

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF ALAMOSA COUNTY

RESOLUTION NO: 2018 – G – 8

RE: A RESOLUTION ADOPTING TEXT AMENDMENTS TO ALAMOSA COUNTY ORDINANCE NO. 16.

Commissioner Sigmond moved for the adoption of the following Resolution.
Commissioner Allen seconded the motion.

WHEREAS, Alamosa County adopted Ordinance No. 16, regarding Medical Marijuana on June 27, 2012; and

WHEREAS, House Bill 17-1220, placed certain caps on the number of plants that could be grown and authorizes counties to modify those limits; and

WHEREAS, §30-11-101(2) of the Colorado Revised Statutes, provides that Counties have the authority to adopt and enforce ordinances and resolutions regarding, health, safety, and welfare issues as proscribed by law; and

WHEREAS, Alamosa County has determined that certain amendments to Ordinance No. 16 are necessary and are in the best interest of the County; and

WHEREAS, a public hearing was held before the Board of County Commissioners on April 25, 2018 for a first reading, and on June 13, 2018 for a second reading and adoption. after proper notice; and

WHEREAS, the amendments to Ordinance No. 16 were published in full on May 12, 2018; and

WHEREAS, there was no opposition to any proposed amendments; and

WHEREAS, the Board of County Commissioners has considered the recommendation of the Alamosa County Land Use Department finds that such recommendations are in the best interest of Alamosa County.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. That Alamosa County Ordinance No. 16 shall be amended as set forth in the attached *Amended Ordinance No. 16*; and

3. That said amended shall take effect immediately in order to protect the

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RS\$0.00 DS\$0.00

Melanie Woodward
Alamosa Cnty Clerk

health, safety, welfare and well-being of the general public.

Passed by roll call vote: Sigmond, Allen in favor, Yohn against.

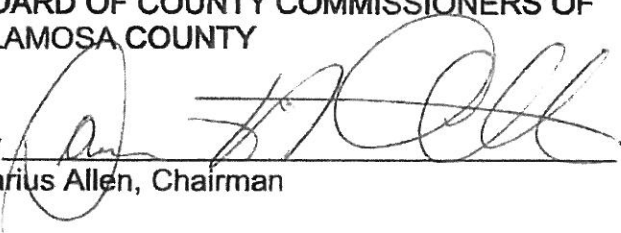
SIGNED this 13th day of June, 2018



ATTEST:

Melanie Woodward
Melanie Woodward, Clerk of the Board

BOARD OF COUNTY COMMISSIONERS OF
ALAMOSA COUNTY

By 
Darius Allen, Chairman

**ORDINANCE REGARDING MEDICAL MARIJUANA WITHIN ALAMOSA COUNTY
2012 – 01**

Amended June 25, 2014

Amended June 13, 2018

ARTICLE I

A. Purpose

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 and 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, therefore the State of Colorado has adopted C.R.S. §12-43.3-101, et seq. to explain how and where marijuana may be lawfully sold, cultivated, manufactured or otherwise distributed to patients. The purpose of this Ordinance is to license and regulate medical marijuana facilities, caregivers, and patients 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 and local 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, including Federal law. The Alamosa Board of County Commissioners hereby determines that it is necessary to the immediate preservation of the public health and safety that this ordinance take effect immediately upon adoption pursuant to C.R.S. §30-15-405.

B. Definitions

(1) C.R.S. § 12-43.3-104 is incorporated herein by reference as if fully set forth below:

(2) "Director" means the Land Use Administrator, or the Land Use Administrator's duly authorized representative.

(3) "Medical marijuana facility" means a medical marijuana center ("MMC"), a medical marijuana-infused product manufacturer ("MMIPM"), or an optional premises cultivation operation ("OPCO").

(4) "Patient" means a person who has a debilitating or disabling medical condition.

(5) "Person" for the purposes of this Ordinance, means an individual or individuals residing in the same residence.

(6) "Plant" Means any cannabis plant in a cultivating medium which is more than four

inches wide or four inches high or a flowering cannabis plant regardless of the plant's size.

(7) "Primary caregiver" means a natural person, other than the patient or the patient's physician, who is eighteen years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition or disabling medical condition.

(8) "Property owner" means the last owner of record as disclosed by the records in the office of the County Assessor of Alamosa County, Colorado.

(9) "Residential Property" means any parcel or tract of land located within the unincorporated area of Alamosa County that lies within a designated residentially zoned district at the time of application.

(10) For purpose of this Ordinance, any "special use permit" issued by the Alamosa County Board of County Commissioners shall be considered the local license required by the applicant.

C. License Required

(1). On and after June 13, 2018, it shall be unlawful to either cultivate more than 24 plants or sell, manufacture, or otherwise distribute any marijuana or marijuana products in Alamosa County without obtaining a local license to operate as a medical marijuana center ("MMC"), a medical marijuana-infused product manufacturer ("MMIPM"), or an optional premises cultivation operation ("OPCO") pursuant to the requirements of this Ordinance. This licensing requirement shall apply regardless of whether the MMC, MMIPM or OPCO has commenced operations prior to July 1, 2012. Any MMC, MMIPM or OPCO that has commenced operation prior to July 1, 2012 and for which a license application has been filed pursuant to this article prior to that date may continue in operation pending final action by the Board of County Commissioners on the application. Any such preexisting MMC, MMIPM or OPCO that does not or cannot meet the licensing requirements set forth in this Ordinance and therefore fails to obtain a license shall cease operations immediately upon such denial.

(2). The license requirement set forth in this article shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state, or city law including, by way of example, a retail sales tax license, a retail food establishment license if applicable, and any applicable zoning or building permit.

D. General Licensing Procedures

- (1). The Alamosa Board of County Commissioners shall serve as the Local Licensing Authority
- (2) Except as otherwise specifically provided in this Ordinance, the general procedures of the Alamosa County Land Use Development Code for the issuance of a Special Use Permit to operate and administer any MMC, MMIPM or OPCO

shall be required for the issuance of a local license. To the extent there is any conflict between this Ordinance and the Alamosa County Land Use Code, the more restrictive shall control.

- (3). Any license (including special use permit) issued for the purpose of owning, operating, or managing a MMC, MMIPM or OPCO is non-transferable.
- (4). If all requirements are met and the license is granted, said license shall be provisional subject to the issuance of a State License within one-hundred and eighty (180) days.
- (5). Nothing in this Ordinance shall be deemed to waive any requirements for the issuance of a State License to operate or administer any MMC, MMIPM or OPCO, including but not limited to, building requirements, background checks, etc.
- (6). In determining whether to issue any license under this Ordinance, the Licensing Authority shall consider the local needs of the community and may, at their sole discretion, require the applicant to present evidence demonstrating that the needs of the community are not being met with current MMC's, MMIPM's or OPCO's.
- (7). The Local Licensing Authority may, for good cause shown, waive strict compliance with any provision set forth herein.

E. Application and Fees

(1) Application for a MMC, MMIPM or OPCO shall be made to the director by applying for a Special Use Permit pursuant to the Alamosa County Land Use Development Code with the required fee AND by submitting a copy of ALL completed forms and documentation that will be submitted to the State for the issuance of a State License.

(2) The application fee for any MMC, MMIPM, or OPCO shall be \$1000.00

F. Prohibited Locations

(1) All MMC, MMIPM or OPCO licenses shall be issued for a specific fixed location which shall be considered the licensed premises. If applicable, all sales or distribution of medical marijuana shall be made directly by a primary caregiver to a patient upon the licensed premises, or via personal delivery of the medical marijuana by the primary caregiver from the licensed premises to the patient at the patient's residence.

(2) MMC's, MMIPM's or OPCO's licenses shall only be issued in the following locations and in accordance with the following restrictions:

- (a) For purposes of MMC's, MMIPM's and OPCO's in any zoned area of Alamosa County designated as Commercial or Industrial. OPCO's and MMIPM's

are also permitted in any zoned area of Alamosa County designated as Rural.

(b) No closer than one thousand (1,000) feet of any church, school or child care establishment, dormitory, health services center or hospital, licensed MMC, MMIPM or OPCO, detention facility, government building, public park or other residential property, ("protected purposes"). The distance shall be computed by direct lineal measurement from the nearest principle structure of the MMC, MMIPM, or OPCO to the nearest property line of the protected purpose. For purposes of this section the distance shall be measured in a straight line, without regard to intervening structures or objects.

G. Requirements Related to Licensed Premises

(1) No marijuana shall be smoked, eaten or otherwise consumed or ingested on the licensed premises.

(2) 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.

H. Signs

All signs shall conform to the requirements of the Alamosa County Land Use Development Code:

(1) All MMC's, MMIPM's or OPCO's premises shall have a sign located at the main entrance of the premises measuring not less than 36" x 36" that states as follows:
WARNING: Marijuana is classified under Schedule I of the Controlled Substances Act. The use, sell, manufacture, or distribution of marijuana is a violation of federal law and is subject to prosecution."

(a). The text of said sign shall cover at least 75% of the sign

I. Labeling

In addition to any labeling requirements set forth by the State Licensing Authority, all marijuana sold or otherwise distributed by the local licensee shall be packaged and labeled in a manner that advises the purchaser that the marijuana is intended for use solely by the patient to whom it is sold, and that any re-sale or redistribution of the marijuana to any third person is a criminal violation.

J. Compliance Review

(1). All licensed MMC's, MMIPM's, and OPCO's located within Alamosa county may be reviewed annually to ensure compliance with all local and state laws, including but not

limited to any applicable rules and regulations promulgated by the State Licensing Authority.

(2). Non-compliance with any provision set forth herein, or the violation of any provision of any local or state law regarding MMC's, MMIPM's or OPCO's shall be grounds for the immediate revocation of the local license. In addition, Alamosa County may seek additional remedies as set forth in Article 10 of the Alamosa County Land Use Development Code, or as amended.

K. Registration of Patients and Primary Caregivers

(1). Any patient or primary caregiver cultivating more than twelve (12) plants in Alamosa County shall provide to the Alamosa County Land Use office a copy of such patient's or primary caregiver's registration with the Colorado Department of Public Health and Environment on an annual basis.

(2). If the patient or primary caregiver cultivating more than twelve (12) plants is not the owner of the property at which the medical marijuana is to be cultivated, the patient or primary caregiver shall present a notarized statement from the owner of such property authorizing the use of the property for a marijuana cultivation.

L. Unlawful Acts: License Violations and Enforcement

(1). It shall be unlawful and a violation of the terms and conditions of this Ordinance to cultivate more than 24 plants, or manufacture, distribute, store, test or sell marijuana, except in compliance with the terms, conditions, limitations and restrictions of said License and in accordance with Sections 14 and 16 of Article XVIII of the State Constitution, and the Colorado Marijuana Code.

(2). It shall be unlawful and a violation of the terms and conditions of every license issued under this Ordinance for any person to engage in any form of business or commerce directly involving the cultivation, processing, manufacturing, sale, or testing of marijuana other than those forms of businesses and commerce that are expressly contemplated by this Ordinance and the Colorado Marijuana Code

(3). It shall be unlawful and a violation of the terms and conditions of every license issued under this Ordinance for any person to permit the consumption of marijuana on any licensed premise.

(4). It shall be unlawful and a violation of this Ordinance for a Marijuana Establishment to operate until it has been properly licensed by the Local Licensing Authority and also licensed by the State Licensing Authority pursuant to the Colorado Marijuana Code.

(5). It shall be unlawful and a violation of this Ordinance for a person or licensee to commit any act or omission which is unlawful pursuant to the Colorado Marijuana Code. In addition to the criminal penalties specified therein, any person or licensee who commits any acts that

are unlawful pursuant to this Ordinance and/or pursuant to the Colorado Marijuana Code shall be subject to suspension, fines, and/or a revocation of its license.

(6). It shall be unlawful and a violation of the terms and conditions of every license issued under this Ordinance to sell marijuana, or any marijuana infused product at any time except between the hours of 10:00 a.m. to 7:00 p.m. unless a more restrictive time is set by the Colorado Marijuana Code.

(7). In addition to any other civil or criminal sanction prescribed by Colorado law or rules promulgated pursuant thereto, the Local Licensing Authority or the Director, has the power, on its own motion or on complaint to fine, restrict, suspend or revoke a license issued by the Local Licensing Authority for a violation by the licensee or by any of the agents or employees of the licensee of the provisions of this Ordinance, the Colorado Marijuana Code and/or of any of the other terms, conditions or provisions of the license issued by the Local Licensing Authority. Any restriction, suspension and/or revocation shall only take effect after investigation and opportunity for a public hearing at which the licensee shall be afforded an opportunity to be heard, unless the Local Licensing Authority determines that the suspension and or revocation must take place to protect the health, safety, and welfare of the general public.

(8). In addition to any other civil or criminal sanction prescribed by Colorado law or rules promulgated pursuant thereto, the Local Licensing Authority or the Director, has the power, on its own motion or on complaint, to fine any property owners cultivating more than 24 plants or for any other violation of this Ordinance or the Colorado Marijuana Code.

Any fine issued by the Local Licensing Authority or the Director shall be payable within twenty (20) days of the date of the Notice. The following graduated fine schedule may apply:

- a. First Offense - \$500.00 fine and/or restrict, suspend or revoke license for medical marijuana facilities.
- b. Second Offense - \$1000.00 fine and/or restrict, suspend or revoke- license for medical marijuana facilities.
- c. Third Offense - \$5000.00 fine and/or automatic suspension and/or revocation of license for medical marijuana facilities..

For a first offense, each day that a violation continues to exist shall constitute a separate offense. For subsequent offenses, each plant in excess of 24 constitutes a separate offense and each day that a violation continues to exist shall constitute a separate offense.

(9). Each person licensed pursuant to this Ordinance shall keep and maintain all records specified in the Colorado Marijuana Code and shall make the same open, at all times, during business hours for the inspection and examination of the Local Licensing Authority and/or the Director. A failure to maintain such records and to allow for inspection of the same as well as a failure to allow the inspection of the licensed premises shall constitute a violation of

this Ordinance and shall subject the licensee or its agent to a fine, suspension and/or revocation of the licensee's license.

(10). In deciding whether a licensee should be fined, suspended or revoked in accordance with this section, and in deciding what conditions to impose in the event of a suspension, if any, the Local Licensing Authority, or its duly authorized representative shall consider:

- a. The nature and seriousness of the violation;
- b. Corrective action, if any, taken by the licensee;
- c. Prior violation(s), if any, at the licensed premises by the licensee and the effectiveness of prior corrective action, if any;
- d. The likelihood of recurrence;
- e. All circumstances surrounding the violation;
- f. Whether the violation was willful;
- g. The length of time the license has been held by the licensee;
- h. The number of violations by the licensee within the applicable twelve (12) month period;
- i. Previous sanctions, if any, imposed against the licensee;
- j. Any other factor making the situation with respect to the licensee or the licensed premises unique.

(11). A copy of any citation issued for any violation and notice of any fine, suspension, or revocation shall be given by certified sent to the property owner's last address of record with the Alamosa County Assessor.

a. At any hearing in which there is an alleged violation of a licensee under this Ordinance, the Local Licensing Authority in its discretion may accept a stipulation that the Licensee shall pay a fine in lieu of serving a restriction, suspension and/or revocation of the Licensee's License; or

b. Reject the stipulation and require a full hearing before the Local Licensing Authority.

(12). The remedies provided in this section are in addition to any other remedy provided by applicable law.

(13). Any party aggrieved by a final decision of the Local Licensing Authority may be appealed to a district court within twenty eight (28) days following the date of such decision pursuant to the provisions of Rule 106(a)(4), Colorado Rules of Civil Procedure.

M. Collection Costs

(1). If the person receiving the citation and the property owner are one and the same and fines remain unpaid twenty (20) days after initial notice of violation, a ten percent (10%) penalty will be assessed and a second copy of the violation notice shall be mailed to the property owner

and payment in full shall be due within twenty (20) days of the date of the notice.

(2). If the person receiving the citation and the property owner are one and the same and the fine remains unpaid ninety (90) days from the date of the second notice, such costs, together with a ten percent (10%) penalty for collection expenses may be assessed as a lien against the property, having priority over all other liens except general taxes and prior special assessments, and shall be certified to the Alamosa County Treasurer for collection in the same manner as other taxes are collected.

(3). The laws of the State of Colorado for assessment and collection of general taxes, including the laws for the sale and redemption of property taxes, shall apply to the collection of assessments pursuant to this section.