

ORDINANCE 2014 - 01
SAN JUAN COUNTY
FOR LICENSURE OF RETAIL AND MEDICAL MARIJUANA ESTABLISHMENTS

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SAN JUAN
COUNTY**

PREAMBLE

WHEREAS, on November 7, 2000 the electorate of the State of Colorado approved Amendment 20 and on November 6, 2012, the electorate of the State of Colorado approved Amendment 64; and

WHEREAS, Section 14, article XVIII of the Colorado Constitution permits the use of medical marijuana by persons suffering from debilitating medical conditions. Further, to enact, restrict, and enforce the state constitution, the General Assembly enacted the Colorado Medical Marijuana Code, article 43.3 of title 12 C.R.S.

WHEREAS, Section 16, article XVIII of the Colorado Constitution permits personal use of marijuana by persons aged 21 years and older under Colorado law. Further, to enact, restrict, and enforce the state constitution, the General Assembly enacted the Colorado Retail Marijuana Code, article 43.4 of title 12, C.R.S. In addition, the Colorado Department of Revenue adopted 1 CCR 212-2, Series 100 through 1400, Retail Marijuana Rules. The Colorado Revised Marijuana Code and the Retail Marijuana Rules authorize counties and municipalities to determine whether to permit, as a matter of state law, certain retail marijuana businesses within their jurisdictions; and

WHEREAS, The purpose of these regulations is to authorize licensing in unincorporated San Juan County as provided in §§ 12-43.3-101, 12-43.3-301(2)(a), 12-43.4-104(3) and 12-43.4-301, C.R.S., as amended; to establish specific standards and procedures for local licensing of marijuana-related business and establishments; and to protect the health, safety, and welfare of the residents and consumers of San Juan County by prescribing the manner in which marijuana businesses can be conducted in the county. By enacting these regulations, San Juan County does not intend to encourage or promote the establishment of any business or operation, or the commitment of any act, that constitutes or may constitute a violation of state or federal law. As of the date of the enactment of these regulations, the use, possession, distribution, and sale of marijuana is illegal under Federal law and those who engage in such activities do so at their own risk of criminal prosecution; and

WHEREAS, San Juan County has determined that permitting of Retail and Medical Marijuana operations is consistent with the objectives expressed by the electorate of San Juan County as demonstrated by the approval of Amendment 20 and Amendment 64; and

WHEREAS, the permitting and regulating of Retail and Medical Marijuana operations is new to San Juan County and to the State of Colorado and therefore these regulations shall be reviewed on an annual basis to determine that they are adequate to protect the health, safety and welfare of the citizens of San Juan County without be overly burdensome on Retail or Medical Marijuana operations.

FURTHERMORE: the U.S. Department of Justice issued a memorandum for all United States attorneys on August 29, 2013, titled "Guidance Regarding Marijuana Enforcement". The Guidance identifies the following eight priorities for marijuana enforcement matters that San Juan County also deems as priorities:

- Preventing the distribution of marijuana to minors.
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels.
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states.
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity.
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana.
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use.
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands.
- Preventing marijuana possession or use on federal property

I. Title

This Ordinance shall be known and may be cited as the "San Juan County Ordinance for Licensure of Retail and Medical Marijuana Establishments."

II. Authority

This Ordinance is authorized by:

Colorado Constitution Article XVIII, Section 16, commonly referred to as "Amendment 64."

Colorado Revised Statutes §12-43.3-101, *et seq.*; §12-43.4-101 *et seq.*; §29-20-104(1)(h); §§30-28-111(1) and 112; §30-28-115(1); and §30-11-106(1)(e).

Colorado Code of Regulations 1CCR 212-2 (Emergency Rules Related to the Colorado Retail Marijuana Code).

Colorado Medical Marijuana Code, Article 43.3 of Title 12, C.R.S.

III. Intent and Purpose

A. The intent and purpose of this Ordinance is to regulate and control the licensing of Retail and Medical Marijuana Establishments and to regulate and control the cultivation, testing, sale, use in manufacturing and distribution of Retail and Medical Marijuana by these

establishments in unincorporated San Juan County in order to promote the efficient use of law enforcement resources, minimize the market for unlawful marijuana, and enhance revenue.

B. This Ordinance shall be deemed an exercise of the police powers of San Juan County as a political subdivision of the State for the protection of the economic and social welfare and the health, peace and morals of the people of San Juan County.

IV. Applicability

This Ordinance applies in unincorporated San Juan County.

V. Definitions

Unless otherwise defined herein, the terms in this Chapter shall have the same meaning as set forth in Sections 14 and 16 of Article XVIII of the Colorado Constitution, Article 43.3 and Article 43.4 of Title 12, C.R.S. and any rules promulgated pursuant thereto. The following words and phrases, when used in this Chapter, shall have the meanings respectively assigned to them:

“Board”: The Board of County Commissioners of San Juan County, Colorado.

“Criminal Justice Agency”: Any federal, state, county or municipal court or any governmental agency or subunit of such agency that performs the administration of criminal justice pursuant to a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice.

“License”: A License to operate a Retail or Medical Marijuana Store, a Retail or Medical Marijuana Cultivation Facility, a Retail or Medical Marijuana Products Manufacturing Facility License or a Retail or Medical Marijuana Testing Facility License pursuant to this Ordinance.

“Licensed Premises”: The premises specified in an application for a License under this Ordinance, which are owned or in possession of the Licensee and within which the Licensee is authorized to operate a Retail or Medical Marijuana Store in accordance with this Ordinance.

“Licensee”: A person designated as a holder of a Retail or Medical License issued pursuant to this Ordinance.

“Local Licensing Authority”: The Board of County Commissioners is the designated Authority.

“Medical Marijuana” Marijuana or Marihuana as defined in Section 14 of Article XVIII of the Colorado Constitution and the Colorado Medical Marijuana Code.

“Medical Marijuana Establishment”: A Medical Marijuana Center, Medical Marijuana Cultivation Facility, Medical Marijuana Manufacturer, or Medical Marijuana Testing Facility.

“Medical Marijuana Center”: A Person licensed to purchase marijuana from medical marijuana cultivation facilities and marijuana products from medical marijuana product manufacturing facilities and to sell medical marijuana and medical marijuana products to consumers with valid medical marijuana cards.

“Person”: A natural person, partnership, association, company, corporation, limited liability company, or organization; except that “Person” does not include any governmental organization.

“Premises”: A distinctly identified and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

“Retail Marijuana”: Marijuana or Marihuana as defined in Section 16 (2)(f) of Article XVIII of the Colorado Constitution that is cultivated, manufactured, distributed, or sold by a Licensed Retail Marijuana Establishment.

“Marijuana Cultivation Facility”: A Person licensed to cultivate, prepare, and package marijuana and sell marijuana to Retail or Medical Marijuana Stores, to Marijuana Product Manufacturing Facilities, and to other Marijuana Cultivation Facilities, but not to consumers.

“Retail Marijuana Establishment”: A Retail Marijuana Store, Retail Marijuana Cultivation Facility, Retail Marijuana Manufacturer, or Retail Marijuana Testing Facility.

“Marijuana Product Manufacturing Facility”: A Person 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 or medical marijuana stores, but not to consumers.

“Retail Marijuana Store”: A Person licensed to purchase marijuana from retail marijuana cultivation facilities and marijuana products from retail marijuana product manufacturing facilities and to sell retail marijuana and retail marijuana products to consumers.

“Marijuana Testing Facility”: An entity licensed to analyze and certify the safety and potency of marijuana. Marijuana Testing Facilities includes only fixed structures/buildings and does not include mobile facilities that move from place to place.

Any words or terms used but not otherwise defined in this Ordinance shall have the meaning set forth in Amendment 64 and the Colorado Retail and Medical Marijuana Code.

VI. License

A. License Required

1. No Person shall operate a Retail or Medical Marijuana Establishment without first having obtained a Retail Marijuana Store, Medical Marijuana Center, Retail or Medical Marijuana Cultivation Facility, Retail or Medical Marijuana Products Manufacturing

Facility or Retail or Medical Marijuana Testing Facility, License as applicable ("License"). Each License shall be for a specifically named Person or Persons for one Premise.

2. The License issued pursuant to this Ordinance shall specify the date of issuance, the period for which it is valid, the name of the Licensee, the premises licensed, and the product that may be sold, grown, manufactured or tested. The License shall be conspicuously placed at all times on the Licensed Premises.

B. Classes of Licenses

The Board is authorized to issue the following classes of Licenses for the purpose of regulating the cultivation, testing, manufacture, distribution and sale of Retail or Medical Marijuana:

1. Retail Marijuana Store License
2. Medical Marijuana Center License
3. Retail Marijuana Cultivation Facility License
4. Medical Marijuana Cultivation Facility
5. Retail Marijuana Products Manufacturing Facility License
6. Medical Marijuana Products Manufacturing Facility License
7. Retail Marijuana Testing Facility License
8. Medical Marijuana Testing Facility License

C. Term of License

A License issued under this Ordinance shall be valid for one year from the date of issuance unless earlier revoked or suspended.

VII. Administration

A. The Board of County Commissioners is the designated Local Licensing Authority for purposes of this Ordinance.

B. This Ordinance shall be implemented and administered by the San Juan County Land Use Administrator ("Administrator"). The Board shall appoint an officer or employee of San Juan County to serve as the Administrator.

VIII. Retail and Medical Marijuana Establishment Operational Standards

A. All Retail Marijuana Establishments located within the unincorporated area of San Juan County shall be operated in full compliance with all applicable standards set forth in the Retail Marijuana Code, the Medical Marijuana Code, the Retail and Medical Marijuana Regulations, and these Local Standards. All Applicants and Licensees must meet the following Standards:

1. Retail and Medical Marijuana Establishments are a Use Subject to Review within the unincorporated San Juan County and subject to the full compliance of the San Juan County Zoning and Land Use Regulation.
2. Retail and Medical Marijuana Establishments shall be located in the Economic Corridors as defined in the Town of Silverton and San Juan County Master Plan and the San Juan County Zoning and Land Use Regulations and only on properties adjacent to public roads with maintained year-round access: U.S. Highway 550, County Road 110 from the Silverton Town Limits to the former town of Gladstone and County Road 2 from the Silverton Town Limits to the former town of Eureka.
3. Retail and Medical Marijuana Establishments shall be constructed, maintained, and operated in full compliance with all applicable codes relating to the construction, occupancy or use of structures within San Juan County including but not limited to Fire and Building Codes, State Electrical Code, any rules and regulations adopted by the San Juan Basin Health Department or any other entity authorized to adopt rules or regulations.
4. An Applicant or Licensee must hold a current valid State Retail or Medical Marijuana License or have submitted a completed application to the State of Colorado for the Retail or Medical Marijuana Establishment.
5. An Applicant or Licensee must own the Licensed Premises or have a valid lease, rental agreement or other arrangement for possession of the Licensed Premises for the effective period of the License.
6. The Retail or Medical Marijuana Establishment must be located 1,000 or more feet from any existing public or private school; licensed child care home or child care center; campus of a college, university or seminary; church or religious institution; or drug or alcohol rehabilitation facility. Provided however that nothing herein shall be deemed to require that a lawfully established Retail or Medical Marijuana Establishment cease operations merely because one of the uses described in the foregoing provision chooses to locate within 1000 feet of an existing licensed Retail or Medical Marijuana Establishment."
7. No Licensee shall allow smoking or consumption of marijuana on the Licensed Premises.
8. Retail or Medical Marijuana may not be sold to Persons under 21 years of age.
9. Persons under the age of 21 shall not be allowed in any Retail Marijuana Establishment.
10. A Licensee, owner, manager, or employee of a Retail or Medical Marijuana Establishment shall promptly report all known criminal

activity occurring within their establishment or on the property where the establishment is located to the Sheriff's Office.

11. Retail and Medical Marijuana Establishments shall be located within a fully enclosed structure and shall not store or display Marijuana or Marijuana Products in such a manner as to be visible from outside the establishment.
12. Signage associated with Retail or Medical Marijuana Establishments shall comply with the applicable signage standards in the San Juan County Zoning and Land Use Regulation, the Retail Marijuana Code, the Medical Marijuana Code and the Retail and Medical Marijuana Regulations.
13. Retail and Medical Marijuana Establishments shall implement appropriate security measures to deter and prevent the unauthorized entrance into areas containing retail marijuana and the theft of retail or medical marijuana, to include at minimum, security cameras, locks, safes and a continuously monitored security alarm system.
14. Retail and Medical Marijuana Establishments shall be open to the public for the maximum hours of 10:00AM – 10:00PM Mountain Time, up to 7 days a week.
15. All Retail and Medical Marijuana Establishments shall install, maintain, and operate active carbon filtration systems, or functionally equivalent systems, such that the odor of marijuana is not detectable at the perimeter of the property on which the Retail or Medical Marijuana Establishment is located. Should such filtration system(s) cease to function for any reason the Licensee shall promptly (within not more than three days) notify the Administrator. The Retail or Medical Marijuana Establishment must cease operations until the filtration system is repaired if the odor of marijuana creates an adverse impact upon the adjoining property.
16. Applicant must pay any applicable fees, including operating and licensing applications, prior to operation of the proposed Retail or Medical Marijuana Establishment.

B. The Distances referred to in Sections VIII(A)(6) above shall be computed by direct measure from the nearest property line of the land used for the purposes listed in Section VIII(A)(6) above to the property line containing the Retail or Medical Marijuana Establishment.

C. Approval of a Retail or Medical Marijuana Establishment License is not a defense to federal criminal charges.

IX. Transfer of Licenses, Change of Location, Change of Ownership

1. Each License issued under this Ordinance is separate and distinct. No Licensee may transfer its License to another Person. A separate License shall be required for each specific business or business entity and for each geographic location.

2. Any proposed transfer of capital stock or any change in principal officers or directors of a corporation holding a License shall be reported to the Administrator and approved by the Board prior to such transfer or change.

3. Any proposed transfer of membership interest or any change in members of any limited liability company holding a License shall be reported to the Administrator and approved by the Board prior to such transfer or change.

4. Any proposed transfer of partnership interest in or change in general or managing partners of any partnership holding a License shall be reported to the Administrator and approved by the Board prior to such transfer or change.

5. A Person may hold one: Retail Marijuana Store, Medical Marijuana Center, Retail Marijuana Cultivation Facility, Medical Marijuana Cultivation Facility, Retail Marijuana Products Manufacturing Facility, Medical Marijuana Products Manufacturing Facility, Retail Marijuana Testing Facility and/or Medical Marijuana Testing Facility License. No Person may hold more than one Retail Marijuana Store License, or more than one Medical Marijuana Center License or more than one Retail Marijuana Cultivation Facility License, or more than one Medical Marijuana Cultivation Facility License, or more than one Retail Marijuana Products Manufacturing Facility License or more than one Medical Marijuana Products Manufacturing Facility License, or more than one Retail Marijuana Testing Facility License or more than one Medical Marijuana Testing Facility License.

X. Process

A. Submittal Requirements

1. Applications for a License must be made to the Administrator on forms prepared and furnished by the Administrator.

2. The Administrator shall maintain a checklist of required Submittal Materials. Such checklist shall not, however, preclude the Administrator from requesting additional information where the Administrator deems such information necessary to enable the Planning Commission or Board of Commissioners to determine whether a License should be granted.

3. Proof of the Right to Possess the Premises. Documents shall be submitted that demonstrate proof of possession of the Retail or Medical Marijuana Establishment to the reasonable satisfaction of the Local Licensing Authority. This documentation may include a copy of a fully executed deed, lease, or contract that governs the terms and conditions of the occupancy of the Retail or Medical Marijuana Establishment for the full term of the Local License and State License and that the Retail or Medical Marijuana Establishment may be lawfully used in accordance with the Local License and State License.

4. Building Plans. The plans for the interior of the Retail or Medical

Marijuana Establishment shall include a detailed floor plan layout drawn to scale (1/4" = 1 foot) which clearly reflects the uses, functions, and operations within the building. The plan shall show mechanical functions such as cooling and ventilation systems, sewage disposal systems, filters and wastewater discharge systems and their locations, heating systems, and all grow light configurations. Where food products are prepared, a detailed plan for the food preparation area must be separately described. For Retail or Medical Marijuana Establishments that are in a multi-occupancy building, detailed drawings showing the wall construction that separates the ownerships or occupancies must also be submitted. All required drawings shall be submitted on paper that is 11" x 17" or larger.

5. Location Plan. The location plan shall show all uses located within 1,000 feet of the property boundary line of the premises on which the Retail or Medical Marijuana Establishment is located, including, but not limited to any public or private school; licensed child care home or child care center; campus of a college, university or seminary; church or religious institution; drug or alcohol rehabilitation facility; residential unit and public building or park. The distance measurement shall be a direct line between the closest point of the premises' boundary and the closest point on the neighboring or nearby lot or parcel containing the specified use. All required drawings shall be submitted on paper that is 11" x 17" or larger.

6. Site Plan. The site plan shall show the location of the building containing the Licensed Premises and provide distances from the building to adjacent buildings, describe all existing uses within the building and all adjacent buildings, parking spaces, property lines, and physical land features, such as streams, driveways, and roadways. The site plan shall be submitted on paper 11" x 17" or larger.

B. Pre-Submittal Conference

1. Applicants must attend a Pre-Submittal Conference.
2. The Pre-Submittal Conference is a meeting between the Applicant, the Administrator and representatives from other County Departments and referral agencies, as appropriate.
3. The purpose of the Pre-Submittal Conference is to identify key issues and concerns regarding the proposed Retail or Medical Marijuana Establishment so the Applicant may address them in the Application and to determine the Submittal Requirements that will be required as part of a particular Application.
4. Applicants must provide to the Administrator a preliminary project description and preliminary site plan prior to the Pre-Submittal Conference.
5. Any comments or commitments made by a staff person during the Pre-Submittal Conference are preliminary in nature and may change as the proposed Retail or Medical Marijuana Establishment is more specifically described in the Application and Submittal Materials.

C. Application

1. An Applicant must submit the Application and Submittal Materials (collectively “Application”) within 30 days following the Pre-Submittal Conference. Failure to comply with this deadline shall be deemed an affirmative statement by the Applicant that the Applicant does not wish to proceed further.

2. All Applications must be complete in every material detail. If the Administrator determines an Application is incomplete, the Applicant must be notified in writing within 10 days of receipt of the Application. An Applicant whose Application is refused due to being incomplete will be given one additional opportunity to submit a revised and complete Application. The second Application must be submitted within 15 days following notice by the Administrator that the initial Application was incomplete.

D. Review

1. Upon receipt of a complete Application, the Administrator will circulate the Application to the Sheriff’s Office, the Building Department, Clerk & Recorder’s Office, the applicable water provider, the applicable sewer provider, the applicable fire district, the Town of Silverton and any other department or agency deemed appropriate during the Pre-Submittal Conference (collectively “Referral Agencies”).

2. The Referral Agencies shall have 14 days following the day of receipt of the Application to provide written comments to the Administrator describing issues, concerns, suggested alternatives or conditions and/or recommendations for approval or denial of the License.

3. The Administrator shall provide copies of all Referral Agency comments received to the Applicant no later than 10 days after the end of the Referral Agency comment period. The Administrator shall allow the Applicant an opportunity to revise and/or supplement and resubmit the Application for re-review. Such re-submittal must be made to the Administrator within 14 days of Applicant’s receipt of Referral Agency comments.

4. Upon receipt of a revised Application, the Administrator will circulate the revised Application to the Referral Agencies for re-review. The Referral Agencies shall have 14 days following the day of receipt of the revised Application to provide supplemental written comments to the Administrator.

5. Failure of a Referral Agency to timely submit written comments shall not be deemed approval of the Application by that Referral Agency.

E. Planning Commission

1. The Planning Commission shall hold a public hearing on the Application.

2. The public hearing will be held no later than 90 days after receipt of a complete Application, unless the Administrator and Applicant mutually agree to extend this deadline.

3. Written notice of the date, time and place of the Planning Commission hearing shall be given by the Administrator to the Applicant by personal service or by mailing the same to the Applicant at the address contained in the Application or to the last address furnished by the Applicant. Notice of the Planning Commission hearing shall also be published in a newspaper of general circulation in San Juan County and posted in a conspicuous place on the proposed Retail or Medical Marijuana Establishment Premises.

4. Notice to the Applicant, and publication and posting of the Planning Commission notice shall be no less than 10 days prior to the public hearing.

5. At the public hearing the Planning Commission shall consider all relevant information presented in verbal testimony or in documents by the Applicant, the Administrator, the Referral Agencies and members of the public.

6. The Planning Commission will determine based on the information presented whether and/or to what degree the Application meets the Standards in Section VIII, the Review Criteria Section XII and is in full compliance with the San Juan County Zoning and Land Use Regulation.

7. The Planning Commission shall make a written recommendation to the Board for approval, approval with conditions, or denial of the License. The recommendation will include findings stating how the Application meets or fails to meet the Standards and, Review Criteria of this Ordinance and of the San Juan County Zoning and Land Use Regulation.

F. Board of County Commissioners

1. The Board shall hold a public hearing on the Application.

2. The public hearing will be held no later than 45 days after the Planning Commission hearing, unless the Administrator and Applicant mutually agree to extend this deadline.

3. Written notice of the date, time and place of the Board hearing shall be given by the Administrator to the Applicant by personal service or by mailing the same to the Applicant at the address contained in the Application or to the last address furnished by the Applicant. Notice of the Board public hearing shall also be published in a newspaper of general circulation in San Juan County and posted in a conspicuous place on the proposed Retail or Medical Marijuana Store Premises.

4. Notice to the Applicant, and publication and posting of the Board -notice shall be no less than 10 days prior to the public hearing.

5. At the public hearing the Board shall consider all relevant information presented in verbal testimony or in documents by the Applicant, the Administrator, Planning Commission, the Referral Agencies and members of the public. All persons testifying may be sworn-in individually or en masse.

6. The Board will determine based on the information presented whether and/or to what degree the Application meets the Standards, the Review Criteria, the Zoning and Land Use Regulation and other applicable provisions of this Ordinance.

7. The Board will decide whether to approve, approve with conditions or deny the Application. The Board shall make a decision on the Application within 30 days of the public hearing. Written notice of the decision shall be provided by personal service or by mailing the same to the Applicant at the address contained in the Application or to the last address furnished by the Applicant.

G. Appeal

Final decisions by the Board are subject to review pursuant to Section 24-4-106 C.R.S.

XI. Fees

All Applicants for licensure and renewal of licensure under this Ordinance shall pay the applicable fees pursuant a schedule of fees set and/or amended by the Board of County Commissioners at an open meeting for which advance notice has been given as required by the Colorado Open Meetings Law.

XII. Review Criteria

A. In determining whether to approve or deny an Application for a Retail or Medical Marijuana Store the following criteria shall be considered as applicable.

1. The fitness to conduct the Retail or Medical Marijuana Establishment and the character and reputation of the Applicant, including the officers, directors and managers. In investigating the fitness, character and reputation, the Board may consider:

a. The Applicant's criminal history. In considering the criminal history, the Board shall have access to criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency. In taking into consideration information concerning the criminal history record, the Board shall also consider

i. Whether the Applicant has knowingly submitted false applications, made willful misrepresentations and/or knowingly committed fraudulent acts.

ii. Whether the Applicant has had previous Medical or Retail Marijuana Establishment Licenses or Alcohol Beverage Licenses denied, or

revoked as a result of violation of law, resulting in a finding of bad moral character by any licensing authority.

iii. Whether the Applicant has been found to be currently delinquent in the payment of any state or local taxes, and record of such tax delinquency has been filed in a court having jurisdiction, or has been made a public record by some other lawful means.

iv. Whether the Applicant has an established pattern of multiple statutory violations which resulted in the revocation or denial of any other professional license, leading to the finding of bad moral character by any licensing authority.

b. When making a determination as to the fitness, character and reputation of the Applicant, the Board shall consider any information provided by the Applicant, including but not limited to evidence of no criminal record, rehabilitation, character references, and educational achievements, financial solvency, community standing, lack of additional arrests or convictions, or the lack of parole or probation violations, especially those items pertaining to the period of time between the Applicant's last criminal conviction and the consideration of the application for a License.

1. Whether the proposed Retail or Medical Marijuana Establishment is compatible with existing and allowed uses in the surrounding area and is in harmony with the neighborhood.

2. Whether the proposed Retail or Medical Marijuana Establishment is consistent with the Town and County Master Plan.

3. Whether the proposed Retail or Medical Marijuana Establishment will result in a substantial adverse impact on property in the vicinity of the proposed Retail or Medical Marijuana Establishment.

4. Whether the proposed Retail or Medical Marijuana Establishment complies with the applicable standards found in the San Juan County Zoning and Land Use Regulation.

5. Whether the buildings and structures to be used for the proposed Retail or Medical Marijuana Establishment have been inspected by County and State Inspectors and determined to be compliant with all applicable building, fire and electrical code provisions and that all necessary building permits have been obtained.

6. Whether the proposed Retail or Medical Marijuana Establishment has all required well and septic permits or is adequately served by public water and sewer.

7. Whether any offensive odors emanating from the proposed Retail or Medical Marijuana Establishment have been reported, or any reported odor problem has been rectified.

8. Whether all real and personal property taxes have been paid for the proposed Retail or Medical Marijuana Establishment or for any other property in the County owned by the Applicant.

9. Whether the proposed Retail or Medical Marijuana Establishment has satisfactory vehicular access and parking facilities, and/or whether the Applicant has suitably mitigated any traffic hazards associated with the use.

B. The Board may deny an Application if the Applicant does not show by a preponderance of the evidence presented at the hearing that the proposed Retail or Medical Marijuana Establishment can be operated in a manner that will not adversely affect the public health or welfare or the safety of the immediate neighborhood in which the proposed Retail or Medical Marijuana Store is to be located.

C. The Board may impose conditions upon the approval of Application which the Board deems reasonably related to the furtherance and protection of the health, safety and welfare of the neighborhood in which the proposed Retail or Medical Marijuana Store is to be located and of the general public, provided such conditions are not Reasonably Impracticable.

XIII. Compliance with Other Regulations

Nothing in this Ordinance is intended to waive Licensee's requirement to comply with other applicable federal, state or local regulations, including but not limited to the Colorado Retail Marijuana Code, the Colorado Medical Marijuana Code and implementing regulations, building codes, fire codes, sign codes, health laws and regulations, etc.

XIV. License Renewal

A. Application for renewal of an existing License shall be made no more than 60 days or less than 30 days prior to the date of expiration. Applications must be made to the Administrator on forms prepared and furnished by the Administrator. Applicants must provide such information as the Administrator may require to enable the Board of County Commissioners to determine whether a Renewal License should be granted.

B. The Administrator will schedule a hearing before the Board within 30 days after receipt of a complete Application, unless the Board has elected to waive the hearing based on information that there is no opposition to the renewal and the Licensee has operated the Retail or Medical Marijuana Establishment in compliance with all laws and conditions of the License. Notice of the renewal hearing shall be advertised in a newspaper of general circulation no less than 10 days and conspicuously posted on the Licensed Premises for no less than 10 days prior to the date of the public hearing.

C. A licensee may submit to the local licensing authority a late renewal application on the prescribed forms and pay a non-refundable late application fee for a renewal application made less than 30 days prior to the date of the expiration of the license. All other provisions concerning renewal applications apply to a late renewal application. The timely filing of a completed renewal application or a late renewal application shall extend the current license until a decision is made on the renewal.

D. Notwithstanding state law to the contrary, a licensee whose license expires and for which a renewal application has not been received by the expiration date shall be deemed to have forfeited its license under this Ordinance. The County shall not accept renewal applications after the expiration date of such license.

E. In determining whether to grant or deny a Renewal License the Board shall consider the following as applicable:

1. Whether the Applicant has failed to comply with any of the terms, conditions or provisions of the State Retail Marijuana Code, the State Medical Marijuana Code, and any rules or regulations promulgated thereunder, or this Ordinance.

2. Whether the Applicant has failed to comply with any terms or conditions that were placed on its State Retail Marijuana License, State Medical Marijuana License or a License issued under this Ordinance.

3. Whether the Licensed Premises has been operated in a manner that adversely affects the public health or the safety of the immediate neighborhood in which the Retail or Medical Marijuana Store is located.

4. Whether complaints about the Retail or Medical Marijuana Store have been made to the Administrator or others by the public or law enforcement.

5. Whether there has been increased need for law enforcement in the vicinity of the Retail or Medical Marijuana Store related to or as a result of its operation.

6. Whether the Applicant has changed its business structure and whether the current owners, officers, managers, contractors, employees, and other support staff have completed a fingerprint-based criminal history record check and the results of such check.

7. Whether any physical modifications have been made to the Licensed Premises.

8. Whether the Applicant owns the Licensed Premises or has a valid lease, rental agreement or other arrangement for possession of the Licensed Premises for the term of the renewal.

F. Any Renewal License shall be valid for one year from the date of renewal unless earlier revoked or suspended.

XV. Inspections of Premises

A. The Administrator and/or his/her designee(s) is authorized to enter or inspect the Licensed Premises to ensure compliance with this Ordinance. By making application for License under this ordinance applicant is irrevocably consenting to inspection by the County or County Designee of licensed premises at any time for any reason.

B. If the Licensee of the premises cannot be located or permission to enter cannot be obtained, the Administrator may seek an administrative search warrant or court order allowing entry by submitting a sworn affidavit to the county or district court detailing facts to support a reasonable belief that a violation is likely to exist and that further investigation of the premises is warranted.

C. Any subsequent entry and inspection must be conducted in accordance with the administrative search warrant or order issued by the court. Inspections may be conducted from public property or right-of-way, or from adjacent private property without the permission of the Licensee.

D. Notwithstanding the provisions of subsections XV(A-D) above, permission to enter or a court order is not required in emergency situations in which the Administrator has reason to believe public health or safety is in imminent danger and could be jeopardized by any delay in obtaining permission to enter or a court order.

XVI. Inspection of Books and Records

A. Each Licensee shall keep a complete set of books of account, invoices, copies of orders, shipping instructions, bills of lading, weigh bills, correspondence, and all other records necessary to show fully the business transactions of such Licensee, all of which shall be open at all times during business hours for the inspection and examination by the Administrator or his/her designee.

B. The Administrator or his/her designee may require any Licensee to furnish such information as it considers necessary for the proper administration of this Ordinance, and may require an audit to be made of such books of account and records on such occasions as it may consider necessary by an auditor to be selected by the Administrator who shall likewise have access to all books and records of such Licensee, and the expense thereof shall be paid by said Licensee.

XVII. Violation

A. It is a violation of this Ordinance for any Person:

1. To operate a Retail or Medical Marijuana Establishment without the required License; or

2. To fail to comply with any of the terms, conditions or provisions of this Ordinance; or

3. To fail to comply with any terms, conditions or provisions of any License issued pursuant to this Ordinance; or

4. To fail to pay any applicable fees, taxes, fines or penalties required for operation of a Retail or Medical Marijuana Establishment.

B. A violation of this Ordinance by a Retail or Medical Marijuana Establishment, whether by the Licensee, his or her employees, agents, or otherwise, shall be the responsibility of the Licensee.

XIII. Enforcement

A. Suspension or Revocation of License

1. The Board, on its own motion or on complaint, after investigation and public hearing at which the Licensee shall be afforded an opportunity to be heard, may suspend or revoke any License for violation by the Licensee or by any of the agents, servants, or employees of such Licensee of the provisions of this Ordinance, or of any of the terms, conditions, or provisions of the License.

2. The Board is authorized to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of any hearing that the Board is authorized to conduct.

3. Notice of proposed suspension or revocation, as well as the date, time and place of the hearing, shall be given by the Administrator to the Licensee by personal service or by mailing the same in writing to the Licensee at the address contained in such License to the last address furnished by the Licensee.

4. Notice required by Subsection XIII (A)(3) above shall state the objective facts or conduct established by an investigation that may warrant suspension or revocation of the License. Notice shall be given by publication and posting no less than 10 days in advance of the public hearing.

5. At the hearing, the Board shall consider all relevant information presented by the Licensee and others, including testimony and documents.

6. The Board may announce its decision at the conclusion of the hearing. The Board's final, official decision shall be in writing and shall set out its findings and conclusions. The Board's decision may be personally delivered to the Licensee or mailed first class in accord with Subsection XIII(A)(3) above.

7. No suspension shall be for a longer period than 6 months.

8. If any License is suspended or revoked, no part of the fees paid therefore shall be returned to the Licensee.

9. The Board may summarily suspend any License for a temporary period not to exceed 15 days upon written notice to the Licensee pending any prosecution, investigation, or public hearing.

10. Whenever the Board decides to suspend the License for 15 days or less becomes final, whether by failure of the Licensee to appeal the decision or by exhaustion of all appeals and judicial review, the Licensee may, before the operative date of the suspension, petition the Board for permission to pay a fine in lieu of having the License suspended for all or part of the suspension period. Upon the receipt of the petition, the Board may, in its sole discretion, stay the proposed suspension and cause any investigation to be made which it deems desirable and may, in its sole discretion, grant the petition if it is satisfied:

a. That the public welfare and morals would not be impaired by permitting the Licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes;

b. That the books and records of the Licensee are kept in such a manner that the loss of sales of Retail or Medical Marijuana and Marijuana Products that the Licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy therefrom;

c. That the Licensee has not had his or her License suspended or revoked, nor had any suspension stayed by payment of a fine, during the 2 years immediately preceding the date of the motion or complaint which has resulted in a final decision to suspend the License; and

d. The fine accepted shall be the equivalent to twenty percent (20%) of the Licensee's estimated gross revenues from sales of Retail or Medical Marijuana and Retail or Medical Marijuana Products during the period of the proposed suspension; except that the fine shall be not less than two hundred dollars (\$200.00) nor more than five thousand dollars (\$5,000.00).

11. Payment of any fine pursuant to the provisions of this subsection XIII(A)(10) shall be in the form of cash or certified check or cashier's check made payable to San Juan County.

12. The Board shall cause such monies to be paid into the general fund of San Juan County.

13. Upon payment of the fine pursuant to subsection XIII(A)(10), the Board shall enter its further order permanently staying the imposition of the suspension.

B. Civil Penalties

1. The Board may impose a Civil Penalty against any Person who violates this Ordinance, or any terms, conditions or provisions of a License (“Violator”), in the amounts specified below:

\$500 to \$1,000 for the first violation.

\$1,000 to \$2,000 for the second violation within 30 days of the first violation.

\$2,000 to \$5,000 for each successive violation within 30 days of the prior violation.

2. No civil penalty shall be imposed by the Board until the alleged Violator has been given written notice and an opportunity to be heard.

3. Notice required by Subsection XIII (B)(2) above shall be given to the alleged Violator and shall state the objective facts or conduct established by an investigation that may warrant a Civil Penalty and the date, time and place of the hearing. Notice may be hand delivered to the Violator or mailed first class to the address shown on the Application or to the last address furnished by the alleged Violator and available Notice shall be given no less than 10 days in advance of the public hearing.

4. The Board is authorized to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of any hearing that the Board is authorized to conduct.

5. At the public hearing, the Board shall consider all relevant information presented by the alleged Violator and others, including testimony and documents.

6. The Board may consider mitigating and aggravating factors when considering the imposition of a Civil Penalty, including but not limited to:

a. Action taken by the Licensee to prevent the violation (e.g. training provided to employees).

b. Licensee’s past history of success or failure with compliance checks.

c. Corrective action(s) taken by the Licensee.

d. Prior violations/prior corrective action(s) and their effectiveness.

e. Willfulness and deliberateness of the violation.

f. Likelihood of reoccurrence of the violation.

7. The Board may announce its decision at the conclusion of the hearing. The Board's final, official decision shall be in writing and shall set out its findings and conclusions. The Board's decision may be personally delivered to the Violator or mailed first class in accordance with Subsection XIII(B)(3) above.

8. Payment of any Civil Penalty pursuant to the provisions of this subsection XIII(B) shall be in the form of cash or certified check or cashier's check made payable to San Juan County.

9. The Board shall cause such moneys to be paid into the general fund of San Juan County.

C. Civil Remedies

1. The Board may initiate injunction or abatement proceedings or any other appropriate legal action in district court or other court having jurisdiction against any Person or Licensee who fails to comply with any provision of this Ordinance or any requirement or condition imposed under this Ordinance.

2. The Board may seek a court order in the nature of mandamus, abatement, injunction or other action to abate or remove a violation or otherwise restore the premises to the condition that existed prior to the violation.

D. Remedies Cumulative

All penalties and remedies for violation of this Ordinance are cumulative.

XIX. Reports

The Board shall report all actions taken to impose fines, suspensions, revocations, civil penalties and civil proceedings to the Colorado State Licensing Authority in a manner as required by the State Licensing Authority.

XX. Amendments

A. The Board may amend this Ordinance after notice and hearing by the San Juan Board of County Commissioners.

B. The Board of County Commissioners may make non-substantive amendments (e.g. typographical errors, language clarifications, etc.) to this Ordinance administratively at any open meeting.

XXI. Release and Indemnification

A. By accepting a License issued pursuant to this article, the Licensee releases the county, its elected officials, employees, officers, attorneys, and agents from any and all liability

for any and all known, unknown or unforeseen damages, injuries, losses and liabilities directly or indirectly related to the Licensee's Retail or Medical Marijuana Cultivation Operation, including but not limited to any claim that results from any arrest or prosecution of the Licensee, its employees, clients or customers, for a violation of Federal or State law, rules or regulations.

B. By accepting a License issued pursuant to this article, the Licensee, jointly and severally, if more than one, indemnifies and holds harmless the county, its employees, officers, elected officials, insurers, attorneys and agents from any and all suits, actions, claims, judgments, obligations or liabilities of every nature and description which arise out of or in any manner are connected with the operation of the Retail or Medical Marijuana Cultivation Operation that is the subject of the License. Furthermore, the Licensee agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at its expense, and to bear all other costs and expenses related thereto, including court costs and attorney fees; however, such agreement does not make the Licensee an agent or employee of the county

XXII. Severability

The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance. Should Amendment 16 and Amendment 20 become invalidated this Ordinance shall be automatically repealed.

XXIII. Effective Date

This Ordinance shall be effective on the 21st day of February

Adopted this 14th day of January, 2015.

**BOARD OF COUNTY COMMISSIONERS OF
SAN JUAN COUNTY, COLORADO**

By: 
Ernest F. Kuhlman, Chairman

ATTEST:


Ladonna L. Jaramillo, Clerk