

**TOWN OF OAK CREEK**

**ORDINANCE NO. 632**

**AN ORDINANCE AMENDING AND MODIFYING CHAPTER 5.06, MEDICAL MARIJUANA, AND CHAPTER 5.10, LOCAL RETAIL MARIJUANA ESTABLISHMENTS CODE, OF THE OAK CREEK MUNICIPAL CODE; REPEALING ALL CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, Chapters 5.06, Medical Marijuana, and Chapter 5.10, Local Retail Marijuana Establishments Code, of the Oak Creek Municipal Code (Code), addresses the business licensing and regulating of marijuana related business operations within the Town of Oak Creek (Town); and

**WHEREAS**, the Board of Trustees of the Town of Oak Creek (Board) held work sessions to review and discuss various amendments to said Chapters 5.06 and 5.10 of the Code on March 26, 2015 and April 23, 2015; and

**WHEREAS**, the Board wishes to amend various provisions of said Chapters 5.06 and 5.10 of the Code; and

**WHEREAS**, a draft of this Ordinance No. 632 amending said Chapters 5.06 and 5.10 was provided at the regular meeting of the Board on May 14, 2015. Public comment was received at said meeting; and

**WHEREAS**, Trustee Brown made a motion to approve Ordinance No. 632 as written. Trustee Gustafson seconded the motion. The motion passed unanimously.

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

**SECTION 1. AMENDMENTS.** Chapter 5.06, Medical Marijuana, and Chapter 5.10, Local Retail Marijuana Establishments Code, of the Oak Creek Municipal Code are hereby amended at various sections as follows (additions are underlined, deletions are struck-through):

**A. Chapter 5.06 MEDICAL MARIJUANA**

**Sections:**

- 5.06.010 Definitions.
- 5.06.020 Applicable requirements.
- 5.06.030 Suspension or revocation of license.
- 5.06.040 Limitation on sale of marijuana.
- 5.06.050 Hours of operation.
- 5.06.060 Signage and required posting.
- 5.06.070 Prohibited activities.
- 5.06.080 Paraphernalia.
- 5.06.090 Edibles.
- 5.06.100 Display of marijuana.

- 5.06.110 Consumption of alcohol.
- 5.06.111 Co-locating licenses.
- 5.06.112 Security.
- 5.06.113 Record keeping:
- 5.06.114 Penalties and injunctive relief.
- 5.06.115 Governmental immunity and town indemnification.
- 5.06.116 Severability.

**5.06.010 Definitions.**

~~The following are definition that shall be applicable to a business that sells or dispenses medical marijuana:~~

~~Business that sells or dispenses medical marijuana: The use of any property or structure within the Town to sell, distribute, transmit, give, dispense or otherwise provide marijuana in any manner to patients or primary care givers in accordance with Amendment 20, and the implementing state statutes and administrative regulations.~~

~~Other defined terms: The other defined terms in Amendment 20 are incorporated into this chapter by reference.~~

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, C.R.S. (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, C.R.S. and any rules or regulations promulgated thereunder.
- B. "Business that sells or dispenses medical marijuana" 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.
- C. "Licensee" means a person licensed or registered pursuant to the Colorado Retail Marijuana Code.
- D. "Local licensing authority" means the Town Board unless the Town Board designates other persons or departments to serve in such capacity by ordinance.
- E. "Medical marijuana establishment" means a medical marijuana center, a medical marijuana-infused product manufacturer, or an optional premises cultivation operation as such may be more fully defined in the Colorado Medical Marijuana Code.
- F. "School" means a public, parochial or private elementary, middle, junior high, or high school or the campus of any college, university or seminary.

**5.06.020 Applicable requirements.**

- A. Location: A business that sells or dispenses medical marijuana licensed premises may only be licensed in Performance District One and is subject to locations permitted under in the Land Use Code, Chapter 17 of the Oak Creek Municipal Code and may not be located within one thousand feet from any School, school, park or playground. All distances shall be calculated by measuring

from the nearest property line of the School to the nearest exterior wall of the building in which the medical marijuana establishment is located.

No medical marijuana dispensary shall be operated as a "home occupations" or "cottage industry" as described in Chapter 17 of the Town of Oak Creek Municipal Code.

- B. Licenses required. A license is required to establish a ~~business that sells or dispenses medical marijuana~~ licensed premises in the Town of Oak Creek through the application process outlined in the Land Use Code, Chapter 17 of the Oak Creek Municipal Code, a sales tax license, and any necessary and building, mechanical, plumbing or electrical licenses shall also be required.

An application for a license to operate a ~~business that sells or dispenses medical marijuana~~ licensed premises submitted to the Town for its approval must meet the following requirements:

1. The application must be filed on the appropriate forms provided by the Town and must contain such information as the Town may require;
2. The application must be verified by oath or affirmation of the persons prescribed by the Town;
3. The applicant must file plans and specifications for the interior of the building to be occupied if the building is in existence at the time of the application. If the building is not in existence at the time of application then a plot plan and a detailed sketch for the interior as well as an architect's drawing of the proposed building must be filed;
4. Each owner, manager and employee of the applicant for a license shall provide suitable evidence of citizenship, residency and good character and reputation. Applicants shall also submit upon request of the Town all required information concerning financial and management associations and interests of the owners of the ~~business that sells or dispenses medical marijuana~~ licensed premises, and the deed, lease, contract, or other documents governing the terms and conditions of occupancy of the premises licensed or proposed to be licensed.

Each licensee shall collect and remit sales tax on all medical marijuana, paraphernalia, and other tangible personal property sold by the licensee at any ~~business that sells or dispenses medical marijuana~~ licensed premises.

- C. Applicant requirements.

1. The applicant's name, address, telephone number and Social Security number;
2. The street address of the proposed ~~business that sells or dispenses medical marijuana~~ licensed premises;
3. If the applicant is not the owner of the proposed location of the ~~business that sells or dispenses medical marijuana~~ licensed premises, a notarized statement from the owner of such property authorizing the submission of the application;
4. A statement of the personal history and criminal history of all owners, managers and employees of the ~~business that sells or dispenses medical marijuana~~ proposed licensed premises;
5. A completed set of the applicant's fingerprints on a form approved by CBI and approved by Oak Creek Police Department of all owners, managers and employees of the ~~business that sells or dispenses medical marijuana~~ proposed licensed premises;
6. A statement to be initialed by the applicant that the applicant and the employees and managers of the ~~business that sells or dispenses medical marijuana~~ proposed licensed premises may be subject to prosecution under federal marijuana laws;

7. A statement to be initialed by the applicant that the Town accepts no legal liability in connection with the approval and subsequent operation of the ~~business that sells or dispenses medical marijuana~~ proposed licensed premises;
  8. Any additional information that the Town reasonably determines to be necessary in connection with the investigation and review of the application.
- D. Fees. The Board of Trustees shall set the application, inspection, annual and other applicable fees by a resolution of the Board, as deemed necessary.
- E. Additional conditions on license: The Town shall have the authority to impose such reasonable terms and conditions on a license as may be necessary to protect the public health, safety, and welfare, and to obtain compliance with the requirements of this chapter and applicable law.
- F. Standards for issuance:
1. The application is complete.
  2. All required fees have been paid.
  3. Application does not contain material misrepresentations.
  4. Public notice of application must be posted at the premises thirty days before hearing to issue license.
  5. Applicant must be determined to be of good moral character.
  6. Completed CBI/NCIC background check; ~~the Town will allow the business that sells or dispenses medical marijuana to open on a temporary basis pending the return of the background check clear of felony charges.~~
  7. The license is granted for a one-year period and must be renewed annually.
  8. ~~Oak Creek~~A sales tax license must be obtained and proof of same provided at time of application.
  9. Diagram of the interior and exterior of the ~~business that sells or dispenses medical marijuana~~licensed premises documenting the security and other interior design of the ~~business that sells or dispenses medical marijuana~~licensed premises as well as exterior lighting, parking, snow removal.
  10. Fire code compliance and inspection completed.
  11. License must be posted in a conspicuous location in the ~~business that sells or dispenses medical marijuana~~licensed premises.
- G. Standards for denial.
1. Failure to comply with aforementioned standards of issuance.
  2. Nontransferable.
  3. The reasonable requirements of the Town are already being met by existing ~~business that sells or dispenses medical marijuana~~licensed premises.
  4. If within a two-year period immediately preceding the date of the application, the Town has denied an application for a license at the same location, then the Town cannot receive or act upon the subsequent application.
- H. Inspection of premises. Prior to the issuance of a license, the ~~business that sells or dispenses medical marijuana~~licensed premises shall be inspected by the Town to determine compliance with the Town's building, technical and fire codes. No license shall be issued if the ~~business that sells or dispenses medical marijuana~~licensed premises does not comply with the Town's Land Use Code and the county's building, technical and fire codes. Throughout the term of the license

the Town may inspect the ~~business that sells or dispenses medical marijuana~~licensed premises to determine continuing compliance with the Town and county's building, technical and fire codes. Access to the ~~business that sells or dispenses medical marijuana~~licensed premises shall be made available to the Town on demand.

- I. Transferability. A license is non-transferable and non-assignable. Any attempt to transfer or assign a license voids the license.
- J. Posting. A license shall be continuously posted in a conspicuous location at the ~~business that sells or dispenses medical marijuana~~licensed premises.
- K. Odor Control. 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.
- L. Staff. Prior to employment, all staff persons of a medical marijuana establishment shall submit fingerprints for a criminal history record and background check and be deemed eligible to work at the medical marijuana establishment by the local licensing authority or its designee.

#### **5.06.030 Suspension or revocation of license.**

A license issued pursuant to this chapter may be suspended or revoked by the Town after a public hearing for the following reasons:

- 1. Fraud, misrepresentation, or a false statement of material fact contained in the license application;
- 2. A violation of any Town, state, or federal law or regulation, other than a federal law or regulation concerning the possession, sale or distribution of marijuana that conflicts with Amendment 20;
- 3. A violation of any of the terms and conditions of the license, including any special conditions of approval imposed upon the license by the Town;
- 4. A violation of any of the provisions of this chapter or of the Town Municipal Code;
- 5. Operations have ceased at the ~~business that sells or dispenses medical marijuana~~licensed premises for more than ~~ninety~~thirty days, including during a change of ownership of the dispensary, unless written notice has been given to the Town; or
- 6. Ownership of the ~~business that sells or dispenses medical marijuana~~licensed premises has been transferred without the new owner obtaining a license pursuant to this chapter.

A public hearing must be noticed for a minimum of fifteen days.

#### **5.06.040 Limitation on sale of marijuana.**

No marijuana may be sold, given away, or transferred from a ~~business that sells or dispenses medical marijuana~~licensed premises except to patients and to primary care-givers.

- 1. Each ~~business that sells or dispenses medical marijuana~~licensed premises shall be operated from a permanent and fixed location. No ~~business that sells or dispenses medical marijuana~~licensed premises shall be licensed to operate from a moveable, mobile, or transitory location.
- 2. Physical delivery of medical marijuana to a patient or the patient's primary caregiver is licensed at a location off of the premises of the licensee's ~~business that sells or dispenses medical marijuana~~licensed premises if:

- (a) The marijuana was lawfully purchased by the patient or the patient's primary caregiver from the licensee's ~~business that sells or dispenses medical marijuana~~ licensed premises;
- (b) The marijuana is delivered only to the patient or the patient's primary caregiver;
- (c) The marijuana is delivered only by the licensee or a care giver in the employ of the licensee;
- (d) The marijuana is delivered to a location within the Town; and
- (e) The marijuana is delivered only by the use of a motor vehicle, bicycle, or other lawful means of transportation.

**5.06.050 Hours of operation.**

A ~~business that sells or dispenses medical marijuana~~ licensed premises may open no earlier than 8:00 a.m. and shall close no later than 10:00 p.m. the same day. A ~~business that sells or dispenses medical marijuana~~ licensed premises may be open seven days a week.

**5.06.060 Signage and required posting.**

All signage for a ~~business that sells or dispenses medical marijuana~~ licensed premises shall comply with the requirements of the Land Use Code of the Town Code and are encouraged to be discreet. In addition, no licensee shall display a sign for the medical marijuana dispensary that contains a graphic/image of marijuana or marijuana paraphernalia. No common street vernacular shall be allowed and marijuana or cannabis (or common phraseology) can be used unless preceded by the word medical.

There shall be posted in a conspicuous location in each ~~business that sells or dispenses medical marijuana~~ licensed premises a legible sign containing the following warnings:

- 1. A warning that the diversion of marijuana for non-medical purposes is a violation of state law;
- 2. A warning that the use of medical marijuana may impair a person's ability to drive a motor vehicle or operate machinery, and that it is illegal under state law to drive a motor vehicle or to operate machinery when under the influence of or impaired by marijuana;
- 3. A warning that loitering in or around the ~~business that sells or dispenses medical marijuana~~ licensed premises is prohibited by state law; and
- 4. A warning that possession and distribution of marijuana is a violation of federal law.

**5.06.070 Prohibited activities.**

- 1. The consumption or inhalation of marijuana on or within the ~~business that sells or dispenses medical marijuana~~ licensed premises is prohibited. A ~~business that sells or dispenses medical marijuana~~ licensed premises may not be used as a physician's office to examine or consult with patients.
- 2. Any operation using compressed, flammable gas as a solvent in the extraction of THC or other cannabinoids from marijuana is specifically restricted to light industrial or industrial areas identified pursuant to the provisions of the Land Use Code, Chapter 17 of the Oak Creek Municipal Code.
- 3. All owners, managers and employees of a ~~business that sells or dispenses medical marijuana~~ licensed premises must be at least twenty-one years of age.

4. No person under the age of eighteen shall be permitted on the ~~business that sells or dispenses medical marijuana~~licensed premises.

#### **5.06.080 Paraphernalia.**

Devices, contrivances, instruments, and paraphernalia for inhaling or otherwise consuming marijuana including, but not limited to, rolling papers and related tools, water pipes, and vaporizers may be lawfully sold at a business that sells or dispenses medical marijuana.

#### **5.06.090 Edibles.**

There is no limitation on medical marijuana edibles as long as the licensee has followed all the rules and regulations set forth by the Colorado Department of Public Health and Environment and provides written proof of same. No medical marijuana edibles shall be displayed so as to be visible through glass, windows, or doors by a person of normal visual acuity standing at the outside perimeter of the ~~business that sells or dispenses medical marijuana~~licensed premises.

#### **5.06.100 Display of marijuana.**

No marijuana shall be displayed so as to be visible through glass, windows, or doors by a person of normal visual acuity standing at the outside perimeter of any ~~business that sells or dispenses medical marijuana~~licensed premises.

#### **5.06.110 Consumption of alcohol.**

The sale or consumption of an alcoholic beverage within a ~~business that sells or dispenses medical marijuana~~licensed premises is prohibited.

#### **5.06.111 Co-locating licenses.**

A licensee who holds both a license pursuant to Title 12, Article 43.4, C.R.S. and a medical 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.

#### **5.06.112 Security.**

A licensee shall provide adequate security on the ~~business that sells or dispenses medical marijuana~~licensed premises including, but not limited to, the following:

1. Security surveillance cameras installed to monitor the main entrance along with the interior and exterior of the premises to discourage and to facilitate the reporting of criminal acts and nuisance activities occurring at the premises. Security video shall be preserved for at least ninety days by the licensee;
2. Robbery and burglary alarm systems which are professionally monitored and maintained in good working conditions;
3. A locking safe permanently affixed to the ~~business that sells or dispenses medical marijuana~~licensed premises that is suitable for storage of all of the saleable inventory of marijuana if marijuana is to be stored overnight on the premises; and

4. Exterior lighting that illuminates the exterior walls of the ~~business that sells or dispenses medical marijuana~~licensed premises if applicable. Motion sensor lighting is acceptable.

**5.06.113 Record keeping:**

1. Each licensee shall maintain an accurate and complete record of all marijuana sold or dispensed at the ~~business that sells or dispenses medical marijuana~~licensed premises. The record shall contain the following information:
  - (a) The quantity of marijuana sold or dispensed; and
  - (b) The date and time the marijuana was sold or dispensed.
2. The licensee's records described in subsection 1 of this section shall be available for inspection by the Town pursuant to Rule 41 of the Colorado Rules of Criminal Procedure or Rule 241 of the Colorado Municipal Court Rules of Procedure.
3. Nothing in this section shall abrogate or affect: (i) any applicable confidentiality provision of state or federal law, or (ii) any applicable statutory or constitutional prohibition against unreasonable searches and seizure of property. In the event of any conflict between this section and any applicable state or federal law, the applicable provision of state or federal law shall control.

**5.06.114 Penalties and injunctive relief.**

1. The operation of a ~~business that sells or dispenses medical marijuana~~licensed premises without a valid license issued may be enjoined by the Town in an action brought in a court of competent jurisdiction. In any case in which the Town prevails in a civil action initiated pursuant to this section, the Town may recover its reasonable attorney fees plus costs of the proceeding.
2. The remedies provided in this section are in addition to any other remedy provided by applicable law.

**5.06.115 Governmental immunity and town indemnification.**

1. By adopting this chapter, the Board of Trustees is relying on, and does not waive or intend to waive by any provision of this chapter, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, section 24-10-101 et seq., C.R.S., as from time to time amended, or any other limitation, right, immunity, or protection otherwise available to the Town, its officers, or its employees.
2. By accepting a license issued pursuant to this chapter a licensee releases the Town, its officers, elected officials, employees, attorneys, and agents from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of owners, operators, employees, clients, or customers of a ~~business that sells or dispenses medical marijuana~~licensed premises for a violation of state or federal laws, rules or regulations.
3. By accepting a medical marijuana license issued by the Town, a licensee, jointly and severally if more than one, 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 a ~~business that sells or dispenses medical marijuana~~licensed premises that is the subject of the license. The licensee further 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.

#### **5.06.116 Severability.**

If any section, paragraph, sentence, clause, or phrase of this chapter is for any reason held to be unconstitutional or otherwise invalid or ineffective by the final, non-appealable order or judgment of any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter. The Town hereby declares that it would have adopted each section, paragraph, sentence, clause and phrase of this chapter irrespective of the fact that any one or more sections, paragraphs, sentences, clauses or phrases may be declared unconstitutional, invalid or ineffective.

### **B. Chapter 5.10 LOCAL RETAIL MARIJUANA ESTABLISHMENTS CODE**

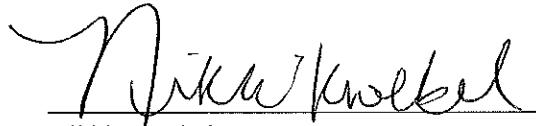
#### **5.10.070 General requirements.**

- 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.
- H. Any operation using compressed, flammable gas as a solvent in the extraction of THC or other cannabinoids from marijuana is specifically restricted to light industrial or industrial areas identified pursuant to the provisions of the Land Use Code, Chapter 17 of the Oak Creek Municipal Code.

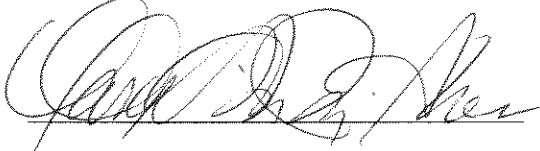
**SECTION 2. SEVERABILITY, CONFLICTING ORDINANCES REPEALED.** If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. All other ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**SECTION 3. 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 14<sup>th</sup> day of May, 2015.

  
Nikki Knoebel, Mayor

ATTEST:



Mary Alice Page-Allen  
Town Administrator/Clerk

