

**OFFICIAL MINUTES AUGUST 14, 2013
CITY OF GUNNISON PLANNING AND ZONING COMMISSION
REGULAR MEETING**

7:00PM

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MEMBERS	PRESENT	ABSENT	EXCUSED
Erik Niemeyer	X		
Erich Ferchau	X		
Andy Tocke	X		
Bob Beda	X		
Greg Larson	X		
Stephanie White	X		
Councilor Stu Ferguson	X		

OTHERS PRESENT: Community Development Director Steve Westbay, Planner Andie Ruggera, Planning Technician Pam Cunningham, Police Chief Keith Robinson and Mathew Kuehlhorn.

I. CALL TO ORDER AT 7:00 PM BY CHAIR GREG LARSON

II. PLEDGE OF ALLEGIANCE TO THE FLAG

III. UNSCHEDULED CITIZENS.

IV. CONSIDERATION OF THE JULY 24, 2013 MEETING MINUTES. Councilor Ferguson moved and Commissioner Tocke seconded to approve the July 24, 2013 meeting minutes as amended.

Roll Call Yes: Niemeyer, Larson, White, Tocke, Ferguson
 Roll Call No:
 Roll Call Abstain: Ferchau, Beda
 Motion carried

V. PUBLIC HEARING AND POSSIBLE ACTION: ZA 13-3

Open Public Hearing. Chair Larson opened the public hearing at 7:08 p.m.

Proof of Publication. Proof of publication was shown for the record.

Review of Process. Director Westbay reviewed the process for a Text Amendment. The application is for a broad-based Code Amendment to address commercial elements of Amendment 64, as well as individual rights to use and grow marijuana for personal use. The history of Amendment 64 and the City ordinances was reviewed. City Ordinance 2, Series 2013 amended the *City of Gunnison Municipal Code* relating to General Offences; Ordinance 6, Series 2013 prohibited the operation of marijuana cultivation facilities, product manufacturing facilities, testing facilities and retail marijuana stores within the city boundaries, but they did not amend the *LDC*. The proposed Ordinance will memorialize in the *LDC* the Ordinances passed by City Council.

Director Westbay summarized the main points in the “Community Development Director Review” that was provided in the packet:

- the Text Amendment is balancing individual rights, the rights of the community at large and the associated health, safety and welfare components that the City is responsible for protecting.

- in preparing the application, he considered staff obligations and the objective components of Amendment 64;
- the terms of the proposed Text Amendment comply with the emergency regulations adopted by the State;
- there are 13 elements of regulations still under review at the state level, which is cause for concern;
- tracking marijuana in the commercial sense is not established, this could potentially cause retail marijuana to leak into the black market;
- marijuana is currently listed as a Schedule 1 substance under the *Controlled Substance Act*, it would be a misstep to move forward with something that would break federal law;
- the social implications in larger metropolitan areas were noted;
- State licensed retailers cannot use federal banking systems to maintain their assets, so they have a lot of cash on hand and they are being robbed;
- there is a conundrum between the *State Constitution* and federal laws that are in contradiction;
- it was a balancing act to address the policy that is being proposed.

Director Westbay stated that as a Certified Planner he cannot make a recommendation that is knowingly breaking a law. Personal use is allowed, commercial selling isn't. The State Attorneys General are saying they aren't after small-time users, just the large drug dealers. Imprisonment of small time users is a strain on the system.

Commissioner Beda interjected that the P&Z members all swore to uphold federal, state and local laws, which puts them in the same dilemma—to uphold the state and federal *Constitution* and state and local laws.

Commissioner Larson observed that it is almost like telling people it is ok to break the law.

Commissioner Ferchau said that there are a lot of things that are inconsistent between state and federal laws. The federal government allows states to pass these laws.

Director Westbay reiterated a quote from Unites States Attorney Jenny A. Durkan, who said, “In enacting the *Controlled Substance Act*, Congress determined that marijuana is a Schedule I controlled substance. Regardless of any changes in state law, growing, selling or possessing any amount of marijuana remains illegal under federal law...”

Commissioner Ferchau asked “Where is the gap that enables us to allow people to use marijuana?” Director Westbay said he is trying to balance individual rights with the public's health, safety and welfare.

Councilor Ferguson stated that the general principle is that the federal government defines that certain kinds of laws are the rights of the states. It reserves other categories that are not extended to the states. The *Controlled Substances Act* is one of those laws that supersede what the states want to do. Congress has been negligent in not addressing it. Therefore, we are in an undefined hazy situation because the laws are in conflict. Someone needs to sort it out. Commissioner Tocke asked if that would be a federal court declaring the state law unconstitutional.

Director Westbay stated that dilemma for the Commission is the land use law and granting of land use rights. Allowing the commercial, industrial, and retail sales components as a land use right is a

slippery slope. If someone opens a retail store, we cannot later amend the codes and prohibit stores without establishing them as nonconforming use. If we tell them they have to shut down, it is a taking. He said that growing in a house is one thing, but the City getting into a taking of a retail component would end up in court.

Commissioner Ferchau asked if we can authorize a certain act, behavior or business subject to reversing it in the future, as a condition of the approval. Director Westbay responded that would not be possible. The P&Z could put it in as a Conditional Use but would have to address fire suppression, smell and odors, but they can't do something retroactively.

Councilor Ferguson stated that in other Ordinances there is a severability clause, which says that if something is found unconstitutional, so be it. That could avoid the issue of a taking. Director Westbay responded that is a valid point, but it doesn't sway his recommendation. Congress has said it is a controlled substance and the federal district attorneys are going to enforce rules that have been enacted by Congress.

Commissioner Ferchau used the analogy of the Gunnison Sage-grouse as another instance of federal law being implemented and the federal enforcers realize they can't deal with all of the issues. The question becomes, does the County enforce that on their behalf by saying they want a permit from the federal government, or do they recognize that what they are approving is contrary to federal law? Director Westbay responded that is a laissez faire policy, but for land use, we either enforce the law or we don't enforce it.

Director Westbay reviewed the proposed changes to the Schedule of Uses table and the proposed review standards for Personal Use of Marijuana. He reiterated that commercial retail pot shops will be prosecuted by the District Attorneys. He said that distribution of marijuana out of Colorado is huge and the feds will be looking at Colorado. We should be conservative.

Chair Larson thanked staff and said he appreciates the work put into the recommendation.

Applicant Presentation. Director Westbay had nothing further to add.

Commissioner Beda asked if growing is allowed as part of the personal use in all zones. Director Westbay stated that it is, but there are limitations on the number of plants and the area used for growing.

Councilor Ferguson asked if there is a conflict between medical marijuana and Amendment 64 for personal use. Director Westbay responded that there is not, but commercial medical marijuana is prohibited. The City regulations recognize that and the land use tables recognize it. The proposed Text Amendment complies with both amendments and regulations.

Public Input. Matthew Kuehlhorn, director of the Gunnison County Substance Abuse Prevention Project (GCSAPP), addressed the Commission. He stated that GCSAPP's interest is in the health of community youth. He said they have been tracking what youth are reporting on use rates and perceptions that youth have. Through the Healthy Kids Colorado survey, they have data at the local and county level, for each school site, and they can compare across the state. He said there will be a commentary in the paper addressing this conversation. He said that the environment we create is going to affect youth, either positively or negatively.

He said that using alcohol as the measure, research says that if kids live around alcohol retail stores they will use alcohol unhealthily. He said that pot stores would cause youth to use it.

Mr. Kuehlhorn stated that there is research about what THC does to brains. There are indicators that if kids use marijuana regularly when the brain is forming they are more likely to have a lower level of “normal.” When we look at this conundrum we look at health for our kids. A high percentage of kids locally report that they are not using marijuana; the goal of GCSAPP is to keep it that way. He said that the data is the same between Gunnison and Crested Butte, but marijuana is easier to access locally than across the state.

Mr. Kuehlhorn said that between 2011 and 2012, young peoples’ perception of risk has dropped. They think marijuana is less risky now than they did in 2011. He relates that to Amendment 64 marketing—that is one of the pieces that people in prevention look at. One of the strategies is to increase the perception of risk. He said it equates to the prescription drug problem in which kids think if it is prescribed, it must be safe.

He added that the retail industry is already huge. In the tobacco and marijuana industry there are brand new products, such as small vaporizers and edibles. There is a market that, while adults love it, it is also attractive to kids. The tobacco and alcohol industries market to kids. Marijuana ads are similar to tobacco ads in the early 1900’s.

Commissioner Ferchau said that kids perceive the risk of negative consequences, such as accidents and arrest. When you compare marijuana and alcohol, pot is preferred because of those things. The perception of risk goes to consequences of use.

Mr. Kuehlhorn responded that perception of risk is difficult to address. It seems there is a long-term risk to the brain, and the challenge is to get the kid to look at the long-term effect.

Commissioner White asked if there are ideas of safe use, like safe drinking. Mr. Kuehlhorn responded that there aren’t, right now. The game of prevention has changed a lot. In the past, there was the “Just Say No” campaign and the DARE program. There is a prevention perspective that swings to more of a safe sex campaign. How can we come at it with education and help them understand the consequences; how can we ensure they use it safely? It is a slippery slope. For Colorado and Washington there are a lot of organizations dealing with it. We need to talk about prevention. It will be interesting to see what does come up.

Staff Presentation. Staff had nothing further.

Chair Larson asked what kind of position this puts the Police Department in.

Keith Robinson, Police Chief, addressed the Commission. He said that regarding the ethical standing, law enforcement has been dealing with this for a while. There are a lot of conflicts between state and federal law. The Police also take an oath, but they can’t enforce federal law at the local level. What the state has done is put in place something where they haven’t legalized pot, but the police can’t prosecute certain people under certain circumstances. The police can’t enforce federal law. On the other side, they have an obligation not to violate federal law. For example, if someone is arrested for DUI, they are asked if they have marijuana, if they do, they have to leave it in the car. If they go to jail, the jail won’t take it, so they have to throw it away. Or, it can be seized for protection, but before they can get it back they have to prove they can legally possess it. If they

can't legally take possession of it, it is disposed of as abandoned property. The state has confused everyone. Medical pot is protected under HPPA. People think they can mail it. That is a violation of state law. People think it is legal. It is only legal in that we can't prosecute under certain situations. People get in trouble and can't understand why. The role of the Police Department is to try to help people understand.

Since the police can't enforce federal law, they also can't put things in place to violate federal laws. If the City makes it legal, when it crosses to another state, did the City help precipitate transportation of drugs? There was a study that lists Colorado as one of the largest exporters of marijuana to other states. It is a big issue. Staff is trying to keep the City out of trouble and help people understand the issues.

Commissioner Ferchau asked what the process would be for reversing Amendment 64. Director Westbay responded that a court will have to strike it down as being unconstitutional. Councilor Ferguson stated that the likelihood of someone putting that together is remote. He predicted one of two outcomes: either a court will receive a challenge that will go to the Supreme Court, who will resolve it by wiping it out, or modifying federal law. Or, perhaps Congress will see that there is a large message and they will resolve it.

Commissioner Ferchau asked if it is illegal to buy or sell marijuana in the state. Chief Robinson replied that right now, you can buy and sell medical marijuana under the conditions that you are a caregiver or a distributor. Those jurisdictions that allow retail sales will be allowed to sell to anyone in the state, but they would have to have a license.

Commissioner Ferchau asked if it is illegal for a neighbor to buy your pot. Chief Robinson replied that there can be no financial gain, but you can give it to your neighbor. It alludes to the growing; using has to be done in private.

Commissioner Ferchau asked if "Consumer" in the Definitions be can be changed to read "Marijuana Consumer."

Chair Larson asked if there are any statistics in the county with Crested Butte having commercial shops. Chief Robinson said he doesn't know of any. Locally, there have been more instances of people mailing marijuana. There was one grow operation with nuisance complaints. In the county, there was one shooting directly related to marijuana growing. He said there has been violence in the past related to marijuana.

Councilor Ferguson said that the *Controlled Substance Act* does not make pot legal; it requires you to have a license. Chief Robinson said the feds put a use tax on medical marijuana and prosecution is based on failure to pay taxes.

Commissioner Beda said that one of the big bullet points on Amendment 64 was that it was going to be taxed. That was only on retail sales.

Commission Discussion

Commissioner Ferchau asked about square footage allowed for personal use. He also asked if it is possible to specify what type of environment marijuana can be grown in and enable a business to sell expensive grow equipment. Director Westbay responded that the issue is health and safety. The

hydroponics equipment can be used for other plants. Commissioner Ferchau asked if the City could require it to be grown in only one method or space to foster a business that [sells that type of equipment]. Director Westbay responded that he didn't contemplate that idea. The grow operations that are problematic are using huge lights and power cords, which is hard to regulate. He considered incorporating building and electric code provisions [but decided against it]. Staff decided growing must be in a concealed space. Some cities don't allow growing in an accessory structure. But the Gunnison Fire Marshal said that from a life safety aspect, it is safer to be in accessory structure than in a house.

Councilor Ferguson said, "What you have done is outstanding. I struggle with the conflict with federal law. If you look at the history of the United States from 1920-1933 during Prohibition, there are parallels. The federal government invested a lot of effort, the success rate was miserable and it created organized crime and a new type of criminals. As much as I hate to see drugs become a bigger part of society, my prediction is, it will happen and we have to find better ways to deal with it. We are simply treading water until a large portion of society reaches a conclusion on the issue. Ultimately they will. This is a transition. The ordinance fits the transition."

Commissioner Tocke said, "What we are looking at is an economy in infancy. What would it look like as a developed economy? Some of these things eventually may not be such issues. People don't want to take the effort to do it. There are plenty of us who don't use marijuana for non-litigious reasons and we won't necessarily use because it is legal." He asked if there was any information available about what the vote was for Amendment 64 in the city. Director Westbay said that those numbers can't be derived because it was a mail-in ballot. He said that he assumes that if this moves forward, there may be a push for a ballot initiative. Commissioner Tocke said he sees the flaws in how Amendment 64 is being handled and it isn't a bullet proof plan. He said that allowing personal use and industrial hemp also is against federal law. So we are picking and choosing. Some things are easier to enforce and control.

Chair Larson said that in a perfect world, a person could go to City Market and get their marijuana prescription filled, the FDA would control it, the THC levels would be monitored, and the ATF would be monitoring it. This isn't a perfect world. So we have to deal with the set of cards we have been dealt.

Commissioner Ferchau said he favors prohibiting industrial hemp in the Industrial zone since it is illegally federally. He would like clarification on the use of compressed gases since propane tanks are allowed to run barbeque grills. Director Westbay responded that that came from the Governor's task force. We aren't going to go out and tell someone they can't store a grill in the garage.

Commissioner Ferchau asked about growing – if a house is rented to five students 21 years of age or older, can they each have 75 square feet? Director Westbay responded they cannot, it is the total area in a single-family residence. Commissioner Beda asked how that will be enforced. Director Westbay responded it will be complaint-driven.

Close Public Hearing. Chair Larson closed the public hearing at 8:25 p.m.

Director Westbay asked if it is important to identify granting a use and taking as a Finding.

Commissioner Tocke asked, "If you allowed it, what would the situation be that you would revoke it?" Director Westbay responded that the values of the community could change and they could tell

leaders they don't like it and leaders can change the law. It is hard to backtrack. It is easier to allow something in the future than to take it away.

Director Westbay stated that Mathew Kuehlhorn provided a good overview of the social implications, which will be in the public record and will be provided to Council. The Commission added a Finding regarding youth perception and safety of youth.

Commissioner Ferchau asked about the demand for industrial hemp. Commissioner Beda said it is low. Discussion continued about hemp and the acreage needed to grow it. Commissioner Ferchau said he would back off on his recommendation to prohibit industrial hemp. He asked why it is prohibited in other zones. Commissioner Niemeyer responded because it is an industrial use. Commissioner Tocke interjected that it is not marijuana, it is hemp. Director Westbay said that the Commission could allow growth of hemp. Commissioner Ferchau asked if someone driving down the street could tell the difference (between hemp and marijuana). Chief Robinson said it would have to be tested. Councilor Ferguson said that it is the processing of the fiber product. Chair Larson interjected that it is an industrial use. Commissioner Tocke explained that it is something that is grown in fields. Discussion continued. Commissioner Ferchau said he was back to prohibiting it. Commissioner Beda said, it is in Amendment 64, but you would have to have acres of it. Councilor Ferguson said, "It is self-solving. In order to have enough volume of hemp, you are talking hundreds of acres. So if someone obtained it legitimately, they could process it." Commissioner Tocke said that, as far as a cottage industry goes, someone could do that.

Director Westbay said that if a plant is in a window, they will be asked to put in a closet, but it won't be tested.

Chief Robinson said that on the criminal side, if they see something unsafe, they call in the Building Official. The two work hand in hand and a lot of it is the practicality of enforcement.

Councilor Ferguson stated that "This is a reasonable balancing act and complies with the state *Constitution* and does not tread on federal laws. Either the court will decide or Congress will do something. Then this will be rewritten. I personally don't have a problem with moving it forward. It is a placeholder."

Commissioner Beda asked if other communities have acted. Director Westbay responded that some have done a blanket prohibition or moratorium. At the CML conference, the attorneys have been talking about it, but everyone is waiting for the state to write regulations. The Department of Revenue is getting ready to start licensing for those communities who are silent or who adopt it through the *Land Use Code*. It is all over the board. The buzz on the news is there will be fewer communities allowing it.

Commissioner Beda stated that the Montrose City Council is probably going to prohibit sales. Montrose County defeated Amendment 64, but Gunnison County was opposite. Do we look at our constituency and see how that works? Director Westbay responded that he brought a recommendation that is in line with his responsibilities as the Planning Director. His conclusion is that the feds are saying it is illegal. We are trying to balance individual use versus retail use that the feds may crack down on. We are taking a conservative approach to protect the interest of the City. We looked at state recommendations, definitions, and ordinances.

The Chair asked for a motion. There wasn't one. Discussion continued. Someone asked what would happen if the Commission doesn't make a recommendation. Director Westbay explained that the options are to approve, approve with conditions, deny or remand the application.

Commissioner Beda asked, "If we prohibit what the state law says we can do, what will that put on the Police Department?" Director Westbay responded that the Council has already put in codes that retail is illegal. Chief Robinson responded that he would assume that, as a zoning board, the Commission cannot affect personal use because that is not a use of land. The part that is in both amendments was the commercial application, which is back to his original statement about enforcement versus compliance. The police can't enforce, but they can put compliance issues in place. They can't enforce against use, but they can enforce how it is done. Personal use would be thrown open [without regulations].

Commissioner Larson reminded the Commission that what is being addressed is land use.

Councilor Ferguson said, "If we took no action, the net effect is people could still do their personal thing under the *Constitution*. But, they could grow it anywhere. Inaction doesn't mean it won't happen. The *LDC* would allow them to do it in a safe and reasonable manner. We are dealing with a land use. It is not within our purview to say you can't do it at all."

Commissioner Niemeyer asked if Council can mandate that P&Z do this. Director Westbay responded that under the *LDC*, there is an obligation to make a recommendation to City Council. If it became indecisive, he would pull the application and talk to Council about what they want to do. He asked the Commission if there is something they would like to change or if it is just that it is complex.

Chair Larson stated that he likes the recommendation and Findings and would like to see it go forward. He asked for a motion.

During the Planning and Zoning Commission meeting held on August 14, 2013, Commissioner Ferchau moved, Commissioner Tocke seconded and the Planning and Zoning Commission voted to recommend APPROVAL, to City Council of Zoning Amendment Application ZA 13-3, for a Text Amendment to establish standards for the home cultivation and home processing of marijuana and to prohibit marijuana clubs within the City of Gunnison, based on the following findings of fact:

1. The Planning and Zoning Commission finds that the record of this action includes the application contents on file with the City of Gunnison; all comments entered into the Public Hearing record; and provisions of the *City of Gunnison Land Development Code* and the *City of Gunnison Master Plan*.
2. The Planning and Zoning Commission finds that City Council previously approved Ordinance No. 2, Series 2011 that prohibits the use of land in the city boundaries for the retail sale, distribution, cultivation and dispensing of medical marijuana and the processing and sale of infused products.
3. The Planning and Zoning Commission finds that City Council previously approved Ordinance No. 2, Series 2013 that defines offenses and penalties related to personal marijuana use, possession and cultivation and prohibits the sale of marijuana without a license.

4. The Planning and Zoning Commission finds that City Council previously approved Ordinance No. 6, Series 2013 that prohibits the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores within the City limits.
5. The Planning and Zoning Commission finds that the proposed amendment complies with the State of Colorado Emergency Regulations; however, 13 rules related to marijuana advertising, health and safety protections, labeling and inventory control and testing lack ruling detail and all contain notices that additional regulation is likely.
6. The Planning and Zoning Commission finds that Marijuana is currently listed as a Schedule I controlled substance under the *Controlled Substances Act (CSA)* enacted by Congress and that regardless of any changes in state law, growing, selling or possessing, any amount of marijuana remains illegal under federal law.
7. The Planning and Zoning Commission finds that the Federal government may restrict federal grants to states and municipalities unless anti-marijuana laws are adopted.
8. The Planning and Zoning Commission finds that the Drug Enforcement Administration has started a systematic crack-down on marijuana enterprises since criminal activity is a concern.
9. The Planning and Zoning Commission finds that City Council carefully considered the provisions of Article XVIII, Section 16(3) of the *Colorado Constitution*, and the impact of marijuana cultivation, processing and consumption for personal use in residential structures on the health, safety and welfare of the city and the inhabitants thereof, and has determined, as an exercise of its local land use authority, to regulate such activity in residential structures in a manner consistent with the City land use regulations.
10. The Planning and Zoning Commission finds that the Governor's Task Force (March 13, 2013) established that the use of compressed, flammable gases (including butane, propane and hexane) as solvents in the extraction of THC in a residential setting presents a significant life-safety risk to the citizens of the State of Colorado and the City of Gunnison.
11. The Planning and Zoning Commission finds that processes, methods, and certain materials used for growing, cultivating, and processing marijuana may present life-safety risks to citizens which risks may be reduced by the regulation of marijuana growth and cultivation.
12. The Planning and Zoning Commission finds that the consumption of marijuana and marijuana products in commercial or industrial buildings, such as in marijuana "clubs" may be detrimental to the public health, safety and welfare.
13. The Planning and Zoning Commission finds that the proposed text amendment establishes standards for the home cultivation and home processing of marijuana and prohibits marijuana clubs within the city of Gunnison.
14. The Planning and Zoning Commission find that the proposed ordinance will modify the *LDC Enforcement Section, 15.20.040 Penalties*, to comply with the maximum fine and/or imprisonment as adopted by Colorado State Legislation.

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15. In regard to the process of this text amendment application, the Planning and Zoning Commission has reviewed the draft Ordinance, Series 2013 (enclosure 1) and the Planning and Zoning Commission finds that it complies with the established review standards (Section 15.150.050) of the *LDC*.
16. The Planning and Zoning Commission finds that the Gunnison County Substance Abuse Prevention Project director, Mathew Kuehlhorn, provided testimony that allowing commercial or personal use of marijuana reduces the perception of risk by youth and this social view may be detrimental to the health safety and welfare of the youth in our community.
17. The Planning and Zoning Commission finds that based on the findings cited above, the approval of this Text Amendment protects the health, safety and welfare of the community.

Roll Call Yes: Niemeyer, Beda, Larson, White, Ferguson, Tocke, Ferchau
Roll Call No:
Roll Call Abstain:
Motion carried

Given the lateness of the hour, it was decided not to adjourn to Work Session.

Chair Larson thanked Chief Robinson for his input.

VI. COUNCIL UPDATE. Councilor Ferguson stated he appreciated the conversation and discussion and feels better prepared for the next conversation on the Marijuana Code.

VII. COMMISSIONER COMMENTS

- There were none

VIII. PLANNING UPDATE. Director Westbay updated the Commission on recent activity in the Community Development Office. Staff has been working on:

- Agenda materials for the August 20th Council meeting. The first item at to discuss will be the Sage-grouse listing. Staff has put together a PowerPoint presentation for the LDC discussion. The *LDC* is ready. The discussion will focus on Section 2 (Zoning Districts), Section 4 (General Development Standards), Section 9 (Waivers) and Section 13 (Incentives). The next step will be to have public outreach to the Chamber, realtors, and contractors to get public input. Would like to diffuse issues before public hearing.

IX. ADJOURN. Chair Larson adjourned at approximately 9:07 pm.

Greg Larson, Chair

Attest:

Pam Cunningham, Secretary

ORDINANCE NO. ____
Series 2013

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, AMENDING TITLE 15 (*LAND DEVELOPMENT CODE*), OF THE *CITY OF GUNNISON MUNICIPAL CODE* ESTABLISHING STANDARDS FOR THE HOME CULTIVATION AND PERSONAL PROCESSING OF MARIJUANA, AND PROHIBITING MARIJUANA CLUBS.

WHEREAS, Colorado voters approved an amendment to Article XVIII, Section 16 of the *Colorado Constitution* that makes the personal use, possession and limited home growing of marijuana for adults twenty-one years of age or older legal under Colorado law; and

WHEREAS, under Article XVIII, Section 16(3) of the *Colorado Constitution*, any person who is twenty-one years of age or older may possess, grow, process or transport no more than six marijuana plants, with three or fewer being mature flowering plants, provided that the growing takes place in an enclosed locked space, is not conducted publicly or openly and is not made available for sale; and

WHEREAS, Gunnison City Ordinance No. 2, Series 2011, prohibits the use of land in the city boundaries for the retail sale, distribution, cultivation and dispensing of medical marijuana and the processing and sale of infused products; and

WHEREAS, Gunnison City Ordinance No. 2, Series 2013, defines offenses and penalties related to personal marijuana use, possession and cultivation and prohibits the sale of marijuana without a license; and

WHEREAS, Gunnison City Ordinance No. 6, Series 2013, prohibits the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores within the City limits; and

WHEREAS, the City Council has carefully considered the provisions of Article XVIII, Section 16(3) of the *Colorado Constitution*, and the impact of marijuana cultivation, processing and consumption for personal use in residential structures on the health, safety and welfare of the City and the inhabitants thereof, and has determined, as an exercise of its local land use authority, to regulate such activity in residential structures in a manner consistent with the City land use regulations; and

WHEREAS, the Governor's Task Force recommendations (March 13, 2013) find that the use of compressed, flammable gases (including butane, propane and hexane) as solvents in the extraction of THC in a residential setting presents a significant life-safety risk concern to the citizens of the State of Colorado and the City of Gunnison; and

WHEREAS, the City Council has considered whether the consumption of marijuana and marijuana products in commercial or industrial buildings, such as in marijuana "clubs" may be inconsistent with surrounding uses, or may otherwise be detrimental to the public health, safety and welfare; and

WHEREAS, the City Council has considered whether the existence of marijuana “clubs” in residential areas is inconsistent with surrounding uses, or may otherwise be detrimental to the public health, safety and welfare.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, ORDAINS THAT:

Section 1. Findings. The City Council hereby finds as follows:

A. Article XVIII, Section 16(3) of the *Colorado Constitution* sets forth certain broad directives for marijuana cultivation, processing and consumption for personal use in residential structures, without any specific legislative directive at this time, and the City Council finds and determines that this ordinance complies with the broad directives under the Colorado Constitution; and

B. The City Council finds and determines that the adoption of Ordinance 2, Series 2011, prohibited retail activities for medical marijuana by prohibiting the establishment of medical marijuana centers, optional premises cultivation operation and medical marijuana-infused product manufacturers within the City of Gunnison; and

C. The City Council finds and determines that the adoption of Ordinance No. 2, Series 2013, defines offenses and penalties related to personal marijuana use, possession and cultivation and prohibits the sale of marijuana; and

D. The City Council finds and determines that the adoption of Ordinance No. 6, Series 2013, prohibits the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores within the City limits; and

E. The City Council finds and determines that the Governor’s Task Force (March 13, 2013) established that the use of compressed, flammable gases (including butane, propane and hexane) as solvents in the extraction of THC in a residential setting presents a significant life-safety risk to the citizens of the State of Colorado; and

F. The City Council finds that processes, methods, and certain materials used for growing, cultivating, and processing marijuana may present life-safety risks to citizens which risks may be reduced by the regulation of marijuana growth and cultivation; and

G. The City Council finds and determines that the consumption of marijuana and marijuana products in commercial or industrial buildings, such as in marijuana “clubs” may be detrimental to the public health, safety and welfare; and

H. The City Council finds and determines that the existence of marijuana “clubs” in residential areas is inconsistent with surrounding uses, or may otherwise be detrimental to the public health, safety and welfare.

Section 2. Authority. The City Council hereby finds, determines, and declares that it has the power and authority to adopt this Article pursuant to:

A. Article XVIII, Section 16 of the *Colorado Constitution*;

- B. The authority granted to home rule municipalities by Article XX of the *Colorado Constitution*;
- C. The powers contained in the *City of Gunnison Home Rule Charter*.
- D. The *Local Government Land Use Control Enabling Act*, Article 20 of Title 29, *C.R.S.*;
- E. Part 3 of Article 23 of Title 31, *C.R.S.*, (concerning municipal zoning powers);
- F. Section 31-15-101, *C.R.S.*, (concerning municipal bodies politic powers);
- G. Section 31-15-401, *C.R.S.*, (concerning municipal police powers); and
- H. Section 31-15-501, *C.R.S.*, (concerning municipal authority to regulate businesses).

Section 3. Definitions. Section 15.40.010, Definitions, of the *City of Gunnison Municipal Code* is hereby amended by the addition of the following definitions:

“Colorado Medical Marijuana Code” means Article 43.3 of Title 12, *Colorado Revised Statutes*.

“Industrial hemp” means the plant of the genus *cannabis* and any part of such plant, whether growing or not, with Delta-9 Tetrahydrocannabinol concentration that does not exceed three-tenths percent on a dry weight basis.

“Marijuana” or “Marihuana” means all parts of the plant of the genus *cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. “Marijuana” or “Marihuana” does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topic or oral administrations, food, drink or other product.

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

“Marijuana club” means a place of private assembly, operated for purposes of inviting members to use or consume marijuana on site.

“Marijuana Consumer” means a person twenty-one years of age or older who purchases marijuana or marijuana products for personal use by persons twenty-one years of age or older, but not for resale to others.

“Marijuana cultivation facility” means an entity licensed to cultivate, prepare, and package marijuana and to sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

“Marijuana establishment” means marijuana cultivation facility, marijuana testing facility, marijuana product manufacturing facility, or retail marijuana store.

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

“Marijuana products” means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

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

“Medical marijuana center” means an entity licensed by a state agency to sell marijuana and marijuana products pursuant to Article XVIII, Section 14 of the *Colorado Constitution* and the *Colorado Medical Marijuana Code*.

“Primary residence” means the place that a person or family member, by custom and practice, makes his or her principle domicile and address and to which the person or family member intends to return, following any temporary absence, such as vacation. Residence is evidenced by actual daily physical presence, use, and occupancy of the primary residence and the use of the residential address for domestic purposes, such as, but not limited to, slumber, preparation of and partaking of meals, regular mail delivery, vehicle and voter registration, or credit, water and utility billing. A person or family member shall have only one primary residence.

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

“Secure area” means an area within the primary residence or associated accessory structure accessible only to the person possessing, growing or processing the marijuana plant for personal use. Secure areas shall be partitioned space with doors, walls, ceilings and floors constructed with rigged wood, sheet rock or other typical construction materials and locked to prevent access by children, visitors, casual passersby, vandals, or anyone not authorized to possess marijuana.

Section 4. Uses in Residential Zone Districts. Table 15.70.010: Schedule of Uses – Residential Zone Districts, of the *City of Gunnison Municipal Code*, is hereby amended to read as follows:

Table 15.70.010: Schedule of Uses – Residential Zone Districts

(A = Allowed, C = Conditional, P = Prohibited)	R-1	R-1M	R-2	R-2M	R-3	Standards*
Residential Uses						
Accessory buildings and structures	A	A	A	A	A	
Accessory dwelling unit	P	P	C	C	C	GMC 15.70.020(A)
Duplex dwelling units	P	P	A	A	A	
Multiple-family units	P	P	P	A	A	

Table 15.70.010: Schedule of Uses – Residential Zone Districts

(A = Allowed, C = Conditional, P = Prohibited)	R-1	R-1M	R-2	R-2M	R-3	Standards*
Residential Uses (continued)						
Single-family dwelling unit	A	A	A	A	A	
Manufactured housing	A	A	A	A	A	GMC 15.70.020(B)
Mobile home park	P	P	P	P	C	GMC 15.70.020(C)
Recreational vehicle park	P	P	P	P	C	GMC 15.70.020(D)
Rooming or boarding house, fraternity, sorority or dormitory	P	P	P	C	C	
Personal use of marijuana	A	A	A	A	A	GMC 15.70.020(I)
Residential Business Uses						
Daycare home	C	C	A	A	A	GMC 15.70.020(E)
Daycare school	P	P	C	C	C	GMC 15.70.020(E)
Daycare center	P	P	C	C	C	GMC 15.70.020(E)
Home occupation	A	A	A	A	A	GMC 15.70.020(F)
Home business	C	C	C	C	C	GMC 15.70.020(F)
Medical marijuana centers	P	P	P	P	P	
Medical marijuana-infused products manufacture	P	P	P	P	P	
Optional premises cultivation operation	P	P	P	P	P	
Marijuana cultivation facility	P	P	P	P	P	
Marijuana establishment	P	P	P	P	P	
Marijuana product manufacturing facility	P	P	P	P	P	
Marijuana testing facility	P	P	P	P	P	
Retail marijuana store	P	P	P	P	P	
Clubs/Public Assembly/Institutional Uses						
Church, parish home and religious education building	C	C	C	C	C	
Clubs operated by and for their members	C	C	C	C	C	
Marijuana club	P	P	P	P	P	

Table 15.70.010: Schedule of Uses – Residential Zone Districts

(A = Allowed, C = Conditional, P = Prohibited)	R-1	R-1M	R-2	R-2M	R-3	Standards*
Clubs/Public Assembly/Institutional Uses (continued)						
Community buildings and uses	C	C	C	C	C	
Government administrative facilities, services, and buildings	P	P	P	P	C	
Group home	P	P	P	P	C	GMC 15.70.020(G)
Hospice	P	P	C	C	C	
Hospital	P	P	C	C	C	
Nursing home	P	P	C	C	C	
Parks and recreation facilities	A	A	A	A	A	
Satellite reception device	A	A	A	A	A	GMC 15.70.020(H)
School	C	C	C	C	C	
Notes: *The standards referenced herein are in addition to all other applicable standards of this <i>Land Development Code</i> .						

Section 5. Uses Prohibited in Commercial/Industrial Zone Districts. Table 15.70.030: Schedule of Uses – Commercial/ Industrial Zone Districts, of the *City of Gunnison Municipal Code*, is hereby amended to read as follows:

Table 15.70.030: Schedule of Uses – Commercial/Industrial Zone Districts

(A = Allowed, C = Conditional, P = Prohibited)	B-1	CBD	C	I	Standards ¹
Commercial and Office Uses					
Clubs operated by and for their members	C	A	A	P	
Marijuana club	P	P	P	P	
Marijuana establishment	P	P	P	P	
Marijuana retail store	P	P	P	P	
Commercial lodging	P	C	A	P	
Commercial parking lots and garages	P	C	A	A	
Drive-in facility	P	C	A	P	GMC 15.70.040(A)
Drive-in food or beverage facility	P	C	A	P	GMC 15.70.040(A)
Indoor amusement and entertainment establishments	P	A	A	P	
Indoor and outdoor eating and drinking establishments	C	A	A	C	

Table 15.70.030: Schedule of Uses – Commercial/Industrial Zone Districts

(A = Allowed, C = Conditional, P = Prohibited)	B-1	CBD	C	I	Standards ¹
Commercial and Office Uses (continued)					
Medical marijuana centers	P	P	P	P	
Professional offices	A	A	A	C	
Publishing business	A	A	A	A	
Radio and television studios	A	A	A	A	
Recreational vehicle park	P	P	C	P	
Retail sales establishment	C	A	A	P	GMC 15.70.040(B)
Sexually oriented businesses	P	P	P	A	GMC 15.70.040(D)
Temporary commercial activities	P	C	C	P	GMC 15.70.040(C)
Personal Services					
Bank, credit and loan services	C	A	A	P	
Beauty and barber shop	A	A	A	P	
Catering services	C	A	A	A	
Funeral home and mortuary	P	C	A	P	
Laundry and dry cleaners	P	A	A	C	
Photographic studios	A	A	A	P	
Repair and maintenance of small appliances, electronics and sporting goods	P	A	A	A	
Secretarial, copying and related service	A	A	A	A	
Self-service laundromat	P	P	A	P	
Tailor, tack or shoe repair services	P	A	A	C	
Travel agency	A	A	A	P	
General Services					
Agricultural feed and equipment supply store	P	P	C	A	
Automobile sales and rental	P	A	A	A	
Automobile service and repair	P	P	C	A	
Commercial storage of personal property in enclosed storage areas	P	P	P	A	
Commercial storage of personal property in open areas	P	P	P	C	
Gasoline service station and car wash	P	P	A	A	
Kennel	P	P	C	C	
Lumber and building supply store	P	P	C	A	
Mobile home & recreational vehicle sales & service	P	P	C	A	

Table 15.70.030: Schedule of Uses – Commercial/Industrial Zone Districts

(A = Allowed, C = Conditional, P = Prohibited)	B-1	CBD	C	I	Standards ¹
General Services (continued)					
Nursery, greenhouses and garden supply	P	P	C	A	
Rental, repair and service of light motorized and non-motorized tools and equipment and large appliances	C	A	C	A	
Veterinary clinic	P	P	C	C	
Light Industrial Uses					
Bulk laundry, dry cleaning or carpet cleaning plant	P	P	P	C	
Cabinet and carpenter shop	P	P	C	A	
Manufacture or assembly of products from the following previously prepared materials: electronic components and wire, fibers, glass, leather, paper, plastics, textiles and wood	P	P	C	A	
Marijuana cultivation facility	P	P	P	P	
Marijuana product manufacturing facility	P	P	P	P	
Marijuana testing facility	P	P	P	P	
Industrial Hemp production	P	P	P	A	
Medical marijuana-infused products manufacture	P	P	P	P	
Optional premises cultivation operation	P	P	P	P	
Plumbing, heating, electrical, sheet metal, construction or paint contractors	P	C	C	A	
Printing establishments	C	C	C	A	
Satellite or electronic transmitting devices including radio or television stations	P	P	C	C	GMC 15.70.020(H)
Repair, rental, sales, service or storage of heavy equipment, heavy machinery, large appliances and boats	P	P	C	A	
Satellite or electronic reception devices	C	C	C	C	GMC 15.70.020(H)
Sign making and sign sale or repair shop	C	C	A	A	
Upholstery shop	P	C	C	A	
Warehouses and truck terminal	P	P	C	A	
Welding or machine shop	P	P	C	A	
Wholesale businesses	P	C	C	A	
Wood truss manufacture	P	P	C	A	
Bulk fuel storage facilities and wholesale sales of fuels	P	P	P	C	

Table 15.70.030: Schedule of Uses – Commercial/Industrial Zone Districts

(A = Allowed, C = Conditional, P = Prohibited)	B-1	CBD	C	I	Standards ¹
General Industrial Uses					
Processing of aggregate, mineral, and other subsurface resources	P	P	P	C	
Junk yard, salvage yard, or automobile wrecking yard	P	P	P	C	
Laboratories	P	C	C	C	
Manufacture of chemicals and explosives	P	P	P	C	
Meat processing plant	P	P	C	C	
Ready mix concrete or hot mix plant	P	P	P	C	
Wood processing, including millwork and sawmill	P	P	C	A	
Tire retreading or vulcanizing shop	P	P	P	C	
Yards for stockpiling coal, sand, gravel, and other materials	P	P	P	C	
Airport Uses					
Air cargo terminal	P	P	P	A	
Air passenger terminal, including airline ticketing facilities and ground support facilities; food, personal service, and retail businesses within the terminal	P	P	P	A	
Aircraft sales, rental, repair, service, and storage	P	P	P	A	
Air side facilities such as runways, taxiways and aprons for the arrival and departure of aircraft	P	P	C	A	
Aviation fuel storage, hangars, and air traffic control facilities	P	P	P	A	
Public and Institutional Uses					
Bus station	P	C	C	C	
Church, parish home, and religious education building	C	A	A	P	
Community buildings and uses	C	A	A	P	
Government administrative facilities, services and buildings	C	A	A	A	
Hospital	P	P	C	P	
Nursing home	P	P	A	P	
Parks and recreation facilities	A	A	A	A	
Public parking facilities	P	C	C	C	
School	C	C	C	C	

Table 15.70.030: Schedule of Uses – Commercial/Industrial Zone Districts

(A = Allowed, C = Conditional, P = Prohibited)	B-1	CBD	C	I	Standards ¹
Residential Business Uses					
Bed and breakfast inn	C	C	C	P	
Daycare home	A	A	A	C	GMC 15.70.020(E)
Daycare school	C	C	C	C	GMC 15.70.020(E)
Daycare center	P	P	C	P	GMC 15.70.020(E)
Home occupation	A	A	A	P	GMC 15.70.020(F)
Home business	A	A	A	P	GMC 15.70.020(F)
Rooming or boarding house ²	C	C	C	P	
Residential Uses					
Personal use of marijuana	A	A	A	A	GMC 15.70.020(I)
Single-family dwelling unit ³	A	C	C	P	
Duplex Dwelling unit ³	A	C	C	P	
Multiple-family dwelling units ³	C	P	C	P	
One or more dwelling units on the same site as a commercial or industrial use ⁴	A	A ⁵	C	A	
Notes:					
1. The standards referenced herein are in addition to all other applicable standards of this <i>Land Development Code</i> .					
2. Provided county/state health code space and sanitation requirements are met.					
3. These uses refer to dwelling units which are the primary use of the property.					
4. These dwelling units shall be accessory to a commercial or industrial use.					
5. In the CBD, dwelling units on the same site as commercial uses shall only be located off the street level.					

Section 6. Section 15.70.020, Review standards applicable to particular residential uses, of the *City of Gunnison Municipal Code* is hereby amended by the addition of sub-section (I) which shall read as follows:

(I) Personal Use of Marijuana. Possessing, growing, or processing marijuana in any residential district and any structure with residential dwelling units shall be governed by the following standards.

1. Any person or family member for the purposes of this section and consistent with Article XVIII, Section 16(3)(b) of the *Colorado Constitution*, who is twenty-one years of age or older that is cultivating marijuana plants for their own use, may only do so within their primary residence or associated accessory structure.
2. Possession, growing and processing of such marijuana plants must not be perceptible from the exterior of the primary residence or accessory structure, including, but not limited to:

- a. common visual observation, including any form of signage;
 - b. unusual odors, smell, fragrances, or other olfactory stimulus; or
 - c. light pollution, glare, or brightness that disturbs the repose of another.
3. Marijuana plants shall not be grown or processed in the common areas of a multi-family or attached residential development.
 4. The use of compressed gases including, but not limited to butane, propane, and hexane, in the cultivation, production, growing and possessing of marijuana plants shall be prohibited.
 5. Cultivation, production, growing and possessing of marijuana plants shall be limited to the following space limitations:
 - a. Within a single family dwelling unit, which is defined as Group R-3 in the *International Building Code*, the aggregate area used for the production, and growing of marijuana plants shall be confined to a contiguous 75 square foot secure area.
 - b. Within a multi-family dwelling unit, which is defined as Group R-2 in the *International Building Code*, the aggregate area used for the production, and growing of marijuana plants shall be confined to a contiguous 35 square foot secure area.
 6. Notwithstanding the standards established herein, the possession, growing and processing of marijuana shall comply with all adopted City building and life-safety codes and regulations as the same may be amended from time to time.
 7. The Community Development Director shall have the authority to inspect any primary residence or associated accessory structures used for the possession, growing and processing of marijuana plants, following the provisions of Section 15.20.010 (Authority to inspect) of the *LDC*.

Section 7. Penalty. Any person, upon conviction of a violation of the provisions of this ordinance, shall be subject to a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment for not more than ninety (90) days, or both such fine and imprisonment. Each and every day, or portion thereof, during which any violation of any of the provisions of this ordinance is committed, continued, or permitted, shall be deemed a separate offense, all in accordance with Section 15.20.040 of the *City of Gunnison Municipal Code*. In addition, the City is specifically authorized to seek an injunction to discontinue the violation of any provision of this ordinance, and all remedies provided for herein shall be cumulative and not exclusive in accordance with Section 15.20.030 of the *City of Gunnison Municipal Code*.

Section 8. Severability. Should any section, clause, phrase, or provision of this ordinance be ruled invalid or unenforceable by any court of competent jurisdiction, it is hereby declared the intent of the City Council of the City of Gunnison that the remaining provisions of this ordinance shall be given full force and effect if it is possible to do so.

INTRODUCED, READ, PASSED, AND ORDERED PUBLISHED this _____ day of _____, 2013, on first reading, and introduced, read, and adopted on second and final reading this _____ day of _____, 2013.

Mayor

ATTEST:

City Clerk