

ORDINANCE NO. 2014-003

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO AMENDING ORDINANCE NO. 2013-01, AND ORDINANCE NO. 2014-02, AND PROVIDING FOR LICENSING AND PERMITTING OF MEDICAL MARIJUANA FACILITIES, MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, AND RETAIL MARIJUANA STORES

WHEREAS, the Board of County Commissioners has previously adopted Ordinances 2013-01 and 2014-02, which Ordinances prohibited the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores until February 3, 2015, except for certain facilities in operation prior to May 11, 2011; and

WHEREAS, the Board of County Commissioners has had work sessions to discuss the possibility of allowing additional cultivation and retail sales in the County and has heard from the Town Council of the Town of Ridgway in support of such facilities, as well as from members of the public who support the expansion of facilities within Ouray County; and

WHEREAS, there remain conflicts between state and federal law, raising concerns about unintended consequences for the county in permitting such facilities, but other counties have concluded that the risks associated with permitting facilities are offset by economic benefits; and

WHEREAS, the Board desires to adopt this ordinance extending the prohibition of the operation of marijuana testing facilities, while permitting cultivation facilities, marijuana product manufacturing facilities, medical marijuana facilities and retail marijuana stores.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO:

Section 1. Authority.

This Ordinance is authorized pursuant to, inter alia, Article XVIII, Section 16, of the Colorado Constitution, the Colorado Retail Marijuana Code, C.R.S. 12-43.4-101, *et seq.* and the Colorado Medical Marijuana Code, C.R.S. 12-43.3-101 *et seq.*, which authorize the licensing and regulation of medical and retail marijuana business and affords local government the option to determine whether or not to allow medical and retail marijuana businesses within their respective jurisdictions and to adopt licensing requirements that are supplemental to or more restrictive than the requirements set forth in state law, Article 11 of Title 30, C.R.S. (county powers and functions), Article 15 of Title 30 (County police powers), and Article 28 of Title 30 (county planning and building regulations).

Section 2. Purpose.

The Board of County Commissioners of Ouray County, Colorado, finds and declares that the prohibition of marijuana testing facilities is permitted by the Colorado Constitution, Article XVIII, Section 16, and is in the best interests of the county to prevent unknown and unintended consequences, including the diversion of limited resources for litigation. The term "marijuana testing facilities" here has the same meaning and definition as in Article XVIII, Section 16 of the Colorado Constitution, and in the Colorado Retail Marijuana Code, C.R.S. 12-43.4-101, *et seq.*

Section 3. Amendment and Extension of Ordinance 2013-01

Ordinance 2013-01 and Ordinance 2014-02 are hereby reaffirmed and readopted with respect to marijuana testing facilities only, and further amended by extending the termination date from February 3, 2015 to February 28, 2016. These Ordinances are amended and repealed with respect to prohibitions on medical marijuana facilities, marijuana cultivation, marijuana retail facilities, and

marijuana production facilities, and the provisions of this Ordinance shall govern all operation of marijuana cultivation, marijuana retail, medical marijuana and marijuana production facilities.

Section 4. Colorado Retail Marijuana Code, Colorado Medical Marijuana Code, Compliance.

The definitions contained in the Colorado Retail Marijuana Code, C.R.S. 12-43.4-101, *et seq.* and the Colorado Medical Marijuana Code, C.R.S. 12-43.3-101, *et seq.* are incorporated herein by reference as though fully set forth. Further, all operation of marijuana cultivation, retail and production in Ouray County shall be in compliance with the Colorado Retail Marijuana Code, and the Colorado Medical Marijuana Code, as applicable. No marijuana facility shall be operated in Ouray County except as permitted and licensed by the State of Colorado, pursuant to state law, and in full compliance with terms and conditions imposed by the State of Colorado. Any marijuana facility that is in non-compliance with any provision of a state permit or license, law or regulations, shall be deemed in violation with this Ordinance.

Section 5. License Required for Operation of Marijuana Facilities.

The County hereby authorizes the operation of medical marijuana facilities, marijuana cultivation facilities, marijuana retail facilities and marijuana production facilities as set forth in this Ordinance. It shall be unlawful for any person to establish or operate a marijuana facility in the County without having first obtained a license for such facility from the local licensing authority. Such license shall be kept current at all times, and the failure to maintain a current license shall constitute a violation of this Ordinance.

Section 6. Licensing Authority.

The Board of County Commissioners shall act as the licensing authority for review and approval of all licenses for marijuana facilities. The Land Use staff shall act as support staff to the Licensing Authority and shall accept and process all applications for marijuana facilities, and shall collect fees, draft and maintain such applications, forms, and administrative materials as may be required for operation of this Ordinance. The staff is delegated responsibility to take ministerial actions involving reporting or confirming local approvals of changes in business names, agents, addresses and similar non-policy matters to state regulators.

Section 7. Requirements of Applications.

A person seeking a license or renewal of a license issued pursuant to this Ordinance shall submit an application to the local licensing authority on forms provided by the Land Use Staff. At the time of application, each applicant shall pay a non-refundable operating fee to the County in an amount to be determined by the County by separate Resolution to defray the costs incurred by the County including, but not limited to, processing the license, administration, inspection and enforcement of marijuana facilities.

A copy of the application and all supporting documentation provided to the State of Colorado for licensing under state law and regulations shall be provided with the application to the County. Prior to approval by the licensing authority, the applicant shall provide a copy of the license or other approval from the State of Colorado to operate in the State of Colorado.

Section 8. Cultivation Facilities.

(A) Licensed marijuana cultivation facilities and premises may propagate, cultivate, harvest, prepare, cure, package and label marijuana, whether in concentrated form or otherwise, and sell marijuana that they have cultivated to a person licensed by the State of Colorado to operate a medical marijuana facility or retail marijuana store, production facility, testing facility, or other cultivation facility. Licensed marijuana cultivation facilities are prohibited from selling marijuana to any consumer.

(B) Marijuana cultivation facilities may be located anywhere in unincorporated Ouray County where farming and ranching is a use by right pursuant to the Ouray County Land Use Code, however, no cultivation may occur without a license under this Ordinance. No cultivation facility may be located within 1000 feet of a school or day care/child care facility. All cultivation activities shall occur within an enclosed space, and shall be subject to all security requirements imposed by this Ordinance and by state law and regulations.

(C) There shall be no more than five (5) marijuana cultivation facilities licensed in Ouray County during 2015, and no more than ten (10) marijuana cultivation facilities licensed in Ouray County in 2016. License applications will be accepted for review on a "first come, first served" basis, commencing at 8:00 a.m. on January 20 by hand-delivery to the Land Use offices at 111 Mall Road, Ridgway, Colorado. In the event that there are more than five (5) applications filed on January 20, 2015, the owner of any marijuana facility already licensed by the State of Colorado and existing in Ouray County shall be given the first priority for application processing, with second priority given to any existing farming and ranching business operation in Ouray County, and then any other applications, as they were received. All other applications shall be processed in order of receipt. In the event that an application is denied by the Licensing Authority, the Land Use staff will process the next application in priority of time. Additional applications for 2016 may be filed beginning on December 1, 2015; except that not more than five (5) new applications may be processed, in order of receipt unless and until one or more facilities licensed in 2015 fails to timely apply for a renewal license pursuant to Section 13 (C) below, or a license renewal application has been denied, or a facility licensed in 2015 has otherwise ceased to operate with a license in Ouray County.

(D) Marijuana cultivation facilities shall be subject to all provisions of the Ouray County Land Use Code applicable to farming and ranching uses and facilities.

(E) Operators of marijuana cultivation facilities shall use best practices to conserve energy and water in cultivation operations, and shall avoid the use of treated water from a domestic water provider for irrigation purposes.

(F) Internal grow-lighting used during night-time hours (from sunset to sunrise) shall not be visible from the exterior of the building. Exterior lighting shall be consistent with the Ouray County Land Use Code.

(G) Marijuana cultivation facilities shall blend as that term is used in the Land Use Code, and/or use landscaping and other measures, as determined by the Local Licensing Authority, to decrease the visibility and reflectivity of any building or structure, including greenhouses, from adjacent properties or roads.

Section 9. Retail or Medical Marijuana Stores and Licensed Premises.

(A) Retail or medical marijuana stores and facilities may be located within unincorporated Ouray County where retail or commercial operations are permitted under the Ouray County Land Use Code or pursuant to an approved PUD. All applicable provisions of the Land Use Code shall apply, including requirements for a special use permit for retail or commercial uses in pertinent zoning districts.

(B) No retail marijuana store or facility shall be located within 1,000 feet of any school or day care/child care facility .

(C) Signage and advertising shall be permitted as provided in the Land Use Code and pursuant to state law and regulations, but in the event of a conflict between state law and the Land Use Code, the more stringent requirement shall apply.

(D) In any retail marijuana store in which edibles are sold to consumers, a sign shall be prominently and conspicuously displayed to inform consumers that the edible products have not been

inspected by, or on behalf of, the county public health agency.

(E) Any edibles sold in a retail marijuana store shall be sold in "child-proof" packaging and labeled as follows: "This product is not for consumption by anyone under the age of 21." Any more stringent state regulations for packaging or labeling of edibles shall be applicable in addition, or if in conflict, shall supersede this provision.

(F) There shall be posted in a conspicuous location in each retail marijuana store a legible sign with the following warning:

"The use of marijuana or marijuana products may impair a person's ability to drive a motor vehicle or operate machinery, it is illegal under state law to drive a motor vehicle or operate machinery when under the influence of, or impaired by, marijuana.

"Possession and distribution of marijuana is a violation of federal law.

"No one under the age of twenty-one (21) years is permitted on the premises."

Section 10. Retail Marijuana Production Facilities.

(A) Retail marijuana production facilities, including production of edibles, may be located within unincorporated Ouray County to the extent that such facility can be operated within the provisions of the definition of Home Business in the Ouray County Land Use Code, but no retail marijuana production facility shall be located within 1000 feet of a school or daycare/child care facility.

(B) Licensed retail marijuana products manufacturers may manufacture, prepare, package and label retail marijuana products, whether in concentrated form or that are comprised of marijuana and other ingredients intended for use or consumption. Licensed retail marijuana products manufacturers may sell retail marijuana products of its own manufacture to persons holding a retail marijuana store license from the State of Colorado, or to other licensed retail marijuana products manufacturers. Licensed retail marijuana products manufacturers are prohibited from selling retail marijuana or retail marijuana products to any consumer. No compressed, flammable gas may be used in any production methodology, including use as a solvent in the extraction of THC or other cannabinoids.

(C) Licensed retail marijuana products manufacturers are prohibited from manufacturing, preparing, packaging or labeling marijuana products in a location that is operated as a retail food establishment or as a wholesale food facility.

(D) All packaging shall include a notice that the contents have not been inspected by the county public health agency.

Section 11. Dual Licenses.

Any person or entity or entities with common ownership licensed by the State of Colorado for multiple licenses to engage in multiple operations or for multiple facilities may apply for such dual operation, including both medical and retail marijuana, in Ouray County to the extent that such operations are otherwise permitted by this Ordinance.

Section 12. Continuing Compliance Documentation.

Any person licensed for any marijuana facility in Ouray County shall demonstrate continued compliance with all state licenses, laws and regulations. Licensees shall provide Ouray County with copies of all documents updating information, agents, employees, operations, violations, enforcement actions, or other administrative matters sent to or received from the State of Colorado licensing and enforcement agencies.

Section 13. Issuance of license, Duration, Renewal.

(A) Upon issuance of a license, the County shall provide the licensee with one (1) original of such license for each establishment or facility to be operated by the licensee in the County. This original license shall be displayed in a location visible to the public or to enforcement officials. The license shall include the name and address of the licensee, the type of facility permitted, and the address of the facility at which it is to be displayed.

(B) Each license issued pursuant to this Ordinance shall be valid for one (1) year from the date of issuance, and may be renewed only as provided by this Ordinance. A renewal application shall be filed not less than sixty (60) days prior to expiration and not more than ninety (90) days from expiration. The timely filing of a renewal application shall extend the current license until a decision is made on the renewal. An untimely application may be accepted upon the payment of a late application fee of \$500.00 to expedite processing, and such application shall serve to extend the license until a decision is made on the renewal.

(C) Notwithstanding any state law to the contrary, a licensee whose license expires and for which an application for renewal has not been received prior to the expiration date, shall be deemed to have forfeited its license under this Ordinance. The County shall not accept a renewal application after the expiration of the license. A licensee whose license expires shall not cultivate, harvest, process, manufacture, produce, or sell retail marijuana or retail marijuana products until a new license has been obtained.

(D) At the sole discretion of the licensing authority, a renewal license may be issued for a period in excess of one (1) year, depending upon the compliance history of the licensee, and such other factors as the licensing authority in its sole discretion may determine are relevant.

(E) Notwithstanding state requirements for individual licenses for multiple activities at one location, Ouray County will license each facility for the activity or activities conducted. For example, if the State of Colorado requires a separate license for each section of plants grown within the same cultivation facility or greenhouse, as each section is used for a licensed medical or retail operation, one license would be required from Ouray County for the cultivation or greenhouse facility, even if some plants grown in the facility are used for medical dispensary purposes and some plants are used for retail operations.

Section 14. Authority to Impose Conditions on License, or to Deny License.

The local licensing authority shall have the authority to impose such reasonable terms and conditions on a license, or to deny a license or renewal of a license, as may be necessary to protect the public health, safety and welfare of the people of Ouray County, and to obtain compliance with the requirements of this Ordinance and applicable law.

Section 15. Operations Fee.

Upon issuance of a license or a renewal of a license, the licensee shall pay to the County a fee in an amount to be determined by the County by separate Resolution to be sufficient to cover the annual costs of inspections and for the purpose of determining compliance with the provisions of this Ordinance and any other applicable state or local laws or regulations.

Section 16. Signage and Advertising

All signage and advertising for a retail marijuana facility shall be in compliance with state laws and regulations, as well as the Ouray County Land Use Code, and any applicable special use permit.

Section 17. Security.

All security measures shall be in compliance with state law and regulations, and shall include security surveillance cameras, robbery and burglary alarms, a locking safe affixed to the premises, exterior

lighting, and deadbolt locks on all exterior doors. The Ouray County Sheriff may inspect the premises at any time to ensure appropriate security measures are in use, and to ensure compliance with state laws and regulations. All exterior lighting shall comply with Ouray County Outdoor Lighting Regulations.

Section 18. Visibility of Activities, Odor and Control of Emissions.

(A) All activities of marijuana facilities, including without limitation, cultivation, growing, processing, displaying, selling, storage and packaging, shall be conducted indoors. For purposes of this Ordinance, greenhouse cultivation shall be deemed to occur indoors.

(B) No devices, contrivances, instruments, and paraphernalia for inhaling or otherwise consuming marijuana shall be displayed or kept in a manner so as to be visible from outside the licensed premises.

(C) No licensee shall operate in a manner that causes a nuisance. The Right to Farm Ordinance, Ordinance No. 2001-01 shall not be a defense to any allegation of operating as a nuisance. A licensee shall take appropriate measures and use best efforts to prevent smoke, odors, debris, fluids, and other substances from exiting a retail marijuana facility, and shall be responsible for immediate and full clean-up and correction of any condition creating a nuisance. A licensee shall properly dispose of all materials, items, and other substances in a safe, sanitary and secure manner in accordance with applicable laws and regulations.

Section 19. Sales and Business Licenses Required.

At all times while a license is in effect, the licensee shall possess all required state and local sales tax and/or business licenses.

Section 20. Sales, Excise and Property Taxes.

Each licensee shall collect and remit all applicable sales and excise taxes, and shall remit applicable real and personal property taxes.

Section 21. Book and Records.

All books and records required to be maintained by the State of Colorado shall also be subject to inspection by the County during regular business hours.

Section 22. Nonrenewal, Suspension or Revocation of License.

The local licensing authority may, after notice and hearing, suspend, revoke or refuse to renew a license for good cause, including suspension or revocation of the licensee's state license, or violation of this Ordinance. The local licensing authority is authorized to adopt rules and procedures governing the conduct of such hearings.

Section 23. Violations and Penalties.

In addition to the possible denial, revocation or nonrenewal of a license under the provisions of this Ordinance, any person, including, but not limited to, any licensee, manager or employee of a retail marijuana facility or any customer of such business, who violates any provision of this Ordinance shall be subject to the following penalties:

(A) It shall be a petty offense for any person to violate any provision of this Ordinance. Any person convicted of having violated any provision of this Ordinance may be punished as prescribed by state law.

(B) The operation of a retail marijuana facility or establishment without a valid license issued pursuant to this Ordinance may be enjoined by the County in an action brought in a court of

competent jurisdiction, and may be otherwise prosecuted under state or federal law.

(C) The operation of a retail marijuana facility or establishment without a valid license issued pursuant to this Ordinance shall be specifically deemed to be a public nuisance.

Section 24. No County Liability; Indemnification.

By accepting a license issued pursuant to this Ordinance, the licensee waives and releases the County, its officers, elected officials, employees, attorneys and agents from any liability for injuries, damages, or liabilities of any kind that result from the arrest or prosecution of retail marijuana facility or establishment owners, operators, employees, clients, or customers for a violation of state or federal laws, rules or regulations. All licensees, jointly and severally in the case of more than one, agree to indemnify, defend and hold harmless the County, its officers, elected officials, employees, attorney and agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including without limitations, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other kind whatsoever arising out of or in any manner connected with the operation of the retail marijuana facility or establishment that is the subject of the license.

Section 25. No Waiver of Governmental Immunity.

In adopting this Ordinance, the Board of County Commissioners is relying on, and does not waive or intend to waive, by any provision of this Ordinance, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101, *et seq.*, as amended from time to time, or any other limitations right, immunity, or protection otherwise available to the County, its officers or its employees.

Section 26. Other Laws Remain Applicable.

To the extent the State of Colorado has adopted or adopts in the future any additional or more stringent law or regulations governing the sale or distribution of retail marijuana products, the additional or more stringent law or regulations shall control the establishment or operation of any such facility or establishment in Ouray County. Compliance with any applicable state law or regulations shall be deemed an additional requirement for issuance or denial of any license under this Ordinance, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

In the event that the State of Colorado prohibits the sale or other cultivation, production or distribution of marijuana, any license issued hereunder shall be deemed immediately revoked by operation of law, with no grounds for hearing, appeal or other redress on behalf of the licensee.

The issuance of any license pursuant to this Ordinance shall not be deemed to create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the cultivation, possession, sale, production, distribution, or use of marijuana.

To the extent that any other court of competent jurisdiction or agency of the United States acts to enforce federal laws and regulations or otherwise determines that the issuance of a license, possession, distribution, cultivation, production, sale, distribution or use of marijuana in the State of Colorado is an illegal activity subject to enforcement, the Board of County Commissioners reserves the right to immediately repeal or amend this Ordinance, and/or to revoke or suspend as a matter of law any and all licenses issued pursuant to this Ordinance.

Section 27. Effective Date.

Pursuant to C.R.S. 30-15-405, this Ordinance shall be published in full following its initial introduction and reading and published by title only following final adoption by the Board of County Commissioners and shall be effective thirty (30) days following such publication by title only.

Section 28. Interpretation.

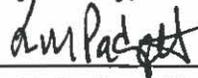
This Ordinance shall be so interpreted and construed as to effectuate its general purpose. Section headings of the Ordinance shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or extent of the provisions of any article or section thereof.

Section 29. Certification.

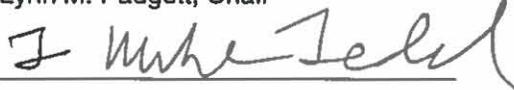
The Ouray County Clerk and Recorder or her Deputy shall certify to the passage of this Ordinance and make not less than three copies of the adopted Ordinance available for inspection by the public during regular business hours.

INTRODUCED AND FIRST READING on Nov. 18, 2014 and first reading continued until December 16, 2014 and on such date ordered published in the *OURAY COUNTY PLAINDEALER*. Published on Nov. 20, 2014

**Board of County Commissioners
Ouray County, Colorado**



Lynn M. Padgett, Chair



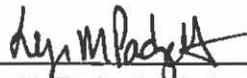
F. Mike Fedel, Vice-Chair



Don Batchelder, Commissioner Member

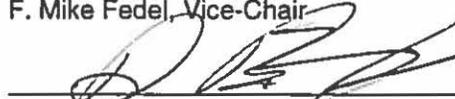
ADOPTED ON SECOND AND FINAL READING on December 16, 2014.

**Board of County Commissioners
Ouray County, Colorado**



Lynn M. Padgett, Chair

F. Mike Fedel, Vice-Chair



Don Batchelder, Commissioner Member

CERTIFICATION BY OURAY COUNTY CLERK AND RECORDER:

I, Michelle Nauer, Clerk and Recorder of Ouray County and Clerk to the Board of County Commissioners, do hereby attest and certify that this Ordinance was

INTRODUCED AND READ ON Nov. 18, 2014 AND CONTINUED TO December 16, 2014 AND READ AND ORDERED PUBLISHED AT SUCH REGULAR MEETING OF THE BOARD OF COUNTY COMMISSIONERS.

THE ORDINANCE WAS PUBLISHED IN FULL IN THE *OURAY COUNTY PLAINDEALER* ON Nov. 20, 2014 ALONG WITH A NOTICE OF PUBLIC HEARING.

ADOPTED AND APPROVED AT A PUBLIC HEARING OF THE BOARD OF COUNTY COMMISSIONERS ON Dec. 16, 2014, AFTER THE SECOND AND FINAL READING OF THE ORDINANCE.

PUBLISHED AFTER ADOPTION IN THE *OURAY COUNTY PLAINDEALER* ON THE 18 DAY OF December, 2014.



Michelle Nauer
Michelle Nauer, Clerk and County Recorder
By: Hannah Hollenbeck, Deputy Clerk of the Board