

**TOWN OF MORRISON, COLORADO
BOARD OF TRUSTEES**

ORDINANCE NO. 510

**AN ORDINANCE ENACTING A NEW ARTICLE XIII OF CHAPTER 11 OF THE
MORRISON MUNICIPAL CODE PERMITTING THE LICENSING AND OPERATION
OF NO MORE THAN ONE (1) RETAIL MARIJUANA ESTABLISHMENT**

WHEREAS, the Town of Morrison is a Colorado home rule municipality operating under a Charter approved by the electorate pursuant to Article XX of the Colorado Constitution and governed by its elected Board of Trustees; and

WHEREAS, the Board of Trustees has authority pursuant to Section 3.9 of the Home Rule Charter to adopt and enforce all ordinances that follow the proper Ordinance Adoption Procedure; and

WHEREAS, exercising this authority, the Board has determined it is in the best interest of the Town to adopt a new Article XIII of Chapter 11 of the Municipal Code to permit and regulate retail marijuana establishments; and

WHEREAS, in connection with such enactment, the Board of Trustees finds it necessary to amend the zoning code of the Town to permit such establishments as a use by right in the Mixed Use Commercial and Office (MU-CO) zone district; and

WHEREAS, in compliance with Home Rule Charter 3.9, the Board has caused the ordinance to be posted prior to its introduction.

NOW, THEREFORE, BE IT ORDAINED by the Board of Trustees of the Town of Morrison, Colorado, that:

Section 1. Municipal code amended. A new Article XIII of chapter 11 of the Code is enacted in its entirety to read as follows:

Article XIII. Retail Marijuana Establishments

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Sec. 11-400. Authority. The Board of Trustees hereby finds, determines, and declares that it has the power to adopt this article pursuant to:

- (a) The Local Government Land Use Control Enabling Act, article 20 of title 40, C.R.S.;
- (b) Part 3 of article 23 of title 31, C.R.S. (concerning municipal zoning powers);
- (c) Section 31-15-103, C.R.S. (concerning municipal police powers);
- (d) Section 31-15-401, C.R.S. (concerning municipal police powers);
- (e) Section 31-15-501, C.R.S. (concerning municipal authority to regulate businesses);
- (f) Article 10 of Title 44, C.R.S. (concerning municipal authority to license and regulate retail marijuana establishments);
- (g) The authority granted to home rule municipalities by Article XX of the Colorado Constitution;
- (h) Article XVIII Section 16 of the Colorado Constitution; and
- (i) The powers contained in the Home Rule Charter.

Sec. 11-401. Definitions.

(a) As used in this article the following words shall have the following meanings, unless the context clearly requires otherwise:

Administrative hearing officer means an officer appointed by the Town Manager to conduct hearings on appeals from the suspension, revocation, denial or conditional approval of a license under this article.

Applicant means any person making an application for a license under this article.

Application means an application for license submitted pursuant to this article.

Church means a building or location used for religious services by an established religious organization.

Code means the Morrison Municipal Code.

Colorado Marijuana Code shall mean Article 10 of Title 44 of the Colorado Revised Statutes and any implementing administrative regulations.

Good cause means and includes

(1) When a licensee violates, does not meet, or fails to comply with any of the terms, conditions, or provisions of this article and any rule and regulation promulgated pursuant to this article or the Colorado Marijuana Code;

(2) When the licensee or applicant has failed to comply with any special terms or conditions that were placed on its license at the time the license was issued, or that were placed on its license pursuant to an order of the local licensing authority or the Colorado Department of Revenue; or

(3) When the licensed premises have been operated in a manner that adversely affects the public health, welfare, or safety of the immediate neighborhood in which the retail marijuana establishment is located. Evidence to support such a finding can include: (i) a pattern of disorderly conduct as defined in section 11-54(a)(1) of this code within or immediately adjacent to the premises of the licensee; (ii) a pattern of drug-related criminal conduct within the licensed premises, or in the immediate area surrounding the licensed premises; (iii) criminal conduct directly related to or arising from the operation of the retail marijuana establishment.

License means a license to operate a retail marijuana establishment issued pursuant to this article.

Licensed premises means the location in the Town from which the Licensee will operate.

Licensee means the person to whom a license has been issued pursuant to this article and the Colorado Marijuana Code to operate a business as described in section 44-10-601, C.R.S.

Marijuana means all parts of the plant of the genus *cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or its resin, including marijuana concentrate but shall not include industrial hemp, the fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

Marijuana clubs means establishments other than private residences, medical marijuana establishments or retail marijuana establishments that allow the public,

members or guests to consume marijuana, medical marijuana-infused products or retail marijuana products on-site.

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

Retail marijuana means marijuana that is cultivated, manufactured, distributed or sold at retail in accordance with the provisions in Section 16 of Article XVIII of the Colorado Constitution and the Colorado Marijuana Code

Retail marijuana establishment shall mean a retail marijuana store

Retail marijuana products shall mean marijuana products as defined in section 16(2)(k) of Article XVIII of the Colorado Constitution that are produced at a retail marijuana products manufacturer.

Retail marijuana store means a person licensed pursuant to the Colorado Marijuana Code to operate a business as described in section 44-10-601, C.R.S.

School shall mean a public or private preschool or a public or private elementary, middle, junior high or high school.

State licensing authority shall mean the authority created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, sale, and testing of retail marijuana in this state, pursuant to section 44-10-201, C.R.S.

(b) In addition to the definitions provided in subsection (a) of this section, the other defined terms in Section 16 of Article XVIII of the Colorado Constitution are incorporated into this article by reference.

Sec. 11-402. Local licensing authority established.

(a) There is hereby established a local licensing authority, which shall have and is vested with the authority to:

1. Grant and refuse licenses and approve and deny applications for renewal and transfer of licenses for the sale, cultivation and manufacture of retail marijuana and retail marijuana products;
2. Promulgate reasonable rules and regulations concerning licenses issued under this article;
3. Suspend and revoke licenses issued under this article in the matter provided by law; and
4. Have all of the powers of the local licensing authority as provided in the Colorado Marijuana Code.

(b) The Board of Trustees shall serve as the local licensing authority for any administrative purposes described in subsections (a)(1), (a)(2) and (a)(4) of this section. An administrative hearing officer shall serve as the local licensing authority for purposes of hearing any requests for suspension or revocation described in subsection (a)(3).

Sec. 11-403. Type and authorized number of retail marijuana establishment licenses.

(a) The local licensing authority may issue only the following type of retail marijuana establishment licenses:

1. Retail marijuana store license.

(b) Only one (1) retail marijuana store license is permitted and may be issued for operation within the limits of the town. In the event more than one (1) application for such license is received by the Town, such applications shall be processed in the order received, and once a license has been issued and the approved licensee has commenced operations within 180 days of license issuance, the remaining applications shall be denied. In the event an approved licensee does not commence operations under the license within 180 days of issuance of the license, the license shall be revoked and the next application shall be processed. This procedure shall be followed until a licensee commences operations. In the event more than one application for a license is received at the same time, the Town Clerk shall conduct a lot drawing to determine the order of processing the applications until an approved licensee has commenced operations as described above. In the event a licensee ceases operations for more than 60 days, the license may be revoked, and upon final action to revoke, the Town will commence the processing of license applications as described above.

Sec. 11-404. Licenses required.

(a) No person shall operate a retail marijuana establishment within the Town without a valid and appropriate retail marijuana establishment license issued in accordance with this article.

(b) This requirement to obtain the appropriate retail marijuana establishment license is in addition to the requirement to obtain a business license pursuant to article II of this chapter and any other license or permit required by the Town.

(c) No person shall operate a retail marijuana establishment within the Town without a valid and appropriate license to operate such establishment issued by the state licensing authority in accordance with the provisions of the Colorado Marijuana Code.

(d) No person may operate a business within the Town concerning the sale, use, consumption, manufacture of marijuana unless specifically authorized pursuant to the provisions of this article.

(e) No marijuana clubs may operate or obtain a business license to operate within the Town.

Sec. 11-405. Application of Colorado Marijuana Code. Except as otherwise provided herein, the local licensing authority shall be governed by the Colorado Marijuana Code now in effect or subsequently amended. In the event of a conflict between the provisions in this article and those in the Colorado Marijuana Code, the more stringent provision shall apply.

Sec. 11-406. Application for license.

(a) A person seeking to obtain a license pursuant to this article shall file an application with the local licensing authority on a form provided by the state, and shall include all additional information required by the Colorado Marijuana Code.

(b) The local licensing authority is hereby authorized to request any applicant to provide information that is in addition to the requirements of the Colorado Marijuana Code if it determines that such information is reasonably necessary to complete the investigation and review of the application.

Sec. 11-407. Operating fee.

(a) An applicant shall pay to the Town a non-refundable operating fee when the application for a license under this article is filed.

(b) The licensee shall pay the non-refundable operating fee to the Town annually along with any application for renewal of a license.

(c) The purpose of the operating fee is to cover the costs of inspection, administration and enforcement of retail marijuana establishments. The amount of the operating fee shall be fixed by the Board of Trustees by motion.

Sec. 11-408. Standards for approval of license, no hearing required.

(a) The local licensing authority is authorized to administratively approve any license under this article so long as the following conditions are met:

1. The application (including any required attachments and submissions) is complete and signed by the applicant;
2. The applicant has paid the operating fee and any other fees required by this code;
3. The application does not contain a material falsehood or misrepresentation;
4. The application complies with all of the requirements of this article and the Colorado Marijuana Code; and

5. The licensing authority has received written approval from the local law enforcement authority as to the applicant's criminal background.

6. The licensing authority has received written approval from the Planning and Zoning Department that the location and zoning requirements imposed by this article and Section 10-1E2.A.1. of the Code have been met.

(b) The local licensing authority may, but is not required to hold a hearing as permitted by section 44-10-303(3), C.R.S. prior to granting a retail marijuana establishment license.

(c) The local licensing authority shall inform the state licensing authority of approval of an application for a license.

Sec. 11-409. Authority to recommend and impose conditions on license.

(a) Any Town department shall have the authority to recommend reasonable terms and conditions on a license as may be necessary to protect the public health, safety, and welfare, and to obtain compliance with the requirements of this article and applicable law.

(b) The local licensing authority is authorized to approve any license issued under this article subject to such reasonable conditions as required by the Town.

(c) In the event an application is conditionally approved, the local licensing authority shall clearly set forth in writing the conditions of approval.

Sec. 11-410. Denial of license. The local licensing authority shall deny an application for a license under this article when the applicant fails to meet all of the standards set forth in section 11-408 of this article.

Sec. 11-411. Appeal – administrative hearing officer.

(a) An applicant has the right to appeal the suspension, revocation, denial or conditional approval of a license under this article.

(b) The applicant must file a written notice of appeal with the local licensing authority within fifteen (15) business days after the date of mailing of the action being appealed.

(c) Upon notice from the local licensing authority that the applicant has satisfied the requirement in subsection (b), the Town Manager shall appoint an administrative hearing officer.

(d) The applicant shall be provided with not less than ten (10) business days prior written notice of the appeal hearing to be held by the administrative hearing officer.

(e) The burden of proof in an appeal filed under this section shall be on the applicant.

(f) If the administrative hearing officer finds by a preponderance of the evidence that the decision of the local licensing authority was correct, the administrative hearing officer shall uphold that decision. If the administrative hearing officer finds by a preponderance of the evidence that the decision of the local licensing authority was incorrect, the administrative hearing officer shall reverse or modify the decision and remand the matter back to the local licensing authority for further action consistent with the hearing officer's findings and order. The administrative hearing officer may order the local licensing authority to impose additional conditions on the license issued or require that the conditions of approval be stricken or modified.

(g) Any decision made by the administrative hearing officer pursuant to this section shall be a final decision and may be appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The applicant's failure to timely appeal the decision is a waiver of the applicant's right to contest the denial or conditional approval of the application.

Sec. 11-412. Duration of license, renewal.

(a) Each license issued pursuant to this article shall expire on the first day of the month one year from the month of issuance, and may be renewed as provided in this section.

(b) An application for the renewal of an existing license shall be made to the local licensing authority as required by the Colorado Marijuana Code.

Sec. 11-413. Duties of licensee. Each licensee shall:

(a) Post the license issued under this article in a conspicuous location on the licensed premises;

(b) Comply with all of the terms and conditions of the license;

(c) Comply with all of the requirements of this article;

(d) Comply with all other applicable Town ordinances;

(e) Comply with the Colorado Marijuana Code;

(f) Comply with all applicable federal laws, rules, or regulations, other than a federal law or regulation concerning the possession, sale or distribution of marijuana that conflicts with Article XVIII Section 16 of the Colorado Constitution;

(g) Permit inspection of its records and operation by the local licensing authority for the purpose of determining the licensee's compliance with the terms and conditions of the license and the Town's tax laws; and

(h) Permit inspection of the premises by authorized Town officials during permitted business hours for the purpose of determining compliance with this article.

Sec. 11-414. Odor control measures required.

Each licensee shall operate its licensed premises in a manner that prevents the escape of odor from marijuana and marijuana products beyond the property line of the licensed premises.

In addition to constituting cause to suspend or revoke a license pursuant to Section 11-415 hereof, odor from marijuana and marijuana products emanating from a licensed premises in violation of this Section of such a nature and duration that substantially annoys, injures or endangers the comfort, health, repose or safety of the public constitutes a public nuisance and may be abated by the Town in accordance with Chapter 1 of Title 5 of this Code.

Sec. 11-415. Hearing, suspension, revocation of license.

(a) A license issued pursuant to this article may be suspended or revoked after a hearing for the following reasons:

1. Fraud, misrepresentation, or a false statement of material fact contained in the license application;
2. A violation of any Town ordinance, state, or federal law or regulation, other than a federal law or regulation concerning the possession, sale or distribution of marijuana that conflicts with Article XVIII Section 16 of the Colorado Constitution;
3. A violation of any of the terms and conditions of the license;
4. A violation of any of the provisions of this article; or
5. Good cause.

(b) Request for suspension or revocation, notice of hearing, burden.

1. Any authorized Town official may request in writing that a license issued under this article be suspended or revoked.
2. The Town Manager shall appoint an administrative hearing officer to preside over the hearing on the suspension or revocation of a license.
3. The administrative hearing officer shall
 - a. Set a date and time on which to determine whether to revoke or suspend such license;
 - b. Notify the licensee in writing of the date and time of the hearing at least ten (10) business days prior to conducting such hearing. Such notice shall be sent by regular mail postage prepaid. Notice is deemed to have been given upon mailing;

- c. Conduct a hearing based on the allegations provided in the written request. This shall be an informal hearing where no rules of evidence shall apply. The burden shall be on the Town to prove by a preponderance of the evidence that the licensee has violated the provisions in subsection 11-404 (a); and
- d. Provide a written decision to the licensee within thirty (30) days after the conclusion of the hearing.

(c) In deciding whether a license should be suspended or revoked, and in deciding what conditions to impose in the event of a suspension, if any, the administrative hearing officer shall consider:

- 1. The nature and seriousness of the violation;
- 2. Corrective action, if any, taken by the licensee;
- 3. Prior violation(s), if any, by the licensee;
- 4. The likelihood of recurrence;
- 5. All circumstances surrounding the violation;
- 6. Whether the violation was willful;
- 7. The number of previous violations by the licensee; and
- 8. Previous sanctions, if any, imposed against the licensee.

(d) In connection with the suspension of a license, the administrative hearing officer may impose reasonable conditions thereon.

(e) Any decision made by the administrative hearing officer pursuant to this section shall be a final decision and may be appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The applicant's failure to timely appeal the decision is a waiver of the applicant's right to contest the decision.

(f) No fee previously paid by a licensee in connection with the application shall be refunded if such license is suspended or revoked.

Sec. 11-416. Prohibited locations.

(a) Except as provided in subsection (b) of this section, no retail marijuana establishment shall be located at a location that does not conform to the requirements of this section.

(b) No retail marijuana store shall be located within one thousand (1,000) feet of a school, an alcohol or drug treatment facility, or the principal campus of a college,

university, or church, or a residential child care facility. This limitation will be computed by direct measurement from the nearest property line of the land used for a school, alcohol or drug treatment facility, or the principal campus of a college, university, or church, or a residential child care facility to the nearest portion of the building in which retail marijuana is to be sold, using a route of direct pedestrian access.

(c) No retail marijuana store shall be located west of the geologic formation within the Town known as the Dakota Hogback, defined by the sections known as Dinosaur Ridge and Mount Glennon, comprised of the geological units from west to east as the Ralston Creek Formation, Morrison Formation, and Dakota Group.

(d) No retail marijuana store shall be located within three quarters ($\frac{3}{4}$) of a mile of another retail marijuana store. This limitation will be measured using a straight line from the perimeter of the parcel where a proposed retail marijuana store will be located. This limitation shall apply to retail marijuana stores whether they located within or outside of the Town limits.

(e) This limitation will be measured using a straight line from the perimeter of the parcel where a proposed retail marijuana store will be located. This limitation shall apply to retail marijuana stores and medical marijuana centers whether they are located within or outside of the Town limits.

(f) Each retail marijuana establishment shall be operated from a permanent location. No retail marijuana establishment shall be licensed to operate from a moveable, mobile, or transitory location.

(g) The suitability of a location for a retail marijuana establishment shall be determined at the time of the issuance of the first license for such establishment. The fact that changes in the neighborhood that occur after the issuance of the first license might render the site unsuitable for a retail marijuana establishment under this section shall not be grounds to suspend, revoke or refuse to renew the license for such establishment so long as the license for the establishment remains in effect.

Sec. 11-417. Signage. All signage for a retail marijuana establishment shall comply with the requirements of the Municipal Code and the Colorado Marijuana Code.

Sec. 11-418. Taxes. Each licensee shall collect and remit all applicable sales taxes on all retail marijuana, paraphernalia, and other tangible personal property sold by the licensee at the retail marijuana establishment according to the provisions of this code and any regulations issued pursuant thereto.

Sec. 11-419. Hours of operation.

(a) A retail marijuana store may open no earlier than 10:00 a.m. and shall close no later than 8:00 p.m., local time, the same day.

(b) A retail marijuana establishment may be open seven (7) days a week.

Sec. 11-420. Penalties, injunctive relief.

(a) It is a misdemeanor offense for any person to violate any provision of this article. Any person convicted of having violated any provision of this article shall be punished as set forth in section 1-4-1 of this Code.

(b) In addition to all other remedies available to the Town under this Code and by law, the operation of a retail marijuana establishment without a valid license issued pursuant to this article may be enjoined by the Town in an action brought in a court of competent jurisdiction.

Sec. 11-421. Implementation

This article shall take effect and become enforceable only upon the approval by the registered electors of the Town at the April 5, 2022 regular Town election of a ballot question approving this ordinance as a referred ordinance under section 5.3 of the Home Rule Charter. In the event such ballot question is not approved by the registered electors, this article shall not take effect and shall be deemed repealed.

Section 2. Zone District Use Chart Amended. Section 10-1E-2.A.1. of the Code is hereby amended by the addition of the following to the list of Permitted Uses by Right in the Mixed Use Commercial and Office (MU-CO) zone district:

Retail Marijuana Store

Section 3. Police Power Finding. The Board of Trustees hereby finds, determines, and declares that this Ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town and the inhabitants thereof.

Section 4. Severability. If any article, section, paragraph, sentence, clause or phrase of this ordinance, or the standards adopted herein is held to be unconstitutional or invalid for any reason, such decision will not affect the validity or constitutionality of the remaining portions of this ordinance. The Board of Trustees hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part or parts are declared unconstitutional or invalid.

Section 5. Effective Date. This ordinance shall take effect fifteen (15) days after adoption and publication as provided by Section 3.14 of the Home Rule Charter.

INTRODUCED, READ, PASSED AND ADOPTED this ____ day of _____, 2021, by a vote of ____ ayes and ___ nays.

TOWN OF MORRISON:

Sean K. Forey, Mayor

ATTEST:

Town Clerk

DRAFT