

ORDINANCE NO. 2
SERIES 2011

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, AMENDING TITLE 15, THE LAND DEVELOPMENT CODE, OF THE CITY OF GUNNISON MUNICIPAL CODE PROHIBITING THE USE OF LAND WITHIN THE BOUNDARIES OF THE CITY OF GUNNISON FOR THE RETAIL SALE, DISTRIBUTION, CULTIVATION, AND DISPENSING OF MEDICAL MARIJUANA.

WHEREAS, the City Council previously adopted Ordinance No. 7, Series 2009, and Ordinance No. 2, Series 2010, imposing a moratorium on the processing and approval of all applications for permits and licenses by the City related to what were referred to as “Medical Marijuana Dispensaries” in order to allow the Colorado Legislature to enact licensing laws; and

WHEREAS, during the pendency of the moratorium ordinances, the Colorado Legislature during the 2010 legislative session considered and adopted legislation which in pertinent part added a new Article 43.3 to Title 12 of the Colorado Revised Statutes, to be known as the Colorado Medical Marijuana Code; and

WHEREAS, the Colorado Medical Marijuana Code clarifies Colorado law regarding the scope and extent of Amendment 20 to the Colorado Constitution (“Article XVIII, Section 14”), and at the same time authorizes a mechanism for the retail sale, distribution, cultivation, and dispensing of medical marijuana known as a “Medical Marijuana Center” and further authorizes licensing mechanisms known as an “Optional Premises Cultivation Operation” and a “Medical Marijuana-Infused Products Manufacturers’ License”; and

WHEREAS, the City Council intends to submit the question of whether to allow medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers within the boundaries of the City of Gunnison to the eligible electors at the next regular election of the City of Gunnison; and

WHEREAS, C.R.S. §12-43.3-106 of the Colorado Medical Marijuana Code specifically authorizes in part that the governing body of a municipality may “vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses”; and

WHEREAS, C.R.S. §12-43.3-310 of the Colorado Medical Marijuana Code further specifically authorizes a municipality in part “to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses...based on local government zoning, health, safety, and public welfare laws for the distribution of medical marijuana that are more restrictive than this article”; and

WHEREAS, C.R.S. §12-43.3-308(1)(c) of the Colorado Medical Marijuana Code also provides that the state and local licensing authorities shall not receive or act upon a new application pursuant to the Colorado Medical Marijuana Code “for a location in an area where the cultivation, manufacture, and sale of medical marijuana as contemplated is not permitted under the applicable zoning laws of the municipality, city and county, or county”; and

WHEREAS, the City Council wishes to prohibit the establishment of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused product manufacturers within the City of Gunnison pending the outcome of the ballot question and further action by the City Council;

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

Section 1. Findings and Legislative Intent. The City Council makes the following legislative findings:

A. The City Council finds and determines that the Colorado Medical Marijuana Code, C.R.S. §12-43.3-101, et seq., clarifies Colorado law regarding the scope and extent of Amendment 20 to the Colorado Constitution.

B. The City Council finds and determines that the Colorado Medical Marijuana Code specifically authorizes in part that the governing body of a municipality may “vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses.”

C. The City Council finds and determines that the Colorado Medical Marijuana Code further specifically authorizes a municipality in part “to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses... based on local government zoning, health, safety, and public welfare laws for the distribution of medical marijuana.”

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. The Colorado Medical Marijuana Code, C.R.S. §12-43.3-101, et seq.;
- 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 31-15-103, C.R.S., (concerning municipal police 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:

“Medical Marijuana” means marijuana that is grown and sold for a purpose authorized by Section 14 of Article XVIII of the Colorado Constitution.

“Medical Marijuana Center” means a person authorized to be licensed to operate a business as described in the Colorado Medical Marijuana Code that sells medical marijuana to registered patients or primary caregivers, as defined in Section 14 of Article XVIII of the Colorado Constitution, but is not a primary caregiver, and which a municipality is authorized to prohibit as a matter of law.

“Medical Marijuana-Infused Products Manufacturer” means a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business known as a Medical Marijuana-Infused Products Manufacturing License, and which a municipality is authorized to prohibit as a matter of law.

“Optional Premises Cultivation Operation” means a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business known as an optional premises grow facility in order to grow and cultivate marijuana for a purpose authorized by Section 14 of Article XVIII of the Colorado Constitution, and which a municipality is authorized to prohibit as a matter of law.

“Patient” has the meaning provided in Section 14(1)(c) of Article XVIII of the Colorado Constitution.

“Primary Caregiver” has the meaning provided in Section 14(1)(f) of Article XVIII of the Colorado Constitution.

Section 4. Uses Prohibited 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	
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	
Residential Business Uses						
Bed and breakfast inn	P	P	C	C	C	
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	
Public/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	
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 land development code.						

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	
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	
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 and recreational vehicle sales and service	P	P	C	A	
Nursery, greenhouses and garden supply	P	P	C	A	
Rental, repair and service of light motorized and nonmotorized 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	
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	
General Industrial Uses					
Bulk fuel storage facilities and wholesale sales of fuels	P	P	P	C	
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	

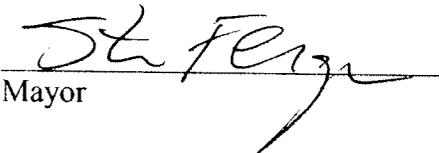
Air passenger terminal, including airline ticketing facilities and ground support facilities; food, personal service, and retail businesses within the terminal	P	P	P	A	
Aircraft sales, rental, repair, service, and storage	P	P	P	A	
Air side facilities such as runways, taxiways and aprons for the arrival 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	
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					
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 land development code.					
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. **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 7. 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.

Section 8. Repeal. Ordinance No. 7, Series 2009, and Ordinance No. 2, Series 2010, are hereby repealed on the effective date of this ordinance.

INTRODUCED, READ, PASSED, AND ORDERED PUBLISHED this 8th day of February, 2011, on first reading, and introduced, read, and adopted on second and final reading this 22nd day of February, 2011.


Mayor

(SEAL)

ATTEST:


City Clerk

Ordinance published in its entirety in the
Gunnison Country Times Newspaper
February 17, 2011