

**ORDINANCE NO. O-2014-32**

AN ORDINANCE REPEALING AND REENACTING DIVISION 1 OF ARTICLE VIII OF CHAPTER 13 OF THE CODE OF ORDINANCES OF THE CITY OF DURANGO CONCERNING THE LICENSING AND REGULATION OF RETAIL MARIJUANA ESTABLISHMENTS WITHIN THE CITY WITH THE DELETION OF THE PROVISION IN SECTION 13-168(B) ALLOWING RETAIL MARIJUANA STORES IN THE MU-N ZONE, AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City of Durango (“City”) is a municipal home-rule corporation created and organized pursuant to Article XX of the Colorado Constitution and the Charter of the City of Durango, Colorado; and

WHEREAS, on June 16, 2014, the City Council approved Ordinance no. O-2014-26 which created Division 1 of Article VIII of Chapter 13 to the Code of Ordinances of the City of Durango related to the licensing and regulation of Retail Marijuana Establishments within the City, and

WHEREAS, on July 17, 2014 the City Clerk approved an Affidavit of a Petitioners’ Committee for a referendum seeking to repeal Ordinance no. O-2014-26 under the provisions of Article VII Section 4 of the Charter of the City of Durango, and

WHEREAS, the approved Affidavit of the Petitioners’ Committee has the effect of suspending Ordinance no. O-2014-26 under the provisions of Section 9(b) of Article VII of the Charter of the City of Durango pending the filing of referendum petitions and subsequent consideration by the City Council or vote of the electorate pursuant to Section 9(b) or Article VII of the Charter; and

WHEREAS, Section 9(b) of Article VII of the Charter provides that any ordinance that is the subject of a referendum shall be considered by the Council for repeal upon certification from the Clerk to the Council of the sufficiency of the referendum petition, and

WHEREAS, the City Council finds that the suspension and possible repeal of Ordinance no. O-2014-26 by a vote of the electors has the effect of disrupting the licensing process for businesses that are lawful under the constitution and laws of the State of Colorado, and

WHEREAS, the suspension and possible repeal of Ordinance no. O-2014-26 by the electorate will have serious and significant impacts on businesses that have made an investment to begin the licensing process to date; and

WHEREAS, the City wishes to consider the repeal of Ordinance O-2014-26 at this time prior to the filing of the citizens' petitions for referendum, thereby satisfying the requirement in the Charter for Council review of the Ordinance proposed for repeal by the Citizens' referendum; and

WHEREAS, the City Council desires to provide for a predictable environment which will allow the licensing process for Retail Marijuana Establishments to proceed pending the resolution of certain issues regarding Retail Marijuana Stores in the MU-N Zone, and

WHEREAS, the City Council desires to reenact all of the provision of Ordinance no. O-2014-26, except for the provisions that allow Retail Marijuana Stores in the MU-N Zone; and

WHEREAS, the City Council desires to consider whether to allow Retail Marijuana Stores in all or portions of the MU-N Zone by separate Ordinance; and

WHEREAS, it is the desire of the City Council that these actions by Council will allow for a more focused citizens' referendum process on the issue of whether Retail Marijuana Stores should be allowed in all or portions of the MU-N Zone while leaving the remainder of the Retail Marijuana Establishment licensing and regulation process in force during any future referendum process; and

WHEREAS, the City Council desires to recognize and continue to process any existing land use or license applications for Retail Marijuana Stores that have been filed prior to the date of this Ordinance;

NOW, THEREFORE, THE CITY OF DURANGO HEREBY ORDAINS:

**Section 1:** The Code of Ordinances of the City of Durango, Colorado is hereby amended by the repeal of Division 1 of Article VIII to Chapter 13 of the Code in its entirety.

**Section 2:** The Code of Ordinances of the City of Durango, Colorado is hereby amended by the re-adoption and addition of Division 1 of Article VIII of Chapter 13 to read in its entirety as follows:

ARTICLE VIII. MARIJUANA LICENSES

Division 1. Retail Marijuana Establishments

**Sec. 13-160. Legislative intent and purpose.**

- (a) *Legislative intent:* The City Council intends to regulate the use, acquisition, production and distribution of recreational marijuana in a manner consistent with Article XVIII, Section 16 of the Colorado Constitution (the “Recreational Marijuana Amendment”, also known as Amendment 64) and in accordance with the Colorado Retail Marijuana Code and Regulations adopted by the State of Colorado thereunder.
- (1) House Bill 13-1317, signed by the Governor on May 28, 2013, enacts C.R.S. Title 12 Article 43.4 (the “Colorado Retail Marijuana Code”), which imposes statewide regulations pertaining to the cultivation, manufacture, distribution and sale of Retail Marijuana and the licensing of Retail Marijuana Establishments. This legislation provides for local licensing, however, the state law is not intended to, and does not, address the local impacts of marijuana operations, making it appropriate for local regulations of marijuana operations.
  - (2) Use, distribution, cultivation, production, possession and transportation of marijuana remains illegal under federal law, and marijuana is still classified as a “Level 1 Controlled Substance” under federal law. Nothing within this Article is intended to promote or condone the production, use, sale or distribution of retail or recreational marijuana other than in compliance with applicable local and state law.
  - (3) This Article is not intended to regulate Medical Marijuana Businesses which are governed by the Medical Marijuana licensing provisions contained in Division 2 of this Article VIII.
  - (4) This Article is to be construed to protect the interests of the public over marijuana business interests. Operation of a Retail Marijuana Establishment is a revocable privilege and not a right within the city. There is no property right for an individual to have or a business to sell marijuana within the City.
- (b) *Purpose:* The purpose of this Division 1 is to implement the Recreational Marijuana Amendment in a manner consistent with C.R.S. Title 12, Article 43.4, to protect the health safety and welfare of the residents of the City by prescribing the time, place and manner in which Retail Marijuana Establishments may be operated within the City. Further the purpose of this Article VIII is to:
- (1) Provide for the safe sale of retail and recreational marijuana to persons legally permitted to obtain, possess and use marijuana for recreational purposes in accordance with the Recreational Marijuana Amendment.
  - (2) Protect public health and safety through reasonable limitations on business operations as they relate to noise, air and water quality, food safety, neighborhood and public safety, security for the business and its personnel, and other health and safety concerns.
  - (3) Impose fees in an amount sufficient to cover the direct and indirect costs to the City of licensing and regulating Retail Marijuana Establishments.
  - (4) Adopt a mechanism for monitoring compliance with the provisions of this Division. 1.

- (5) Create regulations that address the particular needs of residents and businesses of the City and coordinate with laws enacted by the state that pertain to this issue.
- (6) Allow Retail Marijuana Stores and Retail Marijuana Testing Facilities in the City on the condition that such establishments are operated in compliance with this Division 1, rather than banning Retail Marijuana Establishments in the City as permitted by the Recreational Marijuana Amendment.
- (7) Facilitate the implementation of the Recreational Marijuana Amendment without going beyond the authority granted by such Amendment.

**Sec. 13-161 Definitions.**

The following words and phrases used in this Division 1 shall have the following meanings unless the context clearly indicates otherwise:

*Addiction recovery facility* shall mean a facility that provides short-term overnight stays that provides for the treatment or counseling of persons having drug or alcohol abuse problems under the supervision of professional health care or social services providers.

*Applicant* means a person who has submitted an application to the Durango Local Licensing Authority pursuant to this Division, which application has not been approved or denied by the Authority.

*Advertise, advertising or advertisement* means the act of drawing the public's attention, whether through print, signs, telephonic, electronic, wireless or digital means, to a Retail Marijuana Establishment or Retail Marijuana Testing Facility in order to promote the sale or testing of marijuana by the business.

*Business manager* means the individual(s) designated by the owner of a Retail Marijuana Store or Retail Marijuana Testing Facility who are registered with the City as the person(s) responsible for all operations of the business during the owner's absence from the business premises.

*Co-located marijuana business* means a Medical Marijuana Business that has a license pursuant to Division 2 of this Article VIII, that is permitted by the owner of the building and all applicable laws, to divide the licensed Medical Marijuana Business to allow for both a Medical Marijuana Business and a Retail Marijuana Establishment, as a separate business premise with separate licenses from the City, within the same footprint and owned by the same person(s) or entity.

*Colorado Retail Marijuana Code* shall mean Article 43.4 of Title 12, C.R.S., as the same may be hereafter amended, and any other rules or regulations promulgated thereunder.

*Distribute or distribution* shall mean the actual, constructive or attempted transfer, delivery, sale or dispensing of marijuana to another, with or without remuneration.

*Good cause*, for purposes of denial of an initial, renewal, or reinstatement of a license application, or for the imposition of disciplinary action against an existing licensee shall mean:

- (a) The Licensee or Applicant has violated, does not meet, or has failed to comply with any of the terms, conditions of this Division 1, or provisions of the Colorado Retail Marijuana Code, any rules

- promulgated pursuant thereto, or any other supplemental relevant state or local law, rule, or regulation; or
- (b) The Licensee or Applicant has failed to comply with any special terms or conditions that were placed upon the license pursuant to an order of the State Licensing Authority or the Durango Local Licensing Authority or any other local entity with jurisdiction; or
  - (c) The Licensee's Licensed Premises have been operated in a manner that adversely affects the public health, safety or welfare of the immediate neighborhood in which the establishment is located.

*License* means to grant a license or registration pursuant to the Colorado Retail Marijuana Code and this Division 1 for a Retail Marijuana Store or a Marijuana Testing Facility.

*Licensed premises* means the premises specified in an application for a license pursuant to this Division 1 and the Colorado Retail Marijuana Code that is owned by or in possession of the Licensee and within which the Licensee is authorized to distribute, sell or test Retail Marijuana in accordance with the provisions the Colorado Retail Marijuana Code and this Division 1.

*Licensee* shall mean the Retail Marijuana Establishment named on the Retail Marijuana Establishment License, and all individuals named in the initial Retail Marijuana Establishment business license application, or individuals later submitted to and approved by the City, including without limitation, owners Business Managers, financiers, and individuals owning any part of an entity that holds a financial or ownership interest in the Retail Marijuana Establishment.

*Local Licensing Authority* shall mean the Durango Local Licensing Authority established and governed by Article VIII of Chapter 5 of this Code.

*Marijuana* for purposes of this Article shall have the same meaning as set forth in the Recreational Marijuana Amendment; or as may be more fully defined in any applicable state or local law or regulation.

*Marijuana accessories* shall have the same meaning as such term is defined in the Recreational Marijuana Amendment.

*Marijuana business* shall mean any Medical Marijuana Business as defined in Division 2 of this Article or Retail Marijuana Establishment as defined in this Division 1.

*Marijuana social club* shall mean a non-residential location in the City which is used and intended for inviting and assembling people for the primary purpose of using and consuming marijuana and/or marijuana products at that location.

*Medical marijuana* shall have the same meaning as set forth in Division 2 of this Article.

*Medical marijuana business* shall have the same meaning as set forth in Division 2 of this Article.

*Medical marijuana center* shall have the same meaning as set forth in Division 2 of this Article.

*Place open to the general public* shall mean any property owned, leased or used by a public entity, any place on private property open to the public, common areas of buildings, dedicated public parks, vehicles, public transit vehicles, streets, sidewalks, trails, those portions of any public or private property upon which the public has an express or implied license to enter or remain, and any place visible from such places. Place open to the general public shall not include any private

residential property regardless of whether it can be seen from a place open to the public.

*Preschool* means a facility that provides preschool programs and services to the School District under the Colorado Preschool Program Act to a majority of the children who attend or are enrolled in that facility.

*Residential child care facility* shall have the same meaning as set forth in C.R.S., § 26-6-102(8).

*Recreational marijuana* means any marijuana intended for recreational use which meets all of the requirements for recreational marijuana contained in this Division 1, Article XVIII, Section 16 of the Colorado Constitution, and any other applicable state or local law.

*Retail Marijuana* means all parts of the plant of the genus cannabis (hereafter the plant) 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, that is cultivated, manufactured, distributed, or sold by a licensed Retail Marijuana Store. Retail Marijuana does not include industrial hemp, nor does it include fiber produced from stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

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

*Retail marijuana establishment* means a Retail Marijuana Store or a Retail Marijuana Testing Facility licensed under this Division 1.

*Retail marijuana Products* means “marijuana products” as defined in section 16 (2)(k) of article XVIII of the state constitution that are produced at a retail marijuana products manufacturer.

*Retail marijuana products manufacturing facility* means an entity licensed to cultivate, prepare, package and sell Retail Marijuana or any product that contains Retail Marijuana to Retail Marijuana Establishments, but not to consumers.

*Retail marijuana store* means an entity licensed pursuant to this Division I to operate a Retail Marijuana Establishment as described in C. R. S. § 12-43.4-402.

*Retail marijuana testing facility* means a “Marijuana Testing Facility” as defined in Article XVIII, Section 16 of the Colorado Constitution and licensed pursuant to this Division 1 and C.R.S §12-43.4-405

*School* means a public or private licensed preschool, or a public, private or charter elementary, middle, junior high or high school, vocational school, secondary school, community college, college or other institution of higher education.

*State Licensing Authority* means the authority created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of Retail Marijuana in Colorado, pursuant to section C.R.S. §12-43.4-201.

*Street Segment* means a portion of a street which is located between two intersections, or between an intersection and the end of a cul de sac or dead end street.

**Sec. 13-162 Prohibition on marijuana cultivation facilities, marijuana product manufacturing facilities and marijuana social clubs.**

The licensing and operation of Retail Marijuana Cultivation Facilities and Retail Marijuana Product Manufacturing Facilities are hereby permanently prohibited and banned within the City. No person shall be allowed to submit an application to the City for a License for such uses and no application for a License for such uses shall be accepted or processed by the City. No person shall be allowed to own, operate or maintain a Marijuana Social Club within the City. No property within the City shall be used for the prohibited purposes described in this Section.

**Sec. 13-163 License required for retail marijuana store and marijuana testing facility.**

It shall be unlawful to operate a Retail Marijuana Store or a Retail Marijuana Testing Facility within the City without first obtaining a City License to operate pursuant to the provisions of this Division 1, having a validly issued License in good standing from the state, and having paid all applicable fees.

**Sec. 13-164 Applicants for retail marijuana store prior to January 2, 2015.**

Prior to January 2, 2015, only those individuals or entities holding a valid City and state license to operate a Medical Marijuana Center, as of the effective date of this Division, shall be allowed to submit a License application to the City to operate a Retail Marijuana Store. Subsequent to said date, the restriction described in this Section shall be removed and any person who is otherwise qualified under the provisions of this Division 1 and any provisions of applicable state law shall be allowed to submit a License application for a Retail Marijuana Store to the City for processing and review.

**Sec. 13-165 General licensing conditions.**

- (a) Except as specifically provided herein, the issuance of a License for a Retail Marijuana Establishment by the City shall be subject to compliance with all provisions of C.R.S., § 12-43.4-309.
- (b) The License requirements set forth in this Division 1 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, by way of example, a retail sales and use tax license, a retail food establishment license or any applicable zoning, land use or building permits.
- (c) The issuance of a License pursuant to this Article 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.
- (d) A separate license shall be required for each location from which a Retail Marijuana Establishment is operated. A separate License shall be required for each specific business or business entity, for each geographical location and for each co-located Retail Marijuana Establishment.
- (e) The submission of an application for or the acceptance of the issuance of a License under this Division from the City shall act as an acknowledgment and agreement by the Applicant or the Licensee that the sale of Marijuana

continues to be subject to the control and jurisdiction of the federal government and actions taken by the federal government under federal laws and regulations may limit or invalidate any License issued by the City or the Licensee's ability to own or operate a Marijuana Business in the City.

**Sec. 13-166 License application and review process.**

An application for a Retail Marijuana Establishment license shall be made on forms provided by the City Clerk for such purposes. The Applicant shall use the application to demonstrate its compliance with the provisions of this Division 1 and other applicable laws, rules or regulations. 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 Retail Marijuana Establishment in whose name the license is proposed to be issued.
  - (1) If the proposed owner is a corporation, the application shall include the name and address of all officers and directors 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, including 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 proposed owner is a partnership, association or limited liability company, the application shall include 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 or otherwise including 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 application shall include copies of the organizational documents for all entities identified in the application, and the contact information for the person that is authorized to represent the entity or entities.
- (b) Name and address of the proposed manager(s) of the Retail Marijuana Establishment, if the manager is proposed to be someone other than the owner, or if the owner is an entity rather than a natural person.
- (c) A statement indicating whether 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 or a Retail Marijuana Establishment License pursuant to this Article, or any similar state or local licensing law, rule or regulation, or had such a license suspended or revoked.
  - (2) Denied an application for a liquor license pursuant to C.R.S. Title 12, Article 46 or 47, or under the provisions of Chapter 3 of this Code, or by any similar state or local licensing law, rule regulation, or had any such license suspended or revoked.

- (3) 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) 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.
  - (5) Convicted, entered a plea of nolo contendere, or entered a plea of guilty in conjunction with a deferred sentence and judgment pertaining to any felony.
- (d) Proof that the Applicant will have ownership or legal possession of the premises proposed for the Retail Marijuana Establishment for the term of the proposed License. If the premises is not owned by the Applicant, such proof of possession shall include a signed statement from the landlord or owner of the premises consenting to the use of the property for the purposes of operating a Retail Marijuana Establishment.
- (e) Proof of insurance as follows:  
Worker's Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work related to the operation of the Retail Marijuana Establishment and Comprehensive General Liability insurance with minimum single limits of One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) aggregate, applicable to all premises and operations.
- (f) An operating plan for the proposed Retail Marijuana Establishment, including the following information:
- (1) A description of the products and services to be sold or provided by the Retail Marijuana Establishment.
  - (2) A dimensioned floor plan of the proposed premises, clearly labeled, showing:
    - i. The layout of the structure and the floor plan in which the Retail Marijuana Establishment will be located including information sufficient to prove compliance with ventilation, security and other structural requirements contained herein;
    - ii. The principal uses of the floor area depicted on the floor plan, including but not limited to storage areas, retail sales areas and restricted areas where Retail Marijuana will stored and located;
    - iii. Areas where any services other than the distribution or sale of Retail Marijuana is proposed to occur on the Licensed Premises.
- (g) For a Marijuana Testing Facility, a plan that specifies all means to be used for extraction, heating, washing, or otherwise changing the form of the marijuana

plant, or the testing of any Marijuana, and verification of compliance with all applicable state and local laws for ventilation and safety measures for each process. The City shall require the testing facility to obtain a report from an industrial hygienist to verify that the plan submitted, and the improvements to be constructed, adequately protect the business and adjacent properties and persons, and comply with all applicable laws.

- (h) The maximum amount of Retail Marijuana or Retail Marijuana Products that may be on the business premises.
- (i) A security plan indicating how the Applicant will comply with the requirements of this Division 1, and any other applicable law, rule or regulation. The Applicant may submit the portions of such security plan which include trade secrets or specialize security arrangements confidentially. The City will not disclose documents appropriately submitted under the Colorado Open Records Act [C.R.S. § 24-72-201 et seq.] if they constitute confidential trade secrets or specialized security arrangements to any party other than law enforcement agencies, unless compelled to do so by Court Order. 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.
- (j) A lighting plan showing the illumination of the outside of the Retail Marijuana Establishment for security purposes and compliance with applicable city requirements.
- (k) An vicinity map, drawn to scale, indicating, (or zoning confirmation from the city to ascertain) within a radius of one-quarter (1/4) mile from the boundaries of the property upon which the Retail Marijuana Establishment is located, the proximity of the property to any School, Residential Child Care Facility, an Addiction Recovery Facility, or dedicated public park which contains children's playground equipment, or to any other facility identified in this Division 1 or in state law that requires a distance separation from licensed Retail Marijuana Establishments.
  - (l) Finger prints and personal histories for all owners and parties having a financial interest in the proposed Retail Marijuana Establishment, as defined in this Division 1. All such individuals shall be subject to a criminal background check in conjunction with the license application and review.
- (l) A plan for disposal of any Retail Marijuana or product that is not sold or is contaminated in a manner that protects any portion thereof from being possessed or ingested by any person or animal.
- (m) A plan for ventilation that describes the ventilation systems that will be used to prevent any odor of Marijuana from extending beyond the premises of the business.
- (n) A description of all toxic, flammable, or other materials regulated by a federal, state, or local government that would have authority over the business if it was not a Retail Marijuana Establishment, that will be used, kept, or created at the Retail Marijuana Establishment, and the location where such materials will be stored.

- (o) An application for a Retail Marijuana Establishment license shall be accompanied by the application fee, criminal background fee, and annual license fee, together with any other applicable fees that may be established by resolution of the City Council. At least annually, the amount of fees charged shall be reviewed and, if necessary, adjusted to reflect the direct and indirect costs incurred by the City in connection with the administration and enforcement of this Division 1.
- (p) An inspection of the proposed Retail Marijuana Establishment by the City and the Durango Fire Protection District shall be required prior to issuance of a license. Such inspection shall occur after the premises are ready for operation, but prior to the stocking of the business with any Retail Marijuana, and prior to the opening of the business to the public. The purpose of the inspection is to verify that the business facilities are constructed and can be operated in accordance with the application submitted, the applicable requirements of this Division 1, and any other applicable law, rule, or regulation.
- (q) The Durango Local Licensing Authority shall not issue a Retail Marijuana Establishment license until the inspection, background checks, and all other information available to the City have been found to verify that the applicant:
  - (1) has submitted a full and complete application;
  - (2) has made improvements to the business consistent with the application;
  - (3) is prepared to operate the business with the owners and managers as set forth in the application, all in compliance with the provision of this Division 1 and any other applicable law, rule or regulation;
  - (4) has paid all fees; and
  - (5) is otherwise in compliance with all other provisions of this Division 1 and any other relevant provision of the City Code or state law.
- (r) Any signature on an application for the issuance, transfer or modification of a License for a Retail Marijuana Establishment or a for a change in manager or other amendment to the license shall constitute a release for purposes of allowing the City to conduct investigations regarding the personal histories of all interested parties and shall constitute a consent to the release of any information obtained by the City through such process as a public record under the Colorado Open Records Act, including, but not limited to, criminal history reports conducted by the City or any other authorized agency and all financial disclosures obtained by the City or any other entity.
- (s) The application shall be denied if it fails to meet the requirements of this Division 1 or if it is found to contain any false or incomplete information.
- (t) All applications for a new Retail Marijuana Establishment license shall require a public hearing before the Durango Local Licensing Authority appointed by the City Council, inclusive of publication and posting requirements, as set forth in C. R. S., § 12-43.4-302.

**Sec. 13-167 Persons prohibited as licensees and business managers.**

The criteria for determination of those persons who are not eligible to receive a Retail Marijuana Store or Marijuana Testing Facility License or to act as a manager of a Licensed Retail Marijuana Establishment shall be as provided in this Division 1, by any rules and regulations adopted by the Durango Local Licensing Authority, and in C.R.S. § 12-43.4-306.

**Sec. 13-168 Regulations regarding licensed locations.**

- (a) It shall be unlawful to operate a Retail Marijuana Establishment outside of an enclosed space, capable of being locked within a building. All Retail Marijuana Establishment Licenses shall be issued for a specific fixed location within an enclosed building. The portion of such premises upon which the submitted floor plan shows that Retail Marijuana may be produced, dispensed or possessed shall be considered the “restricted area” portion of the business premises.
- (b) A Retail Marijuana Store may be allowed and licensed for operation in the Central Business District (CBD), mixed-use arterial (MU-A), commercial general (CG), commercial regional (CR), business park (BP), and limited industrial (LI) zones through a Limited Use Permit (LUP). A Marijuana Testing Facility may be allowed and licensed for operation in the mixed-use arterial (MU-A), commercial general (CG), commercial regional (CR), business park (BP), and limited industrial (LI) zones through a Limited Use Permit (LUP). Both Retail Marijuana Stores and Marijuana Testing Facilities may be allowed in Planned Development (PD) zones pursuant to the PD approval process.
- (c) In the Central Business District (CBD), not more than one Retail Marijuana Establishment or not more than one Medical Marijuana Business shall be located on all properties or lots that abut any Street Segment. For corner lots, this standard applies to both Street Segments that abut the corner lot, and only one Retail Marijuana Establishment or one Medical Marijuana Business is permitted on the corner lots that abut the intersection.
- (d) Retail Marijuana Stores shall be allowed in mixed use buildings that include residential uses provided that they are otherwise in compliance with all requirements of this Article, the Codes of the City of Durango and any other applicable law, rule or regulation, and provided that the Retail Marijuana Establishment is not located on the same floor as a residential use and is accessed from the street or alley by an entrance separate from the street or alley access to any residential unit.
- (e) No Retail Marijuana Establishment license shall be issued for a Retail Marijuana Store or a Marijuana Testing Facility at a location within 1,000 feet of any School, Addiction Recovery Facility, or Residential Child Care Facility; or within 250 feet of a dedicated public park that contains children’s playground equipment, or to any other facility identified in this Division 1 or in state law that requires a distance separation from licensed Retail Marijuana Establishments.
- (f) The separation requirements in Section 13-168(d) shall not apply to any existing location that is licensed as a Medical Marijuana Center on the effective date of this ordinance if that location is licensed or is the subject of an application for a license for a Retail Marijuana Store as a conversion from a licensed Medical Marijuana Center or as a co-located Retail Marijuana Store with a licensed Medical Marijuana Center prior to January 2, 2015. Provided, however, that such converted license or co-located license shall otherwise be in compliance with all other requirements of this Article, the Codes of the City of Durango and state law.
- (g) No Retail Marijuana Establishment license shall be issued for a location that has within two years immediately preceding the date of the application, been denied by the Durango Local Licensing Authority or the state licensing authority for a

Retail Marijuana Establishment or Medical Marijuana Business due to a concern related to the location.

- (h) The measuring of distances for separations required in this Division 1 shall be completed by the City utilizing official maps and shall be determined by measuring from the closest point on the perimeter of the Applicant's property to the closest point of the property of any facility or use requiring a separation pursuant to subsection (e) of this section. A Retail Marijuana Establishment License may not be issued for any location which is also part of the Licensed Premises of a business holding an alcoholic beverage license pursuant to Chapter 3 of this Code.
- (i) An Applicant may make a request to the Durango Local Licensing Authority to grant a variance of up to 10% from the distance required in subsection (e) of this section for the separation between Retail Marijuana Establishments and public parks which contain playground equipment and the Durango Local Licensing Authority may grant such a variance if it finds that the location of the Retail Marijuana Establishment is separated from the public park by a natural or man-made feature or barrier that tends to physically and visually separate the Retail Marijuana Establishment from the public park or from children using the park.
- (j) It shall be unlawful for the owner of a building to lease space to or allow the use of any portion of the building by a Retail Marijuana Establishment unless the tenant has a valid Retail Marijuana Establishment License or has applied for and not been denied a Retail Marijuana Establishment License. No Marijuana shall be allowed on the Leased Premises until a Retail Marijuana Establishment License has been issued by the City. In the event that the City has an articulable reason to believe that a Retail Marijuana Establishment is being operated within a building, it shall be unlawful for the owner of the building to refuse to allow the City access to the portion of the building in which the suspected Retail Marijuana Establishment is located to determine whether any marijuana is on the premises.
- (k) It shall be unlawful for any Licensee or other person to engage in any manufacturing or production of any retail marijuana infused products or to engage in any cultivation or other marijuana growing operations on the Licensed Premises of any Retail Marijuana Establishment.

**Sec. 13-169 Conversions of licenses and co-locations of marijuana businesses**

- (a) A Licensee of a Medical Marijuana Business that was licensed, open and lawfully operating on the effective date of this Division 1 may submit an application to convert the license to a Retail Marijuana Store license by submitting an application for a Retail Marijuana Store or an application to be co-located with an existing Medical Marijuana Business, paying all applicable fees, and complying with all other requirements of this Division 1 applicable to a Retail Marijuana Store. In the case of a conversion, the previously issued license for the Medical Marijuana Business must be surrendered to the City before the Retail Marijuana Store license will be issued. The term of the new license shall be the same as the existing Medical Marijuana Business License.
- (b) A person who holds both a Medical Marijuana Center license pursuant to Division 2 and Article 43.3 of Title 12, C.R.S. and a Retail Marijuana Store license may operate both licenses within the same premises ("co-located operation"), provided they can satisfy the requirements applicable to each

business or each premises under the Colorado Retail Marijuana Code and this Article VIII and other City Codes.

- (c) No co-located License shall be issued for a Retail Marijuana Store and a Retail Marijuana Testing Facility, or for a Medical Marijuana Business and a Retail Marijuana Testing Facility.
- (d) No co-located License shall be issued for a location in any zone where either of the proposed co-located operations are prohibited by Section 13-168 (b) of this Division 1.
- (e) In the event a Medical Marijuana Center authorizes medical patients under 21 years of age on the premises, then there shall be a complete separation of the Medical Marijuana Business and the Retail Marijuana Store operated under a co-located License. Specifically, the operation of the co-located business premises shall include the following:
  - (1) Separate sales and storage areas.
  - (2) Separate entrances and exits.
  - (3) Separate inventories and inventory tracking processes.
  - (4) Separate point of sales operations.
  - (5) Separate record keeping systems.
  - (6) Each operation shall otherwise meet all requirements imposed herein or in any state law for the operation of a Retail Marijuana Establishment and a Medical Marijuana Business.
- (f) Licensees operating a Medical Marijuana Center that prohibits the admittance of patients under the age of 21 years and a Retail Marijuana Store may share their Licensed Premises as a co-location. Such a Medical Marijuana Center Licensee must post signage that clearly conveys that persons under the age of 21 years may not enter. Under these circumstances, and upon approval of the State Licensing Authority and the City, the Medical Marijuana and Retail Marijuana and Medical Marijuana-Infused Product and Retail Marijuana Product must be separately displayed on the same sale floor. Record-keeping for the business operations of both must enable the state and the city to clearly distinguish the inventories and business transactions of Medical Marijuana and Medical Marijuana-Infused Products from Retail Marijuana and Retail Marijuana Product.

**Sec. 13-170 Regulations related to operation of retail marijuana establishments**

- (a) The Retail Marijuana Establishment shall be operated and maintained in accordance with the conditions stated in the Application under section 13-166 unless amended under the provisions of section 13-177.
- (b) All Retail Marijuana Establishments shall be required to obtain a city business license and shall collect and remit all applicable state, county and city sales taxes, use taxes or other lawfully imposed tax in a timely manner. The retail marijuana business license, and the sales tax license for the business shall be conspicuously posted in the business.
- (c) Retail Marijuana Establishments shall limit their hours of operation to between 8:00 a.m. and 8:00 p.m. daily.

- (d) No Marijuana or products containing Marijuana shall be smoked, eaten or otherwise consumed or ingested within the Retail Marijuana Establishment.
- (e) No person under 21 years of age shall be allowed within the business premises of a Retail Marijuana Establishment. No person shall be allowed entry into the business premises without showing a valid picture identification.
- (f) Any and all possession, storage, display, sales or other distribution of Marijuana and testing of Marijuana shall occur only within the restricted area of a Retail Marijuana Establishment or Retail Marijuana Testing Facility and shall not be visible from the exterior of the business.
- (g) Each Licensee shall manage the licensed premises himself or herself or employ a separate and distinct manager on the premises and shall report the names of the name of the manager to the City. The Licensee shall report any change in manager to the City within seven days after the change.
- (h) A Retail Marijuana Establishment shall be ventilated so that the odor of marijuana or marijuana products cannot be detected by a person with a normal sense of smell at the exterior of the Retail Marijuana Establishment or on any adjoining property.
- (i) The Retail Marijuana Establishment shall not maintain any quantity of Marijuana within the Licensed Premises in excess of the amount stated on the license application to the city.
- (j) All sales of Retail Marijuana shall be made in person, directly to the purchaser, within the restricted area of the Retail Marijuana Establishment. No sales shall be made via telephone, internet or other means of remote purchase. Deliveries shall occur only in person to the purchaser at the time of purchase within the restricted area of the Retail Marijuana Establishment. No drive up windows or other similar delivery process shall be allowed.
- (k) It shall be unlawful for any Retail Marijuana Establishment to employ any person who is not at least 21 years of age. All managers and employees of any Licensee shall possess a valid occupational license and identification badge issued by the state.
- (l) All Retail Marijuana sold or otherwise distributed by the Licensee shall be packaged and labeled in a manner that advises the purchaser that it contains Marijuana, specifies the amount of Marijuana in the product, and that the Marijuana is intended for use solely by a person lawfully possessing Retail Marijuana. The label shall be in compliance with all applicable requirements of the state.
- (m) All Retail Marijuana Testing Facilities shall operate in compliance with all applicable state laws and regulations adopted pursuant to such laws, including but not limited to CR.S., § 12-43.4-405 and rules promulgated thereunder.

**Sec. 13-171 Signage and advertising.**

- (a) Retail Marijuana Establishments shall apply for a sign permit through the Community Development Department. All exterior signage associated with a Retail Marijuana Establishment must meet the standards established in the City 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.

- (b) A Retail Marijuana Establishment may not advertise in a manner that is misleading, deceptive, false, or is designed to appeal to minors.
- (c) Except as otherwise provided in this section it shall be unlawful for any person licensed under this article or any other person to advertise any Retail Marijuana Establishment or any Retail marijuana-infused product anywhere within the City where the advertisement is in plain view of, or in, a place open to the general public, including advertising utilizing any of the following media: any billboard or other outdoor general advertising device as defined by the zoning code; any sign mounted on a vehicle; any hand-held or other portable sign; or any handbill, leaflet or flier directly handed to any person in a public place, left upon a motor vehicle, or posted upon any public or private property. The prohibition set forth in this section shall not apply to:
  - (1) Any sign located on the Licensed Premises of a Retail Marijuana Establishment which exists solely for the purpose of identifying the location of the premises and which otherwise complies with this Code and any other applicable city laws and regulations; or
  - (2) Any advertisement contained within a newspaper, magazine, or other periodical of general circulation within the City or on the internet.
- (d) No Retail Marijuana Establishment shall distribute or allow the distribution of any Marijuana without charge within a Retail Marijuana Establishment or at any other place in the City for purposes of promotion, advertising or any other purpose.

**Sec. 13-172 Right of entry –records to be maintained and inspection procedures**

- (a) Each Licensee of a Retail Marijuana Establishment 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 fully document the business transactions of such Licensee. The Licensee shall also maintain records which verify that the amount of marijuana within the Retail Marijuana Establishment does not exceed the amount allowed. All such records shall be open at all times during business hours for inspection and examination by the city manager or his duly authorized representative(s). The City may require the Licensee to furnish such information as it considers necessary for the proper administration of this Division 1. The records shall clearly show the source, amount, price and dates of all Retail Marijuana received or purchased, and the amount, price, and dates for all Retail Marijuana sold.
- (b) By accepting the Retail Marijuana Establishment License, the Licensee consents to the disclosure of the information required by this section.
- (c) The City may require an audit of the books of account and records of a Retail Marijuana Establishment as it may deem necessary. Such audit may be made by an auditor selected by the City, who shall have access to all books and records of such licensee. The expense of any audit determined to be necessary by the City shall be paid by the City; 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 city, the expense of the audit shall be paid by the Licensee.

- (d) The acceptance of a Retail Marijuana Establishment License from the City constitutes consent by the Licensee, owners, managers and employees of such business to permit the City Manager, or his authorized representative(s), to conduct routine inspections of the licensed Retail Marijuana Establishment to assure that the Retail Marijuana Establishment and the premises are being operated and maintained in accordance with the terms set forth in the application as required by section 13-166 and that all operations and the premises remain in compliance with this Division 1 or any other applicable law, rule or regulation.

**Sec. 13-173 Requirements related to monitoring and security of restricted areas and inventory.**

All components of the security plan submitted with the application, as it may be amended, shall be in good working order, monitored and secured 24-hours per day. A separate security system is required for each business. The security plan must include, at a minimum, the following security measures:

- (a) Cameras. The Retail Marijuana Establishment shall install and use security cameras to monitor and record all areas of the premises (excluding restrooms), including all areas where persons may gain or attempt to gain access to Marijuana or cash maintained by the Retail Marijuana Establishment. Cameras shall record operations of the business to an off-site location, and shall record all potential areas of ingress or egress to the business with sufficient detail to identify facial features and clothing. Recordings from security cameras shall be maintained by the Licensee for a minimum of 40 days in a secure off-site location in the city or through a service over a network that provides on-demand access, commonly referred to as a "cloud."
- (b) Storage. The Retail Marijuana Establishment shall install and use a safe room for storage of any inventory, processed marijuana and cash on the premises when the business is closed to the public. The safe room shall be incorporated into the building structure and shall have solid core doors with commercial grade locks and shall be visible through the surveillance camera system. For Retail Marijuana Products that must be kept refrigerated or frozen, the business may lock the refrigerated container or freezer in a manner authorized by the city in place of the use of a safe so long as the container is affixed to the building structure and visible through the surveillance camera system.
- (c) Alarm System. The Retail Marijuana Establishment shall install and use an alarm system that is monitored by a company that is staffed twenty-four (24) hours a day, seven (7) days a week. The security plan submitted to the City shall identify the company monitoring the alarm, including contact information. Any modification relative to the company monitoring the alarm system shall be reported to the City within 72 hours.

**Sec. 13-174 Compliance with other applicable laws.**

Except as may be otherwise provided in this Division 1, or rules or interpretations adopted by the City pursuant to this Division 1, any law or regulation adopted by the state governing the cultivation, production, possession, or distribution of Marijuana for retail or recreational use shall also apply to Retail Marijuana Establishments licensed within in the City. Provided, however, if a state law or regulation permits what this Division 1 prohibits, this Division 1 shall control.

**Sec. 13-175 Suspension or revocation of license; imposition of fines.**

The grounds for suspension or revocation of a Retail Marijuana Establishment License and the procedures for such suspension or revocation shall be as provided in C.R.S.

§12-43.4-601. In addition thereto, any violation of any of the provisions of this Division 1 or any state law or regulation related to licensing or operation of a Retail Marijuana Establishment shall be grounds for suspension or revocation of a Retail Marijuana Establishment license, subject to notice and public hearing.

Civil penalties for violations of this Division 1 may be imposed by the City against the business or any Licensee up to a maximum amount of \$1,000.00 per Licensee, per occurrence.

**Sec. 13-176 Terms of license – renewals – expiration of license.**

- (a) Term of License. A Retail Marijuana Establishment License shall be valid for one year. The License shall expire on the date stated on the license.
  
- (b) Renewal of License. The Licensee shall apply for renewal of the Retail Marijuana Establishment license at least 45 days prior to the expiration of the License. The Licensee shall apply for renewal using forms provided by the City. If the Applicant files for renewal within 30 days of the expiration date, then the City may process the renewal application if the Applicant submits a late filing fee of \$500.00 at the time of submittal of the renewal application.
  - (1) The renewal license fee, and late fee if applicable, shall accompany the renewal application. Such fees are nonrefundable.
  - (2) In the event there have been any changes to the plans submitted with the initial license application approved by the City or as part of any prior renewal application, the renewal application shall include specifics of the proposed changes in any of such plans.
  - (3) In the event any person who has an interest as described in the initial disclosures made to the city pursuant to this Division 1, or any Business Manager, financier, agent or employee, as defined herein, has been charged with or accused of violations of any law since such disclosure, the renewal application shall include the name of the violator, the date of the violation, the court and case number where the violation was filed and the disposition of such violation.
  - (4) In the event the Retail Marijuana Establishment license has been suspended or revoked, or a licensee has received any notice of violation of any law, the renewal application shall include a copy of the notice, suspension, or revocation.
  - (5) The renewal application shall include verification that the Retail Marijuana Establishment has a valid state License and the state License is in good standing.
  - (6) The renewal application shall include a summary report for the previous twelve months showing the amount of Marijuana purchased; the amount of Marijuana sold, the forms in which Marijuana was sold; the police report numbers or case numbers of all police calls to the Retail Marijuana Establishment; and for calls resulting in a charge of a violation of any law, the charge, case number and disposition of any such charges. The reports may be the same as those provided by the licensee to the state.
  - (7) The City shall not accept renewal applications submitted after the expiration date of the license, but instead shall require the applicant to file a new license application.

- (8) In the event there have been allegations of violations of this Division 1. Code by any of the Licensees or the business submitting a renewal application, the Durango Local Licensing Authority may hold a hearing prior to approving the renewal application. The hearing shall be for purposes of determining whether the application, proposed Licensees and past operation of the business have been in compliance with this Division 1 and the City Code. If the application or the Licensees do not meet the requirements of this Division 1 and the City Code, or the business has been operated in the past in violation of this Division 1, the renewal application may be denied by the City, or issued with conditions.
- (9) In the event a Retail Marijuana Establishment that has been open and operating and submitting monthly sales and use tax returns to the city ceases providing sales and use tax returns to the City for a period of three consecutive months or longer, the Retail Marijuana Establishment license shall be deemed to have expired and a new license shall be required prior to reopening at the location of the business.
- (c) Expiration of License. Expiration of a Retail Marijuana Establishment license for any reason, including, without limitation, pursuant to subsection (b)(9) above shall be considered an inactive local license as described in C.R.S., § 12-43.4-311.

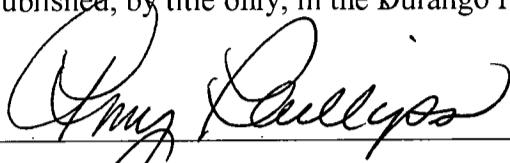
**Sec. 13-177 Transfer of ownership, change of location, modification of premises.**

- (a) Prior to January 2, 2015, no person who was granted a License to operate a Retail Marijuana Establishment shall apply to transfer the ownership of that Retail Marijuana Establishment License, nor shall any Licensee apply for the transfer of the license for the Medical Marijuana Business that was used as the basis for the application for a Retail Marijuana Store under the provisions of Section 13-5 of this Division 1 to any other person.
- (b) An owner of a License to operate a Retail Marijuana Establishment may apply to the Durango Local Licensing Authority for a transfer of ownership under the provisions of C.R.S., §12-43.4-308 on forms provided for that purpose by the City. The inquiry by the Durango Local Licensing Authority into the request for a transfer of ownership may include any item that may be reviewed for a new Retail Marijuana Establishment License, provided that the location of the Retail Marijuana Establishment shall not be subject to review so long as the location met all requirements of this Division 1 and any provisions of state law at the time the license was originally issued and that location has remained in compliance with this Division 1 and provisions of state law subsequent to the issuance of said License.
- (c) An owner of a License to operate a Retail Marijuana Establishment may apply to the Durango Local Licensing Authority for a change in location of the Licensed Premises or a modification of the Licensed Premises including amendments to conditions described on the application form as required by section 13-166 on forms provided by the City. The inquiry by the Durango Local Licensing Authority into the request for a change of location or modification of the Licensed Premises may include any item that may be reviewed for a new Retail Marijuana Establishment license, provided that the qualifications of the Licensees to hold a license for a Retail Marijuana Establishment shall not be subject to review so long as the Licensees met all requirements of this Division and any provisions of state law at the time the license was originally issued and have remained in compliance with this Division 1 and provisions of state law subsequent to the issuance of said License.

**Sec. 13-178 Penalties.**



I further certify that Ordinance No. 0-2014-32 was duly adopted by the Durango City Council on the 5<sup>th</sup> day of August, 2014, and that in accordance with instructions received from the Durango City Council, said ordinance was published, by title only, in the Durango Herald on the 10 day of August, 2014.

A handwritten signature in cursive script, appearing to read "Amy Phillips", written over a horizontal line.

City Clerk