

ORDINANCE NO. 2022-002

AN ORDINANCE OF THE
BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO
REPEALING AND REPLACING ORDINANCE NO. 2019-001, AND PROVIDING FOR
LOCAL LICENSING AND LOCAL REGULATION OF MARIJUANA FACILITIES

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

Section 1. Authority.

A. Section 14 of Article XVIII of the Colorado Constitution, commonly known as Amendment 20 of 2000, authorizes the medical use of marijuana. Section 16 of Article XVIII of the Colorado Constitution, also commonly known as Amendment 64 of 2012, authorizes state and local regulation for businesses engaging in the cultivation, testing, manufacturing, and retail sale of marijuana. More specifically, Subsection 16(5)(f) of Article XVIII allows localities within their respective jurisdictions to prohibit local licensing of specified types of businesses; to regulate the time, place, manner in which marijuana business may operate; to establish licensing procedures; and to limit the total number of marijuana business.

B. Local regulatory authority is also reflected in various provisions of the Colorado Marijuana Code, C.R.S. § 44-10-101, *et seq.*, which authorize the licensing and regulation of medical and retail marijuana business and affords local governments 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. Additional sources of authority are set forth in Article 11 of Title 30, of the Colorado Revised Statutes (county powers and functions); Article 15 of Title 30 (County police powers); and Article 28 of Title 30 (county planning and building regulations). In addition, 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. The Board of County Commissioners hereby adopts this Ordinance 2022-000, permitting local licensing within the unincorporated county of retail and medical marijuana cultivation facilities, retail and medical products marijuana testing facilities, retail and medical marijuana products marijuana manufacturing facilities, and medical marijuana research and development facilities.

Section 2. Definitions

A. "Active Facility" means a Facility that has planted, cultivated and harvested at least one or more marijuana crops, in a total quantity equal to or greater (cumulatively) than twenty five percent (25%) of the maximum number of plants allowed under the State MED license, at least once during the prior licensing period. An "Inactive Facility" is one that is NOT an Active Facility during the prior licensing period.

B. "Administrative Penalties" means a fine, suspension, or revocation of a local license.

C. "APA" means the Colorado Administrative Procedure Act, Title 24, Article 4 of the Colorado Revised Statutes, which is applicable under Section 16(5)(f) of Article XVIII of the Colorado Constitution.

D. "Applicant" means an individual or business entity that is seeking a local license under the terms of this Ordinance.

E. "Business entity" means a corporation, limited liability company, partnership, joint venture, or other business entity recognized under Colorado law.

F. "Board" means the Board of County Commissioners of Ouray County, Colorado.

G. "Chair of the LLA" means the Chair-person of the Board and LLA, or designee.

H. "County" means Ouray County, Colorado.

I. "Excessive Debris" means any undue discharge of dust, debris, smoke, or liquids from a Facility that unreasonably disturbs the quiet use and enjoyment of another's property.

J. "Excessive Heat" means any undue discharge of heat from a Facility that unreasonably disturbs the quiet use and enjoyment of another's property.

K. "Excessive Light" means any undue light pollution or glare from a Facility that unreasonably disturbs

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the quiet use and enjoyment of another's property, including but not limited to any lack of appropriate and commercially feasible anti-reflective materials, any internal grow-lighting used during night-time hours (from sunset to sunrise) that is visible from the exterior of the building, any use of materials and/or construction out of compliance with Section 9.7 of the Land Use Code, and/or any outdoor lighting out of compliance with Section 19 of the Land Use Code.

L. "Excessive noise" means any noise, including noise from an exhaust fan, from a Facility, which would exceed the limits defined by Ouray County Ordinance 1992-1 or C.R.S. § 25-12-103, whichever is more stringent.

M. "Excessive Odor" means the repeat or prolonged smell or odor of marijuana, which unreasonably disturbs the quiet use and enjoyment of another's property, which is attributable to the Facility and detectible to a person with a normal sense of smell from or beyond any adjoining lot, building unit, parcel, tract of land, or public right-of way. Excessive Odor may be verified or identified by any or all of the following methods: Staff's plain smell, law enforcement's plain smell, third-party professional assessment(s), and Staff's legal use of properly calibrated scientific monitoring devices, with sufficient training, in order to detect terpenes or other verifiable chemical compounds.

N. "Excessive Traffic" means undue vehicular or foot traffic, to and from a Facility, which unreasonably disturbs the quiet use and enjoyment of another's property.

O. "Facility" means any commercial marijuana establishment and/or business, specified in an application for a retail and/or medical local license granted under this Ordinance, which consists of the area, including any building or other defined contiguous area including a portion of a building, within which the licensee is authorized to cultivate, manufacture, distribute, test, or take other state-authorized and LLA-authorized actions for regulated marijuana and marijuana products in accordance with the Marijuana Code. Any specific licensed type of Facility herein (e.g. cultivation Facilities and/or products manufacturer Facilities, whether medical or retail), shall have the same meaning as set forth for individual types or classes of licenses in the Marijuana Code, including but not limited to C.R.S. § 44-10-103 and 44-10-401. For purposes of clarity and brevity, the word "marijuana" may be deleted before references to Facilities herein.

P. "Good Cause," for purposes of any license denial or non-renewal, means those criteria set forth in C.R.S. § 44-10-103(17), and additionally means any determination by the LLA of a lack of a preponderance of the evidence from the Applicant justifying any denial of an initial application, or any determination by the LLA of a preponderance of the evidence from Staff justifying any non-renewal.

Q. "Land Use Code" means the County Land Use Code, as amended, which are local regulations for zoning and land use promulgated under C.R.S. § 30-28-116, and are incorporated herein by reference as though fully set forth herein.

R. "Last Known Address" means the address listed on any license application, or subsequently furnished in writing to Staff and/or the LLA in writing by the Applicant.

S. "Legal Access" means direct access to any public road or highway, or such access by any private way of necessity under C.R.S. § 38-1-102 and Article II, Section 14 of the State Constitution, meaning such passageways or roadways necessary in the sense that they are indispensable to the practical use of the property for which they are claimed.

T. "Licensee" means an individual, a business, or a legal entity that holds local license(s) under the terms of this Ordinance, including but not limited to the owner/operator of any Facility.

U. "LLA" means the Local Licensing Authority, which has local licensing regulatory authority under the Colorado Constitution and the Colorado Marijuana Code, and which is composed of the Board.

W. "Local Fee" means a non-refundable Application or Operational Fee established in an amount set by Ouray County Resolution 2019-009, as amended, which is an amount to be determined by the County to be sufficient to cover the costs to process the application, and administration, inspection, and enforcement costs for the license period, pursuant to Article XVIII, Section 16(5)(f) of Article XVIII of the Colorado Constitution, C.R.S. § 44-10-803(3), and other applicable law.

X. "Marijuana" means such products defined under Article XVII, Section 16(2)(f) of the Colorado Constitution, which are regulated under the Marijuana Code. The Board recognizes that although the term "marijuana" has negative historical connotations including extensive usage which has disproportionately affected marginalized communities, the continued usage of this term is necessary for the implementation

of this local regulation because it continues to be codified and legally recognized today. The term “cannabis,” although used widely throughout the industry, is also likely to cause confusion because it broadly encompasses hemp which is outside the scope of this local regulation.

Y. “Marijuana Code” means the Colorado Marijuana Code, C.R.S. § 44-10-101, *et seq.*, as amended, which is incorporated by reference as though fully set forth herein, including but not limited to all definitions in the Marijuana Code. All definitions set forth in Article XVIII, Sections 14 and 16 of the Colorado Constitution, are also incorporated herein by reference as though fully set forth herein.

Z. “Material Misrepresentation” means any misrepresentation, omission, misstatement or falsehood of any information provided to Staff and/or the LLA, provided said information would be of reasonable significance to any transaction or proceeding, including but not limited to information on: name(s) of the applicant, partners, officers, directors or managers if the applicant is a business entity; residency of the applicant or any partner, officer, director, or manager if the applicant is a business entity; information regarding land ownership of a Facility; omission of existing agreements or contracts for change in ownership of the entity, or ownership of the land on which a Facility is proposed; financial interests or financing; and criminal history.

AA. “Property” means the geographical location of any Facility, including any lots or parcels, which are owned or in possession of the licensee, and which cannot include multiple non-adjacent or non-contiguous lots or parcels.

BB. “Staff” means the county staff members of only the County Land Use & Planning Department.

CC. “State MED” means the State of Colorado, Department of Revenue, Marijuana Enforcement Division.

DD. “This Ordinance” means Ordinance 2022-002.

EE. “Variation” means any LLA-approved exception(s) from the terms of this Ordinance.

Section 3. Amendment and Repeal of Ordinance 2019-001.

A. The Board of County Commissioners has previously adopted and repealed Ordinances 2014-003, 2015-004, and 2016-001, Ordinance 2017-001, Ordinance 2018-00; and has previously adopted Ordinance 2019-001 (“2019 Ordinance”).

B. The Board finds that amendments to the 2019 Ordinance governing local licensing authority for the County, are necessary to fully and effectively implement local licensing authority for the County.

C. The 2019 Ordinance is hereby repealed, and the provisions of this Ordinance shall govern the local licensing and operation procedures and restrictions for all retail and/or medical marijuana Facilities within the unincorporated areas of the County.

Section 4. General Licensure Provisions

A. The LLA shall act as the final administrative-level adjudicatory body for the issuance of licenses and any Administrative Penalties set forth herein. The LLA shall have the authority to approve or deny any license application, including any initial application, application for renewal, application for modification, change, or location transfer, authority to impose any conditions on a license that are reasonably necessary to effectuate the terms of this Ordinance, and authority to impose any Administrative Penalties, as may be necessary to obtain compliance with the requirements of this Ordinance and applicable law, and to protect the public health, safety and welfare of the people of the County, including 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 LLA shall deny a license, renewal of a license, or modification of a license to any person prohibited by state law, including but not limited to C.R.S. §§ 44-10-304, 44-10-307 and 44-10-311 through 44-10-314. Staff shall act as support staff to the LLA, and shall accept and process all applications for Facilities, collect fees, draft, maintain, and redact such applications, forms, and administrative materials as may be required for operation of this Ordinance, and take ministerial actions involving reporting or confirming local approvals of changes in business names, agents, addresses and similar non-policy matters to State regulators including the State MED.

B. It shall be unlawful for any person to establish or operate a Facility in the County without having first obtained a license for such facility from the LLA. Such license shall be kept current at all times, and the failure to maintain a current license shall constitute a violation of this Ordinance.

C. The County hereby authorizes the operation of retail and medical marijuana cultivation Facilities, retail and medical products manufacturing Facilities, retail and medical testing Facilities, and medical research and development Facilities, as set forth in this Ordinance. Retail and medical marijuana stores, hospitality businesses, and retail marijuana hospitality and sales businesses, are prohibited within the unincorporated areas of the County, but other types of licenses, including all additional license types specified in the Marijuana Code including C.R.S. § 44-10-401(1), as amended, are not specifically prohibited from local operations including local licensure under this Ordinance, with all procedures set forth herein applicable to the maximum extent permissible under the Marijuana Code and this Ordinance.

C. Additionally, Facilities are separately licensed, regulated, and tightly controlled by both the State MED pursuant to the Marijuana Code, along with the LLA and Staff pursuant to this Ordinance. Therefore, Facilities do not require separate approval or issuance of a Special Use Permit for specified commercial uses under the Land Use Code. Facilities are also accordingly not considered a use by right for agricultural products or operations which are separately regulated and governed under the Ouray County Right to Farm Ordinance No. 2001-01, Sections 2 and 3 of the Land Use Code, Title 35 of the Colorado Revised Statutes, and other applicable law.

Section 5. Application Procedures and Requirements

A. The Applicant shall have the burden, for Good Cause, to demonstrate compliance with all procedures and requirements set forth in this Section, including both procedural and substantive requirements. The LLA and/or Staff shall have the authority to request additional information at any time.

B. Prior to submitting an official application for Staff review, an Applicant shall schedule an in-person pre-application meeting with Staff to discuss the feasibility and siting of a proposed Facility. The purpose of this meeting is to prepare prospective Applicants for application-related processes, procedures, requirements, and standards, including any additional actions or submitted materials that may be required prior to accepting the application for processing. A pre-application meeting is only a courtesy to the Applicant, and as such, does not create any vesting for the Applicant and does not guarantee or imply future approval of a Facility license by the LLA. All submittals and other documentation provided to Staff and/or the LLA are strictly the responsibility of the Applicant at all times.

C. A person seeking a new Facility license pursuant to this Ordinance shall submit an application to the LLA on forms provided by the Staff and available on the Land Use pages of the County website. Each application shall include:

- I. Verification of payment of all non-refundable Local Fee(s).
- II. Unless otherwise provided by the State MED, a copy of the completed application form(s), and all additional supporting documentation provided to the State of Colorado for licensing under state law and regulations.
 - II. A copy of all license(s) or other approval or denial related actions from the State MED to operate in the State of Colorado. Local license approval for medical Facilities is required as a condition of state licensure, within one year of issuance of the state license(s), under C.R.S. § 44-10-305(2)(b)(I).
 - III. Verification of whether the Applicant waives the 30-day timeline, for Applicant's right to a public hearing for any medical Facility within 30 days of the submission of the application, pursuant to C.R.S. § 44-10-307(1)(a). In the event the Applicant does not waive this deadline, staff and/or the LLA may expedite and alter any deadlines in this Ordinance, and reschedule or delay other pending matters, to the maximum extent permissible under the Marijuana Code and other applicable state law.
 - III. Verification that by accepting a license issued pursuant to this Ordinance, the licensee waives and releases Ouray 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 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, claims of injury to water rights or interference with the ability to receive a federal grant, loan or other source of federal funds, forced closure or any other claim whatsoever arising out of or in any manner connected with the operation of

the marijuana facility that is the subject of the license.

IV. Verification that in adopting Ordinance 2022-002, and in taking any and all actions related to marijuana facilities, 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, or any other limitations, rights, immunity, or protection otherwise available to Ouray County, its officers or its employees, including but not limited to the County's absolute immunity for both quasi-judicial and prosecutorial functions in administrative proceedings.

V. The following evidence, including documents submitted by the Applicant to Staff, to establish good moral character and compliance with the Marijuana Code based upon the criteria and prohibitions set forth in C.R.S. §§ 24-5-101(2) and 44-10-307(1) through (3), and other applicable law, including:

- a. A copy of the driver's license of each applicant or partner, officer, director or manager if the applicant is a business entity;
- b. Such other evidence of lawful presence and place of residency, if applicable;
- c. 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, although an applicant who has previously submitted fingerprints for local licensing purposes may request that the fingerprints on file be used;
- d. Upon receipt of all necessary information regarding name(s), address(es), date(s) of birth, driver's license(s), and complete set(s) of fingerprints, Staff shall direct the County Sheriff's Office to conduct a criminal history background check pursuant to C.R.S. § 44-10-307(4)(a), subject to any restrictions imposed by the County Sheriff's Office, to determine whether the applicant, or the partners, officers, directors, or managers if the applicant is a business entity, are qualified to hold a local license;
- e. Financial information regarding loans and investors necessary to determine whether all persons with a financial interest in the Facility have been included as owners pursuant to Colorado statutes and regulations;

VI. Such other information as the LLA or the Staff on its behalf may require, in its sole discretion, in order to determine whether a local license should be granted;

VII. Verification by a notarized oath or affirmation of the Applicant, or the person submitting the application on behalf of the applicant if the applicant is a business entity;

D. Each application shall also include specific documentary evidence, which shall be compiled by appropriately-qualified third-party professionals and/or consultants instead of or in addition to the Applicant if it is feasible to do so at the sole discretion of the Staff and/or LLA, demonstrating that, for all Facilities, whether medical or retail:

I. General Location, Physical, and Siting Requirements:

- a. The Applicant is, or will be, entitled to possession of the Property under a lease, rental agreement, or other similar contractual arrangement;
- b. Any buildings used for Facility operations in which marijuana in any form is present for commercial purposes, including any applicable sale(s), using a direct route of measurement from the nearest portion of any such Facility building used for such purposes, shall comply with a **one thousand (1,000)** foot minimum set-back from any currently-existing:
 - i. Property boundary of a school;
 - ii. Property boundary of an alcohol and/or drug treatment facility;
 - iii. Property boundary of a principal campus of any college, university, or seminary;
 - iv. Property boundary of a residential childcare facility;
 - v. Nearest portion of a building, within any surrounding properties, which is a Primary Dwelling Unit or Adjacent Dwelling Unit, as those terms are defined within Section 2 of the Land Use Code, but not to include any Primary or Adjacent Dwelling Units within the

Property.

- c. The Facility shall be located in the unincorporated areas of the County.
- d. Zoning, parcel/lot, and other physical requirements for specified types of Facilities:
 - i. Cultivation Facilities: Cultivation Facilities shall only be located on Property of 35-acres or more in size, in only the High Mesa and Valley Zones. All cultivation Facilities, including all structures, greenhouses, designated parking areas, storage buildings, and any screened outdoor storage, may not cover more than 10% of the Property. Hoop houses and similar seasonal greenhouse structures, which considered by the County to be indoor cultivation facilities, shall only be left up year-round at the discretion of Staff, based upon a review of the structures design and engineering by the County Building Inspector. The size of any Property proposed for a cultivation Facility may be a factor in limiting the size and/or approval or denial of the proposed Facility.
 - ii. Products manufacturing, research and development, and testing Facilities: Facilities for retail and/or medical products manufacturing, medical research and development, and retail and/or medical testing, shall be located only as a use accessory to an existing licensed and producing cultivation Facility. The total area used for any or all of these Facilities shall not exceed three percent (3%) of the total square footage of the Property, or not more than 6,000 square feet, whichever is less. If the operation includes multiple types of Facility at one Property, then all structures related to every type of Facility, all cultivation area(s), and all outside storage, may not cover more than ten percent (10%) of the total square footage of the lot or parcel. The number of employees allowed for each type of Facility shall be limited to five (5) or as may be established by the LLA upon consideration of the site location, uses of neighboring properties, and impact of traffic on roads and neighbors. Outside storage of supplies, equipment, machinery, or similar items is allowed up to a maximum of 500 square feet and must be screened from neighboring properties, County Roads, and/or public rights-of-way, and outside storage is limitation is included with, and not in addition to, the overall Property coverage limitations stated within this Ordinance.
 - iii. Other License Types: Other types of licenses, including all license types specified in the Marijuana Code including C.R.S. § 44-10-401(1), as amended, are not specifically prohibited from local licensure, if required and applicable, under this Ordinance and the Marijuana Code, with the exception of retail and medical marijuana stores, marijuana hospitality businesses, and retail marijuana hospitality and sales businesses, which are all prohibited within the unincorporated areas of the County under this Ordinance. All such other license types shall be subject to all requirements for products manufacturing, research and development, and testing Facilities, set forth in Section 5(d)(l)(c)(II) of this Ordinance, and all other requirements of this Ordinance as applicable.
- e. The Facility has adequate parking and adequate Legal Access, including a showing that it will not unreasonably disrupt properties with shared access routes. Facilities that do not abut principal arterials, Type 1 County Roads, or Type 2 County Roads, as defined in Section 15.1(D)(3) of the Land Use Code, may be required, at the discretion of the LLA, to comply with the provisions of Section 15.1(F) of the Land Use Code including the payment of impact fees.
- f. The Facility is not located within areas subject to identified geo-hazards, including but not limited to rock-fall areas, avalanches, landslide, potentially unstable slopes, slopes greater than 30-percent, alluvial fans, colluvial slopes, talus slopes, shale faults, or ground subsidence including both collapsing and expanding soils.
- g. The Facility is not located on a property containing known chemical or other contamination, as demonstrated in at least a Phase I Environmental Site Assessment.
- h. The Facility will not unreasonably impact wildlife or significant wildlife habitat.
- i. The Facility has obtained, and can comply with a formal weed mitigation and/or revegetation plan completed by the County Vegetation Department.
- j. The Facility is in compliance with all provisions of the Land Use Code and such provisions

of any local building codes as may be applicable, including the requirement for an approved building permit for any new structure or modifications to an existing structure related to the Facility. Proposed structures related to a Facility do not qualify for agricultural exemptions to building permit requirements. Section 9, except for Section 9.7, of the Land Use Code does not specifically apply to Facilities, but all Facilities shall still reduce visual impacts through blending, architectural design, landscaping, site placement, building materials, and other measures, to limit the visibility and reflectivity of any building or structure, including but not limited to greenhouses, from adjacent properties or roads, or other roads or properties from which the Facility may be visible. For construction of new buildings or structures, it shall be necessary to submit elevation drawings, drawings or depictions of proposed fencing, proposed blending, architectural, and landscaping plans to limit visual impacts.

k. The Facility shall not otherwise result in or present undue risks of any physical or biological hazards or conflicts due to its proposed siting and location.

II. Infrastructure requirements:

a. A traffic analysis showing that the Facility can be operated with no more than 14 Average Daily Trips (ADTs) by both commercial and employee vehicles to and from the Facility, and that sufficient on-site parking is available at the facility for all employees and residents (if applicable). If ADTs exceed 14, a mitigation plan may be required by the Staff and/or LLA.

b. The Facility has an adequate water supply. Adequate potable water access is required for residents and workers at any Facility. A domestic and irrigation water supply analysis (supply vs. anticipated demand) and a will-serve letter or equivalent from the water provider are required. If irrigation water for commercial cultivation purposes or other commercial purposes is not available on the property, the Facility may use domestic water for commercial cultivation or other commercial purposes, but that domestic use must be included in the water supply analysis including a specific analysis of the Facility's ability to utilize available domestic water supplies without depressurization or other negative affects to adjacent and nearby properties. The use of 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. Any use of well water for commercial cultivation or other commercial purposes shall require evidence from the Division of Water Resources or other regulatory agency of a single dedicated well on the Property. The use of shared well water (i.e. a well located outside the Property) is prohibited. In addition, the Facility shall not alter, restrict, or inhibit, or interfere historic irrigation practices. The Facility shall also use commercially feasible best practices to conserve water, and wasteful uses of water are strictly prohibited under any circumstances.

c. This Facility has, or will have, an adequate power supply. A power supply analysis (supply vs. anticipated demand) and a will-serve letter or equivalent from the power provider are required. This may require a "New Construction/Upgrade Engineering Request Form: from the power provider. In addition, the Facility shall use commercially feasible best practices to conserve energy, and wasteful uses of energy are strictly prohibited under any circumstances.

d. The Facility has, or will have, adequate and legal sewage disposal. Both the Colorado Department of Public Health and Environment and this Ordinance prohibit commercial cultivation wastewater from entering a domestic On-Site Waste Water Treatment System (i.e. septic system).

e. The Facility has an adequate solid waste disposal plan, and shall properly dispose of all materials, items, and other substances in a safe, sanitary, and secure manner, in accordance with all applicable local and state laws and regulations.

f. The Facility's signage and advertising are in compliance with state laws and regulations, as well as the Land Use Code, and any applicable special use permit. No on-site sign or advertising, other than County-approved address signage is allowed. County-assigned addresses shall be clearly posted per County Resolution No. 2017-048, as amended, which adopted sign standards and criteria under Section 8.9 of the Land Use Code.

g. The Facility has reasonable and necessary security measures, which are in compliance with state law and regulations, and shall also include security surveillance cameras, robbery and burglary alarms, a locking safe affixed to the Facility, exterior lighting, and deadbolt locks on all exterior doors, and on-site security presence. The County Sheriff's Office may inspect the Facility

at any time to ensure appropriate security measures are in use, and to ensure compliance with state laws and regulations. Facilities are required to have a 24/7 on-site caretaker, unless the Staff and/or LLA approves, in advance, other alternative security measures designed to ensure continual protection of the Facility from intruders.

h. The Facility shall not unduly impact the available infrastructure, beyond what would be allowed in a "Use by Right" under the Land Use Code. An infrastructure demand report is required, which shall address Facility usage calculations for all proposed improvements, along with any other evidence addressing any possible impacts on available infrastructure above any "Use by Right" under the Land Use Code.

III. Community Compatibility Requirements:

a. The Facility shall not generate Excessive Debris.

b. The Facility shall not generate Excessive Heat.

c. The Facility shall not generate Excessive Light.

d. The Facility shall not generate Excessive Noise.

e. The Facility shall not generate Excessive Odor. In addition, the Facility shall implement an odor mitigation plan which, at the sole discretion of the LLA and/or Staff, shall utilize any or all of the following: (1) facility sealing; (2) negative pressure environments; (3) best-in-class technology; (4) automated monitoring; and (5) a proper ventilation system that filters and/or mitigates the odor of marijuana to prevent Excessive Odor.

f. The Facility shall not generate Excessive Traffic.

g. The Facility shall conduct all of its marijuana-related activities inside of a building, greenhouse, or other enclosed structure, including without limitation, growing, processing, displaying, selling, storage and packaging. For purposes of this Ordinance, greenhouse or hoop house cultivation shall be deemed to occur indoors. In addition, 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 Facility.

h. All operations at the Facility, including any dual or multiple Facility uses permitted under this Ordinance, shall not exceed any cultivation of a maximum 9,000 total plant count.

i. The Facility is in general conformance with the County Master Plan.

j. The Facility is generally compatible with the community and neighborhood character including surrounding land uses; the facility shall not unreasonably disrupt, annoy, inconvenience, or injuriously affect the health, safety, or welfare to any resident/property owner within 1 mile of the proposed facility; and the facility shall not create additional impacts that affect public health, safety, or welfare in the County including the immediate neighborhood in which the Facility is located.

Section 6. Application Hearing Procedures

A. 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 LLA, Staff will process the next application in priority of time. If the Staff deems an application to be incomplete, Staff may permit the Applicant a reasonable amount of time to complete or amend an application, not to exceed sixty (60) days from Staff's receipt of the application. In the event of an application deemed to be incomplete by Staff, either the amended application (if completed) or the original application (if no amended application is completed) will be forwarded to the LLA for a public hearing. The Applicant may also withdraw its application at any time, during the application procedures, or during the public hearing procedures prior to the LLA's deliberations.

B. Staff shall schedule a public hearing before the LLA as soon as practicable, following receipt of a completed application, or an application that has been amended within sixty (60) days of Staff's notice of an incomplete application, or an incomplete application that has not been withdrawn and not amended within sixty (60) days of Staff's notice of an incomplete application. Staff shall promptly advise the Applicant of the date and time of the public hearing, by both email (if available) and U.S. mail to the Applicant's Last Known Address.

C. At least 14 days prior to the hearing date before the LLA, notices to adjacent and neighboring

property owners is required. The Applicant must send written notice to: 1) all property owners in the unincorporated county within a one (1) mile radius of the property line of the proposed Facility, 2) any city, town, or public school within a one (1) mile radius of the property line of the proposed Facility, and 3) to all properties in the City of Ouray or the Town of Ridgway that are within 1,321-feet of the property line of the proposed Facility. For written notice, proof of such notice shall be shown by Certificates of Mailing from the U.S. Postal Service, which shall be submitted to Staff immediately upon the Applicant's receipt of such. For on-site notice, the Applicant shall also post a sign in a plainly viewable and conspicuous place on Applicant's Property for which license application has been made. Public notice given by posting must include a sign of suitable material, not less than twenty-two inches wide and twenty-six inches high, composed of letters not less than one inch in height, and stating the type of license applied for, the date of the application, the date and time of the hearing, the name and address of the Applicant, and such other information as may be required to fully apprise the public of the nature of the application. The sign must contain the names and addresses of the officer, directors, and/or manager of the Facility to be licensed.

D. At least 14 days prior to the hearing date before the LLA, Staff shall also give public notice of the hearing by publication in a newspaper of general circulation in the County.

E. Notice by publication and notice by posting must include the type of license applied for, the date of the application, the date and time of the hearing, the name and address of the applicant, the names and addresses of the officers, directors, and/or manager(s) of the Facility to be licensed, and such other information as may be required to fully apprise the public of the nature of the application.

F. Not less than five (5) days before the hearing, Staff shall make known its investigatory findings and recommendations, based on its investigation and review of the application, to the Applicant and other parties of interest. Staff may comply with this requirement by uploading a staff packet containing these findings and recommendations, to a public and readily viewable page of the website.

G. The Applicant shall have the burden, by a preponderance of the evidence, to demonstrate compliance with all procedures and requirements for an application and an ability to ensure continued compliance requirements set forth in this Ordinance, including both procedural and substantive requirements. The Chair of the LLA shall preside over hearings. In the event of any absence or recusal by any LLA member, the Chair of the LLA has the authority to appoint alternate members for the LLA, who shall be the appointed alternate member(s) of the Board of Adjustment pursuant to C.R.S. § 30-28-117 and Section 13.16 of the Land Use Code. The order of presentation at hearings, unless otherwise ordered by the Chair of the LLA, shall be: (1) introductory and preliminary matters; (2) swearing of witnesses; (2) testimony; (3) public comment; (4) rebuttal(s) if requested or otherwise necessary; (5) closing statements and (6) deliberations. Any Material Misrepresentation in the application or during the hearing may be grounds for the LLA's immediate denial of an application, without further hearing procedures.

H. The LLA shall have authority to approve, approve with conditions, or deny an application. The LLA shall issue a final decision in within thirty (30) days of the public hearing, in writing, which shall not be subject to reconsideration unless ordered by a court of competent jurisdiction. Staff or another designee of the LLA shall send a copy of the final decision by both email (if available) and certified U.S. mail to both Applicant's address shown on the application and the Applicant's Last Known Address. In addition, Staff shall submit a copy of the final decision to the State MED.

I. Any approval, for both medical and retail local licenses, shall be subject to inspection and occupancy requirements set forth in C.R.S. § 44-10-304. Upon approval of a license, Staff shall provide the Licensee with one (1) original of such license for each type of licensed Facility. This original license shall be displayed in a location visible to the public and any law enforcement and/or regulatory officials.

J. Any license denial by the LLA shall be subject to judicial review, subject to C.R.S. § 44-10-304(1), and § 24-4-106(1). For any denial that meets the location-related criteria set forth in C.R.S. § 44-10-311(1)(a), the two-year bar for consideration of any future applications for both medical and retail facilities shall apply. Moreover, if any previous denials of a local license for the Applicant or the application are pending judicial review or other related or similar civil actions, including any appellate proceedings, the LLA has the authority to stay any new license applications upon its own motion, until all such judicial review, civil actions, and appellate proceedings are concluded.

Section 7. Continuing Compliance Requirements

A. General Requirements: All Facilities in the County are licensed and regulated under this Ordinance

as a specific requirement of continued licensure. Unless a Variation or Legal Nonconforming Use is applicable under Section 11 of this Ordinance, all Facilities shall be in continued compliance with this Ordinance at all times, and any Licensee shall utilize best efforts to ensure continued compliance at all times with all requirements of this Ordinance, including but not limited to all requirements set forth in Section 5(D)(III) of this Ordinance. All Facilities shall additionally be in compliance at all times with the Marijuana Code, and all state, federal, and local regulations and/or requirements, as applicable, and any violation of these shall be deemed to be violation with this Ordinance. Licensees shall provide Staff with copies of all documents updating information, agents, employees, operations, violations, enforcement actions, or other administrative matters sent to or received from the State MED and other state and/or federal regulatory agencies, and failure to provide these documents may be grounds for any application denial, non-renewal, or any Administrative Penalties set forth herein. Licensees shall further be in continued compliance with all or license-specific terms or conditions that were imposed at the time the license was issued or that were imposed as a result of a disciplinary process or potential disciplinary processes, and any Administrative Penalties issued by the State MED may be grounds for reciprocal discipline at the local level.

B. Additional Requirements for Specified Facilities:

I. Licensed cultivation Facilities 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, or other cultivation facility. Licensed cultivation Facilities are prohibited from selling marijuana directly to any consumer.

II. Licensed research and development cultivation Facilities may grow, cultivate, possess, and transfer for research purposes only.

III. Licensed products manufacturer Facilities 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 products manufacturer Facilities may sell retail marijuana products of their own manufacture to persons holding a retail marijuana store license from the State of Colorado, or to other licensed retail products manufacturers. Licensed retail products manufacturer Facilities are prohibited from selling retail marijuana or retail marijuana products directly to any consumer. With the exception of ethanol, no compressed, flammable gas may be used in any production methodology, including use as a solvent in the extraction of THC or other cannabinoids. Licensed products manufacturer Facilities 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. All packaging shall include a notice that the contents have not been inspected by the county public health agency.

C. Number of Licensed Facilities and Dual Licenses: There shall be no more than a **total of eight (8)** Facilities licensed in the County. The LLA will issue a separate and distinct local license for each Facility, for the activity or activities conducted. Additional medical licenses may be subject to findings by the LLA regarding the effect of restraining competition under C.R.S. § 44-10-313(7), and additional testing Facilities may be subject may be subject to findings by the LLA on the ownership requirements under C.R.S. § 44-10-504(3) and 44-10-604(3). Any person or entity or entities with common ownership licensed by the State of Colorado for dual or multiple licenses to engage in multiple operations may apply for such dual or multiple operation, including both medical and retail marijuana operations and different types of licenses in the County, to the extent that such collocated operations are otherwise permitted by this Ordinance and the Marijuana Code, including virtual and physical separation of plants and inventory in any retail and medical cultivation Facilities as of January 1, 2023 (pursuant to House Bill 22-1037 and other applicable requirements of the Marijuana Code). Any such dual or multiple operations within a single Property shall only count as one (1) total Facility for purposes of the total of **eight (8)** Facilities licensed within the County. In the event that all **eight (8)** Facilities are licensed, and there are no more available licenses, up to two contingent applications for placement on a waitlist may be accepted by Staff. Any acceptance of contingent applications for placement on a waitlist is only a courtesy to the applicant, and as such, does not create any vesting for the applicant and does not guarantee or imply future approval of a marijuana facility license by the LLA. If any Facility fails to timely renew its application pursuant to Section 8 of this Ordinance, or is denied a renewed license, or has otherwise ceased to operate with a license in the County, then Staff may process the next new application in priority of time.

D. Tax and Financial Requirements:

Rev. 10- for public distribution

I. Each Licensee shall collect and remit all applicable sales taxes, excise taxes, income taxes, and real and personal property taxes. Each Licensee shall promptly pay all Local Fees. At all times while a license is in effect, the Licensee shall possess all required state and local sales tax and/or business licenses. 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, pursuant to C.R.S. § 44-10-1001(2).

II. All licensed retail cultivation Facilities shall pay to the County a 5% excise tax on the first sale or transfer of unprocessed retail marijuana from a retail cultivation Facility located within the County, including bud, trim and wet whole plant, and the first sale of seeds and immature plants, or other cultivation products assessed by the Colorado Department of Revenue, from a retail cultivation Facility to a retail store or retail 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 the various products of cultivation as determined by the Colorado Department of Revenue. Remittance of the 5% Ouray County Marijuana Excise Tax shall be paid to the County not later than the 20th 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 February 20 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 the County. The reporting Form and excise tax payment should be made payable to Ouray County and delivered to the Ouray County Administrator, 541 4th 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 \$200 per day for each day the payment is made after the due date, unless specifically excused by the County Administrator in writing. 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 20th of the month is grounds for Administrative Penalties specified herein.

Section 8. Requirements for Duration and Renewal of Licenses.

A. **Renewal Application Requirements:** Every Licensee shall submit a Local Fee for any license renewal. Every renewal application shall contain: (1) a narrative explaining whether the operation is an Active Facility or an Inactive Facility, (2) a summary of the operation during the previous license period; (3) any approved changes or modifications made during the previous license period; (4) any plans for the business during the next license period, including any planned modification or expansion; (5) any documentation explaining any complaints or violations during the previous license period; and (6) such other information as the LLA and/or Staff may require in order to determine if a renewal should be granted.

B. **License Duration:** Each license shall be valid for one (1) year from the date of issuance. At the sole discretion of the LLA and upon Good Cause shown, a renewal license may be issued for a period in excess of one year.

C. **Renewal Timing Requirements.** A renewal application shall be filed at least sixty (60) days, but no more than ninety (90) days, prior to expiration. Renewal applications may be submitted more than ninety (90) days prior to expiration, but only if submitted with an additional request. (e.g. any modification, change, or location transfer, pursuant to Section 9 of this Ordinance). A renewal application shall contain all information necessary, at the discretion of Staff and/or the LLA, to establish the Facility is in continued compliance with all requirements of this Ordinance. The timely filing of a renewal application shall extend the current license period until a final decision is made. An untimely application filed after the sixty (60) day deadline, but before the expiration date, may be expedited at Staff's discretion and may be accepted only upon the payment of any late fees permitted as a Local Fee, and such application shall serve to extend the license period until a final decision is made. A Licensee whose license has expired and for which no application for renewal was received prior to the expiration date, shall be deemed to have forfeited its license under this Ordinance as a matter of law. Staff shall not accept a renewal application after the expiration of the license. A Licensee whose license expired shall not engage in any activities allowed under its prior license until a new license has been obtained.

D. Administrative Renewals: Renewal licenses may be administratively issued by Staff, without a renewal hearing before the LLA, for a period of one year if staff finds that the Facility for which the license was granted:

- I. Is an Active Facility.
- II. Has no continuing complaints or violations of state law or this Ordinance, or other Good Cause that would justify Staff's non-issuance of an administrative renewal.
- III. Has 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. Any Licensee's renewal application that contains significant or substantial changes, revisions, alterations, or expansion of size of the facility, shall require the Licensee to complete an updated application form.

E. Active Facility Requirements: Every licensed Facility shall be an Active Facility upon renewal or transfer of a license. A Licensee whose Facility is not an Active Facility may be granted a single one-year grace period to meet the Active Facility requirement by the LLA, as a condition of renewal, for Good Cause shown and upon the payment of all applicable Local Fees to defray the additional costs of processing a license for an Inactive Facility. Any licensed Facility that has been an Inactive Facility for at least one year (including any grace period) and without Good Cause shown, may also be subject to non-renewal pursuant to this Ordinance and C.R.S. § 44-10-315.

F. Renewal Hearing Procedures: In the event the LLA or Staff notifies Licensee of its intent to not renew or to seek non-renewal of any license, the Licensee may request a full de novo, evidentiary, public hearing before the LLA. The procedures set forth in Section 6 of this Ordinance, as applicable, shall govern the proceedings, except that Staff shall have the burden to justify a non-renewal for Good Cause. Any hearing procedures shall extend the current license period until a final decision is made, which shall be subject to judicial review under C.R.S. § 44-10-314.

Section 9. Requirements for Modifications, Changes, and Location Transfers.

A. For any modification of a Facility, change in ownership and/or trade name, or transfer of a Facility to a new location, an application shall be submitted to Staff on forms provided by the Staff and available on the Land Use pages of the County website, which identifies the modification, change, or location transfer requested. Any modification, change, or location transfer shall only be for an Active Facility, and shall include payment of any applicable Local Fees, along with compliance with reasonable restrictions under this Ordinance.

B. The LLA shall determine the following modification, change, or location transfer applications, in accordance with the procedures and requirements specified in Section 5 and 6 of this Ordinance, as applicable, for the specific modification, change, or location transfer requested:

- I. Major modifications, including any substantial alterations to the Facility, ownership, or other terms and conditions, as provided under state law and regulations, including but not limited to any change in the lease or the ownership of real property on which a facility is located, and any proposed modification that includes expansion of a greenhouse or other related Facilities.
- II. Any change in ownership that involves a change in a controlling beneficial owner, pursuant to C.R.S. §§ 44-10-103(13) and 44-10-312, 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. In addition to any applicable requirements under Section 5 and 6 of this Ordinance, the application shall also include documentation that a transfer of ownership application has been submitted to the State MED and is in process, or, documentation showing that the State MED has approved or conditionally approved, the transfer of the corresponding state license or permit to the proposed transferee.
- III. Any transfer of a Facility to a new location, including all transitioning requirements under C.R.S. § 44-10-313. This transfer shall not affect the count of overall Facilities or result in the Applicant's placement on a waitlist for available Facility licenses under Section 7(C) of this Ordinance.
- IV. All such other items pertaining to any Facility's modification, change, or location transfer as referred to the LLA by Staff.

C. Staff may administratively renew and process the following applications, subject to any additional review and determination by the LLA in Staff's sole discretion:

- I. Minor modifications of any Facility approved by the State, including internal Facility changes or other minor modifications not increasing the overall size of the Facility.
- II. Any Change in Trade Name.
- III. Other minor or insubstantial modifications, changes, or transfers determined in Staff's sole discretion to not warrant review and determination by the LLA.

Section 10. Complaints, Violations, Enforcement, and Penalties.

A. Complaint and Investigation Procedures: Any resident of Ouray County shall have the right to file a formal written complaint against any Facility alleged to be operating in a manner that is in violation of the terms of this Ordinance. Complaints shall not be filed with or submitted to member(s) of the LLA, in order to reduce any potential ex parte contacts and/or the appearance of impropriety during any quasi-judicial proceedings. All complaints during regular county business hours shall be instead filed with the Staff utilizing the "Marijuana Business Complaint Form," available at the Staff's offices or on the County's web site. Complainants may also submit oral complaints outside of regular business hours to the County Sheriff's Office, and the County Sheriff's Office may respond to conduct an initial field investigation of the complaint depending on availability of the County Sheriff's Office, but such after-hours complainants are also required to file a written complaint utilizing the "Marijuana Business Complaint Form" with the Staff before the close of business on the next regular county business day. Upon Staff's receipt of a completed Marijuana Business Complaint Form, Staff shall confirm receipt of the complaint in writing to both the Licensee and the complainant, and conduct a field investigation as soon as is practicable to make a determination as to the extent and validity of the complaint. The Licensee shall have the opportunity to present written data, views, and arguments with respect to any alleged violation. In order to facilitate a timely response to complaints, Staff may request assistance from the Sheriff's Office or any other County departments or offices with necessary expertise and/or availability, in order to conduct the field investigation and determine the extent and validity of the complaint, and such county departments or offices shall provide requested assistance to the maximum extent practicable. Staff may also conduct spot check(s) and/or share anonymized information regarding a complaint with an owner/operator of a marijuana facility, at Staff's discretion, in order to facilitate a timely response and resolution. Staff may also initiate a field investigation at any time at its own discretion, or upon motion of the LLA.

B. Unsubstantiated Complaints: If Staff finds any complaint(s) to be unsubstantiated, following a field investigation and/or unannounced spot check(s) and review of all pertinent information including but not limited to contemporaneous reports, Staff shall notify the complainant and the Licensee in writing of its finding(s).

C. Substantiated Complaints: If Staff finds any complaint(s) to be substantiated, following a field investigation and/or unannounced spot check(s) and review of all pertinent information including but not limited to contemporaneous reports, Staff notify the complainant and the Licensee in writing of its findings, and notify the Licensee in writing to immediately remedy the substantiated violation. The burden shall be on the Licensee to mitigate the substantiated violation within thirty (30) days from the date of notification. If the substantiated violation cannot be reasonably mitigated within thirty (30) days from the date of the notification, the Licensee shall submit a written request to Staff of their intention to develop a plan for mitigation, and shall include a reasonable, specific timeframe to complete the mitigation and/or otherwise come into compliance with this Ordinance, which is subject to approval, modification, or the imposition of different mitigation methods and/or timelines by Staff. Failure to implement approved mitigation methods may result in Administrative Penalties or non-renewal of the license. Nothing in this Section shall be construed to prevent the Sheriff's Office from conducting an independent criminal investigation of any matter, in addition to the procedures for complaints, investigation(s), and Administrative Penalties set forth in this Section 10 of this Ordinance.

D. Administrative Penalties: After notice and hearing, the LLA may impose Administrative Penalties according to the following procedures:

- I. The hearing procedures for Administrative Penalties shall only be initiated when the results of a field investigation and/or other pertinent information including objective facts and conduct

demonstrate, in Staff's sole discretion, reasonable ascertainment of clear and convincing evidence of any violation(s) of the terms of this Ordinance.

II. Staff may issue administrative subpoenas at any time, pertinent to any public hearing for Administrative Penalties, subject to signatory approval by the Chair of the LLA, pursuant to C.R.S. § 44-10-901(1), to require the presence of persons and the presence of records necessary to the determination of a hearing that the LLA is authorized to conduct.

III. Staff shall schedule a public hearing as soon as practicable, and Staff shall promptly advise the Applicant of the date and time of the public hearing, and notice of the intended action, including a signed and sworn statement from Staff stating both the name of the Licensee and grounds for the intended action, which shall be transmitted by both email (if available) and first-class U.S. mail to the Applicant's last known address.

III. Not less than fifteen (15) days before the hearing, Staff shall make known its full investigatory findings, to the Licensee and other parties of interest. Staff may comply with this requirement by uploading a staff packet containing these materials to a public and readily viewable page of the County website.

IV. Staff shall have the burden at the hearing, by clear and convincing evidence, to demonstrate a violation of any terms of this Ordinance. The Chair of the LLA shall preside over hearings. In the event of any absence or recusal by any LLA member, the Chair of the LLA has the authority to appoint alternate members for the LLA, who shall be the appointed alternate member(s) of the Board of Adjustment pursuant to C.R.S. § 30-28-117 and Section 13.16 of the Land Use Code. The order of presentation at hearings, unless otherwise ordered by the Chair of the LLA, shall be: (1) introductory and preliminary matters; (2) swearing of witnesses; (2) testimony; (3) public comment; (4) rebuttal(s) if requested or otherwise necessary; (5) closing statements; and (6) deliberations.

V. The LLA shall issue a final written decision in within thirty (30) days of the public hearing, which shall not be subject to reconsideration by the LLA unless ordered by a court of competent jurisdiction. Staff or another designee of the LLA shall send a copy of the final decision by both email (if available) and certified U.S. mail to both Applicant's address shown on the application and the Applicant's Last Known Address. In addition, Staff shall submit a copy of the LLA's final decision to the State MED.

VI. The LLA shall have authority to issue a suspension up to a period of six (6) months, revocation, and/or a reasonable fine of no less than five hundred dollars (\$500.00) and not more than ten thousand dollars (\$10,000.00), as a stand-alone Administrative Penalty, in conjunction with any other Administrative Penalty, or as a fine in lieu of suspension according the procedures specified in C.R.S. § 44-10-902. In its imposition of Administrative Penalties, the LLA may consider any and all mitigating factors, including but not limited to a lack of prior underlying conduct that the Licensee has admitted to or was found to have committed, actions taken by the Licensee to prevent the underlying conduct, corrective actions taken by the Licensee in response to the underlying conduct, and any other factors pertinent to the underlying conduct. In its determination of Administrative Penalties, the LLA may also consider any and all aggravating factors, including but not limited to:

a. **Severe License Violations Affecting Public Health and Safety:** This category of violation is the more severe and may include, but is not limited to, illegal sales of marijuana; improperly consuming marijuana on the Property; retail marijuana sales in excess of the relevant transaction limit; permitting the diversion of marijuana outside the regulated distribution system; possessing marijuana or marijuana products obtained from outside the regulated distribution system or from an unauthorized source; transferring the ownership of a licensed facility without prior approval from the LLA, its key personnel, managers, shareholders, or owners; willfulness, deliberateness, or negligence of the Licensee in committing the underlying conduct; failure to pay County excise taxes when due; and a pattern of continuing violation(s) following prior underlying violations that the Licensee has admitted to or was found to have committed.

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 violation(s) of terms and conditions of a specific license, failure to provide timely records required by this Ordinance or by state law or regulations, and any prior state-imposed penalty or determination of penalty for the underlying conduct.

c. License Infractions. This category of violation is the least severe and includes, but is not limited to 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.

VII. At any time during the proceedings for Administrative Penalties, Staff and the Licensee may agree to the imposition of additional license conditions and/or the payment of a reasonable fine, conditioned on the Licensee's withdrawal of its right to further hearing procedures specified in this Section, which shall also be subject to final review and approval by the LLA, and shall also be submitted in writing to the State MED pursuant to C.R.S. § 44-10-902(7).

E. Additional procedures for Administrative Penalties set forth in C.R.S. §§ 44-10-901 and 44-10-902, as applicable, including but not limited to summary suspension procedures, are incorporated as though fully set forth herein. The LLA or Staff may defer any enforcement action to the State MED, or other appropriate authorities for civil or criminal legal action(s).

Section 11. Variations and Nonconforming Uses

A. Any Applicant for a Facility license or renewal, modification, change, and/or location transfer of a license, may apply to the LLA for a Variation, according to the following procedures:

I. A Licensee or Applicant may commence an application for a Variation by filing a written request for the Variation to Staff, in conjunction with a new application for a license or renewal, modification, change, and/or location transfer of a license, which must include all pertinent facts and proposed terms for the Variation, along with the payment of any applicable Local Fee(s).

II. The LLA shall review the request for a Variation during any hearing for a renewal, modification, change, or transfer of a license.

III. The Applicant shall have the burden of proof, to demonstrate by clear and convincing evidence, that: strict application of a provision or provisions of this Ordinance are unreasonable in this instance and would result in peculiar and exceptional practical difficulties or undue hardship upon the Applicant; and the Variation from the strict application of this Ordinance to relieve such difficulties or hardship may be granted without substantial detriment to the public good and without substantially impairing the overall spirit, purpose, and intent of this regulation. Variations are not available under any circumstances for the requirements of Section 5(D)(III) of this Ordinance.

IV. The concurring vote of all members of the LLA in attendance at the hearing is required in order to decide in favor of the Applicant on a request for a Variation. The LLA may, in its sole discretion, and is not required to, consider any substantial actions taken prior to enactment of this Ordinance, as prima facie evidence of any Variation, including Licensee's exercise of due diligence in developing the licensed Facility undertaken in the course of Licensee's reasonable reliance on the terms of the 2019 Ordinance, including but not limited to financing, construction plans, applications for other necessary permits, a lack of improper impacts on other potential Applicants or the general public, and any other factor that LLA deems relevant.

F. Legal Nonconforming Uses: Any preexisting uses that were County-approved prior to enactment of this Ordinance, for any location, physical, siting, and infrastructure requirements set forth in Section 5(D)(I) and 5(D)(II) of this Ordinance, or substantially similar requirements, may continue unless are any new applications with regards to the Facility or any Facility modifications, transfers, or changes. All provisions regarding continued compliance shall continue in full force to the maximum extent permissible, including but not limited to continued compliance with the requirements of Section 5(D)(III). In addition, no provision of this Ordinance shall be interpreted to prohibit any preexisting Facility uses protected under C.R.S. §§ 30-28-120, 38-1-101(3), and 44-10-311(1)(d). Staff shall determine to the scope and applicability of any Legal Nonconforming Use, subject to review by the LLA.

Section 12. Special Provisions

A. Governmental Immunity: In adopting this Ordinance, the Board 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, rights, immunity, or protection otherwise available to the County, its officers or its employees.

B. Interpretation: This Ordinance shall be so interpreted and construed as to effectuate its general purpose. This Ordinance shall be generally interpreted to set more restrictive and supplemental local measures for the time, place, manner, number, and licensing of Facilities, notwithstanding any state laws to the contrary, and in the event of any direct conflicts between this Ordinance and the Marijuana Code, the more restrictive provision shall govern with regards to all Facility time, place, manner, number, and licensing requirements. 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. If any part, term, or provision of this contract is held by the courts to be invalid or in conflict with any law of the State of Colorado and the United States of America, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Ordinance did not contain the particular part, term or provision held to be invalid.

C. 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, cultivation, production, possession, distribution, or use of marijuana, the additional or more stringent law or regulations shall control the establishment or operation of any such Facility in the County. In the event that the State of Colorado prohibits the sale, cultivation, production, possession, distribution, or use of marijuana, any license issued hereunder shall be deemed immediately revoked as a matter 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 sale, cultivation, production, possession, distribution, or use of marijuana. To the extent that any 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 or otherwise preempted, the Board 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. Any licensed professionals employed by the County in their professional capacity may cooperate with or assist federal and/or state authorities at any time, in their sole professional discretion, notwithstanding the terms of this Ordinance.

D. Venue: The exclusive venue for any action arising under the terms of this Ordinance, unless otherwise set by applicable law including C.R.S. 44-10-902, or unless otherwise ordered by a court of competent jurisdiction, shall be the Seventh Judicial District, State of Colorado.

Section 13. Effective Date and Certification.

A. 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.

B. 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 **INSERT PUBLICATION DATE**

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

Lynn Padgett, Chair

Jake Niece, Vice-Chair

Ben Tisdel, Commission Member

ADOPTED ON SECOND AND FINAL READING on _____

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

Lynn Padgett, Chair

Jake Niece, Vice-Chair

Ben Tisdel, Commission Member

EFFECTIVE DATE _____.

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 _____ AND CONTINUED TO _____ 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 _____ ALONG WITH A NOTICE OF PUBLIC HEARING.

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

PUBLISHED AFTER ADOPTION IN THE *OURAY COUNTY PLAINDEALER* ON THE ____ DAY OF _____.

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