

TOWN OF LYONS, COLORADO

ORDINANCE NO. 893

AN ORDINANCE ADDING A NEW CHAPTER 6 TO TITLE 2 OF THE LYONS MUNICIPAL CODE CONCERNING THE LICENSING OF MEDICAL MARIJUANA BUSINESSES

WHEREAS, in the November 2000 general election, the voters of the State of Colorado adopted Amendment 20 to the Colorado Constitution ("Amendment 20") which authorizes and limits the sale of medical marijuana for use in the treatment of debilitating medical conditions. Amendment 20 added Section 14 to Article 18 to the Colorado Constitution, and created a limited exception from criminal liability under Colorado law (as opposed to federal law) for seriously ill persons who are in need of marijuana for specified medical purposes and who obtain and use medical marijuana under the limited, specified circumstances described in Amendment 20; and

WHEREAS, notwithstanding the adoption of Amendment 20, marijuana is still a controlled substance under Colorado and federal law. As a result, making it legal for a person to obtain, possess, cultivate, grow, use, or distribute marijuana, even for medical use as contemplated by Amendment 20, has the potential for abuse that should be closely monitored and regulated by local authorities to the extent possible; and

WHEREAS, on July 1, 2010, the Colorado General Assembly enacted House Bill 10-1284, thereby establishing statutory rules, regulations and licensing requirements related to the cultivation, manufacture and sale of medical marijuana and medical marijuana-infused products; and

WHEREAS, House Bill 10-1284 added an new Article 43.3 to Title 12 of the Colorado Revised Statutes, to be known as the Colorado Medical Marijuana Code, which establishes a dual licensing framework for medical marijuana facilities, introduces new terminology with respect to such facilities, identifies the types of license that may be issued within the State of Colorado, and provides for subsequent rule-making authority by the Colorado Department of Revenue to implement the legislation; and

WHEREAS, the Colorado Medical Marijuana Code provides that on or after July 1, 2011, all businesses engaged in the cultivation, manufacture, 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; and

WHEREAS, Section 12-43.3-106 of the Colorado Medical Marijuana Code specifically authorizes the governing body of a municipality to “vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses,” and Section 12-43.3-310(1) specifically authorizes a municipality “to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses ... based on local government zoning, health, safety, and public welfare laws for the distribution of medical marijuana that are more restrictive than this article’s;” and

WHEREAS, the Board of Trustees of the Town of Lyons has carefully considered the provisions of the Colorado Medical Marijuana Code, Amendment 20, and the impact of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ facilities on the health, safety, and welfare of the Town and the inhabitants thereof, and desires to adopt reasonable licensing regulations as contemplated by the Colorado Medical Marijuana Code; and

WHEREAS, the Board of Trustees has further determined that it is in the best interests of the health, safety and welfare of the inhabitants of the Town to exercise its express statutory authority to impose a limited ban on the number of medical marijuana businesses and to adopt reasonable regulations governing those businesses that are allowed to open or remain open.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF LYONS:

SECTION 1. A new Chapter 6 of Title 2 of the Lyons Municipal Code is hereby adopted to read in full as follows:

CHAPTER 6

MEDICAL MARIJUANA

2-6-1: PURPOSE.

(A) The purpose of this Chapter is to implement the provisions of the Colorado Medical Marijuana Code, which authorizes the licensing and regulation of medical marijuana businesses and affords local governments the option to determine whether or not to allow certain medical marijuana businesses within their respective jurisdictions, and to adopt licensing requirements that are supplemental to or more restrictive than the requirements set forth in state law.

(B) The provisions in this Chapter that are different from state law are consistent with the Town’s responsibility to protect the public health, safety and

welfare from any negative impacts associated with the sale, distribution or use of Medical Marijuana, as authorized by Section 12-43.3-305, C.R.S. Where this Chapter differs from state law, the provisions of this Chapter shall apply on all matters authorized by Section 12-43.3-101, *et seq.*, C.R.S. and on all matters of local concern.

(C) By adopting this Chapter, the Town's Board of Trustees does not intend to authorize or make legal any act that is not permitted under state or federal law or to allow any person to engage in conduct that endangers others or causes a public nuisance.

(D) By adopting this Chapter, the Town's Board of Trustees does not intend to waive or otherwise impair any portion of the local option set forth in Section 12-43.3-106, C.R.S.

(E) The objectives of this Chapter include, but are not limited to:

(1) Requiring that any Medical Marijuana Business be operated in a safe manner that does not endanger the public welfare; and

(2) Mitigating potential negative impacts that a Medical Marijuana Business might cause on surrounding properties and persons.

2-6-2: LOCAL LICENSING AUTHORITY.

The Board of Trustees shall be the Local Medical Marijuana Licensing Authority of the Town. The Board of Trustees may delegate to the Town Administrator the authority to carry out administrative and enforcement duties as set forth in this Chapter.

2-6-3 AUTHORITY. The Board of Trustees hereby finds and determines that it has the power to adopt this Chapter pursuant to:

(a) Article 43.3 of Title 12, C.R.S., concerning the licensing of medical marijuana businesses;

(b) Sections 31-15-103 and 31-15-401, C.R.S., concerning municipal police powers; and

(c) Section 31-15-501, C.R.S., concerning municipal authority to regulate businesses.

2-6-4: DEFINITIONS.

Except as set forth below, terms used in this Chapter shall have the definitions found in the Colorado Medical Marijuana Code, C.R.S. 12-43.3-101, *et seq.*

Amendment 20 means the voter-initiated amendment to the Colorado Constitution adopted November 7, 2000, codified as Section 14 of Article 18 to the Colorado Constitution.

Applicant means a person who is making an application for a Medical Marijuana Center license, an Optional Premises Cultivation Operation license or a Medical Marijuana-Infused Products Manufacturing license under this Chapter.

Colorado Medical Marijuana Code means Article 43.3 of Title 12, C.R.S.

General Business License means a license to operate a business within the Town of Lyons, issued pursuant to Chapter 1 of Article 2 of the Lyons Municipal Code.

License means a license to operate a Medical Marijuana Center, an Optional Premises Cultivation Operation or a Medical Marijuana-Infused Products Manufacturing facility issued by the Town pursuant to this Chapter.

Licensee means the person to whom a license has been issued pursuant to this Chapter.

Medical Marijuana Business means a Medical Marijuana Center, an Optional Premises Cultivation Operation, or a Medical Marijuana-Infused Products Manufacturer.

Medical Marijuana Center means a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business as described in Section 12-43.3-402, C.R.S.

Medical Marijuana-Infused Products Manufacturer means a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business as described in Section 12-43.3-404, C.R.S.

Optional Premises Cultivation Operation means a person licensed pursuant to Article 43.3 of Title 12, C.R.S. to operate a business as described in Section 12-43.3-403, C.R.S.

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

Town means the Town of Lyons, Colorado.

Town Administrator means the Town Administrator of the Town of Lyons or his/her designee.

Town Clerk means the Town Clerk of the Town of Lyons or his/her designee.

2-6-5: LICENSES REQUIRED.

(A) No person shall operate or cause or permit the operation of a Medical Marijuana Business within the Town without having first obtained the licenses required by this Chapter and by the Colorado Medical Marijuana Code. Specifically, except as otherwise provided in this Chapter, no person may apply to operate a Medical Marijuana Business within the Town unless:

- (1) A General Business License for a Medical Marijuana Business was issued by the Town and the General Business Licensee began operating a Medical Marijuana Business at the licensed premises before the adoption of this Chapter; and
- (2) A Medical Marijuana Business license is issued by the Town pursuant to and after the effective date of this Chapter; and
- (3) A Medical Marijuana Center license, an Optional Premises Cultivation license, and/or a Medical Marijuana-Infused Products Manufacturing license is issued by the State of Colorado pursuant to the Colorado Medical Marijuana Code.

(B) A separate license shall be required for each Medical Marijuana Center, Optional Premises Cultivation Operation, and Medical Marijuana-Infused Products Manufacturer, regardless of whether two or more of the businesses are under common ownership.

(C) The requirement to obtain a Medical Marijuana Business license is in addition to the requirement to obtain a General Business License and any other license, permit or approval required by the Town, including but not limited to any required land use approval, and any required building permits.

2-6-6: CLASSES OF LICENSE. The Local Licensing Authority may issue and grant to the applicant a license from any of the following classes, provided that the applicant meets all of the criteria set forth in Section 2-6-5 and all other provisions and restrictions in this Chapter:

- (A) Medical Marijuana Center license;
- (B) Optional Premises Cultivation license; or
- (C) Medical Marijuana-Infused Products Manufacturing license.

2-6-7: PERSONS PROHIBITED AS LICENSEES.

No license for a Medical Marijuana Business may be issued to:

(A) An applicant for an Optional Premises Cultivation Operation license unless the applicant is simultaneously applying for, or already holds, a license for a Medical Marijuana Center or a Medical Marijuana-Infused Products Manufacturing Facility within the Town; or

(B) An applicant for a Medical Marijuana-Infused Products Manufacturer license unless the applicant is simultaneously applying for, or currently holds, a license for a Medical Marijuana Center within the Town; or

(C) Any person prohibited from being a licensee by the provisions of Section 12-43.3-307 of the Colorado Medical Marijuana Code.

2-6-8: LOCATION OF MEDICAL MARIJUANA BUSINESSES.

(A) It shall be unlawful to operate or to cause or permit the operation of a Medical Marijuana Business:

(1) In any location that does not comply with the Lyons Zoning Ordinance;

(2) Within one thousand (1,000) feet of a public or private school, an alcohol or drug treatment facility, the principal campus of a college, university or seminary, licensed day care or a licensed residential child care facility;

(3) In any residential zone district or within any dwelling unit in any zone district;

(4) From a moveable, mobile or transitory location; a Medical Marijuana Business shall be permitted to operate only from a fixed location; and

(B) Any Medical Marijuana Business for which a General Business license was issued by the Town before the effective date of this Ordinance shall either cease doing business or come into full compliance with all applicable provisions of Section 2-6-8(A) by relocation or otherwise within one hundred eighty days (180) after the effective date of this Ordinance.

(C) The distances referred to in this Section are to be computed by direct measurement from the nearest portion of a building in which a Medical Marijuana Business is located to the nearest portion of any other building in which a Medical Marijuana Business is located, using a route of direct pedestrian access, or to the nearest property line of the land used for a school, campus, alcohol or

drug treatment facility, licensed day care or licensed residential child care facility, using a route of direct pedestrian access.

2-6-9: RESTRICTIONS ON MEDICAL MARIJUANA BUSINESSES.

(A) It is the intent of the Town's Board of Trustees in adopting this Chapter to allow only those businesses that meet all of the criteria set forth in Section 2-6-5 of this Chapter to apply for and obtain licenses as described herein, except as otherwise provided in this Section 2-6-9. Specifically, only those applicants who had (i) applied for and received a General Business License from the Town to operate a medical marijuana business, and (ii) had begun operating as a medical marijuana business before the adoption of this Chapter are initially eligible to apply for a Medical Marijuana Business license. As of the effective date of this Chapter, four (4) General Business Licenses have been issued by the Town to operate medical marijuana businesses.

(B) It is also the intent of the Board of Trustees, based on extensive public testimony and input and on the Board's careful consideration of the impacts of Medical Marijuana Businesses on the health, safety and welfare of the Town and its inhabitants, to eventually limit the total number of General Business Licenses issued for Medical Marijuana Businesses to no more than two (2). Accordingly, the following restrictions shall be imposed on Medical Marijuana Businesses within the Town:

(1) Only the holders of the four General Business Licenses issued by the Town before the adoption of this Chapter may initially apply for and obtain Medical Marijuana Business licenses pursuant to this Chapter. Any of the eligible General Business License holders that were operating a medical marijuana business before the adoption of this Chapter may file applications for any or all of the classes of license authorized by this Chapter, regardless of the class or classes of business those licensees operated before the adoption of this Chapter. At no time may any General Business License be issued for more than four (4) Medical Marijuana Businesses.

(2) In the event that any Medical Marijuana Business licensed pursuant to this Chapter should cease operating for a period of ninety (90) days or more, the license to operate the Medical Marijuana Business shall terminate and be deemed revoked, thereby reducing the total number of Medical Marijuana Businesses within the Town to three (3). The Local Licensing Authority, in its sole discretion, may grant exceptions from the provisions of this Section if it determines that extraordinary circumstances exist that warrant the exception.

(3) In the event that a second Medical Marijuana Business should cease operating for a period of ninety (90) days or more, the license to

operate such Business shall terminate and be deemed revoked, thereby reducing the total number of Medical Marijuana Businesses within the Town to two (2). The Local Licensing Authority, in its sole discretion, may grant exceptions from the provisions of this Section if it determines that extraordinary circumstances exist that warrant the exception.

(4) In the event the total number of Medical Marijuana Businesses within the Town is reduced to fewer than two (2), then any person may file an application for a Medical Marijuana Business license, and the Local Licensing Authority shall either approve or deny said application pursuant to the provisions of this Chapter. The Local Licensing Authority shall process and consider any such applications in the order in which they were received and deemed complete, and shall terminate its review of any application when the total number of approved Medical Marijuana Businesses again reaches two (2). The Local Licensing Authority may, but is not required to, establish a waiting list of Medical Marijuana Business license applicants at any time before the number of approved Medical Marijuana Businesses falls below two (2). Any such waiting list shall only preserve the names and contact information of prospective applicants in the order in which they were submitted in the event the number of licensed Medical Marijuana Businesses falls below two (2), but shall not be a guaranty that the applications on the waiting list will be approved.

(C) In addition to the restrictions imposed by Section 2-6-7 and by this Section, and in addition to any other limitations imposed by state law, the following restrictions shall apply to all Medical Marijuana Businesses within the Town:

(1) All activities of Medical Marijuana Businesses, including but not limited to cultivating, growing, processing, displaying, manufacturing, selling and storing, shall be conducted indoors. No medical marijuana or paraphernalia shall be displayed or kept so as to be visible from anywhere outside the licensed premises.

(2) A Medical Marijuana Center shall be limited to a maximum total square footage of three thousand (3,000') square feet. An Optional Premises Cultivation Operation shall be limited to a maximum total square footage of seven thousand five hundred (7,500') square feet. A Medical Marijuana-Infused Products Manufacturing facility shall be limited to a maximum total square footage of seven thousand five hundred (7,500') square feet. The Local Licensing Authority, in its sole discretion, shall have the authority to grant exceptions from the provisions of this Section if it determines that extraordinary circumstances exist that warrant the exception.

(3) All Medical Marijuana Businesses shall be equipped with a proper ventilation system that filters out the odor of marijuana so that the odor is not capable of being detected by a person with a normal sense of smell at the exterior of the Medical Marijuana Business or any adjoining business, parcel, or tract of real property.

2-6-10: APPLICATIONS.

(A) All eligible applicants for a Medical Marijuana Business license shall file a completed application for such license with the Town Clerk on forms to be provided by the Town and/or the Colorado Department of Revenue. Such applications must be submitted to the Town on or before June 1, 2011. Said applications must fulfill and meet all applicable requirements of the Colorado Medical Marijuana Code and any implementing regulations, and this Chapter, as amended from time to time. The Town shall have the authority but not the obligation to investigate the background of the applicant and all individuals required by the Colorado Medical Marijuana Code to undergo a background investigation.

(B) All applicants shall file at the time of application the following documents:

(1) the floor plans and specifications for the interior of the building if the building to be occupied is in existence at the time. If the building is not in existence, the applicant shall file a plot plan and detailed sketch for the interior and submit an architect's drawing of the building to be constructed;

(2) a deed, lease or other contractual document demonstrating that the applicant has the legal right to possess the premises of the proposed location of the Medical Marijuana Business for the entire duration of the license period;

(3) a statement signed by the applicant acknowledging that the Town accepts no legal liability in connection with the approval and subsequent operation of the Medical Marijuana Business;

(4) an acknowledgement that the Town will rely on the findings of the Colorado Department of Revenue with regard to all mandatory background investigations, and will conduct only a limited background investigation of its own;

(5) a Neighborhood Responsibility Plan outlining the applicant's plans for outreach and communication with neighbors; and

(6) any additional information that the Local Licensing Authority reasonably determines to be necessary for the investigation and review of the application.

(D) The Town Clerk shall not accept any application that is not complete in every detail. If the Town Clerk discovers an omission or error, the application shall be rejected and returned to the applicant for completion or correction without further action by the Town Clerk. All fees shall be returned with the application. For the purposes of this Chapter, the date the Town Clerk accepts an application that is complete in every detail shall be considered the filing date. A separate application shall be submitted for each Medical Marijuana Center, each Optional Premises Cultivation Operation and each Medical Marijuana-Infused Products Manufacturer.

(E) Upon determining that the application is complete in every detail, the Town Clerk shall forward the application to the Board of Trustees, serving as the Local Licensing Authority.

2-6-11: APPLICATION FEES.

Each individual applicant for a Medical Marijuana Business license shall pay an application processing fee at the time of submitting such application to the Town Clerk. Such application fee shall be nonrefundable, unless the application is returned for being incomplete. The application fees for the various categories of license shall be based on the actual costs incurred by the Town in the processing of applications. The application fee for each class of license shall be as follows:

Medical Marijuana Center	\$500.00
Optional Premises Cultivation Operation	\$500.00
Medical Marijuana-Infused Products Mfr.	\$500.00

In the future, all fees required by this Chapter will be set by resolution of the Town's Board of Trustees.

2-6-12: PUBLIC HEARING.

(A) Upon receipt of an application for a Town license, except an application for renewal or for transfer of ownership, the Local Licensing Authority shall schedule a public hearing on the application, to be held not less than thirty (30) days after the date of the application. The Local Licensing authority shall post and publish public notice of the public hearing not less than ten days prior to the hearing. The Local Licensing Authority shall give public notice by the posting of a sign in a conspicuous place on the Medical Marijuana Business premises for which application has been made and by publication in a newspaper of general circulation in the county in which the Medical Marijuana Business premises are located. At any such public hearing the Local Licensing Authority may receive and consider testimony and evidence as to whether the Medical Marijuana

Business license application meets the approval criteria set forth in this Chapter and in the Colorado Medical Marijuana Code.

2-6-13: INVESTIGATION OF APPLICATION.

(A) An application for a Medical Marijuana Business license shall be deemed complete when all required information and documentation has been submitted, the required individuals have been fingerprinted and photographed by the Boulder County Sheriff's Office, and the license fee has been paid. After accepting the complete application for filing, the Local Licensing Authority shall transmit the application to the Boulder County Sheriff's Office and to the Colorado Department of Revenue. The background investigations required by this Section and by the Colorado Medical Marijuana Code shall be conducted by the Department of Revenue, except where the Local Licensing Authority determines that a local background investigation should be performed. In any such case, the Boulder County Sheriff's Office shall have the authority to do the following:

(1) Investigate the background of each individual applicant and each of the other individuals required to be listed in the license application, and to investigate the accuracy of all the information submitted as a part of the application. The investigation required by this section should be completed within ninety (90) days from the date the application is submitted to the Sheriff's Office. Nevertheless, failure to complete the investigation within ninety (90) days shall not constitute approval of the application. The Sheriff's Office shall promptly forward the application and its completed investigation to the Town Clerk for administrative review; and

(2) Inspect the exterior of the proposed licensed premises for the purpose of creating an environment that impedes criminal activity by improving lighting, mitigating obstructions caused by such things as trees, bushes, fences, and dumpsters that create blind spots or hiding spots, and using security cameras to monitor the property. The Sheriff's Office shall promptly forward the results and recommendations of the inspection to the Town Clerk for administrative review.

(3) The Local Licensing Authority shall also transmit copies of any completed license application to:

(a) The Town's Planning staff; and

(b) Any other person or agency which the Local Licensing Authority reasonably determines should investigate and comment upon the application.

(4) The Local Licensing Authority may require that the State Licensing Authority conduct a concurrent review of a new license application before the Local Licensing Authority's final approval of the application.

2-6-14: APPROVAL OR DENIAL OF APPLICATION.

(A) An application with completed background investigation shall be approved or denied by the Local Licensing Authority. Any approved license shall not be effective until the license has been issued to the applicant by the Town Clerk. An application shall be approved and a license shall be issued unless the Local Licensing Authority finds, based on the background investigation conducted by the Colorado Department of Revenue and/or the Boulder County Sheriff's Office, that the applicant or any of the individuals required by Section 2-6-13 to undergo a background investigation:

- (1) Knowingly made a false statement or knowingly gave false information in connection with the application;
- (2) Is prohibited by Section 12-43.3-307, C.R.S. from being a licensee;
- (3) Will operate the Medical Marijuana Business as a business prohibited by local or state law, statute, rule or regulation;
- (4) Has had a Medical Marijuana Business license or similar local or state license or approval revoked within five (5) years of the date of the current application; or
- (5) Has otherwise failed to comply with the provisions of this Chapter, the Colorado Medical Marijuana Code, or any implementing statutes and administrative regulations as amended from time to time.

(B) The applicant and any other individuals listed on the application may present written documentation to the Town Clerk regarding his/her criminal history, including but not limited to evidence of mitigating factors, rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license.

(C) If the license application is approved by the Local Licensing Authority, the licensee may not begin operating before obtaining the state Medical Marijuana License required by the Colorado Medical Marijuana Code.

2-6-15: APPEAL OF APPLICATION DENIAL.

(A) Written Findings. In the event that the Local Licensing Authority denies a license application, the Local Licensing Authority shall prepare written findings of fact stating the reasons or basis for the denial. A copy of the Authority's findings shall be sent by certified mail, return receipt requested, to the address of the applicant as shown in the application.

(B) . The order of the Local Licensing Authority shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). For purposes of any appeal to the District Court, the Local Licensing Authority's decision shall be final either on the date the applicant receives the findings, conclusion, and order or four (4) days following the date of mailing of the Authority's decision, whichever is earlier.

(C) Closure of Business Pending Appeal. Upon denial of the license application by the Local Licensing Authority, the business shall be deemed unlicensed and must cease operation during the pendency of the appeal.

2-6-16: LICENSE FEE.

The license fee for any license issued pursuant to this Chapter shall be payable to the Town Clerk at the time an initial license application is filed or at the time a renewal application is filed. The license fee is in addition to any application fee required by this Chapter. The license fee shall be nonrefundable unless an application is denied. The license fees for the various classes of license shall be as follows:

Medical Marijuana Center	\$125.00
Optional Premises Cultivation Operation	\$125.00
Medical Marijuana-Infused Products Mfr.	\$125.00

In the future, all fees required by this Chapter will be set by resolution of the Town's Board of Trustees.

2-6-17: TERM OF THE LICENSE.

A Medical Marijuana Business license shall be valid for a period of one year from date of issuance, unless revoked or suspended.

2-6-18: RENEWAL.

A. As a prerequisite to renewal of an existing license issued pursuant to this Chapter, the applicant must pay the annual license fee and file a completed renewal application with the Town Clerk at least forty-five (45) days prior to the date of the license expiration. The Town Clerk may waive the timely filing

requirement where the licensee demonstrates in writing that the failure to timely file is not solely the result of the licensee's negligence; provided that no renewal application shall be accepted by the Town Clerk from any licensee after the license for which renewal is requested has expired.

B. A license that is under suspension may be renewed in accordance with this Section provided that such renewal shall not modify, alter, terminate, or shorten the period or term of the suspension. The suspension of a license shall not extend the term of the license or otherwise relieve the licensee from timely seeking renewal of the license in accordance with this Section. The Town Clerk may administratively renew a license.

2-6-19: DENIAL OF RENEWAL OR TRANSFER; SUSPENSION; REVOCATION.

(A) Denial of Renewal or Transfer, Suspension or Revocation. The Local Licensing Authority may deny renewal or transfer of, suspend, revoke, modify, or place conditions on the continuation of a Medical Marijuana Business license upon a finding that the licensee:

- (1) Has violated any of the provisions of this Chapter;
- (2) Has violated the Colorado Medical Marijuana Code or any implementing regulations, as are amended from time to time;
- (3) Has operated the Medical Marijuana Business in a manner that adversely affects the public health, welfare, or safety of the immediate neighborhood in which the Medical Marijuana Business is located. Evidence to support such a finding includes but is not limited to the occurrence of disturbances upon the licensed premises or upon any parking areas, sidewalks, access ways or grounds within the immediate neighborhood of the licensed premises involving a patient or customer, manager, employee, or the licensee;
- (4) Has violated any Town, state, or federal law or regulation regarding the possession, distribution, or cultivation of controlled substances;
- (5) Has allowed or permitted any other person to violate any of the provisions of this Chapter or engage in criminal conduct on the premises.

(B) Other Enforcement Authorized. A licensee shall be entitled to a quasi-judicial hearing before the Local Licensing Authority if the Town seeks to deny renewal or transfer, suspend, revoke, modify, or place conditions on a license based on a violation of this Chapter.

(1) When there is probable cause to believe that a licensee has violated or permitted a violation of this Chapter or other laws, the Town Attorney may file a written complaint with the Local Licensing Authority setting forth the circumstances of the violation.

(2) The Town Clerk shall send a copy of the complaint by delivery confirmation to the licensee at the address as shown on the license application, together with a notice to appear before the Local Licensing Authority for the purpose of a hearing to be conducted at a specified date and time and at a place designated in the notice to show cause why the licensee's license should not be suspended. Such hearing shall be held on a date not less than thirty (30) days following the date of mailing of the complaint and notice to the licensee. A licensee may be represented at the hearing by an attorney or other representative.

(C) Conduct of Hearing. At the hearing, the Local Licensing Authority shall hear and consider such evidence and testimony presented by the Sheriff's Office or other enforcement officers, the Town, the licensee, or any other witnesses called by the Town or the licensee, which evidence is relevant to the violations alleged in the complaint. The Local Licensing Authority shall conduct the hearing in conformity with quasi-judicial proceedings and shall permit the relevant testimony of witnesses, cross-examination, and presentation of relevant documents and other evidence. The hearing shall be recorded either stenographically or by electronic recording device, as determined by the Authority. Any person requesting a transcript of such record shall pay the reasonable cost of preparing the record. Subpoenas may be issued in accordance with the provisions of Section 5.51.080.

(D) Written Findings. The Local Licensing Authority shall make written findings of fact from the statements and evidence offered and shall reach a conclusion as to whether the alleged violations occurred. Such written findings and conclusion shall be prepared and issued within fourteen (14) days following the conclusion of the hearing. If the Local Licensing Authority determines that a violation did occur which warrants denial of renewal, suspension, revocation, modification, or conditioning of the license pursuant to this section, he or she shall also issue an order suspending, revoking, modifying, or placing conditions on the license. A copy of the findings, conclusion, and order shall be hand delivered or mailed to the licensee by delivery confirmation, at the address as shown on the license application.

(E) Appeal. The order of the Local Licensing Authority shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). For purposes of any appeal to the District Court, the Local Licensing Authority's decision shall be final either on the date the applicant receives the findings, conclusion, and order or four (4) days following the date of mailing of the Authority's decision, whichever is earlier.

(F) No Refund and Costs of Enforcement. In the event of suspension, revocation, modification, conditioning, or cessation of business, no portion of the license fee shall be refunded. Any person whose license is suspended, revoked, modified, or conditioned under this Section shall be required to pay the costs incurred by the Town to enforce this Chapter, including but not limited to attorneys' fees, expert witness and/or consultant fees.

2-6-20: RELOCATION AND TRANSFER.

(A) No licensed Medical Marijuana Business may move to a new location within the Town until the relocation has been approved by the Local Licensing Authority. Any request to relocate a licensed Medical Marijuana Business must be filed with the Local Licensing Authority on a form provided by the Town. The application must be accompanied by:

- (1) The floor plan for the new location as referenced in Section 2-6-10;
- (2) Verification that the proposed Medical Marijuana Business is a permitted use in the zone district in which the proposed new site is located;
- (3) Documentation verifying that the proposed new location is at least 1,000 feet from any other licensed Medical Marijuana Business, as required by Section 2-6-8; and
- (4) Documentation verifying that the proposed new location is at least 1,000 feet from any of the facilities listed in Section 2-6-8.

The Local Licensing Authority shall conduct a public hearing on the proposed relocation as authorized by Section 2-6-12.

(B) No licensed Medical Marijuana Business may be transferred to a new owner until the transfer has been approved by the Local Licensing Authority. Any request to transfer ownership of a licensed Medical Marijuana Business, including any request to convey more than 10% ownership of any entity that owns and operates a Medical Marijuana Business, must be filed with the Local Licensing Authority on a form provided by the Town. The proposed new owner(s) must submit to the background investigation required by Section 2-6-10. The Local Licensing Authority shall conduct a public hearing on the proposed transfer as authorized by Section 2-6-12.

2-6-21: MANAGERS.

(A) Each licensee shall manage the licensed premises himself or herself or employ a separate and distinct manager on the premises and shall report the name of the manager to the Town. The licensee shall include the name of the manager on the license application.

(B) The licensee shall report any change in manager to the Town within ten (10) days of the change.

(C) An application with completed background investigation shall be administratively approved or denied by the Town Clerk pursuant to the criteria set forth in Section 5.51.070 prior to the manager being associated with managing or working at the operation.

2-6-22: UNLAWFUL ACTS.

(A) It shall be unlawful for a person to:

(1) Consume or allow any other person to consume, inhale, or ingest any marijuana or product containing marijuana or alcoholic beverages or a controlled substance on, or within, the premises of a Medical Marijuana Business; or

(2) With knowledge, to permit or fail to prevent the use of his or her registry identification by any other person for the unlawful purchasing of medical marijuana;

(B) It is unlawful for a person licensed pursuant to this article to:

(1) Dispense more than the amount of medical marijuana permitted under the provisions of the Colorado Medical Marijuana Code or the implementing regulations;

(2) Distribute, sell, or transfer any marijuana or any product containing marijuana to anyone other than a registry patient, a primary caregiver, or a person licensed pursuant to the Colorado Medical Marijuana Code;

(3) Store or display any marijuana or product containing marijuana outdoors, or in a manner in which it is visible from a public sidewalk or right of way;

(4) Sell or distribute medical marijuana at any time other than between the hours of 8:00 a.m. and 7:00 p.m. Monday through Sunday;

(5) Sell or allow any person to consume alcohol on the premises of a Medical Marijuana Business;

(6) Violate any of the provisions of the Colorado Medical Marijuana Code or the implementing regulations;

(7) Employ any person under the age of twenty-one (21) years old;

- (8) Offer for sale or solicit an order for medical marijuana in person except within the licensed premises;
- (9) Buy medical marijuana from a person not licensed to sell as provided in the Colorado Medical Marijuana Code;
- (10) Sell medical marijuana except in the permanent location specifically designated in the license for sale;
- (11) Have on the licensed premises medical marijuana or marijuana paraphernalia that show evidence of the medical marijuana having been consumed or partially consumed;
- (12) Offer anything of value to a physician for making patient referrals to the licensed medical marijuana center;
- (13) Fail to apply for a transfer as required by Section 2-6-20; or
- (14) Fail to report the name of or a change in managers as required by Section 2-6-21.

2-6-23: SECURITY REQUIREMENTS FOR LICENSED PREMISES.

All Medical Marijuana Business shall comply with the security requirements for the licensed premises as set forth in the Colorado Medical Marijuana Code and enabling regulations.

2-6-24: RIGHT OF ENTRY.

The application for a Medical Marijuana Business license shall constitute consent of the licensee and his agents or employees to permit the Boulder County Sheriff's Office or any other authorized agent of the Town to conduct routine inspections, from time to time, of any licensed Medical Marijuana Business to ensure compliance with the requirements of this Chapter, the Colorado Medical Marijuana Code, or any other applicable law, rule or regulation.

2-6-25: DUTIES OF LICENSEE.

(A) Each licensee shall:

- (1) Post the license in a conspicuous location on the premises of the Medical Marijuana Business that may be readily seen by persons entering the premises;
- (2) Comply with all of the terms and conditions of the license;

- (3) Comply with all of the requirements of this Chapter;
- (4) Comply with all other applicable Town ordinances;
- (5) Comply with all state laws and administrative regulations pertaining to the medical use of marijuana, including, but not limited to, the Colorado Medical Marijuana Code and the implementing regulations; and
- (6) Comply with all applicable federal laws, rules, or regulations, other than a federal law, rule or regulation concerning the possession, sale or distribution of marijuana that conflicts with Amendment 20.

(B) In addition to the duties set forth in Section 2-6-25(A), the following shall apply to all Medical Marijuana Businesses, in order to facilitate effective law enforcement:

(1) All licensees shall promptly report to the Boulder County Sheriff's Office any disorderly act, conduct or disturbance and any unlawful activity committed in or on the licensed premises or in the immediate vicinity of the licensed premises, including but not limited to any unlawful re-sale of medical marijuana.

(2) Each licensee shall post and keep at all times visible to the public in a conspicuous place on the premises, a sign with a minimum height of fourteen inches (14") and a minimum width of eleven inches (11"), with each letter to be a minimum of one-half inch (1/2") in height, which shall read as follows:

"WARNING:" The Boulder County Sheriff's Office must be notified of any and all disorderly acts, conduct or disturbances and all unlawful activities which occur on or within the premises of this licensed business."

(3) It shall not be a defense to a prosecution of a licensee under this Section that the licensee was not personally present on the premises at the time such unlawful activity, disorderly act or disturbance was committed; however, no agent, servant or employee of the licensee shall be personally responsible for failing to report any disorderly act or conduct or any disturbance and any unlawful activity hereunder if such agent, servant or employee was absent from the premises at the time such activity occurred.

(4) Failure to comply with the requirements of this Section shall be considered by the Licensing Authority in any action relating to the issuance, revocation, suspension or nonrenewal of a license.

2-6-26: SIGNAGE.

(A) **Advertising Signs.** All signage and advertising for a Medical Marijuana Business shall comply with all applicable provisions of the Lyons Municipal Code. Where any provision of the Lyons Municipal Code conflicts with any provision in this Section 2-6-26, this Section shall govern. In addition, no signage or advertising shall use the word “marijuana,” or “cannabis” or any other word, phrase or symbol commonly understood to refer to marijuana unless such word, phrase or symbol is immediately preceded by the word “medical” in type and font that is at least as readily discernible as all other words, phrases or symbols. Such signage and advertising must clearly indicate that all products and services are offered only for medical marijuana patients and primary caregivers, and no signs or advertising may refer directly or indirectly to the recreational use of marijuana, nor otherwise be designed in such a way as to be attractive to minors.

(B) **Warning Signs.** There shall be posted in a conspicuous location in each Medical Marijuana Center a legible sign containing warnings that:

- (1) the possession, use or distribution of marijuana is a violation of federal law;
- (2) the possession, use or distribution of marijuana for nonmedical purposes is a violation of state law;
- (3) It is illegal under state law to drive a motor vehicle or to operate machinery when under the influence of, or impaired by, marijuana; and
- (4) No one under the age of eighteen (18) years is permitted on the premises.

2-6-27: PENALTIES.

A. Any person violating any provision of this Chapter shall be punished pursuant to Chapter 1.4 of the Lyons Municipal Code. Each violation or non-compliance shall be considered a separate and distinct offense. Further, each day of continued violation or non-compliance shall be considered as a separate offense.

B. All remedies and penalties provided for in this Chapter shall be cumulative and independently available to the Town, and the Town shall be authorized to pursue any and all remedies to the full extent allowed by law.

C. Nothing herein contained shall prevent or restrict the Town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or non-compliance. Such other lawful actions

shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.

2-6-28: REFERENCE TO STATE LAW. In all matters not explicitly or implicitly addressed by this Chapter, the Town incorporates by reference and adopts the regulations, standards and procedures set forth in the Colorado Medical Marijuana Code

2-6-29: REASONABLE REGULATIONS.

The Town Administrator is hereby authorized to adopt such reasonable policies and procedures as are deemed necessary to implement the provisions of this Chapter.

SECTION 2. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 3. This Ordinance shall take effect thirty (30) days after final publication.

SECTION 4. The Town of Lyons Board of Trustees shall conduct a sunset review of this Ordinance before the end of the statewide moratorium on July 1, 2012.

INTRODUCED AND PASSED ON FIRST READING THIS 4TH DAY OF APRIL 2011

INTRODUCED, PASSED, ADOPTED AND
ORDERED PUBLISHED THIS 2ND DAY OF MAY 2011

By: _____
Julie Van Domelen, Mayor

ATTEST:

By: _____
Debra K. Anthony, MMC – Town Clerk