

**TOWN OF LYONS, COLORADO**

**ORDINANCE NO. 952**

**AN ORDINANCE AMENDING CHAPTER 6 OF TITLE 2 OF THE LYONS MUNICIPAL CODE CONCERNING THE LICENSING OF MARIJUANA BUSINESSES PURSUANT TO AMENDMENT 64 TO THE COLORADO CONSTITUTION, PROHIBITING MARIJUANA SOCIAL CLUBS AND MAKING IT UNLAWFUL TO PERFORM BUTANE HASH OIL EXTRACTION IN CERTAIN LOCATIONS WITHIN THE TOWN OF LYONS**

WHEREAS, in the November 2000 general election, the voters of the State of Colorado adopted Amendment 20 to the Colorado Constitution ("Amendment 20") which authorizes the use of medical marijuana for the treatment of debilitating medical conditions. Amendment 20 added Section 14 to Article 18 to the Colorado Constitution, and created a limited exception from criminal liability under Colorado law for the activities described in Amendment 20; and

WHEREAS, in the November 2012 general election, the voters of the State of Colorado adopted Amendment 64 to the Colorado Constitution ("Amendment 64") which authorizes the limited possession and personal cultivation of marijuana by adults aged 21 years or older and further established the only means by which a person may commercially cultivate marijuana, produce marijuana products and sell marijuana or marijuana products to persons aged 21 years or older; and

WHEREAS, notwithstanding the adoption of Amendment 20 and Amendment 64, marijuana is still a controlled substance under Colorado and federal law. As a result, making it legal for a person to obtain, possess, cultivate, grow, use, or distribute marijuana, even for medical use as contemplated by Amendment 20 or personal use as contemplated by Amendment 64, has the potential for abuse that should be closely monitored and regulated by local authorities to the extent possible; and

WHEREAS, on July 1, 2010, the Colorado General Assembly enacted House Bill 10-1284, thereby establishing statutory rules, regulations and licensing requirements related to the cultivation, manufacture and sale of medical marijuana and medical marijuana-infused products; and

WHEREAS, House Bill 10-1284 added a new Article 43.3 to Title 12 of the Colorado Revised Statutes, to be known as the Colorado Medical Marijuana Code, which established a dual licensing framework for medical marijuana facilities, introduced new terminology with respect to such facilities, identified the types of license that may be issued within the State of Colorado, and provided for subsequent rule-making authority by the Colorado Department of Revenue to implement the legislation; and

WHEREAS, Section 12-43.3-106 of the Colorado Medical Marijuana Code specifically authorizes the governing body of a municipality to "vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses," and Section 12-43.3-

310(1) specifically authorizes a municipality “to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses ... based on local government zoning, health, safety, and public welfare laws for the distribution of medical marijuana that are more restrictive than this article’s;” and

WHEREAS, on July 1, 2013, the Colorado General Assembly enacted house bill 13-1317, thereby establishing statutory rules, regulations and licensing requirements related to the cultivation, manufacture, testing, research, development and sale of marijuana and marijuana-infused products; and

WHEREAS, House Bill 13-1317 added a new article 43.4 to title 12 of the Colorado Revised Statutes, to be known as the Colorado Retail Marijuana Code, which establishes a dual licensing framework for marijuana facilities, introduces new terminology with respect to such facilities, identifies the types of license that may be issued within the State of Colorado, and provides for subsequent rule-making authority by the Colorado Department of Revenue to implement the legislation; and

WHEREAS, only medical marijuana licensees in good standing with both the Department of Revenue and the local jurisdiction pursuant to Article 43.3 of Title 12 of the Colorado Revised Statutes may apply for or be issued a license pursuant to the Colorado Retail Marijuana Code, Article 43.4 of Title 12 of the Colorado Revised Statutes before October 1, 2014; and

WHEREAS, pursuant to subsection 5(f) of Section 16 of Article XVIII of the Colorado Constitution and the provisions of 12-43.4-301 C.R.S., a locality may enact ordinances or regulations, not in conflict with the Constitution or Colorado Statutes, governing the time, place, manner and number of marijuana establishment operations; establishing procedures for the issuance, suspension, and revocation of a license issued by the locality in accordance with all requirements of Article 4 of Title 24 of the Colorado Administrative Procedure Act or any successor provision; establishing a schedule of annual operating, licensing, and application fees for marijuana establishments, and establishing civil penalties for violation of an ordinance or regulation governing the time, place, and manner of a marijuana establishment that may operate in such locality; and

WHEREAS, a locality may also prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and/or retail marijuana stores through the enactment of an ordinance or through an initiated or referred measure; provided, any initiated or referred measure to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores must appear on a general election ballot during an even numbered year. Further by enacting this Ordinance, the Town of Lyons does not waive or impair its statutory or constitutional authority to restrict the time, place and manner of marijuana businesses or ban marijuana businesses as described in the Constitution; and

WHEREAS, on July 1, 2013, the Colorado General Assembly enacted House Bill 13-1318, thereby referring Proposition AA to the voters of Colorado establishing a retail sales tax and excise tax on non-medical marijuana and in connection therewith, establishing regulations for assessment and collection of such taxes and the ability of a municipal government, pursuant to section 29-2-106 C.R.S. to impose a tax on marijuana to be used for local and municipal purposes; and

WHEREAS, in the November 2013 general election, the voters of the State of Colorado adopted Proposition AA which imposes an excise tax of up to 15% on marijuana at the point of wholesale transfer and a special sales tax on marijuana of up to 10%, 15% of which is returned to the general fund of the jurisdiction in which the tax was collected; and

WHEREAS, the Board of Trustees of the Town of Lyons carefully considered the provisions of the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code, Amendment 20, Amendment 64 and the impact of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' facilities on the health, safety, and welfare of the Town and the inhabitants thereof, and desires to adopt reasonable licensing regulations as contemplated by the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code; and

WHEREAS, since the approval of Amendment 64, media reports have circulated regarding another type of marijuana-related business, where business owners allow for large numbers of individuals to gather for the purpose of smoking marijuana, in some cases pursuant to a system of membership in these marijuana "social clubs;" and

WHEREAS, marijuana social clubs are not recognized by Amendment 20, Amendment 64 or any statutory authority as any kind of legitimate marijuana business, and the Board finds that allowing such enterprises to exist in the absence of state regulation would be a threat to the public health, safety and welfare; and

WHEREAS, the Board of Trustees therefore finds that prohibiting marijuana social clubs as defined herein is a reasonable and appropriate extension of state law; and

WHEREAS, another consequence of the partial legalization of marijuana in Colorado has been the proliferation of businesses and individuals who illegally engage in the practice of extracting hash oil from marijuana plants in a process that involves butane or other similar flammable substances; and

WHEREAS, the practice of butane hash oil extraction can be extremely dangerous if not performed properly, as evidenced by frequent reports of structure fires, explosions and resulting personal injury; and

WHEREAS, at the same time, when done correctly and in accordance with the extensive state regulation of the activity, butane hash oil extraction is not only the

preferred method of extracting hash oil, but may also be the method that best promotes the health of the end user; and

WHEREAS, manufacturers of infused products are the only individuals authorized by state law to perform butane hash oil extractions, and those manufacturers are limited to the safer “closed” method and not the more dangerous “open” method; and

WHEREAS, the Board therefore finds that it is necessary to make it unlawful for any person other than a licensed marijuana infused products manufacturer to perform butane hash oil extractions within the Town of Lyons; and

WHEREAS, the Board of Trustees has further determined that it is in the best interests of the health, safety and welfare of the inhabitants of the Town to exercise its express statutory authority to establish reasonable regulations governing marijuana businesses.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF LYONS:

SECTION 1. Chapter 6 of Title 2 of the Lyons Municipal Code is hereby repealed and readopted to read in full as follows:

## **CHAPTER 6 MARIJUANA BUSINESSES**

### **2-6-1: PURPOSE.**

- (A) The purpose of this Chapter is to implement the provisions of the Colorado Medical Marijuana Code, the Colorado Retail Marijuana law and any successor codes which authorize the licensing and regulation of marijuana businesses and affords local governments the option to determine whether or not to allow certain marijuana businesses within their respective jurisdictions, and to adopt licensing requirements that are supplemental to or more restrictive than the requirements set forth in state law in regards to time, place and manner.
- (B) The provisions in this Chapter that are different from state law are consistent with the Town’s responsibility to protect the public health, safety and welfare from any negative impacts associated with the sale, distribution or use of marijuana, as authorized by Section 12-43.3-305, C.R.S. and Section 12-43.4-301. Where this Chapter differs from state law, the provisions of this Chapter shall apply on all matters authorized by Section 12-43.3-101, *et seq.*, C.R.S., 12-43.4-101, *et seq.*, C.R.S. and on all matters of local concern.
- (C) By adopting this Chapter, the Town’s Board of Trustees does not intend to authorize or make legal any act that is not permitted under state or federal law or to allow any person to engage in conduct that endangers others or causes a public nuisance.

- (D) By adopting this Chapter, the Town's Board of Trustees does not intend to waive or otherwise impair any portion of the local option set forth in Section 12- 43.3-106, C.R.S. OR 12-43.4-301.

**2-6-2: OBJECTIVES.** The objectives of this Chapter include, but are not limited to:

- (1) Requiring that any Marijuana Business be operated in a safe manner that does not endanger the public welfare; and
- (2) Mitigating potential negative impacts that a marijuana business might cause on surrounding properties and persons.

**2-6-3: LOCAL LICENSING AUTHORITY.**

The Board of Trustees shall be the Local Marijuana Licensing Authority of the Town. The Board of Trustees may delegate to the Town Administrator the authority to carry out administrative and enforcement duties as set forth in this Chapter.

**2-6-4: AUTHORITY.** The Board of Trustees hereby finds and determines that it has the power to adopt this Chapter pursuant to:

- (a) Article 43.3 of Title 12, C.R.S., concerning the licensing of medical marijuana businesses;
- (b) Article 43.4 of Title 12, C.R.S., concerning the licensing of retail marijuana businesses;
- (c) Sections 31-15-103 and 31-15-401, C.R.S., concerning municipal police powers; and
- (d) Section 31-15-501, C.R.S., concerning municipal authority to regulate businesses.

**2-6-5: DEFINITIONS.**

Except as set forth below, terms used in this Chapter shall have the definitions found in the Colorado Medical Marijuana Code, C.R.S. 12-43.3-101, *et seq.* and the Colorado Retail Marijuana Code, C.R.S. 12-43.4-101, *et seq.*

**Amendment 20** means the voter-initiated amendment to the Colorado Constitution adopted November 7, 2000, codified as Section 14 of Article 18 to the Colorado Constitution.

**Amendment 64** means the voter-initiated Amendment to the Colorado Constitution adopted November 6, 2012, codified as Section 16 of Article 18 of the Colorado Constitution.

**Applicant** means a person who is making an application for a Marijuana Center license, Cultivation Operation license, a Marijuana-Infused Products Manufacturing license or a testing, research and development facility license under this Chapter.

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

**Colorado Retail Marijuana Code** means Article 43.4 of Title 12, C.R.S.

**Cultivation Operation** means a person licensed pursuant to the Colorado Medical Marijuana and/or Colorado Retail Marijuana Code to operate a business as described in Section 12-43.3-403, C.R.S. or Section 12-43.4-403, C.R.S.

**General Business License** means a license to operate a business within the Town of Lyons, issued pursuant to Chapter 1 of Article 2 of the Lyons Municipal Code.

**Greenhouse** means a building, usually chiefly of glass, in which the temperature is maintained within a desired range, used for cultivating tender plants or growing plants out of season.

**License** means a license to operate a Marijuana Center, a Cultivation Operation, a Marijuana-Infused Products Manufacturing facility or a testing, research and development facility issued by the Town pursuant to this Chapter.

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

**Marijuana Center** means a person licensed pursuant to the Colorado Medical Marijuana Code and/or Colorado Retail Marijuana Code to operate a business as described in Section 12-43.3-402, C.R.S. or Section 12-43.4-402, C.R.S.

**Marijuana-Infused Products Manufacturer** means a person licensed pursuant to the Colorado Medical Marijuana Code and/or Colorado Retail Marijuana Code to operate a business as described in Section 12-43.3-404, C.R.S. or Section 12-43.4-404, C.R.S.

**Marijuana Social Club** means an organization, club or commercial operation in a nonresidential area that allows its members or their guests to consume marijuana or marijuana products on the premises.

**Medical Marijuana** means marijuana or marijuana products that are sold to a patient registered on the medical marijuana patient registry by a marijuana center that has a medical marijuana license issued pursuant to the Colorado Medical Marijuana Code.

**Person** means a natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer or employee thereof.

**Retail Marijuana** means marijuana sold to a customer, aged 21 years or above by a marijuana center which has a license from the State of Colorado to operate a retail marijuana store pursuant to the Colorado Retail Marijuana Code.

**Testing, Research and Development Facility** means a person licensed pursuant to Article 43.4 of Title 12, C.R.S. to operate a business as described in Section 12-43.4-405, C.R.S.

**Town** means the Town of Lyons, Colorado.

**Town Administrator** means the Town Administrator of the Town of Lyons or his/her designee.

**Town Clerk** means the Town Clerk of the Town of Lyons or his/her designee.

## **2-6-6: LICENSES REQUIRED.**

(A) No person shall operate or cause or permit the operation of a Marijuana Business within the Town without having first obtained the licenses required by this Chapter and by the Colorado Medical Marijuana Code and if applicable the Colorado Retail Marijuana Code. Specifically, except as otherwise provided in this Chapter, no person may operate a Marijuana Business within the Town unless:

(1) A Marijuana Business license is issued by the Town pursuant to and after the effective date of this Chapter; and

(2) A Marijuana Center license, a Cultivation license, a Testing Facility license and/or a Marijuana-Infused Products Manufacturing license is issued by the State of Colorado pursuant to the Colorado Medical Marijuana Code and if applicable the Colorado Retail Marijuana Code.

(B) A separate license shall be required for each Marijuana Business Location regardless of whether two or more of the businesses are under common ownership.

(C) The requirement to obtain a Marijuana Business license is in addition to the requirement to obtain a General Business License and any other license, permit or approval required by the Town, including but not limited to any required land use approval, and any required building permits.

## **2-6-7: CLASSES OF LICENSE.**

The Local Licensing Authority may issue and grant to the applicant a license from any of the following classes, provided that the applicant meets all of the criteria set forth in Section 2-6-5 and all other provisions and restrictions in this Chapter:

- (A) Marijuana Center license;
- (B) Cultivation Operation license;
- (C) Marijuana-Infused Products Manufacturing license; or
- (D) Testing, Research and Development Facility license.

## **2-6-8: PERSONS PROHIBITED AS LICENSEES.**

No license for a Marijuana Business may be issued to:

- (A) An applicant for a Marijuana Center at any time the Town has three (3) or more active Marijuana Center licenses issued.

- (B) An applicant for a Testing, Research and Development Facility license who at the time of application has an interest in any other type of Marijuana Business license in the state.
- (C) Any person prohibited from being a licensee by the provisions of Section 12-43.3-307 of the Colorado Medical Marijuana Code or Section 12-43.4-306 of the Colorado Retail Marijuana Code.
- (D) An applicant who has not received a license from the State of Colorado to operate the class of marijuana business proposed to operate within the Town.
- (E) An applicant for a Marijuana Social Club or any other Marijuana-related business not expressly authorized by Amendment 20, Amendment 64, the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code or this Chapter.
- (F) Nothing in this subsection shall be construed to prohibit or restrict the ability of a license in good standing to be transferred to a new location within the Town subject to the provisions of this Chapter.

**2-6-9: LOCATION OF MARIJUANA BUSINESSES.**

- (A) It shall be unlawful to operate or to cause or permit the operation of a Marijuana Business:
  - (1) In any location that does not comply with the Lyons Zoning Ordinance;
  - (2) Within one thousand (1,000) feet of a public or private school, an alcohol or drug treatment facility, the principal campus of a college, university or seminary, public library, licensed day care or a licensed residential child care facility or another marijuana business unless such businesses are in the Commercial Eastern corridor zone district;
  - (3) In any residential zone district or within any dwelling unit in any zone district; or
  - (4) From a moveable, mobile or transitory location; a Marijuana Business shall be permitted to operate only from a fixed location.
- (B) Any Marijuana Business for which a medical marijuana business license was issued by the Town before the effective date of this Ordinance shall either cease doing business or come into full compliance with all applicable provisions of Section 2-6-9(A) by relocation or otherwise within one hundred eighty days (180) after the effective date of this Ordinance.
- (C) The distances referred to in this Section are to be computed by direct measurement from the nearest portion of a building in which a Marijuana Business is located to the nearest portion of any other building in which a Marijuana Business is located, using a route of direct pedestrian access, or to the nearest property line of the land used for a school, campus, alcohol or drug



treatment facility, licensed day care or licensed residential child care facility, using a route of direct pedestrian access.

## **2-6-10: RESTRICTIONS ON MARIJUANA BUSINESSES.**

(A) It is the intent of the Town's Board of Trustees in adopting this Chapter to allow only those businesses that meet all of the criteria set forth in this Chapter to apply for and obtain licenses as described herein, except as otherwise provided in this Section 2-6-10.

(B) Maximum number of Marijuana Businesses. It is also the intent of the Board of Trustees, based on extensive public testimony and input and on the Board's careful consideration of the impacts of Marijuana Businesses on the health, safety and welfare of the Town and its inhabitants, to limit the total number of marijuana business licenses issued for Marijuana Centers to no more than three (3). Accordingly, the following restrictions shall be imposed on marijuana Businesses within the Town:

~~(B)~~(C) Marijuana Centers. As of the effective date of this Chapter, three (3) medical marijuana Business Licenses are issued by the Town to operate medical marijuana businesses.

Only the holders of the three medical marijuana business licenses issued by the Town before the adoption of this chapter may initially apply for and obtain Marijuana Center licenses pursuant to this Chapter as amended. Any of the eligible General Business License holders that were operating a medical marijuana business before the adoption of this Chapter may file applications for any or all of the classes of license and to the State of Colorado Department of Revenue for a State license as authorized by this Chapter, regardless of the class or classes of business those licensees operated before the adoption of this Chapter. At no time may any marijuana business license be issued for more than three (3) Marijuana Centers. Whenever the total number of Marijuana Centers within the Town is three (3), then no further licenses may be issued for a Marijuana Center. If the number of Marijuana Centers within the Town is reduced to two (2) or one (1), then any person may file an application for a Marijuana Business License for a Marijuana Center, and the Local Licensing Authority shall either approve or deny said application pursuant to the provisions of this Chapter. The Local Licensing Authority shall process and consider any such applications in the order in which they were received and deemed complete, and shall terminate its review of any application when the total number of approved Marijuana Centers again reaches three (3). The Local Licensing Authority may, but is not required to, establish a waiting list of Marijuana Business license applicants at any time before the number of approved Marijuana Centers falls below three (3). Any such waiting list shall only preserve the names and contact information of prospective applicants in the order in which they were submitted in the event the number of licensed Marijuana Centers falls below three (3), but shall not be a guaranty that the applications on the waiting list will be approved.

(2) Cultivation Facilities. Any person may file an application for a Marijuana Business License for a Cultivation Facility. At no time may any Marijuana Business License be issued for more than one (1) Cultivation Facility at one time.

(3) Infused-Products Manufacturing Facilities. Any person may file an application for a Marijuana Business License for an Infused-products Manufacturing License. At no time may any Marijuana Business License be issued for more than two (2) Manufacturing Facilities.

(4) Testing Facilities. Pursuant to state law, marijuana testing facilities may not be owned by any person who holds any interest in any other marijuana business within the state. Accordingly, any person may apply for a Marijuana Business license to operate a Marijuana Testing Facility, subject to the other applicable provisions of this Chapter. There shall be no limit on the number of Marijuana Testing Facilities.

(C) In addition to the restrictions imposed by this Section, and in addition to any other limitations imposed by state law, the following restrictions shall apply to all Marijuana Businesses within the Town:

(1) All activities of Marijuana Businesses, including but not limited to cultivating, growing, processing, displaying, manufacturing, selling and storing, shall be conducted indoors except the cultivation and growing of marijuana in greenhouses with the security features contemplated under state law is permissible in the commercial eastern corridor zone district. No marijuana or paraphernalia shall be displayed or kept so as to be visible from anywhere outside the licensed premises.

(2) A Marijuana Center shall be limited to a maximum total square footage of three thousand (**3,000**) square feet. A Cultivation Operation shall be limited to a maximum total square footage of twenty-thousand feet. (**20,000**) square feet. Any application for a proposed Cultivation Facility that is not a greenhouse or is in excess of 7,500 square feet must be accompanied by a feasibility study regarding the use of Town-owned utilities. A Marijuana-Infused Products Manufacturing facility shall be limited to a maximum total square footage of seven thousand five hundred (**7,500**) square feet in the commercial eastern corridor zone district, the Local Licensing Authority, in its sole discretion, shall have the authority to grant exceptions from the provisions of this Section if it determines that circumstances exist that warrant the exception. There shall be no limit on the maximum size of a Marijuana Testing Facility, except as imposed by applicable zoning regulations.

(3) All Marijuana Businesses shall be equipped with a proper ventilation system that filters out the odor of marijuana so that the odor is not capable of being detected by a person with a normal sense of smell at the exterior of the Marijuana Business or any adjoining business, parcel, or tract of real property.

(4) Within one year after licensing, all Marijuana Centers must employ at least one device designed to scan driver's licenses and other identification cards which reliably verify age and/or detect false identification cards.

## **2-6-11: APPLICATIONS.**

- (A) All eligible applicants for a Marijuana Business license shall file a completed application for such license with the Town Clerk on forms to be provided by the Town and/or the Colorado Department of Revenue. Said applications must fulfill and meet all applicable requirements of the Colorado Medical Marijuana Code and/ or the Colorado Retail Marijuana Code any implementing regulations, and this Chapter, as amended from time to time. The Town shall have the authority but not the obligation to investigate the background of the applicant and all individuals required by the Colorado Medical Marijuana Code and Colorado Retail Marijuana Code to undergo a background investigation.
- (B) All applicants shall file at the time of application the following documents:
- (1) the floor 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 plan and detailed sketch for the interior and submit an architect's drawing of the building to be constructed;
  - (2) a deed, lease or other contractual document demonstrating that the applicant has the legal right to possess the premises of the proposed location of the Marijuana Business for the entire duration of the license period;
  - (3) a statement signed by the applicant acknowledging that the Town accepts no legal liability in connection with the approval and subsequent operation of the Marijuana Business;
  - (4) an acknowledgement that the Town will rely on the findings of the Colorado Department of Revenue with regard to all mandatory background investigations, and will conduct only a limited background investigation of its own;
  - (5) A Neighborhood Responsibility Plan outlining the applicant's plans for outreach and communication with neighbors; and
  - (6) any additional information that the Local Licensing Authority reasonably determines to be necessary for the investigation and review of the application.
- (C) The Town Clerk shall not accept any application that is not complete in every detail. If the Town Clerk discovers an omission or error, the application shall be rejected and returned to the applicant for completion or correction without further action by the Town Clerk. All fees shall be returned with the application. For the purposes of this Chapter, the date the Town Clerk accepts an application that is complete in every detail shall be considered the filing date. A separate application shall be submitted for each Marijuana Center, each Cultivation Facility and Infused Products Manufacturing Facility.

- (D) Upon determining that the application is complete in every detail, the Town Clerk shall forward the application to the Board of Trustees, serving as the Local Licensing Authority.

**2-6-12: APPLICATION FEES.**

Each individual applicant for a Marijuana Business license shall pay an application processing fee at the time of submitting such application to the Town Clerk. Such application fee shall be in addition to the portion of the application fee paid to the Town by the Department of Revenue if applicable, nonrefundable, unless the application is returned for being incomplete. An application shall be considered incomplete until the Town Licensing Authority has received its portion of the application fee from the Department of Revenue. The application fees for the various categories of license shall be reasonably related to the actual costs incurred by the Town in the processing of applications. The application fee for each class of license shall be as follows:

Marijuana Center	\$1,000
Cultivation Operation	\$1,000
Marijuana-Infused Products Mfr.	\$1,000
Marijuana Testing Facility	\$1,000

In the future, all fees required by this Chapter will be set by resolution of the Town’s Board of Trustees.

**2-6-13: PUBLIC HEARING.**

Upon receipt of an application for a Town license, except an application for renewal or for transfer of ownership, the Local Licensing Authority shall schedule a public hearing on the application, to be held not less than thirty (30) days after the date of the application. The Local Licensing Authority shall post and publish public notice of the public hearing not less than ten days prior to the hearing. The Local Licensing Authority shall give public notice by the posting of a sign in a conspicuous place on the Marijuana Business premises for which application has been made and by publication in a newspaper of general circulation in the county in which the Marijuana Business premises are located. At any such public hearing the Local Licensing Authority may receive and consider testimony and evidence as to whether the Marijuana Business license application meets the approval criteria set forth in this Chapter and in the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code. Witnesses should confine their testimony to the question of whether the application satisfies all applicable approval criteria, as the failure to meet one or more of those criteria is the only basis on which an application may be denied at a Public Hearing.

**2-6-14: INVESTIGATION OF APPLICATION.**

- (A) An application for a Marijuana Business license shall be deemed complete when all required information and documentation has been submitted, the required

individuals have been fingerprinted and photographed by the Boulder County Sheriff's Office, and the license and all applicable application fees have been paid. After accepting the complete application for filing, the Local Licensing Authority shall transmit the application to the Boulder County Sheriff's Office and to the Colorado Department of Revenue. The background investigations required by this Section and by the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code shall be conducted by the Department of Revenue, except where the Local Licensing Authority determines that a local background investigation should be performed. In any such case, the Boulder County Sheriff's Office shall have the authority to do the following:

(1) Investigate the background of each individual applicant and each of the other individuals required to be listed in the license application, and to investigate the accuracy of all the information submitted as a part of the application. The investigation required by this section should be completed within ninety (90) days from the date the application is submitted to the Sheriff's Office. Nevertheless, failure to complete the investigation within ninety (90) days shall not constitute approval of the application. The Sheriff's Office shall promptly forward the application and its completed investigation to the Town Clerk for administrative review; and

(2) Inspect the exterior of the proposed licensed premises for the purpose of creating an environment that impedes criminal activity by improving lighting, mitigating obstructions caused by such things as trees, bushes, fences, and dumpsters that create blind spots or hiding spots, and using security cameras to monitor the property. The Sheriff's Office shall promptly forward the results and recommendations of the inspection to the Town Clerk for administrative review.

(3) The Local Licensing Authority shall also transmit copies of any completed license application to:

(a) The Town's Planning staff; and

(b) Any other person or agency which the Local Licensing Authority reasonably determines should investigate and comment upon the application.

(4) The Local Licensing Authority may require that the State Licensing Authority conduct a concurrent review of a new license application before the Local Licensing Authority's final approval of the application.

## **2-6-15: APPROVAL OR DENIAL OF APPLICATION.**

(A) An application with completed background investigation shall be approved or denied by the Local Licensing Authority. Any approved license shall not be effective until the license has been issued to the applicant by the Town Clerk. An application shall be approved and a license shall be issued unless the Local Licensing Authority finds, based on the background investigation conducted by the Colorado Department of Revenue and/or the Boulder County Sheriff's Office,

that the applicant or any of the individuals required by Section 2-6-14 to undergo a background investigation:

- (1) Knowingly made a false statement or knowingly gave false information in connection with the application;
  - (2) Is prohibited by Section 12-43.3-307, C.R.S. from being a licensee;
  - (3) Will operate the Marijuana Business as a business prohibited by local or state law, statute, rule or regulation;
  - (4) Has had a Marijuana Business license or similar local or state license or approval revoked within five (5) years of the date of the current application; or
  - (5) Has otherwise failed to comply with the provisions of this Chapter, the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code or any implementing statutes and administrative regulations as amended from time to time.
- (B) The applicant and any other individuals listed on the application may present written documentation to the Town Clerk regarding his/her criminal history, including but not limited to evidence of mitigating factors, rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license.
- (C) If the license application is approved by the Local Licensing Authority, the licensee may not begin operating before obtaining the State Medical Marijuana License required by the Colorado Medical Marijuana Code or the State Retail Marijuana License required by the Colorado Retail Marijuana Code.

## **2-6-16: APPEAL OF APPLICATION DENIAL.**

- (A) Written Findings. In the event that the Local Licensing Authority denies a license application, the Local Licensing Authority shall prepare written findings of fact stating the reasons or basis for the denial. A copy of the Authority's findings shall be sent by certified mail, return receipt requested, to the address of the applicant as shown in the application.
- (B) The order of the Local Licensing Authority shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). For purposes of any appeal to the District Court, the Local Licensing Authority's decision shall be final either on the date the applicant receives the findings, conclusion, and order or four (4) days following the date of mailing of the Authority's decision, whichever is earlier.
- (C) Closure of Business Pending Appeal. Upon denial of the license application by the Local Licensing Authority, the business shall be deemed unlicensed and must cease operation during the pendency of the appeal.

**2-6-17: OPERATING FEE.**

The operating fee for any license issued pursuant to this Chapter shall be payable to the Town Clerk at the time an initial license application is filed or at the time a renewal application is filed. The operating fee is in addition to any application fee required by this Chapter. The operating fee shall be nonrefundable unless an application is denied. The operating fees for the various classes of license shall be as follows:

Marijuana Center	\$3,000.00
Cultivation Operation	\$3,000.00
Marijuana-Infused Products Mfr.	\$3,000.00
Marijuana Testing Facility	\$3,000.00

In the future, all fees required by this Chapter will be set by resolution of the Town’s Board of Trustees.

**2-6-18: TERM OF THE LICENSE.**

A Marijuana Business license shall be valid for a period of one year from date of issuance, unless revoked or suspended.

**2-6-19: RENEWAL.**

- (A) As a prerequisite to renewal of an existing license issued pursuant to this Chapter, the applicant must pay the annual Operating Fee and file a completed renewal application with the Town Clerk at least forty-five (45) days prior to the date of the license expiration. The Town Clerk may waive the timely filing requirement where the licensee demonstrates in writing that the failure to timely file is not solely the result of the licensee’s negligence; provided that no renewal application shall be accepted by the Town Clerk from any licensee after the license for which renewal is requested has expired.
- (B) A license that is under suspension may be renewed in accordance with this Section provided that such renewal shall not modify, alter, terminate, or shorten the period or term of the suspension. The suspension of a license shall not extend the term of the license or otherwise relieve the licensee from timely seeking renewal of the license in accordance with this Section. The Town Clerk may administratively renew a license.
- (C) If, during the term of license, the license is in good standing and the licensee applies for and is granted a license to operate a Retail Marijuana Business pursuant to Section 12-43.4-401, an applicant shall within fourteen (14) days inform the Local Licensing Authority in writing and prior to exercising any privilege of the State Retail Marijuana License file a license renewal application and pay the application fee and the annual Operating Fee. Upon acceptance of the renewal application, the Local Licensing Authority shall issue the renewed

Marijuana Business license whose term shall assume the term of the existing license.

**2-6-20: DENIAL OF RENEWAL OR TRANSFER; SUSPENSION; REVOCATION.**

- (A) Denial of Renewal or Transfer, Suspension or Revocation. The Local Licensing Authority may deny renewal or transfer of, suspend, revoke, modify, or place conditions on the continuation of a Marijuana Business license upon a finding that the licensee:
  - (1) Has violated any of the provisions of this Chapter;
  - (2) Has violated the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code or any implementing regulations, as are amended from time to time;
  - (3) Has operated the Marijuana Business in a manner that adversely affects the public health, welfare, or safety of the immediate neighborhood in which the Marijuana Business is located. Evidence to support such a finding includes but is not limited to the occurrence of disturbances upon the licensed premises or upon any parking areas, sidewalks, access ways or grounds within the immediate neighborhood of the licensed premises involving a patient or customer, manager, employee, or the licensee;
  - (4) Has violated any Town, state, or federal law or regulation regarding the possession, distribution, or cultivation of controlled substances;
  - (5) Has allowed or permitted any other person to violate any of the provisions of this Chapter or engage in criminal conduct on the premises.
- (B) Other Enforcement Authorized. A licensee shall be entitled to a quasi-judicial hearing before the Local Licensing Authority if the Town seeks to deny renewal or transfer, suspend, revoke, modify, or place conditions on a license based on a violation of this Chapter.
  - (1) When there is probable cause to believe that a licensee has violated or permitted a violation of this Chapter or other laws, the Town Attorney may file a written complaint with the Local Licensing Authority setting forth the circumstances of the violation.
  - (2) The Town Clerk shall send a copy of the complaint by delivery confirmation to the licensee at the address as shown on the license application, together with a notice to appear before the Local Licensing Authority for the purpose of a hearing to be conducted at a specified date and time and at a place designated in the notice to show cause why the licensee's license should not be suspended. Such hearing shall be held on a date not less than thirty (30) days following the date of mailing of the complaint and notice to the licensee. A licensee may be represented at the hearing by an attorney or other representative.



- (C) **Conduct of Hearing.** At the hearing, the Local Licensing Authority shall hear and consider such evidence and testimony presented by the Sheriff's Office or other enforcement officers, the Town, the licensee, or any other witnesses called by the Town or the licensee, which evidence is relevant to the violations alleged in the complaint. The Local Licensing Authority shall conduct the hearing in conformity with quasi-judicial proceedings and shall permit the relevant testimony of witnesses, cross-examination, and presentation of relevant documents and other evidence. The hearing shall be recorded either stenographically or by electronic recording device, as determined by the Authority. Any person requesting a transcript of such record shall pay the reasonable cost of preparing the record. Subpoenas may be issued in accordance with the applicable provisions of the Lyons Municipal Code.
- (D) **Written Findings.** The Local Licensing Authority shall make written findings of fact from the statements and evidence offered and shall reach a conclusion as to whether the alleged violations occurred. Such written findings and conclusion shall be prepared and issued within fourteen (14) days following the conclusion of the hearing. If the Local Licensing Authority determines that a violation did occur which warrants denial of renewal, suspension, revocation, modification, or conditioning of the license pursuant to this section, he or she shall also issue an order suspending, revoking, modifying, or placing conditions on the license. A copy of the findings, conclusion, and order shall be hand delivered or mailed to the licensee by delivery confirmation, at the address as shown on the license application.
- (E) **Appeal.** The order of the Local Licensing Authority shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). For purposes of any appeal to the District Court, the Local Licensing Authority's decision shall be final either on the date the applicant receives the findings, conclusion, and order or four (4) days following the date of mailing of the Authority's decision, whichever is earlier.
- (F) **No Refund and Costs of Enforcement.** In the event of suspension, revocation, modification, conditioning, or cessation of business, no portion of the license fee shall be refunded. Any person whose license is suspended, revoked, modified, or conditioned under this Section shall be required to pay the costs incurred by the Town to enforce this Chapter, including but not limited to attorneys' fees, expert witness and/or consultant fees.

## **2-6-21: RELOCATION AND TRANSFER.**

- (A) No licensed Marijuana Business may move to a new location within the Town until the relocation has been approved by the Local Licensing Authority. Any request to relocate a licensed Marijuana Business must be filed with the Local Licensing Authority on a form provided by the Town. The application must be accompanied by:
  - (1) The floor plan for the new location as referenced in Section 2-6-11;

(2) Verification that the proposed Marijuana Business is a permitted use in the zone district in which the proposed new site is located;

(3) Unless the proposed new location is in the commercial eastern corridor zone, documentation verifying that the proposed new location is at least 1,000 feet from any other licensed Marijuana Business, as required by Section 2-6-9; and

(4) Unless the proposed new location is in the commercial eastern corridor zone, documentation verifying that the proposed new location is at least 1,000 feet from any of the facilities listed in Section 2-6-9.

Unless the relocation is required to comply with the provisions of Section 2-6-9(A)(2) of this Chapter as amended as described in Section 2-6-9(B), the Local Licensing Authority shall conduct a public hearing on the proposed relocation as authorized by Section 2-6-13.

(B) No licensed Marijuana Business may be transferred to a new owner until the transfer has been approved by the Local Licensing Authority. Any request to transfer ownership of a licensed Marijuana Business, including any request to convey more than 10% ownership of any entity that owns and operates a Marijuana Business, must be filed with the Local Licensing Authority on a form provided by the Town. The proposed new owner(s) must submit to the background investigation required by Section 2-6-14. The Local Licensing Authority shall conduct a public hearing on the proposed transfer as authorized by Section 2-6-13.

#### **2-6-22: MANAGERS.**

(A) Each licensee shall manage the licensed premises himself or herself or employ a separate and distinct manager on the premises and shall report the name of the manager to the Town. The licensee shall include the name of the manager on the license application.

(B) The licensee shall report any change in manager to the Town within ten (10) days of the change.

(C) An application with completed background investigation shall be administratively approved or denied by the Town Clerk pursuant to the criteria set forth in Section 2-6-14 prior to the manager being associated with managing or working at the operation.

#### **2-6-23: UNLAWFUL ACTS.**

(A) It shall be unlawful for a person to:

(1) Consume or allow any other person to consume, inhale, or ingest any marijuana or product containing marijuana or any alcoholic beverages or any

illegal controlled substance on, or within, the premises of a Marijuana Business;  
or

(2) With knowledge, to permit or fail to prevent the use of his or her registry identification by any other person for the unlawful purchasing of medical marijuana;

(B) It is unlawful for a person licensed pursuant to this article to:

(1) Dispense more than the amount of marijuana or marijuana products permitted under the provisions of the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code or the implementing regulations;

(2) Distribute, sell, or transfer any marijuana or any product containing marijuana to in violation of the Colorado Medical Marijuana Code and/or the Colorado Retail Marijuana Code;

	<b>Age</b>	<b>Hours</b>	<b>Quantity</b>
Medical	18	8 a.m. - 7 p.m.	2 ounces
Retail	21	8 a.m. - 10 p.m.	1 Ounce in State 1/4 out of state
Dual Use Medical/Retail	21	Medical 8 a.m. - 7 p.m. Retail 8 a.m. – 10 p.m.	2 ounces medical counter, 1 ounce in state, 1/4 out of state retail counter

(3) Distribute, sell, or transfer any marijuana or any product containing marijuana to any person under the age of twenty-one (21) years old, except in Medical Marijuana-only Centers;

(4) Allow a person under the age of twenty-one (21) years old to present in the licensed premises of a marijuana business, except in Medical Marijuana-Only Centers;

(5) Use butane or other flammable solvent in the process of extracting oil from marijuana any place in the Town, except that a licensed infused-products manufacturing facility may use flammable solvents in the process of hash oil extraction, provided those facilities use only the “closed” method of extraction and otherwise comply with state regulations;

(6) Store or display any marijuana or product containing marijuana outdoors, or in a manner in which it is visible from a public sidewalk or right of way;

- (7) Sell or distribute medical marijuana at any time other than between the hours of 8:00 a.m. and 7:00 p.m. Monday through Sunday;
- (8) Sell or distribute retail marijuana at any time other than between the hours of 8:00 a.m. and 10 p.m. Monday through Sunday;
- (9) Sell or allow any person to consume alcohol or any illegal controlled substance on the premises of a Marijuana Business;
- (10) Violate any of the provisions of the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code or the implementing regulations;
- (11) Employ any person under the age of twenty-one (21) years old;
- (12) Offer for sale or solicit an order for marijuana or marijuana products in person except within the licensed premises;
- (13) Buy marijuana or marijuana products from a person not licensed to sell as provided in the Colorado Medical Marijuana Code or the Colorado Retail Marijuana Code;
- (14) Sell marijuana or marijuana products except in the permanent location specifically designated in the license for sale;
- (15) Have on the licensed premises marijuana or marijuana paraphernalia that show evidence of the marijuana having been consumed or partially consumed;
- (16) Offer anything of value to a physician for making patient referrals to the licensed marijuana center;
- (17) Fail to apply for a transfer as required by Section 2-6-21; or
- (18) Fail to report the name of or a change in managers as required by Section 2-6-22.

#### **2-6-24: SECURITY REQUIREMENTS FOR LICENSED PREMISES.**

All Marijuana Business shall comply with the security requirements for the licensed premises as set forth in the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code and enabling regulations.

#### **2-6-25: RIGHT OF ENTRY.**

The application for a Marijuana Business license shall constitute consent of the licensee and his agents or employees to permit the Boulder County Sheriff's Office or any other authorized agent of the Town to conduct routine inspections, from time to time, of any licensed Marijuana Business to ensure compliance with the requirements of this Chapter, the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code, or any other applicable law, rule or regulation.

## **2-6-26: DUTIES OF LICENSEE.**

(A) Each licensee shall:

- (1) Post the Town of Lyons license and all applicable State licenses in a conspicuous location on the premises of the Marijuana Business that may be readily seen by persons entering the premises;
- (2) Comply with all of the terms and conditions of the license;
- (3) Comply with all of the requirements of this Chapter and all other applicable Town ordinances;
- (4) Comply with all state laws and administrative regulations pertaining to the use of marijuana, including, but not limited to, the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code and the implementing regulations; and
- (5) Comply with all applicable federal laws, rules, or regulations, other than a federal law, rule or regulation concerning the possession, sale or distribution of marijuana that conflicts with Amendment 20 or Amendment 64.

(B) In addition to the duties set forth in Section 2-6-26(A), the following shall apply to all Marijuana Businesses, in order to facilitate effective law enforcement:

(1) All licensees shall promptly report to the Boulder County Sheriff's Office any disorderly act, conduct or disturbance and any unlawful activity committed in or on the licensed premises or in the immediate vicinity of the licensed premises, including but not limited to any unlawful re-sale of marijuana or marijuana products.

(2) Each licensee shall post and keep at all times visible to the public in a conspicuous place on the premises, a sign with a minimum height of fourteen inches (14") and a minimum width of eleven inches (11"), with each letter to be a minimum of one-half inch (1/2") in height, which shall read as follows:

"WARNING:" The Boulder County Sheriff's Office must be notified of any and all disorderly acts, conduct or disturbances and all unlawful activities which occur on or within the premises of this licensed business."

(3) It shall not be a defense to a prosecution of a licensee under this Section that the licensee was not personally present on the premises at the time such unlawful activity, disorderly act or disturbance was committed; however, no agent, servant or employee of the licensee shall be personally responsible for failing to report any disorderly act or conduct or any disturbance and any unlawful activity hereunder if such agent, servant or employee was absent from the premises at the time such activity occurred.

(4) Failure to comply with the requirements of this Section shall be considered by the Licensing Authority in any action relating to the issuance, revocation, suspension or nonrenewal of a license.

#### **2-6-27: SIGNAGE.**

- (A) **Advertising Signs and Restrictions.** All signage and advertising for a Marijuana Business shall comply with all applicable provisions of the Lyons Municipal Code. Where any provision of the Lyons Municipal Code conflicts with any provision in this Section 2-6-27, this Section shall govern. No signs, advertising or promotional products may be designed in such a way as to be attractive to minors. It shall be unlawful for any Marijuana Business to offer or advertise free marijuana or marijuana-infused products.
- (B) **Warning Signs.** There shall be posted in a conspicuous location in each Marijuana Center a legible sign containing warnings that:
- (1) the possession, use or distribution of marijuana is a violation of federal law;
  - (2) the possession, use or distribution by a person under twenty-one (21) years of age of marijuana for nonmedical purposes is a violation of state law;
  - (3) it is illegal under state law to drive a motor vehicle or to operate machinery when under the influence of, or impaired by, marijuana; and
  - (4) no one under the age of twenty-one (21) years is permitted on the premises.

#### **2-6-28: PENALTIES.**

- (A) Any person violating any provision of this Chapter shall be punished pursuant to Chapter 1.4 of the Lyons Municipal Code. Each violation or non-compliance shall be considered a separate and distinct offense. Further, each day of continued violation or non-compliance shall be considered as a separate offense.
- (B) All remedies and penalties provided for in this Chapter shall be cumulative and independently available to the Town, and the Town shall be authorized to pursue any and all remedies to the full extent allowed by law.
- (C) Nothing herein contained shall prevent or restrict the Town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or non-compliance. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.

#### **2-6-29: REFERENCE TO STATE LAW.**

In all matters not explicitly or implicitly addressed by this Chapter, the Town incorporates by reference and adopts the regulations, standards and procedures set forth in the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code.

**2-6-30: REASONABLE REGULATIONS.**

The Town Administrator is hereby authorized to adopt such reasonable policies and procedures as are deemed necessary to implement the provisions of this Chapter.

SECTION 2. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 3. This Ordinance shall take effect thirty (30) days after final publication.

SECTION 4. The temporary moratorium on marijuana businesses imposed by Ordinance No. \_\_\_\_, which was scheduled to expire on November 5, 2014, shall now expire on the effective date of this Ordinance.

SECTION 5. The Board of Trustees shall conduct a comprehensive review of this Ordinance within two years of the effective date.

INTRODUCED AND PASSED ON FIRST READING THIS 21<sup>st</sup> DAY OF JULY 2014.

INTRODUCED, PASSED, ADOPTED AND ORDERED PUBLISHED THIS 4<sup>TH</sup> DAY OF JULY 2014.

TOWN OF LYONS

By: \_\_\_\_\_  
John E. O'Brien, Mayor

ATTEST:

By: \_\_\_\_\_  
Debra K. Anthony, Town Clerk