

HUERFANO COUNTY MARIJUANA AND HEMP REGULATIONS

SECTION 18.00

RECITALS

1. At the November 2012 general election, Colorado voters adopted Amendment 64 to the Colorado Constitution ("Article XVIII, Section 16") which authorizes the use, possession, growth, transport and transfer of marijuana in limited amounts and under limited circumstances, and further authorizes the conduct of business to cultivate, manufacture, test and sell marijuana and marijuana products.
2. In response, on July 2, 2014, by and through the adoption of Resolution No. 14-14, the Board of County Commissioners of Huerfano County ("BOCC") adopted certain land use regulations to authorize and govern the use of land within the County for the cultivation of marijuana; and
3. These regulations were subsequently amended by the BOCC on May 19, 2015, through the adoption of Resolution No. 15-18; and
4. After two years' experience with the marijuana cultivation industry and the land use impacts, challenges and needs presented by that industry, the BOCC determined that it was necessary and desirable to also regulate the use of land within the County for hemp-cultivation purposes, as such crop is similar to marijuana in its potential land use impacts while remaining a distinct and separate sort of enterprise; and
5. After approximately three years' experience with administering its marijuana land use regulations, the BOCC found and determined that it was necessary and desirable to adopt a temporary moratorium on the processing of applications for new cultivation activities, to afford the BOCC the time to study and evaluate the effectiveness of the existing regulations and, if necessary, to amend the regulations to operate more efficiently or to better serve the goals and purposes of the regulations; and
6. After undertaking its study and evaluation of the existing regulations, the BOCC now finds and determines; that the existing regulatory process of considering and approving marijuana cultivation by conditional use permit is adequately serving the County's goals of mitigating the potential adverse impacts of cultivation activities; that marijuana-related manufacturing and extraction activities *can* present minimal risk to the public health, safety and welfare, but only if adequately regulated to prevent the use of butane and other combustible or hazardous materials; and that the continued operation of industry related to marijuana and hemp may benefit County residents through economic opportunities, property development, a broadening of local job diversity, increased tax revenue and local job growth.
7. The BOCC now therefore desires to adopt amended land use regulations to authorize and govern marijuana and hemp cultivation and other related manufacturing, testing and storage activities, all as further set forth herein.

18.0 AUTHORITY AND PURPOSE OF THESE REGULATION:

- 18.0.1 These regulations are authorized by and adopted pursuant to the Colorado Retail Marijuana Code, Article 43.4 of Title 12, C.R.S.; the Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.; and C.R.S. § 30-28-102.
- 18.0.2 The purpose of this Section is to authorize, under limited circumstances and in limited locations, the cultivation, manufacturing, testing and storage of

marijuana and marijuana products and the cultivation of hemp, through a conditional use permit process that affords the County the opportunity to evaluate the appropriateness of each particular proposed location to its particular proposed use and to mitigate any potentially adverse land use impacts projected to be caused by such use, all in furtherance of the health, safety and welfare of County residents and visitors. Nothing in this Section is intended to promote or condone the sale, distribution, possession or use of marijuana in violation of any applicable law. Compliance with the requirements of this Section shall not provide a defense to criminal prosecution under any applicable law.

- 18.0.3 If the State of Colorado adopts any stricter regulation governing the activities governed by this Section, the stricter regulation shall control such activity. If the State prohibits any activity governed by this Section, any permit issued under this Section shall be deemed immediately revoked by operation of law, with no ground for appeal or other redress by the permittee.

18.1 **FEES AND DEPOSITS:**

- 18.1.1 Completeness Review meeting fee. Every applicant shall meet with County staff at the time of application submittal, and at such time, pay a non-refundable completeness review meeting fee of \$400.
- 18.1.2 Application Fee. At the time of application acceptance, each applicant shall pay a non-refundable \$1,300 application fee.
- 18.1.3 Operating Fee Deposit. At the time of application acceptance, each applicant must deposit a refundable operating fee deposit with the County in the amount of \$10,000 per Conditional Use Permit. This deposit shall be deposited and maintained in a separate account and drawn upon and used by the County to recover the County's costs and expenses in administering the Conditional Use Permit. Such costs and expenses may include, but shall not be limited to, County staff time, the procurement and maintenance of compliance tools and devices, outside review agencies and professional services. The County shall provide an annual statement to the applicant for each deposit provided by the applicant, reflecting the current balance of the deposit and the amounts and identified purpose(s) of any withdrawals since the last statement. Following the complete discontinuation, abandonment, revocation or transfer of a Conditional Use Permit, the County shall refund any unused amount of the deposit to the applicant with an accounting of its balance over time. Each applicant to assume responsibility for an existing Conditional Use Permit as a transferee must deposit a new refundable operating fee deposit with the County in the amount of \$10,000 per Conditional Use Permit.
- 18.1.4 Operating Transfer Fee. At the time of the County's acceptance of an application to transfer a Conditional Use Permit, the proposed transferee shall pay a non-refundable operating transfer fee in the amount of \$ 1,500. This transfer fee is in addition to the new operating fee deposit required under subsection 18.1.2. above.

18.2 GENERAL PROVISIONS:

- 18.2.1 The title of this Section shall be the Huerfano County Marijuana and Hemp Regulations, and may be so cited.
- 18.2.2 When a provision of this regulation would result in peculiar and exceptional hardship, the applicant may request a variance hearing with the Board of Adjustment. Said board shall have the authority to grant relief from the provision providing it does not produce a substantial detriment to the public good. See, Section 1.04.01 of the Huerfano County Zoning Regulations.
- 18.2.3 Definitions:
General definitions, terms and phrases are stated in Section 17.00 of the General Land Use regulations.
- 18.2.3.1 In addition to the definitions contained in this Paragraph, other terms used in this Section shall have the meanings ascribed to them in Sections 14 and 16 of Article XVIII of the Colorado Constitution and the Colorado Retail Marijuana Code and such definitions are hereby incorporated into this Section by this reference.
- 18.2.3.2 *County:* Huerfano County, Colorado.
- 18.2.3.3 *County Excise Tax:* The five percent (5%) County excise tax referred to voters by Huerfano County Board of County Commissioners' Resolution 14-15 and adopted and approved by the voters. This excise tax applies only to the first wholesale transfer or sale of marijuana and not to hemp.
- 18.2.3.4 *Existing:* Lawfully operating or under construction with a valid and active building permit issued by Huerfano County prior to a Conditional Use Permit application being filed with the County pursuant to this Section.
- 18.2.3.5 *Facility:* The area identified in a Conditional Use Permit application within which one or more of the following marijuana or hemp-related commercial activities are authorized to occur: Cultivation; Manufacturing; and Testing.
- 18.2.3.6 *Hemp:* "Industrial hemp," as defined by Section 16(2)(d) of the Colorado Constitution.
- 18.2.3.7 *Marijuana:* "Retail marijuana," as defined in Section 16(2)(f) of Article XVIII of the Colorado Constitution and regulated by Article 43.4, Title 12, C.R.S.
- 18.2.3.8 *Normal business hours:* Each week day, Monday through Friday, from 8:00 am until 4:00pm.
- 18.2.3.9 *Principal:* A natural person with legal authority to take action on behalf of the holder of a state-issued license to operate a marijuana or hemp Facility within the County.

18.2.4 The only marijuana and hemp-related activities that are eligible to be authorized by a Conditional Use Permit under this Section are those specified by subsection 18.0.2. All other marijuana and hemp-related activities and uses of land are expressly prohibited, except as otherwise authorized by the Colorado Constitution or other applicable law.

18.3 CONDITIONAL USE PERMIT (CUP) GENERAL REQUIREMENTS:

Because of their unusual or special characteristics, conditional uses require review and evaluation so that they may be located properly with respect to their effects on surrounding properties. Marijuana and hemp-related facilities present unique potential land use impacts such as placing significant demand on water and other resources and utilities, potential odor drift and heightened safety and security concerns. As such, in addition to the provisions applicable to Conditional Use Permits (CUP) in Section 1.06 of the Huerfano County Zoning Regulations, the following apply to each Conditional Use Permit to operate a facility:

18.3.1 In the event of any conflict between the requirements of this Section 18.00 and the general Conditional Use Permit requirements of Section 1.06, or any other applicable law, the more specific or stringent requirement shall govern.

18.3.2 A facility is permitted only as a conditional use in Agricultural, Commercial, and Industrial Zoning Districts as defined in Section 1.00, *et seq.* of the Huerfano County Zoning Regulations.

18.3.3 A facility shall be setback a minimum of five- hundred (500) feet from the nearest property line of property zoned or used for residential purposes, excepting outdoor cultivation facilities, which shall be setback a minimum of one-thousand (1,000) feet from each of the facility's property lines.

18.3.4 A facility shall be setback a minimum of one-thousand (1,000) feet from the nearest property line of property used as an existing public or private educational institution, licensed child care facility, medical facility, correctional or rehabilitation facility, library or used for public recreation.

18.3.5 A facility may not be located and operated as a home occupation pursuant to Section 1.11 of the Huerfano County Zoning Regulations.

18.3.6 A facility must comply at all times with all condition(s) and requirement(s) of its associated Conditional Use Permit as well as with all other permits, licenses, approvals, laws, rules and regulations.

18.3.7 A facility proposed as a new building or structure must obtain the Conditional Use Permit required by this Section prior to the commencement of construction. A facility proposed within an existing building or structure, regardless of whether or not any modification to the building or structure is required or proposed, must obtain the Conditional Use Permit required by this Section prior to the issuance of a Certificate of Occupancy to occupy and operate the proposed facility.

18.3.8 An applicant for a Conditional Use Permit under this Section shall provide, at time of application, evidence of all licenses, permits and approvals necessary to operate the proposed facility as required by the State of Colorado, Huerfano County, Las Animas-Huerfano Counties District Health Department or other applicable regulatory agency with jurisdiction.

Notwithstanding any other provision of the Huerfano County Zoning Regulations, County staff shall not accept or process an application lacking such evidence. For purposes of this provision, evidence of approval that is conditional *only* upon local land use approval shall constitute sufficient evidence of approval.

- 18.3.9 A Conditional Use Permit issued under this Section may be transferred to a person or entity other than the original applicant only upon the review and approval of the BOCC and the payment of all fee(s) and deposit(s) required of the new permit holder under Subsection 18.1 of this Section 18.00.. It shall be the burden of the proposed new (or amended) permit holder to demonstrate to the satisfaction of the BOCC that its continuation of the conditional use shall meet all existing permit conditions and requirements, as well as with all other applicable law, rules and regulations. This provision requires BOCC approval of any proposed change to one or more principal(s) of a permit holder even when the named permittee remains the same. Nothing in this Subsection shall be construed to require an applicant who is interested in assuming responsibility for an existing Facility to transfer the existing Conditional Use Permit in lieu of applying for a new Conditional Use Permit; however, every new owner who assumes responsibility for an existing Facility must obtain County approval prior to operating the Facility, through either transfer or issuance of a new Permit.
- 18.3.10 In addition to any requirements under the Colorado Retail Marijuana Code, and any rules or regulations promulgated thereunder requiring licensees to maintain books and records, every facility shall maintain accurate and complete records necessary to demonstrate compliance with this Section and with the County excise tax, including but not limited to number of County resident employees and tax returns. All records required to be kept hereunder must be kept in a legible manner and must be preserved and made available for inspection by the County for a period of three (3) years.
- 18.3.11 Each facility's paid workforce shall be comprised of a minimum of fifty-one percent (51%) Huerfano County residents, on an average annual basis, unless such facility obtains a variance from this requirement pursuant to Section 1.04.01 of the Huerfano County Zoning Regulations. Each permit holder shall submit annual evidence of compliance with this Subsection at each annual compliance review.
- 18.3.12 An applicant must obtain all required construction permits within forty-five (45) days of final approval of a Conditional Use Permit and must commence construction of a facility, whether such construction is a new build or the modification of an existing building or structure, within one hundred eighty (180) days of building permit approval. All construction necessary to operate a facility must be completed, pass final inspections and issued a certificate of occupancy within one year of building permit approval. Failure to meet the deadlines required hereunder shall render the prior approval of a Conditional Use Permit null and void and without further effect.
- 18.3.13 Any facility that ceases operations for a period of six (6) consecutive months shall be considered abandoned and the Conditional Use Permit issued therefor may be revoked on such grounds following the procedure set forth under Section 1.06.04 of the Huerfano County Zoning Regulations.

- 18.3.14 To ensure the appropriate decommissioning of any abandoned facility, each application shall include a bond, either in cash or underwritten by a surety company licensed to do business in the State, in an amount equal to five percent (5%) of the project value. Upon the abandonment of a facility, if the responsible Conditional Use Permit holder(s) fail to appropriately decommission the facility, as reasonably determined by the County Building Official, the County may draw upon the bond required hereunder and perform such work at the facility as is necessary to protect the public health, safety and welfare.
- 18.3.15 Each facility must meet all applicable safety and security requirements of the state of Colorado.
- 18.3.16 When determined necessary to ensure that the Conditional Use will neither be likely to prove detrimental to the public health, safety or welfare of County residents nor cause hardship for neighboring persons, a facility may be required to install an automatic fire suppression system and/or other fire mitigation measures beyond those required by the uniform codes adopted by the County and otherwise applicable to the facility.
- 18.3.17 A new facility located within three and one half (3 ½) miles of a municipal boundary must obtain an extraterritorial water tap from said municipality. The applicant must file proof of such a tap at the time of initial application. Any new water line necessitated by such extraterritorial service and all other facilities necessary to properly provide service to the facility must be constructed and approved by the applicable jurisdiction prior to the issuance of a Certificate of Occupancy for the facility.
- 18.3.18 A new facility located more than three and one half miles (3 ½) from a municipality must secure and provide proof of a physical, legal source of water, approved by a Division 2 Engineer from the Colorado Division of Water Resources, and guaranteed for a minimum period of twelve (12) months from the date of application. Documentation of this requirement must be included with the initial application materials and upon annual compliance review.
- 18.3.19 Permitted solvents used for the processing of marijuana or hemp shall be limited to Carbon Dioxide (CO₂) and Water (H₂O).
- 18.3.20 Procedures for processing marijuana or hemp for edibles, CBD extraction, or biofuels must be approved by the Colorado Department of Public Health (CDPHE) or its designee or by other applicable state or county regulatory agencies, including but not limited to the Colorado Marijuana Enforcement Division (MED).
- 18.3.21 Huerfano County Sheriff's Department Deputies, Code Enforcement Officers, or any other County Designee may enter and inspect all areas of all facilities during normal business hours for compliance with this Section and all other applicable laws that the officer has the jurisdiction and authority to enforce. Nothing in this paragraph amends, reduces or otherwise affects the legal authority of law enforcement officers to enter facilities at other times or under other circumstances within the parameters of the United States and Colorado Constitutions.
- 18.3.22 Annual Compliance Review. Each Conditional Use Permit issued under this

Section 18.00 shall be reviewed annually for compliance with all terms and conditions of the Permit and all requirements of this Section 18.00. The annual review shall be conducted pursuant to the review process set forth in Subsection 1.06.04 of the County Zoning Regulations.

18.4 MARIJUANA CULTIVATION SPECIFIC REQUIREMENTS:

18.4.1 Cultivation shall take place either within a secured, locked structure complying with the building standards adopted by Huerfano County Government or within the perimeter of a secured, locked outdoor cultivation facility that meets all applicable safety and security requirements of the state of Colorado.

18.4.2 Odor from a cultivation facility must not be detected by an Olfactometer after the odorous air has been diluted with seven (7) or more volumes of odor-free air, at the property line of an area being used predominantly for residential or commercial purposes, as determined by the Code Enforcement Officer. In all other land use areas, it is a violation if odors are detected after odorous air has been diluted with fifteen (15) or more volumes of odor-free air.

18.5 MARIJUANA INFUSED PRODUCT MANUFACTURING SPECIFIC REQUIREMENTS:

The setback requirement in section 18.03.4 may be reduced to five-hundred (500) feet when approved by the BOCC.

18.6 HEMP PRODUCTION SPECIFIC REQUIREMENTS:

18.6.1 Prior to the processing of any hemp, the name and address of the processing company shall be submitted to the Colorado Department of Public Health and Environment (CDPHE) and the Huerfano County Land Use Department.

18.6.2 An application for a new hemp facility to be located within a five (5) mile radius of any existing marijuana cultivation facility must include a letter of support from each such facility within such radius.

18.6.3 The requirement of section 18.03.17 shall not apply to hemp cultivation. The provision in section 18.03.18 will be enforced regardless of the distance from a municipality.

18.6.4 Any transporting of hemp shall be accompanied by a copy of the Department of Agriculture Hemp Permit.

18.7 LABORATORY TESTING SPECIFIC REQUIREMENTS:

The setback requirement in section 18.03.4 may be reduced when approved by the BOCC.

18.8 NO COUNTY LIABILITY; INDEMNIFICATION; NO DEFENSE:

18.8.1. By accepting a permit issued pursuant to this Section, the permit holder waives any claim concerning, and releases the County, its officers, elected officials, employees, attorneys and agents from, any liability for injuries or damages of any kind that result from any arrest or prosecution of business owners, operators, employees, clients or customers of the permit holder for a violation of state or federal laws, rules or regulations.

18.8.2. By accepting a permit issued pursuant to this Section, all permit holders, jointly and severally if more than one (1), agree to indemnify, defend and hold harmless the County, its officers, elected officials, employees, attorneys, agents and insurers against all liability, claims and demands on account of any injury, loss or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the business or enterprise that is the subject of the permit.

18.8.3. The issuance of a permit pursuant to this Section shall not be deemed to create an exception, defense or immunity for any person in regard to any potential criminal liability the person may have under state or federal law for the cultivation, possession, sale, distribution or use of marijuana or hemp.

DRAFT