

MEMORANDUM

TO: Ouray City Council
Patrick Rondinelli
Leo Rasmusson
Planning Commission

FROM: David L. Masters
Kathryn M. Sellars

DATE: April 1, 2010

RE: Medical Marijuana - Topic D

I. Requirements for Licenses

A. Application

1. On a form to be provided by City Administrator. Including the following proposed information:
 - a. Name, address, telephone number, date of birth, and social security number
 - (1) Issue regarding corporations and business entities:
 - (a) A primary care giver means a person, other than patient and the patient's physician, who is eighteen years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition. Amendment 20.
 - i) Issue is whether a primary care giver can be a corporation or other type of business entity (and therefore a licensee).
 - ii) I would suggest that a licensee must be primary care giver and a primary care giver must be an individual under Amendment 20 and for that reason, a licensee should not be corporation or any other type of business entity.

- (b) If the City wants to allow corporations to be licensees, then consider the following additional provisions for the application:
 - i) Name and address of all officers or directors of the corporation, and of any persons holding outstanding capital stock of the corporation.
 - ii) If applicant is a partnership, association or limited liability corporation, the name and address of all members holding interest therein.
 - iii) For any type of entity, the name and address of any manager or managers of the medical marijuana dispensary.
 - iv) Manager must be 21 years of age and a primary care giver as defined under Amendment 20.
 - v) Manager is responsible for insuring at all times that all employees, volunteers, agents and any other individuals have any charge over the functioning of the operation are acting in compliance with the provisions of the Code.

- b. Location of dispensary including street address;
- c. Proof of ownership of the license premises. If the applicant is not the owner of the proposed location, a notarized statement from owner authorizing the submission of the application;
- d. A list of any other licenses and, or permits issue to and, or revoked from the applicant in the last five years of the date on the permit application by type, current status, and issuing agency for each license/permit;
- e. A valid sales taxes license from the State of Colorado;

- f. Must submit an operating plan with application. The operating plan must include the following and any supporting documentation:
 - (1) A business plan including a description of products and services to be provided by the medical marijuana dispensary, hours of operation, and number of employees and their ages.
 - (2) A floor plan, drawn to scale, showing the layout of the medical marijuana dispensary and the principal uses of the floor areas, including where the plants will be grown and where any medical marijuana food products will be prepared. Floor plan must include a “waiting area” at the entrance to receive clients, a separate and secure designated area for dispensing medical marijuana to qualified patients.
 - (3) A grow plan for the medical marijuana, including how many plants and what type of plants, ventilation system, and storage procedures. This plan should include fire prevention plan.
 - (4) A lighting plan for the dispensary including exterior security lighting and lighting for plants.
 - (5) A signage plan for the dispensary that is in compliance with the applicable requirements of the Code (future section #).
 - (6) A security plan that demonstrates the applicant’s compliance with the Code (future section #).
 - (7) A waste disposal plan acceptable to address the disposal of byproducts, unwanted products, and paraphernalia;
- g. If selling medical marijuana food products or any edibles, a copy of the retail food license from the Colorado Department of Public Health, or if the Department refuses to issue a license, a notarized letter from the Department explaining why a food retail license was not required;
- h. Complete set of fingerprints of applicant (if entity, all members);
- i. Written approval to conduct a criminal background check for the applicant (if entity, criminal background check for all members);

- j. Written approval from Land Use department that the dispensary meets location requirements (future section #);
- k. Statement signed by the applicant (if entity, stockholders, partners or members) that any employees who are not primary care givers in their own right are subject to prosecution under state law and that the applicant may be criminally liable for employing such individuals;
- l. Statement signed by the applicant (if entity, stockholders, partners or members) that the City accepts no legal liability in connection with the approval and subsequent operation of the medical marijuana dispensary;
- m. Any additional information that the City Administrator reasonably determines to be necessary in connection with the investigation and review of the application.

B. Limitations on Persons as Licensees

There are two general methods of determining the quality of the licensees that municipalities have been using.

- 1. Character Qualifications
 - a. Good Moral Character. Mirrored after the requirement from the liquor code. Remember under the liquor code, the behavior or act in question must be substantial and substantiated. Further, if the City is taking into information from the criminal history in terms of good moral character, the City should also take into account evidence of rehabilitation, character references and educational achievements, especially those items pertaining to the period of time between the last criminal convictions and consideration of the application for the permit.
- 2. Criminal History
 - a. There are a variety of criminal background limitations a municipality could impose:
 - (1) No convicted felons with no time limit;
 - (2) No felony convictions within some many years prior to applicant; or

- (3) No drug related crimes - either felonies or misdemeanors or both

II. Application Process

A. First Stage

1. City Administrator will conduct a preliminary review of application for completeness of application. If application is incomplete, City Administrator shall notify applicant within 10 days of receipt of application.
2. Appeal process on determination of completeness of application.

B. Administrative

1. City Administrator shall approve, conditionally approve or deny an application within thirty (30) days of the City Administrator's receipt of the same, by written notice to the applicant.
2. The decision period is extended for an additional thirty (30) days if necessary for the City Administrator to complete the substantive review of the application.
3. If the application is denied, the City Administrator shall clearly set forth in writing the grounds for denial.
4. If the application is conditionally approved, the City Administrator shall clearly set forth in writing the conditions of approval.
5. Authority to impose conditions: the City Administrator shall have the authority to impose such reasonable terms and conditions on a permit as may be necessary to protect the public health, safety and welfare, and to obtain compliance with the requirements of this Article and applicable law.
6. Notice of decision: The City Administrator shall notify the applicant of the decision on the application within three days of rendering the decision. Notice shall be given by mailing a copy of the City's Administrator's decision to the applicant by regular mail, postage prepaid, at the address shown in the application. Notice is deemed to have been properly given upon mailing.

7. Appeal to Council of Administrator's Decision

- a. An applicant has the right to appeal the City Administrator's conditional approval or denial of an application to the Council.
- b. An applicant's appeal of the City Administrator's conditional approval or denial of any application shall be processed as provided, however, that the applicant's written notice of appeal shall be filed with the City Administrator within ten (or 15 or 20) days after the date of mailing of the City Administrator's decision on the application.
- c. The appeal shall be scheduled for public hearing with Council no later than thirty (30) days after the receipt of the notice of appeal unless the applicant agrees to a longer period. The applicant shall be provided with no less than ten days' prior written notice of the appeal hearing to be held by the Council.
- d. The burden of proof in an appeal filed under this section shall be on the applicant.
- e. If the Council finds by a preponderance of the evidence that the decision of the City Administrator was correct, the Council shall uphold the decision of the City Administrator. If the Council finds by a preponderance of the evidence that the decision of the City Administrator was incorrect, the City Administrator's decision shall be set aside and the permit issued if it was previously denied or the conditions stricken or modified.

C. Council

1. Public Hearing

- a. Upon receipt of an application, the City shall hold a public hearing on the application not less thirty (30) days after the filing date of the application and shall post the public notice thereof not less than ten days prior to the hearing. Public notice shall be given by posting of a sign in a conspicuous place on the premises for which application has been made and by publication in a newspaper of general circulation in the county in which the premises are located.

- b. Notice given by posting shall include a sign of suitable material, not less than twenty-two inches wide and twenty-six inches high, composed of letters not less than one inch in height and stating the type of license applied for, the date of the application, the date of the hearing, and the name and address of the applicant, and such other information as may be required to fully apprise the public of the nature of the application.
 - (1) If the applicant is a partnership, the sign shall contain the names and addresses of all partners, and if the applicant is a corporation, an association or another organization, the sign shall contain the names and address of the president, vice-president, secretary, and manager of other managing officers. If the applicant is an limited liability company, the sign shall contain the names and addresses of all members.
- c. Notice given by publication shall contain the same information as that required for signs.
- d. Any sign posted as required (in future section), shall be placed so as to be conspicuous and plainly visible to the general public.
- e. Public Hearing
 - (1) At the public hearing held pursuant to this Section, each party in interest shall be allowed to present evidence and to cross-examine witnesses, except as otherwise provided (in future section).
 - (2) “Party in interest” means any of the following:
 - (a) the applicant;
 - (b) property owners and adult residents within five hundred feet of the proposed licensed premises;
 - (c) owners or managers of a business located within five hundred feet of the proposed licensed premises;
 - (3) The City, in its discretion, may limit the presentation of evidence and cross-examination so to prevent repetitive and cumulative evidence or examination.

f. Decision of Authorities

- (1) Before entering a decision approving, conditionally approving or denying an application, the City shall consider the facts and evidence adduced as a result of its investigation, as well as any other facts; the evidence produced at the public hearing; and other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed.
- (2) A decision of the City approving, conditionally approving or denying an application shall be released in writing stating the reason for the decision within thirty days after the date of the public hearing. The City shall send a copy of the decision by certified mail to the applicant at the address shown in the application.

D. Either Administrative or Public Hearing

1. The City shall not issue a license until after an inspection has been made pursuant to (future Section).

E. Guidelines for Decision Making

1. Standards for Issuances
 - a. Application is complete and signed by applicant;
 - b. Applicant has paid the application fee and any other fees required;
 - c. The application does not contain a material falsehood or misrepresentation;
 - d. The application complies with all of the requirements of this Article;
 - e. The applicant (including all owners of any corporation or another business entity) has not previously been convicted of a felony violation related to the sale, possession or use of a scheduled control substance. In making this determination the City Administrator shall be governed by the provisions of Section 24-5-101, C.R.S. **or**

- (1) The applicant has good moral character (If a corporation or other business entity all individuals must have good moral character).
 - f. The proposed location of the medical marijuana dispensary is permitted.
2. Denial on permit
 - a. The City Administrator (or Council) shall deny an application for a permit under this Article, if the City Administrator (or Council) determines that:
 - (1) Information contained in the application or supplemental information requested from the applicant is found to be false is any material respect; or
 - (2) The application fails to meet any of the standards sets forth in the standards for issuance of permit.
 - (3) No renewal of application fee if denied.
 - b. If denial is based upon a determination by the City Administrator (or Council) that the application is incomplete, the applicant shall have a one-time opportunity to resubmit the application twenty (20) days from the date on the notice of denial. If the applicant resubmits the application within that twenty (20) days, then the applicant will not be required to resubmit any application fee, unless the applicant initially failed to submit the applicant fee and that is the basis for the determination that the application was incomplete.

III. Fees

- A. Application Fee (nonrefundable)
- B. License Fee
- C. Renewal Fee

IV. Inspections

- A. Prior to Issuance of License

1. Prior to the issuance of the license, the premises at which the medical marijuana dispensary will be operated, shall be inspected by the Building Official to determine compliance with the City's building and technical codes. No license shall be issued if the premises at which the medical marijuana dispensary will be operated does not or will not comply with the City's building and technical codes. Through the term of the license, the Building Official may inspect the licensed premises to determine continuing compliance with the City's building and technical codes. Access to such premises may be obtained by the Building Official in accordance with the applicable provision of the Code.

B. Post Issuance of License

1. All dispensaries shall maintain sufficiently detailed written records regarding their verification that medical marijuana is dispensed only to qualified patient under the Colorado Const Art., XVIII, Sec. 14.
2. These records are subject to periodic inspection by the City, in order to ensure compliance with this section.
3. The licensee agrees to permit inspection of records, inventory, operation and premises by the City for the purpose of determining the licensee's compliance with the terms and conditions of the license and this Section.
4. If any licensee refuses such access or inspection, the City shall have recourse, as provide by law, including obtaining a warrant from the Municipal Court. The Court may also issue a subpoena duces tecum for a hearing before the Council, which subpoena may be enforced by the District Court or other Court of competent jurisdiction.

V. Enforcement

A. Persons not licensed.

1. Any acts in violation of this Section committed by a person not licensed under this Section shall be deemed unlawful.
2. Any person convicted of a violation of this Section may be sentenced to jail for a period of 90 days and a fine of \$1,000.00.

B. Persons Licensed

1. After receiving a complaint or on its own motion, the City shall conduct an investigation into an alleged violation of this Section.
2. Administrative:
 - a. Suspension or revocation of a license
 - (1) A license issued pursuant to this Section may be suspended or revoked by the City Administrator for the following reasons:
 - (a) Fraud, misrepresentation, or a false statement of material fact contained in the license application;
 - (b) A violation of any City, state, or federal law or regulation, other than the federal law or regulation concerning the possession, sale or distribution of marijuana that conflicts with Amendment 20;
 - (c) A violation of any of the terms and conditions of the license, including any special conditions of approval imposed upon the license by the City Administrator (or Council);
 - (d) A violation of any of the provision of this Section;
 - (e) Operations have ceased at the medical marijuana dispensary for more than ninety (90) days;
 - (2) The City Administrator shall notify the licensee of the decision to suspend or revoke the permit within three (3) business days of rendering the decision. Notice shall be given by mailing a copy of the City Administrator's suspension or revocation to the licensee by regular mail, postage prepaid, at the address shown in the license. Notice is deemed to have been properly given upon mailing.
 - (a) No such suspension shall be for a longer period than six months. If any license is suspended or revoked, no part of the fees paid therefor shall be returned to the licensee. Any license may be summarily suspended by the issuing licensing authority without notice pending any prosecution, investigation or

public hearing. Nothing in this Section shall prevent the summary suspension of such license for a temporary period of not more than fifteen days.

- (3) No suspension or revocation shall be final until the licensee has been given the opportunity for a hearing to address the suspension or revocation. The licensee has the right to appeal the City Administrator's suspension or revocation to the Council by filing a written request with the City Administrator within (10, 15, or 20) days of the date of the Notice of Decision issued by the City Administrator.
 - (a) The burden of proof is an appeal filed under this Section shall be on the licensee;
 - (b) If the Council finds by a preponderance of the evidence that the decision of the City Administrator was correct, the Council shall uphold the decision of the City Administrator. If the Council finds by a preponderance of the evidence that the decision of the City Administrator was incorrect, the City Administrator's decision shall be set aside.

3. Alternative: Public Hearing

- a. After conducting an investigation, the City shall hold a public hearing at which the licensee shall be afforded an opportunity to be heard. Notice of such hearing shall be given by mailing a notice of the hearing in writing to the licensee at the address contained in such license. The City has the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of any hearing that City is authorized to conduct.
- b. After an investigation and public hearing, the City may suspend or revoke any license for any violation by the licensee or by any of the agents, servant or employee of such licensee of the provisions of this Section.
- c. Notice of suspension or revocation, shall be given by mailing the notice in writing to the licensee at the address contained in such license. No such suspension shall be for a longer period than six months. If any license is suspended or revoked, no part of the fees

paid therefor shall be returned to the licensee. Any license may be summarily suspended by the issuing licensing authority without notice pending any prosecution, investigation or public hearing. Nothing in this Section shall prevent the summary suspension of such license for a temporary period of not more than fifteen days.

4. Suspension - Petition for Fine - Administrative or Public Hearing

a. After a decision of the City (Administrator or Council) suspending a license or permit for fourteen days or less, the licensee may, before the operative date of the suspension, petition for permission to pay a fine in lieu of having the license or permit suspended for all or part of the suspension period. Upon the receipt of the petition, the City (Administrator or Council) may, in its sole discretion, stay the proposed suspension and cause any investigation to be made which it deems desirable and may, in its sole discretion, grant the petition if it is satisfied:

- (1) That the public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes and
- (2) That the licensee has not had his or her license suspended or revoked, nor had any suspension stayed by payment of a fine, during the two years immediately preceding the date of the motion or complaint which has resulted in a final decision to suspend the license.
- (3) If the City (Administrator or Council) does not grant the petition, the suspension shall go into effect on the operative date set by the City as a result of the hearing and investigation in this Section.
- (4) The fine shall be fifty dollars a day for each day that the City (Administrator or Council) determined the license was to be suspended, regardless of whether the license is actually suspended for that period. The City Council may set the fine by resolution. If the Council takes no action to set the fine, then the fine will remain at the amount as last set by the Council.

- (5) Payment of any fine pursuant to this Section shall be in the form of cash, certified check or cashier's check made payable to the City. Fines paid under this Section shall be deposited into the general fund of the City.
- (6) Upon payment of the fine pursuant to this Section, the City Administrator shall notify the licensee in writing that the suspension is stayed.

VI. Renewal Process

A. Renewal of license

- a. Mirror the initial procedure (either Administrative or Public Hearing)
- b. Licenses will be valid for one (1) year from the date of issuance, and may be renewed as provided in (future section).
- c. An application for renewal of an existing permit shall be made to the City Administrator not less than forty-five(45) days prior to the date of expiration. No application for renewal shall or will be accepted by the City Administrator after the date of expiration. The City Administrator may waive the forty-five (45) days time requirement set for in (future section), if the applicant demonstrates an adequate reason.
- d. Standards for renewal:
 - (1) The standards for issuance shall apply to the processing of an application to renew a license. The timely filing of a renewal application shall extend the current license until a final decision is made on the renewal application (including any appeal of the City Administrator's decision to the Council).
 - (2) At the time of filing of an application for the renewal of an existing license the applicant shall pay the renewal fee in the amount set forth in this Section.
 - (3) The City Administrator (or Council) may refuse to renew a license for good cause.
 - (a) Good cause: For the purposes of refusing or denying a permit renewal under this Section, good cause

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