

ORDINANCE NO. 10-2010

AN ORDINANCE REPEALING EXISTING MORITORIUM AND ENABLING THE OPERATION OF CERTAIN OPERATIONS PURSUANT TO AND CONSISTENT WITH ARTICLE XVIII, SECTION 14 OF THE COLORADO CONSTITUTION, AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the voters of Colorado approved Amendment 20 at the 2000 general election, which was subsequently codified as Section 14 of Article XVIII of the Colorado Constitution, and which authorizes the medical use of marijuana by persons in Colorado suffering from debilitating medical conditions; and

WHEREAS, as a result of recent modifications to Federal law enforcement policy concerning the prosecution of Federal marijuana violations in States which have legitimized the use of marijuana for medical purposes, medical marijuana centers have increased within the State of Colorado, as well as other states that have adopted constitutional provisions authorizing the medical use of marijuana; and

WHEREAS, the Board of County Commissioners has previously adopted Resolution No 2010-38 which generally provided for a moratorium on all medical marijuana facilities up to and including December 31, 2010; and

WHEREAS, House Bill 10-1284 was subsequently passed by the Colorado Legislature and signed into law by the Governor on June 7, 2010; and

WHEREAS, House Bill 10-1284 establishes a dual licensing framework for medical marijuana facilities, introduces new terminology with respect to such facilities, significantly restricts the types of licenses that may be issued within the State of

Colorado, and provides for subsequent rule-making authority in favor of the Colorado Department of Revenue to implement the legislation; and

WHEREAS, the revocation of the Moratorium imposed by Resolution No. 2010-38 and the adoption of the procedures and regulations contained herein is both necessary and appropriate to coordinate local regulations pertaining to medical marijuana with the regulatory provisions set forth in House Bill 10-1284; and

WHEREAS, public hearing has heretofore been held pursuant to notice, and the Board of County Commissioners has concluded, subsequent to said hearing, that the repeal of Resolution No. 2010-38 and the adoption of this Ordinance with its rules, procedures and regulations pertaining to medical marijuana would be in the best interests of the citizens of Archuleta County;

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

Section 1. That Resolution No. 2010-38 of the Board of County Commissioners of Archuleta County should be, and the same is, hereby repealed in its entirety.

Section 2. Legislative intent and purpose.

(a) Legislative Intent: The Board of County Commissioners by this Ordinance intends to regulate the use, acquisition, production and distribution of medical marijuana in a manner consistent with Article XVIII, Section 14 of the Colorado Constitution (the “Medical Marijuana Amendment”).

(1) The Medical Marijuana Amendment to the Colorado Constitution does not provide a legal manner for patients to obtain medical marijuana unless the patient grows the marijuana or the marijuana is grown by the patient’s primary caregiver.

(2) House Bill 10-1284, signed by the Governor on June 7, 2010, enacts Article 43.3 of Title 12, Colorado Revised Statutes, (the “Colorado Medical Marijuana Code”) which imposes statewide regulations pertaining to the use, acquisition, production, sale and distribution of medical marijuana and marijuana-infused products within the State of Colorado.

(3) Nothing within this section is intended to promote or condone the production, use, sale or distribution of medical marijuana other than in compliance with applicable state law.

(b) Purpose: The purpose of this Ordinance is to implement the Medical Marijuana Amendment in a manner consistent with Article 43.3 of Title 12, Colorado Revised Statutes, to protect the public health, safety and welfare of the residents and patients of the County by prescribing the manner in which medical marijuana businesses may be conducted within the County. Further, the purpose of this section is to:

(1) Provide for the safe sale and distribution of marijuana to patients who qualify to obtain, possess and use marijuana for medical purposes under the Medical Marijuana Amendment.

(2) Protect public health and safety through reasonable limitations on business operations as they relate to noise, air and water quality, neighborhood and patient safety, security for businesses and their personnel, and other health and safety concerns.

(3) Promote high quality neighborhoods by limiting the concentration of any one type of business in specific areas.

(4) Impose fees to cover the cost to Archuleta County of licensing medical marijuana businesses.

(5) Adopt a mechanism for monitoring compliance with the provisions of this Ordinance.

(6) Create regulations that address the particular needs of patients and residents of the County and coordinate with laws enacted by the state that pertain to the issue.

(7) Facilitate the implementation of the Medical Marijuana Amendment without exceeding the authority granted by such Amendment.

Section. 3. Definitions.

The following words and phrases used in this Ordinance shall have the following meanings unless the context clearly indicates otherwise:

(a) “Business manager” means the individual designated by the owner of the medical marijuana business and registered with the County as the person responsible for all operations of the business during the owner’s absence from the business premises.

(b) “Good cause” shall have the same meaning as set forth in C.R.S., §12-43.3-104(1).

(c) “Licensed premises” means the premises specified in an application for a license under this ordinance 10-2010, which is owned or in possession of the licensee, and within which the licensee is authorized to manufacture, distribute or sell medical marijuana in accordance with the provisions of the Division.

(d) “Licensee” shall have the same meaning as set forth in C.R.S., §12-43.3-104(4).

(e) “Local licensing authority” shall mean an authority established and appointed by the Board of County Commissioners to approve the issuance of licenses

pursuant to this Ordinance, and to administer other provisions set forth herein in the event no such authority is established the Board of County Commissioners shall serve as the Local Licensing Authority.

(f) “Medical marijuana” shall have the same meaning as set forth in C.R.S., §12-43.3-104(7).

(g) “Medical marijuana business” shall mean a person holding a medical marijuana center license, as defined in C.R.S., §12-43.3-402, a medical marijuana-infused products manufacturing license, as defined in C.R.S., §12-43.3-404, and optional premises cultivation license, as defined in C.R.S., §12-43.3-403, any patient that cultivates, produces, sells, distributes, possesses, transports, or makes available marijuana in any form to another patient or to a primary caregiver for medical use, or a primary caregiver that cultivates, produces, sells, distributes, possesses, transports, or makes available marijuana in any form to more than one patient. The term “medical marijuana business” shall not include the private possession, production, distribution and medical use of marijuana by an individual patient or an individual caregiver for one patient in the residence of the patient or caregiver to the extent permitted by Article XVIII, Sec. 14 of the Colorado Constitution or any other applicable state law or regulation.

(h) “Medical marijuana center” shall have the same meaning as set forth in C.R.S., §12-43.3-104(8).

(i) “Medical marijuana-infused product” shall have the same meaning as set forth in C.R.S., §12-43.3-104(9).

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

(k) “Optional premises” shall have the same meaning as set forth in C.R.S., §12-43.3-104(11).

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

(m) “Person” means a natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer or employee thereof.

(n) “Premises” means a distinct definite location which may include a building, a part of a building, a room, or any other definite contiguous area.

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

(p) “School” means a public or private preschool, or a public, private or charter elementary, middle, junior high or high school.

Section. 4. License required.

It shall be unlawful for any person to operate a medical marijuana business without first having obtained a license to operate pursuant to the provisions of this Ordinance and having paid the fee therefore. The licensing requirement applies

to all medical marijuana businesses that exist on the effective date of this Ordinance adopting this provision and any medical marijuana businesses established after such effective date.

(a) Any medical marijuana business that commenced operation prior to the effective date of the Ordinance adopting this provision, which is in a location where the business qualifies as a use permitted by right in the zone district in which it is located, and which has obtained a valid sales and use tax license from the State of Colorado, may continue to operate pending final action on an application for a license pursuant to this section, which application must be filed with the County no later than October 31, 2010.

(b) Pursuant to the provisions of Article 43.3, Title 12, Colorado Revised Statutes, medical marijuana businesses shall be licensed by the County in one of the following categories:

(1) Medical marijuana center, as defined in C.R.S., §12-43.3-104(8). Such centers shall meet all criteria and requirements of C.R.S., §12-43.3-402, as well as all other regulatory requirements applicable to medical marijuana centers set forth within this Division and within Article 43.3 of said Title 12, C.R.S.

(2) Medical marijuana-infused products manufacturer, as defined in C.R.S., §12-43.3-104(8). Such centers shall meet all criteria and requirements of C.R.S., §12-43.3-404, as well as all other regulatory requirements applicable to medical marijuana-infused products manufacturing set forth within this Ordinance and within Article 43.3 of said Title 12, C.R.S.

(c) The optional premises cultivation license referenced in C.R.S., §12-43.3-403 will not be issued by the County. Marijuana growing operations, except those grown in connection with the operation of a Medical marijuana center are prohibited in the County, due to impacts on adjoining properties, as well as fire, safety, and health risks associated with such facilities.

(d) The licensing requirements set forth in this section 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, including, but not by way of limitation, a retail sales and use tax license, retail food establishment license, or any applicable zoning or building permit.

(e) No license for a medical marijuana center or a medical marijuana-infused products manufacturer shall be issued by the County until a license for such use, at the location designated in the application, has been issued by the Department of Revenue of the State of Colorado.

(f) The issuance of a license pursuant to this Ordinance does not create a defense, exception or provide immunity to any person in regard to any potential criminal liability the person may have for the production, distribution or possession of marijuana.

(g) A separate license shall be required for each location from which a medical marijuana business is operated.

(h) All medical marijuana business licenses issued by the County shall be valid for a period of one year from the date such license is issued. Renewal applications shall be filed at least 60 days prior to the expiration date of the existing license.

(i) Licensees shall report each transfer or change of ownership interest, change in business manager, or change in financial interest on forms provided by the Archuleta County Development Services. An application for a change of business manager shall be submitted at least 30 days prior to any such change to provide necessary time for the background check and processing of the application.

Section. 5. Application.

An application for a medical marijuana business license shall be made on forms provided by the Archuleta County Development Services for such purposes. The application shall be used to demonstrate compliance with the provisions of this Ordinance and any other applicable law, rule or regulation. In addition to general information required of standard applications, the application shall require the following information:

(a) Name and address of the owner or owners of the medical marijuana business in whose name the license is proposed to be issued.

(1) If the owner is a corporation, this shall include the name and address of any officer or director of the corporation, and of any person holding any financial interest in the corporation, whether as a result of the issuance of stock, instruments of indebtedness, or otherwise; provided, however, this shall not require disclosure of information pertaining to a bank, savings and loan association or other commercial lender which has loaned funds to the applicant.

(2) If the owner is a partnership, association or limited liability company, the name and address of all partners, members, managers or persons holding any financial interest in the partnership, association or limited liability company, including those holding an interest as the result of instruments of indebtedness; provided, however, this shall not require disclosure of information pertaining to a bank, savings and loan association or other commercial lender which has loaned funds to the applicant.

(3) If the owner is not a natural person, the organizational documents for all entities identified in the application, and the contact information for the person who is authorized to represent the entity or entities.

(b) Name and address of the manager of the medical marijuana business, if the manager is proposed to be someone other than the owner, or if the owner is an entity other than a natural person.

(c) Name and address of all persons holding any financial interest in the medical marijuana business.

(d) A statement of whether or not any of the named owners, members, business managers, parties with a financial interest, or persons named on the application have been:

(1) Denied an application for a medical marijuana business license by any other jurisdiction, including the State of Colorado, or had such license suspended or revoked.

(2) Denied an application for a liquor license pursuant to Title 12, Article 46 or 47, C.R.S., or had any such license suspended or revoked.

(3) Within the previous ten (10) years, convicted, entered a plea of *nolo contendere*, or entered a plea of guilty in conjunction with a deferred sentence and judgment pertaining to any charge related to possession, use, or possession with intent to distribute narcotics, drugs or controlled substances.

(4) Within the previous ten (10) years, convicted, entered a plea of *nolo contendere*, or entered a plea of guilty in conjunction with a deferred sentence and judgment pertaining to any charge related to driving or operating a motor vehicle while under the influence of or while impaired by alcohol or controlled substances.

(e) Proof of ownership or legal possession of the premises proposed for the medical marijuana business for at least the term of the proposed license.

(f) An operating plan for the proposed medical marijuana business which includes a description of the products (meaning specifically marijuana products) and services to be provided by the business, including whether the business proposes to engage in the production of retail sale of food or other products for human ingestion, and whether any products or services will be provided at a location different than the address on the license application.

(g) A dimensioned floor plan of the licensed premises, clearly labeled, not larger in size than 8 ½ inches by 11 inches and showing:

(1) The layout of the structure and the floor plan where the medical marijuana business is to be located;

(2) The principle uses of the floor area depicted on the floor plan, including but not limited to, the areas where non-patients will be permitted, private consulting areas, storage areas, retail sales areas, and areas where medical marijuana will be distributed;

(3) Production areas, if any, which shall not be open to any persons other than those employed by the business;

(4) Areas where any services other than the distribution or sale of medical marijuana is proposed to occur on the licensed premises; and

(5) The separation of those areas that are open to persons who are not patients from those areas open only to patients;

(6) The location of the steel door and any safes as well as any doors and windows.

(h) A security plan indicating how the applicant will comply with all applicable State and County. The applicant may submit the portions of such security plan which include trade secrets or specialize security arrangements confidentially. The County will not disclose documents appropriately submitted under the Colorado Open Records Act [§24-72-201, *et seq.*, C.R.S.] if they constitute confidential trade secrets or specialized security arrangements to any party other than law enforcement agencies. Any document that the applicant considers eligible for protection under the Colorado Open Records Act shall be clearly marked as confidential and the reasons for such confidentiality, including a citation to relevant statutory authority shall be stated on the document.

(i) A lighting plan showing the lighting outside the medical marijuana business for security purposes and compliance with applicable County requirements.

(j) An area map, drawn to scale, indicating, within a radius of one-quarter mile from the boundaries of the property upon which the medical marijuana business is located, the proximity of the property to any school as “school” is defined in this Ordinance, any other medical marijuana business, or any residential zone district.

(k) Finger prints and personal histories for all owners, business managers, employees and parties having a financial interest in the proposed medical marijuana business, as defined in State Statutes or this Ordinance. All such individuals shall be subject to a criminal background check in conjunction with the license application.

(l) An application for a medical marijuana business license shall be accompanied by the application fee, criminal background check fee, and annual license fee, together with any other applicable fees. Such fees shall be established by resolution of the Board of County Commissioners.

(m) An inspection of the proposed medical marijuana business by the County and/or by the Pagosa Fire & Protection District, if the premises are within the Service Area of said Pagosa Fire & Protection District, shall be required prior to the hearing before the Board of County Commissioners regarding the issuance of a license. Such inspection shall occur after the licensed premises is ready for operation, but prior to the hearing before the Board of County Commissioners regarding the issuance of a license. The inspection shall verify that the premises is constructed and operated in accordance with the submitted application, and that such premises is in compliance with applicable codes, including, but not limited to the Uniform Building Code and Uniform Fire Code.

(n) The Archuleta County Development Services may issue a medical marijuana business license if the inspection, background checks, and all other information available to the County verify that the applicant has submitted a full and complete application, has made improvements to the business consistent with the application, and is prepared to operate the business with other owners and managers as set forth in the application, all in compliance with the provision of this Ordinance and any other applicable law, rule or regulation.

The application will be denied if it fails to meet the requirements of this section or if it is found to contain any false or incomplete information.

(o) All applications for a new medical marijuana business license shall require a public hearing before the local licensing authority appointed by the Board of County Commissioners, inclusive of publication and posting requirements, as set forth in §12-43.3-302, C.R.S.

Section. 6. Persons prohibited as licensees.

The criteria for determination of those persons who are not eligible to receive a medical marijuana business licenses shall be as provided in §12-43.3-307, C.R.S.

Section. 7. Permitted locations.

(a) Medical marijuana businesses including but not limited to medical marijuana-infused products manufacturing businesses may be allowed in the commercial (C)

or industrial (I) zones. Medical marijuana dispensaries shall not be allowed within any residentially zoned areas and shall not be allowed as a home occupation.

(b) Any medical marijuana business located within the County shall be located not less than 1,500 feet from any school, as “school” is defined in this Ordinance, any licensed day care facility, or dedicated public park, whether located within or outside the corporate limits of the County. The suitability of a location for the medical marijuana business shall be determined at the time of the issuance of the first license for such business. The fact that changes in the neighborhood that occur after the issuance of the first license might render the site unsuitable for a medical marijuana business under this section shall not be grounds to suspend, revoke or refuse to renew the license for such business so long as the license for the business remains in effect. Nothing within this section shall preclude the establishment of a public, private or charter school, licensed day care facility, licensed pre-school or dedicated public park within 500 feet of a pre-existing medical marijuana business.

(c) For purposes of this section, distances shall be measured consistent with the language set forth in C.R.S., §12-47-313(1)(d)(II).

Section. 8. Requirements related to operation of medical marijuana business.

(a) All medical marijuana businesses shall collect and remit all applicable State, and County sales taxes in a timely manner. The name and contact information for the owner or owners and any business manager of the medical marijuana business and the sales tax license for the business shall be conspicuously posted in the business. Their State and County license to engage in a Medical Marijuana Business shall also be posted.

(b) Medical marijuana businesses shall limit their hours of operation to between 10:00 a.m. and 7:00 p.m.

(c) Any medical marijuana business within the County shall be required to have a fully operational alarm system which must be properly maintained. Such alarm systems shall have video surveillance coverage of the premises at all times and shall have redundant power supplies and circuitry to prevent de-activation, either intentional or unintentional. If an alarm system is deactivated, the company monitoring the systems must immediately notify the Sheriff’s department.

(d) Medical marijuana businesses with marijuana or marijuana-infused products on site shall be equipped with a steel door or a solid wood core door with deadbolts in place and engaged for purposes of securing the space or location where medical marijuana or medical marijuana-infused products are stored, or where any medical marijuana transaction is to take place. In addition thereto, each medical marijuana business shall be equipped with at least one silent alarm for every 500 square feet of interior business space.

(e) Medical marijuana businesses shall apply for a sign permit through Archuleta County Development Services. All exterior signage associated with a medical marijuana business will meet the standards established in the County Code. In

addition, no exterior signage shall use the word “marijuana,” “cannabis” or any other word, phrase or symbol commonly understood to refer to marijuana.

(f) The smoking of marijuana within a perimeter of 50 feet of a medical marijuana business is prohibited.

(g) All inventory containing any form of marijuana must be placed within a locked safe on the premises during hours that the business is closed. The safe must be securely bolted to the floor or installed as part of the foundation of the building in which the medical marijuana business is located.

(h) It shall be unlawful for any medical marijuana business to employ any person who is not at least 18 years of age.

(i) Any and all production, distribution, possession, storage, display, sales or other distribution of marijuana shall occur within an enclosed building and shall not be visible from the exterior of the building.

(j) No licensed premises shall be managed by any person other than the licensee or the business manager listed on the application for the license, renewal application, or change of manager application. Such licensee or business manager shall be on the premises and responsible for all activities within the licensed premises during all times when the business is open.

(k) There shall be posted in a conspicuous location in each medical marijuana business a legible sign containing the following warnings:

(1) A warning that the diversion of marijuana for non-medical purposes is a violation of state law;

(2) A warning that the use of medical marijuana may impair a person’s ability to drive a motor vehicle or operate machinery, and that it is illegal under state law to drive a motor vehicle or operate machinery when under the influence of or impaired by marijuana;

(3) A warning that loitering in or around the medical marijuana business is prohibited by state law;

(4) A warning that possession and distribution of marijuana is a violation of federal law;

(5) A warning that smoking of marijuana within a medical marijuana business or within 50 feet of such a business is unlawful; and

(6) A warning that the smoking or consumption of marijuana in public is prohibited by state law.

Section. 9. Right of entry – records to be maintained.

(a) Each licensee of a medical marijuana business shall keep and maintain a complete set of books of account, invoices, copies of orders and sales, shipping receipts, bills of lading, correspondence, and all other records necessary to show fully the business transactions of such license. The licensee shall also maintain records which verify that no more marijuana was within the medical marijuana business than allowed by applicable law for the number of patients who designated the medical marijuana business owner as their primary caregiver. All such records shall be open at all times during business hours for inspection and examination by the County Administrator or his duly authorized representative(s).

The County may require the licensee to furnish such information as it considers necessary for the proper administration of this Ordinance. The records shall clearly show the source, amount, price and dates of all medical marijuana received or purchased, and the amount, price, dates and patient or caregiver for all medical marijuana sold.

(b) By accepting the medical marijuana business license, the licensee is providing consent to disclose the information required by this section, including information about the number of patients and caregivers. Any records provided by the licensee that include patient or caregiver confidential information may be submitted in a manner that maintains the confidentiality of the document(s) under the Colorado Open Records Act [C.R.S., §24-72-201, *et seq.*] or other applicable law. Any document that the applicant considers eligible for protection under the Colorado Open Records Act shall be clearly marked as confidential and the reasons for such confidentiality shall be stated on the document including but not limited to reference to the statutory authority under which confidentiality is claimed. The County will not disclose documents appropriately submitted under the Colorado Open Records Act [§24-72-201, *et seq.*, C.R.S.] as confidential documents to any party other than law enforcement agencies.

(c) The County may require an audit to be made of such books of account and records as it may deem necessary. Such audit may be made by an auditor selected by the County, who shall likewise have access to all books and records of such licensee. The expense of any audit determined to be necessary by the County shall be paid by the County; provided, however, should the audit reflect a failure of the licensee, in whole or in part, to timely remit all sales taxes due to the County, the expense of the audit shall be paid by the licensee.

(d) Acceptance of a medical marijuana business license from the County constitutes consent by the licensee, owners, managers and employees of such business to permit the County Administrator, or his authorized representatives, to conduct routine inspections of the licensed medical marijuana business to assure compliance with this Ordinance or any other applicable law, rule or regulation.

Section. 10. Suspension or revocation of license.

The grounds for suspension or revocation of a medical marijuana business license and the procedures for such suspension or revocation shall be as provided in §12-43.3-601, C.R.S.

Section 11. Renewal

The process for renewal shall be the same as for the initial application including but not limited to background checks, finger prints, submission of drawings and inspection by fire and/or building officials.

Section 12. Effective Date.

This ordinance shall become effective upon its passage.

APPROVED AND ADOPTED IN PAGOSA SPRINGS, ARCHULETA COUNTY,
COLORADO, this ___ day of _____, 2010.

Board of Commissioners

Clifford Lucero, Chairman

ATTEST:

County Clerk & Recorder, June Madrid