

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN THAT:

The Board of County Commissioners for the County of Mesa, State of Colorado, will consider the adoption of an **Ordinance for the Licensing and Regulation of Marijuana Business Businesses**. Notice is hereby given that the proposed ordinance will be introduced and read before the Board of County Commissioners for the County of Mesa, State of Colorado, 544 Rood Avenue, Grand Junction, Colorado at a PUBLIC HEARING to be held on the 17<sup>th</sup> day of May, 2022 at 9:00 a.m.

Further Notice is hereby given that the final passage and adoption of the proposed ordinance will occur before the Board of County Commissioners for the County of Mesa, State of Colorado, 544 Rood Avenue, Grand Junction, Colorado at PUBLIC HEARING to be held on the 7<sup>th</sup> day of June, 2022 at 9:00 a.m., at which time public comments will be taken and considered before the final adoption of the proposed ordinance.

Copies of the proposed ordinance are available for public inspection in the Mesa County Administration Office, 544 Rood Avenue, Grand Junction, Colorado, at any time Monday through Friday between the hours of 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m. A copy may also be viewed on Mesa County's website at: [www.mesacounty.us](http://www.mesacounty.us).

Published in the Grand Junction Sentinel on May 6, 2022.

**ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY  
OF MESA, STATE OF COLORADO**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE FOR THE LICENSING AND REGULATION OF MARIJUANA  
BUSINESS BUSINESSES**

**WHEREAS**, the General Assembly enacted the Colorado Marijuana Code (C.R.S. §44-10-101, et seq., hereafter, "Colorado Marijuana Code") as of January 1, 2020; and

**WHEREAS**, subsequent to the adoption of the Colorado Marijuana Code, the Colorado Department of Revenue adopted 1 CCR 212-3, the Colorado Marijuana Rules; and

**WHEREAS**, the Mesa County Board of County Commissioners ("Board") adopted Ordinance 11 on August 12, 2013, which prohibited marijuana operations of any nature or type; and

**WHEREAS**, in November 2021 the voters of Mesa County passed Ballot Measure 1A County which overrides Ordinance 11 and allows certain marijuana businesses; and

**WHEREAS**, pursuant to Amendment 64, and the Colorado Marijuana Code, including specifically, C.R.S. §44-10-104(1)(a), counties may adopt resolutions or ordinances governing the cultivation or sale of marijuana; and

**WHEREAS**, as affirmed by C.R.S. §44-10-104, as provided in section 16(5)(f) of article XVIII of the state constitution, any local jurisdiction may enact ordinances or regulations governing the time, place, manner, and number of retail marijuana business businesses, which may include a local licensing requirement, or may prohibit the operation of retail marijuana business businesses through the enactment of an ordinance or through a referred or initiated measure; and

**WHEREAS**, the Board is authorized by C.R.S. §30-11-101(2) to adopt and enforce ordinances and resolutions regarding health, safety, and welfare issues as otherwise prescribed by law, and provide for the enforcement thereof; and

**WHEREAS**, the Board has determined that adopting regulations governing the time, place, manner and number of operating retail marijuana business businesses in unincorporated Mesa County will serve the health, safety and welfare of the community; and

**WHEREAS**, the Board has determined that the efficient administration of marijuana laws and regulations encourages that it adopt a single set of regulations applicable to both medical marijuana and retail marijuana to the extent that doing so conforms to the requirements of the Colorado Marijuana Code; and

**WHEREAS**, the Board has considered the testimony and opinions of persons interested in marijuana regulation at public work sessions and at public hearings; and

**WHEREAS**, the Board finds it is in the interest of public health, safety and welfare that the Board adopt the Mesa County Marijuana Licensing Regulations.

**NOW, THEREFORE, BE IT RESOLVED**, that the Mesa County Board of County Commissioners hereby adopts the Mesa County Marijuana Licensing Regulations attached hereto, effective June 7, 2022.

**NOW, THEREFORE, BE IT FURTHER RESOLVED**, that any Moratorium effecting marijuana businesses including but not limited to Ordinance 11 is rescinded, effective June 7, 2022.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MESA COUNTY AS FOLLOWS:**

### **Part 1. General Provisions**

#### Section 1.01 Title.

These regulations shall be known and referred to as the "Mesa County Marijuana Licensing Regulations" (referred to herein as "Regulations").

#### Section 1.02 Authority.

Section 14 of Article XVIII of the Colorado Constitution permits limited medical uses of marijuana under Colorado law. Section 16, Article XVIII of the Colorado Constitution permits personal use of marijuana by persons aged 21 years and older under Colorado law. To enact, restrict, and enforce the State Constitution, the General Assembly enacted the Colorado Marijuana Code, Article 10 of Title 44, C.R.S. In addition, the Colorado Department of Revenue adopted 1CCR 212-3, the Colorado Marijuana Rules. The Colorado Marijuana Code and the Colorado Marijuana Rules authorize counties and municipalities to determine whether to permit, as a matter of state law, certain marijuana businesses within their jurisdictions.

#### Section 1.03 Purpose.

##### 1.03.1 The Purpose of these regulations are to:

1. Authorize licensing of certain marijuana businesses in unincorporated Mesa County as provided in the Colorado Marijuana Code and the Colorado Marijuana Rules; to establish specific standards and procedures for local licensing of marijuana-related business businesses; and to protect the health, safety, and welfare of the residents, consumers and patients of Mesa County by prescribing the manner in which marijuana business businesses can be conducted in Mesa County.

2. Comply with the Mesa County's obligations under the Colorado Marijuana Code;
3. Comply with Mesa County's obligations under Const. Art. XVIII, §16(5)(e);
4. Require that medical marijuana cultivation facilities, medical marijuana testing facilities and medical marijuana products manufacturers, collectively referred to as "Medical Marijuana Business Businesses," shall operate in a safe manner that does not endanger the public welfare and in a manner that conforms to the Colorado Marijuana Code;
5. Require that retail marijuana cultivation facilities, retail marijuana products manufacturers and retail marijuana testing facilities, collectively referred to as "Retail Marijuana Business Businesses," shall operate in a safe manner that does not endanger the public welfare and in a manner that conforms to the Colorado Marijuana Code;
6. Mitigate potential negative impacts that the Marijuana Business Businesses may cause on surrounding properties and persons;
7. Regulate the conduct of persons owning, operating, and using Marijuana Business Businesses to protect the public health, safety and welfare;
8. Establish a nondiscriminatory mechanism by which the County appropriately regulates the location and operation of Marijuana Business Businesses within the County.

#### 1.03.2 Assumption of Risk of Violation of Federal Law

By enacting these Regulations, Mesa County does not intend to encourage or promote the establishment of any business or operation, or the commitment of any act, that constitutes or may constitute a violation of federal law. As of the date of the enactment of these regulations, the use, possession, distribution, and sale of marijuana is illegal under Federal law and those who engage in such activities do so at their own risk of criminal prosecution.

#### Section 1.04 Effective Date and Applicability of Regulations.

It shall be unlawful to operate any business in unincorporated Mesa County for which a license is required under the Colorado Marijuana Code without first having obtained a local license under these regulations and a state license under state code. Provided, further, these regulations necessary to the immediate preservation of the public health and safety due to the immediate impact upon surrounding residences, Places of Worships and schools from the attraction of transients, parking and traffic problems, the potential for increased crime and noise, increased safety hazards to neighborhood children, and the potential for overall deterioration of neighborhood quality, and

therefore shall become effective immediately upon adoption.

## Section 1.05 Definitions.

1.05.1 Unless otherwise expressly provided, the definitions in the Colorado Marijuana Code, including the definitions in C.R.S. §44-10-103, shall apply in these Regulations with respect to Marijuana Businesses.

1.05.2 The following words, terms and phrases, when used in these Regulations, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. *"Authority," "Mesa County Local Licensing Authority" and "Local Licensing Authority"* have the same meaning for the purposes of these Regulations.
2. *"Place of Worship"* shall mean any tax-exempt building used for nonprofit purposes by a recognized and legally established sect for the purpose of worship, including educational buildings when operated by such Place of Worship. The term "Place of Worship" includes a synagogue, temple, etc.
3. *"Good Cause"*, for purposes of refusing or denying a license issuance, renewal or transfer means:
  - a. The Licensee or applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of these Regulations, the Colorado Marijuana Code, or the state administrative regulations promulgated pursuant thereto, as applicable;
  - b. The Licensee or applicant has failed to comply with any special terms or conditions that were placed on its license pursuant to an order of the State or Local Licensing Authority;
  - c. The Licensed Premises have been operated in a manner that adversely affects the public health or welfare or the safety of the immediate neighborhood in which the establishment is located; or
  - d. The Licensed Premises have been inactive without justification for at least one year.
4. *"Licensed Premises"* means the premises specified in a license under these Regulations, which are owned or in possession of the Licensee and within which the Licensee is authorized to cultivate, manufacture, or test medical marijuana and/or retail marijuana in accordance with the provisions of the Colorado Marijuana Code, as applicable, and these Regulations.

5. *"Licensee"* means a Person licensed pursuant to these Regulations.
6. *"Location"* means a particular parcel of land that may be identified by an address or other descriptive means.
7. *"Regulated Marijuana Business"* means and includes jointly and severally a Medical Marijuana Business and/or a Retail Marijuana Business.
8. *"Medical Marijuana Business"* means a medical marijuana cultivation facility or a medical marijuana products manufacturer as defined in the Colorado Medical Marijuana Code.
9. *"Owner"* means any person having a beneficial interest, as defined by the State Licensing Authority, in a Medical or a Retail Marijuana Business.
10. *"Premises"* means a distinctly identified, as required by the State Licensing Authority, and definite Location, which may include a building, a room, or any other definite contiguous area.
11. *"Retail Marijuana Business"* means a retail marijuana cultivation facility, retail marijuana products manufacturer, or a retail marijuana testing facility as defined in the Colorado Marijuana Code.

#### Section 1.06 Adoption of Colorado Marijuana Code and State Administrative Regulations.

1.06.1 Except where the provisions expressly set forth in these Regulations are inconsistent with or differ from the Colorado Marijuana Code or the state administrative regulations promulgated pursuant thereto, all of the provisions of the Colorado Marijuana Code and the state administrative regulations promulgated pursuant thereto, each as they are amended from time-to-time, are adopted herein by this reference, and apply to all applications received and licenses issued by the Local Licensing Authority with respect to Marijuana Business Businesses.

1.06.2 If there is a conflict between the provisions of these Regulations and the Colorado Marijuana Code, the Colorado Marijuana Code, or the state administrative regulations promulgated pursuant to them, respectively, the provisions of these Regulations control to the fullest extent permitted by applicable law.

1.06.3 If the state modifies or adopts laws or rules that are stricter than those within these regulations the modified or newly adopted state laws or rules shall control and be deemed additional requirements for the issuance, denial, renewal, suspension or revocation of any license issued pursuant to these regulations

#### Section 1.07 Licenses and Grant of Authority for Dual Licenses.

1.07.1 The marijuana licensing authority for Mesa County shall be the Board of County Commissioners. The Board may designate a county licensing coordinator or such other county

staff or office(s) with responsibility to serve the local licensing authority as its staff by accepting complete applications, establishing procedure, serving as public liaison, preparing reports and recommendations to the local licensing authority, inspecting businesses for compliance with the provisions of this chapter, notifying the county attorney and local licensing authority of any suspected violations, and maintaining records regarding the performance of these duties. The county licensing coordinator is hereby designated as the person permitted to administratively approve applications where these regulations specifically delegate such authority to designated staff members.

1.07.2 The Authority is authorized to issue the following local licenses should the applicant fulfill the requirements in these regulations, which requirements shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state, or local law:

1. Retail marijuana cultivation facility;
2. Retail marijuana products manufacturer;
3. Retail marijuana testing facility;
4. Business Operators;
5. Research and Development (R&D);
6. Transporters;
7. Accelerators
8. Medical marijuana cultivation facility;
9. Medical marijuana products manufacturer;
10. Medical marijuana testing facility

1.07.3 All other forms or types of licenses are currently not allowed including:

1. Medical marijuana store;
2. Retail marijuana store;
3. Retail marijuana hospitality and sales business;

1.07.4 The dual operation of a medical and retail cultivation facility is permitted so long as both licenses are held by the same owners, all applicable state and local licenses have been issued, such licenses remain valid and active for both operations, and both operations are in compliance with all applicable state and local requirements.

## Section 1.08 County Reservations.

1.08.1 Adoption of these Regulations is not intended to waive or otherwise impair any portion of the local option available under Colorado Constitution Art. XVIII, §16(5)(f) or the Colorado Marijuana Code.

1.08.2 Adoption of these Regulations is not intended to waive or otherwise impair the Mesa County's authority to adopt specific or different standards or other regulations for the issuance and administration of local licenses from time-to-time.

## 1.09 Prohibited licensees.

### 1.09.1 No license shall be issued to and or held by:

1. A person who has not paid all of the fees required by the local licensing authority.
2. A person licensed pursuant to this chapter who, during a period of licensure, or who, at the time of application, is delinquent on the payment of county property or excise taxes. Local licensing authority staff will verify that property taxes are current as of the date an application is accepted and deemed complete and the date a license is to be issued and become effective.
3. A sheriff, deputy sheriff, police officer, prosecuting officer, or an employee of the state licensing authority or an employee of local licensing authority directly involved in the licensing and permitting process or any member of such an individual's immediate family
4. An employee of the State of Colorado Marijuana Enforcement Division ("MED") who had regulatory oversight responsibilities for individuals or businesses licensed by the MED in the six (6) months immediately preceding the date of the person's application.
5. A person or entity that is not eligible for a license under the laws of the State of Colorado or any regulations promulgated thereunder.

## 1.10 Candor; Cooperation; Duty to Report.

1.10.1 All applications or other requests submitted to the local licensing authority's staff must be materially complete and accurate. All individuals executing and submitting applications, statements, attachments and other supporting documentation shall be deemed to have submitted such documentation based on the understanding and affirmation that all of the information and documentation submitted is true and correct to the best of their knowledge and belief.

1.10.2 Any false statements, misleading information, misrepresentations, or failure to reveal information requested may be deemed sufficient cause to deny the application or request and may be grounds for enforcement action, including revocation of any license

1.10.3 Any owner, Licensee or Business Operator with day-to-day management authority over an entity that has a local license or has a pending application for a local license, must notify local licensing authority staff, in writing, of any conviction, deferred sentence or judgment regarding a felony within seven (7) days of such conviction, deferred sentence or judgment.

1.10.4 Any owner or business operator with day-to-day management authority over an entity that has a license or has a pending application for a license must notify local licensing authority staff, in writing, of any criminal charges regarding a controlled substance within seven (7) days of the person's arrest or receipt of a summons.

1.10.5 For any person licensed under these regulations, any revocation of an owner's license by the state or any other local jurisdiction must be reported to the local licensing authority's staff within ten (10) days of such revocation.

1.10.6 Licensees shall notify the local licensing authority's staff within ten (10) days of the issuance of any discipline, or the acceptance of an assurance of voluntary compliance, by the MED or any other local jurisdiction against any of the licensees' licenses or licensed premises.

1.10.7 Applicants and licensees shall notify the local licensing authority's staff within ten (10) days of any other event that renders the applicant or licensee no longer qualified to hold a license under these regulations.

1.10.8 A licensee shall report any discovered plan or other action of any person to commit theft, burglary, underage sales, diversion of marijuana or marijuana product, or other crime related to the operation of the licensed business to the local licensing authority. A report shall be made as soon as possible after the discovery of the action, but no later than fourteen (14) days after such discovery. Such information may be provided to law enforcement agencies by local licensing authority staff.

1.10.9 A licensed marijuana business must disclose any change of its registered agent in Colorado within seven (7) days of the change.

1.10.10 If a marijuana Business Operator is contracted to manage the overall operations of another marijuana business' licensed premises, the marijuana business shall designate a natural person who is an officer, agent or employees of the business operator as management personnel of the licensed premises. Changes to designated management personnel shall be disclosed to the local licensing authority staff within seven (7) days of the change.

1.10.11 Applicants and licensees must cooperate in any investigation conducted by the local licensing authority. Failure to cooperate in any investigation may be grounds for denial of an application or for disciplinary action against a licensee.

1.10.12 Within forty-eight (48) hours after a recall notice for any marijuana or marijuana product has been issued, whether voluntarily initiated by a licensee or at the request of the MED, a licensee shall notify the local licensing authority.

## **Part 2 General Restrictions**

2.01 A Licensed Premises shall not be:

1. Located in a building that has any portion of it classified or occupied as residential under any applicable building code adopted by Mesa County.
2. Currently licensed as a Food Service Restaurant.
3. In violation of the Mesa County Land Development Code (“LDC”)
4. In violation of any relevant rules and regulations adopted by the Mesa County Health Department (MCPH).
5. In violation of any health standards adopted by either the state or local licensing authorities.
6. In violation of any relevant federal, state or local statutes, rules and regulations regarding wastewater disposal or wastewater treatments systems.
7. On a parcel that is delinquent on the payment of county property taxes as of:
  - a. the date an application is accepted and deemed complete; or,
  - b. the date a license is to be issued and become effective.

2.02 All applicants seeking a license of any type shall comply with the LDC before being issued their license. Failure to comply with any provision of the LDC is sufficient grounds for the Authority to deny an application for a license. The Authority may revoke a license if it later finds that a licensee did not comply with any provision of the LDC.

2.03 Any adverse impacts resulting from the use (including but not limited to: hours of operation, traffic generation, noise, odor, dust, and other external impacts) will be mitigated to the maximum extent possible.

2.04 If a medical marijuana cultivation facility is dually located with a retail marijuana cultivation facility, the licensee shall maintain separation of the two (2) licensed operations, including marijuana plants and marijuana inventory as required by the MED or by Mesa County.

2.05 If a marijuana cultivation facility shares its licensed premises with a licensed research business, an R&D co-location permit must first be obtained from the MED and the licensee must comply with all terms and conditions of the co-location permit.

2.06 A marijuana cultivation facility is authorized to utilize a licensed marijuana transporter for transportation of its marijuana only so long as the place where transportation orders are taken and

delivered is a licensed marijuana business. Nothing in this rule prevents a marijuana cultivation facility from transporting its own marijuana.

2.07 If a medical marijuana products manufacturer is dually located with a retail marijuana products manufacturer, the licensee shall maintain visual and operational separation of the two (2) licensed operations, including product inventory as required by the MED or by Mesa County in conjunction with compliance of the applicable provision of the LDC. Nothing in this rule prohibits a co-located medical marijuana products manufacturer and a retail marijuana products manufacturer from sharing raw ingredients in bulk, except that medical marijuana and retail marijuana may not be shared under any circumstance.

2.08 If a marijuana products manufacturer shares its licensed premises with a licensed research business, an R&D co-location permit must first be obtained from the MED and the licensee must comply with all terms and conditions of the co-location permit.

2.09 A marijuana products manufacturer is authorized to utilize a licensed marijuana transporter for transportation of its marijuana products only so long as the place where transportation orders are taken and delivered is a licensed marijuana business. Nothing in this rule prevents a marijuana products manufacturer from transporting its own marijuana products.

2.10 A business operator will not have its own licensed premises, but it shall maintain its own place of business within unincorporated Mesa County. A business operator shall designate and maintain its place of business separate from the licensed premises of a marijuana business it operates.

2.11 A business operator license may only be held by a business entity, including but not limited to a corporation, limited liability company, partnership or sole proprietorship.

2.12 Business operators, as well as their owners with day-to-day management authority, may be disciplined for violations committed by owners, agents or employees of the marijuana business acting under the direction and control of the business operator. A business operator may also be disciplined for violations not directly related to any marijuana business it is operating.

### **Part 3 Modifications and Changes to Licensed Premises**

3.01 No licensee shall materially change, alter or modify the licensed premises without complying with this section, the provisions of the LDC and applicable state law.

3.02 If requested by the licensee, the local licensing authority may provide information to the MED indicating that local licensing authority approval is not required for the changes, alterations or modifications described in this subsection and that the local licensing authority will neither approve nor deny such modification requests. The local licensing authority reserves the right to notify other departments or outside agencies and provide and share information with such department and agencies about such changes, alterations or modifications.

3.03 Failure to provide notice to the local licensing authority, to provide additional documentation, or to obtain any necessary approvals or permits shall be a violation of these regulations and shall be grounds for enforcement action.

3.04 Licensees shall notify the local licensing authority's staff prior to making any physical changes, alterations or modifications to the licensed premises, including temporary changes, alterations or modifications except those identified above.

3.05 As part of the notification process, satisfactory evidence must be provided that demonstrates that the licensee has obtained the approval of the proposed modification from the MED, Mesa County Community Development Department and from any other agency having jurisdiction (e.g. fire authority or district, MCB, MCPH, CDPHE, or EPA). Any conditions or limitations of approval from all such other agencies must be provided with the notification. The local licensing authority may verify any or all of the information provided with the applicable department or agency.

3.06 If requested by the licensee, the local licensing authority may provide evidence of conditional approval of the proposed modifications to the MED once all necessary approvals and comments from agencies other than the MED are provided to staff.

3.07 Licensees shall only be permitted to complete conditionally approved modifications once evidence of MED approval for the same proposed modification is provided to licensing staff. After all conditions of approval have been satisfied and modifications are permitted to commence, the licensee shall have one (1) year to complete the approved modifications. Failure to complete the modifications within one (1) year, without approval of an extension for good cause, shall result in expiration and revocation of local licensing authority approval for the modification.

3.08 Failure to obtain necessary approvals from agencies or to provide the required notification and evidence of necessary approvals to staff prior to changes, alterations or modifications shall be grounds for enforcement action.

3.09 In the event a licensee is unclear about what notice or approval is required, or disagrees with staff's interpretation of what notice or approval is required, the licensee may request a determination from the local licensing authority.

3.10 Any local license, other than a license for a business operator, is limited to the location specified in the license application. The relocation of an existing licensed marijuana business, other than a licensed business operator, shall require a new license and shall comply with all provisions of the LDC. Any fees paid for a prior location shall not be applied to the new location. Relocation of a business operator's place of business within the county may be permitted upon administrative approval of licensing authority staff, if the licensee provides staff with satisfactory evidence of the right to possess the new place of business during the term of the license, together with proof of applicable land use and building code approvals.

## **Part 4 Inspections**

4.01 All licensed operations and facilities shall be subject to inspection by the local licensing authority, its staff, investigators and designees, including but not limited to local law enforcement officers, community development department staff, and representatives of local fire districts, during all business hours and other times of apparent activity for the purpose of inspection or investigation.

4.02 Upon request from the local licensing authority or its staff, the applicant or licensee shall timely provide accurate and complete records related to the business. If any part of the place of business or licensed premises consists of a locked area, such area shall be made available for inspection without delay upon request by any authorized representative or designee of the local licensing authority. Failure to make records related to the business or a locked area available for inspection upon request shall constitute a violation of this regulation and such violation may, in the discretion of the local licensing authority, form or constitute a basis for summary suspension or other enforcement proceedings against the licensee.

4.03 This section shall be cumulative to and not limit any right of inspection authority authorized under any law.

## **Section 5 Enforcement**

### **5.01 Unlawful Acts.**

5.01.1 It is unlawful and a violation of this Section and of the terms and conditions of every local license to cultivate, process, manufacture, distribute, deliver, store, test, or transfer marijuana, except in strict compliance with these regulations, the Colorado Marijuana Code, the Colorado Marijuana Rules, Amendment 20 and Amendment 64.

5.01.2 It is unlawful for any person to engage in any form of business or commerce directly involving the cultivation, processing, manufacturing, distribution, delivery, storage, testing, or sale of marijuana other than those forms of business and commerce that are expressly contemplated by this section, the Colorado Marijuana Code, the Colorado Marijuana Rules, Amendment 20 and Amendment 64.

### **5.02 Investigation.**

5.02.1 *Investigation.* The local licensing authority or other county designated officer will initiate an investigation after receiving a complaint or observing potential noncompliance. If, in the opinion of the designated officer, the investigation demonstrates that probable cause of a violation of this Section, the Colorado Marijuana Code, or the Colorado Marijuana Rules may exist, a Notice of Charge containing a written summary of the facts and the supporting evidence and the Notice of Charge shall be presented to the local licensing authority and the licensee being charged.

5.02.2 For purposes of these regulations, a *Notice of Charge* shall be used interchangeably with the terms *Notice to Comply* and a *Notice of Violation* as they appear in the Mesa County Code

## Compliance Services Standard Operating Procedures.

5.02.3 *Notice of Charge.* If, in the opinion of the designated officer who conducted the investigation, such violation does not affect public health, safety or welfare, the local licensing authority shall send a written warning or notice of violation to the licensee, by mail or email, setting forth the violations discovered during their investigations. For purposes of this provision, the notice of violation shall be deemed delivered on the date it is emailed to the licensee at the email address on file with the County (a delivery receipt is required), upon hand delivery, or five (5) days after it is mailed by first class, U.S. mail.

5.02.4 *Informal Adjustment.* The licensee shall have ten (10) days from the date of Notice of Charge to contact the local licensing authority representative who issued the Notice of Charge and arrange a date and time to meet to discuss the violations and proposed remedies to such violations. At its initial meeting, staff will work with licensees to establish timelines within which remedies to violations must be completed.

5.02.5 *Diligence.* Every licensee shall diligently pursue all actions necessary to bring its license, licensed premises or place of business, or both into compliance. If a licensee fails to diligently pursue and complete required remedies within the timeframes established, the local licensing authority may pursue an enforcement action.

### 5.03 Enforcement.

5.03.1 *Notice to Appear.* If a licensee fails to diligently pursue and complete required remedies necessary to bring its license, licensed premises or place of business, or both into compliance within the timeframe established as part of the Informal Adjustment process, the licensee shall be issued a Notice to Appear. The Notice to Appear will identify the violations and failure of the licensee to correct the same and provide the licensee with the date and time of a scheduled hearing before the local licensing authority. Licensing staff shall deliver the same to the local licensing authority and licensee, by mail or electronic transmission. For purposes of this provision, the Notice to Appear shall be deemed delivered on the date it is emailed to the licensee at the email address on file with the County (a delivery receipt is required), upon hand delivery, or five (5) days after it is mailed by first class, U.S. mail.

5.03.2 *Response.* A licensee shall file a written response with staff within fifteen (15) days of the date the Notice to Appear is delivered to the licensee. If a licensee fails to file a written response within this time frame, the local licensing authority may enter a default judgment against the licensee at its next regularly scheduled meeting.

5.03.3 *Hearing.* At a scheduled hearing, the local licensing authority may administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary for determination at a hearing. The licensee shall be given the opportunity to cross-examine those testifying, as well as provide evidence in defense or to mitigate any penalty.

5.03.4 *Sanctions.* After hearing testimony at a public hearing for which the licensee was given notice to appear, the local licensing authority may issue a verbal or written warning, a fine, a fine

in lieu of suspension, or suspend or revoke a license for violation of these regulations, the marijuana code, the marijuana rules or provisions and conditions of the license. A suspension shall not be longer than six (6) months. If a license is still in violation after being suspended for six (6) months, the license shall be revoked. Notice of a suspension shall be posted on the premises in accordance with the requirements of the marijuana code and marijuana rules.

*5.03.5 Summary Suspension.* A license may be summarily suspended by the local licensing authority without prior notice to the licensee when the local licensing authority finds, by objective and reasonable grounds, either that: (i) the public health, safety or welfare requires emergency action, or (ii) the licensee, or its owners, business operators, agents, or employees or social equity licensees, as defined by the Colorado Marijuana Code, who are participating in the accelerator program and are being hosted and offered technical and capital support by the licensee have willfully and deliberately violated these regulations, the marijuana code, the marijuana rules or provisions of the license.

*5.03.5.1 Presentation of Findings.* After delivery of a written presentation of findings from local licensing authority staff or other county designated officer following a full investigation (i.e. the reasonable ascertainment of the underlying facts on which action is based), the local licensing authority may summarily suspend a license.

*5.03.5.2 Hearing.* A hearing on the summary suspension shall be held and determined promptly after a summary suspension occurs. The local licensing authority may administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary for determination at a hearing. The licensee shall be given the opportunity to cross-examine those testifying and provide evidence in defense or to mitigate a penalty.

*5.03.5.3 Sanctions after hearing.* After hearing testimony at a hearing, the local licensing authority may confirm and continue the summary suspension, issue a verbal or written warning, a fine, a fine in lieu of suspension, or revoke a license for violation by the licensee or its owners, business operators, agents, or employees or social equity licensees who are participating in the accelerator program and are being hosted and offered technical and capital support by the licensee, as applicable, of this Section, the marijuana code, the marijuana rules or provisions and conditions of the license. A suspension shall not be longer than six (6) months. Notice of a suspension shall be posted on the premises in accordance with the requirements of the marijuana code and marijuana rules.

*5.03.6 Notice to licensee.* Notice of a suspension, revocation, fine or other sanction shall be mailed, by certified mail, to the licensee at the address contained in the license and shall be deemed received five (5) days from the date of mailing.

*5.03.7 Penalty schedule.* The penalty schedule is a framework providing guidance to the local licensing authority as to the range of violations, suspension description, fines, and mitigating and aggravating factors considered in enforcement actions. The circumstances surrounding any penalty imposed will be determined on a case-by-case basis. The local licensing authority shall make

determinations regarding the type of penalty to impose based on the severity of the violation in the following categories:

5.03.7.1 License violations affecting public safety.

5.03.7.1.1 Violations of this nature generally have an immediate impact on the health, safety, and welfare of the public at large. This category of violation is the most severe and may include, but is not limited to:

- 5.03.7.1.1.1 Wastewater discharge in violation of applicable permits or federal, state and local regulations that poses health hazards to water systems, groundwater or the public.
- 5.03.7.1.1.2 Production of marijuana products with chemicals or chemical compounds prohibited by federal, state or local jurisdictions.
- 5.03.7.1.1.3 Consuming marijuana on a licensed premises.
- 5.03.7.1.1.4 Permitting the diversion of marijuana outside the regulated distribution system.
- 5.03.7.1.1.5 Possessing marijuana or marijuana products obtained from outside the regulated distribution system or from an unauthorized source.
- 5.03.7.1.1.6 Failure to cooperate with law enforcement or licensing and code enforcement staff and investigators during the course of a local licensing authority investigation.
- 5.03.7.1.1.7 Failure to continuously escort a visitor in a limited access area.
- 5.03.7.1.1.8 Violations related to R&D co-location permits.
- 5.03.7.1.1.9 Failure to maintain books and records to fully account for all transactions of the business.
- 5.03.7.1.1.10 Failure to comply with any requirement related to transfer of sampling units.
- 5.03.7.1.1.11 Packaging or labeling violations that directly impact patient or customer safety.

5.03.7.1.2 *Penalties and sanctions.* Penalties for this category of violation include license restrictions, license suspension, including summary suspension, a fine per individual violation, a fine in lieu of suspension, a license revocation, or any combination of the above depending on the mitigating and aggravating circumstances. Any fine levied under this category shall not exceed fifty percent (50%) of the maximum fine that the MED can levy for the same or similar violations. While the amount of the fine is set by the MED, a fine under these regulations is separate from

what MED may levy against a licensee.

#### 5.03.7.2 License violations.

5.03.7.2.1 This category of violation is more severe than a license infraction but generally does not have an immediate impact on the health, safety and welfare of the public at large. License violations may include, but are not limited to:

- 5.03.7.2.1.1 Failure to obtain prior approval of changes or transfers of ownership.
- 5.03.7.2.1.2 Failure to provide notification, with evidence of necessary approvals, to the county for premises or facility modifications
- 5.03.7.2.1.3 Failure to comply with the requirements and conditions of approved land use permits that do not directly impact public safety.
- 5.03.7.2.1.4 Advertising or marketing violations.
- 5.03.7.2.1.5 Packaging or labeling violations that do not directly impact patient or consumer safety.
- 5.03.7.2.1.6 Failure to maintain minimum security requirements.
- 5.03.7.2.1.7 Failure to keep and maintain adequate business books and records.
- 5.03.7.2.1.8 Minor or clerical errors in the inventory tracking procedures.

5.03.7.2.2 Penalties and sanctions. The range of penalties for this category of violation may include a written warning, license restrictions, suspension, a fine per individual violation, a fine in lieu of suspension, a license revocation, or any combination of the above depending on the mitigating and aggravating circumstances. Any fine levied under this category shall not exceed fifty percent (50%) of the maximum fine that the MED can levy for the same or similar violations.

#### 5.03.7.3 License infractions.

5.03.7.3.1 This category of violation is the least severe and may include, but is not limited to:

- 5.03.7.3.1.1 Failure to display required badges.
- 5.03.7.3.1.2 Failure to provide any required notice and documents to the county in the time required under these regulations.
- 5.03.7.3.1.3 Failure to notify licensing staff of a change in entity structure.

5.03.7.3.2 Penalties and sanctions. The range of penalties for this category of violation may include a verbal or written warning, license restrictions, license suspension, a fine per individual violation, a fine in lieu of suspension or any combination of the above depending on the mitigating and aggravating circumstances. Any fine levied under this category shall not exceed fifty percent (50%) of the maximum fine that the MED can levy for the same or similar violations.

5.03.7.3.3 Mitigating and aggravating factors. The local licensing authority may consider mitigating and aggravating factors when considering the imposition of a penalty. These factors may include, but are not limited to:

- 5.03.7.3.3.1 Any prior violations that the licensee has admitted to or was found to have engaged in.
- 5.03.7.3.3.2 Action taken by the licensee to prevent the violation.
- 5.03.7.3.3.3 The licensee's past history of success or failure with compliance checks.
- 5.03.7.3.3.4 Corrective action(s) taken by the licensee related to the current violation or prior violations.
- 5.03.7.3.3.5 Willfulness and deliberateness of the violation.
- 5.03.7.3.3.6 Likelihood of reoccurrence of the violation. Owner, business operator or manager is the violator or has directed an employee or other individual to violate the law.
- 5.03.7.3.3.7 Participation in state-approved educational programs related to the operation of a marijuana business.

5.03.7 *Fine in lieu.* If the local licensing authority suspends a license for fourteen (14) days or less, the licensee may, before the date of the start 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. The local licensing authority may stay the proposed suspension, investigate the matter, and may grant the petition if it makes a finding that the factors set forth in C.R.S. § 44-10-901(3)(a), as amended, are satisfied. The fine accepted shall be not less than five hundred dollars (\$500.00) and no more than one-hundred thousand dollars (\$100,000.00). The fine shall be based on the costs and expenses for the county's investigation and hearing, as well as a penalty that is supported by the record. Upon payment of the fine, the local licensing authority shall enter a further order permanently staying the imposition of the suspension.

5.03.8 Illegal controlled substance.

5.03.9.1 The local licensing authority's order may specify that some or all of the licensee's marijuana or marijuana product is an illegal controlled substance. The order may specify that the licensee shall lose any interest in any of the marijuana or marijuana product even if the marijuana or marijuana product previously qualified as permitted marijuana or marijuana product.

5.03.9.2 The local licensing authority's order may direct the destruction of any such marijuana and marijuana products. If the local licensing authority order the destruction of any such marijuana and marijuana products, the local licensing authority and its representatives and designees shall have the authority to enter upon the licensed premises and seize and destroy the

marijuana plants or marijuana products that are subject of the local licensing authority. Mesa County will not be liable for any damages for any marijuana or marijuana product that is destroyed under this section.

5.03.8.3 The local licensing authority shall not carry out destruction until at least fifteen (15) days following the issuance of the order has passed and the District Attorney for the Twenty-first Judicial District has been notified of the impending destruction. The local licensing authority will not carry out the destruction if the District Attorney for the Twenty-first Judicial District has notified the local licensing authority that the marijuana or marijuana products declared an illegal controlled substance constitute evidence in a criminal proceeding and it should not be destroyed.

5.03.8.4 During the period of time between the issuance of the local licensing authority order and the destruction of the marijuana or marijuana products declared an illegal controlled substance, the licensee shall not sell, destroy, or otherwise let any marijuana or marijuana products declared an illegal controlled substance leave the licensed premises, unless specifically authorized by the local licensing authority or court order, and the licensee must safeguard and physically separate under continued video surveillance any marijuana or marijuana product in its possession and control and must fully comply with all security requirements.

5.03.8.5 Unless the local licensing authority or court otherwise orders, the licensee may cultivate, water, or otherwise care for any marijuana or marijuana products declared an illegal controlled substance during the period of time between the issuance of the local licensing authority order and the destruction of the marijuana or marijuana products declared an illegal controlled substance.

5.03.9 Decision and Appeal. Any decision of the local licensing authority regarding an application, renewal, suspension or revocation shall be in writing and shall set forth the reasons for the decision. At all times, the applicant or licensee bears the burden of proving it has not committed a violation or is qualified to hold a license by a preponderance of the evidence. The decision of the local licensing authority under this Section shall constitute a final decision. Such a final decision is subject to judicial review pursuant to Colorado Rule of Civil Procedure 106(a)(4).

5.03.10 Fees

5.03.10.3 Application, license, operating and any other applicable fees shall be set by the Board of County Commissioners. All applicable fees shall be submitted with each application. Fees for licenses may be adjusted by the Board of County Commissioners at any time and will become effective upon existing marijuana businesses during the succeeding license period.

5.03.10.4 If a license is not issued by the local licensing authority, the application fee is non-refundable, but any license and operating fees will be refunded to the applicant. However, once a license is issued, all fees are non-refundable and will not be prorated for any reason during the license term.

5.03.10.5 Applicants shall also pay any fees charged by other agencies, such as local fire

districts, Mesa County Building Department, Mesa County Public Health, or Mesa County Community Development to review and approve application materials or to perform inspections. Failure to pay such fees shall be grounds for denial of any application submitted pursuant to this Section.

#### Part 6 Release, Indemnification and Entitlement.

6.01 *Release.* By accepting a license issued pursuant to these regulations, the licensee releases the county, its elected officials, employees, officers, attorneys, and agents from any and all liability for any and all known, unknown or unforeseen damages, injuries, losses and liabilities directly or indirectly related to the licensee's ownership of, or other interest in, any marijuana operations, including but not limited to any claim that results from any arrest or prosecution of the licensee or its employees, clients or customers, as applicable, for a violation of state or federal law, rules, or regulations.

6.02 *Indemnification.* By accepting a license issued pursuant to these regulations, the licensee, jointly and severally, if more than one (1), indemnifies and holds harmless the county, its employees, officers, elected officials, insurers, attorneys and agents from any and all suits, actions, claims, judgments, obligations or liabilities of every nature and description which arise out of or in any manner are connected with the operation of a marijuana business applying for a license or licensed by the county. Furthermore, the licensee agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at its expense, and to bear all other costs and expenses related thereto, including court costs and attorney fees; however, such agreement does not make the licensee an agent or employee of the county.

6.03 *Entitlement.* No person shall have any entitlement or vested right to licensing under these regulations. Licenses issued pursuant to these regulations are a revocable privilege subject to the will, oversight and scrutiny of local and state authorities. These regulations, the marijuana code, and the marijuana rules may be periodically amended. Such changes may preclude the continuance, renewal or further issuance of a local license to any person or for any given location. As of the date these regulations were enacted and amended, the cultivation, use, possession, distribution and sale of marijuana is illegal under federal law, and any person who engages in such activities does so at their own risk. Any license issued pursuant to this Section does not provide any exception, defense or immunity to any person in regard to any potential criminal liability a person may have for the cultivation, use, possession, distribution and sale of marijuana.

6.04 *Further Affirmation.* The county may require an applicant, as part of the application and review process, to affirm in writing the requirements of this section or any other part of this section.

#### Section 7 Surrender.

7.01 Any licensee may surrender its license by delivering documentation satisfactory to the local licensing authority that evidences the same to the county, but such surrender shall not affect the

civil or criminal liability for acts committed prior thereto, nor entitle the licensee to a refund of any fees for any remaining portion of the licensing year.

The foregoing text is the authentic text of Ordinance No. \_\_\_\_\_. The first reading of said Ordinance took place on \_\_\_\_\_, 2022 at a regular Board of County Commissioners meeting. It was published in full in the Grand Junction Daily Sentinel on \_\_\_\_\_, 2022. The Ordinance was adopted on its second reading at a regular Board of County Commissioners meeting on \_\_\_\_\_, 2022 and shall take effect on June 7, 2022.

ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS this \_\_\_\_ day of June, 2022.

\_\_\_\_\_  
Cody Davis, Chair  
Board of County Commissioners of Mesa County, Colorado

ATTEST:

\_\_\_\_\_  
Mesa County Clerk and Recorder