

ARTICLE 5 Retail Marijuana Businesses

Sec. 6-5-1. Definitions.

- (a) As used in this Article, the following words shall have the following meanings unless the context clearly requires otherwise:

Retail marijuana establishment means a retail marijuana store, retail marijuana cultivation facility, retail marijuana products manufacturer, or retail marijuana testing facility for which a license is required under the RM Code and this Article.

Retail marijuana store means a retail marijuana store, as defined in Section 16 of Article XVIII of the Colorado Constitution, or as may be more fully defined in the Colorado Retail Marijuana Code.

RM Code means the Colorado Retail Marijuana Code, Section 12-43.4-101, et seq., C.R.S.

RM Regulations means the Rules Regarding Retail Marijuana, 1 C.C.R. § 212-2, as adopted by the Retail Marijuana Enforcement Division of the Colorado Department of Revenue, and any amendments thereto.

- (b) The terms defined in the RM Code and RM Regulations shall have the same meaning when used in this Article unless the context clearly requires otherwise.

Sec. 6-5-2. License required.

It is unlawful for any person to own or operate a retail marijuana establishment within the Town without first having obtained from the Town and the State licenses for each facility to be operated in connection with such business.

Sec. 6-5-3. Limitation on number of retail marijuana licenses granted and issued.

- (a) The Town shall have the authority to grant and issue no more than two (2) retail marijuana licenses. At the time that two (2) retail marijuana licenses have been granted and issued by the Town pursuant to this Chapter 6, the Town shall not accept the submission of any application for a retail marijuana license, shall not process any application for a retail marijuana license, and shall not grant any retail marijuana license. The foregoing notwithstanding, a duly-licensed retail marijuana store shall be permitted to obtain license to operate a marijuana hospitality and sales establishment on the duly-licensed premises subject to and in accordance with applicable provisions of this Chapter and other applicable laws.
- (b) In the event that a previously granted and issued retail marijuana license is revoked, not renewed or terminated, resulting in the permanent loss of that retail marijuana license and the existence of fewer than two (2) retail marijuana licenses issued in the Town, then the Town may, at the Town's sole discretion, accept applications for a new retail marijuana license and may grant a new retail marijuana license in order to bring the total number of granted and issued retail marijuana licenses back to a total of two (2).
- (c) The intent of this Section 6-5-3 is to limit the total number of retail marijuana licenses granted and issued in the Town to no more than a total of two (2), subject to the exception set forth in subsection (a).

Sec. 6-5-4. Local licensing authority.

- (a) The Board of Trustees shall be the Local Licensing Authority for the licensing of retail marijuana establishments pursuant to this Article unless the Board of Trustees designates other persons to serve as the Local Licensing Authority. The Local Licensing Authority shall possess all powers given to local licensing authorities by the provisions of the RM Code and RM Regulations. Any decision made by the Local Licensing

Authority to grant or deny a license, to revoke or suspend a license or to renew or not renew a license shall be a final decision and may be appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

- (b) In case of an application resubmitted directly to the Town pursuant to Section 16(5)(h) of Article XVIII of the Colorado Constitution, due to the failure of the state licensing authority to act upon an application within ninety (90) days, the Board of Trustees shall also act as the licensing authority and all requirements of this Article shall apply to such application. In addition to compliance with this Article, the applicant shall demonstrate compliance with all applicable requirements of the RM Code and RM Regulations and shall pay to the Town the full amount of the application fee if not forwarded by the State. The Local Licensing Authority shall approve or deny such application within ninety (90) days after receipt of the resubmitted application.
- (c) The Town Clerk shall assist the Local Licensing Authority by receiving all applications, coordinating with other Town officers and departments when relevant, scheduling required public hearings and providing notice in accordance with this Article and the RM Code. The Town Clerk shall also act as the local point-of-contact with the Colorado Marijuana Enforcement Division on retail marijuana regulatory matters.

Sec. 6-5-5. Limitations and requirements applicable to retail marijuana establishments.

- (a) State requirements. Retail marijuana establishments must at all times comply with the regulations and requirements contained in the RM Code and RM Regulations with regard to applications, licensing and operations of licensed premises. The Local Licensing Authority may revoke any license if the retail marijuana establishment fails to comply with any and all applicable state requirements.
- (b) Location. Retail marijuana establishments shall only be located on property within the Commercial Zoning District or a planned development district; but shall not be permitted in the Central Business District. Retail marijuana establishments are not permitted within any other zoning district or within any building that contains a residential dwelling or lodging unit. Retail marijuana establishments shall not be permitted to operate as "home occupations."
- (c) Separation requirements.
 - (1) No retail marijuana establishment shall be issued a license if, at the time of the initial application for such license, the proposed location is:
 - a. Within one thousand (1,000) feet of any educational institution or school, either public or private;
 - b. Within two hundred (200) feet of any existing licensed child care facility at the time of initial application.
 - (2) No retail marijuana store shall be issued a license if, at the time of the initial application for such license, the proposed location is within five hundred (500) feet of any existing retail marijuana store or medical marijuana center.
 - (3) The distances set forth in this Subsection shall be computed by direct measurement in a straight line from the nearest property line of the land used for the purposes stated above, respectively, to the nearest portion of the building in which the retail marijuana establishment is located. The locational criteria contained in this Subsection shall apply to all proposed changes in the location of an existing license.
- (d) Co-location. A retail marijuana establishment shall be located on the same licensed premises as a medical marijuana business licensed pursuant to Article 6 of this Chapter and operated by the same licensee, subject to compliance with all state requirements and the requirements of this Article and Article 6 of this Chapter and the issuance of a state license allowing for such co-location.

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- (e) Advertisements. Advertisements, signs, displays or other promotional material depicting marijuana uses or symbols shall not be shown or exhibited off the premises. No signage associated with a retail marijuana establishment shall use the word "marijuana," or any other word or phrase commonly understood to refer to marijuana. No signage may display photographs or other representations of marijuana plants.
 - (f) Indoor operation. All retail marijuana establishment activities (except transportation) shall be conducted indoors. Products, accessories and associated paraphernalia shall not be visible from a public sidewalk or right-of-way.
 - (g) Inspection of licensed premises. During all business hours and other times of apparent activity, all licensed premises shall be subject to inspection by the Town Marshall or commissioned police officer of the Town, or the Town Manager or the Town Manager's appointee for the purpose of investigating and determining compliance with the provisions of this Article and any other applicable state or local law or regulation. Such inspection may include, but need not be limited to, the inspection of books, records and inventory. Where any part of the premises consists of a locked area, such area shall be made available for inspection, without delay, upon request.
 - (h) Additional requirements. Retail marijuana establishments shall be subject to the following additional requirements:
 - (1) A retail marijuana store may only be open for the sale or distribution of retail marijuana during the hours of 8:00 a.m. to 8:00 p.m. unless the Board of Trustees authorizes extended hours of operation to no later than 12:00 a.m. as a provision of the license. The Town Board may only authorize such extension after making a determination that such hours of operation are appropriate for the neighborhood.
 - (2) No on-site consumption of marijuana is allowed.
 - (3) A Town business license and sales tax license are required.
 - (4) No mobile structure may be used to dispense retail marijuana.
 - (5) No alcohol sales or consumption shall be permitted on the licensed premises.
 - (6) A licensee shall not permit persons who do not possess a valid identification or other appropriate proof of age to loiter on or about the licensed premises.
 - (i) Proper ventilation. All retail marijuana establishments shall be equipped with a proper ventilation system that filters out the odor of marijuana so that the odor is not capable of being detected by a person with a normal sense of smell at the exterior of the retail marijuana establishment or any adjoining business, parcel, or tract of real property. All applicants for a new retail marijuana establishment license shall submit a ventilation and odor mitigation plan with their application, which shall be subject to review and approval by the Local Licensing Authority prior to issuance of a new license. In case of an existing license for which no ventilation and odor mitigation plan has been approved, such a plan shall be submitted with the next renewal application submitted for the licensed premises and shall be subject to review and approval by the Town Manager or his or her designee as part of the renewal application. The Town Clerk may refer such a plan submitted with a renewal application for review by the Board of Trustees, which shall conduct such review, with or without a public hearing, and the decision of the Board shall be final. The lack of an approved ventilation and odor mitigation plan shall be grounds for denial of a new license or renewal of an existing license. Failure to install or maintain the ventilation system required by an approved ventilation and odor mitigation plan shall constitute a violation of this Article and shall be grounds for suspension or revocation of a license.

Sec. 6-5-6. Excise tax.

A tax is imposed upon all retail sales of retail marijuana and retail marijuana products sold within the Town by licensed retail marijuana stores at the rate of ten percent (10%) of the gross price paid by the purchaser,

rounded off to the nearest penny. The tax imposed by this Section is in addition to, and not in lieu of, the sales tax owed to the Town and all taxes owed to the State in connection with the sale of retail marijuana and retail marijuana products. Where possible, taxes shall be collected pursuant to section 4-3-8 of the Grand Lake Municipal Code. The Town Manager may adopt administrative rules and regulations specifying additional or alternative procedures for the collection and enforcement of the retail marijuana excise tax imposed by this Section.

Sec. 6-5-7. Application requirements.

- (a) A person seeking to obtain a license pursuant to this Article shall submit an application to the Town Clerk. The form of the application shall be as provided by the Town Clerk.
- (b) A license issued pursuant to this Article does not eliminate the need for the licensee to obtain other required licenses and permits related to the operation of the retail marijuana store, including, without limitation, any development approval required by this Code; a sales tax license; and a building, mechanical, plumbing or electrical permit.
- (c) An application for a license under this Article shall include the following information and any additional information required by the Town Clerk:
 - (1) The applicant's name, address, telephone number and Social Security number and, if the applicant is a partnership, the names and addresses of all the partners, and, if the applicant is a corporation, the names and addresses of all the corporate officers, and, if the applicant is a cooperative association, the names and addresses of its directors and officers;
 - (2) A completed set of the applicant's fingerprints;
 - (3) The street address of the proposed retail marijuana establishment;
 - (4) Proof of ownership, or, if the applicant is not the owner of the proposed location of the retail marijuana establishment, satisfactory proof that the applicant is or will be entitled to possession of the premises under a lease, rental agreement or other written agreement, including authorization to use the premises for a retail marijuana establishment for which the application is made;
 - (5) An acknowledgement by the applicant that the applicant and its owners, officers and employees may be subject to prosecution under federal laws relating to the possession and distribution of controlled substances; that the Town accepts no legal liability in connection with the approval and subsequent operation of the retail marijuana establishment; and that the application and documents submitted for other approvals relating to the retail marijuana establishment operation are subject to disclosure in accordance with the Colorado Open Records Act;
 - (6) The ventilation and odor mitigation plan required by Subsection 6-5-5(i) of this Article.
- (d) In addition to the foregoing, an applicant shall also submit all other information required by the RM Code and RM Regulations for state and local applications.
- (e) Upon receipt of the application for a retail marijuana store license, the Authority may circulate the application to the Town Planner, the Finance Director, the Police Department, the local fire protection district or any other department or agency the Authority deems necessary in order to determine whether the proposed facility is or will be in compliance with any and all laws, rules and regulations administered by these respective departments and agencies.
- (f) When the application is filed, the applicant shall pay to the Town the local share of the application fee, as established pursuant to the RM Code, unless the State has forwarded such fee to the Local Licensing Authority.
- (g) If an application is approved, the applicant shall also pay an annual operating fee in such amount as is established from time to time by the Board of Trustees and set forth in the appendices to this Code.

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- (h) Each license issued pursuant to this Article shall be valid for a period of one (1) year from the date of issuance and may be renewed as provided in this Section. An application for renewal shall be made to the Town Clerk not less than thirty (30) days prior to the date of expiration and concurrent with the application for renewal filed with the state licensing authority. The renewal application shall be accompanied by the annual operating fees for the renewal term. Except as otherwise provided in Subsection 6-5-5(i) of this Article, the license shall be renewed by the Town Clerk unless the renewal is denied by the state licensing authority or unless it appears to the Town Clerk that good cause exists to deny the renewal application, in which case the Town Clerk shall refer the application to the Board of Trustees for review at a public hearing. The Town Clerk shall refer the renewal application for public hearing only if the licensee has had complaints filed against it, the licensee has a history of violations or there are allegations against the licensee that would constitute good cause for denial of a license as defined in the RM Code. The procedures provided in Sections 6-5-8 to 6-5-10 below shall apply to the Board of Trustees' review and determination whether to renew a license. In order to be entitled to such review, the applicant shall pay an additional fee equal to the application fee for a new license.
 - (i) Except for direct applications pursuant to Subsection 6-5-4(b) of this Article, the Local Licensing Authority will not begin processing a license application until it receives notice of the application from the state licensing authority. The Local Licensing Authority may await completion of the state licensing authority's review and issuance of the state license before processing the local application, or it may conduct a concurrent review of a new license application prior to the state licensing authority's final approval of the license application. The Local Licensing Authority shall notify the state licensing authority whether it approves or denies any forwarded application.
 - (j) In the event that there are more applicants for licenses than there are available licenses, the Town may conduct the random selection of qualified applicants for licenses.
 - (k) Once the maximum number of retail marijuana licenses have been issued, the Town shall not accept any further applications for such use until an existing license is either revoked or expires. When the number of licensed retail marijuana stores is less than the limit provided for in this Chapter for any reason, including the cessation of operation of a retail marijuana store either by license revocation or expiration, notice shall be posted on the Town's website, and the Town shall process applications as provided for herein.

Sec. 6-5-8. Investigation of applicant.

- (a) Upon receipt of an application for a license under this Article, the Town Clerk shall transmit copies of the application to the Police Department, the Town Manager, the Planning and Building Department and any other person or agency who the Town Clerk determines should participate in the review of the application. The Town or any of its departments or officials may visit and inspect the property in which the applicant proposes to conduct business and investigate the fitness to conduct such business of any person, the officers and directors of any corporation or the partners of any partnership applying for a license.
- (b) In investigating the fitness of the applicant, the Town may obtain criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency. In the event the Town takes into consideration information concerning the applicant's criminal history record, the Town shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license.
- (c) Not less than five (5) days prior to the date of the public hearing on a license application or, in the event of an application for which no public hearing is scheduled, not less than five (5) days prior to the decision to approve or deny an application, the Town Clerk shall make known the findings of the investigation in writing to the applicant and other parties of interest.

Sec. 6-5-9. Public hearings; notice; publication.

- (a) Upon receipt of an application for a local license, except an application for renewal or for transfer of ownership, the Local Licensing Authority shall schedule a public hearing upon the application, to be held not less than thirty (30) days after the date of the application. The Local Licensing Authority shall post and publish public notice thereof not less than ten (10) days prior to the hearing. The Local Licensing Authority shall give public notice by the posting of a sign in a conspicuous place on the retail marijuana establishment premises for which application has been made and by publication in a newspaper of general circulation in the County.
- (b) Public notice given by posting shall include a sign of suitable material, not less than twenty-two (22) inches wide and twenty-six (26) inches high, composed of letters not less than one (1) inch in height, and stating the type of license applied for, the date of the application, the date of the hearing, 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. The sign shall contain the names and addresses of the officers, directors or manager of the facility to be licensed.
- (c) Public notice given by publication shall contain the same information as that required for the posting of signs.
- (d) If the building in which a retail marijuana establishment is to be located is in existence at the time of the application, the sign shall be posted so as to be conspicuous and plainly visible to the general public. If the building is not constructed at the time of the application, the applicant shall post a sign at the premises upon which the building is to be constructed in such a manner that the notice shall be conspicuous and plainly visible to the general public.

Sec. 6-5-10. Issuance or denial of license.

- (a) Not less than five (5) days prior to the date of the public hearing, the Local Licensing Authority shall make known its findings, based on its investigation, in writing to the applicant and other parties of interest. The Local Licensing Authority has authority to refuse to issue a license provided for in this Section for good cause, subject to judicial review.
- (b) Before entering a decision approving or denying the application for a local license, the Local Licensing Authority may consider, except where this Article specifically provides otherwise, the facts and evidence adduced as a result of its investigation, as well as any other facts pertinent to the application, including the number, type and availability of retail marijuana establishments located in or near the premises under consideration and any other pertinent matters affecting the qualifications of the applicant.
- (c) Within thirty (30) days after the public hearing or completion of the application investigation, the Local Licensing Authority shall issue its decision approving or denying an application for local licensure. The decision shall be in writing and shall state the reasons for the decision. The Local Licensing Authority shall send a copy of the decision by certified mail to the applicant at the address shown in the application.
- (d) The Board of Trustees may impose reasonable conditions upon any license issued pursuant to this Article.
- (e) After approval of an application, the Local Licensing Authority shall not issue a local license until the building in which the business to be conducted is ready for occupancy with such furniture, fixtures and equipment in place as are necessary to comply with the applicable provisions of this Article, and then only after the Local Licensing Authority has inspected the premises to determine that the applicant has complied with the architect's drawing and the plot plan and detailed sketch for the interior of the building submitted with the application.
- (f) After approval of an application for local licensure, the Local Licensing Authority shall notify the state licensing authority of such approval.

Sec. 6-5-11. Contents and display of license.

The licensee shall post the license in a conspicuous location at the retail marijuana establishment. A retail marijuana establishment license shall contain the following information:

- (1) The name of the licensee, the date of issuance of the license and the street address at which the licensee is authorized to operate the retail marijuana establishment;
- (2) Any conditions of approval imposed upon the license by the Board of Trustees;
- (3) The date of expiration of the license; and
- (4) The license shall be signed by the applicant and the Town Clerk.

Sec. 6-5-12. Transfer of ownership.

In determining whether to permit a transfer of ownership, the Local Licensing Authority shall consider only the requirements of this Article, the RM Code and RM Regulations. The Local Licensing Authority may hold a hearing on the application for a transfer of ownership; provided that the Local Licensing Authority shall not hold a hearing pursuant to this Section until the Local Licensing Authority has posted a notice of hearing in the manner described in Section 6-5-9 of this Article on the licensed premises for a period of ten (10) days and provided notice of the hearing to the applicant at least ten (10) days prior to the hearing. An application fee shall accompany each application for a transfer of ownership, in such amount as is established from time to time by the Board of Trustees and as set forth in the appendices to this Code.

Sec. 6-5-13. Suspension or revocation.

- (a) The Local Licensing Authority may revoke or elect not to renew any license if it determines that the licensed premises have been inactive, without good cause, for at least one (1) year.
- (b) In addition to any other sanctions prescribed by this Article, the RM Code or the RM Regulations, the Local Licensing Authority has the power, on its own motion or on complaint, after investigation and opportunity for a public hearing at which the licensee shall be afforded an opportunity to be heard, to suspend or revoke a license issued by the Local Licensing Authority for a violation by the licensee, or by any of the agents or employees of the licensee, of the provisions of this Article, the RM Code or RM Regulations, or of any of the terms, conditions or provisions of the license. The Local Licensing Authority 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 a hearing that the state or Local Licensing Authority is authorized to conduct.
- (c) The state licensing authority or Local Licensing Authority shall provide notice of suspension, revocation, fine or other sanction, as well as the required notice of the hearing pursuant to Subsection (b) above, by mailing the same in writing to the licensee at the address contained in the license. Except in the case of a summary suspension, a suspension shall not be for a longer period than six (6) months. If a license is suspended or revoked, a part of the fees paid therefor shall not be returned to the licensee. Any license or permit may be summarily suspended by the Local Licensing Authority without notice pending any prosecution, investigation or public hearing pursuant to the terms of Section 24-4-104(4), C.R.S.
- (d) Whenever a decision of the Local Licensing Authority suspending a license for fourteen (14) days or less becomes final, the licensee may, before the operative date of the suspension, petition for permission to pay a fine in lieu of having the license suspended for all or part of the suspension period. Upon the receipt of the petition, the Local Licensing Authority 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 the Local Licensing Authority is satisfied that:

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- (1) 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;
 - (2) The books and records of the licensee are kept in such a manner that the loss of sales that the licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy; and
 - (3) 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 (2) years immediately preceding the date of the motion or complaint that resulted in a final decision to suspend the license or permit.
- (e) The fine accepted shall be not less than five hundred dollars (\$500.00) nor more than one hundred thousand dollars (\$100,000.00).
 - (f) Payment of a fine shall be in the form of cash, a certified check or a cashier's check made payable to the Local Licensing Authority.
 - (g) Upon payment of the fine pursuant to Subsection (c) above, the Local Licensing Authority shall enter its further order permanently staying the imposition of the suspension.

Sec. 6-5-14. Penalty.

Failure to comply with the provisions of this Article shall constitute a violation of this Code, and, in addition to being grounds for denial, suspension or revocation of a license, such violation may be punished by a civil penalty in an amount not exceeding the maximum fine provided in Section 1-4-10 of this Code. Proceedings for the determination of such liability and imposition of such civil penalty shall be conducted in the Municipal Court in the same manner as proceedings relating to noncriminal traffic infractions, in accordance with the provisions of Article 1 of Chapter 8 of this Code. In no case shall any defendant found guilty of any violation of this Article be punished by imprisonment for such violation.

Sec. 6-5-15. Incorporation of state law.

The provisions of the Colorado Marijuana Code, and any rules and regulations promulgated thereunder, are incorporated herein by reference except to the extent that more restrictive or additional regulations are set forth in this Article.

Sec. 6-5-16. Other laws remain applicable.

Before issuing a license, the Local Licensing Authority shall obtain written confirmation from the licensee that the licensee understands and agrees to the following:

- (1) Neither this Article, nor the act of obtaining a license from the Local Licensing Authority, protects licensees or the owners, operators, employees, customers and clients of a licensed premises from criminal prosecution pursuant to any superior law that prohibits the cultivation, sale, use or possession of controlled substances, including but not limited to medical marijuana and retail marijuana.
 - (2) As of the date of the adoption of this Article, the cultivation, sale, possession, distribution and use of marijuana remains a violation of Federal law and this Article affords licensees and the licensees' owners, operators, employees, customers and clients with no protection from criminal prosecution under such law. Licensees and their owners, operators, employees, customers and clients assume any and all risk and liability arising or resulting from the operation of the licensed premises under Federal law.
 - (3) The Town has no liability to a licensee or any other person for injuries, damages or liabilities of any kind, under any legal theory, arising from the forced closure of the licensed premises if the Colorado
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Marijuana Code, the applicable administrative regulations and/or this Article are found to be invalid or illegal under any superior law.

- (4) To the greatest extent permitted by law, any action taken under the provisions of this Article by any public officers, elected or appointed officials, employees, attorneys and agents of the Town, is not a personal liability of such person or of the Town.

