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Chuck Broerman
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El Paso County, CO

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RESOLUTION NO. 21- 93

BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO

RESOLUTION TO APPROVE AMENDED EL PASO COUNTY MEDICAL MARIJUANA POLICY

WHEREAS, pursuant to C.R.S., §§ 30-11-101(1)(d) and 30-11-107(1)(e), the board of County Commissioners of El Paso County, Colorado (hereinafter "Board") has the legislative authority to make all contracts and manage the business and concerns of the County: and

WHEREAS, pursuant to C.R.S. 44-10-101, *et seq.*, C.R.S. 29-20-101, *et seq.*, C.R.S. 30-11-401 *et seq.*, and C.R.S. 30-28-101, *et seq.*; and

WHEREAS, the BOCC desires to amend the El Paso County Medical Marijuana Policy with the most recent amendment at Resolution No. 17-119, to maintain consistency with state law and in furtherance of the public health, safety and welfare.

NOW, THEREFORE, BE IT RESOLVED the Board of County Commissioners of El Paso County, Colorado, hereby adopts and approves the amended El Paso County Medical Marijuana Policy, attached hereto and incorporated herein as Exhibit A, and that the Clerk and staff are permitted to make ministerial corrections, such as correcting typos or formatting, if necessary.

BE IT FURTHER RESOLVED that this Resolution hereby repeals and replaces all previous resolutions concerning the medical marijuana policy and application for medical marijuana licenses.

BE IT FURTHER RESOLVED that Stan VanderWerf, Chair of the Board of County Commissioners, or Cami Bremer, Vice Chair of the Board of County Commissioners, on behalf of the Board, are hereby authorized to execute any and all documents necessary to carry out the intent of the Board as described herein.

DONE THIS 16th day of March 2021, at Colorado Springs, Colorado.

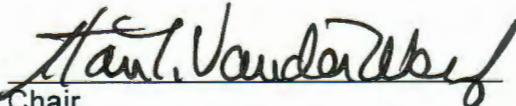
ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By:


Chuck Broerman
County Clerk & Recorder

By:


Chair

EL PASO COUNTY MEDICAL MARIJUANA POLICY

Section 1: Purpose

The purpose of the El Paso County Medical Marijuana Policy (“Policy”) is to protect the public health, safety and welfare by regulating the operation of Medical Marijuana Facilities (as defined below) and the conduct of persons owning and operating them, by mitigating the negative impacts that Medical Marijuana Facilities may have on the communities in which they operate, and by establishing a local licensing framework that effectively and fairly enforces the regulations and standards for them.

Section 2: Authority

This Policy is adopted pursuant to C.R.S. 44-10-101, *et seq.*, C.R.S. 29-20-101, *et seq.*, C.R.S. 30-11-401 *et seq.*, and C.R.S. 30-28-101, *et seq.*

Section 3: Definitions

- 3.1 Unless otherwise defined by this Policy, all terms used herein shall have the same meaning as set forth in the Colorado Marijuana Code, C.R.S. 44-10-101, *et seq.*, and any regulations promulgated thereunder.
- 3.2 “Adjacent” means sharing all or a portion of a lot line or parcel or tract boundary line.
- 3.3 “Alcohol Beverage” shall have the same meaning as set forth in C.R.S. 44-3-103(2).
- 3.4 “Board” means the Board of County Commissioners of El Paso County, Colorado.
- 3.5 “Colorado Marijuana Code” means C.R.S. 44-10-101, *et seq.*, and any regulations promulgated thereunder.
- 3.6 “County Clerk” means the El Paso County Clerk and Recorder.
- 3.7 “Planning and Community Development” means the El Paso County Planning and Community Development Department.
- 3.8 “Land Development Code” means the El Paso County Land Development Code.
- 3.9 “Medical Marijuana Business” means a medical marijuana store, a medical marijuana cultivation facility, or a medical marijuana products manufacturer, as those terms are defined in C.R.S. 44-10-103.
- 3.10 “Religious Institution” shall have the same meaning as set forth in the Land Development Code.

3.11 “Sheriff’s Office” means the El Paso County Sheriff’s Office.

Section 4: General Provisions

- 4.1 The provisions of this Policy are consistent with the Colorado Marijuana Code. To the extent this Policy is silent as to any particular definition, regulation or subject matter, the applicable provisions of the Colorado Marijuana Code shall govern. The provisions of this Policy shall apply throughout the unincorporated area of El Paso County.
- 4.2 Local licenses shall be valid for a period of one year.
- 4.3 The Board shall be the local licensing authority with respect to all applications and actions.
- 4.4 The El Paso County Attorney shall advise the Board on legal matters related to the Colorado Marijuana Code and this Policy. The County Attorney shall designate one or more Assistant County Attorneys to act as legal advisor to the Sheriff’s Office and the County Clerk on legal matters related to the Colorado Marijuana Code and this Policy and as prosecutor in suspension and revocation matters on behalf of the Sheriff’s Office.
- 4.5 The Board shall, from time to time, set application and licensing fees by resolution and approve all application and licensing forms that are not provided by the Colorado Department of Revenue.
- 4.6 If any application is denied by the Board or is withdrawn by the applicant prior to approval, all license fees, but no application fees, shall be refunded.
- 4.7 It is unlawful to operate a Medical Marijuana Business within the unincorporated area of El Paso County without a valid local license issued in accordance with this Policy and a valid state license issued by the Colorado Department of Revenue.
- 4.8 All new licenses, license renewals, changes of location, transfers of ownership, and modifications of premises approved pursuant to this Policy shall be expressly conditioned upon the same being approved by the Colorado Department of Revenue. Denial of the application by the Colorado Department of Revenue shall be grounds for revocation of the local license or approval.
- 4.9 With respect to all application types, the County Clerk shall not be responsible for investigating the background of any individual, the financial information, assets and history of any individual or business entity, the corporate and ownership structure of any business entity, or any financial agreement required to be provided pursuant to the Colorado Marijuana Code.
- 4.10 No license shall be issued to an medical marijuana cultivation facility that is connected with a medical marijuana business located outside El Paso County. No license shall be issued to a medical marijuana business that is connected with an medical marijuana cultivation facility located outside El Paso County.

4.11 El Paso County shall not issue local licenses for medical marijuana testing facilities or medical marijuana transporters.

Section 5: New License Applications

5.1 An applicant seeking a new license for a Medical Marijuana Business shall file a complete application, including all required forms and fees, with the County Clerk.

5.2 Upon a determination that a completed application, including all required forms and fees, for a new license has been received, the County Clerk shall submit copies of the application to the following agencies for the following purposes. Upon completion, these agencies shall submit their written findings and conclusions to the County Clerk.

5.2.1 The Sheriff's Office shall conduct background investigations of the applicant and all related persons for whom background investigations are authorized and site inspections of the proposed licensed premises.

5.2.2 Planning and Community Development shall establish compliance with applicable Land Development Code regulations and shall determine the distance from the proposed Medical Marijuana Business to the locations listed in Section 5.3.2.

5.3 Upon receipt of the information provided by the Sheriff's Office and Planning and Community Development, the County Clerk shall schedule the license application for a hearing before the Board. Notwithstanding the foregoing, an application for a new license that does not meet the following requirements shall not be scheduled for hearing, no further action shall be taken on the application, and all license fees, but no application fees, shall be refunded.

5.3.1 The proposed premises shall not be at a location that is the same as or within 1000 feet of a location for which, within the two years immediately preceding the date of the application, the Board has denied an application for the same type of license due to the nature of the use or other concern related to the location.

5.3.2 The proposed premises shall not be on the same lot, parcel or tract as, shall not be adjacent to, and shall not be within 1000 feet of the following:

- a lot, parcel or tract where a residential use exists or is a principal allowed use under the Land Development Code
- a school
- the principal campus of a college, university or seminary
- a public park
- a religious institution
- a state-licensed drug or alcohol treatment facility
- a state-licensed childcare facility or home

Distances shall be computed by direct measurement from the nearest property line of the land use set forth above to the nearest portion of the building in which medical marijuana is to be sold, using a route of direct pedestrian access.

Any Medical Marijuana Business that complied with and received temporary land use approval pursuant to Resolutions No. 09-469 and 10-230 and subsequently received state and local licenses may continue to operate despite noncompliance with this Section. Such facility, however, may not submit a transfer of ownership application.

- 5.3.3 The applicant must or will be entitled to possession of the proposed premises under a lease, rental agreement, or other arrangement for possession of the premises or by virtue of ownership of the premises.
- 5.4 At the hearing on a new license application, and prior to making its decision to approve or deny the application, the Board may consider the factors set forth in C.R.S. 44-10-303(2) and C.R.S. 44-10-310 as well as compliance with the provisions of the Colorado Marijuana Code and this Policy.
- 5.5 The Board may deny the application for a new license for good cause, subject to judicial review.
- 5.6 No license approved by the Board shall be issued until the Clerk to the Board Department inspects the licensed premises to determine compliance with C.R.S. 44-10-304(4) and this Policy.
- 5.7 If the application for a new license is denied by the Board or withdrawn by the applicant, all license fees, but no application fees, shall be refunded.

Section 6: Public Notice

- 6.1 Public notice shall be required for all new and change of location applications. Notwithstanding the foregoing, any applicant for a change of location to premises located on the same lot or parcel as the existing licensed premises shall not be required to provide public notice.
- 6.2 The applicant shall mail a notice to all property owners adjacent to and within one-half mile of the subject property, to be measured without regard for governmental or quasi-governmental jurisdictional boundaries. The public notice shall be sent via regular U.S. Mail, First Class Postage prepaid and addressed to property owners at the addresses contained in the records of the El Paso County Assessor's Office. Certificates of Mailing shall be purchased from the post office to provide proof of mailing.

- 6.3 The public notice shall contain the following information: applicant's name and address, name and address of the officers, directors, or manager, trade name, proposed license type, date of application address of proposed premises and hearing date.
- 6.4 Public notice shall be mailed at least two weeks prior to any public hearing on the application.
- 6.5 No later than one week prior to the scheduled hearing before the Board, the applicant shall submit or cause to be submitted to the County Clerk a notarized affidavit, signed and sworn to by the individual who completed the mailing, a list of the property owners and their addresses to whom public notice was sent, and the Certificates of Mailing purchased from the post office.

Section 7: License Renewals

- 7.1 Upon a determination by the County Clerk that the application does not require scheduling for a hearing as set forth in Section 7.3, the application shall be deemed approved and the Chair or Vice Chair of the Board shall have the authority to sign any documentation necessary for such approval.
- 7.2 License renewal applications shall be scheduled for a hearing before the Board if one of the following circumstances exists:
 - 7.2.1 A complaint has been filed against the licensee with the County Clerk or the Sheriff's Office during the current license period, and the County Attorney's Office has determined that sufficient evidence exists to support the complaint.
 - 7.2.2 One or more violations of the Colorado Marijuana Code, this Policy or any other conditions placed upon the license have occurred during the current license period.
 - 7.2.3 There are allegations against the licensee that, if true, would constitute good cause for denial, and the County Attorney's Office has determined that sufficient evidence exists to support the allegations.
- 7.3 License renewal applications received within 90 days after the expiration date of the license shall be subject to a late renewal fee as set by the Board.
- 7.4 The Board may refuse to renew any license for good cause, or if the licensed premises have been inactive for at least one year without good cause, subject to judicial review.

Section 8: Change of Location

- 8.1 An applicant seeking to change the location of an existing license shall file a complete application, including all required forms and fees, with the County Clerk.

- 8.2 Upon a determination that a completed application, including all required forms and fees, for a change of location has been received, the County Clerk shall submit a copy of the application to Planning and Community Development for the purposes set forth in Section 5.2.2. Upon completion, Planning and Community Development shall submit its written findings and conclusions to the County Clerk.
- 8.3 Upon receipt of the information provided by Planning and Community Development, the County Clerk shall schedule the change of location application for a hearing before the Board. Notwithstanding the foregoing, an application for a change of location that does not meet the requirements of Section 5.3 shall not be scheduled for hearing, no further action shall be taken on the application, and all license fees, but not the application fees, shall be refunded.
- 8.4 The applicant shall comply with Section 6 if applicable.
- 8.5 In making its decision whether to grant or deny the change of location application, the Board shall consider the provisions of the Colorado Marijuana Code, this Policy and all reasonable restrictions that are or may be placed upon the new location by the Board.
- 8.6 No approval of an application for change of location shall become effective until the Clerk to the Board Department inspects the licensed premises to determine compliance with C.R.S. 44-10-304(4) and this Policy.

Section 9: Transfer of Ownership

- 9.1 An applicant seeking to transfer ownership of an existing license or any interest therein shall file a complete application, including all required forms and fees, with the County Clerk.
- 9.2 Upon a determination that a completed application, including all required forms and fees, for a transfer of ownership has been received, the County Clerk shall forward a copy of the application to the Sheriff's Office for the purpose of conducting background investigations of the applicant and all related persons for whom background investigations are authorized. Upon completion, the Sheriff's Office shall submit its written findings and conclusions to the County Clerk.
- 9.3 Upon receipt of the information provided by the Sheriff's Office, the County Clerk shall schedule the transfer of ownership application for a hearing before the Board.
- 9.4 In making its decision whether to grant or deny the transfer of ownership application, the Board shall consider only the requirements of the Colorado Marijuana Code and this Policy.

Section 10: Modification of Premises

- 10.1 An applicant seeking to modify licensed premises shall file a complete application, including all required forms and fees, with the County Clerk.
- 10.2 Upon a determination that a completed application, including all required forms and fees, for a modification of premises has been received, the County Clerk shall, if the footprint of the licenses premises is proposed to be changed, forward a copy of the application to Planning and Community Development for the purposes set forth in Section 5.2.2. Upon completion, Planning and Community Development shall submit its written findings and conclusions to the County Clerk.
- 10.3 Upon receipt of the information provided by Planning and Community Development, or if no such review is required, the County Clerk shall schedule the application for a hearing before the Board. Notwithstanding the foregoing, an application for modification of premises that does not meet the requirements of Section 5.3 shall not be scheduled for a hearing and no further action shall be taken on the application.
- 10.4 In making its decision whether to grant or deny the modification of premises application, the Board shall consider only the requirements of the Colorado Marijuana Code and this Policy.

Section 11: Hearings

- 11.1 Public notice of all hearings scheduled before the Board shall be published by the County Clerk and posted by the applicant in accordance with C.R.S. 44-10-303(1). Applicants shall provide to the County Clerk an affidavit of posting on a form supplied by the County Clerk.
- 11.2 The decision of the Board shall be based solely on competent evidence presented at the public hearing, and a proper weighing thereof. Rules of evidence shall not be strictly applied unless otherwise determined by the Board, in its discretion.
- 11.3 Hearings shall be conducted according to the procedures set forth in the Board's Legislative and Parliamentary Rules and Procedures, adopted by resolution.
- 11.4 The following documents, as applicable to the particular hearing, shall be deemed admitted as exhibits in the Board's record of proceedings unless the Board determines otherwise after an objection:
 - agenda item summary
 - state application
 - evidence of possession of premises
 - depictions of premises submitted pursuant to C.R.S. 44-10-301(2)
 - affidavit of public notice
 - results of background investigation
 - affidavit of posting
 - certified published legal notice of hearing

- copy of letter of findings

11.5 If the Board considers the criminal history record of an applicant or related person in determining the qualification of said applicant to hold a license, the Board must also consider any information provided by the applicant or related person regarding such criminal history record as set forth in C.R.S. 44-10-307(4)(a).

Section 12: Standards of Operation

12.1 There shall be no possession or consumption of any alcohol beverage on any licensed premises.

12.2 No one under the age of 18 shall be allowed on any licensed premises unless such person is a medical marijuana patient and is accompanied by his or her primary caregiver, or unless such person is under the age of 10 and is accompanied by his or her parent or guardian who is a patient or primary caregiver.

12.3 A licensee or an owner or manager of a licensed premises shall report all known criminal activity occurring within the licensed premises or on the lot or parcel on which the licensed premises sits to the Sheriff's Office.

12.4 Medical Marijuana Businesses shall not store or display medical marijuana and medical marijuana products in such a manner that it is visible from outside the licensed premises.

12.5 Licensed premises shall be constructed, altered, maintained and operated in compliance with the Pikes Peak Regional Building Code and applicable fire codes. If the licensed premises is not located within an established fire protection district, then it must be equipped with a fire alarm system that is monitored by a third party and that meets the applicable National Fire Protection Association standards for fire alarms.

12.6 Medical marijuana cultivation facilities shall install and maintain active carbon filtration systems such that the odor of marijuana is not detectable at the exterior of the licensed premises or on the same or an adjacent lot, parcel or tract.

12.7 Medical Marijuana Businesses shall keep in force and effect at all times workmen's compensation insurance as required by statute, general liability insurance with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate.

12.8 The following security measures are required for all medical marijuana centers:

12.8.1 All medical marijuana center inventory and cash shall be stored in a safe or vault affixed to the building structure during non-business hours.

12.8.2 Monitored panic alarm systems shall be installed and maintained in good working order.

12.9 The following signage standards shall apply to all Medical Marijuana Facilities:

12.9.1 Exterior signage must comply with Chapter 6 of the Land Development Code, but cannot use “marijuana,” “cannabis” or other words, parts of words, phrases or symbols commonly understood to refer to marijuana unless immediately preceded by the word “medical.” A cross symbol, similar to the universally recognized symbol for a facility offering first aid, may not be used in on- or off-premise signs.

12.9.2 There shall be posted in a conspicuous location within the licensed premises a sign or signs containing the following warnings. The warnings shall be legible and printed in all capital letters of at least one-half inch in height.

12.9.2.1 USE, POSSESSION, CULTIVATION OR DISTRIBUTION OF MARIJUANA IS A VIOLATION OF FEDERAL LAW.

12.9.3 There shall be posted in a conspicuous location within the licensed premises a legible sign containing the name and contact information of the owner(s) and manager(s) of the Medical Marijuana Facility.

12.10 No medical marijuana center shall use the term “pharmacy,” “pharmacist,” “pharmaceutical,” “Rx” or any term of similar import or modified spelling thereof, in the name of the medical marijuana center or in the display of any sign, advertisement or other device.

12.11 Hours of Operation. Medical marijuana businesses shall not sell or serve medical marijuana or medical marijuana products at any time other than between the hours of 8:00 a.m. and 11:59 p.m., Monday through Sunday.

Section 13: Suspension and Revocation

13.1 No license suspension or revocation proceeding shall be scheduled for a hearing before the Board unless the El Paso County Attorney’s Office has determined that probable cause exists to believe that a violation of the Colorado Marijuana Code, this Policy or the terms and conditions of the license has occurred.

13.2 Any recommended stipulations or agreements between the licensee and the Sheriff’s Office shall be presented to the Board at the hearing by the Assistant County Attorney designated as prosecutor. Those stipulations shall require the licensee to admit to the alleged violation and may include an agreement to, or cap on, the suspension period or fine in lieu of suspension. The Board, in its discretion, may:

- Accept the stipulations or agreements and dispense with the hearing;
- Allow limited testimony and evidence and, based thereon, accept the stipulations or agreements without a full hearing; or,
- Reject the stipulations or agreements and require a full hearing.

- 13.3 The hearing shall be conducted according to the procedures set forth in the Board's Legislative and Parliamentary Rules and Procedures, adopted annually by resolution, except that no parties other than the Sheriff's Office, represented by the Assistant County Attorney, and the licensee and his or her representative shall be allowed to present evidence or testify before the Board. The order of proceeding shall be the Sheriff's Office, followed by the licensee, followed by rebuttal and closing statements by the Sheriff's Office, followed by rebuttal and concluding statements by the licensee.
- 13.4 All documents referenced or submitted as evidence at the hearing shall be automatically admitted and received as exhibits unless the Board determines otherwise after an objection.
- 13.5 The decision of the Board shall be based solely on competent evidence presented at the public hearing, and a proper weighing thereof. Rules of evidence shall not be strictly applied unless otherwise determined by the Board, in its discretion.
- 13.6 In determining an appropriate sanction, the Board shall consider all mitigating and aggravating factors. Any sale of medical marijuana to a person under the age of 18 shall be grounds for revocation of a license.
- 13.7 Requests to pay a fine in lieu of serving a suspension period shall be heard by the Board at a separate hearing scheduled before the suspension period is set to begin, unless the request is made in such a manner as to allow completion of the relevant investigation before the initial suspension hearing.
- 13.8 Every Medical Marijuana Business whose license has been suspended shall post notice of the suspension as required by the rules promulgated by the Colorado Marijuana Enforcement Division.

Section 14: Severability

Should any portion of this Policy be determined to be unenforceable or invalid, that determination shall not affect the validity of the remaining portions of this Policy.