

ORDINANCE NO. 666

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF HAYDEN, COLORADO, PERMITTING, REGULATING AND LICENSING THE CULTIVATION OF RETAIL AND MEDICAL MARIJUANA UNDER LIMITED CIRCUMSTANCES AND MAKING CONFORMING AMENDMENTS TO SUBSECTION 8.08.080.A., TO SECTIONS 8.35.010, 8.35.040, 16.03.040.I.3 AND 16.03.040.J.3, AND TO TITLES 5 AND 16 OF THE HAYDEN MUNICIPAL CODE

RECITALS

1. In the November 2000 general election, the voters of the State of Colorado adopted Amendment 20 to the Colorado Constitution ("Article XVIII Section 14") which, among other things, authorizes the sale of medical marijuana for use in the treatment of debilitating medical conditions.
2. In response, and for those reasons stated in Ordinance No. 632, the Town Council ("Council") of the Town of Hayden, Colorado ("Town") prohibited the location, operation or other establishment of Medical Marijuana Centers, Optional Premises Cultivation Operations, and Medical Marijuana-Infused Products Manufacturers in Town.
3. At the November 2012 general election, the voters of the State of Colorado adopted Amendment 64 to the Colorado Constitution ("Article XVIII, Section 16") which authorizes the use, possession, growth, transport and transfer of marijuana in limited amounts and under limited circumstances, and further authorizes the conduct of business to cultivate, produce, test and sell marijuana and marijuana products.
4. In response, and for those reasons stated in Ordinance No. 659, the Council prohibited the location, operation or other establishment of Marijuana Establishments, as that term is defined by Article XVIII, Section 16, within Town.
5. Among the stated reasons for the above-referenced prohibitions were: Amendment 64 did not provide information on how the conduct of business to cultivate and sell marijuana would meet the new State of Colorado laws, or how the Federal government would react to the State of Colorado's voter supported constitutional amendment to cultivate and sell marijuana, or how the Town would pay for the licensing, permitting and regulation of marijuana cultivation business(s), or what nuisances would arise from the cultivation of marijuana and how these nuisances would be addressed to minimize the nuisance impact on neighboring properties, or how the Town might afford to defend itself if local policies and regulations for the cultivation, sale and taxation of the marijuana business(s) were challenged; and the Council now finds and determines that other Colorado municipalities have adopted codes to provide for proper ways to regulate and permit marijuana businesses, that the Federal government is currently allowing Colorado marijuana cultivation businesses to continue, that the Town Council can set licensing, permitting and regulatory fees at an amount likely to fully cover the Town-incurred expenses, that nuisances arising from marijuana cultivation operations are capable of being mitigated and regulated with proper enforcement, and that by adopting regulations and permit requirements similar to those successfully adopted and implemented by other Colorado communities, the Town can mitigate the previously identified concerns and taxpayers can benefit by

the economic opportunities, property development, a broadening of the local job diversity, increased local tax revenue and local job growth.

6. Based on its observations of the secondary effects of marijuana cultivation activities in other jurisdictions, the Council finds that such activity can pose a significant risk to the public health, safety and welfare if and when the use of pesticides, fertilizers, butane and other combustible materials is unregulated and when individuals without experience or training in cultivation or extraction methods begin to experiment with such activity.
7. The Council further finds that, while cultivation and extraction activities present a risk if unregulated, those risks may be mitigated through regulations that limit such activities to certain zone districts, limit the permissible size and scope of home-based cultivation and require commercial cultivation operations to obtain a Town license and to meet certain health, safety and welfare standards.
8. The Council now therefore desires to adopt regulations to permit and license, under certain limited circumstances, the cultivation of both medical and retail marijuana within the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HAYDEN, COLORADO, THAT:

Section 1. Findings and Intent. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council of the Town of Hayden, Colorado.

Section 2. Title 5 of the Hayden Municipal Code (“Code”), concerning Business Taxes, Licenses and Regulations, is hereby amended by the addition of a new Chapter 5.22, to read in its entirety as follows:

Chapter 5.22

MARIJUANA CULTIVATION FACILITIES

Sections:

- 5.22.010. Purpose, Intent and Other Laws
- 5.22.020. Definitions
- 5.22.030. Application
- 5.22.040. Licensing Authority created
- 5.22.050. Composition of the Authority
- 5.22.060. Functions of the Authority
- 5.22.070. License required; term of license; renewal application
- 5.22.080. Application requirements; payment of application fee
- 5.22.090. Denial of application
- 5.22.100. Persons prohibited as licensees
- 5.22.110. Requirements related to the premises
- 5.22.120. Prohibited acts.
- 5.22.130. Required books and records
- 5.22.140. Inspection of licensed premise
- 5.22.150. Nonrenewal, suspension or revocation of license
- 5.22.160. Violations and penalties
- 5.22.170. No Town liability; indemnification; no defense

5.22.010 Purpose, Intent and Other Laws

- A. The purpose of this Chapter is to authorize, under limited circumstances and in limited locations, the cultivation of retail marijuana pursuant to the Colorado Retail Marijuana Code and the cultivation of medical marijuana pursuant to the Colorado Medical Marijuana Code, which authorize the licensing and regulation of marijuana cultivation and affords the Town the option to determine whether or not to allow such cultivation within its jurisdiction and to adopt licensing requirements that are supplemental to or more restrictive than the requirements set forth in state law. The intent of this Chapter is to establish a nondiscriminatory mechanism by which the Town can control, through appropriate regulation, the location and operation of marijuana cultivation within the Town. Nothing in this Chapter 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 Article shall not provide a defense to criminal prosecution under any applicable law.

- B. If the State adopts any stricter regulation governing the cultivation of marijuana than that set forth in this Chapter, the stricter regulation shall control such activity in the City. A licensee may be required to demonstrate, upon demand by the local licensing authority or by law enforcement officers, that the source and quantity of any marijuana found upon the licensed premises are in full compliance with applicable state regulation. If the State prohibits the cultivation of marijuana, any license issued under this Chapter shall be deemed immediately revoked by operation of law, with no ground for appeal or other redress by the licensee. The issuance of any license pursuant to this Chapter 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.

5.22.020. Definitions

The following words and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section:

Applicant means any person or entity who has submitted an application for a license or renewal of a license issued pursuant to this Chapter. If the applicant is an entity and not a natural person, applicant shall include all persons who are members and managers of such entity.

Colorado Medical Marijuana Code means Title 12, Article 43.3 of the Colorado Revised Statutes, as amended from time to time, and any rules or regulations promulgated thereunder.

Colorado Retail Marijuana Code means Title 12, Article 43.4 of the Colorado Revised Statutes, as amended from time to time, and any rules or regulations promulgated thereunder.

Consumer means a person who purchases marijuana for his or her own use and not for resale to others.

Cultivation or cultivate means the process by which a person grows a marijuana plant.

Facility means the defined area in which a cultivation operation may be conducted, whether the entirety of a building or structure or a unit, suite, leaseable space or other defined portion thereof, as clearly-delineated on the site plan or other development approval associated with the conditional use permit issued for the facility and on the detailed diagram of the proposed licensed premises required to be filed with the Town pursuant to Section 5.22.080.B.(7) hereof as part of an application for a License under this Chapter.

Fee schedule means the Town of Hayden Fee Schedule, as adopted and amended by the Town Council from time to time.

Good cause (for the purpose of refusing or denying a license or license renewal under this Chapter) means: (1) the licensee has violated, does not meet or has failed to comply with any of the terms, conditions or provisions of this Chapter, of the Colorado Retail Marijuana Code, of the Colorado Medical Marijuana Code, of any rule or regulation promulgated pursuant to such Codes or pursuant to this Chapter, or of the Hayden Municipal Code; (2) the licensee has failed to comply with any special terms or conditions that were placed on its license, whether state or local, at the time the license was issued, or that were placed on its license, whether state or local, in prior disciplinary proceedings or to which the licensee agreed in the context of potential disciplinary proceedings; or (3) the licensee's facility has been found to have been operated in a manner that adversely affects the public health, welfare or safety of the immediate neighborhood in which the facility is located. Evidence to support such a finding can include: (i) a continuing pattern of offenses against the public peace; (ii) a continuing pattern of drug-related criminal conduct within the premises of the facility or in the immediate area surrounding the facility; or (iii) a continuing pattern of criminal conduct directly related to or arising from the operation of the facility.

Industrial hemp means the plant of the genus Cannabis and any part of such plant, whether growing or not, with a Delta-9 tetrahydrocannabinol concentration that does not exceed three-tenths percent (0.03%) on a dry-weight basis.

License means a document issued by the Town officially authorizing an applicant to operate a marijuana cultivation facility pursuant to this Chapter, or, if required by the context, means a document issued by the state licensing authority pursuant to the Colorado Retail Marijuana Code.

Licensed premises means the premises specified in an application for a license under this Chapter which is owned or in possession of the licensee and within which the licensee is authorized to cultivate marijuana in accordance with state and local law.

Licensee means the person or entity to whom a license has been issued pursuant to this Chapter.

Marijuana means all parts of the plant of the genus Cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin, including marijuana concentrate, but provided, however, that such concentrate must have

been extracted with water-based methods. Water-Based marijuana concentrate is the only type of marijuana concentrate that a Marijuana cultivation facility is authorized to produce under a License issued pursuant to this Chapter. Marijuana does not include industrial hemp, nor does it include fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other product.

Marijuana cultivation facility means an entity licensed to cultivate more than twelve (12) marijuana plants at any one time, prepare and package the marijuana and either provide medical marijuana to one or more patients or sell marijuana to marijuana stores, to marijuana product manufacturing facilities, to other marijuana cultivation facilities, to medical marijuana centers or to medical marijuana-infused products manufacturers, but not to consumers.

Marijuana product manufacturing facility shall have the same meaning as set forth in the Colorado Retail Marijuana Code.

Marijuana store shall have the same meaning as set forth in the Colorado Retail Marijuana Code.

Medical marijuana center shall have the same meaning as set forth in the Colorado Medical Marijuana Code.

Medical marijuana-infused products manufacturer shall have the same meaning as set forth in the Colorado Medical Marijuana Code.

State means the State of Colorado.

State licensing authority shall have the same meaning as set forth in the Colorado Retail Marijuana Code, in the context of retail marijuana, and in the Colorado Medical Marijuana Code, in the context of medical marijuana.

Water-based marijuana concentrate means a specific subset of marijuana that was produced by extracting cannabinoids from marijuana through the use of only water, ice or dry ice.

B. In addition to the definitions contained in Subsection (a) above, other terms used in this Chapter shall have the meaning ascribed to them in Article XVIII, Section 14, of the Colorado Constitution or in the Colorado Medical Marijuana Code or in the Colorado Retail Marijuana Code, and such definitions are hereby incorporated into this Chapter by reference.

5.22.040. Licensing Authority created.

There shall be and is hereby created a Marijuana Licensing Authority, hereafter referred to in this Chapter as the "Authority."

5.22.050. Composition of the Authority.

The Authority shall be the Town Clerk.

5.22.060. Functions of the Authority.

A. The Authority shall have the duty and authority pursuant to this Chapter and the Colorado Medical Marijuana Code and Colorado Retail Marijuana Code to grant or deny licenses, as well as all powers of a local licensing authority as set forth in said Colorado Codes.

B. The Authority shall have the power to: (i) promulgate rules and regulations concerning the procedures for hearings before the Authority; (ii) require any applicant or licensee to furnish any relevant information required by the Authority; and (iii) administer oaths and issue subpoenas to require the presence of persons and the production papers, books and records at any hearing that the Authority is authorized to conduct. Any such subpoena shall be served in the same manner as a subpoena issued by a district court of the State.

5.22.070. License required; term of license; renewal application.

A. It shall be unlawful for any person to establish or operate a marijuana cultivation facility in the Town without first having obtained from the Town and from the State, if the State requires licensure of such a facility, a license for each facility to be operated. Such licenses shall be kept current at all times and shall be conspicuously displayed at all times in the premises to which they apply. The failure to maintain a current license shall constitute a violation of this Section.

B. It shall be unlawful for any person, group of persons or entity to cultivate more than twelve (12) marijuana plants on any premises without first having obtained the license required by this Chapter, regardless of whether such plants are grown individually or cooperatively, for wholesale, personal use or for provision to another, as a commercial enterprise, as a caregiving enterprise or for purely personal use, and regardless of any other factor(s) concerning such cultivation.

C. Any license issued by the Authority under this Chapter shall expire one year after the date of its issuance.

D. An application for renewal of an existing license shall be made on forms provided by the Town and the State. At the time of the renewal application, each applicant shall pay a nonrefundable fee to the Town, as set forth in in the Fee Schedule, to defray the costs incurred by the Town for background investigations, review of the application and inspection of the proposed premises, as well as any other costs associated with the processing of the application.

5.22.080. Application requirements; payment of application fee.

A. Prior to making an application for a license, the person potentially seeking the license shall first attend at least one pre-application meeting with the Town Manager, Town Clerk and any other Town official or employee whose presence is requested by the Town Manager or Clerk. The purpose of the pre-application meeting is to advise the potential applicant as to the process for applications under this Chapter, to answer preliminary questions from the potential applicant and to provide an opportunity to identify issues

that might preclude the issuance of a license pursuant to this Chapter. Prior to such pre-application meeting, the potential applicant shall pay a pre-application fee to the Town, as set forth in Fee Schedule, to defray the costs incurred by the Town in conducting the meeting. A person seeking a license shall submit an application to the Town on forms provided by the State and Town. At the time of application, each applicant shall pay an application fee to the Town, as set forth in Fee Schedule to defray the costs incurred by the Town for background investigations, review of the application and inspection of the proposed premises, as well as any other costs associated with the processing of the application. In addition, the applicant shall present for recording one (1) of the following forms of identification:

- (1) An identification card issued in accordance with Section 42-2-302, C.R.S.;
- (2) A valid state driver's license;
- (3) A valid driver's license containing a picture issued by another state;
- (4) A United States military identification card;
- (5) A valid passport; or
- (6) An alien registration card.

B. The applicant shall also provide the following information on a form approved by, and acceptable to, the Town, which information shall be required for the applicant and all persons having a financial interest in the facility that is the subject of the application or, if the applicant is an entity, having a financial interest in the entity:

- (1) Name, address, date of birth and other identifying information as may be required;
- (2) An acknowledgement and consent that the Town may conduct a background investigation, including a criminal history check, and that the Town will be entitled to full and complete disclosure of all financial records of the facility, including but not limited to records of deposits, withdrawals, balances and loans;
- (3) If the applicant is a business entity, information regarding the entity, including without limitation the name and address of the entity, its legal status and proof of registration with, or a certificate of good standing from, the Colorado Secretary of State, as applicable;
- (4) A copy of the deed reflecting the applicant's ownership of, or a lease reflecting the right of the applicant to possess, the proposed licensed premises;
- (5) If the applicant is not the owner of the proposed licensed premises, a notarized statement from the owner of such property authorizing the use of the property for a marijuana cultivation facility;
- (6) Evidence of the issuance of a valid Town excise tax license, if required;

(7) A clearly legible "to scale" diagram of the proposed licensed premises, no smaller than 8.5" x 11" and no larger than 11" x 17", showing, without limitation, the building layout, all entryways and exits to and from the proposed licensed premises, all areas in which marijuana will be cultivated and stored, and all proposed areas of water-based extraction activities;

(8) A comprehensive operation plan for the cultivation facility that contains, at a minimum, the following:

a. A description of the security provisions and systems meeting the requirements of Section 5.22.110.E. of this Chapter; and

b. An exterior lighting plan; and

c. A description of the cultivation activities, including without limitation, the area in which plants will be grown, a description of the ventilation and odor filtration system for the premises, if required by Section 5.22.110.D. of this Chapter, and a description of the automatic fire suppression system, if required by applicable building and fire codes; and

(9) An area map drawn to scale indicating land uses of other properties within a 500-foot radius of the property upon which the applicant is seeking a license. The map shall depict the proximity to the property to any school, park or commercial child care center.

(10) Any additional information that the Authority reasonably determines to be necessary in connection with the investigation, review and determination of the application.

C. A license issued pursuant to this Chapter does not eliminate the need for the licensee to obtain other required permits or licenses related to the operation of the facility, including, without limitation, any development approvals or building permits required by this Code.

D. Upon receipt of a complete application, the Authority shall circulate the application to all affected service areas and departments of the Town to determine whether the application is in full compliance with all applicable laws, rules and regulations. No license shall be approved until after the Authority has caused the proposed premises to be inspected to determine compliance of the premises with any applicable requirements of this Chapter and Code, and with the plans and descriptions submitted as part of the application. Within thirty (30) days after the completion of the Authority's investigation of the application, the Authority shall issue a written decision approving or denying the application for licensure, which decision shall state the reasons for the decision and be sent via certified mail to the applicant at the address shown in the application. In addition, the Authority shall promptly notify the State Medical Marijuana Licensing Authority of any approval of an application for local licensure.

E. After approval of an application, the Authority shall not issue a license or license certificate until the building in which the business is to be conducted is ready for

occupancy with such furniture, fixtures and equipment in place as are necessary to comply with the applicable provisions of this Chapter. After approval of an application, the Authority shall not issue a license or license certificate until the applicant provides written evidence that the applicant has paid all license application fees due to the State in connection with the State Licensing Authority's review of the application, where applicable. Each license certificate issued by the Town pursuant to this Chapter shall specify the date of issuance, the period of licensure, the name of the licensee and the premises or optional premises licensed.

5.22.090. Denial of application.

The Authority shall deny any application that does not meet the requirements of this Chapter and may deny an application that does not meet the requirements of the Colorado Medical Marijuana Code. The Authority shall also deny any application that contains any false, misleading or incomplete information. Denial of an application for a license shall be subject to review by a court of competent jurisdiction.

5.22.100. Persons prohibited as licensees.

No license shall be issued to, held by or renewed by any of the following:

- A. Any applicant who has made a false, misleading or fraudulent statement, or who has omitted pertinent information, on the application for a license;
- B. Any applicant who has failed to pay all required state and local application and/or license fees, as applicable.
- C. Any licensee who is delinquent in or who has failed to file tax returns and other required financial information, to remit taxes to the Town or the State, or who has otherwise failed to conduct the facility in compliance with all applicable ordinances, rules, regulations and laws.

5.22.110. Requirements related to the premises.

- A. All cultivation, water-based extraction and related activities shall be conducted indoors.
- B. All product storage shall be indoors. Marijuana shall not be visible from a public sidewalk or right of way.
- C. No marijuana shall be consumed on the licensed premises.
- D. The cultivation of marijuana that results in any single marijuana plant of a height greater than twelve (12) inches is only permitted when the premises are equipped with a system that removes the odors of the marijuana being cultivated so that the odor is not detectable from the exterior of the business or from within any adjoining premises. Approval of the odor removal system by the Building Inspector is required prior to any cultivation process beginning. The Building Inspector's determination of the adequacy of any proposed odor-removing system shall be based on his reasonable determination of the ability of the proposed system to remove odors as required by this Subsection, which

determination shall be based upon the manufacturer's or an engineer's design specifications for the system as they relate to the premises in question.

E. Adequate security must be provided on the premises. At a minimum, the security shall include:

- (1) Security surveillance cameras installed and properly maintained to monitor each entrance along the interior and exterior of the premises to discourage crime and to facilitate the reporting of criminal acts, as well as nuisance activities; security video shall be preserved in the manner and for the period of time set forth in the Colorado Medical Marijuana Enforcement Division Rules, as amended from time to time;
- (2) Robbery and burglary alarm systems that are professionally monitored and maintained in good working condition;
- (3) Exterior lighting that illuminates the exterior walls of the business during evening hours and is compliant with the Town Code;
- (4) A secure safe that is utilized for the purposes of storing cash and marijuana that is not then being actively cultivated; and
- (5) Locking systems for exterior doors that are designed and installed in such fashion as to deter unlawful entry and provide safe emergency egress.

5.22.120. Prohibited acts.

A. It shall be unlawful for any licensee to permit the consumption of alcohol beverages, as defined in the Colorado Liquor Code, on the licensed premises.

B. It shall be unlawful for any licensee to sell, dispense, give or otherwise distribute marijuana except as permitted by law.

C. After issuance of a license, it shall be unlawful for a licensee to make a physical change, alteration or modification of the licensed premises that materially or substantially alters the licensed premises or the usage of the licensed premises from the plans and specifications submitted at the time of obtaining the original license without obtaining the prior written approval of the Authority and the State Licensing Authority, when applicable. For purposes of this Subsection, physical changes, alterations or modification of the licensed premises, or in the usage of the premises requiring prior written approval, shall include but not be limited to the following:

- (1) Any increase or decrease in the size or physical capacity of the licensed premises;
- (2) The sealing off, creation of or relocation of a common entryway, doorway, passage or other such means of ingress and/or egress, when such common entryway, doorway or passage alters or changes the cultivation, wholesale or distribution of marijuana within the licensed premises;

(3) Any enlargement of a cultivation area; and

(4) Any change in the interior of the premises that would affect the basic character of the premises or physical structure that existed in the plan on file as part of the latest prior application.

5.22.130. Required books and records.

A. In addition to any requirements under the Colorado Medical Marijuana Code or Colorado Retail Marijuana Code, and any rules or regulations promulgated thereunder requiring licensees to maintain books and records, every facility shall maintain an accurate and complete record of all marijuana cultivated, all marijuana processed into usable form, and all marijuana sold, given away, dispensed or otherwise distributed or removed from the licensed premises. Such records shall include:

(1) The total quantity of marijuana cultivated and the total usable quantity of marijuana produced from time to time, including the date(s) of cultivation and the date(s) on which cultivated marijuana was reduced to usable form; and

(2) The date and time at which any marijuana was removed from the licensed premises, including the amount of marijuana removed, the person who removed it, the location to which the marijuana was delivered and the date and time of such delivery.

B. All events and/or transactions that are to be recorded pursuant to this Section shall be kept in a numerical register in the order in which they occur.

C. All records required to be kept under this Section must be kept in the English language in a legible manner and must be preserved and made available for inspection by the Town for a period of three (3) years after the date of the occurrence and/or transaction. The licensee may redact any information the licensee is required by law to maintain as confidential prior to providing records to the Town for inspection and shall provide to the Town, upon request, a citation to the law that requires such non-disclosure or a copy of any court order or other legal authority to withhold such information.

5.22.140. Inspection of licensed premises.

During all business hours and other times of apparent activity, all licensed premises shall be subject to inspection by the Chief of Police, the Fire Chief, the Building Official or the authorized representative of any of them, for the purpose of investigating and determining compliance with the provisions of this Chapter and any other applicable state or local law or regulation. Such inspection may include, but need not be limited to, the inspection of books, records and inventory. Where any part of the premises consists of a locked area, such area shall be made available for inspection, without delay, upon request.

5.22.150. Nonrenewal, suspension or revocation of license.

A. The Authority may suspend, revoke or refuse to renew a license for any of the following reasons:

(1) The applicant or licensee, or his or her agent, manager or employee, have violated, do not meet or have failed to comply with any of the terms, requirements, conditions or provisions of this Chapter or with any applicable state or local law or regulation;

(2) The applicant or licensee, or his or her agent, manager or employee, have failed to conduct the licensed operations in conformance with the application pursuant to which the license was issued, or have failed to comply with any special terms or conditions of its license pursuant to the order of the State or Local Licensing Authority, including those terms and conditions that were established at the time of issuance of the license and those imposed as a result of any disciplinary proceedings held subsequent to the date of issuance of the license; or

(3) The facility has been operated in a manner that adversely affects the public health, safety or welfare.

B. The Authority shall not suspend or revoke a license until after notice and an opportunity for hearing has been provided to the licensee.

C. The Authority shall not hold a hearing on a license renewal application unless a complaint has been filed concerning the licensee or there are allegations against the licensee that, if established, would be grounds for suspension, revocation or nonrenewal under Subsection A. of this Section.

D. Evidence to support a finding under Paragraph A.(3) of this Section may include, without limitation, a continuing pattern of disorderly conduct or drug-related criminal conduct within the premises of the facility or in the area immediately surrounding the facility, or a continuing pattern of criminal conduct directly related to or arising from the operation of the facility.

5.22.160. Violations and penalties.

In addition to the possible denial, suspension, revocation or nonrenewal of a license under the provisions of this Chapter, any person, including but not limited to any licensee, manager, agent or employee of a cultivation facility who violates any provision of this Chapter shall be guilty of a misdemeanor punishable in accordance with Section 1.08 General Penalty of this Code.

5.22.170. No Town liability; indemnification; no defense.

A. By accepting a license issued pursuant to this Chapter, the licensee waives any claim concerning, and releases the Town, its officers, elected officials, employees, attorneys and agents from, any liability for injuries or damages of any kind that result from any arrest or prosecution of facility owners, operators, employees, customers or patients of the licensee for a violation of state or federal laws, rules or regulations.

B. By accepting a license issued pursuant to this Chapter, all licensees, jointly and severally if more than one (1), agree to indemnify, defend and hold harmless the Town,

its officers, elected officials, employees, attorneys, agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the facility that is the subject of the license.

C. The issuance of a license pursuant to this Chapter shall not be deemed to create an exception, defense or immunity for any person in regard to any potential criminal liability the person may have under state or federal law for the cultivation, possession, sale, distribution or use of marijuana.

Section 3. Subsection 8.08.080.A. of the Code, concerning Specific Nuisances Declared, is hereby amended by the addition of a new paragraph 15, to read in its entirety as follows:

15. Regularly occurring or persistent unusual and/or offensive odors, smells, fragrances, or other olfactory stimulus detectable by any person with a normal sense of smell upon or within any nearby property or unit.

Section 4. Subsection 8.35.010.A. of the Code, concerning Findings and Legislative Intent in regards to the prohibition of marijuana establishments, is hereby amended to read in its entirety as follows:

E. The Town Council therefore finds and determines that as a matter of the Town's local land use and zoning authority, and consistent with authorization provided by Article XVIII, Section 16 of the Constitution, that no suitable location exists within the corporate limits of the Town for the manufacture and sale of marijuana by the operation of or through marijuana establishments, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores.

Section 5. Section 8.35.040 of the Code, concerning the prohibition of Marijuana Establishments, Marijuana Cultivation Facilities, Marijuana Product Manufacturing Facilities, Marijuana Testing Facilities and Retail Marijuana Stores, is hereby amended to read in its entirety as follows:

It is unlawful for any person or entity to operate, cause to be operated or permit to be issued to operate a marijuana establishment, marijuana product manufacturing facility, marijuana testing facility or retail marijuana store which license could otherwise be obtained with the Town and all such uses and operations are hereby prohibited in any location within the Town or within any area annexed to the Town.

Section 6. Title 16 of the Hayden Municipal Code, concerning Land Use, is hereby amended by the addition of a new Article 14, to read in its entirety as follows:

ARTICLE 14 - MARIJUANA REGULATIONS

DIVISION 1 RESIDENTIAL CULTIVATION RESTRICTIONS

Section 14.010. Legislative powers.

The Town Council hereby finds and declares that it has the power to enact this Article and the regulations herein pursuant to Article XVIII, Section 16(5)(f) of the Colorado Constitution; C.R.S. § 12-43.4-104(3); C.R.S. § 12-43.3-106; Article 20 of Title 29, C.R.S.; Part 3 of Article 23 of Title 31, C.R.S.; Section 31-15-103, C.R.S.; and Section 31-15-401, C.R.S.; and Section 31-15-501; Article XX, Section 6 of the Colorado Constitution, and the Town's Home Rule Charter.

Section 14.020.

Unlawful Acts.

It shall be unlawful for any person to cultivate marijuana in a residential zone district or in a residential structure being used for residential purposes in any zone district except as permitted and regulated by this Article.

Section 14.030 Definitions.

The definitions set forth in Chapter 5.22 of this Code shall apply to this Article.

Section 14.040. Residential Cultivation regulations.

- A. The cultivation, production and possession of marijuana in a residential structure is permitted, subject to the following requirements:
 - (1) The cultivation, production and or possession of medical marijuana plants must be in full compliance with all applicable provisions of Article XVIII, Section 14 of the Colorado Constitution, the Medical Marijuana Program, C.R.S. § 25-1.5-106, including its regulations set forth in 5 CCR 1006-2; and the Colorado Medical Marijuana Code, if applicable, and all its implementing rules and regulations; and
 - (2) The only cultivation activity that may occur as a home occupation is the cultivation by a primary caregiver of medical marijuana for his or her patient(s), subject to all other applicable requirements and restrictions, including but not limited to those restrictions set forth in this Section as well as all home occupation requirements set forth in the Town's zoning regulations.
 - (3) The cultivation, production and possession of marijuana for personal use by persons twenty-one years of age or older must comply with the applicable provisions of Article XVIII of Section 16 of the Colorado Constitution and the requirements set forth in this Article.
 - (4) Marijuana must be cultivated, produced, processed and possessed within a person's primary residence, as defined in Subsection B. below; and
 - (5) The cultivation, production, processing and possession of marijuana plants must not be conducted in an open and public manner meaning it must not be perceptible from the exterior of the primary residence, and such activity shall not cause or create any of the following:
 - a. Regularly occurring or persistent unusual odors, smells, fragrances, or other olfactory stimulus detectable by any person with a normal sense of smell upon or within any adjacent unit or property;
 - b. Light pollution, glare, or brightness that unreasonably disturbs others in the use or enjoyment of their property, or constitutes a nuisance; or

c. Excessive noise.

- (6) The residential structure must include ventilation and odor control in the area in which cultivation occurs that is adequate to effectively eliminate odor from the cultivation travelling to and being detected by a person with a normal sense of smell at the exterior of the premises, in the surrounding neighborhood and/or in adjacent units.
 - (7) Marijuana plants shall not be cultivated, produced, processed or possessed in the common areas of a multi-family or attached residential development; and
 - (8) The cultivation, production, processing and possession of marijuana plants shall be limited to the following maximum permissible number of plants and area restrictions:
 - a. For a single-family dwelling unit (Group R-3 as defined by the most current international building code adopted by the Town), within a single enclosed locked, defined, contiguous area containing no more than twelve (12) plants within such person's primary residence;
 - b. For a multi-family dwelling unit (Group R-2 as defined by the most current international building code, adopted by the Town), within a single enclosed locked, defined, contiguous area containing no more than twelve (12) plants within such person's primary residence.
 - (9) Marijuana plants shall not be cultivated, produced, processed or possessed in any accessory structure; and
 - (10) The cultivation, production, processing and possession of marijuana plants shall meet the requirements of all adopted Town building and life/safety codes; and
 - (11) The use of any compressed flammable gas as a solvent in the extraction of tetrahydrocannabinols or other cannabinoids is prohibited; and
 - (12) The total load for a single branch circuit shall not exceed the ampacity for the entire cultivation area within a dwelling.
 - (13) Marijuana waste shall be rendered unusable prior to leaving the residence by grinding and incorporating the material with non-consumable solid wastes such as food waste, soil or other compostable materials through a garbage disposal or any other reasonably available residential method or through any other method that renders such waste material unrecognizable and unusable.
- B. For purposes of this section, "primary residence" means the place that a person, by custom and practice, makes his or her principal domicile and address, and to which the person intends to return following any temporary absence, such as a vacation. Residence is evidenced by actual daily physical presence, use, and occupancy of the primary residence, and the use of the residential address for domestic purposes, such as, but not limited to, sleep, preparation of and partaking of meals, regular mail delivery, vehicle and voter registration, or credit, water and utility billing. A person shall have only one primary residence. A primary residence shall not include accessory buildings.

- C. For purposes of this section, “enclosed locked” area means a location within the primary residence accessible only to the person growing the marijuana through one or more doors secured by a locking mechanism designed to limit access such as with a key or combination lock, and with walls and roofing that must be constructed of solid materials. Such premises must remain secure at all times and any windows must be locked to prevent access by children, visitors or a casual passersby.

Sections 14.050 – 14.060. Reserved.

DIVISION 2 NON-RESIDENTIAL CULTIVATION RESTRICTIONS.

Section 14.070. Legislative intent.

- A. Town Council hereby finds and declares that the proliferation of large-scale, non-licensed, and unregulated marijuana cultivation operations poses a significant threat to the health, safety, and security of all citizens of the town. The Town Council finds that such operations can result in increased violations of criminal laws along with violations of building, electrical, and fire codes in these large cultivation operations. It is, therefore, the intent of the Town Council to place reasonable and necessary restrictions upon such cultivations.

Section 14.080. Non-Residential Cultivation Restrictions.

- A. It shall be unlawful for any person, alone or in concert with other persons, to possess or cultivate more than twelve (12) marijuana plants on any premises or within any structure in any zone district in the Town without an approved Conditional Use Permit and without the license required for such a cultivation facility under Chapter 5.22 of this Code .
- B. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises to allow more than twelve (12) marijuana plants to be possessed or cultivated on the premises without approval of a Conditional Use Permit and without the license required for such a cultivation facility under Chapter 5.22 of this Code.
- C. It shall be unlawful for any person, alone or in concert with other persons, to cultivate marijuana outside of a completely enclosed locked structure.
 - 1. Nothing in this section shall be construed to allow the cultivation of marijuana in any number, manner, or location that is in conflict with the cultivation restrictions imposed in this Article within single family and multi-family residential dwelling units.
 - 2. For purposes of this section:
 - a. “Completely enclosed locked structure” means a structure as defined by the zoning code accessible only to the persons cultivating the marijuana through one or more doors secured by a locking mechanism designed to limit access such as with a key or combination lock, and with walls and roofing that must be constructed of solid materials. Such structure must remain secure at all times and any windows must be locked to prevent access children, visitors or a casual passerby.
 - b. “Cultivate” means the planting, growing, harvesting, storing, drying, trimming, or processing of marijuana plants.

- D. The marijuana plants must be cultivated, produced, processed and possessed within the building approved as part of any Conditional Use Permit process; and
- E. The cultivation, production, processing and possession of marijuana plants must not be conducted in an open and public manner meaning it must not be perceptible from the exterior of the building on the subject site, and such activity shall not cause or create any of the following:
 - 1. Regularly occurring or persistent unusual odors, smells, fragrances, or other olfactory stimulus detectable by any person with a normal sense of smell upon or within any adjacent unit or property;
 - 2. Light pollution, glare, or brightness that unreasonably disturbs others in the use or enjoyment of their property, or constitutes a nuisance; or
 - 3. Excessive noise.
- F. All marijuana cultivation facilities must employ and maintain ventilation and odor control that is adequate for the size of the facility to effectively eliminate odor from the facility escaping the facility so as to be detected by a person with a normal sense of smell at the exterior of the premises, in the surrounding neighborhood or in adjacent units.
- G. Marijuana plants shall not be cultivated, produced, processed or possessed in any accessory structure.
- H. The cultivation, production, processing or possession of marijuana plants shall meet the requirements of all adopted Town building and life/safety codes.
- I. The use of any compressed flammable gas as a solvent in the extraction of tetrahydrocannabinols or other cannabinoids is prohibited.
- J. The total load for a single branch circuit shall not exceed the ampacity for the entire cultivation area within the building.
- K. Marijuana waste shall be rendered unusable prior to leaving the facility by grinding and incorporating the material with non-consumable solid wastes such as food waste, soil or other compostable materials.
- L. Cultivation facilities shall not be located within 500 feet of any public or parochial school or the principal campus of any college, university, or seminary; any public park; or any commercial child care center. Distances described in this paragraph shall be calculated by measuring the distance from the nearest property line of the school, park or commercial child care center to the building in which the medical marijuana center is located.
- M. Retail marijuana cultivation uses shall not operate in a manner that adversely affects the public health, safety, and welfare of the immediate neighborhood in which the retail marijuana cultivation use is located.

Section 14.090. Control of Emissions.

In accordance with Town of Hayden Code Title 8. Health and Safety Section 8.08 Nuisances, sufficient measures and means of preventing smoke, odors, debris, dust, fluids, and other substances from exiting a cultivation facility must be provided at all times. In the event that any odors, debris, dust fluids or other substances exit a cultivation facility, the owner of the subject premises and the licensee shall be jointly and severally liable for such conditions and shall be responsible for immediate, full clean-up and correction of such condition. The licensee shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state, and local laws and regulations.

All cultivation facilities must employ and maintain ventilation and odor control that is adequate for the size of the facility to effectively eliminate the pungent odor from the operation so that the odor does not migrate in and around the marijuana cultivation site and is not detected by a person with a normal sense of smell at the exterior of the premises, in the surrounding neighborhood and/or in adjacent units.

Section 7. Section 16.03.040.I.3 of the Hayden Municipal Code shall be amended to include the addition of a new conditional use, cc. Marijuana Cultivation.

Section 8. Section 16.03.040.J.3 of the Hayden Municipal Code shall be amended to include the addition of a new conditional use, z. Marijuana Cultivation.

Section 9. Affirmation and Restatement of Prohibition of all Marijuana-Related Businesses, Enterprises and Activities Not Expressly Permitted by this Ordinance. Pursuant to the authority granted by Article XVIII, Section 16(5)(f) of the Colorado Constitution; C.R.S. § 12-43.4-104(3); C.R.S. § 12-43.3-106; Article 20 of Title 29, C.R.S.; Part 3 of Article 23 of Title 31, C.R.S.; Section 31-15-103, C.R.S.; Section 31-15-401, C.R.S.; and Section 31-15-501; the Council hereby affirms and restates the prohibition of all marijuana-related businesses, enterprises and activities adopted by Ordinances No. 632 and 659 excepting only those businesses, enterprises and activities that are expressly permitted by this Ordinance.

Section 10. If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The Town Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 11. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 12. The repeal or modification of any provision of the Municipal Code of the Town of Hayden by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 13. This ordinance is deemed necessary for the preservation of the public property, health, welfare, peace and safety.

Section 14. Violations of this ordinance shall be punishable in accordance with the provisions of the Hayden Municipal Code.

Section 15. EFFECTIVE DATE.

This Ordinance, immediately on final passing and adoption, shall be published by the Town Clerk in accordance with Section 3-3h of the Home Rule Charter and recorded in the Town Book of Ordinances kept for that purpose, authenticated by the signatures of the Mayor and Town Clerk. This Ordinance shall be in force and take effect fifteen (15) days after second publication in accordance with Section 3-3h of the Hayden Home Rule Charter.

Section 16. PUBLIC HEARING.

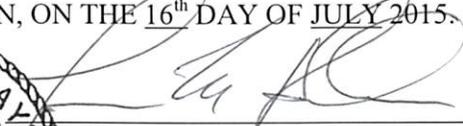
A public hearing on this Ordinance will be held on the 6th day of August 2015, at or about 7:30 p.m. at the Hayden Town Hall, 178 West Jefferson Ave, Hayden, Colorado.

INTRODUCED, READ, AND ORDERED PUBLISHED PURSUANT TO SECTION 3-3 (d) OF THE HAYDEN HOME RULE CHARTER, BY THE TOWN COUNCIL OF THE TOWN OF HAYDEN, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF HAYDEN, ON THE 16th DAY OF JULY 2015.

ATTEST


Sharon Johnson, Town Clerk



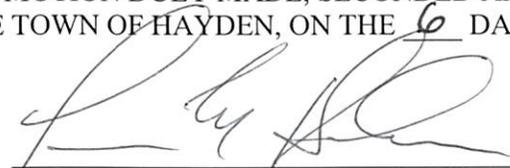

James M. Haskins, Mayor

FINALLY ADOPTED, PASSED, APPROVED, AND ORDERED PUBLISHED PURSUANT TO SECTION 3-3 (h) OF THE HAYDEN HOME RULE CHARTER, BY THE TOWN COUNCIL OF THE TOWN OF HAYDEN, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF HAYDEN, ON THE 6 DAY OF August 2015.

ATTEST


Sharon Johnson, Town Clerk




James M. Haskins, Mayor