ORDINANCE NO. 7
SERIES 2015

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, AMENDING TITLE 5 GENERAL OFFENSES, CHAPTER 5.10 GENERAL OFFENSES OF THE CITY OF GUNNISON MUNICIPAL CODE, RELATED TO MARIJUANA.

WHEREAS, the Colorado Medical Marijuana Code is contained in 12-43.3-101, et seq., C.R.S.; and,

WHEREAS, the Colorado Retail Marijuana Code is contained 12-43.4-101, et. seq., C.R.S.; and,

WHEREAS, administrative regulations pertaining to both medical and retail establishments promulgated by the State Licensing Authority are contained in the Colorado Code of Regulations; and

WHEREAS, the City Council has approved Ordinance 5, Series 2015, relating to the licensing and regulation of medical and retail marijuana establishments within the City.

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

Section 1. 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., Title 12, Article 43.3;
B. The Colorado Retail Marijuana Code, C.R.S. Title 12, Article 43.4;
C. The authority granted to home rule municipalities by Article XX of the Colorado Constitution;
D. The powers contained in the City of Gunnison Home Rule Charter;
E. The Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.;
F. Part 3 of Article 23 of Title 31, C.R.S., (concerning municipal zoning powers);
G. Section 31-15-103, C.R.S., (concerning municipal police powers);
H. Section 31-15-401, C.R.S., (concerning municipal police powers); and,
I. Section 31-15-501, C.R.S., (concerning municipal authority to regulate businesses).

Section 2. Definitions. Unless otherwise defined in this Ordinance, or as may be set forth in Chapter 3, 8 and 14 of the City of Gunnison Municipal Code (GMC), or the City of Gunnison Land Development Code (LDC), the City of Gunnison incorporates the definitions for the marijuana industry as set forth in the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code, and the regulations propounded by the State Licensing Authority.

Section 3. City of Gunnison Municipal Code, Title 5, General Offenses, Chapter 5.10, General Offenses, Section 5.10.180 Possession of marijuana is hereby repealed and reenacted to read as follows:

5.10.180 Possession of marijuana

A. No person under the age of 21 who does not possess a medical marijuana card in compliance with the Colorado Revised Statutes shall possess marijuana or consume marijuana within the City.

B. No person 21 years of age or older who does not possess a medical marijuana card in compliance with the Colorado Revised Statutes shall possess more than one ounce of marijuana, except as permitted pursuant to Colorado Constitution, Article XVIII, Section 16 (3)(b).

C. No person who possess a medical marijuana card in compliance with Colorado Revised Statute shall possess more than two ounces of marijuana, except as permitted pursuant to Colorado Constitution, Article XVIII, Section 14 (4)(b).

D. Licensed Persons engaged in the transportation or movement of marijuana, in the course of doing business for a licensed marijuana establishment, are exempt from this section 5.10.080.

E. Possession of not more than one ounce of marijuana or consumption of marijuana by a person under the age of 21 is a petty offense.

F. Possession of more than one ounce but less than two ounces of marijuana is a petty offense. Possession of two ounces but less than 6 ounces of marijuana is a misdemeanor.

Section 4. City of Gunnison Municipal Code, Title 5, General Offenses, Chapter 5.10, General Offenses, Section 5.10.182 Transfer, sale and purchase of marijuana, is hereby repealed and reenacted to read as follows:

5.10.182 Unlicensed transfer, sale or purchase of marijuana

A. No person shall transfer, sell, trade, exchange, or give, with or without remuneration, any amount of marijuana to a person under the age of 21.

B. No person under the age of 21 may obtain marijuana by any means, with or without remuneration.

C. No person shall transfer, sell, trade, or exchange, with remuneration, any amount of marijuana to a person 21 years of age and older without a license.

D. No person shall give, without remuneration, more than one ounce of marijuana to a person 21 years of age and older.

E. No person 21 years of age or older may obtain more than one ounce of marijuana, with or without remuneration.

F. Restrictions placed on transferring, exchanging or giving of marijuana does not apply to persons who are in compliance with the Colorado Revised Statutes pertaining to medical marijuana.

G. The transfer, sale, trade, or exchange of marijuana in violation of this section is a misdemeanor. Obtaining marijuana in violation of this section is a petty offense.

Section 5. City of Gunnison Municipal Code, Title 5, General Offenses, Chapter 5.10, General Offenses, Section 5.10.183 Personal cultivation of marijuana, is hereby repealed and reenacted to read as follows:

5.10.183 Personal cultivation of marijuana

A. No individual shall cultivate or allow cultivation on premises under their control of more than six marijuana plants, three of which are mature flowering plants, except as allowed pursuant to Colorado Constitution, Article XVIII, Section 14 (4)(b) or Article XVIII, Section 16. The marijuana produced by such cultivation, in excess of legal possession limits, shall be maintained on the premises where grown. Marijuana cultivated by an individual shall not be sold.

B. Cultivation of more than six plants by a primary care giver, medical marijuana patient or by multiple individuals on a single property is prohibited;

1. Within a single-family dwelling unit where the aggregate area used for the production and growing of marijuana plants exceeds a contiguous 25 square-foot secure area;

2. Within the common area of a multi-family dwelling unit;

3. Within any dwelling, apartment, duplex, residence, or location where individuals reside where the aggregate area used for the production and growing of marijuana plants exceeds 25 square-foot;

4. If the property is not in compliance with the International Building Code as adopted by the City of Gunnison;

5. If the property is not in compliance, to the standard used for licensed marijuana establishments, as to odor provisions of the LDC, Section 3.15 (B)(10).

C. No person shall openly or publicly cultivate marijuana. "Openly or publicly cultivated" means the plants, lights, sounds and odors associated with cultivation are clearly visible and identifiable from a public place or cause a public nuisance.

D. No person shall cultivate marijuana except in a secure area as defined in the LDC.

E. No person shall cultivate marijuana in a residence where a person under twenty-one years of age lives unless the cultivation area is in a secure area denying the underage person access.

F. No person shall cultivate marijuana in a residence visited by persons under twenty-one years of age without ensuring that access to the cultivation site is reasonably restricted preventing access for the duration of the underage persons visit.

G. Violation of any part of this section is a misdemeanor.

Section 6. City of Gunnison Municipal Code, Title 5, General Offenses, Chapter 5.10, General Offenses, is hereby amended to add a new Section 5.10.185, Unlawful acts related to licensed commercial marijuana establishments.

5.10.185, Unlawful acts related to licensed commercial marijuana establishments

A. It is unlawful to allow an unauthorized person into a limited-access area.

B. It is unlawful to allow a person licensed pursuant to state statute to be within a limited-access area without the person's license badge displayed as required by state statute, except as provided in section 12-43.3-701 and 12-43.4-701, C.R.S.

C. It is unlawful to sell or permit the sale of marijuana or marijuana products to a person under twenty-one years of age who does not possess a medical marijuana card in compliance with the Colorado Revised Statutes.

D. It is unlawful to sell or permit the sale of medical marijuana or medical marijuana products to a person not authorized to purchase medical marijuana pursuant to Colorado Statute.

E. It is unlawful to present false, altered or fraudulent identification or documents when purchasing marijuana or marijuana products.

F. It is unlawful for a person under twenty-one years of age to purchase marijuana, marijuana concentrate or marijuana products who does not possess a medical marijuana card in compliance with the Colorado Revised Statutes.

G It is unlawful for a person not authorized to purchase medical marijuana or medical marijuana products to purchase from a medical marijuana business.

H. It is unlawful to sell more than a quarter of an ounce of retail marijuana and no more than a quarter of an ounce equivalent of a retail marijuana product during a single transaction to a nonresident of Colorado.

I. It is unlawful to sell more than one ounce of retail marijuana and no more than an ounce equivalent of a retail marijuana product during a single transaction.

J. It is unlawful to sell, serve, or distribute marijuana, marijuana concentrate or products containing marijuana except during the hours provided for in the City of Gunnison Land Development Code.

K. It is unlawful for a person to consume marijuana or products containing marijuana or marijuana concentrate in a licensed marijuana establishment, and

it is unlawful for a marijuana licensee to allow marijuana or products containing marijuana or marijuana concentrate to be consumed upon its licensed premises.

L. It is unlawful to have on any licensed premises any marijuana, marijuana products, or marijuana paraphernalia that shows evidence of marijuana usage or marijuana products having been consumed or partially consumed.

M. It is unlawful for any person licensed to sell marijuana or marijuana products to:

(1) Display any signs that are inconsistent with the LDC;

(2) To use advertising material that is misleading, deceptive, or false, or that is designed to appeal to minors

N. All sales, transfers and distribution of marijuana by a licensed marijuana establishment shall occur only upon licensed premises, and the licensee shall be strictly prohibited from delivery of marijuana to any person at any other location.

O. The transfer, sale, trade, or exchange of marijuana in violation of this section is a misdemeanor. Obtaining marijuana in violation of this section is a petty offense.

Section 7. City of Gunnison Municipal Code, Title 5, General Offenses, Chapter 5.10, General Offenses, is hereby amended to add a new Section 5.10.187, Immunity for persons who suffer or report an emergency drug or alcohol overdose event.

5.10.187, Immunity for persons who suffer or report an emergency drug or alcohol overdose event.

A. A person shall be immune from criminal prosecution for an offense under Sections 5.10.160, 5.10.180, 5.10.181, 5.10.182(A), (B) or (D), and 5.10.184 of this Chapter:

1. The person reports in good faith an emergency drug or alcohol overdose event to a law enforcement officer, to the 911 system, or to a medical provider;

2. The person remains at the scene of the event until a law enforcement officer or an emergency medical responder arrives or the person remains at the facilities of the medical provider until a law enforcement officer arrives;

3. The person identifies himself or herself to, and cooperates with, the law enforcement officer, emergency medical responder, or medical provider; and

4. The offense arises from the same course of events from which the emergency drug or alcohol overdose event arose.

B. The immunity described in subsection 1 of this section also extends to the person who suffered the emergency drug or alcohol overdose event.

C. The immunity described in subsection 1 of this section does not apply to a licensee or employee or agent of a marijuana establishment working within the scope of their employment.

Section 8. City of Gunnison Municipal Code, Title 5, General Offenses, Chapter 5.10, General Offenses, is hereby amended to add a new Section 5.10.188, Relationship to Colorado Retail Marijuana Code, Colorado Medical Marijuana Code and Colorado Code of Regulations.

5.10.188, Colorado Retail Marijuana Code, Colorado Medical Marijuana Code and Colorado Code of Regulations (CCR)

A. Except as otherwise specifically provided the City of Gunnison Ordinances related to marijuana incorporates the requirements and procedures set forth in the Colorado Retail Marijuana Code, the Colorado Medical Marijuana Code and the Colorado Code of Regulations. In the event of any conflict between the provisions of this section and the provisions of the Colorado Retail Marijuana Code, Colorado Medical Marijuana Code and Colorado Code of Regulations or any other applicable state or local law, the more restrictive provision, article or section shall be used.

Section 9. If any section of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or the constitutionality of the remaining portions of the ordinance. The City Council of the City of Gunnison hereby declares that it would have passed this ordinance, and each section thereof, irrespective of the fact that any one or more sections be declared unconstitutional.

INTRODUCED, READ, PASSED, AND ORDERED PUBLISHED this 14th day of June, 2015, on first reading, and introduced, read, and adopted on second and final reading this 28th day of July, 2015.

Richard Hagan
Mayor

(SEAL)

ATTEST:

Gail A Davidson
City Clerk

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