

Town of Silverton

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ORDINANCE NO. 2010-05

AN EMERGENCY ORDINANCE AMENDING THE CODE OF THE TOWN OF SILVERTON IN ORDER TO PROVIDE FOR LOCAL REGULATION OF MEDICAL MARIJUANA OPERATIONS.

WHEREAS, the electorate of the state of Colorado, in the 2000 general election, approved the lawful use of medical marijuana by enacting Article XVIII, Section 14 of the Colorado Constitution (“Amendment 20”); and

WHEREAS, in the 2010 regular legislative session, the General Assembly of the State of Colorado enacted House Bill 10-1284 – to be codified as the Colorado Medical Marijuana Code and conferring authority to local governments to license and regulate any businesses that stood to lawfully operate within the confines of Amendment 20; and

WHEREAS, the Town of Silverton has a valid interest in regulating the impacts of medical marijuana businesses in a manner consistent with Amendment 20; and

WHEREAS, if medical marijuana dispensaries operating pursuant to Amendment 20 were allowed to be established and operated without appropriate local regulation, medical marijuana dispensaries might be operated in a manner that would be inconsistent with surrounding uses or otherwise be detrimental to the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF SILVERTON, COLORADO:

Section 1. Chapter 10 of the Silverton Municipal Code pertaining to licensure is hereby amended by the addition of a new Article 5 to read as follows:

ARTICLE 5

Licensing of Medical Marijuana Operations

Sec. 10-5-1 Short Title This Article shall be known and may be cited as the “Town of Silverton Medical Marijuana Licensure Rules and Guidelines”

Sec. 10-5-2 Findings

- A. Lawfulness - The production, sale and use of medical marijuana shall be lawful within the statutory limits of the Town of Silverton provided that all licensure, permitting, land use and other requirements established under this Code are satisfied and further provided that any business operating pursuant to the terms of this Article operate in conformance with all such requirements as established by Amendment 20, the Colorado Medical Marijuana Code, and any such rules or regulations appurtenant thereto as the State may promulgate from time to time.
- B. Local Option – Pursuant to Section 12-43.3-106 of the Colorado Medical Marijuana Code, the Town of Silverton – by and through either its elected authority or general electorate – maintains the right to declare the activities contemplated herein to be unlawful upon a majority vote of either its governing body or by the general electorate at a regular or special election called in accordance with the Colorado Municipal Election Code of 1965 or Uniform Election Code of 1992.

Sec. 10-5-3 Definitions – Terms used in this Article shall be given their plain meaning when not otherwise given explicit meaning in this Section (3). As used in this Article, the following words and phrases shall be construed with the following meanings:

“Applicant” includes any person seeking to obtain a Town of Silverton license for the purposes of operating a lawful medical marijuana-related business within the jurisdictional limits of the Town.

“Local Licensing Authority” is that body responsible for granting final approval of, and issuing municipal medical marijuana licenses to, medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers. Such authority shall consist of the Town of Silverton Board of Trustees, which body shall approve local medical marijuana licenses by a simple majority vote unless and until such entity, by resolution, proscribes an alternate approval process and/or delegates its authority vested herein.

“Optional Premises” means a property or portion thereof individually licensed in conjunction with a licensed medical marijuana center and employed as an ancillary growing facility servicing the latter.

“Optional Premises Cultivation Operation” means any person operating a lawful, licensed business for the purpose of growing and cultivating medical marijuana in conjunction with either a licensed medical marijuana center or medical marijuana-infused goods production facility.

“Person” includes any natural person, partnership, association, company, corporation, limited liability company or any agent or officer thereof.

“Medical Marijuana Center” means and includes any natural person, partnership, association, company, corporation, limited liability company or any agent or officer thereof operating a lawful, licensed business for the purpose of selling medical marijuana to registered patients or primary caregivers but shall not include primary caregivers.

“Medical Marijuana-Infused Goods Production Facility” means any person lawfully creating medical marijuana-infused products pursuant to the terms and conditions of this article and which has a written agreement or contract with a medical marijuana center licensee.

“Patient” means any individual permitted to lawfully purchase, receive and use medical marijuana in accordance with the terms of Amendment 20 of the constitution of the State of Colorado.

“Primary Caregiver” means a person, other than a patient and the patient's physician, who is eighteen years of age or older, who may lawfully engage or assist no more than five such patients at any given time in the provision and use of medical marijuana. When this relationship exists, the Primary Caregiver shall bears a significant responsibility for managing the well-being of his or her patients permitted to use medical marijuana by virtue of a debilitating medical condition.

“State Licensing Authority” is the Executive Director of the State of Colorado Department of Revenue or the Deputy Director of the Department of Revenue if the Executive Director so designates.

Sec. 10-5-4 Town of Silverton Medical Marijuana Licenses

A. License Required – No person or entity shall operate as a medical marijuana center, a medical marijuana-infused goods production facility, or an optional premises cultivation operation without obtaining both state and local licenses therefore, the latter of which

shall be issued by the Town consistent with the terms of this Section (3) and shall be renewed on a bi-annual basis.

B. License Not Required

1. Medical Marijuana Patients. Patients lawfully registered with the state for the purposes of using medical marijuana to treat a debilitating condition shall not be required to obtain a Town of Silverton medical marijuana license.
2. Primary Caregivers. Any individual registered with the State of Colorado as a Primary Caregiver and operating lawfully as such under the terms of Sections 25-1.5-106(5)-(6) of the Colorado Revised Statutes shall not be required to obtain a Town of Silverton medical marijuana license. Any Primary Caregiver operating within the jurisdictional limits of the Town of Silverton and receiving compensation for such services may nevertheless be subject to the business license requirements of Article I of this Chapter.

C. License Types – Consistent with Colorado Medical Marijuana Code Section 12-43.3-401 and the three types of lawful business types enumerated therein, the Town of Silverton shall issue three types of local operational licenses, each of which shall be renewed on an annual basis:

1. License to Operate a Medical Marijuana Center. Such licenses shall be issued to Applicants who submit a valid application therefore and seek to lawfully sell medical marijuana pursuant to the terms and conditions of Section 12-43.3-402 of the Colorado Medical Marijuana Code.
2. License to Operate a Medical Marijuana-Infused Goods Production Facility. Such licenses shall be issued to Applicants who submit a valid application therefore and seek to lawfully produce and sell medical marijuana-infused products pursuant to the terms and conditions of Section 12-43.3-404 of the Colorado Medical Marijuana Code.
3. License to Operate an Optional Premises Cultivation. Such licenses shall be issued only in conjunction with the issuance of either a License to Operate a Medical Marijuana Center as proscribed in Subsection (a) of this section and shall be issued to Applicants who submit a valid application therefore and seek to lawfully cultivate medical marijuana pursuant to Section 12-43.3-403 of the Colorado Medical Marijuana Code.

D. Application for Licensure – Persons or entities seeking to operate any of the three business types enumerated in Subsection (B) of this Section within the jurisdictional limits of the Town of Silverton shall first file and have approved, an application tendered by the Town Clerk for such purposes. Applicants shall submit a completed copy of such form as the Town Administrator may designate but which shall

accommodate application to the Town for any of the business types included in Subsection (B) of this section and shall at a minimum include the following:

1. The street address or addresses of the medical marijuana operation or operations the Applicant seeks to license under the provisions of these Rules and state law, which information shall be subject to the confidentiality requirements of Section 12-43.3-310(14) of the Medical Marijuana Code where applicable;
2. The Applicant's name, mailing address and telephone number. If the Applicant is not the owner of the identified location of the proposed business, a notarized statement from the owner of such property authorizing the submission of the application and operation of the business on the premises;
3. Plans and specifications for the interior of the building if the building to be occupied is in existence at the time. If the building is not in existence, the Applicant shall file a plot and plan and a detailed sketch for the interior and submit an architect's drawing of the building to be constructed.
4. An indication that the Town has received a completed set of the Applicant's fingerprints on a form approved by the Town Administrator;
5. An indication as to which type of license(s) is being sought. If the Applicant is seeking to obtain a License to Operate an Optional Premises Cultivation, Applicant must concurrently apply for and obtain either a License to Operate a Medical Marijuana Center or a License to Operate a Medical Marijuana-Infused Goods Production Facility. If the proposed optional premises cultivation operation is to serve an existing, lawfully licensed medical marijuana center or medical marijuana-infused goods production facility, Applicant may indicate as much on the application, identify the operation to be served by such optional premises cultivation operation, and upon verification of Town staff of this information, the Licensing Authority may issue an independent License to Operate an Optional Premises Cultivation notwithstanding the terms of this Subsection (5).
6. An attestation that the Applicant has either submitted an application for an annual Town of Silverton Business License or is submitting such application in conjunction with the medical marijuana license application. The form shall verify Applicant's understanding that obtaining a Town license permitting the lawful operation of a medical marijuana facility does not relieve such Applicant or facility of any standards that may be triggered by the business license initiation and renewal

processes. Applicant shall acknowledge that such review may include compliance determinations at both the local and state levels and that such determinations may include, but may not be limited to, those relating to applicable zoning standards, building and fire codes and electrical compliance.

7. An application fee in an amount as has been established by Resolution upon a majority vote of the Town Board, made payable to the Silverton Town Treasurer, and assessed in accordance with Section 12-43.3-503.
- E. Processing Priority – the Town Clerk shall process applications submitted pursuant to this Section in the order in which applications for Town Business Licenses appurtenant thereto are received. When multiple applications are referred to the Local Licensing Authority for its consideration, the Authority shall consider the order of receipt in evaluating potential separation requirements as established in Chapter 7 of this Municipal Code.
 - F. Local Licensing Authority Review – In accordance with Colorado Medical Marijuana Code Section 12-43.3-303, when presented with an application for a medical marijuana license, the Local Licensing Authority or its Town staff designees shall commence an investigation the purpose of which shall be to render a determination on the propriety of issuing a license to the particular applicant and for the particular premises identified in the application under consideration.
 - G. Hearing – Upon receipt of an application for a license under this Section, the Licensing Authority may schedule a public hearing upon the application to be held not less than thirty days after the date of the application. If the Licensing Authority elects to hold such hearing, the Town Clerk shall post and publish notice thereof not less than ten (10) days prior to the scheduled date of such hearing and shall carry out all other public notice requirements as proscribed by Section 12-43.3-302 of the Colorado Medical Marijuana Code. Notwithstanding any provisions to the contrary herein, any hearing conducted in response to an application to approve a medical marijuana operation pursuant to these Licensure Rules and Guidelines shall comport with the confidentiality requirements of Section 12-43.3-310(14) of the Medical Marijuana Code where applicable.
 - H. Concurrent State-Local Approval – Consistent with the provisions of Colorado Medical Marijuana Code Sections 12-43.3-302(5), either the Local Licensing Authority or an Applicant with Local Licensing Authority Approval may request that the state licensing authority conduct a concurrent review of a new license application prior to the Local Licensing Authority’s final approval of the license application. In such cases, the Local Licensing Authority will continue to independently review the Applicant’s license application.

- I. Final Determination – Not less than twenty-five days after the receipt of a complete application, the Local Licensing Authority shall make known its findings in writing to both the Applicant and other such interested parties as may exist relative to the application. The Local Licensing Authority has authority to refuse to issue a license for good cause, subject to judicial review.
- J. Pre-Issuance Inspection – Should the Local Licensing Authority not reject an application for good cause, it shall require the Applicant to provide proof that any license application fee due to the State has in fact been duly paid to the State Department of Revenue in accordance with the requirements established by Section 12-43.3-310(6) of the Colorado Medical Marijuana Code. By verification through the Town Building Inspector or other appropriate authority as it may designate, the Local Licensing Authority shall also confirm the premises upon which the business to operated is ready for occupancy and that such furniture, fixtures, and equipment is in place as is conceived and upon inspection of the premises, shall issue a positive determination that the Applicant has complied with the architect’s drawing, plot plan and detailed sketch for the interior of the building submitted with the application.
- K. Issuance of License – Upon approval of an application and verification of the terms established in Section 10-5-4(J) of this Code, the Local Licensing Authority shall approve an application and direct staff to issue the proper license to the Applicant which shall be in a form to be approved by the Town Administrator.
- L. State Notification – Upon approval of an application for local licensure, the Local Licensing Authority shall notify the State Licensing Authority of such action, following which the State Licensing Authority shall investigate and either approve or disapprove the application for state licensure. If application for state licensure is denied, any approval for local licensure shall be considered null and void unless and until the state application is remedied and approved.
- M. Renewals – Notwithstanding the terms of Subsection (C) of this Section, Applicants seeking to renew existing operational licenses issued under this Article may do so subject to a \$100 annual renewal fee and by and through a shortened renewal form as designated by the Town Administrator. Such form may elicit any such information as sought through the initial application process but may also ask for additional information reasonably related to the renewal process.
- N. Suspension or Revocation of License – If, in the opinion of the Local Licensing Authority, a licensee otherwise permitted to operate a medical marijuana-related business in accordance with these provisions and those of the Colorado Medical Marijuana Code has failed to abide by the terms of any portion thereof, the Authority may suspend or revoke such license by a majority vote.

- O. Appeal – The Town Board of Adjustment shall serve as the sole appellate authority for any final decision issued by the Local Licensing Authority, be it approval or denial of a license application or the suspension or revocation thereof. The appeal process for any reconsideration of a decision concerning a medical marijuana operation shall be in accordance with that procedure dictated by Section 7-1-8(D) of this Municipal Code.

Sec. 10-5-5 Operational Requirements – Any business licensed by the Town of Silverton pursuant to these Rules and Guidelines shall maintain operational standards consistent with the Colorado Medical Marijuana Code and any State regulations as may be promulgated in support thereof. A failure of any operation licensed under these Rules and Guidelines may expose the owner and/or operator of such establishments to fines and criminal penalties as dictated by the Colorado Medical Marijuana Code.

- A. Inspection – For the purposes of enforcing the provisions of these Rules and Guidelines, all Town-licensed premises, including any places where medical marijuana is grown, stored, cultivated, sold, or dispensed, shall be subject to inspection by Town staff during all business hours and other times of apparent activity in accordance with Colorado Medical Marijuana Code Section 12-43.3-701.

Section 2. Chapter 7, Article 2, Section 5 of the Municipal Code, entitled “Definitions” is hereby amended by the addition of the following to be inserted alphabetically into said article, with the entire section to be renumbered accordingly:

“Applicant” includes any person seeking to obtain a Town of Silverton license for the purposes of operating a lawful medical marijuana-related business within the jurisdictional limits of the Town.

“Optional Premises” means a property or portion thereof individually licensed in conjunction with a licensed medical marijuana center and employed as an ancillary growing facility servicing the latter.

“Optional Premises Cultivation Operation” means any person operating a lawful, licensed business for the purpose of growing and cultivating medical marijuana in conjunction with either a licensed medical marijuana center or medical marijuana-infused products.

“Person” includes any natural person, partnership, association, company, corporation, limited liability company or any agent or officer thereof.

“Medical Marijuana Center” means and includes any natural person, partnership, association, company, corporation, limited liability company or any agent or officer thereof operating a lawful, licensed business for the

purpose of selling medical marijuana to registered patients or primary caregivers but shall not include primary caregivers.

“Medical Marijuana-Infused Goods Production Facility” means any person lawfully creating medical marijuana-infused products pursuant to the terms and conditions of this article and which has a written agreement or contract with a medical marijuana center licensee.

“Medical Marijuana-Related Business” shall include and be limited to Optional Premises Cultivation Operations, Medical Marijuana Centers, and Medical Marijuana-Infused Goods Production Facilities.

Section 3. Chapter 7 of the Municipal Code is amended to include the following Article 5 – Medical Marijuana Operations:

Sec. 7-5-2. Location and requirements.

- A. Permitted Locations – Medical marijuana-related businesses shall be located only in permanent locations established within the Business Pedestrian (B-P) or the South-East Economic Development (E-D) zoned areas of the Town and shall be considered “Uses Permitted by Right” in each of those two zones. Medical marijuana-related businesses shall not be permitted in the North-East E-D zone. It shall be unlawful to cause or permit the operation, establishment or maintenance of a medical marijuana-related business outside of the E-D or B-P zoned areas of the Town or from a movable, mobile or transitory location in any zone district or on any public rights-of-way within the Town, excluding delivery services with a lawful base of operation in San Juan County.
- B. Penalty – It shall be unlawful to cause or permit the operation, establishment or maintenance of a medical marijuana-related business unless a use subject to review permit has been obtained pursuant to this Code, a business license has been obtained pursuant to this code, and unless the use is in compliance with such approval and all applicable regulations of this Code.
- C. No medical marijuana-related business shall be established, operated or maintained within 150 feet of the exterior property boundary of property containing the following:
 - 1. Any Civic/Open Space District zoned property in the Town;
 - 2. Any licensed day care center;

3. Any alcohol or drug rehabilitation facility;
4. Any public community center, park, fairground or recreation center, or any publicly owned or maintained building open for use to the general public;
5. Any other medical marijuana dispensary; or
6. Any halfway house or correctional facility.

D. No medical marijuana-related business shall be established, operated or maintained within 300 feet of the exterior property boundary of property containing the following:

1. Any public or private educational institution or school;

E. A medical marijuana-related business that, at the time it received its use-subject-to-review permit and business license, was in compliance with the location requirements for subsections (C) and subsection (D) of this section, does not violate that subsection if, when the dispensary applies to renew its valid business license, it no longer meets any of the location requirements in subsection (C) and (D). This provision only applies to the renewal of a valid business license and does not apply to an application for a business license that is submitted as a result of the previous business license expiring or being revoked.

Sec. 7-5-2. Advertisements and signs

Existing town sign regulations shall apply to medical marijuana dispensaries.

Sec. 7-5-3. Indoor use

All business related to, or distribution of, medical marijuana shall be conducted indoors, and business activities should be screened to prevent the viewing the growing or distribution of medical marijuana from the public right-of-way. It shall be unlawful for any person to consume, or permit consumption of, medical marijuana on the premises.

Businesses shall operate only within the hours of 8am to 7pm.

Sec. 7-5-4. Security

Medical marijuana dispensaries shall provide adequate security on the premises, and the use subject to review application shall include a narrative description of

how the Applicant will provide security. Furthermore, medical marijuana-related businesses shall provide proof as to the functionality of a security system within twenty-four hours of such request by a Town Official or the Town Board.

Section 4. 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 Board 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 5. The repeal or modification of any provision of any prior ordinance 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, and each provision shall be treated and held as still remaining in force 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 6. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

INTRODUCED, READ, ADOPTED ON FIRST READING, AND ORDERED PUBLISHED AND POSTED IN FULL this 28th day of June, 2010.

PUBLIC HEARING AND SECOND HEARING WILL BE THE 14th DAY OF July, 2010, AT 7:00 P.M. AT SILVERTON TOWN HALL, 1360 GREENE STREET, SILVERTON, COLORADO

READ, ADOPTED ON SECOND READING, APPROVED, SIGNED, AND ORDERED PUBLISHED BY TITLE this 14th day of July, 2010.

TOWN OF SILVERTON, COLORADO

Terrence Kerwin, Mayor

ATTEST:

Brian Carlson, Clerk Treasurer