

**TOWN OF MOFFAT, COLORADO
ORDINANCE NO. 2018-4**

**AN ORDINANCE CONCERNING THE LICENSING AND REGULATION OF
MEDICAL MARIJUANA DISPENSARIES**

NOW THEREFORE BE IT ORDAINED by the Board of Trustees of the Town of Moffat, Colorado:

Section 1. Purpose and legislative intent. Although the possession and use of marijuana is and remains unlawful under Federal law, Section 14 of Article XVIII of the Colorado Constitution (“Amendment 20”) provides an exception to prosecution under state criminal laws when marijuana is possessed and used for medicinal purposes by a patient who has been diagnosed with a debilitating medical condition by the patient’s primary caregiver. Amendment 20 does not, however, contain any provision for the lawful sale or distribution of marijuana to patients and, to date, the State of Colorado has failed to adopt laws or regulations to clearly explain how and whether marijuana may be lawfully sold or otherwise distributed to patients. As a result of this ambiguity in the State law, unregulated medical marijuana dispensaries are beginning to proliferate in the San Luis Valley and elsewhere in Colorado. The purpose of this Ordinance is to license and regulate medical marijuana dispensaries in the interest of public health, safety and general welfare. In particular, this Ordinance is intended to regulate the sale and distribution of marijuana in the interest of patients who qualify to obtain, possess and use marijuana for medical purposes under Amendment 20, while promoting compliance with other state laws that prohibit trafficking in marijuana for non-medical purposes. Nothing in this Ordinance is intended to promote or condone the sale, distribution, possession or use of marijuana in violation of any applicable law. Compliance with the requirements of this Ordinance shall not provide a defense to criminal prosecution under any applicable law.

Section 2. Definitions. The following words and phrases, when used in this Ordinance, shall have the meanings respectively assigned to them:

- (A) *Clerk* means the Town Clerk, or the Clerk’s duly authorized representative.
- (B) *Marijuana* shall have the same meaning as the term “usable form of marijuana” as set forth in Article XVIII, Section 14(1)(i) of the Colorado Constitution, or as may be more fully defined in any applicable state law or regulation.
- (C) *Medical Marijuana Dispensary* means a business that sells or otherwise distributes marijuana through one or more primary care-givers for medical use, along with any cultivation of marijuana associated with such sale or distribution. The term “medical marijuana dispensary” shall not include the private possession and medical use of marijuana by an individual patient or caregiver to the extent permitted by Article XVIII, Section 14 of the Colorado Constitution, and any other applicable state law or regulation.
- (D) *Medical use* shall have the same meaning as is set forth in Article XVIII, Section 14 (1)(b) of the Colorado Constitution, or as may be more fully defined in any applicable state law or regulation.

- (E) *Parent* shall have the same meaning as set forth in Article XVIII, Section 14(1)(c) of the Colorado Constitution, or as may be more fully defined in any applicable state law or regulation.
- (F) *Patient* shall have the same meaning as is set forth in Article XVIII, Section 14(1)(d) of the Colorado Constitution, or as may be more fully defined in any applicable state law or regulation.
- (G) *Primary care-giver* shall have the same meaning as is set forth in Article XVIII, Section 14(1)(f) of the Colorado Constitution, or as may be more fully defined in any applicable state law or regulation.
- (H) *School or child care establishment* means any public or private school providing instruction to students in kindergarten through grade twelve; any public or private schools or pre-schools that provide preparatory schooling for children of any age younger than the state age of mandatory attendance; or any commercial child care establishment.

Section 3. License Required.

- (A) On and after June 1, 2010 it shall be unlawful for any person to sell or otherwise distribute any marijuana for medical use in Moffat without obtaining a license to operate as a medical marijuana dispensary pursuant to the requirements of this Ordinance. This licensing requirement shall apply regardless of whether or not a medical marijuana dispensary has commenced operation prior to June 1, 2010. Any medical marijuana dispensary that has commenced operation prior to June 1, 2010 and for which a license application has been filed pursuant to this Ordinance prior to that date may continue in operation pending final action by the Town Clerk on the application. Any such preexisting medical marijuana dispensary that does not or cannot meet the licensing requirements set forth in this Ordinance and therefore fails to obtain a license shall be terminated immediately upon such denial.
- (B) The license requirement set forth in this Ordinance shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state, or Town law including, by way of example, a retail sales tax license, a retail food establishment license if applicable, any applicable zoning or building permit.

Section 4. General licensing procedures.

Except as otherwise specifically provided in this Ordinance, the general procedures and requirements for issuance and administration of business licenses by the clerk shall apply to medical marijuana dispensary licenses. To the extent there is any conflict between the provisions of this Ordinance and general business licensing ordinances, the provisions of this Ordinance shall control.

Section 5. Application

- (A) Application for a medical marijuana dispensary license shall be made to the Clerk upon forms provided by the Clerk for that purpose. In addition to the

information required for a regular business license, the application shall include the following information:

- (1) Name and address of the owner or owners of the medical marijuana dispensary in whose name the license is proposed to be issued.
- (2) If the owner is a corporation, the name and address of any officer or director of the corporation, and of any person holding ten percent (10%) or more of the issued and outstanding capital stock of the corporation.
- (3) If the owner is a partnership, association or company, the name and address of any member holding ten percent (10%) or more of the interest therein.
- (4) Name and address of any manager or managers of the medical marijuana dispensary, if the manager is proposed to be someone other than the owner.
- (5) A statement of whether or not any of the foregoing persons have:
 - a. Been denied an application for a medical marijuana dispensary license pursuant to this Ordinance or any other similar state or local licensing law, or had such a license suspended or revoked.
 - b. Been convicted of a felony or has completed any portion of a sentence due to a felony conviction within the preceding five (5) years.
- (6) Proof of ownership or legal possession of the licensed premises for the term of the proposed license. If the licensed premises will be leased, the application shall include written consent by the owner of the property to the licensing of the premises for a medical marijuana dispensary.
- (7) An operating plan for the proposed medical marijuana dispensary including the following information:
 - a. A description of the products and services to be provided by the medical marijuana dispensary, including an indication of whether or not the dispensary proposed to engage in the retail sale of food for human consumption.
 - b. A floor plan, drawn to scale, showing the layout of the medical marijuana dispensary and the principal uses of the floor area depicted therein, including a depiction of where any services other than the dispensing of medical marijuana are proposed to occur on the licensed premises.
 - c. A security plan indicating how the applicant intends to adequately comply with the requirements of Section 8(g).

- (8) An area map, drawn to scale, indicating, within a radius of one-quarter mile from the boundaries of the property upon which the medical marijuana dispensary is located, the proximity of the property to any school or child care establishment, to any other medical marijuana dispensary, or to any residential zone district.
- (B) Any application for a medical marijuana dispensary permit shall be accompanied by the application fee, criminal background check fee, and the annual business license fee.
- (C) Upon receipt of an application for a medical marijuana dispensary license, the Clerk shall circulate the application to the Town Marshall or the Town's designated law enforcement agency to determine whether the proposed dispensary is in full compliance with any and all laws, rules and regulations.
- (D) The Town Marshall or the Town's designated law enforcement agency may perform a criminal background investigation for each applicant or manager to determine compliance with Section 6 or may use State or Federal documentation provided with the application.
- (E) The Clerk shall perform an inspection of the proposed licensed premises to determine compliance with any applicable requirement of this Ordinance.
- (F) The Clerk shall deny any application for a license that is not in full compliance with this Ordinance, any other applicable town law or regulation, or any state law or regulation governing medical marijuana dispensaries. The Clerk shall also deny any application that contains any false or incomplete information.

Section 6. Persons prohibited as licensees and managers.

- (A) No license provided by this Ordinance shall be issued to or held by:
 - (1) Any person who, in the immediately preceding twelve (12) months had a medical marijuana dispensary license revoked by the Town.
 - (2) Any person who has been convicted of a felony or has completed any portion of a felony sentence within the preceding five (5) years, with this prohibition applying to:
 - a. Any owner who is a natural person.
 - b. If the owner is a corporation, any officer or Clerk of the corporation, and any person holding ten percent (10%) or more of the issued and outstanding capital stock of the corporation.
 - c. If the owner is a partnership, association or company, any member holding ten percent (10%) or more of the interest therein.
- (B) No licensed premises shall be managed by any person who has been convicted of a felony or has completed any portion of a felony sentence within the preceding five (5) years.

Section 7. Prohibited Locations

- (A) All medical marijuana dispensary licenses shall be issued for a specific location which shall be considered the licensed premises. All sales or distribution of medical marijuana shall be made directly by a primary care-giver to a patient upon the licensed premises, or via personal delivery of the medical marijuana by the primary care giver from the licensed premises to the patient at the patient's residence.
- (B) No Medical marijuana license shall be issued for the following locations:
 - (1) In any residential zone district as defined by the zoning code of the town, or in any other location where retail sales are prohibited by the zoning code.
 - (2) Within five hundred (500) feet of any school or child care establishment, with the distance computed by direct measurement from the nearest property line of the land used for school or child care purposes to the nearest portion of the building in which the medical marijuana dispensary is located, using a route of direct pedestrian access. This restriction shall not apply to any applicant who submits a license for a medical marijuana dispensary prior to June 1, 2010 for any location where the same applicant had commenced operation of a dispensary on or before January 1, 2010, as evidenced by the fact that the applicant submitted an application for a retail sales license for the dispensary which was date-stamped as being received by the Clerk on or before January 1, 2010, and thereby obtained a retail sales license for that location bearing an effective date of January 1, 2010, or earlier.
- (C) Medical marijuana shall be prohibited in all zoning districts in the Town of Moffat, except commercial districts. Operation in commercial districts shall be allowed by conditional review use, and shall be subject to all applicable procedures and law governing conditional review uses in the Town. There shall be a rebuttable presumption that two operating medical marijuana dispensaries in the Town of Moffat are adequate to serve the medical marijuana patients in and around the Town, given the Town and surrounding community's overall population. Anyone seeking a license for a medical marijuana dispensary when there are two or more medical marijuana dispensaries currently operating in the Town shall be required to present sufficient evidence to overcome this rebuttable presumption, otherwise the license application will be denied.

Section 8. Requirements related to licensed premises.

- (A) No marijuana shall be smoked, eaten or otherwise consumed or ingested on the licensed premises.
- (B) No person under eighteen years of age shall be permitted on the licensed premises, unless the person has been qualified to possess marijuana for medical use in accordance with Article XVIII, Section 14(6) of the Colorado Constitution, and the person is accompanied by a parent.

- (C) The name and contact information for the owner or owners and any manager of the medical marijuana dispensary shall be conspicuously posted in the dispensary.
- (D) Any and all cultivation, processing, storage, display, sales or other distribution of marijuana shall occur within an enclosed building and shall not be visible from the exterior of the building.
- (E) No licensed premises shall be managed by any person other than the owner or the manager listed on the application for the license.
- (F) The medical marijuana dispensary shall be closed to the public, and no sale or other distribution of marijuana shall occur upon the licensed premises or via delivery from the licensed premises between the hours of 9:00 p.m. and 7:00 a.m.
- (G) The licensed premises shall be monitored and secured 24-hours per day including, at a minimum, the following security measures:
 - (1) Installation and use of a safe for overnight storage of any processed marijuana, and cash on the licensed premises, with the safe being incorporated into the building structure or securely attached thereto.

Section 9. Compliance with state law.

- (a) To the extent the state has adopted or adopts in the future any additional or stricter law or regulation governing the sale or distribution of marijuana for medical use, the additional or stricter regulation shall control the establishment of operation of any medical marijuana dispensary in the town. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any license under this Ordinance, and non-compliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.
- (b) Any medical marijuana dispensary licensed pursuant to this Ordinance may be required to demonstrate, upon demand by the Clerk, or by law enforcement officers, that the source and quantity of any marijuana found upon the licensed premises is in full compliance with any applicable state law or regulation.
- (c) If the state prohibits the sale or other distribution of marijuana through medical dispensaries, any license issued pursuant to this Ordinance shall be deemed to be immediately revoked by operation of law, with no ground for appeal or other redress on behalf of the licenses.
- (d) The issuance of any license pursuant to this Ordinance shall not be deemed to create an exception, defense, or immunity to any person in regard to any potential criminal liability the person may have for the cultivation, possession, sale, distribution, or use of marijuana.

Section 10. Medical marijuana dispensaries License Fees.

Application and license fees for medical marijuana dispensaries are as follows:

- (1) New License Application fee... Per Town of Moffat Business License Application and Renewal \$25 plus \$2,500.00 (\$2,500 paid to the State accompanying other State fees to be reimbursed by State of Colorado to the Town of Moffat).
- (2) Annual License renewal fee... Per Town of Moffat Business License Application and Renewal \$1,500.
- (3) Application to transfer the location of the license, change principals, modify the licensed premises or otherwise amend, change or alter an existing license..... \$1,500
- (4) Late Fee Renewal..... \$500
- (5) Any other cost incurred by the Town associated with processing the application, such as costs for background checks, inspections, and attorney fees..... Actual Costs

The License fees set forth in this section may be amended in the future by resolution. The license fee shall be refunded if the application is denied.

Section 11. Violations of Ordinance

Any person convicted of operating a medical marijuana dispensary in violation of this Ordinance shall pay a fine of up to \$300 per day, with every day of violation to constitute a separate and continuing violation. For purposes of violations, the manager and/or owner of a corporation or other business entity shall be deemed to be the responsible party for paying fines associated with violations of this Ordinance.

This Ordinance, 2018-4 supersedes all previous ordinances: #2-2010, #2016-5, and #2017-3.

FIRST READ on this 2nd day of October 2018.

SECOND READING and ADOPTED on this _____ day of November, 2018.

TOWN OF MOFFAT, COLORADO

By: Patricia Reigel, Mayor

ATTEST:

Sarah Van Horn, Town Clerk

[SEAL]

CERTIFICATION

I hereby certify that the above Ordinance was introduced, read in full, on October 2, 2018 and then approved and adopted at the regular meeting of the Board of Trustees of the Town of Moffat, Colorado on the November 6, 2018, and published by posting at the following locations: Moffat Post Office, Moffat Town Hall and the Mirage Coffee Shop on September 25, 2018 and October 30, 2018.

Sarah Van Horn, Town Clerk