

ORDINANCE NO. 20

SERIES 2011

AN ORDINANCE AMENDING ARTICLE 5 OF CHAPTER 6 OF THE CRESTED BUTTE MUNICIPAL CODE REGARDING THE LICENSING OF MEDICAL MARIJUANA DISPENSARIES BY REPEALING AND RE-ENACTING ARTICLE 5 AND MAKING CERTAIN OTHER RELATED CONFORMING CHANGES TO THE CODE

WHEREAS, the Town of Crested Butte, Colorado ("**Town**") is a home rule municipality duly and regularly organized and now validly existing as a body corporate and politic under and by virtue of the Constitution and laws of the State of Colorado;

WHEREAS, Article 5 of Chapter 6 of the Crested Butte Municipal Code ("**Code**") contains regulations ("**MMD Regulations**") that govern the licensing of medical marijuana dispensaries;

WHEREAS, on June 7, 2010, the Governor of the State of Colorado signed into law House Bill 10-1284 enacting Title 12, Article 43.3 of the Colorado Revised Statutes ("**Colorado Medical Marijuana Code**"), which regulates, as a matter of state-wide concern, the cultivation, manufacture, distribution and sale of medical marijuana;

WHEREAS, the Colorado Medical Marijuana Code states that on or after July 1, 2011, all businesses engaged in the cultivation, manufacture, distribution or sale of medical marijuana, or in the processing of medical marijuana-infused products, shall be subject to its terms and conditions, and any rules promulgated, pursuant thereto;

WHEREAS, the Colorado Medical Marijuana Code also authorizes local governments to prohibit or regulate medical marijuana businesses, and to adopt regulations consistent with the intent of the Colorado Medical Marijuana Code that are more restrictive than the the Colorado Medical Marijuana Code;

WHEREAS, the Town staff has reviewed and compared the MMD Regulations to the Colorado Medical Marijuana Code and the rules promulgated by the Colorado Medical Marijuana Licensing Authority pursuant thereto and recommends that the MMD Regulations be amended to conform with the Colorado Medical Marijuana Code and that new regulations should be added to the Code that are consistent with the Colorado Medical Marijuana Code that protect the health, safety and welfare of the residents and visitors of Crested Butte; and

WHEREAS, the Town Council has reviewed the Town staff's recommendations and has concluded that the MMD Regulations should be amended to conform with the Colorado Medical Marijuana Code and that new regulations should be added to the Code that are consistent with the Colorado Medical Marijuana Code that protect the

health, safety and welfare of the residents and visitors of Crested Butte as recommended by the Town staff and set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT,

Section 1. Amending Section 16-1-20. Section 16-1-20 is hereby amended by amending and replacing the defined term "Medical marijuana dispensary" with the following:

"Medical marijuana center for purposes of this Chapter 16, means the use of any property, structure, unit, facility or location for a medical marijuana center as defined in the Colorado Medical Marijuana Code, codified at Title 12, Article 43.3, C.R.S."

Section 2. Amending Section 4-2-30. Section 4-2-30 is hereby amended by amending the following defined terms and adding the following defined terms, as applicable:

"Medical marijuana means marijuana as defined in the Colorado Medical Marijuana Code, codified at Title 12, Article 43.3, C.R.S.

Medical marijuana paraphernalia or paraphernalia, for purposes of this Chapter 4, means devices, contrivances, instruments and paraphernalia for inhaling or otherwise consuming medical marijuana including, but not limited to, rolling papers and related tools, water pipes and vaporizers. Such term shall not fall within the definition of "medical supplies" as defined in this Section, and shall not be deemed to be therapeutic devices, but shall rather be deemed to be personal property."

Section 3. Amending Section 16-1-20. Section 16-1-20 is hereby amended by including therein the following new defined term:

"School means a public or private preschool or a public or private elementary, middle, junior high, or high school."

Section 4. Amending Section 16-5-530. Section 16-5-530 is hereby amended by amending subsection (14) thereof:

"(14) Medical marijuana centers."

Section 5. Amending Section 16-8-85. Section 16-8-85 is hereby amended by replacing said Section in its entirety with the following revised Section:

"Section 16-8-85. Criteria for Board decision relative to medical marijuana centers.

No conditional use permit for a medical marijuana center shall be given unless the following criteria are first met:

(1) No medical marijuana center shall be allowed except in accordance with the following location requirements:

a. No medical marijuana center shall be located within 500 feet of any licensed child-care facility at the time of establishment of the medical marijuana center.

b. No medical marijuana center shall be located within 500 feet of any school at the time of establishment of the medical marijuana center.

c. No medical marijuana center shall be located within 175 feet of any public park or playground at the time of establishment of the medical marijuana center.

d. No medical marijuana center shall be located adjacent, as defined in Section 6-5-30 of this Code, to a residential dwelling at the time of the establishment of the medical marijuana center.

e. No medical marijuana center shall be located in a movable or mobile structure.

f. No medical marijuana center may be located in a residential unit of any kind.

g. Medical marijuana centers may not serve as home occupations as defined in Section 16-1-20 of this Code.

h. Medical marijuana centers must have unique physical addresses.

i. Medical marijuana centers must be accessible from public rights-of-way.

(2) Before granting a conditional use permit for a medical marijuana center, the applicant therefor shall first have obtained a medical marijuana center license from the Town as described in Article 5 of Chapter 6 of this Code.

(3) In addition to the conditional use criteria set forth in this Article 8 of this Code, the Board shall consider whether the issuance of a conditional use permit for a medical marijuana center would result in or cause an undue concentration of medical marijuana centers within the Town.

(4) A conditional use permit for a medical marijuana center may not be issued for premises used in conjunction with a conditional use for a restaurant or other use that serves and/or prepares foodstuffs whether in conjunction with medical marijuana or not.

(5) No more than five (5) medical marijuana centers shall be granted a conditional use permit at any given time.

(6) Section 6-5-190 of this Code shall have been complied with prior to the issuance of the conditional use permit for a medical marijuana center.

(7) The conditional use permit for a medical marijuana center shall at all times be conditioned upon the continued existence of the license for a medical marijuana center as described in Article 5 of Chapter 6 of this Code. Where such medical marijuana center license expires or is otherwise terminated or revoked, the corresponding conditional use permit shall similarly expire or otherwise be terminated or revoked without further action of the Town. For purposes hereof, the transfer and reissuance of a license for a medical marijuana center pursuant to Section 6-5-200 of this Code shall not be deemed to be a termination of said license and the related conditional use permit. Such condition and the requirements of Article 5, Chapter 6 of this Code shall be incorporated in the conditional use permit by reference."

Section 6. Amending Section 16-8-100. Subsection (b) of Section 16-8-100 is hereby amended and replaced with the following new subsection (b) which shall read as follows:

"(b) Notwithstanding subsection (a) hereinabove, a conditional permit use for a medical marijuana center shall automatically terminate upon the expiration, termination or revocation of the license for a medical marijuana center issued pursuant to Article 5 of Chapter 6 of this Code. For purposes hereof, the transfer and reissuance of a license for a medical marijuana center pursuant to Section 6-5-200 of this Code shall not be deemed to be a termination of said license and the related conditional use permit. In the case of such a transfer, the license may be reissued in the name of the transferee and the related conditional use permit shall continue to remain in effect under the same conditions and requirements set forth therein, except where changes to the conditional use permit are necessitated under the Code, including, without limitation, on account of any physical change, modification or alteration to the licensed premises as described in Section 6-5-80(g)."

Section 7. Amending Article 5 of Chapter 6. Article 5 of Chapter 6 is hereby amended by replacing said Article in its entirety with the following new Article 5 which shall read as follows:

"ARTICLE 5

Medical Marijuana Center Licensing

Table of Contents:

Section 6-5-10.	Purpose.
Section 6-5-20.	Incorporation of Colorado law.
Section 6-5-30.	Definitions.
Section 6-5-40.	Medical Marijuana Local Licensing Authority.
Section 6-5-50.	Functions and Powers of Local Licensing Authority.
Section 6-5-60.	Optional Premises Cultivation Operations and Medical Marijuana-infused Product Manufacturers Prohibited.
Section 6-5-70.	Town and State Licenses Required.
Section 6-5-80.	Requirements for Application; Ongoing Requirements.
Section 6-5-90.	Duration of License.
Section 6-5-100.	Number of Licenses; First Come First Served
Section 6-5-110.	Processing of New Applications; Public Hearing, Notice, Posting and Publication.
Section 6-5-120.	Processing of Renewal Applications; License Renewal Requirements.
Section 6-5-130.	Initial Application and Renewal Fees.
Section 6-5-140.	Denial of Issuance of License or Renewal.
Section 6-5-150.	Suspension and Revocation of License.
Section 6-5-160.	Authority to Impose Conditions on License.
Section 6-5-170.	License Conditional upon Granting of Conditional Use by Board.
Section 6-5-180.	Contents of License.
Section 6-5-190.	Inspection of the Premises.
Section 6-5-200.	License in Gross; License Transferable.
Section 6-5-210.	Duties of Licensee.
Section 6-5-220.	Posting of License.
Section 6-5-230.	Limitation on Sale of Paraphernalia.
Section 6-5-240.	Restrictions on Sale of Foodstuffs.
Section 6-5-250.	Hours of Operation.
Section 6-5-260.	Signage.
Section 6-5-270.	Required Warnings to Be Posted.
Section 6-5-280.	On-Site Consumption of Medical Marijuana.
Section 6-5-290.	On-Site Consumption of Alcohol.
Section 6-5-300.	Restrictions on Cultivation, Growing and Processing; Manufacturing of Medical Marijuana-infused Products; Storage.
Section 6-5-310.	Display of Medical Marijuana; Deliveries.
Section 6-5-320.	Security Requirements.
Section 6-5-330.	Disposal.
Section 6-5-340.	Sales Tax.
Section 6-5-350.	Recordkeeping; Ledger Required.
Section 6-5-360.	Violation and Penalty; Remedies Cumulative.
Section 6-5-370.	No Waiver of Governmental Immunity.
Section 6-5-380.	No Town Liability.
Section 6-5-390.	Indemnification of Town.

Section 6-5-40. Other Laws Remain Applicable.

Section 6-5-10. Purpose.

The purpose of this Article is to implement the provisions of Title 12, Article 43.3 of the Colorado Revised Statutes, known as the "Colorado Medical Marijuana Code," which authorizes the licensing and regulation of medical marijuana centers, and affords local government the option to determine whether or not to allow certain medical marijuana businesses within their jurisdictions, and to adopt licensing requirements that are supplemental to or more restrictive than the requirements set forth in Colorado law. By adoption of this Article, the Town Council does not intend to authorize or make legal any act that is not permitted under federal or State law.

Section 6-5-20. Incorporation of Colorado law.

The provisions of the Colorado Medical Marijuana Code, and any rules and regulations promulgated thereunder, are incorporated herein by reference, except to the extent that more restrictive or additional regulations are set forth in this Article.

Section 6-5-30. Definitions.

For purposes of this Article the following definitions shall apply:

Adjacent or adjoining means, for purposes of this Section only, adjacent to or contiguous with the proposed location of a medical marijuana center. Adjacency shall not be deemed to exist where a platted or dedicated public street or alley exists between the proposed medical marijuana center and another property. Adjacency shall also not be deemed to exist where the medical marijuana center shares a common ceiling or floor with another premises and where the medical marijuana center and the other property are not otherwise adjacent within the meaning of this definition.

Alcoholic beverage shall have the meaning ascribed to such term in Section 10-7-10 of this Code.

Applicant means any person who has submitted an application for a license or a renewal thereof pursuant to this Article. An applicant must be twenty one (21) years of age or older. If an applicant is an entity, the term applicant as applied in this Article shall include all those persons that have a financial interest in the entity, including, without limitation, the shareholders, members, managers, officers and directors of such entity.

Application means an application for a license submitted pursuant to this Article.

Board means the Board of Zoning and Architectural Review.

Building official means the Town Building Official as defined and referred to elsewhere in this Code.

Cultivation means the process by which a person promotes the germination and growth of a seed to a marijuana plant.

Good cause shall have the meaning ascribed to such term in the Colorado Medical Marijuana Code.

License means a license to operate a medical marijuana center issued by the Town pursuant to this Article.

Licensee means the applicant or its permitted transferee or assignee to which a license has been issued, transferred or assigned pursuant to this Article.

Local Licensing Authority means the Crested Butte Town Council.

Medical marijuana shall have the meaning ascribed to such term in the Colorado Medical Marijuana Code.

Medical marijuana center shall have the meaning ascribed to such term in the Colorado Medical Marijuana Code.

Medical marijuana-infused product shall have the meaning ascribed to such term in the Colorado Medical Marijuana Code.

Medical marijuana-infused product manufacturer shall have the meaning ascribed to such term in the Colorado Medical Marijuana Code.

Medical marijuana paraphernalia or paraphernalia means devices, contrivances, instruments and paraphernalia for inhaling or otherwise consuming medical marijuana including, but not limited to, rolling papers and related tools, water pipes and vaporizers.

Optional premises shall have the meaning ascribed to such term in the Colorado Medical Marijuana Code.

Optional premises cultivation operation shall have the meaning ascribed to such term in the Colorado Medical Marijuana Code.

Patient has the meaning provided in Section 14 of Article XVIII to the Colorado Constitution

Person means a natural person, partnership, association, company, corporation, limited liability company or other organization, or a manager, agent, owner, director, servant, officer or employee thereof.

Premises means a distinct and definite location, which may include a building, part of a building, a room or any other definite contiguous area.

State Licensing Authority shall have the meaning ascribed to such term in the Colorado Medical Marijuana Code.

Section 6-5-40. Medical Marijuana Local Licensing Authority.

There shall be and is hereby created a local medical marijuana licensing authority, hereafter referred to in this Article as the "Local Licensing Authority." The Town Council shall constitute the Local Licensing Authority. The Town Clerk shall function as clerk to the Local Licensing Authority and the Town Attorney shall function as its legal counsel.

Section 6-5-50. Functions and Powers of Local Licensing Authority.

(a) The Local Licensing Authority shall have all the powers of a Local Licensing Authority as set forth in the Colorado Medical Marijuana Code and this Article 5. Such powers shall include, without limitation, the power to require any applicant or licensee to furnish any relevant information in connection with the application or license, the power to promulgate rules and regulations concerning the procedures for hearings before the Local Licensing Authority and the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books and records at any hearing which the Local Licensing Authority is authorized to conduct. Any such subpoenas shall be served in the same manner as a subpoena issued by the District Court for the State of Colorado.

(b) The Local Licensing Authority shall have the power and authority to license medical marijuana centers.

Section 6-5-60. Optional Premises Cultivation Operations and Medical Marijuana-infused Product Manufacturers Prohibited.

Optional premises cultivation operations and medical marijuana-infused product manufacturer businesses are strictly prohibited and the Local Licensing Authority shall not have the power and authority to license such businesses.

Section 6-5-70. Town and State Licenses Required.

It shall be unlawful for any person to establish or operate a medical marijuana center in Crested Butte without first having obtained from the Local Licensing Authority and the State Licensing Authority a license for a medical marijuana center. Such license shall be kept current at all times, and the failure to maintain a current license from both the Town and the State of Colorado shall constitute a violation of this Section.

Section 6-5-80. Requirements for Application; Ongoing Requirements.

(a) A person seeking to obtain or renew a license, or gain a transfer of a license, shall file an application with the clerk for the Local Licensing Authority on forms provided by the clerk.

(b) An application for a license under this Article shall contain, at a minimum, the following information and submittals: (1) application fee; (2) the applicant's personal and identification information; (3) the street address of the proposed medical marijuana center; (4) if the applicant is not the sole owner of the proposed location of the medical marijuana center, a notarized statement from the owner (or co-owners) of such property authorizing the submission of the application; (5) evidence of a right to possess (e.g., deed, lease, option to lease) the property that is the subject of the medical marijuana center; (6) a statement of the applicant's personal, financial and business backgrounds; (7) a complete set of the applicant's fingerprints as taken by the Marshal's Department; (8) a sworn statement to be acknowledged by the applicant and the owner of the premises that the applicant, owner and the employees of the medical marijuana center may be subject to prosecution under State, federal and local controlled substance laws; (9) an acknowledged waiver by the applicant and the owner of the premises that the applicant, owner and employees of the medical marijuana center waive any and all claims against the Town in connection with the approval and subsequent operation of the medical marijuana center; (10) an acknowledgement and consent that the Town will conduct a background investigation, including, without limitation, criminal history check, and the Town will be entitled to full and complete disclosure of all financial records of the medical marijuana business, including records of deposit, withdrawals, balances and loans; (11) drawings of the premises and all entry ways and exits thereto as required by the Building Official; (12) proof of State of Colorado residency; (13) all of those items required in the application form; and (14) any additional information and submittals that the Local Licensing Authority reasonably determines to be necessary in connection with the investigation and review of the application.

(c) For purposes of items (2), (6), (8), (10), (12) and (14) above, the proposed manager of the medical marijuana center, all persons having a financial interest in the medical marijuana center and, if the applicant is an entity, all persons having a financial interest in the entity shall be expected to comply with said application requirements.

(d) Medical marijuana centers shall submit the following at the time of submittal of the application:

(1) An operations plan for the medical marijuana center which shall contain, without limitation: (i) a security plan that complies with this Article, the Colorado Medical Marijuana Code and any rules promulgated by the State Licensing Authority; (ii) hours of operation; (iii) number of employees; and (iv) a description of all products to be sold.

(2) If the applicant is a business entity, information regarding the entity, including, without limitation, the name and address of the entity, its legal status and proof of registration (e.g. articles of incorporation, articles of organization) with, or certificate of good standing from, the Colorado Secretary of State, as applicable, and organizational documents (e.g., operating agreement, stockholders agreement, partnership agreement, etc.).

(3) A complete lighting plan that is in compliance with the applicable requirements contained in this Code.

(4) A complete signage plan that is in compliance with the applicable requirements contained in this Code.

(5) Any additional supporting documentation that the Local Licensing Authority determines to be necessary in evaluating the application.

(e) Following receipt of a license for a medical marijuana center from the Town and a conditional use permit from the Board, the licensee shall apply for and obtain a Town sales tax license and a Town business license before commencing operations.

(f) The licensee shall at all times maintain an active, up to date and valid, State of Colorado sales tax license, Town sales tax license and Town business license.

(g) The licensee shall make no physical change, modification or alteration to the licensed premises without the prior approval of the Local Licensing Authority, and the Board where required. For purpose hereof, a physical change, modification or alteration of premise shall be as described in the Colorado Medical Marijuana Code and the regulations adopted pursuant thereto including Section 16.115 of such regulations.

(h) The licensee shall at all times keep and maintain the application and all associated submittals and supporting documentation up to date and current during the license term and any renewal.

(i) A license issued pursuant to this Article does not eliminate the need for the licensee to obtain any other required Town permits related to the operation of the approved medical marijuana center, including, but not limited to, any additional required conditional use permits (i.e., in addition to the conditional use permit for a medical marijuana center), development approvals and building permits required by this Code.

Section 6-5-90. Duration of License.

Each license shall be valid for one (1) year from the date of issuance, and may be renewed only as permitted in this Article 5. All renewals of a license shall be for no more than one (1) year.

Section 6-5-100. Number of Licenses; First Come First Served.

(a) No more than five (5) licenses for medical marijuana centers shall be issued at any given time.

(b) Applications shall be received by the clerk for the Local Licensing Authority on a first-come, first served basis. The clerk for the Local Licensing Authority may not accept applications for new licenses until such time as the State Licensing Authority is accepting applications for new licenses. Such requirement shall similarly apply to those medical marijuana center business already licensed by a local licensing authority and seeking to apply with the Town for a license as contemplated in Section 12-43.3-103(2)(d)III, C.R.S.

Section 6-5-110. Processing of New Applications; Public Hearing, Notice, Posting and Publication.

Applications for licenses shall be processed by the Local Licensing Authority pursuant to the requirements and procedures of the Colorado Medical Marijuana Code, inclusive of, without limitation, the notice and hearing requirements contained in Section 12-43.3-302, C.R.S. Applications for new licenses shall only be approved after a hearing held by the Local Licensing Authority in accordance with the Colorado Medical Marijuana Code.

Section 6-5-120. Processing of Renewal Applications; License Renewal Requirements.

All license renewal applications shall be applied for by the licensee thereof, and processed by the Local Licensing Authority, pursuant to the Colorado Medical Marijuana Code, inclusive of, without limitation, the provisions contained in Section 12-43.3-311, C.R.S. Except where the Local Licensing Authority holds a hearing on account of complaints filed against the subject license or licensee, or the license or licensee has a history of violations, or there are allegations against the license or licensee that would constitute good cause, the clerk shall process such renewal application administratively pursuant to the Colorado Medical Marijuana Code and this Article and issue the license without a hearing of the Local Licensing Authority.

Section 6-5-130. Initial Application and Renewal Fees.

(a) An applicant shall pay the Town a non-refundable application fee when the application is filed and then annually thereafter as part of any renewal. The purpose of the fee is to cover the administrative costs of processing the application and renewal and to defray the costs and expenses incurred by the Town in regulating the medical marijuana center and enforcing the requirements of this Article 5. Application and renewal fees shall be set by resolution of the Town Council from time to time.

(b) If the conditional use permit is denied by the Board, the application fee for the permit shall not be returned to the applicant but shall instead be deemed liquidated.

Section 6-5-140. Denial of Issuance of License or Renewal.

The Local Licensing Authority shall deny any application, whether for an initial application or any renewal, that does not meet the requirements of this Article and the Colorado Medical Marijuana Code. The Local Licensing Authority may also deny any application that contains any false, misleading or incomplete information, and for good cause shown. Denial of an application for a license shall not be subject to administrative review but rather only to review by a court of competent jurisdiction.

Section 6-5-150. Suspension and Revocation of License.

A license may be suspended and/or revoked in accordance with the requirements and procedures of the Colorado Medical Marijuana Code, inclusive of, without limitation, the provisions contained in Section 12-43.3-601, C.R.S.

Section 6-5-160. Authority to Impose Conditions on License.

The Local Licensing Authority shall have the authority to impose any and all such reasonable terms and conditions on a license and any renewal thereof as may be necessary to protect the public health, safety and welfare, and to obtain compliance with the requirements of this Article, the Colorado Medical Marijuana Code and applicable law.

Section 6-5-170. License Conditional upon Granting of Conditional Use by Board.

Notwithstanding anything contained in this Article, the issuance of the license shall be conditioned upon the Board granting a conditional use permit for the medical marijuana center. Should the Board not grant a conditional use permit for the medical marijuana center, the license shall be void ab initio. Should a license expire, be terminated or not renewed, the conditional use for the medical marijuana center shall similarly expire or be terminated without further action by the Board or Town Council.

Section 6-5-180. Contents of License.

A license shall contain, without limitation, the following information: (i) the name of the licensee; (ii) the effective date of the license; (iii) the address of the premises connected with the license to operate the medical marijuana center; (iv) any conditions of approval imposed upon the license by the Local Licensing Authority pursuant to Section 6-5-120 of this Code; (v) the date of the expiration of the license; (vi) reference to this Article 5. A permit must be signed by the Town Clerk to be valid.

Section 6-5-190. Inspection of the Premises.

Prior to the issuance of a conditional use permit, the premises at which the medical marijuana center will be operated shall be inspected by the Building Official to determine compliance with the Town's building and technical codes. No conditional use permit shall be issued if the premises at which the medical marijuana center will be operated fails to comply at the time of issuance of the permit with the Town's building and technical codes. Throughout the term of the license, the Building Official may inspect the premises at which the medical marijuana center is operated to determine continuing compliance with the Town's building and technical codes. Access to such premises may be obtained by the Building Official in accordance with the applicable provisions of this Code.

Section 6-5-200. License in Gross; License Transferrable.

The license shall be deemed to be a license in gross. The license is transferable and assignable; provided that, the requirements of the Colorado Medical Marijuana Code are at all times satisfied by the transferee or assignee.

Section 6-5-210. Duties of Licensee.

It is the duty and obligation of each licensee to:

(a) comply with all of the terms and conditions of the license, and any special conditions on the license imposed by the Local Licensing Authority pursuant to Section 6-5-120 of this Code;

(b) comply with all of the requirements of this Article;

(c) comply with all other applicable provisions of this Code, Town ordinances and other Town requirements;

(d) comply with all State laws and administrative regulations pertaining to the use of medical marijuana, including, but not limited to, Section 14 of Article XVIII of the Colorado Constitution; Section 18-18-406.3, C.R.S.; and the Colorado Medical Marijuana Code and the administrative regulations pertaining to medical marijuana pursuant thereto; and

(e) if the Local Licensing Authority has a reasonable suspicion that the licensee is violating or has violated the terms and conditions of the license, the licensee shall allow inspection of its records, building or structure and operations by the Town for the purpose of determining the licensee's compliance with the terms and conditions of the license. Nothing in this section shall abrogate or affect, however, (i) any applicable confidentiality provision of State or federal law, or (ii) any applicable statutory or constitutional prohibition against unreasonable searches and seizures 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 in all cases prevail and control.

Section 6-5-220. Posting of License.

The license shall be continuously posted in a conspicuous location at the medical marijuana center.

Section 6-5-230. Limitation on Sale of Paraphernalia.

Devices, contrivances, instruments and paraphernalia for inhaling or otherwise consuming medical marijuana including, but not limited to, rolling papers and related tools, water pipes and vaporizers may lawfully be sold at a medical marijuana center; provided that, such items may only be sold or provided to patients or primary caregivers and as are reasonably necessary for the consumption of medical marijuana (as opposed to the consumption of marijuana inconsistent with State law, including, without limitation, Section 14 of Article XVIII of the Colorado Constitution; the Colorado Medical Marijuana Code and administrative regulations pertaining to medical marijuana pursuant thereto; and Section 18-18-406.3, C.R.S.).

Section 6-5-240. Restrictions on Sale of Foodstuffs.

Medical marijuana centers may not be co-located with food cooking and preparation facilities preparing, producing or assembling food whether for medical or non-medical purposes. A medical marijuana center may not sell non-medical food products which are similar to the medical marijuana-infused products being sold in the medical marijuana center such as, but not limited to, medical marijuana brownies or lolly-pops. This does not include medicine products such as tinctures. Alcohol may not be sold at the medical marijuana center.

Section 6-5-250. Hours of Operation.

Medical marijuana centers may be open for the sale of medical marijuana during the hours of 9:00 a.m. to 7:00 p.m. only, seven days per week.

Section 6-5-260. Signage.

All signage for a medical marijuana center shall comply with the requirements of Article 18 of Chapter 16 of this Code. In addition, no signage shall use the word "marijuana," "cannabis," or any other word or phrase commonly understood to refer to marijuana unless such word or phrase is immediately preceded by the word "medical," nor shall such signage display a graphic/image of any portion of a marijuana plant.

Section 6-5-270. Required Warnings to Be Posted.

There shall be posted in a conspicuous location in each medical marijuana center a legible sign containing warnings that: (i) the diversion of marijuana for non-medical purposes is a violation of State law; (ii) 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; (iii) loitering in or around the medical marijuana dispensary is prohibited by State law; and (iv) possession and distribution of marijuana is a violation of federal law. Signage shall also comply with the Colorado Medical Marijuana Code and rules promulgated by the State Licensing Authority.

Section 6-5-280. On-Site Consumption of Medical Marijuana.

The consumption, ingestion or inhalation of medical marijuana on or within the premises of a medical marijuana center is prohibited.

Section 6-5-290. On-Site Consumption of Alcohol.

The sale, ingestion or consumption of an alcoholic beverage within a medical marijuana center is prohibited.

Section 6-5-300. Restrictions on Cultivation, Growing and Processing; Manufacturing of Medical Marijuana-infused Products; Storage.

(a) The growing, cultivation and processing of marijuana of any kind on or within the premises of a medical marijuana center is strictly prohibited.

(b) The manufacturing of medical marijuana-infused products on or within the premises of a medical marijuana center is strictly prohibited.

(c) All medical marijuana dispensing activities shall be conducted indoors.

(d) All medical marijuana product storage shall be indoors. All medical marijuana and paraphernalia shall be in a sealed/locked cabinet and out of plain sight view from within the medical marijuana center except when being accessed for distribution.

(e) Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting the medical marijuana dispensary must be provided at all times. In the event that any odors, debris, items, dust, fluids or other substances shall exit the medical marijuana center, the owner or the subject premises and the licensee shall be jointly and severally responsible for such conditions and shall be responsible for full clean up and or correction of this condition immediately. The medical marijuana center shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner.

Section 6-5-310. Display of Medical Marijuana; Deliveries.

(a) No medical 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 the medical marijuana dispensary. Products, accessories and associated paraphernalia shall not be visible from a public sidewalk or right of way.

(b) All deliveries of medical marijuana and products, accessories and associated paraphernalia to medical marijuana centers shall be conducted discreetly and out of plain sight of all other persons not associated with the medical marijuana dispensary and shall comply with the Colorado Medical Marijuana Code.

Section 6-5-320. Security Requirements.

The licensee shall provide security as provided in, and the premises shall at all times comply with, the security requirements set forth in the Colorado Medical Marijuana Code and any regulations promulgated pursuant thereto.

Section 6-5-330. Disposal.

The disposal of, without limitation, unwanted medical marijuana, by-products and paraphernalia shall be done in accordance with the provisions of the Colorado Medical Marijuana Code and any regulations promulgated pursuant thereto.

Section 6-5-340. Sales Tax.

Each licensee shall collect and remit Town sales tax on all medical marijuana, products, accessories, associated paraphernalia and other tangible personal property sold by the licensee at the medical marijuana center in accordance with this Code.

Section 6-5-350. Recordkeeping; Ledger Required.

(a) Each licensee shall maintain an accurate and complete record of all medical marijuana, products, accessories, associated paraphernalia and other tangible personal property sold or dispensed at the medical marijuana dispensary.

(b) The licensee's records described in subsection (a) of this Section shall be available for inspection by the Marshal's Department pursuant to Rule 41, C.R.C.P. or Rule 241 of the Colorado Municipal Court Rules of Procedure.

(c) 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.

(d) A licensee shall keep a ledger which shall record the following information, and which shall be made available to the Town upon request:

- (1) the quantity of medical marijuana dispensed in each transaction;
- (2) the date and time the medical marijuana was sold or dispensed;
- (3) the type and source of medical marijuana dispensed;
- (4) the total amount paid by the patient for the transaction for all goods, products and services provided or sold at the medical marijuana dispensary;
- (5) each patient's medical marijuana identification card number, and any other identifying information permitted by law; and
- (6) confirmation that the licensed confirmed the identity of the patient receiving the medical marijuana with a valid photo identification.

Section 6-5-360. Violation and Penalty; Remedies Cumulative.

Any person who violates any of the provisions of this Article shall be subject to the violation and penalty provisions set forth in Article 4 of Chapter 1 of this Code. All remedies contemplated in this Section shall be deemed cumulative and concurrent.

Section 6-5-370. No Waiver of Governmental Immunity.

In adopting this Article, the Town Council is relying on, and does not waive or intend to waive by any provision of this Article, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) 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, at law and/or in equity.

Section 6-5-380. No Town Liability.

By accepting a license issued pursuant to this Article the licensee, jointly and severally if more than one, waives and releases the Town, its officers, elected officials, employees, attorneys, insurers, insurance pools and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of dispensary owners, operators, employees, clients or customers for a violation of State or federal laws, rules or regulations.

Section 6-5-390. Indemnification of Town.

By accepting a license issued pursuant to this Article, the licensee, jointly and severally if more than one, shall indemnify, defend and hold harmless the Town, its officers, elected officials, employees, attorneys, agents, insurers and insurance pool against all liability, claims, damages 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, claim, damage or demand of any kind whatsoever, which arise out of or are in any manner connected with the operation of the medical marijuana center 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, losses, damages or demands at its expense, and to bear all other costs and expenses related thereto, including court costs and attorneys' fees.

Section 6-5-400. Other Laws Remain Applicable.

The provisions of this Article do not, and are not intended to, protect licensees, operators, employees, customers, property owners and clients of a permitted medical marijuana center from prosecution pursuant to any laws that may prohibit the growing, cultivation, sale, use, distribution or possession of controlled substances. In addition, as of the date of the adoption of this Article the growing, cultivation, sale, possession, distribution and use of marijuana remains a crime in violation of federal controlled substances laws and this Article affords no protection against prosecution under such federal laws. Licensee, operators, employees, customers, property owners and clients of the permitted medical marijuana center assume any and all risk and any and all liability arising or resulting from the operation of the medical marijuana center. Further, to the greatest extent permitted by law, any actions taken under the provisions of this Article by any public officer or officers, elected or appointed officials, employees, attorneys and agents of the Town shall not become a personal liability of such person or of the Town."

Section 8. Severability. If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance as an entirety, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 9. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision thereof that is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 3rd DAY OF OCTOBER, 2011.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 17th DAY OF OCTOBER, 2011.

TOWN OF CRESTED BUTTE, COLORADO

By: *Leah B. Williams*
Leah B. Williams, Mayor

ATTEST:

Eileen Hughes
Eileen Hughes, Town Clerk

[SEAL]



