

**RESOLUTION NO. 2014-15**

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LA PLATA COUNTY, COLORADO, ADOPTING CODE AMENDMENTS TO CHAPTER 7 OF THE LA PLATA COUNTY CODE ALLOWING FOR THE CONVERSION OF MEDICAL MARIJUANA CULTIVATION FACILITIES TO RETAIL MARIJUANA CULTIVATION FACILITIES**

**WHEREAS**, the Board of County Commissioners has the authority to exercise all County powers for the unincorporated areas of La Plata County pursuant to C.R.S. § 30-11-103; and

**WHEREAS**, at the November 6, 2012 general election, the voters of the State of Colorado adopted Amendment 64 of the Colorado Constitution ("Amendment 64"), which is codified as Article XVIII, § 16 of the Colorado Constitution; and

**WHEREAS**, as authorized by Amendment 64, the State Legislature enacted the Colorado Retail Marijuana Code, C.R.S. §§ 12-43.4-101, *et seq.*; and

**WHEREAS**, Amendment 64 and C.R.S. § 12-43.4-104(1) provide that a person who is operating in good standing a medical marijuana optional premises cultivation license may apply to fully convert the optional premises cultivation license to a retail marijuana cultivation license or apply for a retail marijuana cultivation license to be co-located with the optional premises cultivation license if such co-location is permitted by the local jurisdiction; and

**WHEREAS**, Amendment 64 provides that a locality may enact regulations governing the time, place, manner and number of retail marijuana establishments and to establish procedures for the issuance, suspension and revocation of local permits for retail marijuana establishments allowed under Amendment 64; and,

**WHEREAS**, on August 27, 2013, the Board of County Commissioners adopted Ordinance No. O-2013-03 enacting a temporary ban on the submission, acceptance, or processing of applications and the licensing, permitting or operation of retail marijuana establishments described under Amendment 64 until December 31, 2014 or until such time as this Board duly adopts regulations by resolution; and

**WHEREAS**, on February 11, 2014, the Board of County Commissioners held a public meeting as part of a properly noticed business agenda to receive evidence and testimony from county staff as well as members of the public; and

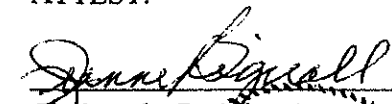
**NOW THEREFORE, BASED UPON THE EVIDENCE AND TESTIMONY PRESENTED AT THE PUBLIC MEETING, BE IT RESOLVED BY THE LA PLATA COUNTY BOARD OF COUNTY COMMISSIONERS:**

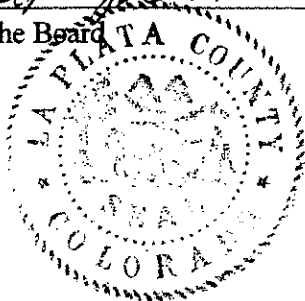
1. That Chapter 7 of the La Plata County Code shall be and is hereby amended as set forth in the attached Exhibit A to allow for the full or partial conversion of a medical marijuana optional premises cultivation license approved prior to December 31, 2013, to a retail marijuana cultivation facility license.
2. The ban adopted pursuant to Ordinance No. O-2013-03 enacting a temporary ban on the submission, acceptance, or processing of applications and the licensing, permitting or operation of retail marijuana establishments described under Amendment 64 is hereby repealed ONLY in regard to the full or partial conversion of a medical marijuana optional premises cultivation license approved prior to December 31, 2013, to a retail marijuana cultivation facility licenses, as set forth in Exhibit A. The ban remains in place for all other retail marijuana facilities allowed for under Amendment 64.
3. The enactment of this Resolution is necessary for the immediate preservation of public health, safety and welfare and, therefore, this Resolution shall take effect on date of its adoption.

**DONE AND ADOPTED IN DURANGO, LA PLATA COUNTY, COLORADO, this 11th day of February, 2014.**

BOARD OF COUNTY COMMISSIONERS OF  
LA PLATA COUNTY, COLORADO

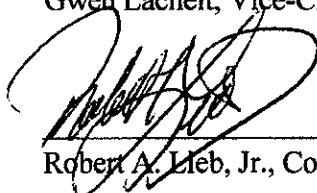
ATTEST:

  
Clerk to the Board



  
Julie Westendorff, Chair

  
Gwen Lachelt, Vice-Chair

  
Robert A. Lieb, Jr., Commissioner

**Article II. Retail Marijuana Establishments.**

**Sec. 21. Applicability.**

All retail marijuana establishments must comply with the regulations of this article, as well as all other applicable state laws, rules and regulations. A person must obtain a license pursuant to this article, the Colorado Constitution Art. XVIII, Sec. 16, and the Colorado Retail Marijuana Code prior to commencement of operation of a retail marijuana establishment. All terms in this article shall have the same meaning and definition as in the Colorado Constitution Art. XVIII, Sec. 16, and the Colorado Retail Marijuana Code, C.R.S. §§ 12-43.4-101 *et seq.*

**Sec. 22. Local licensing authority and classes of licenses.**

The retail marijuana licensing authority for the county shall be an individual or individuals appointed by the board of county commissioners and shall serve at the pleasure of the board. The local licensing authority may issue retail marijuana cultivation facility licenses and take all actions authorized pursuant to this chapter.

**Sec. 23. Eligibility.**

- (1) A person that meets the following criteria shall be eligible to apply for a retail marijuana cultivation facility license:
  - (a) The applicant received an approved medical marijuana optional premises cultivation license pursuant to this chapter prior to December 31, 2013; and
  - (b) The applicant's medical marijuana optional premises cultivation license is in compliance with the Colorado Medical Marijuana Code and this chapter.

**Sec. 24. Dual premises with medical marijuana optional premises cultivation facilities.**

- (1) A retail marijuana cultivation facility shall be allowed to share a location with a medical marijuana optional premises cultivation facility licensed pursuant to this chapter. A licensed retail marijuana cultivation facility that is not sharing its location shall turn in its medical marijuana optional premises cultivation license to the county building department within fourteen (14) calendar days of issuance of the retail marijuana cultivation facility license by the State of Colorado.
- (2) If the applicant needs to make a physical change, alteration or modification of the licensed medical marijuana optional premises cultivation facility to accommodate a dually located retail marijuana cultivation facility, the applicant must comply with Section 10 of this Chapter.

**Sec. 25. License restrictions.**

- (1) A licensed retail marijuana cultivation facility premises shall not be:
  - (a) Expanded beyond the area duly licensed as a medical marijuana optional premises cultivation facility;
  - (b) In violation of the land use code;
  - (c) In violation of the fire code;
  - (d) In violation of the Colorado Retail Marijuana Code;
  - (e) In violation of the building code;
  - (f) In violation of any relevant rules and regulations adopted by San Juan Basin Health Department;
  - (g) In violation of the State of Colorado Electrical Board rules and regulations; and
  - (h) Located on a parcel that is delinquent on the payment of County property taxes.
- (2) A licensee shall not be:
  - (a) In violation of the Colorado Medical Marijuana Code or this chapter.

**Sec. 26. Application requirements, review process, and license term.**

- (1) An application for a new retail marijuana cultivation facility license shall be submitted on forms provided by the building department. Applications shall include the following documentation:
  - (a) Floor plans. Floor plans for the retail marijuana cultivation facility shall be submitted on paper 24" x 24" or larger. If the retail marijuana cultivation facility proposes to share a location with a duly approved medical marijuana optional premises cultivation facility, the physical or virtual separation shall be clearly delineated in the designs.
  - (b) Copy of applicable State license application and determination of completeness. The county will not process any application for a new retail marijuana cultivation facility license until it receives a copy of the application submitted by the applicant to the Colorado Marijuana Enforcement Division for a license for the same facility and may not process an application until the county receives a determination by the Division that said application is complete.

- (c) Fees. Applicable county fees shall be submitted with the application.
- (d) Any additional information that the county may request to process and fully investigate the application. Any additional information so requested by the county must be furnished within seven (7) calendar days. Failure to provide any requested information within this time frame shall be grounds for denial of the application.

(2) The building department director shall review the application for completeness and may approve or deny a completed application based on the requirements of this article. All decisions shall be in writing and shall be effective on the date of approval. If the application is denied, the applicant shall have the right to appeal the decision to the local licensing authority. A request for an appeal shall be submitted in writing to the building department within fourteen (14) calendar days of the issuance of the denial. The local licensing authority shall consider the appeal during a duly noticed public hearing and shall issue a final determination on the application.

(3) A retail marijuana cultivation facility license shall be valid for one year from the State of Colorado's approval of an application for a new license, except new licenses that fully convert from a medical marijuana optional premises cultivation license to a retail marijuana cultivation facility license. For such a conversion, the retail marijuana cultivation facility license shall assume the balance of the licensing term previously held by the surrendered medical marijuana optional premises cultivation license and shall have the same expiration date.

#### **Sec. 27. Occupational licenses.**

Within ten (10) calendar days of the state's issuance of an occupational license, as required by the Colorado Retail Marijuana Code and rules, a licensee shall provide a copy of such license to the building department. The licensee shall provide the building department with notice of termination of a person holding an occupational license within ten (10) calendar days of such termination. Such documentation shall be kept at the premises and shall be provided for review upon request during any county inspection.

#### **Sec. 28. Inspections.**

The licensed premises, including any places where marijuana is grown, stored, or cultivated, shall be subject to inspection by the local licensing authority, its investigators and designees, during all business hours and other times of apparent activity for the purpose of inspection or investigation. This section shall not limit any inspection authority provided in law.

#### **Sec. 29. Enforcement and penalties.**

(1) *Investigation.* Investigations shall be initiated after receiving a complaint or observing potential noncompliance. If the investigation demonstrates probable cause of a violation by the licensee, its agents or employees, of this article or provisions of the license, then a written summary of the facts and the supporting evidence shall be provided to the local licensing authority. If the local licensing authority finds the evidence supports probable cause, it shall issue an order to show cause why the licensee's license should not be subject to disciplinary action. Such order shall include a date for a public hearing.

(2) *Hearing.* After hearing testimony in a public hearing, the local licensing authority may suspend or revoke a license for violation of this article or provisions of the license by the licensee, its agents or employees. The local licensing authority may administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary for determination at a hearing.

(3) *Sanctions.* Notice of a suspension, revocation, or other sanction shall be mailed to licensee at the address contained in the license. A suspension shall not be longer than six months. Notice of a suspension shall be posted on the premises.

(4) *Fine in lieu.* If the local licensing authority suspends a license for 14 calendar days or less, the licensee may, before the date of the suspension, petition for permission to pay a fine in lieu of having the license suspended for all or part of the license period. The local licensing authority may stay the proposed suspension, investigate the matter, and may grant the petition if it makes a finding that the factors set forth in C.R.S § 12-43.4-601(3)(a) are satisfied. The fine accepted shall be not less than five hundred dollars (\$500.00) and no more than one hundred thousand dollars (\$100,000.00). The fine shall be based on the costs and expenses for the county's investigation and hearing, as well as a penalty that is supported by the record. Upon payment of the fine, the local licensing authority shall enter a further order either staying the imposition of the suspension or dismissing the disciplinary proceeding.

(5) *Summary suspension.* A license may be summarily suspended by the local licensing authority without notice pending a hearing when the local licensing authority finds that there are objective and reasonable grounds that the licensee, its agents or employees has either willfully and deliberately violated this article or provisions of the license, or that the public health, safety or welfare imperatively requires emergency action. A license may be summarily suspended only after a full investigation by the county and delivery of a written presentation of the findings to the local licensing authority. A hearing on suspension or revocation shall be held and determined promptly after a summary suspension occurs.

(6) *Illegal controlled substance.* The local licensing authority's order may specify that some or all of the licensee's marijuana or marijuana-infused product is an illegal

controlled substance. The order may specify that the licensee shall lose any interest in any of the marijuana or marijuana-infused product even if the marijuana or marijuana-infused product previously qualified as retail marijuana or a retail marijuana-infused product. The local licensing authority order may direct the destruction of any such marijuana and marijuana-infused products. If destruction is ordered, the local licensing authority shall not carry out destruction until at least 15 calendar days following the issuance of the order has passed and the District Attorney for the 6<sup>th</sup> Judicial District has been notified of the impending destruction. Within 15 calendar days following the issuance of the order, a licensee shall have the right to petition the 6<sup>th</sup> Judicial District Court to stay the action of the local licensing authority.

**Sec. 30. Fees.**

License, operating and any other applicable fees shall be set by the board of county commissioners and such fees, after being duly adopted, will be published to the county website. All applicable fees shall be submitted with the application. If a license is not issued by the county, the license and operating fees will be refunded to the applicant.

**Sec. 31. Notice of State of Colorado inspections and enforcement actions.**

A licensee shall provide the building department with notice of any and all inspections and enforcement actions by the Colorado Marijuana Enforcement Division. The notice shall be provided to the building department in writing within ten (10) calendar days of the inspection or notice of an enforcement action. The notice shall include a copy of any and all written formal and informal documents received from the Division.

**Sec. 32. Release and indemnification.**

(1) *Release.* By accepting a license issued pursuant to this article, the licensee releases the county, its elected officials, employees, officers, attorneys, and agents from any and all liability for any and all known, unknown or unforeseen damages, injuries, losses and liabilities directly or indirectly related to the licensee's retail marijuana cultivation operations, including but not limited to any claim that results from any arrest or prosecution of the licensee, its employees, clients or customers, for a violation of State or federal law, rules, or regulations.

(2) *Indemnification.* By accepting a license issued pursuant to this article, the licensee, jointly and severally, if more than one, indemnifies and holds harmless the county, its employees, officers, elected officials, insurers, attorneys and agents from any and all suits, actions, claims, judgments, obligations or liabilities of every nature and description which arise out of or in any manner are connected with the operation of the retail marijuana cultivation operation that is the subject of the license. Furthermore, the licensee agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at its expense, and to bear all other costs

and expenses related thereto, including court costs and attorney fees; however, such agreement does not make the licensee an agent or employee of the county.

(3) *Further affirmation.* The county may require an applicant as part of the application and review process to affirm in writing the requirements of this section.