

ORDINANCE NO. 6
SERIES 2015

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO AMENDING TITLE 5 OF THE CITY OF GUNNISON MUNICIPAL CODE, ESTABLISHING GENERAL OFFENSES RELATED TO THE SALE, CULTIVATION, MANUFACTURING AND TESTING OF MARIJUANA AND MARIJUANA PRODUCTS BY LICENSED AND UNLICENSED INDIVIDUALS.

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, in 2010, electors of the City of Gunnison voted to prohibit the operation of medical marijuana establishments within the City; and,

WHEREAS, in 2011, the City Council adopted Ordinance 2, Series 2011, prohibiting the establishment of Medical Marijuana Centers, Optional Premises Cultivation Operations and Medical Marijuana-Infused Product Manufacturers within the City of Gunnison; and,

WHEREAS, in 2013, the City Council of the City of Gunnison, passed Ordinance No. 6, Series 2013, prohibiting the operation of retail marijuana establishments within the City; and,

WHEREAS, since the action of voters in 2010 and the City's action in 2013, regulations regarding the marijuana industry, both medical and retail, have been developed and refined by the State legislature, and members of the public have requested that the City determine whether to continue the prohibition on medical and retail marijuana establishments within the City; and,

WHEREAS, on November 4, 2014, the City of Gunnison put the question to registered electors of the City of Gunnison, whether to allow medical marijuana establishments within the City, whether to allow retail marijuana establishments in the City, and whether to allow the sale of medical or retail marijuana within the City would be subject to local taxation; and,

WHEREAS, voters approved the establishment of medical and retail marijuana establishments within the City limits, as well as taxation on sales of the same, subject to such rules, regulations, limitations and restrictions as may be adopted by City Council; and,

WHEREAS, both the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code specifically authorize a local jurisdiction which is going to allow the medical and retail marijuana establishments within its boundaries, to adopt its own time, place and manner restrictions, as well

as other local regulations, which rules and regulations may be stricter than those established by the State of Colorado; and

WHEREAS, the City Council has approved Ordinance 5, Series 2015 authorizing the licensing and regulating of medical and retail related commercial businesses.

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), 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. Possession of not more than two ounces of marijuana by a person under the age of 21 is a petty offense~~

- 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. Possession of more than one ounce but less than two ounces of marijuana by a person 21 years or older is a petty offense~~
- D. Individual engaged in the transportation or movement of marijuana, in the course of doing business for a licensed marijuana facility are exempt from this section 5.10.080.
- E. Possession of not more than ~~two~~ one ounces of marijuana or consumption of marijuana by a person under the age of 21 is a petty offense. Possession of more than one ounce but less than two ounces of marijuana ~~by a person 21 years or older in violation of this section~~ is a petty offense. Possession of two ounces but less than 6 ounces of marijuana ~~by a person, regardless of age, in violation of this section~~ 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 commercially cultivate marijuana, manufacture marijuana products, sell marijuana or accessories or operate a marijuana test facility until such time as the city of Gunnison adopts rules, regulations and standards addressing the commercial cultivation of marijuana, the manufacturing of marijuana products, the operation of marijuana test facilities, or the retail sales of marijuana and marijuana products and accessories, whether for recreational or medical purposes.~~
- AB. 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.
- BC. No person under the age of 21 may obtain marijuana by any means, with or without remuneration.
- CD. 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.
- DE. No person shall give, without remuneration, more than one ounce of marijuana to a person 21 years of age and older.
- EF. No person 21 years of age or older may obtain more than one ounce of marijuana, with or without remuneration.

- FG. Restriction placed on transferring, exchanging or giving of marijuana does not apply to individuals who are in compliance with the Colorado Revised Statutes pertaining to medical marijuana.
- GH. 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 21 years of age or older shall possess more than six marijuana plants, three of which are mature flowering plants. The marijuana produced by such cultivation, in excess of one ounce, shall be maintained on the premises where grown. Marijuana cultivated by an individual shall not be sold.~~

- A. It is unlawful for a person to knowingly cultivate, grow, or produce a marijuana plant or knowingly allow a marijuana plant to be cultivated, grown, or produced on land that the person owns, occupies, or controls.
- B. ~~Cultivation shall be conducted in an enclosed space which shall be locked.~~ Cultivation shall be conducted in compliance with city building and life/safety codes as the same may be amended from time to time.
- 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. Cultivation shall only occur on real property over which the plants’ owner has control.~~
- E. It is not a violation of this subsection A. if:
 - 1. The person is lawfully cultivating medical marijuana pursuant to the authority granted in section 14 of article XVIII of the state constitution;
 - 2. The person is lawfully cultivating marijuana in an enclosed and locked space pursuant to the authority granted in section 16 of article XVIII of the state constitution; except that, if the cultivation area is located in a residence and:
 - a. A person under twenty-one years of age lives at the residence, the cultivation area itself must be enclosed and locked; and
 - b. If no person under twenty-one years of age lives at the residence,

the external locks of the residence constitutes an enclosed and locked space. If a person under twenty-one years of age enters the residence, the person must ensure that access to the cultivation site is reasonably restricted for the duration of that person's presence in the residence.

~~—E.F.~~ Violation ~~of any part of this section~~ involving up to six plants 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. Allowed unauthorized person into a limited-access area.
- B. 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 of Colorado Revised statute.
- C. It is unlawful to sell or permit the sale of marijuana or marijuana products to a person under twenty-one years of age.
- 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. Person presented false, altered or fraudulent identification or documents at time of purchase
- F. Person under twenty-one years of age purchased marijuana, marijuana concentrate or marijuana products. Persons' in compliance with state medical marijuana provisions are exempt.
- G. Person not authorized to purchase medical marijuana or medical marijuana products purchased 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, serve, or distribute marijuana, marijuana concentrate or products containing marijuana except during the hours provided for in Municipal Ordinance.
- J. 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.

- K. 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.
- L. It is unlawful for any person licensed to sell marijuana or marijuana products to:
 - (1) Display any signs that are inconsistent with Gunnison Ordinances;
 - (2) To use advertising material that is misleading, deceptive, or false, or that is designed to appeal to minors
- M. All sales, transfers and distribution of marijuana by a licensed marijuana business shall occur only upon licensed premises, and the licensee shall be strictly prohibited from delivery of marijuana to any person at any other location.

Section 7. City of Gunnison Municipal Code, Title 5, General Offenses, Chapter 5.10, General Offenses, is hereby amended to add a new Section 5.10.186, Extraction of marijuana concentrate prohibited.

5.10.186 Extraction of Marijuana Concentrate Prohibited.

- A. Except as provided in paragraph C of this section, it shall be unlawful for any person to process or manufacture marijuana concentrate anywhere in the city.
- B. Except as provided in paragraph C of this section, it shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises anywhere in the city to allow marijuana concentrate to be processed or manufactured on the premises.
- C. It shall not be an offense under 5.10.186 A or 5.10.186 B if:
 - 1. The production of marijuana concentrate is done in a licensed marijuana manufacturing facility and in compliance with all applicable state and municipal ordinances, and all rules and regulations promulgated thereunder, including any and all necessary permits; or,
 - 2. The production of marijuana concentrate is done by means of water-based extraction or food-based extraction methods, and is done in full compliance with any and all other applicable state and municipal ordinances, and all rules and regulations promulgated thereunder, including any and all necessary permits

- (a) For purposes of this section:
 - (1). “Food-based extraction” means producing marijuana concentrate by extracting cannabinoids from marijuana through the use of propylene glycol, glycerin, butter, olive oil, or other typical cooking fats.
 - (2). “Water-based extraction” means producing marijuana concentrate by extracting cannabinoids from marijuana through the use of only water, ice or dry ice.

D. Violation of this section is a misdemeanor.

Section 8. City of Gunnison Municipal Code, Title 5, General Offenses, Chapter 5.10, General Offenses, is hereby amended to add a new Section 5.10.187, 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 described 18-1-711 (3) Colorado Revised Statute which is comparable to a Municipal Ordinance violation if:
 - 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.

Section 9. 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 Revised Statute.

5.10.188, Relationship to Colorado Retail Marijuana Code, Colorado Medical Marijuana Code and Colorado Revised Statute

- 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 Colorado Revised Statutes (C.R.S.). 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 C.R.S. or any other applicable state or local law, the more restrictive provision, article or section shall be used.