

**TOWN OF OAK CREEK
ORDINANCE NO. 624**

**AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF OAK CREEK,
COLORADO ENACTING A RETAIL MARIJUANA ESTABLISHMENTS CODE**

WHEREAS, Amendment 64, codified in Section 16 of Article XVIII of the Colorado Constitution (sometimes referred to herein as “Amendment 64”), permits adults over the age of twenty-one to use, possess and cultivate limited amounts of marijuana pursuant to the restrictions therein and permits the State and local governments to license and regulate Retail Marijuana Establishments to grow, sell, produce and test marijuana and marijuana products for consumers; and

WHEREAS, on May 28, 2013, the governor signed House Bill 13-1317 into law enacting Title 12, Article 43.4 of the Colorado Revised Statutes (the “Colorado Retail Marijuana Code”) that regulates the cultivation, manufacture, distribution and sale of retail marijuana; and

WHEREAS, the Colorado Retail Marijuana Code states that on or after October 1, 2013 businesses engaged in the cultivation, manufacture or sale of marijuana, in the processing of marijuana-infused products, or testing of marijuana shall apply for a license subject to its terms and conditions and any rules promulgated pursuant thereto; and

WHEREAS, the Colorado Constitution also authorizes counties and municipalities in Colorado to prohibit or regulate retail marijuana businesses and to adopt regulations consistent with the intent of the state law; and

WHEREAS, Amendment 64 requires localities to specify the entity within the locality that is responsible for processing applications for Retail Marijuana Establishments no later than October 1, 2013; and

WHEREAS, in the interest of public safety of the Town of Oak Creek (“Town”) desires all marijuana to be sold by licensed, regulated commercial operators in the areas of the Town which are identified in the land use code for these types of businesses; and

WHEREAS, the Oak Creek Planning Commission held a public meeting on August 7, 2013 and forwarded a recommendation to the Oak Creek Board of Trustees (“Board”) on amendments to the Town of Oak Creek Land Use Code (“Land Use Code”) and the Oak Creek Municipal Code (“Municipal Code”) on related issues pertaining to medical and retail marijuana operations to be considered at a duly noticed public hearing; and

WHEREAS, notice of the public hearing scheduled August 22, 2013 on the ordinance adopting such amendments was published on July 28, 2013 in the Steamboat Pilot, a paper of general circulation in the Town; and

WHEREAS, a draft of this Ordinance enacting a Retail Marijuana Establishments Code as outlined herein was introduced and read at the regular meeting of the Board on August 8, 2013; and

WHEREAS, the Oak Creek Board of Trustees considered this Ordinance enacting a Retail Marijuana Establishments Code at a public hearing on August 22, 2013. Public comment was received at said public hearing; and

WHEREAS, Trustee Gustafson made a motion to approve Ordinance No. 624 as written. Trustee Gagne seconded the motion. The motion passed by a vote of 6 to 1.

NOW, THEREFORE, be it enacted by the Board of Trustees of the Town of Oak Creek as follows:

Section 1.

Chapter 5.10

LOCAL RETAIL MARIJUANA ESTABLISHMENTS CODE

- 5.10.010 Definitions.**
- 5.10.020 License required.**
- 5.10.030 Local Licensing Authority.**
- 5.10.040 Fees.**
- 5.10.050 General licensing procedures.**
- 5.10.060 Permitted locations.**
- 5.10.070 General requirements.**
- 5.10.080 Co-locating licenses.**
- 5.10.090 Disciplinary actions; sanctions; penalties.**
- 5.10.100 Relation to Colorado Retail Marijuana Code; Other laws.**
- 5.10.110 Severability.**

5.10.010 Definitions.

Unless otherwise specified in this article or the context otherwise requires, any terms used herein shall have the same meanings as provided in Section 16 of Article XVIII of the Colorado Constitution and Title 12, Article 43.4 of the Colorado Revised Statutes (the “Colorado Retail Marijuana Code”). The following words and phrases, when used in this chapter, shall have the meanings respectively assigned to them:

- A. “Colorado Retail Marijuana Code” shall mean Title 12, Article 43.4 of the Colorado Revised Statutes and any rules or regulations promulgated thereunder.
- B. “Good Cause” for the purposes of refusing or denying a license, renewal or reinstatement 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 Section 16 of Article XVIII of the Colorado Constitution, this chapter, any other provision of the Oak Creek Municipal Code or the Colorado Retail Marijuana Code; or
 - b. The licensee or applicant has failed to comply with any special term or condition that was placed on its license by the State or the Local Licensing Authority; or
 - c. The licensee or applicant has failed to meet the good moral character, criminal history and background check standards as determined by the Local Licensing Authority; or
 - d. The Licensed Premises had been operating, or is proposed to be operated, in a manner that adversely effects the public health or safety of the immediate neighborhood in which the Licensed Premises are located or are proposed to be located.
 - e. The licensee or applicant has failed, during any period of licensure, to file any tax return with a taxing agency related to the operation of a Retail Marijuana Establishment or Medical Marijuana operation, or to pay any taxes, interest or penalties due to a taxing agency related to the operation of a Retail Marijuana Establishment or Medical Marijuana operation.
- C. “Marijuana Accessories” shall have the same meaning as set forth in Section 16 of Article XVIII of the Colorado Constitution or as may be more fully defined in the Colorado Retail Marijuana Code.
 - D. “Licensed Premises” means the premises specified in an application for a license pursuant to this chapter and the Colorado Retail Marijuana Code, that is owned or in lawful possession of the licensee and within which the licensee is authorized to distribute, sell, cultivate, or test marijuana in accordance with the provisions of this chapter, Section 16 of Article XVIII of the Colorado Constitution, and the Colorado Retail Marijuana Code.
 - E. “Licensee” means a person licensed or registered pursuant to the Colorado Retail Marijuana Code.
 - F. “Local Licensing Authority” means the Town Board unless the Town Board designates other persons or departments to serve in such capacity by ordinance.
 - G. “Operating Fees” means fees that must be paid by a licensee for the costs of administering and enforcing this chapter as set forth by a resolution approved by the Town Board, in Section 16 of Article XVIII of the Colorado Constitution, or as may be more fully defined in the Colorado Retail Marijuana Code.
 - H. “Retail Marijuana Establishment” means a retail marijuana store, a retail marijuana cultivation facility, a retail marijuana product manufacturing facility, or a retail marijuana testing facility as set forth in Section 16 of Article XVIII of the Colorado Constitution, or as may be more fully defined in the Colorado Retail Marijuana Code.
 - I. “School” means a public, parochial or private elementary, middle, junior high, or high school or the campus of any college, university or seminary.
 - J. “State Licensing Authority” means the executive director of the Department of Revenue or the deputy director of the Department of Revenue as set forth in C.R.S. §12-43.4-201.

5.10.020 License required.

- A. Except as otherwise provided in this chapter and in Section 16 of Article XVIII of the Colorado Constitution, it shall be unlawful for any person to test, cultivate, produce, manufacture, sell or otherwise distribute any marijuana for non-medical use in the Town of Oak Creek without first obtaining a license to operate a Retail Marijuana Establishment pursuant to the Colorado Retail Marijuana Code and receiving affirmative approval of such license by the Local Licensing Authority. Notwithstanding, this section shall not apply to an individual twenty-one years of age or older acting in conformance with Subsection 3 of Section 16 of Article XVIII of the Colorado Constitution.
- B. Any requirements set forth in this article shall be in addition to, and not in lieu of, any other requirements imposed by any State or local law.

5.10.030 Local Licensing Authority

- A. For the purpose of regulating and controlling the licensing of cultivation, manufacturing, distribution, testing and sales of marijuana in the Town of Oak Creek, there is hereby created the Local Licensing Authority of the Town of Oak Creek. The Local Licensing Authority shall be the Town Board unless the Town Board designates other persons or departments to serve in such capacity by ordinance.
- B. The Local Licensing Authority shall have such powers and duties as are set forth in this chapter, in the Colorado Retail Marijuana Code, and Subsection 5(e) of Section 16 of Article XVIII of the Colorado Constitution.
- C. At such time as application forms are made available by the State Licensing Authority, the Local Licensing Authority shall begin to receive and process applications from the State Licensing Authority pursuant to the Colorado Retail Marijuana Code and this chapter.
- D. When presented by the State Licensing Authority with a Retail Marijuana Establishment license application, the Local Licensing Authority or its designee shall determine whether to issue local approval of the license based on the requirements of this chapter and the Colorado Retail Marijuana Code.
- E. The Local Licensing Authority shall provide the State Licensing Authority with notice of its decision on each license application by giving them written notice within forty-five (45) days of receipt of the application from the State Licensing Authority.
- F. The Local Licensing Authority shall notify the applicant of its decision by giving written notice to the address provided by the applicant within forty-five (45) days of receipt of the application from the State Licensing Authority. In the event of a denial, the Local Licensing Authority shall provide the applicant with a written statement containing the reason(s) for such denial.
- G. The Local Licensing Authority shall approve a license under this article when, after considering the application forwarded to it by the State Licensing Authority and from such other information as may otherwise be obtained or requested by the Local Licensing Authority, the Local Licensing Authority determines that the application complies with all of the requirements of this chapter including the following:
 - a. The application, including any required attachments and submissions, is complete and signed by the applicant;

- b. The applicant has paid the application fee and any other fees required by this chapter;
 - c. The application does not contain a material falsehood or misrepresentation;
 - d. The location of the Retail Marijuana Establishment is proposed to be located on premises is authorized and permitted under the Oak Creek Land Use Code;
 - e. A finding is made by the Local Licensing Authority that the applicant, or the officers, directors, members or stockholders if applicant is a corporation, partnership, association, cooperative or company, is of good moral character and has passed a criminal history and background check; and
 - f. The applicant meets or otherwise will meet all the requirements of this chapter.
- H. Upon receipt of a copy of an application for change of location, change of ownership, modification of premises or any other change to the license from the State Licensing Authority, the Local Licensing Authority shall approve the change within forty-five (45) days of receipt of the application provided the licensee has paid any applicable fees and provided that the proposed change meets all requirements of this Chapter unless there exists Good Cause to deny the proposed change.
- I. The Local Licensing Authority shall be assisted by all necessary departments of the Town of Oak Creek and such other personnel as may be designated by the Town Board in the performance of its duties.

5.10.040 Fees.

The Town Board shall, by a resolution of the Town Board, impose operating fees for costs of processing licensing applications and any other costs related to implementation, administration and enforcement of this chapter including unannounced compliance checks. These fees shall include, but are not limited to, fees for operating, renewals, change of location, inspections, background checks, changes of ownership and modification of premises.

5.10.050 General licensing procedures.

- A. Within forty-five (45) days of receipt of a renewal application from the State Licensing Authority, the Local Licensing Authority shall renew the local approval of the license if the licensee meets all requirements of this chapter and has paid any applicable fees unless there exists Good Cause for not approving renewal of the license.
- B. Notwithstanding anything elsewhere set forth in this chapter or the Oak Creek Municipal Code to the contrary, the Local Licensing Authority may deny any application submitted to it directly or any application forwarded to it by the State Licensing Authority if such application does not meet the requirements of Section 16 of Article XVIII of the Colorado Constitution the Colorado Retail Marijuana Code, this chapter, or any other provision of the Municipal Code or for Good Cause, including without limitation any application for:
 - a. issuance of an initial license;
 - b. license renewal;
 - c. reinstatement of a license; or
 - d. change of location, change of ownership, modification of licensed premises or any other change to the license.

5.10.060 Permitted locations.

- A. Retail Marijuana Establishments shall only be located in areas permitted by the Oak Creek Land Use Code.
- B. No Retail Marijuana Establishment shall be located within 1000 feet of any School at the time of the initial application.
- C. All distances shall be calculated by measuring the distance from the nearest property line of the School to the nearest exterior wall of the building in which the Retail Marijuana Establishment is located.
- D. The requirements of this subsection shall not apply to a premises where a current and active license was previously issued pursuant to the Town's Medical Marijuana Code, including conversion of such licensed or co-location licensed premises to a Retail Marijuana Establishment so long as such use has not been discontinued for a period of nine months pursuant to Section 17.08.05, Oak Creek Land Use Code.

5.10.070 General requirements.

- A. No Retail Marijuana Establishment approved pursuant to this article may sell marijuana at any time except between the hours of 8:00 a.m. to 8:00 p.m.
- B. A licensed premises that cultivates or processes marijuana 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 lot on which the licensed premises is located.
- C. All Retail Marijuana Establishments shall operate from a permanent and fixed location. No Retail Marijuana Establishment shall operate from a vehicle or other moveable location.
- D. Retail Marijuana Establishments shall have staff members present during hours of operation. No vending machine or unsupervised transactions shall be permitted.
- E. Prior to employment, all staff persons of a Retail Marijuana Establishment shall submit fingerprints for a criminal history record and background check and be deemed eligible to work at the Retail Marijuana Establishment by the Local Licensing Authority or its designee.
- F. A sales tax license shall be obtained, as necessary, and a copy provided to the Local Licensing Authority, prior to commencing Retail Marijuana Establishment operations.
- G. Retail Marijuana Establishments shall not display signs visible from the exterior of the premises that depict any portion of the marijuana plant.

5.10.080 Co-locating licenses.

- A. Pursuant to § 12-43.4-104 of Colorado Revised Statutes, certain medical marijuana licensees or applicants qualified to receive a State license may, on or after October 1, 2013, either apply for a Retail Marijuana Establishment license in addition to their medical marijuana license, convert their medical marijuana license to a Retail Marijuana Establishment license, or apply for a Retail Marijuana Establishment license and

surrender their medical marijuana license when the Retail Marijuana Establishment license is issued.

- B. A person who holds both a license pursuant to Title 12, Article 43.3 of the Colorado Revised Statutes, and a Retail Marijuana Establishment may operate both licenses in the same premises ("co-located operations") provided they meet the requirements of the Colorado Retail Marijuana Code and this chapter.

5.10.090 Disciplinary actions; sanctions; penalties.

Procedures for suspension or revocation of licenses issued pursuant to this chapter and other fines, sanctions and penalties shall be as provided in the Colorado Retail Marijuana Code and Section 16 of Article XVIII of the Colorado Constitution.

5.10.100 Relation to Colorado Retail Marijuana Code; other laws.

Except as otherwise specifically provided herein, this chapter incorporates the requirements and procedures set forth in the Colorado Retail Marijuana Code and Section 16 of Article XVIII of the Colorado Constitution. In the event of any conflict between the provisions of this chapter and the provisions of the Colorado Retail Marijuana Code, the more restrictive provision shall control.

5.10.110 Severability.

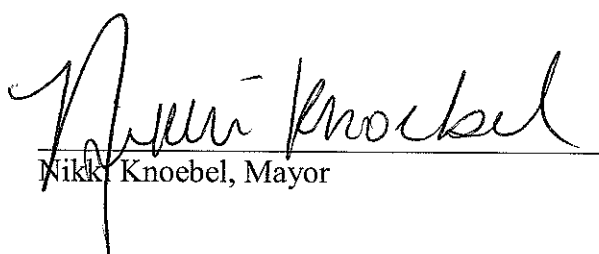
If any part or parts, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion of this Ordinance.

Section 2. Effective Date. This ordinance shall take effect and be in full force and effect thirty (30) days after adoption and publication pursuant to C.R.S. § 31-16-105.

INTRODUCED, READ, APPROVED AND ORDERED PUBLISHED this 22nd day of August, 2013.

ATTEST:


Michelle Page-Allen
Town Administrator/Clerk


Nikko Knoebel, Mayor

