

TOWN OF NEDERLAND, COLORADO

ORDINANCE NUMBER 721

AN ORDINANCE AMENDING ARTICLE XI OF CHAPTER 6 OF THE NEDERLAND MUNICIPAL CODE, CONCERNING THE REGULATION OF MARIJUANA, TO CLARIFY THE RESPECTIVE ROLES OF THE TOWN CLERK AND THE TOWN BOARD OF TRUSTEES UNDER SUCH ARTICLE

WHEREAS, the Town of Nederland, Colorado (“Town”) is a statutory town, duly organized and existing under the laws of the state of Colorado; and

WHEREAS, pursuant to Section 16 of Article 18 of the Colorado Constitution and the Colorado Retail Marijuana Code, Article 43.4 of Title 12, C.R.S., the Town Board of Trustees (“Board”) possesses the authority to adopt legislation concerning the regulation of retail marijuana establishments in Town; and

WHEREAS, under this authority, the Board previously adopted Ordinance No. 720, which enacted a new Article XI of Chapter 6 of the Nederland Municipal Code (“Code”), entitled “Regulation of Marijuana,” to govern the permissible time, place and manner of conduct of marijuana establishments in Town and to provide a local licensing process for such establishments; and

WHEREAS, the Board now desires to amend certain provisions of the newly-adopted Article XI of Chapter 6 of the Code to clarify the intended roles and responsibilities of the Town Clerk and of the Board in the context of retail marijuana establishment licensure and regulation, as further specified herein.

NOW THEREFORE, BE IT ORDAINED by the Board of Trustees of the Town of Nederland, Colorado, as follows:

Section 1. The introductory paragraph of Section 6-275 of the Nederland Municipal Code (“Code”) is hereby amended as follows

Sec. 6-275. Marijuana Establishment Application.

The Local Licensing Authority shall have those powers and duties as set forth in this Article and Section 16 of Article 18 of the Colorado Constitution and the CRMC, except when any such power, duty or authority is delegated to another entity or person, such as the Town Clerk, under this Article.

Section 2. Subsections (3) and (4) of Code Section 6-277, concerning the processing of new marijuana establishment licenses, is hereby amended as follows:

(3) The Local Licensing Authority shall approve, deny, or conditionally approve a pending application for a Retail Marijuana Store, after conducting a public

hearing on the application, within forty-five (45) business days of the receipt of the completed application received by certified mail. Notice of the public hearing before the Local Licensing Authority shall be posted and published not less than ten (10) days prior to the hearing in accordance with C.R.S. § 12-43.4-302. The Town Clerk is authorized to approve, deny or conditionally approve a pending application for any other type of Retail Marijuana Establishment without conducting a public hearing on the application. The Clerk shall render his or her decision within forty-five (45) business days of the receipt of the completed application by certified mail.

(4) The Town Clerk shall notify the applicant of the decision on the pending application by mailing a copy of the ~~Local Licensing Authority's~~ decision to the Applicant by certified mail, postage prepaid, at the address designated in the application. Notice is deemed to have been properly given upon mailing. The Town Clerk is further authorized to notify the Applicant of the decision verbally at the time of mailing. A Marijuana Establishment may not operate until it is licensed by the State Licensing Authority pursuant to the CRMC and approved by the Town ~~Local Licensing Authority~~ in accordance with this Section.

Section 3. Code Section 6-278, concerning denial of applications and appeals, is hereby amended as follows:

Sec. 6-278. Denial and Appeals ~~of Denial.~~

(1) The Local Licensing Authority or Town Clerk shall deny an application for a license under this Article if it determines that:

(A)(1) Information contained in the application is found to be false in any material respect; or

(B) (2) The application fails to meet any of the standards set forth in Section 6-279 of this Article. If an application is denied, the operating fee shall be refunded by 50 percent.

(2) An applicant has the right to appeal a decision of the Town Clerk to deny or to conditionally approve an application by filing a written notice of appeal within seven (7) days of the date of the decision. The matter shall be scheduled before the Board of Trustees no later than thirty (30) days from the date the notice of appeal is filed with the Clerk's office. On appeal, the Board of Trustees shall determine whether the Town Clerk's determination that denial is required by Code Section 6-278(1) or (2) or, in the case of conditional approval, that the condition imposed is reasonably calculated to ensure compliance with this Article, is supported by a preponderance of the evidence available to the Town Clerk when s/he rendered his or her decision. The burden on appeal shall be on the applicant.

(3) (A) Any decision made by the Local Licensing Authority pursuant to this section shall be a final decision and may be appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

(4) The Applicant's failure to timely appeal ~~the a~~ a decision in accordance with subsection (2) or (3) hereof, as applicable, is a waiver of the Applicant's right to contest the decision denial or conditional approval of the application.

Section 4. The introductory sentence of Code Section 6-279, concerning the issuance of a license, is hereby amended as follows:

Sec. 6-279. Issuance of a license. The Town Clerk shall issue a local license under this Article when the Local Licensing Authority or Town Clerk, as appropriate, determines that:

Section 5. Subsection (6) of Code Section 6-279, concerning the issuance of a license, is hereby amended as follows:

(6) The applicant and manager are of good moral character. In making this determination or when considering a criminal conviction, the Local Licensing Authority and Town Clerk shall be governed by the provisions of this Article and Section 24-5-101, C.R.S. If the Local Licensing Authority or Town Clerk takes into consideration information concerning the applicant's criminal history record, the Local Licensing Authority or Town Clerk shall consider the period of time between the applicant's last criminal conviction as described in Section 6-275 in the consideration of the application for a license;

Section 6. Subsection (6) of Code Section 6-280, concerning required contents of a license, is hereby amended as follows:

(6) Any special conditions of approval imposed upon the license by the Local Licensing Authority or Town Clerk; and

Section 7. Section 6-281 of the Code, concerning the renewal of licenses, is hereby amended as follows:

6-281. Renewal of a License.

- (1) Except as otherwise provided in this section, each license issued pursuant to this Article shall be valid for one (1) year from the date of issuance, and may be renewed as provided in this section.
- (2) Ninety (90) days prior to the expiration date of an existing license, the Town Clerk ~~Local Licensing Authority~~ shall notify the licensee of such expiration date by certified mail at the business's last known mailing address.
- (3) A renewal of an existing license shall be made to the Town Clerk not less than forty-five (45) days prior to the date of expiration by certified mail. No

renewal shall be accepted by the Town Clerk after the date of expiration. The Town Clerk may waive the forty-five (45) day time requirement set forth in this subsection in writing sent by certified mail if the applicant demonstrates an adequate reason, as determined by the Town Clerk.

- (4) At the time of renewal of an existing license, the applicant shall pay the applicable fees.
- (5) The provisions of sections 6-275 through 6-279, inclusive, shall be updated and applied if applicable to an existing application on file with the ~~Local Licensing Authority~~ Town to renew a license. The timely payment of license fees shall extend the current license until a final decision is made on the renewal, including any appeal of the ~~Local Licensing Authority's~~ decision.
- (6) The Town Clerk shall deny a renewal application upon a finding that the business or the Applicant fails to meet the requirements of this Article or has failed to satisfy or comply with any condition(s) previously imposed upon the license.
- ~~(67) In addition to the denial criteria set forth under subsection (6) above, the Town Clerk Local Licensing Authority, in his/her its discretion, may revoke or elect not to renew a Retail Marijuana Store license if s/he it determines that the licensed premises have been inactive, without good cause, for at least a period of one year and said business possesses one of the maximum valid licenses for retail marijuana stores in Town, the license for such establishment shall be deemed "inactive." Inactive licenses shall expire immediately upon written notice issued by the Town Clerk by certified mail. A licensee whose license expires due to inactivity pursuant to this subsection (7) may appeal the local licensing authority's determination in accordance with article ii of chapter 6 of this code. The town shall not issue another retail marijuana store license to take the place of one of the maximum retail marijuana store licenses found to be inactive until such determination of inactivity is final (through failure of the licensee to appeal within thirty (30) business days or the board of trustee's decision on appeal).~~
- (8) An applicant has the right to appeal a decision of the Town Clerk made under subsection (6) or (7) of this Section by filing a written notice of appeal within seven (7) days of the date of the decision. The matter shall be scheduled before the Board of Trustees no later than thirty (30) days from the date the notice of appeal is filed with the Clerk's office. On appeal, the Board of Trustees shall determine whether the Town Clerk's findings and determination are supported by a preponderance of the evidence available to the Town Clerk when s/he rendered his or her decision. The burden on appeal shall be on the applicant.

Section 8. Subsection (2) of Code Section 6-282, concerning duties of a licensee, is hereby amended as follows:

- (2) Comply with all of the terms and conditions of the license, and any special conditions on the license imposed by the ~~Local Licensing Authority~~ pursuant to Section 6-279;

Section 9. Subsection (6) of Code Section 6-284, concerning places of operation, is hereby amended as follows:

(6) A cultivation facility may be located in residential zoning as a licensed home occupation with an approved Special Review Use permit, pursuant to Sections 16-32 and 16-76 of this Code and in the Central Business District (CBD) and the Neighborhood Commercial (NC) district as a Special Review Use (See Sec. 16-32).

Section 10. Subsection (8) of Code Section 6-284, concerning places of operation, is hereby amended as follows:

(8) In addition to the zone district restrictions imposed by Subsections (2) through ~~(3)~~ (7) above, no Retail Marijuana Store Establishment shall be located:

- (A) Within 100 feet of a licensed child care facility;
- (B) Within 100 feet of any educational institution or school, college or university, either public or private;

Section 11. Subsection (1) of Code Section 6-287, concerning the suspension and revocation of licenses, is hereby amended as follows:

(1) In addition to any fines or other sanctions prescribed by Article II of Chapter 6 of this Code, this Article or rules promulgated pursuant to this Article, the Local Licensing Authority Town Clerk has the power, on their own motion or on complaint, after investigation and opportunity for a hearing at which the licensee shall be afforded an opportunity to be heard, to suspend, revoke or fine a Marijuana Establishment license issued by the Town for a violation by the licensee or by any of the agents or employees of the licensee. The Town Clerk has the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of a hearing that the Local Licensing Authority is authorized to conduct for the following reasons:

Section 12. Paragraph (C) of Subsection (1) of Code Section 6-287, concerning the suspension and revocation of licenses, is hereby amended as follows:

(C) A violation of any of the terms and conditions of the license, including any special conditions of approval imposed upon the license ~~by the Local Licensing Authority~~ pursuant to Section 6-279;

Section 13. Should any one or more sections or provisions of this Ordinance or of the Code provisions enacted hereby be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance or of such Code provision, the intention being that the various sections and provisions are severable.

Section 14. Any and all Ordinances or Codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such Ordinance or Code or part thereof shall not revive any other section or part of any Ordinance or Code provision heretofore repealed or superseded.

INTRODUCED, ADOPTED AND ORDERED PUBLISHED THIS 1st DAY OF OCTOBER, 2013.

TOWN OF NEDERLAND, COLORADO



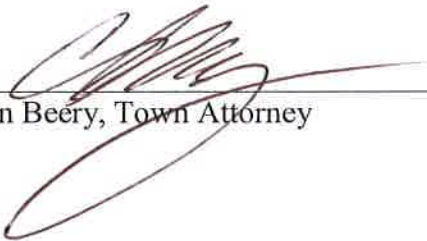
Joe Gierlach, Mayor

ATTEST:



Michele Martin, Town Clerk

APPROVED AS TO FORM:



Carmen Beery, Town Attorney

