

ORDINANCE NO. 18, SERIES OF 2010

AN ORDINANCE CONCERNING THE LICENSING AND REGULATION OF MEDICAL MARIJUANA FACILITIES.

BE IT ORDAINED BY THE COUNCIL OF CAÑON CITY, as follows:

Section 1. That Title 5 of the Cañon City Municipal Code shall be amended by adding a new Chapter 5.56, to read as follows:

“Chapter 5.56 MEDICAL MARIJUANA FACILITIES

Sections:

- 5.56.010 Purpose and legislative intent**
- 5.56.020 Definitions**
- 5.56.030 License required**
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- 5.56.070 Persons prohibited as licensees and managers**
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- 5.56.100 Suspension and revocation**
- 5.56.110 Application and license fees**

5.56.010 Purpose and legislative intent. Although the possession and use of marijuana is and remains unlawful under Federal law, Section 14 of Article XVIII of the Colorado Constitution ("Amendment 20") provides an exception to prosecution for patients and their caregivers under state criminal laws when marijuana is possessed and used for medicinal purposes by a patient who has been diagnosed with a debilitating medical condition. Amendment 20 does not, however, contain any provision clearly authorizing the cultivation, sale or distribution of medical marijuana to patients by facilities that are not care-givers. In order to address that omission, the Colorado General Assembly adopted the Colorado Medical Marijuana Code, Article 43.3 of Title 12, C.R.S., which provides for the licensing and regulation of certain medical marijuana facilities by state and local licensing authorities. The purpose of this chapter is to provide for the licensing and regulation of medical marijuana facilities and businesses authorized and contemplated in the Colorado Medical Marijuana Code for the benefit of patients who qualify to obtain, possess and use marijuana for medical purposes under Amendment 20, while promoting compliance with other state laws that prohibit trafficking in and the use of marijuana for non-medical purposes. Nothing in this chapter is intended to promote or condone the sale, distribution, possession or use of marijuana in violation of any applicable state law. Compliance with the requirements of this chapter shall not provide a defense to criminal prosecution under any applicable law.

5.56.020 Definitions. The following words and phrases, when used in this chapter, shall have the meanings respectively assigned to them:

A. “City Clerk” means the City Clerk of the City of Cañon City, or the City Clerk’s duly authorized designee.

B. “Marijuana” shall have the same meaning as the term “usable form of marijuana” as set forth in Article XVIII, Section 14(1)(i) of the Colorado Constitution, or as may be more fully defined in any applicable state law or regulation.

C. “Licensed Medical Marijuana Facility” means the “licensed premises” occupied by a “medical marijuana center”, an “optional premises cultivation operation” or a “medical marijuana-infused products manufacturer”, as those terms are described in subsections (3), (8), (10) and (12) of Section 12-43.3-104, C.R.S. Prior to July 1, 2011, “Licensed Medical Marijuana Facility” also shall mean the premises occupied by any “established, locally approved business for the purpose of cultivation, manufacture or sale of medical marijuana or medical marijuana-infused products”, as described in Section 12-43.3-103, C.R.S., that is established and operated in full compliance with the restrictions and requirements set forth in this Chapter 5.56 and applicable provisions of the Colorado Medical Marijuana Code.

D. “Laws of the State of Colorado” shall mean and include: Section 14 of Article XVIII of the Colorado Constitution; the Colorado Medical Marijuana Code, Article 43.3 of Title 12, C.R.S.; other Colorado statutes, including but not necessarily limited to § 18-18-406.3, C.R.S. and § 25-1.5-106, C.R.S.; applicable regulations promulgated by CDPHE and the State Licensing Authority; and all applicable final decisions of Colorado’s appellate courts.

E. “Licensed Child Care Facility” means any family child care facility, child care center, children’s group home or children’s home, as defined at Sections 17.08.090, 17.08.095, 17.08.100 and 17.08.105, respectively, that existed at the time of the establishment of the medical marijuana facility, but excludes “Residential Child Care Facilities”, as defined in § 26-6-102(8), C.R.S.

F. “Medical Use” shall have the same meaning as is set forth in Article XVIII, Section 14(1)(b) of the Colorado Constitution, or as may be more fully defined in any applicable state law or regulation.

G. “Patient” shall have the same meaning as is set forth in Article XVIII, Section 14(1)(d) of the Colorado Constitution, or as may be more fully defined in any applicable state law or regulation.

H. “Primary Care-giver” shall have the same meaning as is set forth in Article XVIII, Section 14(1)(f) of the Colorado Constitution, the Colorado Medical Marijuana Code and any other applicable state law or regulation.

I. “Registry Identification Card” shall have the same meaning as is set forth in Article XVIII, Section 14(1)(f) of the Colorado Constitution, the Colorado Medical Marijuana Code and any other applicable state law or regulation.

J. “School” means a public or private preschool or a public or private elementary,

middle, junior high, or high school.

K. Unless defined in this chapter or the context clearly indicates otherwise, any word or term used in this chapter that is defined in Article XVII, Section 14(1)(f) of the Colorado Constitution or in the Colorado Medical Marijuana Code shall have the same meaning that is ascribed to such word or term in the Colorado Constitution or in the Colorado Medical Marijuana Code.

5.56.030 License Required.

A. Except as otherwise provided in this chapter, it shall be unlawful for any person to cultivate, sell or otherwise distribute any marijuana for medical use in the City of Cañon City without first obtaining a license to operate as a licensed medical marijuana facility pursuant to the requirements of this chapter. This licensing requirement shall apply regardless of whether or not a business that cultivates, manufactures or sells medical marijuana products has commenced operation prior to the effective date of this ordinance; provided that any such business that was issued a retail sales tax license by the City and commenced operation prior to June 1, 2010 may continue operations until August 15, 2010. Thereafter, such business may continue to operate only if a medical marijuana facility license application provided for in this Chapter 5.56 for such business is filed on or before August 15, 2010 and the applicant is operating in compliance with all applicable requirements of this chapter and the Colorado Medical Marijuana Code. Under such circumstances, such facility may continue in operation pending final action by the City Clerk on the application. Any such preexisting medical marijuana facility that does not or cannot meet the licensing requirements set forth in this chapter shall be denied a license. The business of any such applicant that is denied a license shall be terminated immediately upon such denial.

B. The licensing requirements set forth in this chapter and in the Colorado Medical Marijuana Code shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state, or local law. For example, a licensed medical marijuana facility also must obtain state and local retail sales tax licenses and must comply with applicable building code and permit requirements.

5.56.040 Local Licensing Authority.

A. For the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution and sale of medical marijuana in this City, there is hereby created the Local Licensing Authority of the City of Cañon City, which shall be the City Clerk.

B. The Local Licensing Authority shall have such powers and duties as are provided for in this chapter and in the Colorado Medical Marijuana Code.

C. The City Clerk shall be assisted by the City Attorney, the Chief of Police, the Deputy City Clerk and such other personnel as may be designated by the City Administrator in the performance of the powers and duties of the Local Licensing Authority.

5.56.050 General licensing procedures.

A. In addition to the provisions of this chapter, the general and customary procedures and requirements for issuance and administration of licenses by the City Clerk shall apply to medical marijuana facility licenses.

B. The City Clerk shall have authority to promulgate and employ reasonable regulations associated with the making and processing of applications for medical marijuana facility licenses. The City Clerk also may promulgate regulations concerning the processes and procedures associated with the issuance, renewal, denial, suspension and/or revocation of such licenses that supplement and are not inconsistent with the provisions of this chapter. Such regulations shall be written and shall become effective when copies of the same have been provided to City Council and made available to the public on the City's official bulletin board and website, or upon a later effective date set forth in the regulations.

5.56.060 Application.

A. Application for a medical marijuana facility license shall be made to the City Clerk upon forms provided by the City Clerk for that purpose. A complete application must include all information that is required by the state with respect to any license that may be issued pursuant to the Colorado Medical Marijuana Code and such additional information as may be requested by the City Clerk in writing.

B. Proof of ownership or legal possession of the proposed licensed premises for the term of the proposed license must be presented to the City Clerk before any medical marijuana facility license permitted by this chapter may be issued. If the licensed premises will be leased, rather than owned, by the applicant, the written consent by the owner of the property to the licensing of the premises as a medical marijuana facility must be submitted by the applicant to the City Clerk as part of a complete application. A fully-executed lease may satisfy this requirement if it clearly indicates that the owner knows the leased premises will be used as a licensed medical marijuana facility.

C. An application must include an operating plan for the proposed medical marijuana facility including the following information:

1. A description of the products and services to be provided by the medical marijuana facility, including an indication of whether or not the facility proposes to engage in the retail sale of medical marijuana-infused products for human consumption.
2. A floor plan showing all interior dimensions of the licensed premises and the layout of the medical marijuana facility. Such floor plan also shall show the principal uses of the floor area depicted therein, including a depiction of where any services other than the dispensing of medical marijuana are proposed to occur on the licensed premises.

3. A security plan indicating how the applicant intends to comply with the requirements of subsection 5.56.080H, including an indication of whether or not the applicant intends to utilize licensed security guards.
4. Any information regarding security required for a licensed premises under the Colorado Medical Marijuana Code.
5. An area map, drawn to scale—with a radius of one-quarter mile from the boundaries of the proposed licensed premises—showing the proximity of the licensed premises to: any school; any licensed child care facility; any alcohol or drug treatment facility; the principal campus of any college, university or seminary; or any other medical marijuana facility, the location of which is not by law required to be kept confidential.
6. Any information and/or documentation not included in the foregoing five paragraphs that is or will be required in an application to be filed with the State Licensing Authority for any state license that may be issued in accordance with the provisions of the Colorado Medical Marijuana Code.
7. Any additional document(s) or information reasonably requested by the City Clerk including but not limited to: (i) corporate or partnership documents (such as Articles of Incorporation, LLC formation documents and partnership agreements) describing the structure of an entity that is an applicant and indentifying all persons holding a ten percent (10%) or greater ownership interest (including shareholders, members or partners in such entity); and (ii) financial documents identifying the source(s) of funds used to establish the facility.

D. Any application for a medical marijuana facility license shall be accompanied by the application fee, criminal background check fee, and annual fee as required by Section 5.56.110 or in any resolution adopted pursuant to said Section 5.56.110. No application shall be deemed complete or be processed in the absence of the payment of such fees.

E. Upon receipt of an application for a medical marijuana facility license, the City Clerk shall circulate the application to the Community Development Department (including the Planning and Building Divisions thereof), the Finance Department and the Police Department to determine whether the proposed facility is or will be in full compliance with any and all laws, rules and regulations administered by these respective City departments. The failure of any such department to report back to the City Clerk within ten (10) days shall be deemed a recommendation for approval of the license by such department.

F. Unless an application is under concurrent review by the State Licensing Authority and the Local Licensing Authority, the City Clerk shall perform a criminal background investigation for each person subject to a criminal background check under the provisions of the Colorado Medical Marijuana Code in connection with any license application permitted

thereunder. The applicant shall pay all costs of such background checks.

G. The City Clerk and the Chief of Police, or their designee, shall perform an inspection of the proposed licensed premises to determine compliance with any applicable requirement of this chapter.

H. The City Clerk shall deny any application for a license that is not complete or otherwise in full compliance with this chapter, any other applicable City law or regulation, or any applicable state law or regulation governing medical marijuana facilities. The City Clerk also shall deny any application that contains any false or incomplete information, but shall allow an applicant reasonable opportunity to correct deficiencies in applications that fail to include complete information before denying such applications.

5.56.070 Persons prohibited as licensees and managers.

A. No license provided for by this chapter shall be issued to or held by:

1. Any persons that would not qualify for a license pursuant to the minimum licensing requirements set forth in Part 3 of the Colorado Medical Marijuana Code.
2. Any person who fails to provide evidence of ownership or possession of a proposed licensed premises.
3. Any person who proposes a licensed premises that does not satisfy the location and distance requirements set forth in this chapter.

B. No licensed premises shall be owned, operated or managed by any person who is not a person of good moral character, as that term is used and defined in the Colorado Medical Marijuana Code.

C. Any person licensed pursuant to the provisions of this chapter shall be obligated to perform in accordance with all applicable provisions of the Colorado Medical Marijuana Code in addition to the requirements of this chapter.

5.56.080 Local restrictions and requirements.

A. Permitted Locations for Sales. All medical marijuana facility licenses shall be issued for a specific fixed location which shall be designated the licensed premises. Except as provided in Subsection E, all sales, deliveries and other transfers of medical marijuana products by a licensee shall be made at the licensed premises.

B. Distance from Schools. No medical marijuana facility shall be located within 1000 feet of any school that existed at the time of the establishment of the facility; provided that any medical marijuana facility established prior to January 1, 2010 and operated in full compliance with state and local law shall not be subject to this requirement until July 1, 2011.

C. Distance from Licensed Child Care Facilities. No medical marijuana facility shall be located within 1000 feet of any licensed child care facility, as defined in this chapter.

D. Distance from Other Medical Marijuana Facilities. No licensed medical marijuana facility, other than a licensed “optional premises cultivation operation” (or functional equivalent) or a “medical marijuana-infused products manufacturer” (or functional equivalent) operated by the same person who also holds a related business license to cultivate, manufacture or sell medical marijuana products (such as a “medical marijuana center” or its functional equivalent) shall be located within 1000 feet of another licensed medical marijuana facility existing at the time of the establishment of the facility. For purposes of this paragraph, a medical marijuana facility that is not yet open for business shall be considered to be “existing” at a specific location only if an application for a medical marijuana facility license at such location was filed with and accepted by the City Clerk on or before July 1, 2010. Under such circumstances, such proposed medical marijuana facility shall continue to be considered to be existing until such application has been withdrawn by the applicant or denied by final action of the City. To the extent permitted by applicable law, the City Clerk shall maintain a list of locations with respect to which medical marijuana facility license applications have been filed and are pending.

E. No Mobile Facilities. No medical marijuana facility shall be located in a movable or mobile vehicle or structure and no medical marijuana product shall be delivered in the City unless such delivery is by a medical marijuana facility licensed by the City and such delivery is specifically permitted by the Colorado Medical Marijuana Code. No delivery from any medical marijuana facility located outside the City shall be made to any patient or care-giver within the City.

F. Measurement of distance. Any distance specified in subsection B, C or D of this section shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each facility to the nearest property line of the premises in question.

G. No facilities in residential zone districts. No licensed medical marijuana facility shall be established or operated within the boundaries of any residential zone district of the City or within the boundaries of the central business district, as those boundaries existed at the time of the establishment of the facility, except that a facility established and operating on January 1, 2010 in the central business district may continue to operate at its current location in such district until July 1, 2011 if such facility is operated in compliance with all applicable state and local law.

H. Security Measures. Each licensed premises shall be monitored and secured 24-hours per day, seven days per week, including, at a minimum, the following security measures:

1. Installation and use of security cameras, of sufficient quality to produce useable images with identifiable features, to monitor all areas of the licensed premises where persons may gain or attempt to gain access to marijuana or cash maintained by the medical marijuana facility. Recordings from security cameras shall be maintained for a minimum of

one hundred twenty (120) hours in a secure off-site location, and for such longer periods as are requested in writing by any peace officer performing law enforcement duties and functions within the City. The failure of such system [camera(s) and recording equipment] to capture and preserve images and activities at a licensed marijuana facility may be grounds for denial, revocation or suspension of a medical marijuana facility license.

2. Installation and use of a safe for overnight storage of any processed marijuana, and cash on the licensed premises, with the safe being incorporated into the building structure or securely attached thereto.
3. Installation of a monitored user alarm system in accordance with any applicable requirements of this Code.
4. To the extent the licensee utilizes contracted security guards (in lieu of its own employees) to patrol the licensed premises, any such guards shall be duly licensed in accordance with applicable requirements of this Code.
5. Each licensed premises also shall conform to any safety and security requirements set forth in the Colorado Medical Marijuana Code and any regulations promulgated by the State Licensing Authority.

I. Ventilation System. Every licensed medical marijuana facility where marijuana plants are cultivated or kept in an enclosed environment and shall have a ventilation system approved by the City.

J. No products to be visible from public places. Marijuana plants, products, accessories, and associated paraphernalia contained in a medical marijuana facility shall not be visible from a public sidewalk, public street or right of way, or any other public place.

K. No beer or alcohol on premises. No fermented malt beverages and no alcohol beverages, as defined in the Colorado Beer Code and the Colorado Liquor Code, respectively, shall be kept, served or consumed on the premises of a medical marijuana facility.

L. Posting of owner/contact information. The name and contact information for the owner or owners and any manager of the medical marijuana facility shall be conspicuously posted in the facility, together with the name and contact information of any person designated by the owner to be contacted in the event of an emergency.

M. Modification of premises. No change shall be made to the floor plan of the interior of any licensed premises unless such modification of the premises is approved by the City Clerk prior to the time the change is made. Requests for such modifications shall be made on forms provided or permitted by the City Clerk. The City Clerk may charge a processing and inspection fee to cover any processing and/or inspection costs (including the cost of City employee time) associated with a request for the modification of a licensed premises. No later than ten (10) days following any authorized modification of licensed premises, the licensee shall amend the floor

plan required under 5.56.050(A)(7) and file such amended floor plan with the City Clerk.

N. Restrictions regarding signage. The following requirements regarding signage shall apply to all medical marijuana facilities:

1. All signage associated with a medical marijuana facility will meet the general standards established in Chapter 17.30 of this Code.
2. In addition, no sign associated with a medical marijuana facility shall use the word “marijuana”, “cannabis”, or any other word or phrase commonly understood to refer to marijuana unless such word or phrase is immediately preceded by the word “medical” or the message of such sign includes the words “for medical use” or “for medicinal purposes” in letters that are no smaller than the largest letter on the sign.

5.56.090 Procedural requirements.

A. Issuance or denial of license. No license authorized under this chapter shall be issued unless:

1. All applicable requirements of the Colorado Medical Marijuana Code have been satisfied.
2. All conditions imposed upon the applicant by this chapter as prerequisites to the issuance of the license have been met;
3. The required license fees and associated costs have been paid;
4. The use to which the premises are proposed to be put shall conform to the requirements of Title 17 pertaining to zoning;
5. All other applicable specific requirements of City law have been met;
6. The applicant is not in arrears in any administrative or court fines, assessments, sales tax reporting and/or payment obligations, or fees, owed to the City of Cañon City, and has no outstanding warrants for his/her arrest in any jurisdiction; and
7. No fraudulent, misrepresented, or false statement of material or relevant fact is contained within the application.

B. Opportunity for hearing. If it shall come to the attention of the City Clerk that one or more of the above grounds exists, the application shall be denied. Otherwise the license shall be granted. In the event that the application is denied, the City Clerk shall furnish the applicant a copy of the order and the reasons supporting the denial upon the written request of the applicant. Any applicant whose application was denied without a hearing shall be entitled to a hearing on

such application upon written request to the City Clerk. Such hearing shall be conducted within ten (10) days of the City Clerk's receipt of the written request, unless a later hearing date is requested by the applicant. The City Clerk or the City Clerk's designee shall be the hearing officer at any such hearing. When the hearing officer is a person other than the City Clerk, the City Clerk shall adopt the findings and decisions of such hearing officer.

C. Posting. Every license issued pursuant to this chapter shall be posted during the period such license is valid. Such license shall be posted upon the wall of the principal room or office of the facility. When such license expires, it shall be removed. No license not in full force and effect shall remain posted.

D. Expiration. No license issued pursuant to this chapter shall extend beyond two (2) years from the date of its issuance and shall expire on the date specified on the license. No license issued for any period after July 1, 2011 will be valid unless a state license of the same type shall also be issued in accordance with the provisions and requirements of the Colorado Medical Marijuana Code.

5.56.100 Suspension and revocation.

A. Prior to July 1, 2011, in addition to any other penalties prescribed by the Cañon City Municipal Code, the City Clerk may, on his/her own motion or on complaint, and after investigation and a show-cause hearing at which the licensee shall be afforded an opportunity to be heard, suspend or revoke any license previously issued by him/her for any violation of any of the following provisions, requirements, or conditions:

1. The licensee has failed to pay the annual license fee; or that
2. The licensee has made any false statement in the application for a license as to any of the facts required to be stated in such application; or that
3. The licensee has failed either to file the required reports or to furnish such information as may be reasonably required by the City Clerk under the authority vested in the City Clerk by the provisions of this chapter; or that
4. The licensee, either knowingly or without the exercise of due care to prevent the same, has violated: any terms or provisions of this Chapter 5.56; any provision of any license issued pursuant to this chapter; or any regulation or order lawfully made under and within the authority of this chapter relating to the license; or that
5. Any fact or condition exists which, if it had existed or had been known to exist at the time of the application for such license, would have warranted the City Clerk in refusing originally to issue such license; or that
6. The licensee, or any of the agents, servants, or employees of the licensee, have violated any rule or regulation promulgated by the City Clerk under

this Code relating to medical marijuana facility licenses; or that

7. The licensee has failed to maintain the premises in compliance with the requirements of the City's Zoning Ordinance and/or any building code provision applicable to the licensed premises; or that
8. The licensee, or any of the agents, servants or employees of the licensee, have violated any ordinance of the City or any state law on the premises or have permitted such a violation on the premises by any other person.
9. The licensee, or any of the agents, servants or employees of the licensee have violated any applicable provision of the Colorado Medical Marijuana Code.

B. No suspension under this subsection B shall be for a longer period than six (6) months. Notice of suspension or revocation, as well as any required notice of a show-cause hearing, shall be given by mailing the same in writing to the licensee at the licensee's last address of record with the City Clerk.

C. Any final decision of the City Clerk denying, suspending or revoking a license, following a hearing permitted in this section, may be appealed to a district court within thirty (30) days following the date of such decision pursuant to the provisions of Rule 106(a)(4), Colorado Rules of Civil Procedure.

D. Effect of termination. Upon the expiration, revocation, surrender or other termination of a license, for whatever reason under this chapter, the license shall be deemed null and void, together with all the privileges associated with it. During the period that a license is suspended, no licensee shall exercise any of the privileges associated with the license.

5.56.110 Application and license fees.

- A. Initial application and license fees for medical marijuana facilities are as follows:
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| 1. | a. New license application fee (first submittal) | \$1,500.00 |
| | b. New license application fee (for associated facilities or licenses) | \$ 500.00 |
| 2. | Criminal background check fee, per person checked | actual costs |
| 3. | a. License fee (pre-July 1, 2011 effective date) | \$ 500.00 |
| | b. License fee (post-July 1, 2011 effective date) | \$1,000.00 |
| 4. | Renewal application fee | \$ 500.00 |
| 5. | Change of manager | \$ 150.00
(plus actual
background |

		check fees)
6.	Modification of premises and/or other activities for which a fee is permitted, but for which a fixed amount is not set in this section	up to \$ 250.00
7.	Change of corporate structure	\$ 150.00 per person (plus actual background check fees)
8.	Changes in financial interest	\$ 100.00 minimum, or actual cost if more than \$100

B. City Council, by resolution, may increase or decrease any fee or cost or otherwise modify any other provision set forth in Subsection A. Any such increase, decrease or other modification shall be evidenced by an appendix to this section.

Section 2. Safety Clause. The City Council hereby finds, determines, and declares that this ordinance is necessary for the immediate preservation of the public peace, health, and safety of the residents of the City.

Tony Greer, Mayor

ATTESTATION & CERTIFICATION

06/21/2010 – Introduced, Read by title & Passed on first reading
06/25/2010 – Published
07/06/2010 – Passed & Adopted on second reading
07/11/2010 – Effective

Becky Walker, MMC
City of Cañon City, Colorado