

**TOWN OF FRASER
ORDINANCE NO. 396
Series 2012**

AN ORDINANCE AMENDING THE FRASER MUNICIPAL CODE BY ADOPTING LICENSING AND OPERATIONAL REQUIREMENTS FOR MEDICAL MARIJUANA BUSINESSES WITHIN THE TOWN OF FRASER; REPEALING THE EXISTING MORATORIUM REGARDING THE LICENSING OF SUCH BUSINESSES; AND DECLARING AN EMERGENCY.

WHEREAS, Article XVIII, Section 14 of the Colorado Constitution creates an affirmative defense for the medical use of marijuana to state criminal statutes prohibiting the cultivation, possession, and use of marijuana; and

WHEREAS, the Colorado General Assembly has adopted the Colorado Medical Marijuana Code C.R.S 12-43.3-101 *et seq.*, which provides statutory authority for the operation of businesses for the purpose of manufacturing, possessing, and distributing marijuana for medical purposes without regard to whether the business or its owner, managers, employees, or suppliers are "primary caregivers" pursuant to Article XVIII, Section 14; and

WHEREAS, the Colorado Medical Marijuana Code, in Section 12-43.3-106, C.R.S., provides a local option for local governments to prohibit the operation of medical marijuana businesses by vote of the registered electors or by action of the local governing body; and

WHEREAS, the Colorado Medical Marijuana Code also provides authority for local governments to adopt local regulations concerning the licensing and operation of medical marijuana businesses if such businesses are not prohibited, which local regulations are in addition to those imposed by the state; and

WHEREAS, the Fraser Board of Trustees, by Ordinance 372, submitted a ballot question to the registered electors at a special election held on November 2, 2010, asking whether the Town should prohibit medical marijuana businesses, which ballot question was defeated; and

WHEREAS, at the same special election, the registered electors approved a ballot question to impose an additional excise tax on the sale of medical marijuana, medical marijuana paraphernalia, and medical marijuana-infused products, at the rate of five percent of the gross amount paid in connection with such sales; and

WHEREAS, the Board of Trustees has previously adopted a temporary moratorium on the licensing of medical marijuana businesses pending the adoption of state and local regulations regarding such businesses, such moratorium having been extended through July 1, 2012 pursuant to Ordinance No. 390; and

WHEREAS, the Board of Trustees is now prepared to adopt local regulations regarding the local licensing and operation of medical marijuana businesses, as provided in this Ordinance and in accordance with the Colorado Medical Marijuana Code; and

WHEREAS, the Board of Trustees finds and determines that the provisions of this Ordinance and the regulations herein adopted for the licensing and operation of medical marijuana businesses are reasonable and necessary to protect and preserve the health, safety and welfare of the citizens of the Town of Fraser, Colorado.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF FRASER, COLORADO, AS FOLLOWS:

PART 1: AMENDMENT OF MUNICIPAL CODE.

1.1 The Code of the Town of Fraser, Colorado (herein sometimes referred to as the "Municipal Code"), is hereby amended by adding a new Article to Chapter 6 of said Code, to be numbered "Article 5 - Medical Marijuana Businesses", which shall read as set forth in Exhibit "A" attached hereto and incorporated herein by this reference.

1.2 The Fee Schedule set forth in Appendix A of the Municipal Code is hereby amended by adding the following fee under Chapter 6 of said Appendix A:

Municipal Code-Based Fees, Costs and Deposits		
<i>Code Section</i>	<i>Fee/Charge</i>	<i>Amount</i>
Chapter 6		
6-5-60	Application fee for new medical marijuana business license	\$5,000.00 plus reimbursement of any additional fees or expenses incurred by the Town and/or reimbursement of any Town expenses incurred in excess of this amount.
6-5-60	Annual license fee for each medical marijuana center, optional premises cultivation operation, or medical marijuana-infused products manufacturer (separate fee for each operation and/or location)	\$5,000.00 plus reimbursement of any additional fees or expenses incurred by the Town and/or reimbursement of any Town expenses incurred in excess of this amount.
6-5-60	Late renewal fee (C.R.S. 12-43.3-311(2)(a))	\$500.00
6-5-60	Change of location application fee	\$700.00
6-5-60	Modification of premises application	\$700.00
6-5-60	Change of corporate structure/officers/directors	\$500.00

	(for each owner/officer/director added)	
6-5-60	Manager registration (if not an owner)	\$500.00
6-5-110	Transfer of ownership application fee (new entity)	\$5,000.00

PART 2: REPEAL OF MORATORIUM.

2.1 The temporary moratorium on the licensing of medical marijuana businesses, as most recently extended pursuant to the provisions of Ordinance No. 390, is hereby repealed effective as of the date this Ordinance takes effect.

PART 3: PENALTY CLAUSES. The following section of the Code of the Town of Fraser, Colorado, contains penalty clauses applicable to violations of this Ordinance, and such section is herewith set forth in full and hereby enacted:

Sec. 1-4-10. General penalty for violation.

It shall be unlawful for any person to violate, disobey, omit, neglect, refuse or fail to comply with or resist the enforcement of any provision of this Code; and where no specific penalty is provided therefor, the violation of any provision of this Code shall be punished by a fine not exceeding one thousand dollars (\$1,000.00), by imprisonment for a term not exceeding one (1) year, or by both such fine and imprisonment. Each day such violation continues shall be considered a separate offense

PART 4: REPEAL. In addition to the repeal of the temporary moratorium, as provided in Part 2 hereof, any and all existing ordinances or parts of ordinances of the Town of Fraser covering the same matters as embraced in this Ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed; provided, however, that such repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

PART 5: SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance or the said Codes adopted herein is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance or said Codes. The Town of Fraser hereby declares that it would have adopted this Ordinance and said Codes, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases thereof be declared invalid or unconstitutional.

PART 6: DECLARATION OF EMERGENCY; EFFECTIVE DATE. Because of the immediate risk that inappropriate medical marijuana businesses might be permitted upon expiration of the existing state and local moratoriums, the Board of Trustees hereby finds, determines, and declares that an emergency exists, that this Ordinance is necessary for the immediate preservation of public peace, health, safety and welfare, and that it shall be in full force and effect immediately upon adoption.

PART 7: PUBLICATION. This Ordinance shall be published by title only.

READ, PASSED, ADOPTED AND ORDERED PUBLISHED BY THE BOARD OF TRUSTEES AND SIGNED THIS 27th day of JUNE, 2012.

Votes in favor: _____
Votes opposed: _____
Votes abstained: _____

BOARD OF TRUSTEES OF THE
TOWN OF FRASER, COLORADO

BY: _____
Peggy Smith, Mayor

ATTEST:

Lu Berger, Town Clerk

(S E A L)

Published in the *Middle Park Times* on July 5, 2012.

ARTICLE 5

Medical Marijuana Businesses

Sec. 6-5-10. Definitions.

(a) As used in this Article the following words shall have the following meanings, unless the context clearly requires otherwise:

(1) *MM Code* means the Colorado Medical Marijuana Code, C.R.S. 12-43.3-101 et seq.

(2) *MM Regulations* means the Rules Regarding Sale, Manufacturing and Dispensing of Medical Marijuana, 1 CCR 212-1, as adopted by Medical Marijuana Enforcement Division of the Colorado Department of Revenue, and any amendments thereto.

(3) *Medical Marijuana Business* means a medical marijuana center, optional premises cultivation operation, or medical marijuana-infused products manufacturer for which a license is required under the MM Code and this Article.

(b) The terms defined in the MM Code and MM Regulations shall have the same meaning when used in this Article, unless context clearly requires otherwise.

Sec. 6-5-20. License required.

It is unlawful for any person to own or operate a Medical Marijuana Business within the Town of Fraser without first having obtained from the Town and the state a license for each facility to be operated in connection with such business.

Sec. 6-5-30. Local Licensing Authority.

(a) The Fraser Board of Trustees shall be the local licensing authority for the licensing of Medical Marijuana Businesses pursuant to this Article, unless the Board designates other persons to serve as the local licensing authority. The local licensing authority shall possess all powers given to local licensing authorities by the provisions of the MM Code and MM Regulations. Any decision made by the local licensing authority to grant or deny a license, to revoke or suspend a license, or to renew or not renew a license 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.

(b) The Town Clerk shall assist the local licensing authority by receiving all applications; coordinating with other Town officers and departments when relevant; scheduling required public hearings; and providing notice in accordance with this Article and the MM Code.

Sec. 6-5-40. Limitations and Requirements Applicable to Medical Marijuana Businesses.

(a) **State Requirements:** Medical Marijuana Businesses must at all times comply with the regulations and requirements contained in the MM Code and MM Regulations with regard to applications, licensing and operations of licensed premises.

(b) **Location:** Medical Marijuana Businesses shall only be located on property within the Business zoning district. Medical Marijuana Businesses are not permitted within any other zoning district or within any building that contains a residential dwelling or lodging unit. Medical Marijuana Businesses shall not be permitted to operate as "home occupations."

(c) **Separation Requirements:**

(1) No Medical Marijuana Business shall be issued a license if, at the time of the initial application for such license, the proposed location is:

(i) within one thousand feet of any educational institution or school, either public or private;

(ii) within five hundred feet of any existing Medical Marijuana Business, whether such business is located within or outside of the Town;

(iii) within two hundred feet of any existing licensed child care facility.

(2) The distances set forth in this subsection shall be computed by direct measurement in a straight line from the nearest property line of the land used for the purposes stated above, respectively, to the nearest portion of the building in which the Medical Marijuana Business is located. The locational criteria contained in this subsection shall apply to all proposed changes in the location of an existing license.

(d) **Advertisements:** Advertisements, signs, displays or other promotional material depicting medical marijuana uses or symbols shall not be shown or exhibited off the premises. No signage associated with a medical marijuana center shall use the word "marijuana," "cannabis," or any other word or phrase commonly understood to refer to marijuana. No signage may display photographs or other representations of marijuana plants.

(e) **Indoor Operation; Odors:**

(1) All medical marijuana dispensing, production, cultivation, manufacturing and storage activities shall be conducted indoors. Products, accessories, and associated paraphernalia shall not be visible from a public sidewalk or right of way.

(2) The cultivation of marijuana is only permitted when the premises are equipped with a system that removes the odors of the marijuana being cultivated so that the odor is not detectable from the exterior of the business or from within any adjoining premises. Approval of the odor removal system by the Building Official is required prior to any cultivation process beginning. The Building Official's determination of the adequacy of any proposed odor-removing system shall be

based on his reasonable determination of the ability of the proposed system to remove odors as required by this subsection, which determination shall be based upon the manufacturer's or an engineer's design specifications for the system as they relate to the premises in question.

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

(g) **Additional Requirements:** Medical Marijuana Businesses shall be subject to the following additional requirements:

(1) The business may only be open for the sale or distribution of medical marijuana during the hours of 8:00 a.m. to 7:00 p.m.

(2) No on-site consumption of marijuana is allowed.

(3) A Fraser business license and sales tax license are required.

(4) No mobile structure may be used to dispense medical marijuana.

(5) No alcohol sales or consumption shall be permitted on the licensed premises.

(6) A licensee shall not permit persons who do not possess a valid registry card or other appropriate credentials to loiter on or about the licensed premises.

Sec. 6-5-50. Excise Tax.

(a) A tax is imposed upon all retail sales of medical marijuana, medical marijuana paraphernalia, and medical marijuana-infused products made within the town of Fraser by licensed Medical Marijuana Businesses at the rate of five percent (5.0%) of the gross price paid by the purchaser, rounded off to the nearest penny. The tax imposed by this section is in addition to, and not in lieu of, the sales tax owed to the Town in connection with the sale of medical marijuana, medical marijuana paraphernalia, and medical marijuana-infused products.

(b) Except for those provisions that by their terms cannot apply, the procedures for the collection and enforcement of the Town's use tax as provided in Section 4-3-50(a) of this Code shall apply to the collection and enforcement of the medical marijuana excise tax imposed by this section. The Town Manager or his or her designee may adopt administrative rules and regulations specifying additional or alternative procedures for

the collection and enforcement of the medical marijuana excise tax imposed by this section.

Sec. 6-5-60. Application Requirements.

(a) A person seeking to obtain a license pursuant to this article shall submit an application to the Town Clerk. The form of the application shall be as provided by the Town Clerk.

(b) A license issued pursuant to this chapter does not eliminate the need for the licensee to obtain other required licenses and permits related to the operation of the Medical Marijuana Business, including, without limitation, any development approval required by this Code; a sales tax license; and a building, mechanical, plumbing, or electrical permit.

(c) An application for a license under this article shall include the following information and any additional information required by the Town Clerk:

(1) The applicant's name, address, telephone number, and Social Security number and, if the applicant is a partnership, the names and addresses of all the partners, and if the applicant is a corporation, the names and addresses of all the corporate officers, and if the applicant is a cooperative association, the names and addresses of its directors and officers;

(2) A completed set of the applicant's fingerprints;

(3) The street address of the proposed Medical Marijuana Business;

(4) Proof of ownership; or if the applicant is not the owner of the proposed location of the Medical Marijuana Business, satisfactory proof that the applicant is or will be entitled to possession of the premises under a lease, rental agreement or other written agreement, including authorization to use premises for the specific type of Medical Marijuana Business for which the application is made;

(5) An acknowledgement by the applicant that the applicant and its owners, officers, and employees may be subject to prosecution under federal laws relating to the possession and distribution of controlled substances; that the Town of Fraser accepts no legal liability in connection with the approval and subsequent operation of the Medical Marijuana Business; and that the application and documents submitted for other approvals relating to the Medical Marijuana Business operation are subject to disclosure in accordance with the Colorado Open Records Act.

(d) In addition to the foregoing, an applicant shall also submit all other information required by the MM Code and MM Regulations for state and local applications.

(e) When the application is filed, the applicant shall pay to the Town a non-refundable application fee in such amount as is established from time to time by ordinance or resolution adopted by the Board of Trustees and set forth in the

appendices to this Code. The purpose of the fee is to cover the administrative costs of processing the application. If the application is approved, the applicant shall also pay an annual license fee, for each licensed Medical Marijuana Business operation, in such amount as is established from time to time by the Board of Trustees and set forth in the appendices to this Code.

(f) Each license issued pursuant to this chapter shall be valid for a period of one year from the date of issuance and may be renewed as provided in this section. An application for renewal shall be made to the Town Clerk not less than forty-five (45) days prior to the date of expiration and shall be accompanied by the annual license fee(s) for the renewal term. The license shall be renewed by the Town Clerk unless it appears to the Town Clerk that good cause exists to deny the renewal application, in which case the Town Clerk shall refer the application to the Board of Trustees for review at a public hearing. The Town Clerk shall refer the renewal application for public hearing only if the licensee has had complaints filed against it, the licensee has a history of violations, or there are allegations against the licensee that would constitute good cause for denial of a license as defined in the MM Code. The procedures provided in Sections 6-5-70 to 6-5-90 shall apply to the Board of Trustees' review and determination whether to renew a license. In order to be entitled to such review, the applicant shall pay an additional fee equal to the application fee for a new license.

Sec. 6-5-70. Investigation of Applicant.

(a) Upon receipt of an application for a license under this article, the Town Clerk shall transmit copies of the application to the Police Department, the Town Manager, the Planning and Building Department, and any other person or agency who the Town Clerk determines should participate in the review of the application. The Town or any of its departments or officials may visit and inspect the plant or property in which the applicant proposes to conduct business and investigate the fitness to conduct such business of any person, or the officers and directors of any corporation, or the partners of any partnership applying for a license.

(b) In investigating the fitness of the applicant, the Town may obtain criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency. In the event the Town takes into consideration information concerning the applicant's criminal history record, the Town shall also consider any information provided by the applicant regarding such criminal history record, including, but not limited to, evidence of 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) Not less than five days prior to the date of the public hearing on a license application or, in the event of an application for which no public hearing is scheduled, not less than five days prior to the decision to approve or deny an application, the Town Clerk shall make known the findings of the investigation in writing to the applicant and other parties of interest.

Sec. 6-5-80. Public Hearings; Notice; Publication.

(a) Upon receipt of an application for a local license, except an application for renewal or for transfer of ownership, the local licensing authority shall schedule a public hearing upon the application to be held not less than thirty days after the date of the application. The local licensing authority shall post and publish public notice thereof 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 medical marijuana center premises for which application has been made and by publication in a newspaper of general circulation in Grand County.

(b) Public notice given by posting shall include a sign of suitable material, not less than twenty-two inches wide and twenty-six inches high, composed of letters not less than one inch in height and stating 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. The sign shall contain the names and addresses of the officers, directors, or manager of the facility to be licensed.

(c) Public notice given by publication shall contain the same information as that required for the posting of signs.

(d) If the building in which medical marijuana is to be sold is in existence at the time of the application, the sign shall be posted so as to be conspicuous and plainly visible to the general public. If the building is not constructed at the time of the application, the applicant shall post a sign at the premises upon which the building is to be constructed in such a manner that the notice shall be conspicuous and plainly visible to the general public.

(e) The local licensing authority, or a license applicant with local licensing authority approval, may request that the state licensing authority conduct a concurrent review of a new license application prior to the local licensing authority's final approval of the license application. If the local licensing authority permits a concurrent review, it will continue to independently review the applicant's license application.

Sec. 6-5-90. Issuance or Denial of License.

(a) Not less than five days prior to the date of the public hearing, the local licensing authority shall make known its findings, based on its investigation, in writing to the applicant and other parties of interest. The local licensing authority has authority to refuse to issue a license provided for in this section for good cause, subject to judicial review.

(b) Before entering a decision approving or denying the application for a local license, the local licensing authority may consider, except where this Article specifically provides otherwise, the facts and evidence adduced as a result of its investigation, as well as any other facts pertinent to the type of license for which application has been made, including the number, type, and availability of medical marijuana outlets located

in or near the premises under consideration, and any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed.

(c) Within thirty days after the public hearing or completion of the application investigation, a local licensing authority shall issue its decision approving or denying an application for local licensure. The decision shall be in writing and shall state the reasons for the decision. The local licensing authority shall send a copy of the decision by certified mail to the applicant at the address shown in the application.

(d) The Board of Trustees may impose reasonable conditions upon any license issued pursuant to this Article.

(e) After approval of an application, a local licensing authority shall not issue a local license until the building in which the business to be conducted is ready for occupancy with such furniture, fixtures, and equipment in place as are necessary to comply with the applicable provisions of this chapter, and then only after the local licensing authority or its designee has inspected the premises to determine that the applicant has complied with the architect's drawing and the plot plan and detailed sketch for the interior of the building submitted with the application.

(f) After approval of an application for local licensure, the local licensing authority shall notify the state licensing authority of such approval.

Sec. 6-5-100. Contents and Display of License.

(a) The licensee shall post the license in a conspicuous location at the Medical Marijuana Business. A Medical Marijuana Business license shall contain the following information:

(1) The name of the licensee; The date of issuance of the license; The street address at which the licensee is authorized to operate the Medical Marijuana Business;

(2) Any conditions of approval imposed upon the license by the Board of Trustees;

(3) The date of expiration of the license; and

(4) The license shall be signed by the applicant and the Town Clerk

Sec. 6-5-110. Transfer of Ownership.

(a) In determining whether to permit a transfer of ownership, the local licensing authority shall consider only the requirements of this Article, the MM Code and MM Regulations. The local licensing authority may hold a hearing on the application for a transfer of ownership; provided the local licensing authority shall not hold a hearing pursuant to this section until the local licensing authority has posted a notice of hearing in the manner described in Section 6-5-80 on the licensed premises for a period of ten

days and provided notice of the hearing to the applicant at least ten days prior to the hearing. An application fee shall accompany each application for a transfer of ownership, in such amount as is established from time to time by the Board of Trustees and as set forth in the appendices to this Code.

Sec. 6-5-120. Suspension or Revocation.

(a) The local licensing authority may revoke or elect not to renew any license if it determines that the licensed premises have been inactive, without good cause, for at least one year.

(b) In addition to any other sanctions prescribed by this Article, the MM Code or the MM Regulations, the local licensing authority has the power, on its own motion or on complaint, after investigation and opportunity for a public hearing at which the licensee shall be afforded an opportunity to be heard, to suspend or revoke a license issued by the local licensing authority for a violation by the licensee or by any of the agents or employees of the licensee of the provisions of this Article, the MM Code or MM Regulations, or of any of the terms, conditions, or provisions of the license. The local licensing authority 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 state or local licensing authority is authorized to conduct.

(c) The state or local licensing authority shall provide notice of suspension, revocation, fine, or other sanction, as well as the required notice of the hearing pursuant to subsection (b), by mailing the same in writing to the licensee at the address contained in the license. Except in the case of a summary suspension, a suspension shall not be for a longer period than six months. If a license is suspended or revoked, a part of the fees paid therefore shall not be returned to the licensee. Any license or permit may be summarily suspended by the local licensing authority without notice pending any prosecution, investigation, or public hearing pursuant to the terms of C.R.S. § 24-4-104(4).

(d) Whenever a decision of the local licensing authority suspending a license for fourteen days or less becomes final, the licensee may, before the operative date of the suspension, petition for permission to pay a fine in lieu of having the license suspended for all or part of the suspension period. Upon the receipt of the petition, the local licensing authority may, in its sole discretion, stay the proposed suspension and cause any investigation to be made which it deems desirable and may, in its sole discretion, grant the petition if the local licensing authority is satisfied that:

(1) The public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes;

(2) The books and records of the licensee are kept in such a manner that the loss of sales that the licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy; and

(3) The licensee has not had his or her license suspended or revoked, nor had any suspension stayed by payment of a fine, during the two years immediately preceding the date of the motion or complaint that resulted in a final decision to suspend the license or permit.

(e) The fine accepted shall be not less than five hundred dollars nor more than one hundred thousand dollars.

(f) Payment of a fine shall be in the form of cash, a certified check or cashier's check made payable to the local licensing authority.

(g) Upon payment of the fine pursuant to subsection (c), the local licensing authority shall enter its further order permanently staying the imposition of the suspension.

Sec. 6-5-130. Penalty.

Failure to comply with the provisions of this Article shall constitute a violation of this Code, and in addition to being grounds for denial, suspension or revocation of a license, such violation may be punished as provided in Section 1-4-10 of this Code.