

TOWN OF DE BEQUE ORDINANCE NO. 537

SERIES 2023

AN ORDINANCE AMENDING CHAPTER 5.22 OF THE DE BEQUE MUNICIPAL CODE PERTAINING TO MARIJUANA LICENSING PROCEDURES TO REQUIRE THAT APPLICANTS HAVE AN APPROVED BUSINESS PREMISES AT THE TIME OF LICENSING OR RENEWAL; AND CLARIFYING OTHER PROVISIONS TO ADDRESS CURRENT STATE LAW.

- a. The Town of De Beque currently regulates marijuana businesses pursuant to the authority granted by Title 44, Article 10, of the Colorado Revises Statutes.
- b. It is the intent of the Town that marijuana licensing procedures be simplified for the benefit of prospective applicants and Town staff.
- c. In accordance with Title 14 of the De Beque Municipal Code, Special Use (SU) approval is required for all marijuana businesses. It is in the interests of the parties that applicants for a marijuana license have an approved business location via the SU process as a condition precedent to the issuance of a marijuana license, a change in license location, or at the time of renewal of a license under this Chapter.
- d. The Town is aware of some instances where persons have obtained a marijuana license without obtaining SU approval for business location. This practice is not in the best interests of the Town, as it facilitates speculation in marijuana licenses and commits staff resources regulating businesses with no active location.
- e. The Town additionally wishes to amend its ordinance to require self-reporting by Licensees of violations under other laws. In some cases, violations have not been reported to the Town, and it is in the public interest that all such violations are known to the Town so it can, if appropriate, take corrective action.
- f. It is the intent of the Town to provide advance notice of this change in policy to existing licensees.

NOW THEREFORE, Chapter 5.22 of the De Beque Municipal Code is amended to read as follows:

Chapter 5.22

MARIJUANA LICENSING - GENERAL PROVISIONS

Sections:

- 5.22.010 Purpose and Description.
- 5.22.020 Adoption of Colorado Marijuana Code.
- 5.22.030 Definitions.
- 5.22.040 License Required.
- 5.22.050 License Application.
- 5.22.060 Application Review Procedure.
- 5.22.070 Public Hearing Procedure.
- 5.22.080 Review Criteria.
- 5.22.090 Posting, Display of License.
- 5.22.100 Expiration of License.
- 5.22.110 Transfer of License.
- 5.22.111 Change of Location or Licensed Premises Modification.
- 5.22.120 Renewal of License.
- 5.22.130 Inspection.
- 5.22.140 License Violations.
- 5.22.150 License Revocation.
- 5.22.160 Hearings.
- 5.22.170 Notice of Suspension or Revocation.
- 5.22.180 Effect of Suspension or Revocation.
- 5.22.190 Summary Suspension.
- 5.22.200 Performance Standards for Marijuana Establishments.
- 5.22.210 Injunction.
- 5.22.240 Prohibited Acts – Penalty.

5.22.010 Purpose and Description. The purpose of this Chapter is to regulate and control potential adverse effects from medical and retail marijuana businesses in accordance with the power granted by the Colorado Constitution, state law, and the Town’s police power, and thereby to protect the health, safety, and welfare of the citizens; protect the citizens from increased crime; preserve the quality of life; and preserve the property values and character of the surrounding neighborhoods. This Chapter is authorized by the Colorado Marijuana Code, Article 10, Title 44, Colorado Revised Statutes (“Marijuana Code” or the “Code”) and other applicable law.

(Ord.488, §6, 2017) (Ord. 497, § 2, 2019)

5.22.020 Adoption of Colorado Medical and Retail Marijuana Codes. Except as expressly set forth herein, the Town hereby adopts and incorporates herein the Marijuana Code, and the provisions of the Colorado Department of Revenue Marijuana Enforcement Division Permanent Rules Related to the Colorado Marijuana Code, 1 CCR 212-3, as now existing or as may be

hereafter amended. At least one (1) copy of these documents will be kept on file by the Town Clerk and open to public inspection during regular business hours.

(Ord.488, §6, 2017) (Ord.497, §2, 2019)

5.22.030 Definitions. Except where specifically defined in this Section, the capitalized terms in this Chapter shall have the same meaning as that set forth in Article XVIII, Section 16 of the Colorado Constitution, the Code, or the Permanent Rules Related to the Colorado Marijuana Code. In the event of any conflict between such documents, the Permanent Rules shall control over this Section, the Colorado statutes shall control over the Permanent Rules, and the Colorado Constitution shall control over all other legal authorities. Federal law shall not be relevant in interpreting this Section.

- A. Active Facility means a Marijuana Establishment that is open for business and operated continuously during regular business hours during the term of its license issued under this Chapter.
- B. Applicant shall mean the person or entity submitting an Application of any kind under this Chapter, and shall include all members, shareholders, officers, directors, partners and managers in the case of a corporate entity or partnership.
- C. Application shall mean the submission by an Applicant of all materials required under this Chapter a License.
- D. Change Application means an application from a Licensee to change the location of a License or to modify or expand a Licensed Premises, including by adding a new type of Marijuana business to the Licensed Premises that complies with Section 5.22.111.
- E. Colorado Marijuana Code shall mean Article 10 of Title 44, Colorado Revised Statutes, as amended.
- F. License shall mean a license granted by the Town to an Applicant for a Licensed Premises.
- G. Licensed Premises shall mean the premises specified in a State License supplied for approval pursuant to this Chapter, owned or in the possession of the Licensee permitting the Licensee to operate a Marijuana Establishment in accordance with the provisions of the Code and this Chapter.
- H. Licensee shall mean a person licensed pursuant to the Code and approved pursuant to this Chapter.
- I. Medical Marijuana shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.

- J. Medical Marijuana center shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.
- K. Medical Marijuana Establishment shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.
- L. Medical Marijuana-Infused Product shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.
- M. Medical Marijuana-Infused Products Manufacturing Facility shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.
- N. Medical Marijuana Testing Facility shall have the same meaning as set forth in Section 14.01.180 of the Municipal Code.
- O. Optional Premises Cultivation Operation shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.
- P. Permanent Rules Related to the Colorado Marijuana Code or Permanent Rules shall mean the Colorado Department of Revenue Permanent Rules Related to the Colorado Marijuana Code 1 CCR 212-3:1-105, et seq as the same may be in effect and amended from time to time.
- Q. Renewal Application means an application from an existing licensee to renew a License previously approved by the Board of Trustees pursuant to this Chapter that complies with Section 5.22.120.
- R. Retail Marijuana shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.
- S. Retail Marijuana Cultivation Facility-Limited shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.
- T. Retail Marijuana Cultivation Facility shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.
- U. Retail Marijuana Establishment shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.
- V. Retail Marijuana Product shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.
- W. Retail Marijuana Products Manufacturing Facility shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.

X. Retail Marijuana Store shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.

Y. State License shall mean the license granted by the Colorado Department of Revenue pursuant to the Codes and Permanent Rules for the operation of a Marijuana Establishment.

(Ord. 472, §5, 2016) (Ord. 488, §6, 2017) (Ord. 489, §3, 2017) (Ord. 497, §2, 2019)

5.22.040 License Required. It shall be unlawful for any person to operate a Marijuana Establishment without a State License and without a License issued under the provisions of this Chapter. A separate License is required for each Marijuana Establishment and each Licensed Premises.

(Ord. 488, §6, 2017)

5.22.041 Limit on Licensed Premises. The total number of each type of Marijuana Establishment, as defined in Chapter 14.01.180, licensed to operate within the Town shall not exceed four (4) at any point in time. No Application will be accepted, processed, or reviewed unless a License of the type applied for is available as of the date of submission of an Application.

(Ord. 456 § 4, 2015) (Ord.488, §6, 2017) (Ord.489, §3, 2017)

5.22.050 License Application. An Application for the Operation of a Marijuana Establishment at a Licensed Premises shall be made as required by the Code and Permanent Rules. The Applicant has the burden of demonstrating compliance with the provisions of this Chapter, the Municipal Code, the Code, the Permanent Rules, and any other applicable law, rule, or regulation. All representations and information contained in the Application must be truthful. The Application to the Town shall include the following:

1. An application form provided by the Town.
2. A complete copy of the State License application as or to be submitted to the State Marijuana Enforcement Division.
3. Proof of ownership, lease, rental agreement, or other arrangement for possession of the proposed Licensed Premises.
4. A diagram showing the configuration of the proposed Licensed Premises, including a statement of total floor space occupied by the businesses, and designating the use of each room or other area of the premises.

5. The diagram shall designate those rooms or other areas of the premises where patrons are not permitted.

6. Sign, security, video surveillance, odor control, and lighting plans indicating how the Applicant will comply with the requirements of the Code, this Chapter, and other applicable provisions of the Municipal Code.

7. An area map, drawn to scale, indicating the boundaries of the property upon which the Marijuana Establishment is located, and indicating the proximity, measured per the standards as set forth below, of the proposed License Premises to any kindergarten through 12th grade public or private school and indicating the proximity to any other licensed Marijuana Establishment.

8. The diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches (+/- 6"). A dimensioned map utilizing the Mesa County GIS system is acceptable.

9. The diagram shall designate the place at which the License will be conspicuously posted as required by this Chapter.

10. Payment of all required fees as set forth on the Town's Marijuana Establishment fee schedule together with a signed agreement to reimburse consultant fees on a form provided by the Town.

11. The Town may require other or additional submittals as may be reasonably necessary for the particular Application, or as dictated by the Code, Permanent Rules, or other Town ordinances.

(Ord. 486, §3, 2017) (Ord. 488, §6, 2017) (Ord. 489, §3, 2017)

5.22.060 Application Review Procedure. A. Within ten (10) business days of submission of an Application the Town Clerk or a designee shall conduct an initial review of the Application to determine whether it is complete. Such initial review will examine whether:

1. All application materials required by section 5.22.050 have been received;

2. The proposed Licensed Premises location complies with the zoning, land use laws, and distance requirements of the Town, or that the necessary land use application has been made for a Special Use (SU) has been made under section 14.030.180 and 14.030.080. If approval of a SU has not been obtained for the proposed Licensed Premises, review of the application will be stayed pending completion and approval of the SU process.

a. The Applicant has established a meeting date with the Colorado Department of Revenue Marijuana Enforcement Division at which an application for a state license will be submitted, or that the application for a State License has been submitted to and has been deemed complete by the Colorado Department of Revenue Marijuana Enforcement Division;

b. the Applicant is, or will be, entitled to possession of the proposed Licensed Premises for which application is made by virtue of ownership, lease, rental agreement, or other arrangement for possession.

B. If, during the initial review, it is determined that the Application is incomplete the Town shall notify the Applicant in writing of the missing and required materials or information. The Applicant shall have ten (10) business days from this notice to provide the missing materials or information, or the Application will be deemed automatically denied.

C. If or when the Application is deemed complete the Town shall notify the Applicant and promptly schedule a public hearing on the Application before the Board of Trustees.

D. The Applicant shall be required to provide notice of the public hearing at its sole cost and expense. Such notice shall be made by publishing a legal notice in a newspaper of general circulation within the Town, by posting a notice of public hearing in a conspicuous place on the premises viewable from a public right-of-way, and by mailing notice via certified U.S. Mail to all properties within 250 feet of the property line of the proposed premises. All notice must be provided, and all signs posted, not less than fifteen (15) days prior to the scheduled public hearing. The notice shall state the type of license applied for, the date of the application, the date of the hearing, the name and address of the Applicant, and such other information as may be required to fully apprise the public of the nature of the application. If the Applicant is a partnership, the notice shall contain the names and addresses of all partners, and if the Applicant is a corporation, association, limited liability company or other organization, the notice shall contain the names and addresses of the president or manager or other managing officer(s) of the business as well as their members or shareholders, as applicable. If the partners, members, officers, managers, or shareholders are corporate entities and not individual persons, the individuals comprising such entities shall also be disclosed.

E. The Town Administrator shall forward the completed Application to all appropriate Town departments, consultants, and referral agencies for review of compliance with the provisions of this Chapter, the Codes, the Permanent Rules, and any other applicable law, rule, or regulation.

(Ord. 488, §6, 2017) (Ord. 489, §3, 2017)

5.22.070 Public Hearing Procedure.

A. Except as specifically set forth herein, all hearings for a License shall be conducted pursuant to the quasi-judicial procedures of Chapter 2.08.

B. The Board of Trustees may on its own motion and without the Applicant's consent continue the public hearing one (1) time to a date certain for a period not to exceed thirty (30) days. Continuances for longer than thirty (30) days require the consent of the Applicant.

C. All decisions on an Application shall be in writing stating the reasons therefore. The Board shall either deny the Application or approve the application with or without conditions. Within thirty (30) days after the date of the public hearing a copy of such decision shall be hand delivered or sent by first-class mail to the Applicant at the address shown in the Application. If the Board fails to approve the Application within these deadlines, unless the deadline is waived by the Applicant, such failure shall be deemed a denial of the Application.

D. The Town shall notify the state licensing authority of such decision.

5.22.080 Review Criteria and Appeals

A. In order to approve a License, the Board of Trustees shall find that all of the following are satisfied:

1. The Application is complete, and all fees have been paid.
2. Public Notice was properly provided pursuant to the provisions of this Chapter.
3. The Applicant is qualified under the provisions of this Chapter, the Code, or Permanent Rules.
4. The State License Application has been prepared for submission to (including the setting of a meeting date with the Marijuana Enforcement Division) or received by the Marijuana Enforcement Division, deemed complete, and approved or conditioned on granting of the License by the Town.
5. The proposed Licensed Premises comply with the design and performance requirements of the Code, the Permanent Rules, and this Chapter, including meeting the required spacing.
6. There is an approved and valid Special Use for the Licensed Premises.

B. Any person entitled to receive mailed public notice pursuant to Section 5.22.060(D) may appeal to the Town Board of Trustees a decision made by the Town Administrator pursuant to Section 5.22.060(A)(2). Said appeal will be conducted pursuant to Chapter 2.08 of the De

Beque Municipal Code. Appeals of any decision made by the Board of Trustees pursuant to this Chapter shall be made to a court of competent jurisdiction in accordance with Colorado Law.

C. The approval requirements set forth in this Chapter shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other state or local law, including, but not by way of limitation, a retail sales tax license, retail food establishment license, or development, zoning or building permit.

(Ord.488, §6, 2017) (Ord.489, §3, 2017)

5.22.090 Posting, Display of License.

A. Every License issued by the Town for a Marijuana Establishment shall be posted during the period such license is valid. Such License shall be posted in a conspicuous place and shall be visible from the principal entrance of the Licensed Premises. When such License expires, it shall be removed; only valid Licenses in full force and effect shall remain posted.

B. It shall be the duty of each Licensee to exhibit the License upon the request of any peace officer or other official of the Town.

(Ord.488, §6, 2017)

5.22.100 Expiration of License. Each License shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section 5.22.120 of this Chapter. A Licensee must immediately notify the Town and cease operations if the Licensee's State License expires or is not valid for any reason. No Licensee shall operate a Marijuana Establishment without a valid, active State License.

(Ord.488, §6, 2017)

5.22.110 Transfer of License. No License shall be transferred from one person or entity to another without prior approval from the Town and the State. Any change of ownership, including change to corporate or partnership structure, shall require an application for transfer of ownership and payment of the transfer of ownership fee set by the Town. The Town Clerk may approve or deny the transfer application based on the standards set forth in this Chapter. A transfer of a License in compliance with this Section 5.22.110 is not considered an application for a new License and is therefore not subject to or affected by Section 5.22.041.

(Ord.472, §5, 2016) (Ord. 486, §3, 2017)

5.22.111 Change of Location or Licensed Premises Modification.

A. A License may be transferred to a different location, or a Licensed Premises may be modified or expanded, including by adding the operation of another type of Marijuana Establishment at the Licensed Premises, only upon submission and approval of the following:

1. A change application form prepared and provided by the Town;
2. Proof that the current License is Active Facility;
3. Proof that ownership, lease, rental agreement, or other arrangement for possession for the new location of the License and Licensed Premises;
4. Payment of the change application fee;
5. A diagram showing the use and configuration of the proposed Licensed Premises at the new location or the proposed modifications to the Licensed Premises at the original location, including a statement of total floor space occupied by the business, and designating the use of each room or other area of the premises and which rooms or areas where patrons are not permitted;
6. An approved Special Use for the proposed change pursuant to Sections 14.03.180 and 14.03.080; and
7. Such other materials as may be reasonably necessary to evaluate the specific application.

B. In order to approve a change application, the decision maker shall find:

1. The Change Application is complete, and all fees have been paid;
2. Public notice was properly provided pursuant to the provisions of this Chapter; and
3. The change to the Licensed Premises is permitted under the Code, the Permanent Rules, this Chapter, and applicable ordinances of the Town.

C. The Applicant shall change the location of its business to that specified in the approved change application within 60 days of the decision authorizing the change.

D. At no time may a Marijuana Establishment operate or exercise any of the privileges granted pursuant to a License in more than one location.

E. A change application is not considered an application for a new License and is therefore not subject to or affected by Section 5.22.041, except that a change application seeking approval of the addition of a different license category at the Licensed Premises will be reviewed for compliance with Section 5.22.041.

(Ord.472, §5, 2016) (Ord. 486, §3, 2017) (Ord.488, §6, 2017) (Ord.489, §3, 2017)

5.22.120 Renewal of License.

A. At any time from ninety (90) to thirty (30) days prior to the expiration of the current License, a Licensee may submit a Renewal Application to renew the existing License for the succeeding year and pay the required fees. Unless otherwise provided by this Chapter, if a renewal application is so made such License may continue as valid unless or until the Renewal Application is reviewed for final action.

B. License renewals may be issued administratively by the Town Clerk, without a hearing, for a period of one (1) year if the Clerk finds that the Licensed Premises:

1. is an Active Facility;
2. the State License is valid; and
3. there are no outstanding violations of this Chapter, the Code, Permanent Rules, Town ordinances, or the applicable License that would justify non-renewal.

C. Alternatively, the Clerk has discretion to refer any renewal action to the Board of Trustees for review and final action if there are complaints filed against the Licensee, there are pending violations, or if there are other circumstances constituting good cause.

D. Prior to renewal the Town Clerk shall send the Renewal Application to all Town departments for review and comment. If Town staff intends to seek non-renewal at the renewal hearing, it shall notify the Licensee in writing of its intention not less than ten (10) days prior to the hearing. In that written notice the Town shall provide a general description of the facts constituting good cause for non-renewal.

E. In the event there are pending violations of this Chapter, the Code, Permanent Rules, or other Town ordinances, the violation(s) shall be adjudicated prior to final action on the renewal.

F. If the renewal application is brought before the Board of Trustees, the matter shall be conducted pursuant to the quasi-judicial procedures of Chapter 2.08. At the time of final action, the License may be renewed, denied, or renewed subject to conditions. The final decision shall be in writing and state the reasons for such decision.

G. Licenses for Active Facilities are eligible for renewal. Any Licensee that is not an Active Facility shall not be renewed.

H. A Renewal Application is not considered an application for a new License and is therefore not subject to or affected by Section 5.22.041.

(Ord. 472, §5, 2016) (Ord. 486, §3, 2017) (Ord. 488, §6, 2017) (Ord. 497, §2, 2019)

5.22.130 Inspection.

A. The Licensee and/or owner of any Licensed Premises shall permit representatives of the Colorado Marijuana Enforcement Division, Marshal's Department, Mesa County Health Department, Town Administrator or a designee, or the Fire Department, to inspect the premises of a Marijuana Establishment for the purpose of ensuring compliance with this Chapter, the Code, and the Permanent Rules.

B. Town departments and agencies shall conduct such inspections in a reasonable manner and only as frequently as may be reasonably necessary.

C. Except in cases of emergency, inspections shall take place during the regular business hours of the Marijuana Establishment or when any person is on the Licensed Premises.

D. It shall be unlawful for the Licensee or any employee to refuse to permit such lawful inspection of the Licensed Premises as provided in this Section.

(Ord.488, §6, 2017)

5.22.140 License Enforcement.

A. Complaints of violations of Chapter, the Code, Permanent Rules, or other Town ordinances will be investigated by the Town. If the Town confirms a violation, it will notify the Licensee in writing, and it shall be the obligation of the Licensee to cure or abate the violation(s) within thirty (30) days of notice. Failure to cure violation(s) may result in suspension, non-renewal, administrative penalties, or other license sanctions.

B. In the event the State License is suspended or revoked for any reason the License granted by the Town under this Chapter shall be deemed to be automatically suspended for the same period or revoked without any further action by the Town.

C. License enforcement proceedings shall be conducted in accordance with the procedures specified in Section 5.22.160.

D. In determining the action to be taken with respect to any violation, the Town shall consider the following aggravating and mitigating circumstances:

1. Whether the License has been previously suspended or revoked.
2. Whether the Licensee was warned that the conduct involved could lead to a suspension or revocation.
3. Whether the cause for suspension or revocation involves one or several violations.
4. Whether the violation(s) are technical or substantive in nature.
5. The extent to which the Licensee, Licensee's agents and employees, as opposed to patrons, were involved in the violation(s).
6. The extent to which the Licensee or Licensee's employees had knowledge of the violation(s).
7. Any corrective or remedial action the Licensee has taken to prevent similar violation(s) in the future.
8. Whether the violation(s) involved the commission of a crime, and if so, the degree of crime involved.
9. The extent to which the violation(s) caused personal injuries or property damages.
10. Whether the Licensee has paid damages or made restitution to any person or entity damaged by the violation(s).
11. The extent to which the violations posed a significant risk to the health, safety, and welfare of persons on or off of the Licensed Premises.
12. The length of time over which the violation(s) extended.
13. The extent to which the Licensee or Licensee's employees realized a financial gain from the violation(s).
14. The number of employees, patrons, or both involved in the violation(s).
15. The nature and extent of enforcement action taken by the Town or any law enforcement to detect the violation(s).
16. The involvement of any persons under twenty-one (21) years of age in the violation(s).

17. The extent to which the Licensee or Licensee's employees have attempted to cover up the violation(s), destroy evidence or otherwise hinder the investigation and detection of the violation(s).

18. The extent to which the Licensee and Licensee's employees have acted in good faith.

E. Each Licensee has an affirmative duty to report to the Town in writing all alleged violations of the Colorado Marijuana Code, the Permanent Rules, or other applicable laws occurring upon or related to the Licensed Premises within ten (10) days of the receipt of any charge, summons, or similar notice of violation. Any such violation, or the failure of the Licensee report same, may be a basis for additional license enforcement action by the Town.

(Ord.488, §6, 2017)

5.22.150 License Revocation.

A. The Board of Trustees may revoke a license if the Board finds and determines that:

1. The License has previously been suspended within the preceding twelve (12) months;
2. The Licensee gave false information in the material submitted to the Town;
3. A Licensee or employee has knowingly allowed consumption of marijuana on the Licensed Premises;
4. A Licensee or an employee has knowingly allowed someone under the age of twenty-one onto the Licensed Premises;
5. A Licensee or an employee knowingly operated a Marijuana Establishment during a period of time when the License was suspended;
6. A Licensee has commenced operation of its Marijuana Establishment without satisfying all conditions precedent, if any, imposed on the initial grant or renewal of Licensee's License;
7. The Licensed premises are not an Active Facility, as defined in this Chapter; or
8. There is other good cause for revocation, as defined by the Code, Permanent Rules, or this Chapter.

B. When the Town revokes a license, the revocation shall continue for one (1) year, and the Licensee shall not be issued a License for one (1) year for the premises in question, nor as to any other premises within the Town, from the date revocation became effective.

(Ord.488, §6, 2017) (Ord. 486, §3, 2017)

5.22.160 Hearings.

A. The Board of Trustees shall conduct hearings for violation, suspension, revocation, or other action with respect to Licenses granted pursuant to this Chapter in accordance with Chapter 2.08 of the De Beque Municipal Code. The Board of Trustees shall make findings of fact and conclusions concerning the revocation or suspension of a license. The Board of Trustees shall transmit a copy of the final findings of fact and conclusion to the Licensee as provided hereafter and to the State.

B. Upon commencement of suspension, renewal, or revocation proceedings, the Town Administrator or its designee shall set a time and place for a hearing of the matter before the Board of Trustees.

C. The Town Administrator shall give the Licensee timely notice of the time and place of the hearing and the violations asserted. Such notice shall be served personally or by mailing by first-class mail to the last address furnished to the Town by the Licensee, at least ten (10) days prior to the hearing. In lieu of such service, or in addition thereto, a copy of such notice may be affixed to the principal entrance of the Licensed Premises.

D. In the event that Town staff may recommend suspension, non-renewal, or revocation in any proceeding concerning a license under this Chapter, the Town shall notify the Licensee in writing of that recommendation or determination, which shall be sent not less than (10) days prior to the hearing date.

E. In any hearing the Licensee shall be afforded an opportunity to be heard, present evidence, cross-examine witnesses, and offer evidence in mitigation of any alleged violations.

F. All evidence shall be recorded by electronic recording device.

G. In all such proceedings, the Town Attorney shall act as the attorney on behalf of the Town.

5.22.170 Notice of Suspension or Revocation.

A. Upon suspension, revocation, or other action with respect to any License issued under this Chapter, notice of such suspension or revocation shall be given by personally serving

the Licensee with the order of suspension or revocation or by mailing such order to such person by certified or registered mail at the business address of the Licensee as shown on the License or at the address of the designated agent. In lieu of such service, or in addition thereto, a copy of such order may be affixed to the principal entrance of the Licensed Premises.

B. The order shall be effective immediately upon service of notice thereof unless the order provides otherwise. Service of such order shall be complete upon mailing or posting.

C. A decision of Board of Trustees is reviewable only by the Mesa County District Court under C.R.C.P. 106(a)(4). There shall be no stay of execution pending a review by the Court except by Court order.

5.22.180 Effect of Suspension or Revocation. Upon the effective date of suspension or revocation of any License, the Licensee shall immediately cease and desist from further operation or activity.

5.22.190 Summary Suspension. When the conduct of any Licensee, agent or employee is so inimical to the public health, safety, and general welfare as to constitute a nuisance or hazard and thus give rise to an emergency, the Town Administrator shall have the authority to summarily order the cessation of business and the closure of the Licensed Premises pending a hearing on the question of whether to suspend or revoke the license. Unless waived by the Licensee in writing, the Board of Trustees shall conduct a hearing upon the summary order and the activity giving rise to such order within fifteen (15) days after the Town Administrator has acted. The order shall state the grounds for its issuance and shall give notice of the hearing and shall be served upon the affected person in the manner prescribed herein. At such hearing the Licensee shall show cause why the summary suspension should not be made a final order of suspension or revocation.

5.22.200 Performance Standards for Marijuana Establishments

A. Hours of Operation. All Marijuana Establishments may operate from the hours of 9:00am to 10:00pm, Monday through Sunday.

B. Location of Licensed Premises. Marijuana Establishments shall be located only in areas of the Town as allowed in Chapter 14. No Marijuana Establishment shall be located:

1. within four hundred feet (400') of any existing public or private school facility where classes are held for children aged kindergarten through the 12th grade. The distance shall be computed by a straight-line measurement from the nearest property line of the school property to the nearest structure line of the premises housing the Medical or Retail Marijuana Establishment;

2. in any zone district not specifically permitted by right or as a special review use by Chapter 14.

C. Qualifications of Applicants. In addition to the requirements of the Code and Permanent Rules, the Applicant and Licensee shall:

1. Demonstrate that they possess the qualities of honesty, fairness, candor, trustworthiness, and responsibility, and that they do not have a history of prior misconduct. Prior acts of misconduct include, but are not necessarily limited to criminal convictions, criminal or other formal charges of fraud or theft, or acts of moral turpitude.

2. Not be in default under the provisions of this Chapter or the Town ordinances; be in default of any agreement with the Town; or have any unpaid or outstanding taxes, fees, fines, or assessments.

D. Miscellaneous. In addition, all Marijuana Establishments shall comply with the following requirements:

1. Any applicable Town business/sales tax license shall be obtained, and all applicable state, county, city, and special district sales taxes shall be collected and remitted in a timely manner.

2. A sign permit shall be obtained from the Town for all signage. All exterior signage associated with a Medical or Retail Marijuana Establishment will meet the standards established in the Code and in the Municipal Code.

3. No Licensee shall allow the smoking in public or consumption of any Marijuana on the Licensed Premises.

4. All sales and distribution of Marijuana shall occur only upon the Licensed Premises unless distribution is done by a person or business with a valid medical or retail marijuana transporter license issued by the Colorado Marijuana Enforcement division, the Licensee is strictly prohibited from delivering Retail Marijuana to any person at any location other than the Licensed Premises.

5. No Licensed Premises shall be managed by any person other than the Licensee, or the establishment manager listed on the Application. Such Licensee or establishment manager shall be responsible for all activities that occur within the Licensed Premises.

6. There shall be posted in a conspicuous location in each Medical and Retail Marijuana Establishment legible signs as required by the Code, including but not limited to:

a. A warning that the use of marijuana may impair a person's ability to drive a motor vehicle or operate machinery, and that it is illegal under state law to drive a motor vehicle or operate machinery when under the influence of or impaired by marijuana.

- b. A warning that loitering in or around a Marijuana Establishment is prohibited by state law;
- a. A warning that possession and distribution of marijuana is a violation of federal law;
- d. A warning that consumption of marijuana within a Marijuana Establishment is prohibited;
- e. A warning that the smoking or consumption of marijuana in public is prohibited by state law;
- f. A notice that no-one under the age of twenty-one (21) is allowed on the Licensed Premises;
- g. The name and contact information for the owner or owners and any business manager of the Marijuana Establishment;
- h. The State and Town Marijuana Establishment license; and
- i. All sales tax/business licenses.

7. The provisions of Chapter 7.10 of the Town Municipal Code shall apply to all Medical and Retail Marijuana Establishments. Pursuant to 7.10.040(B), an odor control plan must be submitted as follows:

- a. as part of an Application for a new License; or
- b. with respect to Licenses issued prior to the effective date of Chapter 7.10, the earlier of sixty days following the effective date of Chapter 7.10 or with the submission of the Licensee's next Renewal Application or Change Application. An inspection may occur within sixty (60) days of approval of an existing Licensee's odor control plan to determine compliance therewith.

(Ord. 487 §3, 2017) (Ord.488, §6, 2017)

5.22.210 Injunction. Any person who operates or causes to be operated a Medical or Retail Marijuana Establishment without a license is subject to suit for injunction as well as criminal prosecution. Nothing in this Section shall limit any other remedy available to the Town under applicable law. In any such proceeding, the Town need only show proof of the violation to obtain injunctive relief, which shall be issued without the posting of bond by the Town.

(Ord.488, §6, 2017)

5.22.240 Prohibited Acts - Penalty. Any person who violates any provision of this Chapter, or who fails to perform an act required by any provision of this Chapter, commits a Class A municipal offense. Each day that a violation continues shall be considered a separate violation.

(Ord. 444 § 2, 2014); (Amended Ord. 456 §4, 2015). (Ord. 485 §2, 2017)

The foregoing ordinance was approved by the De Beque Board of Trustees this 26th day of SEPTEMBER, 2023. This ordinance shall take effect thirty (30) days from publication.

TOWN OF DE BEQUE BOARD OF TRUSTEES

By: Shanelle Hansen
Shanelle Hansen, Mayor

Sept 26th, 2023
Date

Attest:

Lisa M. Rogers
Lisa Rogers, Town Clerk

Sept 26, 2023
Date

