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§ 180-59. Medical Marijuana Dispensaries [Added 09-22-09, Ord. 09-16; Repealed and Reenacted 06-14-11, Ord. 11-07; Amended 06-10-14, Ord. 14-03; Amended 01-27-15, Ord. 15-02]

- A. Purpose and Intent. The purpose of this Section is to implement the provisions of Article 43.3 of Title 12, C.R.S., known as the Colorado Medical Marijuana Code, and to regulate medical marijuana businesses in the interest of public health, safety and general welfare. In particular, this Section is intended to regulate the sale and distribution of marijuana in the interests of patients who qualify to obtain, possess and use marijuana for medical purposes under Article XVIII, Section 14 of the Colorado Constitution. Nothing in this Section is intended to promote or condone the sale, distribution, possession or use of marijuana in violation of any applicable law. Compliance with the requirements of this Section shall not provide a defense to criminal prosecution under any applicable law.
- B. Other Laws. If the state adopts any stricter regulation governing a medical marijuana business than that set forth in this Section, the stricter regulation shall control the establishment or operation of any medical marijuana business in the Town. A licensee shall be required to demonstrate, upon demand by the local licensing authority, or by law enforcement officers, that the source and quantity of any marijuana found upon the licensed premises are in full compliance with applicable state regulation. If the state prohibits the sale or other distribution of medical marijuana, any license issued under this Section shall be deemed immediately revoked by operation of law, with no ground for appeal or other redress by the licensee. The issuance of any license pursuant to this Section shall not be deemed to create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the cultivation, possession, sale, distribution or use of marijuana.
- C. Definitions. The following words and phrases, when used in this Section, shall have the meanings ascribed to them in this Section:

Applicant shall mean any person or entity who has submitted an application for a license or renewal of a license issued pursuant to this Section. If the applicant is an entity and not a natural person, *applicant* shall include all persons who are the members, managers, officers, directors and shareholders of such entity.

Colorado Medical Marijuana Code shall mean Title 12, Article 43.3 of the Colorado Revised Statutes, as amended from time to time, and any rules or regulations promulgated thereunder.

Cultivation or *cultivate* shall mean the process by which a person grows a marijuana plant.

Dual operation means a business that operates both as a licensed medical marijuana business and a licensed marijuana store in accordance with Subsection R of this Section.

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Good cause (for the purpose of refusing or denying a license or license renewal under this Section) means: (1) the licensee has violated, does not meet, or has failed to comply with any of the terms, conditions or provisions of this Section, of the Colorado Medical Marijuana Code or of any rule and regulation promulgated pursuant to this Section or the Colorado Medical Marijuana Code; (2) the licensee has failed to comply with any special terms or conditions that were placed on its license, whether state or local, at the time the license was issued, or that were placed on its license, whether state or local, in prior disciplinary proceedings or that arose in the context of potential disciplinary proceedings; or (3) the licensee's medical marijuana business has been found to have been operated in a manner that adversely affects the public health, welfare or safety of the immediate neighborhood in which the medical marijuana business is located. Evidence to support such a finding can include: (i) a continuing pattern of offenses against the public peace; (ii) a continuing pattern of drug-related criminal conduct within the premises of the medical marijuana business or in the immediate area surrounding the medical marijuana business; or (iii) a continuing pattern of criminal conduct directly related to or arising from the operation of the medical marijuana business.

Industrial hemp means the plant of the genus cannabis and any part of such plant, whether growing or not, with a Delta-9 tetrahydrocannabinol concentration that does not exceed three-tenths percent on a dry weight basis.

License shall mean a document issued by the Town officially authorizing an applicant to operate a medical marijuana business pursuant to this Section.

Licensee shall mean the person or entity to whom a license has been issued pursuant to this Section.

Licensed premises means the premises specified in an application for a license under this Section, or if required by the context, under Section 180-60 of this Chapter, which is owned or in possession of the licensee and within which the licensee is authorized to operate a medical marijuana business, or if required by context, a retail marijuana establishment, in accordance with state and local law.

Marijuana means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. *Marijuana* does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

Medical marijuana business or *business* shall mean a medical marijuana center, optional premises cultivation operation, or medical marijuana-infused products manufacturer as defined in the Colorado Medical Marijuana Code.

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Residential zoning district shall mean and include the following Town of Frisco zone districts: (1) Residential Single-Household District; (2) Residential Neighborhood District; (3) Residential Low Density District; (4) Residential Moderate Density District; (5) Residential Highest Allowable Density District.

Retail marijuana establishment means a marijuana store, a marijuana cultivation facility, or a marijuana products manufacturing facility, each as defined in Section 180-60 of this Chapter.

State shall mean the state of Colorado.

In addition to the definitions contained in this Section, other terms used in this Section shall have the meaning ascribed to them in Article XVIII, Section 14, of the Colorado Constitution or the Colorado Medical Marijuana Code, and such definitions are hereby incorporated into this Section by this reference.

- D. Licensing Authority Created. There shall be and is hereby created a Medical Marijuana Licensing Authority hereafter referred to in this Section as the "Authority.
- E. Composition of the Authority. The Authority shall be the Town Clerk.
- F. Functions of the Authority. The Authority shall have the duty and authority pursuant to the Colorado Medical Marijuana Code and this Section to grant or deny licenses, as well as all powers of a local licensing authority as set forth in the Colorado Medical Marijuana Code. The Authority shall have the power to: (i) promulgate rules and regulations concerning the procedures for hearings before the Authority; (ii) require any applicant or licensee to furnish any relevant information required by the Authority; and (iii) administer oaths and issue subpoenas to require the presence of persons and the production papers, books and records at any hearing that the Authority is authorized to conduct. Any such subpoena shall be served in the same manner as a subpoena issued by a district court of the state.
- G. License Required; Term of License; Renewal Application.
1. It shall be unlawful for any person to establish or operate a medical marijuana business in the Town without first having obtained from the Town and the state a license for each facility to be operated in connection with such business. Such licenses shall be kept current at all times and shall be conspicuously displayed at all times in the premises to which they apply. The failure to maintain a current license shall constitute a violation of this Section.
 2. Any license issued by the Authority under this Section shall expire at such time as any license then issued by the state for the medical marijuana business expires.

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3. An application for renewal of an existing license shall be made on forms provided by the Town and the state. At the time of the renewal application, each applicant shall pay a nonrefundable fee to the Town in the amount of \$1,500.00 to defray the costs incurred by the Town for review of the application and inspection of the proposed premises, as well as any other costs associated with the processing of the application.

H. Application Requirements: Payment of Application Fee.

1. A person seeking a license pursuant to the Colorado Medical Marijuana Code and the provisions of this Section shall submit an application to the Town on forms provided by the state and Town. At the time of application, each applicant shall pay a nonrefundable fee to the Town in the amount of \$3,000.00 to defray the costs incurred by the Town for review of the application and inspection of the proposed premises, as well as any other costs associated with the processing of the application. In addition, the applicant shall present for recording one (1) of the following forms of identification: (i) an identification card issued in accordance with Section 42-2-302, C.R.S.; (ii) a valid state driver's license; (iii) a valid driver's license containing a picture issued by another state; (iv) a United States military identification card; (v) a valid passport; or (vi) an alien registration card.
2. The applicant shall also provide the following information on a form approved by, and acceptable to, the Town, which information shall be required for the applicant and, as applicable, the proposed manager of the medical marijuana business:
 - a. name, address, date of birth, and other identifying information as may be required by the Licensing Authority, as well as the name, address, date of birth, and other identifying information for any person that is required by the state in connection with the applicant's application for a state license;
 - b. a copy of the deed reflecting the applicant's ownership of, or a lease reflecting the right of the applicant to possess, the proposed licensed premises for the proposed use;
 - c. evidence of the issuance of a valid Town business license;
 - d. evidence of the issuance of a medical marijuana business license by the state licensing authority for the proposed licensed premises; and
 - e. a "to scale" diagram of the boundaries of the proposed licensed premises;
 - f. a description of cultivation activities, if any, within the medical marijuana business including, without limitation, the area in which plants will be grown, and a description of the associated ventilation and odor filtration system for the premises;

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- g. if the medical marijuana business will be providing marijuana products in an edible form, evidence, at a minimum, of a pending application for any food establishment license that may be required by the state or by Summit County; and
 - h any additional information that the Authority reasonably determines to be necessary in connection with the investigation, review and determination of the application.
- 3. A license issued pursuant to this Section does not eliminate the need for the licensee to obtain other required permits or licenses related to the operation of the medical marijuana business including, without limitation, any development approvals or building permits required by this Code.
- 4. Upon receipt of a complete application, the Authority shall circulate the application to all affected service areas and departments of the Town to determine whether the application is in full compliance with all applicable laws, rules and regulations. No license shall be approved until after the Authority has caused the proposed premises to be inspected to determine compliance of the premises with any applicable requirements of this Article and Code, and with the plans and descriptions submitted as part of the application. Within thirty (30) days after the completion of the Authority's investigation of the application, the Authority shall issue a written decision approving or denying the application for licensure, which decision shall state the reason(s) for the decision and be sent via certified mail to the applicant at the address shown in the application. In addition, the Authority shall promptly notify the state medical marijuana licensing authority of any approval of an application for local licensure.
- 5. After approval of an application, the Authority shall not issue a license or license certificate until the building in which the business is to be conducted is ready for occupancy with such equipment in place as may be necessary to comply with the applicable provisions of this Section. After approval of an application, the Authority shall not issue a license or license certificate until the applicant provides written evidence that the applicant has paid all license application fees due to the state in connection with the state licensing authority's review of the application. Each license certificate issued by the Town pursuant to this Section shall specify the date of issuance, the period of licensure, the name of the licensee, and the premises or optional premises licensed.
- I. Issuance or Denial of Application. The Authority shall deny any application that does not meet the requirements or limitations of this Section. The Authority shall deny any application that contains any false, misleading or incomplete information. The Authority shall deny an application for good cause. Denial of an application for a license shall be subject to review by a court of competent jurisdiction.

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- J. Persons Prohibited as Licensees. No license shall be issued to, held by, or renewed by any of the following:
1. any applicant who has made a false, misleading or fraudulent statement, or who has omitted pertinent information, on the application for a license;
 2. any applicant for an optional premises cultivation operation license unless the applicant is simultaneously applying for, or currently holds, a license for a medical marijuana center or a medical marijuana-infused products manufacturing facility in the Town; and
 3. any applicant for a medical marijuana-infused products manufacturer license unless the applicant is also applying for, or currently holds, a license for a medical marijuana center in the Town.
- K. Locational Criteria. No medical marijuana business shall be issued a license if, at the time of the initial application for such license, the proposed location is:
1. within 500 feet of any licensed child care facility;
 2. within 500 feet of any educational institution or school, either public or private;
 3. within 500 feet of any halfway house or correctional facility;
 4. within 700 feet of another medical marijuana business or retail marijuana establishment;
 5. within 500 feet of a residential dwelling unit;
 6. within any residential zoning district, or the Central Core Zoning District, or the Mixed Use Zoning District along East or West Main Street;
 7. within any building containing a dwelling unit, a pediatrician's office, or any hotel, motel, condominium hotel, boarding facility, lodging facility or rooming facility; or
 8. within a single development project that contains another medical marijuana business or a retail marijuana establishment as defined.

For purposes of this Section, a "residential dwelling unit " shall not include an accessory housing unit to a commercial unit, nor any other dwelling unit that is accessory or incidental to a commercial use. For purposes of this Section, a "single development project" shall mean and include any area in which the property proposed for use as a medical marijuana business shares a common interest in common property, such as parking areas or sidewalk areas, or is a member of a property owners' association with another medical marijuana business or a retail marijuana establishment. The distances set forth in this Section shall be computed by direct

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measurement in a straight line from the nearest property line of the land used for the purposes stated above, respectively, to the nearest portion of the building in which the medical marijuana business or a retail marijuana establishment as defined in Section 180-60 of this Chapter is located. The locational criteria contained in this Section shall apply to all proposed changes in the location of an existing license. Nothing in this subsection shall be construed so as to limit the location of a medical marijuana business based upon its distance from another medical marijuana business or retail marijuana establishment when the medical marijuana business is engaged in dual operations under subsection R below, or when the medical marijuana businesses are operated in the same licensed premises, in one contiguous location, and under the same ownership. In the event that applications for licensure of more than one medical marijuana business and/or retail marijuana establishment are pending at the same time and one proposed location is within 700 feet of another proposed location, the Licensing Authority shall consider and act first upon the application determined by the Licensing Authority to have first been a complete application without regard to the proposed location that is set forth in any application determined to have been complete at a later date.

L. Requirements Related to the Premises. Medical marijuana businesses shall be subject to the following additional requirements:

1. All medical marijuana dispensing, production, manufacturing and cultivation activities shall be conducted indoors.
2. All product storage shall be indoors. Products, accessories, and associated paraphernalia shall not be visible from a public sidewalk or right of way. All medical marijuana or medical marijuana-infused products ready for sale shall be in a sealed or locked cabinet except when being accessed for distribution.
3. The business may only be open for the sale, service or distribution of medical marijuana between the hours of 8:00 a.m. and 10:00 p.m. of the same day, Monday through Sunday.
4. No marijuana shall be consumed on the licensed premises.
5. The cultivation of marijuana is only permitted when the premises are equipped with a system that removes the odors of the marijuana being cultivated so that the odor is not detectable from the exterior of the business or from within any adjoining premises. Approval of the odor removal system by the Building Official is required prior to any cultivation process beginning. The Building Official's determination of the adequacy of any proposed odor-removing system shall be based on his reasonable determination of the ability of the proposed system to remove odors as required by this Subsection, which determination shall be based upon the manufacturer's or an engineer's design specifications for the system as they relate to the premises in question.

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M. Prohibited Acts.

1. It shall be unlawful for any licensee to permit the consumption of alcohol beverages, as defined in the Colorado Liquor Code, on the licensed premises.
2. It shall be unlawful for any licensee holding a medical marijuana center license, or any agent or employee thereof, to sell, give, dispense or otherwise distribute medical marijuana or any medical marijuana infused product from any outdoor location or vehicle.
3. It shall be unlawful for any optional premises cultivation operation to:
 - a. operate in the Town, unless it operates as an optional premises to a medical marijuana center or a medical marijuana-infused products manufacturer located in the Town that is under the same ownership as the optional premises cultivation operation; or
 - b. sell, give, dispense or otherwise distribute medical marijuana except to a medical marijuana center or medical marijuana-infused products manufacturer located in the Town that is under the same ownership as the optional premises cultivation operation.
4. It shall be unlawful for any medical marijuana-infused products manufacturer to:
 - a. operate in the Town unless its owner also holds a medical marijuana center license in the Town; or
 - b. sell, give, dispense or otherwise distribute any of the products that it manufactures except to a medical marijuana center located in the Town that is under the same ownership as the medical marijuana-infused product manufacturer.
5. After issuance of a license, it shall be unlawful for a licensee to make a physical change, alteration or modification of the licensed premises that materially or substantially alters the licensed premises or the usage of the licensed premises from the plans and specifications submitted at the time of obtaining the original license without obtaining the prior written approval of the Authority and the state licensing authority. For purposes of this Subsection, physical changes, alterations or modification of the licensed premises, or in the usage of the premises requiring prior written approval, shall include but not be limited to the following:
 - a. any increase or decrease in the size or physical capacity of the licensed premises; and
 - b. any enlargement of a cultivation area.

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- N. Inspection of Licensed Premises. During all business hours and other times of apparent activity, all licensed premises shall be subject to inspection by the Chief of Police or the Building Official, or the authorized representative of either of them, for the purpose of investigating and determining compliance with the provisions of this Section and any other applicable state or local law or regulation. Such inspection may include, but need not be limited to, the inspection of books, records and inventory. Where any part of the premises consists of a locked area, such area shall be made available for inspection, without delay, upon request.
- O. Nonrenewal, Suspension or Revocation of License.
1. The Authority may suspend, revoke or refuse to renew a license for good cause.
 2. The Authority shall not suspend or revoke a license until after notice and an opportunity for hearing has been provided to the licensee.
 3. The Authority shall not hold a hearing on a license renewal application unless a complaint has been filed concerning the licensee or there are allegations against the licensee that, if established, would be grounds for suspension, revocation or non-renewal under Subsection P.1. of this Section.
- P. Violations and Penalties. In addition to the possible denial, suspension, revocation or nonrenewal of a license under the provisions of this Section, any person, including but not limited to any licensee, manager or employee of a medical marijuana business, or any customer of such business, who violates any provision of this Section, shall be guilty of a misdemeanor punishable in accordance with Section 1-14 of this Code.
- Q. No Town Liability; Indemnification; No Defense.
1. By accepting a license issued pursuant to this Section, the licensee waives any claim concerning, and releases the Town, its officers, elected officials, employees, attorneys and agents from, any liability for injuries or damages of any kind that result from any arrest or prosecution of business owners, operators, employees, clients or customers of the licensee for a violation of state or federal laws, rules or regulations.
 2. By accepting a license issued pursuant to this Section, all licensees, jointly and severally if more than one (1), agree to indemnify, defend and hold harmless the Town, its officers, elected officials, employees, attorneys, agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any

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manner connected with the operation of the medical marijuana business that is the subject of the license.

3. The issuance of a license pursuant to this Section shall not be deemed to create an exception, defense or immunity for any person in regard to any potential criminal liability the person may have under state or federal law for the cultivation, possession, sale, distribution or use of marijuana.
- R. Dual Operations. Any medical marijuana business that has been issued a license pursuant to this Section may, in accordance with the requirements and limitations of state law, share its licensed premises with a licensed retail marijuana establishment.