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§ 180-60. Retail Marijuana [Added 09-10-13, Ord. 13-07; Amended 06-10-14, Ord. 14-03; 07-22-14, Ord. 14-05; 01-27-15, Ord. 15-02]

- A. Purpose and Intent. The purpose of this Section is to implement the Colorado Retail Marijuana Code, which authorizes the licensing and regulation of retail marijuana businesses and affords the Town the option to determine whether or not to allow retail marijuana businesses within its jurisdiction and to adopt licensing requirements that are supplemental to or more restrictive than the requirements set forth in state law. The intent of this Section is to establish a nondiscriminatory mechanism by which the Town can control, through appropriate regulation, the location and operation of retail marijuana establishments within the Town. 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 the sale or distribution of retail marijuana or retail marijuana products than that set forth in this Section, the stricter regulation shall control the establishment or operation of any retail marijuana establishment in the Town. A licensee may 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 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 and managers 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.

Colorado Retail Marijuana Code shall mean Title 12, Article 43.4 of the Colorado Revised Statutes, as amended from time to time, and any rules or regulations promulgated thereunder.

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Consumer means a person twenty-one (21) years of age or older who purchases marijuana or marijuana products for personal use by a person twenty-one (21) years of age or older, but not for resale to others.

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

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

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.

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 Retail Marijuana Code or of any rule and regulation promulgated pursuant to this Section or the Colorado Retail 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 retail marijuana store 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 retail marijuana store 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 retail marijuana store or in the immediate area surrounding the retail marijuana store; or (iii) a continuing pattern of criminal conduct directly related to or arising from the operation of the retail marijuana establishment.

License shall mean a document issued by the Town officially authorizing an applicant to operate a retail marijuana establishment pursuant to this Section or, if required by the context, means a document issued by the state licensing authority pursuant to the Colorado Retail Marijuana Code.

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 180-59 of this Chapter, which is owned or in possession of the licensee and within which the licensee is authorized to operate a retail marijuana establishment, or if required by context, a medical marijuana business, in accordance with state and local law.

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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.

Marijuana accessories means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

Marijuana cultivation facility means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to marijuana stores, but not to consumers.

Marijuana product manufacturing facility means an entity licensed to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to marijuana stores, but not to consumers.

Marijuana store means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

Marijuana testing facility means an entity licensed to analyze and certify the safety and potency of marijuana.

Medical marijuana 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.

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 means marijuana that is cultivated, manufactured, distributed or sold by a licensed retail marijuana establishment.

Retail marijuana establishment means a marijuana store, a marijuana cultivation facility, a marijuana products manufacturing facility or a marijuana testing facility.

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Retail marijuana products means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients that are intended for use or consumption, including without limitation edible products, ointments and tinctures.

State shall mean the state of Colorado.

State licensing authority means the authority created by the Colorado Department of Revenue for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, sale and testing of retail marijuana in the State of Colorado pursuant to C.R.S. § 12-43.4-201.

In addition to the definitions provided in this Subsection, other terms used in this Section shall have the meaning ascribed to them in Article XVIII, Section 16, of the Colorado Constitution or the Colorado Retail Marijuana Code, and such definitions are hereby incorporated into this Subsection by this reference.

- D. Licensing Authority Created. There shall be and is hereby created a Local 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 this Section to grant or deny licenses for marijuana stores. 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. Retail Marijuana Establishment Prohibitions, Marijuana Store License Required; Term of License; Renewal Application, Taxes.
 - 1. It shall be unlawful for any person to operate any retail marijuana establishment within the Town of Frisco other than a marijuana store, marijuana cultivation facility or marijuana products manufacturing facility that has been licensed by the state licensing authority. It shall further be unlawful for any person to operate any marijuana store, marijuana cultivation facility or marijuana products manufacturing facility within the Town of Frisco without first having obtained from the Authority a license for the store or facility. 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 state or Town license shall constitute a violation of this Section.

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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 marijuana store expires.
3. An application for renewal of an existing license shall be made on forms provided by the Authority.
4. A licensee shall collect and remit Town sales tax on all retail marijuana, retail marijuana products, paraphernalia and other tangible personal property sold at retail.
5. 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 marijuana store, marijuana cultivation facility or marijuana products manufacturing facility, including, without limitation, a Town business license, and any development approvals or building permits required by any applicable provisions of this Code.

H. Application Requirements.

1. A person seeking a license pursuant to the provisions of this Section shall submit an application to the Town on forms provided by the Authority. As a part of any such application, 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 United States military identification card; or (iv) a valid passport.
2. The applicant shall also provide the following information on a form approved by, and acceptable to, the Authority, which information shall be required for the applicant and the proposed manager of the marijuana store:
 - 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 marijuana store, marijuana cultivation facility and/or marijuana products manufacturing facility license by the state licensing authority for the proposed licensed premises;
 - e. If the marijuana store will be providing retail marijuana products in an edible form, evidence, at a minimum, of a pending application for any food

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establishment license or permit that may be required by the state and Summit County;

- f. a description of cultivation activities, if any, within the retail marijuana establishment 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; and
 - g. a “to scale” diagram of the boundaries of the proposed licensed premises.
3. The applicant shall pay the to the Town a license fee in the amount of \$3000.00 to cover the cost of inspections conducted pursuant to Subsection P of this Section for the purpose of determining compliance with this Section and other applicable law.

I. Issuance or Denial of Application.

1. 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. 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 registered mail to the applicant at the address shown in the application. In addition, the Authority shall promptly notify the state licensing authority of its decision on the application for local licensure.
2. 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 not be subject to further administrative review, but shall subject to review by a court of competent jurisdiction.
3. The Authority may impose such reasonable terms and conditions on a license as may be necessary or desirable to ensure compliance with the requirements of this Section

- ### J. Locational Criteria.
- A retail marijuana establishment shall be operated from a permanent, indoor location and, except as further limited in this Subsection, within a zone district of the Town that allows for retail sale uses. No retail marijuana establishment shall be permitted to operate from a moveable, mobile or transitory location. The suitability of a location for a retail marijuana establishment shall be determined at the time of the issuance of the first license. The fact that later changes in the neighborhood occur that may render the site unsuitable for a marijuana store shall not be grounds to suspend, revoke or refuse to renew the

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license. No applicant shall be issued a license for a retail marijuana establishment if, at the time of the initial application for such license, the proposed location of the licensed premise 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 retail marijuana establishment or medical marijuana business;
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 retail marijuana establishment or medical marijuana business.

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 retail marijuana establishment 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 retail marijuana establishment or medical marijuana business. The distances set forth in this Subsection shall be computed by direct 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 retail marijuana establishment or medical marijuana business is located. The locational criteria contained in this Subsection 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 retail marijuana establishment based upon its distance from another retail marijuana establishment or medical marijuana business when the retail marijuana establishment is engaged in dual operations under subsection M below, or when the retail marijuana establishments 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

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complete application without regard to the proposed location that is set forth in any application determined to have been complete at a later date.

K. Requirements Related to the Premises. Marijuana stores shall be subject to the following additional requirements:

1. A licensed marijuana store may sell retail marijuana or retail marijuana products to persons 21 years of age or older in the following quantities:
 - a. Up to one ounce of retail marijuana or its equivalent in retail marijuana products during a single sales transaction to Colorado residents; or
 - b. Up to one-quarter ounce of retail marijuana or its equivalent in retail marijuana products during a single sales transaction to a non-Colorado resident.
2. The following forms of identification may be accepted to determine Colorado residency: a valid state of Colorado driver's license; a valid state of Colorado identification card; or any other valid government-issued picture identification that demonstrates that the holder of the identification is a Colorado resident.
3. The retail marijuana offered for sale and distribution shall be packaged and labeled in accordance with state law.
4. The business may only be open for the sale or distribution of retail marijuana or retail marijuana products only between the hours of 8:00 a.m. and 10:00 p.m. of the same day, Monday through Sunday.
5. No marijuana shall be consumed on the licensed premises.
6. 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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L. Prohibited Acts Related to Marijuana Cultivation Facilities and Marijuana Product Manufacturing Facilities.

1. It shall be unlawful for any marijuana cultivation facility to:
 - a. operate in the Town, unless it operates in the same licensed premises and under the same ownership with a marijuana store located in the Town; or
 - b. sell, give, dispense or otherwise distribute marijuana except to the marijuana store located in the same licensed premises and that is under the same ownership as the marijuana cultivation facility.
2. It shall be unlawful for any marijuana product manufacturing facility to:
 - a. operate in the Town, unless its operates in the same licensed premises and under the same ownership with a marijuana store located in the Town; or
 - b. sell, give, dispense or otherwise distribute any of the products that it manufactures except to the marijuana store located in the same licensed premises and under the same ownership as the marijuana product manufacturing facility.

M. Dual Operations. Any medical marijuana business that has been issued a license pursuant to Section 180-59 of this Code may, in accordance with the requirements and limitations of this Section and state law, share its licensed premises with a licensed retail marijuana establishment.

N. Legal Nonconformity. Any other provision of this Code notwithstanding, any medical marijuana business that has been issued a license pursuant to Section 180-59 of this Code, whether for a medical marijuana center, optional premises cultivation operation, or medical marijuana-infused products manufacturer, or any combination thereof, each as defined in the Colorado Medical Marijuana Code, may, without diminution of any legal nonconforming status that it may have, engage in dual operations as set forth in Subsection M above, or may, in accordance with applicable law, transfer its operations to that of a marijuana store, so long as, in each instance, the floor area of the dual operations or the new marijuana store does not exceed the floor area of the licensed medical marijuana business.

O. Prohibited Acts. It is unlawful for any licensee to:

1. Permit the consumption of alcohol beverages, as defined in the Colorado Liquor Code, on the licensed premises;
2. Purchase or otherwise obtain retail marijuana from a source that is not properly authorized under state and local law to sell or dispense retail marijuana;

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3. Permit the use, consumption, ingestion or inhalation of retail marijuana or retail marijuana products on or in the premises of a marijuana store;
 4. Dispense marijuana to a person that is or appears to be under the influence of alcohol or under the influence of any controlled substance, including marijuana;
or
 5. After issuance of a license, 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.
- P. 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.
- Q. 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 R.1. of this Section.
- R. 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 marijuana store

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who violates any provision of this Section, shall be guilty of a misdemeanor punishable in accordance with Section 1-14 of this Code.

S. 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 manner connected with the operation of the marijuana store 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.