

**ORDINANCE NO. 2016-001****AN ORDINANCE OF THE  
BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO****REPEALING ORDINANCES NO. 2014-003 and 2015-004, PROVIDING FOR LICENSING  
AND PERMITTING OF MEDICAL MARIJUANA FACILITIES, MARIJUANA CULTIVATION  
FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, AND RETAIL  
MARIJUANA STORES, AND PROHIBITING MARIJUANA TESTING FACILITIES**

**WHEREAS**, the Board of County Commissioners has previously adopted Ordinances 2014-003 ("2014 Ordinance") and 2015-004 ("2015 Ordinance") which Ordinances provide for licensing and permitting of marijuana cultivation facilities, marijuana product manufacturing facilities and retail marijuana stores; and prohibited operation of marijuana testing facilities, except for certain facilities in operation prior to May 11, 2011; and

**WHEREAS**, in 2015 the voters of Ouray County approved an excise tax of 5% on the average market rate, as determined by the Colorado Department of Revenue, on the first sale or transfer of unprocessed retail marijuana by a retail marijuana facility located within Ouray County; and

**WHEREAS**, the Board of County Commissioners finds that additional amendments to the Ordinances governing retail marijuana in Ouray County are necessary to fully and effectively implement and enforce the 2014 and 2015 Ordinances; and

**WHEREAS**, the Board of County Commissioners has power under C.R.S. 12-43.4-306, among other authorities, to conduct such background investigations of applicants and consider such matters as state law permits in reviewing applications for licenses for retail marijuana establishments and facilities to ensure the public health, safety and welfare; 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.

**WHEREAS**, the Board of County Commissioners deems it in the public interest to combine the multiple amendments to Ordinance 2014—003 into one Ordinance for ease of the public, applicants, and staff to implement a local licensing program for retail marijuana;

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

**Ordinances 2014-003, 2015-004 are hereby repealed and replaced by this Ordinance.**

**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 Repeal of Ordinances 2013-01, 2014-003, and 2015-004**

Ordinance 2013-01, Ordinance 2014-02, and Ordinance 2015-004 are hereby reaffirmed and readopted with respect to marijuana testing facilities only, and the termination date of the moratorium for marijuana testing facilities is as provided in Ordinance 2015-004, December 31, 2018. These Ordinances are 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 the licensing and operation of all 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, and the applicable Regulations adopted by the Colorado Department of Revenue, as those regulations may be amended from time to time. 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 Local Licensing Authority for review and approval of all licenses for marijuana facilities. The Land Use staff (herein referred to as 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) 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 Staff. At the time of application, each applicant shall pay a non-refundable operational/application 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.
- (B) 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 issuance of the County license, the applicant shall provide a copy of the license or other approval from the State of Colorado to operate in the State of Colorado. The information

provided with the application shall include, but is not limited to:

- (1) the name, address, and date of birth of the applicant or of each of the partners, officers, directors, or managers if the applicant is a corporation, limited liability company, partnership or other business entity;
- (2) a copy of the driver's license of each applicant or partner, officer, director or manager if the applicant is a corporation, limited liability company, partnership, joint venture, or other business entity, or such other evidence of lawful presence and residency, if applicable, and good character and reputation as the Local Licensing Authority may request;
- (3) a complete set of fingerprints of the applicant or of each of the partners, officers, directors or managers, if the applicant is a corporation, limited liability company, partnership, joint venture, or other business entity;
- (4) such other information as the Local Licensing Authority or the Staff on its behalf may require in order to determine whether a local license should be granted.
- (5) Financial information regarding loans and investors necessary to determine whether all persons with a financial interest in the retail marijuana establishment have been included as owners pursuant to Colorado statute and regulations.

An applicant who has previously submitted fingerprints for local licensing purposes may request that the fingerprints on file be used.

The local licensing authority shall direct the Ouray County Sheriff to conduct a criminal history background check pursuant to C.R.S. 12-43.4-307 to determine whether the applicant, or the partners, officers, directors, or managers if the applicant is a corporation, limited liability company, partnership, joint venture, or other business entity are qualified to hold a local license based upon the criteria and prohibitions set forth in C.R.S. 12-43.4-306.

Each application must be verified by the oath or affirmation of the applicant, or the person submitting the application on behalf of the applicant if the applicant is corporation, limited liability company, partnership, joint venture, or other business entity.

Any misrepresentation, omission, or falsehood of material information provided and verified in the application may be grounds for immediate denial of the application or revocation of a license. Material information includes, but is not necessarily limited to: the applicant, names of partners, officers, directors or managers; residency of the applicant or any partner, officer, director, or manager if the applicant is a corporation, limited liability company, partnership, joint venture, or other business entity; information regarding land ownership of a marijuana cultivation facility; omission of existing agreements or contracts for change in ownership of the entity, or ownership of the land on which a marijuana cultivation facility is proposed; financial interests or financing; criminal history.

- (C) Applicants are strongly urged to schedule a pre-application meeting with staff to determine what additional documents will be required prior to processing. For construction of new buildings or structures, it may be necessary to submit elevation drawings, drawings or depictions of proposed fencing, proposed blending, architectural, and landscaping plans to limit visual impacts,
- (D) Public notices, notices to adjacent and neighboring property owners, on-site posting are required for all new applications. Written notice must be sent to adjacent property owners, and property owners within 500 feet of the property line of the proposed facility. The procedures for notices shall be as provided in applicable provisions of the Land Use Code, and will be provided to applicants by the staff upon request, or upon receipt of a complete application.

## **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 directly to any consumer.

- (B) Marijuana cultivation facilities may only be located on a legal, conforming lot 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 licensed 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. No cultivation activities will be permitted outside a building, greenhouse or other enclosed space. Applicants must demonstrate that the proposed location of the cultivation facilities on the lot will minimize off-site impacts of the facility: 1) to adjacent residents or properties; 2) on traffic congestion on local streets and roads; 3) of odor, light, and noise; 4) visually. Applicant shall demonstrate that the proposed operation meets the general criteria of the Special Use Permits Section of the LUC. Applicants must demonstrate that the proposed facility is in general conformance with the Ouray County Master Plan, and can be constructed and operated in a manner that is compatible with adjacent property uses.
- (C) Applicants shall provide information and such documentation as staff may reasonably require demonstrating the availability of an adequate water supply for both irrigation and domestic uses during the term of the license, and shall confirm such information and demonstrate continued availability of an adequate water supply as part of any renewal application. Hauled water may not be used as a source of water and shall not be considered an adequate water supply except as an emergency, temporary supply.
- (D) There shall be no more than eight (8) marijuana cultivation facilities licensed in Ouray County, including application renewals and new applications. The Local Licensing Authority may, by a future resolution to be attached to this ordinance, increase or decrease the number of cultivation facilities allowed. All applications shall be processed in order of receipt. In the event that an application for a new license or for renewal of an existing license is denied by the Local Licensing Authority, staff will process the next application in priority of time. Staff may refuse to accept Applications that are deemed incomplete, or may permit an Applicant a reasonable amount of time to complete or amend an application, not to exceed sixty (60) days. Any application that is materially or substantially amended, including changes in the name of the applicant, the proposed location of the facility, or any combination of amendments, may be considered incomplete and, when amended will be placed at the end of the priorities in time. Additional applications may be filed with the staff, but there shall be no more than a total of eight (8) cultivation facilities licensed in Ouray County at any time. If a cultivation facility fails to timely renew its application pursuant to Section 13, or is denied a renewed license, or has otherwise ceased to operate with a license in Ouray County, then staff may process the next new application in priority of time. No more than two (2) "contingent" applications will be accepted by the Staff.
- (E) Marijuana cultivation facilities shall be subject to all provisions of the Ouray County Land Use Code and such provisions of the building codes as may be applicable. "Hoop" houses and similar seasonal greenhouse structures are limited to summer use only, from April 1 through October 31, unless a snow load rating can be provided demonstrating compliance with building code snow load requirements. The licensee shall bear the burden of proving that the snow load requirement is met.
- (F) 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.
- (G) 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.

- (H) Marijuana cultivation facilities shall reduce visual impacts through blending, architectural design, landscaping, site placement, building materials, and other measures, as determined by the Local Licensing Authority, to limit the visibility and reflectivity of any building or structure, including greenhouses, from adjacent properties or roads, or other roads or properties from which the facility may be visible. Cultivation facility structures, including greenhouses, may not cover more than 10% of the total square footage of the lot or parcel.
- (I) All licensed retail marijuana cultivation facilities shall pay to the County a 5% excise tax on the first sale or transfer of unprocessed retail marijuana from a retail marijuana cultivation facility located within Ouray County, including bud, trim and wet whole plant and the first sale of seeds and immature plants from a retail marijuana cultivation facility to a retail marijuana store or retail marijuana products manufacturing facility. The amount of the excise tax shall be calculated using the procedures adopted by the State of Colorado Department of Revenue, as amended from time to time, for collection of the state excise tax: using the average market rate for flower, trim and immature plants as determined by the Colorado Department of Revenue. Remittance of the 5% Ouray County Marijuana Excise Tax shall be paid to Ouray County not later than the 20<sup>th</sup> day of the month following the month in which sale or transfer of unprocessed retail marijuana occurred.

*For example, the excise tax for sales or transfers of unprocessed marijuana occurring during the month of January are due not later than February 20. If the 20<sup>th</sup> falls on a weekend or holiday, the due day is the following business day.*

A copy of the excise tax return filed with the Colorado Department of Revenue must accompany the County excise tax payment, along with the 5% Marijuana Excise Tax Reporting Form and payment to Ouray County. The reporting Form and excise tax payment should be made payable to Ouray County and delivered to the Ouray County Administrator, 541 4<sup>th</sup> Street, Ouray, Colorado 81427, or mailed to P.O. Box C, Ouray, Colorado 81427. A reporting form must be submitted each month by every licensed retail marijuana facility, even if no sales or transfer occurred during the month or no excise tax is due for the period. Late payments shall be assessed a penalty of \$100 per day for each day the payment is made after the due date, unless specifically excused by the County Administrator in writing for good cause shown. Payments should be made by check or cashier's check if possible. In addition to the late fee, failure to pay the excise tax due on or before the 20<sup>th</sup> of the month is grounds for immediate suspension or revocation of the County license for the cultivation facility.

#### **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 licensed 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-resistant" packaging, as defined by state regulations, 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 Products Manufacturing Facility.**

- (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 directly 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. Failure to provide any documents sent to or received from the State of Colorado licensing and enforcement agencies may be grounds for denial of a renewal permit or revocation of a permit.

#### **Section 13. Issuance of license, Duration, Renewal, Modifications and Transfers of Licenses.**

- (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) Renewal licenses may be administratively issued by the staff for a period of one year if staff finds that the facility for which the license was granted has been operated during the license period, there have been no continuing violations of state law or this Ordinance and there are no substantial revisions, amendments or alterations to the existing facility or any term of a lease, water supply, or other local license term or condition. Staff may request that the Local Licensing Authority review and consider any renewal application. An applicant may request that the Local Licensing Authority review and consider any application. Any renewal application that contains significant or substantial changes, revisions, alterations, or expansion of size of the facility shall be required to complete an updated application form and shall be considered by the Local Licensing Authority. At the sole discretion of the Local 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 Local Licensing Authority in its sole discretion may determine are relevant. To prevent speculation in obtaining and holding a license, consideration of license renewal for any facility that has not been in operation during the initial license period unless the Local Licensing Authority finds and determines, in its sole discretion, that the Licensee has exercised due diligence in developing the licensed facility, including, but not limited to, financing, construction plans, and application for other necessary permits, and that there is reasonable cause for not having completed the facility and commencing operation during the initial license period.
- (E) Modifications of a license during the term of the license may be made by submitting an application identifying the modifications requested in the locally issued license. Modifications, other than internal premises changes approved by the State, which will be reviewed by staff, will be considered by the Local Licensing Authority and approved or denied in the discretion of the Local Licensing Authority. Modifications include those alterations to the facility, ownership, or other terms and conditions, as provided under state law and regulations. Modifications will also include any change in the lease of property or the ownership property on which a facility is located.
- (F) The Local Licensing Authority will consider all requests for transfer of a local license to a new person, or business entity upon the submittal by a licensee and proposed transferee of an application for transfer the license. Any change in ownership, including restructuring of an existing business entity to include additional members, partners, shareholders or any financial arrangement that includes a financial interest in the entity, including a share of profits, future ownership rights or promise of future ownership rights, requires approval of the Local Licensing Authority. The application shall include documentation that a transfer of ownership application has been submitted to the State and is in process, or, has approved or conditionally approved, the transfer of the corresponding state license or permit to the proposed transferee. The application shall include the information provided for a new license, as provided in Section 7 above, including a complete set of fingerprints for all persons, partners, members, officers, and managers. The Local Licensing Authority may request such additional investigation or information as it deems necessary to make an informed decision, and may approve or deny the application for transfer in its discretion, and upon such terms and conditions as may be approved by the Local Licensing Authority and agreed to by the proposed transferee.

- (G) 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. A Licensee shall provide the County with copies of all licenses received from the state.

#### **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, or a modification 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. All approvals by the Local Licensing Authority shall include a consideration of whether the proposed activity or facility is in general conformance with the Master Plan, and shall include consideration of whether the proposed activity or facility can be conducted or constructed and operated in a manner that is compatible with the adjacent land uses. The Local Licensing Authority may, in its sole discretion, deny a license, renewal of a license, or modification of a license. The Local Licensing Authority may deny a renewal of a license if information is presented demonstrating that material information in the application for the initial license was untruthful, misleading, contained material omissions, misstatements or was otherwise intentionally or purposefully calculated to mislead the Local Licensing Authority about any material information, including ownership of the facility, owners, directors, managers, or holders of financial interest in the applicant. The Local Licensing Authority shall deny a license, renewal of a license, or modification of a license to any person prohibited by state law, as provided in C.R.S. 12-43.4-307

#### **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. Signs for marijuana cultivation facilities shall be limited to address only.

#### **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, and on-site security presence. 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. Owners/managers of marijuana facilities are strongly encouraged to have a 24/7 on-site caretaker. However, other alternative security measures designed to ensure continual premises protection from intruders may be proposed.

#### **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. Good cause for the purpose of suspending, revoking, or refusing to renew a license under this Ordinance means: (1) the licensee has violated, does not meet, or has failed to comply with any of the terms, conditions or provisions of this Ordinance and any rule or regulation promulgated pursuant to this Ordinance, including failure of the licensee to provide the County with copies of documents filed with the State Marijuana Enforcement Division (MED) and correspondence with the MED; (2) the licensee has failed to comply with any special or license-specific terms or conditions that were imposed at the time the licensee was issued or that were imposed as a result of a disciplinary process or potential disciplinary process; (3) the licensee's retail marijuana store, retail marijuana products manufacturing operation, or retail marijuana cultivation facility has been operated in a manner that is a nuisance or that otherwise affects the public health, welfare or safety of the immediate neighborhood in which the marijuana establishment is located. Evidence to support such a finding may include: (a) a continuing pattern of offenses against the public peace; (b) a continuing pattern of drug-related criminal conduct within the premises of the marijuana establishment; or (c) a continuing pattern of criminal conduct directly related to or arising from the operation of the retail marijuana establishment.

#### **Section 23. Violations, Enforcement and Penalties.**

1. In addition to the possible denial, revocation, suspension or non-renewal of a license under the provisions of this Ordinance, any person, including, but not limited to, any applicant, licensee, manager or employee of a retail marijuana facility, or any customer thereof, who makes a false statement on an application, or violated any provision of this Ordinance or of the Colorado laws and regulations governing the licensing and operation of a retail marijuana facility will be subject to one or more of the following penalties, depending on the determination by the Local Licensing Authority of the severity of the violation in the following categories:
  - A. License Violation Affecting Public Health and Safety. This category of violation is the more severe and may include, but is not limited to, sales of retail marijuana to persons under the age of 21; consuming marijuana on the licensed premises; retail marijuana sales in excess of

the relevant transaction limit; permitting the diversion of retail marijuana outside the regulated distribution system; possessing retail marijuana or retail marijuana product obtained from outside the regulated distribution system or from an unauthorized source; other violations of Colorado Department of Revenue Regulation R 1307. Violations in this category also include transferring the ownership of a licensed facility without prior approval from the Local Licensing Authority, its key personnel, managers, shareholders, or owners. Penalties for violations in this category may include license revocation suspension, non-renewal or denial, additional restrictions on the license, and/or a fine of up to \$10,000, or as otherwise permitted by state law. The Licensing Authority may consider mitigating and aggravating circumstances in determining the penalty or penalties for violations.

- B. License Violations. This category of violation is more severe than a license infraction, but not as severe as a violation affecting public health and safety, and includes, but is not limited to violations of terms and conditions of a specific license, failure to provide timely records required by this Ordinance or by state law or regulations; and failure to pay County excise taxes when due. The range of penalties for this category of violation may include a written warning, a suspension of the license, revocation of the license, and/or a fine of up to \$5,000.
- C. License Infractions. This category of violation is the least severe and includes, but is not limited to violations of land use code violations, building permit violations, or terms and conditions of a license not considered as either a License Violation Affecting Public Health and Safety or License Violation.

## 2. Mitigating and Aggravating Factors.

The Local Licensing Authority may consider mitigating and aggravating circumstances when considering the imposition of a penalty for violations and infractions. These factors may include, but are not limited to:

- A. Any prior violations or infractions that the Licensee has admitted to or was found to have committed.
- B. Actions taken by the Licensee to prevent the violation or infraction.
- C. Corrective actions taken by the Licensee in response to the current violation or infraction.
- D. Willfulness, deliberateness, or negligence of the Licensee in committing the violation or infraction
- E. Any other factors pertinent to the violation or infraction, including any state imposed penalty or determination of penalty for the violation or infraction.

- 3. The Local Licensing Authority may defer any enforcement action to the State of Colorado Department of Revenue.
- 4. Enforcement actions undertaken by the County shall be initiated and prosecuted by the County Attorney and shall be heard by the Local Licensing Authority, or as otherwise provided at law for violation of county ordinances.

## **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.**

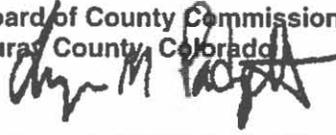
This Ordinance shall be so interpreted and construed as to effectuate its general purpose. Section headings of the Ordinance shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or extent of the provisions of any article or section thereof.

**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 and on such date ordered published in the *OURAY COUNTY PLAINDEALER*. Published on May 5, 2016.

Board of County Commissioners  
Ouray County, Colorado



Lynn M. Padgett, Chair



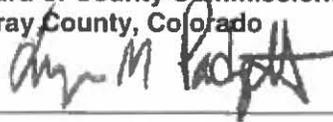
Ben Tisdel, Vice-Chair



Don Batchelder, Commissioner Member

**ADOPTED ON SECOND AND FINAL READING** on May 24, 2016

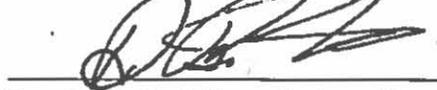
Board of County Commissioners  
Ouray County, Colorado



Lynn M. Padgett, Chair



Ben Tisdel, Vice-Chair



Don Batchelder, Commissioner Member

**EFFECTIVE DATE** JUNE 25, 2016.

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 MAY 3, 2016 AND CONTINUED TO MAY 24, 2016 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 MAY 5, 2016 ALONG WITH A NOTICE OF PUBLIC HEARING.

ADOPTED AND APPROVED AT A PUBLIC HEARING OF THE BOARD OF COUNTY COMMISSIONERS ON MAY 24, 2016, AFTER THE SECOND AND FINAL READING OF THE ORDINANCE.

PUBLISHED AFTER ADOPTION IN THE *OURAY COUNTY PLAINDEALER* ON THE 26 DAY OF MAY, 2016



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