

**Town of Basalt, Colorado
Ordinance No. 03
Series of 2023**

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO, AMENDING CHAPTER 6, ARTICLE V OF THE BASALT MUNICIPAL CODE TO UPDATE STATUTORY REFERENCES IN THE ARTICLE, TO CHANGE APPLICATION REQUIREMENTS, AND TO CHANGE PUBLIC HEARING PROCEDURE FOR LICENSING RENEWAL.

RECITALS

- A. The Town of Basalt ("Town") is a Colorado home-rule municipality, duly organized and existing under the Town's Home Rule Charter adopted pursuant to Article XX of the Constitution of the State of Colorado.
- B. During the 2018 legislative session, the Colorado General Assembly enacted House Bill 18-1023 repealing and relocating laws related to the regulation of marijuana from Title 12, Colorado Revised Statutes, to a new Title 44 as part of the organizational recodification of Title 12.
- C. During the 2019 legislative session, the Colorado General Assembly enacted Senate Bill 19-224 combining the Medical Marijuana Code and the Retail Marijuana Code, which had been in separate articles in Title 44, into one article in Title 44 titled as the Colorado Marijuana Code.
- D. The Town wishes to amend the Code to reflect the codification of the Colorado Marijuana Code in Title 44, Article 10, Colorado Revised Statutes.
- E. The Town wishes to amend the Code to change the public hearing procedure for medical marijuana center or retail marijuana store licensing renewal so that the Town Clerk may administratively renew licenses but has discretion to require a public hearing for good cause.
- F. The Town wishes to amend the Code to remove the application requirement that an owner or partial owner of a medical marijuana center or retail marijuana store have a primary home in the Roaring Fork Valley and instead require that each medical marijuana center or retail marijuana store name a local responsible party that has a primary home in the Roaring Fork Valley.
- G. The Town Council finds and determines that it is in the best interests of the Town to update and amend the Code for medical marijuana centers and retail marijuana stores as set forth herein. The Town Council finds and determines that this

Ordinance is reasonable and necessary to promote the legitimate public purposes of the public health, safety, and welfare.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO, AS FOLLOWS:

1. Recitals. The foregoing recitals are incorporated herein as findings of Town Council.
2. Text Amendments. The Basalt Municipal Code is hereby amended as shown on Exhibit A, which is incorporated into this Ordinance by reference.
3. Severability. If any provision of this Ordinance is found to be unconstitutional or unlawful, such finding shall only invalidate that part or portion found to violate the law. All other provisions shall be deemed severable and shall continue in full force and effect.
4. Effective Date. This Ordinance shall be effective 14 days after final publication in accordance with the Town of Basalt Home Rule Charter.

READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING TO BE HELD ON MARCH 14, 2023, by a vote of 7 to 0 on February 28, 2023.

READ ON SECOND READING AND ADOPTED, by a vote of 7 to 0 on March 28, 2023.

TOWN OF BASALT, COLORADO

By: _____

William G. Kane, Mayor

ATTEST:

By: _____

Pamela Schilling, Town Clerk



First Publication: Thursday, March 9, 2023
Final Publication: Thursday, March 23, 2023
Effective Date: Thursday, April 6, 2023

EXHIBIT A AMENDMENT TO THE TOWN CODE

Chapter 6, Article V is amended as follows

Additions shown in underline. Deletions shown in ~~strikethrough~~.

Sec. 6-119. Classes of licensing authorized.

For the purpose of regulating the cultivation, manufacture, distribution, offering for sale, and sale of marijuana or marijuana products, the Town only authorizes issuance of licenses to medical marijuana centers and retail marijuana stores, subject to the provisions provided in this Article V. No other classes of medical marijuana or retail marijuana facilities are authorized for licensing.

Sec. 6-120. Relationship to state law.

Except as otherwise specifically provided herein, this Article V incorporates the requirements and procedures set forth in Sections 14 and 16(2) of Article XVIII of the Colorado Constitution, as well as in the Colorado ~~Medical Marijuana Code, § 12-43.3-401~~ 44-10-101 et. seq., C.R.S., ("CMMC"), as amended, ~~1 CCR 212-1 212-3,~~ Permanent Rules Related to the Colorado ~~Medical Marijuana Code, Marijuana Enforcement Division, Colorado Department of Revenue, hereinafter referred to as "1 CCR 212-1 212-3,"~~ the Colorado ~~Retail Marijuana Code, § 12-43.4-103, C.R.S., ("CRMC:"), as amended, and 1 CCR 212-2, Permanent Rules Related to the Colorado Retail Marijuana Code, Marijuana Enforcement Division, Colorado Department of Revenue, hereinafter referred to as "1 CCR 212-2,"~~ In the event of any conflict between the provisions of this Chapter and the provisions of the CMMC, or 1 CCR 212-1 212-3, ~~GRMC, or 1 CCR 212-2,~~ or any other applicable state or local law, the more restrictive provision shall control.

Sec. 6-121. Definitions.

The definitions set forth in Sections 14 and 16(2) of Article XVIII of the Colorado Constitution, as well as in the CMMC, ~~1 CCR 212-1, CRMC, or 1 CCR 212-2 212-3,~~ as amended, shall apply equally to this Article V. All definitions contained in Chapter 16 of this Code are incorporated herein. In addition, the following terms shall have the meanings respectively assigned to them:

Co-located refers to a medical marijuana center and a retail marijuana store that are side by side but with separate entrances.

Coterminous refers to a medical marijuana center and a retail marijuana store in a completely shared space.

Primary home means that home or place in which a person's habitation is fixed and to which the person, whenever absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of such absence. A primary home is a permanent building or part of a building and may include, by way of example, a house, condominium, apartment, room in a house, or manufactured housing. No rental property, vacant lot, vacant house or cabin, or other premises used solely for business purposes shall be considered a primary home.

Sec. 6-122. Local licensing authority.

The Town ~~Clerk~~Manager or his or her designee shall act as the administrative licensing official and the Town Council shall act as the local licensing authority. In the case of an application for a medical marijuana center or a retail marijuana store within the Town, no later than five (5) business days of the completion of the investigation of the application pursuant to Section 6-126, the Town ~~Clerk~~Manager shall either notify the state licensing authority in writing that:

- (1) The proposed licensed premises violates any zoning law or other restriction on location set forth in Town laws and that the application is disapproved by the Town. Any failure to make such a determination upon the initial review of a state license application shall not preclude the Town from later determining that proposed license is in violation of Town zoning laws or any other restriction on location set forth in Town laws, and disapprove the issuance of a state or Town license on this basis; or
- (2) The application that is not disapproved as provided in paragraph (1) above, and the Town's ultimate decision to approve or deny the issuance of the state license in the Town is subject to the completion of the local licensing process as set forth in this Article V, after which the Town will notify the state licensing authority in writing of whether or not the medical marijuana center or retail marijuana store proposed in the application has or has not been approved by the Town.

Sec. 6-123. Reserved.

Sec. 6-124. Application requirements.

- (a) Complete application. The application for licensing of a medical marijuana center or retail marijuana store shall be comprised of a Town of Basalt Medical Marijuana Center application for all applications seeking licensure of medical marijuana centers, the Town of Basalt Retail Marijuana Store application for all applications seeking licensure of retail marijuana stores, a copy of all completed and executed forms and applications required to be submitted to the Marijuana Enforcement Division, Colorado Department of Revenue, and any additional information requested by the Town in order for the Town to fully investigate the application to demonstrate compliance with this Code. The failure to provide the information required by this section may be grounds for the denial of the application.
- (b) Fees. Applicants must include payment in full of all non-refundable application fees.

- (c) Residency-Local agent. The applicant seeking licensure must provide the Town with the name and current contact information of ~~an owner or partial owner~~ a local responsible party, known as a local agent, who can address issues at of the proposed medical marijuana center or retail marijuana store. The local agent shall be a natural person possessing required owner or employee occupational licensing through the Marijuana Enforcement Division of the State of Colorado. The local agent who shall have a primary home (as the term is defined in this Article V) within the following Colorado zip codes: 81611 - Aspen; 81615 - Snowmass Village; 81654 - Old Snowmass; 81656 - Woody Creek; 81642 - Meredith and Thomasville; 81621 - Basalt; 81623 - Basalt/Carbondale; and 81601 - Glenwood Springs; 81647 - New Castle; 81652 - Silt; 81650 - Rifle; 81635 - Parachute; 81637 - Dotsero and Gypsum; and 81631 Eagle.

Sec. 6-125. Requirements for obtaining licensing of medical marijuana centers and retail marijuana stores.

- (a) No more than two (2) medical marijuana centers and no more than two (2) retail marijuana stores shall be licensed within the Town limits.
- (b) Any person, partnership, or corporation must have a separate license for each medical marijuana center or retail marijuana store, including those that are co-located or coterminous.
- (c) Neither medical marijuana centers nor retail marijuana stores shall be permitted within any of the following locations:
- (1) Two hundred (200) feet of the following major parks: Arbaney Park, Lions Park, Southside Park, Willits Linear Park, Willits Soccer Field, and Triangle Park;
 - (2) Five hundred (500) feet of a licensed child care facility;
 - (3) One thousand (1,000) feet of an elementary school, middle school or high school;
 - (4) In a building where the use would abut the following school routes: Two Rivers Road from Homestead Drive to Elk Run Drive; Southside Drive from the High School Property to Fiou Lane; Fiou Lane from Southside Drive to Basalt Avenue; Basalt Avenue from Fiou Lane to Two Rivers Road; or Cottonwood Drive from Two Rivers Road to Riverside Drive; or
 - (5) Any location that is not permitted by the CMMC or the CRMC.

The distances referred to in the above subparagraphs (a), (b), and (c) are to be computed by direct measurement from the nearest property line of the land used for a school, park, or child care facility to the nearest portion of the building in which medical or retail marijuana is to be sold, using a route of direct pedestrian access. The above provisions shall not affect the renewal or reissuance of a license once granted by the Town, nor shall the provision apply to an existing licensed premises on land owned by the state or apply to a license in effect and actively doing business before said facility listed above was constructed.

Sec. 6-126. Investigation of application.

Upon receipt of an application for a medical marijuana center license or a retail marijuana store license properly filed with the Town and upon payment of the nonrefundable application fee, the local licensing official shall mark the application as received and send photocopies of the application to the Building Department and ZoningPlanning Department, Police Department, Town Clerk's office and any other agency responsible under law for investigating compliance, such as health inspection services or Fire Department. Each department or agency shall promptly conduct an investigation of the applicant, application, and the proposed medical marijuana center in accordance with its responsibilities under law. Said investigations shall be completed by the Building Department and ZoningPlanning Department, Police Department, Building Inspection Department and any other agency within forty-five (45) days of receipt of the application by the local licensing official. At the conclusion of its investigation, each department or agency shall indicate on the photocopy of the application its approval or disapproval of the application, date it, signs it and, in the event of disapproval, state the reasons therefor. In particular:

- (1) The Police Department shall disapprove the application if it finds that the security measures are not in compliance with this Code, the CMMC, or the CRMC.
- (2) The ZoningPlanning Department shall determine whether the proposed medical marijuana center or retail marijuana store complies with all location and zoning requirements of this Code.
- (3) The Town Clerk's office shall obtain information from the Colorado Bureau of Investigation to determine whether an applicant has been convicted of a crime.
- (4) The Building Inspection Department shall inspect the proposed medical marijuana center or retail marijuana store in order to ascertain whether it is in compliance with applicable statutes and ordinances.

Sec. 6-127. Procedure for granting or denying application.

- (a) Scheduling of public hearing. Following the investigation of the application, pursuant to Section 6-126 above, the Town ~~Clerk~~Manager shall schedule a public hearing with the Town Council to consider the application for licensing of the medical marijuana center or retail marijuana store.
- (b) Public hearing. The following public hearing procedure applies when an application has been deemed complete and has been found to comply with all zoning laws and other restrictions set forth in Town laws. This public hearing procedure applies to any application for licensing renewal in the event a hearing is required pursuant to Section 6-136.
 - (1) Based on the results of the investigation of the application, pursuant to Section 6-126, Town staff shall submit its recommendations and comments to the Town Council for consideration. Copies of staff recommendations shall be available to the applicant prior to the public hearing.
 - (2) At a duly noticed public hearing, the Town Council shall consider the application and Town staff comments and recommendations.

- (3) The Town Council must make a finding and determination as to the good moral character of the applicant.
- (4) The Town Council may deny the application for licensing renewal if there is evidence that the licensed premises have been previously operated in a manner that adversely affects the public health, welfare, or safety of residents of the Town.
- (5) The Town Council shall consider the facts and evidence adduced as a result of its investigation, as well as any other facts, the number, type, and availability of the same type of retail marijuana establishment in the Town, and any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed.
- (6) The Town Council has authority to refuse to issue any license for good cause, subject to judicial review. The term "good cause" means that the applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of the CMMC, the CRMC, or any rule and regulations promulgated pursuant thereto, or this Article V or any rules and regulations promulgated pursuant to this title. "Good cause" also means that the proposed licensed premise cannot be supported by the existing infrastructure of the Town.
- (7) Any decision of the Town Council approving or denying an application shall be in writing stating the reasons there for, within thirty (30) days after the date of the public hearing, and the Town Clerk shall send a copy of such decision by ~~certified mail~~ to the state licensing authority and to applicant ~~at the address shown in the application~~. The license, if granted, shall state on its face the name of the person or entity, to whom it is granted, the expiration date, and the address of the medical marijuana center or retail marijuana store. The license shall be posted in a conspicuous place at or near the entrance to the licensed premises so that it can be easily read at any time.

Sec. 6-128. Operation of licensed medical marijuana centers and retail marijuana stores.

In addition to the requirements contained in this Code, the CMMC, ~~the CRMC, 1 CCR 212-1, and 1 CCR 212-2 212-3~~, the following general requirements for medical marijuana centers and retail marijuana stores shall apply:

- (1) Relevant zoning requirements are contained in Chapter 16 of this Code and are incorporated herein. Any applicant for a license under this article must obtain zoning approval prior to the issuance of a license.
- (2) Hours of operation for medical marijuana centers and retail marijuana stores will be from 8:00 a.m. to 12:00 a.m. Monday through Sunday.
- (3) Marijuana clubs, businesses, or other places of assembly where customers, members, or the like, are invited for the purpose of using or consuming marijuana or marijuana products on-site are prohibited in the Town limits.
- (4) The consumption, inhalation, or use of marijuana or marijuana products is not allowed on or within the licensed premises.
- (5) All sales, distribution, and transfers of marijuana, marijuana products, or paraphernalia by a licensed medical marijuana center, retail marijuana store, or

its employees or agents, shall occur only upon the licensed premises from within a permanent building. The licensee is prohibited from delivering marijuana, marijuana products, or associated paraphernalia to any person or business at any other location.

- (6) No alcohol sales or consumption of alcohol shall be permitted in or upon the licensed premises.
- (7) No medical marijuana center licensee or its employees and no retail marijuana stores shall permit individuals to loiter or stay in the licensed premises. Exceptions to this are granted for individuals conducting business with the medical marijuana center or retail marijuana store, their contractors, or individuals making deliveries to the license premises.
- (8) The growing, cultivation, or processing of marijuana or marijuana products within the licensed premises of a medical marijuana center or retail marijuana store is prohibited.
- (9) The licensed premises shall be monitored and secured twenty-four (24) hours a day including, at a minimum, the following security measures:
 - a. Installation and use of digital security cameras, capable of recording and duplicating color video and still images that are identifiable in all lighting conditions twenty-four (24) hours per day, to monitor all areas of the licensed premises where persons may gain or attempt to gain access to marijuana, marijuana products, paraphernalia, or monies maintained by the center or store. Security surveillance cameras shall also monitor the main entrance along the interior and exterior of the premises to discourage crime and to facilitate the reporting of criminal acts as well as nuisance activities. Security camera surveillance recordings, from all security cameras at the licensed premises, shall be preserved for at least one hundred eighty (180) days, by the business, and be made immediately available to law enforcement officers upon request in a format that can be viewed and duplicated by the Basalt Police Department.
 - b. Access to online web-based live monitoring of all video surveillance cameras shall be provided to the Police Department.
 - c. Exterior lighting shall illuminate all exterior windows and doors of the center or store which are accessible from the exterior of the building during non-daylight hours. All exterior lighting must be in compliance with the Town Code. This requirement may be waived upon concurrency by the Police Chief and Town Planner.
 - d. All exterior windows shall not be covered by window shades or other material and shall be of sufficient size to permit observation of the interior of the licensed premises by law enforcement officers standing outside the center or store.
 - e. Installation and use of a locking burglary safe for storage of all marijuana, marijuana products, and /or monies on the licensed premises during nonbusiness hours. The safe shall be incorporated into the building structure or securely attached thereto. Perishable edible products must be stored in a locking refrigerated container incorporated into the building structure or securely attached thereto.

- f. Written documentation of security measures, video surveillance systems, and drawings of licensed premises shall be included with the application for a medical marijuana center license or retail marijuana store.
- (10) Every owner and manager of a medical marijuana center or retail marijuana store shall ensure that every owner and manager, and all employees responsible for the sale of the product has successfully completed an State-approved educational seminar.
- (11) Signs must comply with Section 16-190 of the Code.
- (12) Licensees must maintain and update the local agent information with the Town required by Section 6-124.

Sec. 6-129. Inspection and monitoring of licensed facilities.

- (a) During all business hours, and other times of apparent activity, all licensed premises shall be subject to inspection by the Chief of Police, Building Official, local licensing official, Fire Department or their authorized representatives for the purpose of investigating and determining compliance with the provision 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, inventory, security measures, and video surveillance recordings.
- (b) Where any part of the licensed premises consists of a locked or inaccessible area, such area shall be made available for inspection, without delay, upon request.
- (c) The Police Department shall provide ongoing monitoring of the licensed premises to ensure compliance with all applicable security measures.

Sec. 6-130. Immunity of Town.

By accepting a license issued pursuant to this Article, a licensee, jointly and severally if more than one (1), agrees to indemnify and defend the Town, its officers, elected officials, employees, attorneys, agents, insurers and self-insurance pool against all liability, claims and demands on account of injury, loss or damage, including without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the operation of the medical marijuana center or retail marijuana store that is the subject of the license. The licensee further agrees to investigate, handle, respond to and 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. The Town Clerk~~Manager~~ may require a licensee to execute a written instrument confirming the provisions of this section.

Sec. 6-131. Unlawful acts.

It shall be unlawful for any person:

- (1) To operate any medical marijuana center in the Town without a license duly issue by the state licensing authority under the CMMC and in compliance with any and all applicable state laws;
- (2) To operate any retail marijuana store in the Town without a license duly issued by the state licensing authority under the CRMC and in compliance with any and all applicable state laws;
- (3) To operate any medical marijuana center or retail marijuana store in the Town without a license duly issued by the Town under this Article V. and in compliance with any and all applicable Town laws;
- (4) To engage in any form of business or commerce involving the cultivation, processing, manufacturing, storage, sale, distribution or consumption of medical marijuana other than those forms that are expressly contemplated by Section 14 or 16 of Article XVIII of the Colorado Constitution, ~~the CMMC,~~ or the CRMC;
- (5) To sell marijuana or marijuana products from marijuana plants possessed, grown, processed, or transported for personal use pursuant to Subsection 16(3) of Article XVIII of the Colorado Constitution;
- (6) To work in the medical or retail marijuana industry without first obtaining occupational licensing through the Marijuana Enforcement Division of the State of Colorado; or
- (7) Operating a medical marijuana center or retail marijuana store to refuse to permit any lawful inspection of the licensed premises.
- (8) Violating any of the provisions contained in this Article.

Sec. 6-132. Criminal penalties.

If any person fails or refuses to obey or comply with or violates any of the provisions contained in this Article, or a license issued pursuant thereto, such person, upon conviction of such offense, shall be guilty of a misdemeanor and shall be punished by a fine as shown on the Town's fee schedule. If no specific criminal penalty exists under this Section, the penalty shall be as shown under Section 1-82 of this Code for violations not otherwise specifically provided in this Code or the fee schedule. For violations that are of a continuing nature, each day that the violation continues to occur shall be considered a separate offense.

Sec. 6-133. Civil disciplinary actions.

- (a) Any violation of the terms and conditions of a license for a medical marijuana center or retail marijuana store or any violation of the CMMC, ~~1 CCR 212-1,~~ ~~the CRMC,~~ ~~1 CCR 212-2~~ 212-3, or this Code may result in fines, suspension, or revocation of the license, in addition to any other fines or remedies available to the Town pursuant to other provisions of the Town Code.
- (b) In lieu of any license suspension or revocation, the Town Council may assess a fine against the licensee not to exceed one thousand dollars (\$1,000.00) per violation. Whether a fine should be assessed and the amount of such fine shall be determined by the Town Council in its discretion, based upon the nature of the offense, the licensee's record, whether the violation presents a threat to public

health, safety or welfare, the duration of the violation, and any other mitigating or aggravating circumstances present.

- (c) Procedures for investigation of license violations for suspension and revocation as a result of any such violation are provided in the CMMC, ~~1 CCR 212-1~~, the CRMC, ~~or 1 CCR 212-2 212-3~~.

Sec. 6-134. Transfer of ownership.

Transfer of ownership of any local license issued pursuant to this Article V shall be governed by the standards and procedures set forth in the CMMC, ~~1 CCR 212-1~~, the CRMC, ~~1 CCR 212-2 212-3~~, and the Town Council shall administer transfers of local licenses in the same manner as the state licensing authority administers transfers of state licenses. In addition, the public hearing requirements and the local agent requirements from this Article V shall apply to all applications for transfer of ownership of any local license.

Sec. 6-135. Change of location; modification of premises.

Any change of the location of any license or any modification of the licensed premises shall be governed by the standards and procedures set forth in the CMMC, ~~1 CCR 212-1~~, the CRMC, ~~or 1 CCR 212-2 212-3~~, and the Town Council shall administer applications to change location or modify premises in the same manner as the state licensing authority administers changes of location and modification of premises for state licenses. Any proposed modification and any new location to which an existing licensed business is transferred shall fully comply with spacing requirements as set forth in this Article V, as well as the zoning requirements set forth in Chapter 16 of the Town Code.

Sec. 6-136. Term of licenses; renewals.

Any local license issued pursuant to this Article V shall be valid for a period of one (1) year from the date of issuance. Application for renewal of a license shall be made at least forty-five (45) days before the expiration date of the current license. Any renewal of the license shall be governed by the standards and procedures set forth in the CMMC, ~~1 CCR 212-1, the CRMC, or 1 CCR 212-2 212-3~~, subject to any additional restrictions as provided in this Article V. The Town Clerk is authorized to administratively review and approve an application for the renewal of any previously approved medical marijuana center license or a retail marijuana store license retail marijuana license or medical marijuana license, where, after reasonable investigation by the Town Clerk and consultation by the Town Clerk with the Basalt Police Department and other appropriate administrative personnel, the Town Clerk determines there is not any "Good Cause," as defined in 1 CCR 212-3. Alternatively, the Town Clerk may, in his or her discretion, refer any licensing or permitting decision authorized to the Town Clerk under this Section to the Town Council if, in the Town Clerk's opinion, the matter should be presented to the Town Council.