

1/19/2021 10:14 AM



Board of Trustees
WORK SESSION
Thursday, Jan. 21, 2021, 4 pm

Due to COVID-19, there is no public attendance in person. Instead, please join virtually:

On Your Computer: <http://bit.ly/37Eflej> | Password 419766

On Your Phone: 253-215-8782 | Webinar ID: 835 9695 3363 | Password: 419766

AGENDA

Please note that decisions are not made at Work Sessions

- 1) Marijuana

Title 11

MEDICAL AND RETAIL MARIJUANA REGULATIONS

CHAPTERS:

11.01 General Provisions

11.02 License Application

11.04 Enforcement

Chapter 11.01

GENERAL PROVISIONS

Sections:

- 11.01.010 Definitions.
- 11.01.020 Licensed Required.
- 11.01.030 Local Licensing Authority.
- 11.01.040 General Limitations.
- 11.01.050 Excise Tax.

11.01.010 Definitions.

The following words and phrases shall have the following meaning for the purposes of this chapter, unless the context clearly indicates otherwise:

Medical marijuana store is a person licensed to operate a business under C.R.S. § 44-10-104, as amended, that sells medical marijuana to registered patients or primary caregivers as defined in Section 14 of Article XVIII of the Colorado Constitution, but is not a primary caregiver.

Retail marijuana store is an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers, as set forth in Section 16 of XVIII of the Colorado Constitution.

Town marijuana code is this Title 11 regulation, and all other applicable Town codes, policies, resolutions, or ordinances.

Applicable state law includes general marijuana rules under 1 C.C.R. § 212-3, Medical marijuana rules under 5 C.C.R. §1006-2:1, statutes contained in Article 10 of the Colorado Revised Statutes, and Section 14 and 16 of XVIII of the Colorado Constitution.

Local Licensing Authority is the Town of Cedaredge Board of Trustees.

Staff for purposes of this Title 11 means Town Manager, or authorized designee.

Planning Commission means the zoning commission as defined and appointed pursuant to Cedaredge Land Use Regulations, 16.03.060.

11.01.020 License Required.

It is unlawful for any person to own or operate a medical or retail marijuana establishment within the Town without first having obtained from the Town and the State a license for each facility to be operated in connection with such business.

11.01.030 Local Licensing Authority.

- A. The local licensing authority may enact all reasonable regulations applicable to medical and retail marijuana businesses based on local government zoning, health, safety, and public welfare laws for the distribution of medical and retail marijuana.
- B. Local regulations concerning medical marijuana may be more restrictive than those in Article 10 of the Colorado Revised Statutes, while regulations concerning retail marijuana may be no less restrictive.
- C. The local licensing authority has final review and approval of all licenses for marijuana stores and any decision 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.
- D. In the case of applications resubmitted to the Town directly pursuant to Section 16(5)(h) of Article XVIII of the Colorado Constitution, due to failure of the state licensing authority to act upon an application within ninety (90) days, this Local Licensing Authority will act and approve or deny the same within ninety (90) days after receipt of the resubmitted application so long demonstrated compliance with all applicable Town regulations is had, and the full application fee is paid to the Town, if not forwarded by the State.
- E. The Local Licensing Authority delegates to Staff, the acceptance and processing all applications for marijuana stores, collecting fees, and maintaining such applications, forms, and administrative materials as may be required for operation and management of licenses.
- F. The Local Licensing Authority delegates to Staff the responsibility to take ministerial actions involving reporting or confirming local approvals of

changes in business names, agents, addresses, and similar non-policy matters with state regulators, and to administratively approve license renewal as authorized herein.

- G. The Planning Commission shall act as a recommending body to the Local Licensing Authority concerning review of the site development plan in accordance with Cedaredge Municipal Code, 16.10.030 and these Title 11 regulations.

11.01.040 General Limitations.

- A. Compliance with law. All marijuana establishments must comply with these Title 11 regulations, applicable state law, and any other local laws or regulations. The Local Licensing Authority may revoke any license if the any marijuana establishment fails to comply.
- B. Location. Marijuana establishments shall only be located on property within MUC-D1 Mixed-Use Commercial District and B-1 Business District, as defined under Cedaredge Land Use Regulations, Title 16. Marijuana establishments are not permitted within any other zoning district or within any building that contains a residential dwelling or lodging unit. Marijuana establishments shall not be permitted to operate as home occupations.
- C. Separation requirements.
 - A. No marijuana establishment shall be issued a license if, at the time of the initial application for such license, the proposed location is:
 - a. Within five hundred (500) feet of any educational institution or school, public or private;
 - b. Within two hundred (200) feet of any existing licensed childcare facility at the time of initial application; or
 - c. Within five hundred (500) feet of any existing marijuana store.
 - B. The distances above are computed by direct measurement from the nearest point of the building used for the sale of marijuana, to the nearest portion of the building used for the purposes stated above, using a route of direct pedestrian access. This location criteria applies to all proposed changes in the location of an existing license.
- D. Co-location. A retail marijuana store may be located on the same licensed premises as a medical marijuana store and may be operated by the same licensee, subject to compliance with all state requirements and the

requirements of this Article 11, and the issuance of a state license allowing for such co-location.

- E. Advertisements. Advertisements, signs, displays or other promotional material depicting marijuana uses or symbols shall not be shown or exhibited off the premises. No signage associated with a retail marijuana establishment shall use the word "marijuana," or any other word or phrase commonly understood to refer to marijuana. No signage may display photographs or other representations of marijuana plants.
- F. Indoor operation. All marijuana store activities (except transportation) shall be conducted indoors. Products, accessories, and associated paraphernalia shall not be visible from a public sidewalk or right-of-way.
- G. 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 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.
- H. Additional requirements. Marijuana establishments are subject to the following additional requirements.
 - 1. A retail marijuana store may only be open for the sale or distribution of retail marijuana during the hours of 8:00 a.m. to _____ p.m. unless the Board of Trustees authorizes extended hours of operation to no later than _____ a.m. as a provision of the license. Such extension may be authorized after determining that such hours of operation are reasonably appropriate for the neighborhood.
 - 2. No on-site consumption of marijuana is allowed.
 - 3. A Town business license is required.
 - 4. No mobile structure may be used to dispense marijuana.
 - 5. No automatic dispensing machine may be used to dispense marijuana.
 - 6. No alcohol sales or consumption shall be permitted on the licensed premises.

- 7. A licensee shall not permit persons who do not possess a valid identification or other appropriate proof of age to loiter on or about the licensed premises.
- 8. Separate off-street parking spaces are required for all employees and establishment patrons.

- I. Industrial Hemp Prohibited.
- J. Internet sales with pickup (currently allowed by Governor due to COVID)
- K. Delivery services for medical and/or retail marijuana
- L. Accelerator Store Licensee
- O. Retail Marijuana Business Operator
- P. Retail Hospitality and Sales Business License

11.010.050 Excise Tax

- A. A tax is imposed upon all retail sales of retail marijuana and retail marijuana products sold within the Town by licensed retail marijuana stores at the rate of five percent (5%) 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 and all taxes owed to the State in connection with the sale of retail marijuana and retail marijuana 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 _____ of this Code shall apply to the collection and enforcement of the retail marijuana excise tax imposed by this Section. The Town Manager may adopt administrative rules and regulations specifying additional or alternative procedures for the collection and enforcement of the retail marijuana excise tax imposed by this Section.
- C. Medical.....

Chapter 11.02

APPLICATION PROCESS

Sections:

- 11.02.010 Application Requirements.
- 11.02.020 Applicant Investigations.
- 11.02.030 Public Hearing – Notice - Publication.
- 11.02.040 License – Issuance or Denial.
- 11.02.050 Ownership Transfer.

11.02.010 Application Requirements.

- A. A person seeking to obtain a license pursuant to this Article must submit the Town approved application to the Town Clerk.
- B. A license issued pursuant to this Article does not eliminate the need for the licensee to obtain other required licenses and permits related to the operation of the marijuana stores, 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, social security number and date of birth, if the applicant is a entity (define the same), the names and addresses of all owners.....(Cite to Statute).
 - 2. A completed set of the applicant's fingerprints.
 - 3. The street address of the proposed marijuana store.
 - 4. Proof of ownership, or, if the applicant is not the owner of the proposed location of the retail marijuana establishment, 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 the premises for a marijuana store 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 accepts no legal liability in connection with the approval and subsequent operation of the marijuana establishment; and that the application and documents submitted for other approvals relating to the marijuana establishment operation are subject to disclosure in accordance with the Colorado Open Records Act or (add the medical MJ confidential records statute).
 - 6. The submittals required for a conditional use application including a Site Development Plan and architectural elevations submitted in accordance with Cedaredge Land Use Regulations, Chapter 16.04.
 - 7. A traffic impact analysis and plan completed by a qualified and experienced transportation engineer which minimizes traffic congestion, provides for off-street parking for all uses, includes traffic circulation drives and aisles plan, a parking layout, ingress and egress to an improved public right-of-way so located to promote safety, and adequate turning radius.

8. All marijuana establishments shall be equipped with a proper ventilation system that filters out the odor of marijuana so that the odor is not capable of being detected by a person with a normal sense of smell at the exterior of the retail marijuana establishment or any adjoining business, parcel, or tract of real property. All applicants for a new retail marijuana establishment license shall submit a ventilation and odor mitigation plan with their application, which shall be subject to review by the Planning Commission and approval by the Local Licensing Authority prior to issuance of a new license.
9. In addition to the foregoing, an applicant shall also submit all other information required by any other state and local applications.
10. When the application is filed, the applicant shall pay to the Town the local share of the application fee, as established pursuant to this Article, unless the State has forwarded such fee to the Local Licensing Authority.
11. If an application is approved, the applicant shall also pay an annual operating fee in such amount as is established from time to time by the Board of Trustees as adopted from time to time by Resolution.
12. Each license issued pursuant to this Article shall be valid for a period of one (1) year from the date of issuance and may be renewed as provided in this Section. An application for renewal shall be made to Staff not less than thirty (30) days prior to the date of expiration and concurrent with the application for renewal filed with the state licensing authority, as required.
13. Any renewal application filed late will be subject to a late fee and Staff has no authority to waive such late fee.
14. The renewal application will be accompanied by the annual operating fees for the renewal term. The license will be administratively renewed by Staff unless the renewal is denied by the state licensing authority or unless it appears to Staff that good cause exists to deny the renewal application, in which case Staff shall refer the application to the Local Licensing Authority for review at a public hearing.
15. Good cause for referral to the Local Licensing Authority includes, licensee has any unresolved or unmitigated complaints filed against it, the licensee has a history of three or more violations or allegations against the licensee that would constitute good cause for denial of a license. The procedures provided in _____ below shall apply to the Local Licensing Authority's review and determination whether to renew a license. A review by the Local

Licensing Authority requires an additional fee equal to the application fee for a new license prior to being entitled to review.

16. The ventilation and odor mitigation plan will be reviewed and approval by Staff each renewal period. Staff may refer such plan submitted with a renewal application for review by the Planning Commission, who will conduct such review, with or without a public hearing. The decision of the Planning Commission as to the sufficiency of the mitigation plan shall be final, subject to appeal to Local Licensing Authority. A review by the Local Licensing Authority requires an additional fee equal to the application fee for a new license prior to being entitled to review.
17. The lack of an approved ventilation and odor mitigation plan shall be grounds for denial of a new license or renewal of an existing license. Failure to install or maintain the ventilation system required by an approved ventilation and odor mitigation plan shall constitute a violation of this Article and shall be grounds for suspension or revocation of a license.
18. Except for direct applications under Section 11.01.030-D, Staff will not begin processing a license application until it receives notice of the application from the state licensing authority. Staff may await completion of the state licensing authority's review and issuance of the state license before processing the local application, or it may conduct a concurrent review of a new license application prior to the state licensing authority's final approval of the license application. The Local Licensing Authority shall notify the state licensing authority whether it approves or denies any forwarded application.

11.02.020 Applicant Investigation.

- A. Upon receipt of an application for a license under this Article, Town Clerk shall transmit copies of the application to the Police Department, the Town Manager, the Planning and Building Department and the Town Attorney. The Town or any of its departments or officials may visit and inspect the property in which the applicant proposes to conduct business and investigate the fitness to conduct such business of any person, 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 (5) 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 (5) days prior to the decision to approve or deny an application, Staff shall make known the findings of the investigation in writing to the applicant and other parties of interest.

11.02.030 Public Hearing – 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 (30) days after the date of the application. The Local Licensing Authority shall post and publish public notice thereof not less than ten (10) 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 retail marijuana establishment premises for which application has been made and by publication in a newspaper of general circulation in the County.
- B. Public notice given by posting shall include a sign of suitable material, not less than twenty-two (22) inches wide and twenty-six (26) inches high, composed of letters not less than one (1) 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 a marijuana establishment is to be located is in existence at the time of the application, the sign shall be posted to be conspicuous and plainly visible to the 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 public.

11.02.040 License – Issuance or Denial

- A. Not less than five (5) days prior to the date of the public hearing, Staff 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 Staff investigation, as well as any other facts pertinent to the application, including the number, type and availability of marijuana establishments located in or near the premises under consideration and any other pertinent matters affecting the qualifications of the applicant.
- C. Within thirty (30) days after the public hearing or completion of the application investigation, the 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 Local Licensing Authority may impose reasonable conditions upon any license issued pursuant to this Article.
- E. After approval of an application, the 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 Article, and then only after the Local Licensing Authority 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 Applicant shall notify the state licensing authority of such approval by submitting the license containing the following:
 - 1. The name of licensee, date of license issuance, and physical and mailing address of the licensed premises;
 - 2. Any conditions of approval imposed by the Local Licensing Authority;
 - 3. The license experience date; and
 - 4. The signature of the applicant and the Town Clerk.

11.02.050 Ownership Transfer.

In determining whether to permit a transfer of ownership, the Local Licensing Authority shall consider only the requirements of this Article set forth (To be determined). The Local Licensing Authority may hold a hearing on the application for a transfer of ownership; provided that 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 11.02.030 of this Article on the licensed premises for a period of ten (10) days and provided notice of the hearing to the applicant at least ten (10) 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 by resolution.

11.04

ENFORCEMENT

Sections:

- 11.04.010 Suspension or Revocation.
- 11.04.020 Penalty.

11.04.010 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 (1) year.
- B. In addition to any other sanctions prescribed by this Article, 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 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 licensing authority 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 Section 11.02.030, and 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 (6) months. If a license is suspended or revoked, a part of the fees paid therefor 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 (14) 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 and deterrence purposes;
 2. The books and records of the licensee are kept in such a manner that the loss of sales that the licensee would may suffer if the suspension goes 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 (2) 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 two thousand dollars (\$2,000.00) nor more than twenty-five thousand dollars (\$25,000.00).
- F. Payment of a fine shall be in the form of cash, a certified check or a cashier's check made payable to the Local Licensing Authority.
- G. Upon payment of the fine pursuant to Subsection (c) above, the Local Licensing Authority shall enter its further order permanently staying the imposition of the suspension

11.04.020 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 by a civil penalty in an amount not exceeding the maximum fine provided in Chapter 1-16 of the Town Code. Proceedings for the determination of such liability and imposition of such civil penalty shall be conducted in the Municipal Court in the same manner as proceedings relating to noncriminal traffic infractions, in accordance with _____. In no case shall any defendant found guilty of any violation of this Article be punished by imprisonment for such violation.

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