

**TOWN OF RICO
ORDINANCE NO. 2018-03**

AN ORDINANCE OF THE TOWN OF RICO, REPEALING AND REPLACING ORDINANCE NO. 2014-06, BEING THE LICENSING AND PERMITTING OF RETAIL MARIJUANA ESTABLISHMENTS

WHEREAS, the Town of Rico voters approved the permitting of Retail Marijuana Establishments as defined under C.R.S. 12-43.3 103(17) on November 4, 2014;

WHEREAS, the Board of Trustees previously passed Ordinance 2011-02 which prohibits Medical Marijuana as defined under C.R.S. 12-43.3-104(11) and the repeal and replacement of Ordinance 2014-06 herein does not affect Ordinance 2011-02;

WHEREAS, the Board of Trustees previously passed Ordinance 2014-06, authorizing the licensing and regulation of Retail Marijuana Establishments, as defined under C.R.S. 12-43.4-103(17)

WHEREAS, the previous Ordinance 2014-06 prohibited Retail Marijuana Establishments from being located within 1000' of any school or church which limited the possible location of a retail marijuana establishment within the town limits;

WHEREAS, the Board of Trustees desires to reduce the distance within which a retail marijuana establishment can be located within any school or church from 1000' to 300' to allow a retail marijuana establishment to open in the Town of Rico; and

WHEREAS, the Board of Trustees desires to correct some grammatical errors in the previous Ordinance 2014-06 and to add some additional license application requirements when an applicant applies for a license or special use permit to operate a Retail Marijuana Store as defined under C.R.S. 44-12-103(28).

THE BOARD OF TRUSTEES OF THE TOWN OF RICO ORDAINS, as follows:

Ordinance 2014-06 is hereby repealed and replaced with the following:

Section 1. Authority.

This Ordinance is authorized pursuant to Article XVIII, Section 16, of the Colorado Constitution and the Colorado Retail Marijuana Code, C.R.S. 12-43.4-101, et seq. which authorizes the licensing and regulation of Retail Marijuana

Establishments, as defined under C.R.S. 12-43.4-103(17), as amended, and affords local governments the option to determine whether or not to allow retail marijuana businesses within their respective jurisdictions and to adopt licensing requirements that are supplemental to or more restrictive than the requirements set forth in state law.

Section 2. Colorado Retail Marijuana Code Compliance.

All Retail Marijuana Establishments in the Town of Rico shall be in compliance with the Colorado Retail Marijuana Code, C.R.S. 12-43.4-101, *et seq* as amended and no Retail Marijuana Establishment shall be operated in the Town of Rico except as permitted and licensed by the State of Colorado and the Town of Rico.

Section 3. License Required for Operation of Retail Marijuana Establishments.

It shall be unlawful for any person to establish or operate a Retail Marijuana Establishment in the Town of Rico without having first obtained a license from the local licensing authority. Such license shall be kept current at all times, and the failure to maintain a current license shall constitute a violation of this Ordinance.

Section 4. Licensing Authority.

The Board of Trustees shall act as the licensing authority for review and approval of all licenses for Retail Marijuana Establishments. The Town Manager shall act as support staff to the Licensing Authority and accept and process all applications for Retail Marijuana Establishments, and shall collect fees, draft and maintain such applications, forms, and administrative materials as may be required for operation of this Ordinance.

Section 5. Requirements of Applications, Modifications and Renewals

(A) A person seeking a license or renewal of a license issued pursuant to this Ordinance shall submit an application the local licensing authority on forms provided by the Staff. At the time of application, each applicant shall pay a non-refundable license fee to the Town in an amount to be determined by the Town by separate Resolution to defray the costs incurred by the Town including, but not limited to, processing the license, administration, inspection and enforcement of Retail Marijuana Establishments.

(B) A copy of the application and all supporting documentation provided to the State of Colorado for licensing under state law and regulations shall be made available to the Town, upon its request.

(C) The information provided with the application shall include, but is not limited to:

(1) a complete application and the application fee as set forth in the appropriate fee schedule;

(2) the name, address, and date of birth of the applicant or of each of the partners, officers, directors, or managers if the applicant is a corporation, limited liability company, partnership, joint venture, or other business entity;

(3) a copy of the driver's license of each applicant or partner, officer, director or manager if the applicant is a corporation, limited liability company, partnership, joint venture, or other business entity, or such other evidence of lawful presence and residency, if applicable;

(4) a complete set of fingerprints of the applicant or of each of the partners, officers, directors or managers, if the applicant is a corporation, limited liability company, partnership, joint venture, or other business entity, unless a request is made and approved to use previously submitted fingerprints on file be used;

(5) such other information as the Local Licensing Authority or the Staff on its behalf may require in order to determine whether a local license should be granted;

(6) financial information regarding loans and investors necessary to determine whether all persons with a financial interest in the retail marijuana establishment have been included as owners pursuant to Colorado statute and regulations; and

(7) information and such documentation as Staff may reasonably require demonstrating the availability of an adequate water supply for both irrigation and domestic uses during the term of the license and shall confirm such information and demonstrate continued availability of an adequate water supply as part of any renewal application. Hauled water may not be used as a source of water and shall not be considered an adequate water supply except as an emergency, temporary supply.

(D) The local licensing authority shall direct the Town of Rico Marshall to conduct a criminal history background check pursuant to C.R.S. 12-43.4-307 to determine whether the applicant, or the partners, officers, directors, or managers if the applicant is a corporation, limited liability company, partnership, joint venture, or other business entity are qualified to hold a local license based upon the criteria and prohibitions set forth in C.R.S. 12-43.4-306.

(E) Each application must be verified by the oath or affirmation of the applicant, or the person submitting the application on behalf of the applicant if the applicant is a corporation, limited liability company, partnership, joint venture, or other business entity.

(F) Any misrepresentation, omission, or falsehood of material information provided and verified in the application may be grounds for immediate denial of the application or revocation of a license. Material information includes, but is not necessarily limited to: the name of the applicant, and any partners, officers, directors or managers if the applicant is a corporation, limited liability company,

partnership, joint venture, or other business entity; the residency of the applicant or any partner, officer, director, or manager if the applicant is a corporation, limited liability company, partnership, joint venture, or other business entity; information regarding land ownership of a marijuana cultivation facility; omission of existing agreements or contracts for change in ownership of the entity, or ownership of the land on which a marijuana cultivation facility is proposed; financial interests or financing; and criminal history.

(G) Modifications of a license during the term of the license may be made by submitting an application identifying the modifications requested in the locally issued license. Minor modifications of premises approved by the State including internal premises changes or other minor modifications not increasing the overall size of the facility will be reviewed by Staff. Major modifications will be considered by the Local Licensing Authority and approved or denied in the discretion of the Local Licensing Authority. Modifications include substantial alterations to the facility, ownership, or other terms and conditions, as provided under state law and regulations. Modifications will also include any change in the lease or ownership of the property on which a facility is located. Any proposed modification that includes expansion of a greenhouse or other related facilities by more than 10% of the licensed square footage shall require on-site posting and notice to adjacent property owners.

(H) The Local Licensing Authority will consider all requests for transfer of a local license to a new person, or business entity upon the submittal by a licensee and proposed transferee of an application for transfer the license, after submitting the application to transfer, the fee and providing the license has been put to use and the Retail Marijuana Establishment is in operation and open for business. Any change in ownership, including restructuring of an existing business entity to include additional members, partners, shareholders or any financial arrangement that includes a financial interest in the entity, including a share of profits, future ownership rights or promise of future ownership rights, requires approval of the Local Licensing Authority. The application shall include documentation that a transfer of ownership application has been submitted to the State and is in process, or, documentation showing that the State has approved or conditionally approved, the transfer of the corresponding state license or permit to the proposed transferee. The application shall include the information provided for a new license, including a complete set of fingerprints for all persons, partners, members, officers, and managers. The Local Licensing Authority may request such additional investigation or information as it deems necessary to make an informed decision and may approve or deny the application for transfer in its discretion, and upon such terms and conditions as may be approved by the Local Licensing Authority and agreed to by the proposed transferee.

Section 6. Cultivation Facilities.

(A) Licensed Marijuana Cultivation Facilities, defined under Colorado Constitution, Article XVIII, Section 16(2)(h), may propagate, cultivate, harvest, prepare, cure, package and label retail marijuana, whether in concentrated form or otherwise, and sell retail marijuana that they have cultivated to a person licensed by the State of Colorado to operate a Retail Marijuana Store, production facility, testing facility, or other cultivation facility. Licensed Marijuana Cultivation Facilities are prohibited from selling retail marijuana to any consumer.

(B) Marijuana Cultivation Facilities may be located anywhere in the Town of Rico where agriculture, including greenhouses, may be conducted, either by right or by a special use permit. All cultivation activities shall occur within an enclosed space and shall be subject to all security requirements imposed by this Ordinance and by state law and regulations.

(C) Marijuana Cultivation Facilities shall be subject to all provisions of the Town of Rico Land Use Code applicable to agricultural uses and facilities.

(D) Operators of Marijuana Cultivation Facilities shall use best practices to conserve water in cultivation operations and shall avoid the use of treated water from a domestic water provider for irrigation purposes.

(E) Internal lighting used during night-time hours (from sunset to sunrise) shall not be visible to adjacent properties. Exterior lighting shall be consistent with the Town of Rico Land Use Code.

Section 7. Retail Marijuana Stores.

(A) Retail marijuana stores and facilities may be located within the Town of Rico in any location where retail or commercial operations are permitted under the Town of Rico Land Use Code or pursuant to an approved special use permit. All applicable provisions of the Land Use Code shall apply, including requirements for a special use permit for retail or commercial uses in pertinent zoning districts.

(B) No Retail Marijuana Establishment shall be located within 300' of any school or church.

(C) Signage and advertising shall be permitted as provided in the Land Use Code and pursuant to state law and regulations, but in the event of a conflict between state law and the Land Use Code, the more stringent requirement shall apply.

(D) In any Retail Marijuana Store in which edibles are sold to consumers, a sign shall be prominently and conspicuously displayed to inform consumers that the edible products have not been inspected by a local public health agency.

(E) There shall be posted in a conspicuous location in each Retail Marijuana Store a legible sign with the following warning:

"The use of marijuana or marijuana products may impair a person's ability to drive a motor vehicle or operate machinery. It is illegal under state law to drive a motor vehicle or operate machinery when under the influence of, or impaired by, marijuana.

"Possession and distribution of marijuana Is a violation of federal law.

"No one under the age of twenty-one (21) years is permitted on the premises."

Section 8. Retail Marijuana Products Manufacturers.

(A) Retail Marijuana Product Manufacturing Facilities, including production of edibles, may be located within the Town of Rico at any location where food production or manufacturing is permitted by the Town of Rico Land Use Code as a use by right, or pursuant to an approved special use permit.

(B) Licensed Retail Marijuana Products Manufacturers may manufacture, prepare, package and label retail marijuana products, whether in concentrated form or that are comprised of marijuana and other ingredients intended for use or consumption. Licensed retail marijuana products manufacturers may sell retail marijuana products of its own manufacture to persons holding a retail marijuana store license from the State of Colorado, or to other licensed retail marijuana products manufacturers. Licensed Retail Marijuana Products Manufacturers are prohibited from selling retail marijuana or retail marijuana products to any consumer.

(C) Licensed Retail Marijuana Products Manufacturers are prohibited from manufacturing, preparing, packaging or labeling marijuana products in a location that is operated as a retail food establishment or as a wholesale food facility.

(D) All packaging shall include a notice that the contents have not been inspected by the county public health agency.

Section 9. Retail Marijuana Tasting Facilities.

(A) Retail Marijuana Testing Facilities may be located within the Town of Rico at any location where agricultural, commercial or industrial uses are permitted by the Town of Rico Land Use Code as a use by right, or pursuant to an approved special use permit.

(B) Licensed Retail Marijuana Testing Facilities may accept samples of retail marijuana or retail marijuana products from retail marijuana establishments for testing and research purposes only.

(C) Licensed Retail Marijuana Testing Facilities are permitted to develop retail marijuana products; however, they may not engage in the manufacturing of retail marijuana. Licensed Retail Marijuana Testing Facilities are further prohibited from selling, distributing or transferring retail marijuana or retail marijuana products.

(D) A person who has a financial interest in a Retail Marijuana Testing Facilities is prohibited from holding a financial interest in a medical marijuana business licensed pursuant to the Colorado Medical Marijuana Code, or a financial Interest in any other retail marijuana establishment.

Section 10. Dual Licenses.

Any person who has been licensed by the State of Colorado for multiple licenses to engage in multiple operations or for multiple facilities may apply for such dual operations in the Town of Rico County to the extent that such operations are otherwise permitted by this Ordinance and the Land Use Code.

Section 11. Continuing Compliance Documentation.

Any person licensed for any Retail Marijuana Establishment in the Town of Rico shall demonstrate continued compliance with all state licenses, laws and regulations. Licensees shall provide the Town of Rico with copies of all documents updating information, agents, employees, operations, violations, enforcement actions, or other administrative matters sent to or received from the State of Colorado licensing and enforcement agencies.

Section 12. Issuance of License, Duration, Renewal, License Limitations.

(A) A maximum of three (3) Retail Marijuana Establishment licenses shall be issued by the Local Licensing Authority. The Local Licensing Authority may, by resolution, increase or decrease the number of licenses allowed. An application for renewal of an existing retail marijuana establishment license shall receive a preference over an application for a new retail marijuana establishment license, if the existing business has substantially met all of the requirements of this Ordinance and the Colorado Retail Marijuana Code during the previous license term and is in good standing. If a new retail marijuana store license or a new retail marijuana cultivation license becomes available for issuance after the issuance of the initial licenses, the Town Clerk shall publish a notice stating when the Town will accept applications for such licenses. Any applications received before or after the period described in such notice will be considered null, void and of no effect

(B) Upon issuance of a license, the Town shall provide the licensee with one (1) original of such license for each establishment or facility to be operated by the

licensee in the Town. This original license shall be displayed in a location visible to the public or to enforcement officials. The license shall include the name and address of the licensee, the type of facility permitted, and the address of the facility at which it is to be displayed.

(C) Each license issued pursuant to this Ordinance shall be valid for one (1) year from the date of issuance and may be renewed only as provided by this Ordinance. A renewal application shall be filed not less than sixty (60) days prior to expiration and not more than ninety (90) days from expiration. The timely filing of a renewal application shall extend the current license until a decision is made on the renewal. An untimely application may be accepted upon the payment of a late application fee of \$500 to expedite processing, and such application shall serve to extend the license until a decision is made on the renewal.

(D) Notwithstanding any state law to the contrary, a licensee whose license has expired and for which an application for renewal has not been received prior to the expiration date, shall be deemed to have forfeited its license under this Ordinance. The Town shall not accept a renewal application after the expiration of the license. A licensee whose license expires shall not cultivate, harvest, process, manufacture, produce, or sell retail marijuana or retail marijuana products until a new license has been obtained.

(E) At the sole discretion of the licensing authority, a renewal license may be issued for a period in excess of one (1) year, depending upon the compliance history of the licensee, and such other factors as the licensing authority in its sole discretion may determine are relevant.

Section 13. Authority to Impose Conditions on License, or to Deny License.

The local licensing authority shall have the authority to impose such reasonable terms and conditions on a license or to deny a license or renewal of a license as may be necessary to protect the public health, safety and welfare of the people of the Town of Rico, and to obtain compliance with the requirements of this Ordinance and applicable law.

Section 14. Annual Operations Fee.

Upon issuance of a license or a renewal of a license, the Licensee shall pay to the Town a fee in an amount to be determined by the Board of Trustees by separate Resolution to be sufficient to cover the annual costs of inspections and for the purpose of determining compliance with the provisions of this Ordinance and any other applicable state or local laws or regulations.

Section 15. Signage and Advertising.

All signage and advertising for a Retail Marijuana Establishments shall be in compliance with state laws and regulations, as well as the Town of Rico County Land Use Code, and any applicable special use permit.

Section 16. Security.

All security measures shall be in compliance with state law and regulations, and shall include security surveillance cameras, robbery and burglary alarms, a locking safe affixed to the premises, exterior lighting, and deadbolt locks on all exterior doors. Law enforcement officials may inspect the premises at any time to ensure appropriate security measures are in use, and to ensure compliance with state laws and regulations.

Section 17. Visibility of Activities, Odor and Control of Emissions.

(A) All activities of Retail Marijuana Establishments, including without limitation, cultivation, growing, processing, displaying, selling, storage and packaging, shall be conducted indoors. For purposes of this Ordinance, greenhouse cultivation shall be deemed to occur indoors.

(B) No devices, contrivances, instruments, and paraphernalia for inhaling or otherwise consuming marijuana shall be displayed or kept in a manner so as to be visible from outside the licensed premises.

(C) No licensee shall operate in a manner that causes a nuisance. A licensee shall take appropriate measures and use best efforts to prevent smoke, odors, debris, fluids, and other substances from exiting a retail marijuana facility, and shall be responsible for immediate and full clean-up and correction of any condition creating a nuisance. A licensee shall properly dispose of all materials, items, and other substances in a safe, sanitary and secure manner in accordance with applicable laws and regulations,

Section 18. Sales and Business Licenses Required.

At all times while a license is in effect, the licensee shall possess all required state and local sales tax and/or business licenses

Section 19. Sales and Property Taxes.

Each licensee shall collect and remit all applicable sales, taxes, shall remit applicable real and personal property taxes, and shall remit any applicable excise tax, license fee or annual operations fee.

Section 20. Book and Records.

All books and records required to be maintained by the State of Colorado shall also be subject to inspection by the Town during regular business hours.

Section 21. Nonrenewal, Suspension or Revocation of License.

The local licensing authority may, after notice and hearing, suspend, revoke or refuse to renew a license for good cause, including suspension or revocation of the licensee's state license, or violation of this Ordinance. The local licensing authority is authorized to adopt rules and procedures governing the conduct of such hearings.

Section 22. Violations and Penalties.

In addition to the possible denial, revocation or nonrenewal of a license under the provisions of this Ordinance, any person, including, but not limited to, any licensee, manager or employee of a retail marijuana facility or any customer of such business, who violates any provision of this Ordinance shall be subject to the following penalties:

(A) It shall be a petty offense for any person to violate any provision of this Ordinance. Any person convicted of having violated any provision of this Ordinance may be punished as prescribed by state law.

(B) The operation of a retail marijuana facility or establishment without a valid license issued pursuant to this Ordinance may be enjoined by the Town in an action brought in a court of competent jurisdiction and may be otherwise prosecuted under state or federal law.

(C) The operation of a Retail Marijuana Establishment without a valid license issued pursuant to this Ordinance shall be specifically deemed to be a public nuisance.

Section 23. No Town of Rico Liability; Indemnification.

By accepting a license issued pursuant to this Ordinance, the licensee waives and releases the Town of Rico, its officers, elected officials, employees, attorneys and agents from any liability for injuries, damages, or liabilities of any kind that result from the arrest or prosecution or retail marijuana facility or establishment owners, operators, employees, clients, or customers for a violation of state or federal laws, rules or regulations. All licensees, jointly and severally in the case of more than one, agree to indemnify, defend and hold harmless the Town, its officers, elected officials, employees, attorney and agents. insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including without limitations, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other kind whatsoever arising out of or in any manner connected with the operation of the retail marijuana facility or establishment that is the subject or the license.

Section 24. No Waiver of Governmental Immunity.

In adopting this Ordinance, the Board of Trustees is relying on, and does not waive or intend to waive, by any provision of this Ordinance, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101, *et seq.*, as amended from time to time, or any other limitations right, immunity, or protection otherwise available to the Town, its officers or its employees.

Section 25. Other Laws Remain Applicable.

To the extent the State of Colorado has adopted or adopts in the future any additional or more stringent law or regulations governing the sale or distribution of retail marijuana products, the additional or more stringent law or regulations shall control the establishment or operation of any such facility or establishment in the Town of Rico. Compliance with any applicable state law or regulations shall be deemed an additional requirement for Issuance or denial of any license under this Ordinance, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

In the event that the State of Colorado prohibits the sale or other cultivation, production or distribution of marijuana, any license issued hereunder shall be deemed immediately revoked by operation of law, with no grounds for hearing, appeal or other redress on behalf of the licensee.

The issuance of any license pursuant to this Ordinance shall not be deemed to create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the cultivation, possession, sale, production, distribution, or use of marijuana.

To the extent that any other court of competent jurisdiction or agency of the United States acts to enforce federal laws and regulations or otherwise determines that the issuance of a license, possession, distribution, cultivation, production, sale, distribution or use of marijuana in the State of Colorado is an illegal activity subject to enforcement, the Board of Trustees reserves the right to immediately repeal or amend this Ordinance, and/or to revoke or suspend as a matter of law any and all licenses issued pursuant to this Ordinance.

Section 26. Effective Date.

Pursuant to C.R.S. 31-16-106 and Section 3.5 of the Charter of the Town of Rico, this Ordinance shall be published in full following its initial introduction and reading and published by title only following final adoption by the Board of Trustees, with a statement indicating the effective date of the Ordinance, and that the full text of the Ordinance is available at the office of the Town Clerk.

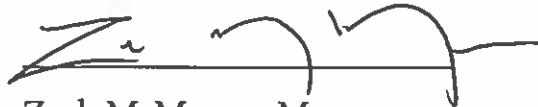
Section 27. Interpretation.

This Ordinance shall be so interpreted and construed as to effectuate its general purpose. Section headings of the Ordinance shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or extent of the provisions of any article or section thereof.

INTRODUCED, READ, APPROVED AS INTRODUCED, AND ORDERED PUBLISHED on first reading by Town of Rico Board of Trustees this 16th day of May, 2018.

READ, APPROVED AND ADOPTED BY FINAL READING by Town of Rico Board of Trustees this 20th day of June, 2018

TOWN OF RICO, COLORADO



Zach McManus, Mayor

ATTEST:



Linda Yellowman, Town Clerk