

**CITY OF RIFLE, COLORADO
ORDINANCE NO. 19
SERIES OF 2013**

AN ORDINANCE OF THE CITY OF RIFLE, COLORADO, ENACTING
ARTICLE IX OF CHAPTER 6 OF THE RIFLE MUNICIPAL CODE
REGARDING THE LICENSING AND REGULATION OF RETAIL
MARIJUANA CULTIVATION FACILITIES PURSUANT TO AMENDMENT
64.

WHEREAS, Colorado voters passed Amendment 64, which amended Article XVIII of the Colorado Constitution by the addition of a new Section 16 regarding the personal use and regulation of marijuana; and

WHEREAS, Amendment 64 allows local governments to prohibit or allow the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance; and

WHEREAS, pursuant to Ordinance No. 20, Series of 2013, the City prohibited marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores in the City; and

WHEREAS, in order to allow the existing medical marijuana cultivation operations licensed within the City pursuant to Article VIII of Chapter 6 of the Rifle Municipal Code to convert to retail marijuana cultivation facilities under Amendment 64, the City finds it is necessary to adopt regulations regarding the licensing of such retail marijuana cultivation facilities.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIFLE, COLORADO, THAT:

Section 1. The foregoing recitals are incorporated herein as if set forth in full.

Section 2. A new Article IX of Chapter 6 of the Rifle Municipal Code, entitled “Retail Marijuana Cultivation Facilities,” is hereby enacted to read as follows:

**Chapter 6
Business Licenses**

**Article IX
Retail Marijuana Cultivation Facilities**

6-9-10. Purpose and Legislative Intent

Section 16 of Article XVIII of the Colorado Constitution, also commonly known as Amendment 64, authorizes a system of state licensing for businesses engaging in the cultivation,

testing, manufacturing, and retail sale of marijuana, collectively referred to as “marijuana establishments” by the Constitution. Subsection 16(5)(f) of Article XVIII allows localities, within their respective jurisdictions: to prohibit state licensing of marijuana establishments; to regulate the time, place, and manner in which marijuana establishments may operate; and to limit the total number of marijuana establishments. The authority of localities to prohibit or regulate marijuana establishments within their respective jurisdictions, including the authority to engage in local licensing of marijuana establishments, is also reflected in various provisions of the Colorado Retail Marijuana Code, Article 43.4 of Title 12, C.R.S. The purpose of this Article IX is to exercise the authority of the City of Rifle to prohibit marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores in the City and allow state licensed retail marijuana cultivation facilities to exist in the City in accordance with applicable state laws and regulations as well as the additional local licensing requirements and other restrictions set forth herein.

6-9-20. Definitions.

(a) For purposes of this Article, the following terms shall have the following meanings:

Amendment 64 means a voter-initiated amendment to the Colorado Constitution adopted in November 2012 adding Section 16 of Article XVIII to the Colorado Constitution.

Colorado Medical Marijuana Code means Article 43.3 of title 12 of the Colorado Revised Statutes and any rules or regulations promulgated thereunder, as amended.

Colorado Retail Marijuana Code means Article 43.4 of Title 12 of the Colorado Revised Statutes and any rules or regulations promulgated thereunder, as amended.

Good cause (for the purpose of refusing or denying a license renewal under this Article) means: (1) the licensee has violated, does not meet, or has failed to comply with any of the terms, conditions or provisions of this Article and any rule and regulation promulgated pursuant to this Article; (2) the licensee 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 in prior disciplinary proceedings or that arose in the context of potential disciplinary proceedings; (3) the licensee’s retail marijuana cultivation facility has been operated in a manner that adversely affects the public health, welfare or safety of the immediate neighborhood in which the retail marijuana cultivation facility is located or (4) the licensee or applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of this Article or the Colorado Retail Marijuana Code. Evidence to support a finding of good cause may include: (i) a continuing pattern of offenses against the public peace, as defined in Chapter 10 of this Code; (ii) a continuing pattern of drug-related criminal conduct within the premises of the retail marijuana cultivation facility or in the immediate area surrounding the facility; or (iii) a

continuing pattern of criminal conduct directly related to or arising from the operation of the retail marijuana cultivation facility.

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 the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate, but excluding industrial hemp, 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.

Retail marijuana cultivation facility means a facility licensed to cultivate, prepare and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

Marijuana testing facility means a facility licensed to analyze and certify the safety and potency of marijuana.

Marijuana product manufacturing facility means a facility licensed to purchase marijuana; manufacture, prepare and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

Retail marijuana store means a facility licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

Marijuana club means a place not used for residential purposes where individuals gather to consume or grow marijuana, regardless of whether such place calls itself private or public or charges an admission or membership fee.

(b) In addition to the definitions provided in Subsection (a) above, the other defined terms in Amendment 64 and Section 12-43.4-103, C.R.S. and any implementing regulations are incorporated into this Article by reference.

**6-9-30. Retail Marijuana Cultivation Facility License Required;
All Other Marijuana Establishments Prohibited**

(a) No person shall operate a retail marijuana cultivation facility within the City without a valid license issued in accordance with this Article. The City Manager of the City of Rifle is hereby designated to act as the local licensing authority for the City, within the meaning of the Colorado Retail Marijuana Code. Under any and all circumstances in which state law requires communication to the City by the state licensing authority or any other state agency in

regard to the licensing of marijuana establishments by the state, or in which state law requires any review or approval by the City of any action taken by the state licensing authority, the exclusive authority for receiving such communications and granting such approvals shall be exercised by the City Manager or the City Clerk on his or her behalf.

(b) This Article only permits the licensure of retail marijuana cultivation facilities and all other marijuana establishments, specifically marijuana product manufacturing facilities, marijuana testing facilities, retail marijuana stores and marijuana clubs, are prohibited from operating in any location in the City.

(c) Under no circumstances shall the City receive or act upon any application for local licensing of a marijuana establishment in circumstances where the state has failed to act in accordance with Section 16 of Article XVIII of the Colorado Constitution, it being the intent of this Article that no retail marijuana cultivation facility may lawfully exist in the City absent the issuance of a state license and full regulatory oversight of the retail marijuana cultivation facility by the state as well as the City.

6-9-40. Relationship to Colorado Retail Marijuana Code; Other Laws.

Except as otherwise specifically provided herein, this Article incorporates the requirements and procedures set forth in the Colorado Retail Marijuana Code. In the event of any conflict between the provisions of this Article and the provisions of the Colorado Retail Marijuana Code or any other applicable state or local law, the more restrictive provision shall control. To the extent the State of Colorado has adopted or adopts in the future any additional or stricter laws or regulations governing retail marijuana, the additional or stricter regulations shall control any retail marijuana cultivation facility in the City. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any license under this Article, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

6-9-50. Unlawful Acts.

It shall be unlawful for any person to:

(a) Operate any retail marijuana establishment in the City except for a retail marijuana cultivation facility with a license duly issued by the state licensing authority under the Colorado Retail Marijuana Code and in compliance with any and all applicable state laws;

(b) Operate any retail marijuana establishment in the City except for a retail marijuana cultivation facility with a license duly issued by the City Manager under this Article and in compliance with any and all applicable City laws;

(c) Engage in any form of business or commerce involving the cultivation, processing, manufacturing, storage, sale, distribution or consumption of marijuana other than those forms that are expressly contemplated by Section 16 of Article XVIII of the Colorado Constitution, the Colorado Retail Marijuana Code, or the Colorado Medical Marijuana Code; or

(d) Sell marijuana or marijuana products from marijuana plants possessed, grown, processed, or transported for personal use pursuant to Subsection 16(3) of Article XVIII of the Colorado Constitution.

**6-9-60. Limitation of Retail Marijuana Cultivation Facilities
Existing Medical Marijuana Cultivation Operations; Conversion**

(a) Only existing medical marijuana cultivation operations licensed within the City pursuant to Article VIII of Chapter 6 of the Rifle Municipal Code and by the state pursuant to the Colorado Medical Marijuana Code may apply for, and upon approval of a license, operate a retail marijuana cultivation facility in the City. [Enumerate those licenses]

(b) Pursuant to section 12-43.4-104, C.R.S., certain medical marijuana licensees or applicants qualified to receive a state license may, on or after October 1 2013, either apply for a retail marijuana cultivation facility license in addition their medical marijuana cultivation operation license, convert their medical marijuana cultivation operation license to a retail marijuana cultivation facility license, or apply for a retail marijuana cultivation facility license and surrender their medical marijuana cultivation operation license when the retail marijuana cultivation facility license is issued. A person who holds both a medical marijuana cultivation operation license pursuant to Article 43.3 of Title 12, C. R.S. and a retail marijuana cultivation facility license may operate both licenses in the same premises ("dual operation") provided they meet the requirements of the Colorado Retail Marijuana Code and this Article.

6-9-70. Application for License.

(a) A person seeking to obtain a license pursuant to this Article shall file an application with the City Manager. The form of the application shall be provided by the City Manager.

(b) An application for a license under this Article shall contain the following information:

(1) The name, address, telephone number, date of birth and social security number of all owners of the retail marijuana cultivation facility, or if it is a business entity, the names of each natural person who owns any ownership interest in the entity;

- (2) The street address, and unit number, if applicable, of the proposed retail marijuana cultivation facility, and a complete description including sketch diagram of the site for which the license is being obtained;
 - (3) If the applicant is not the owner of the proposed location of the retail marijuana cultivation facility, a statement from the owner of such property on a City-approved form authorizing the submission of the application;
 - (4) A completed set of the applicant's fingerprints;
 - (5) A statement to be initialed by the applicant that the City accepts no legal liability in connection with the approval and subsequent operation of the retail marijuana cultivation facility;
 - (6) A consent and acknowledgment that the City will conduct a background investigation of each owner;
 - (7) For a retail marijuana cultivation facility, the applicant must provide evidence that the structure has an adequate electrical supply safely installed for the operation certified by a Colorado licensed electrician, proper filtered ventilation and odor control measures installed so that no odors leave the premises, irrigation and plumbing plan, chemical storage and disposal plan, mitigation measures for air-borne fungi and related pests; and
 - (8) Any additional information that the City Manager reasonably determines to be necessary in connection with the investigation and review of the application.
- (c) Applications deemed complete shall be processed by the City Manager in order of receipt and incomplete applications will be rejected.

6-9-80. Application Fee.

An applicant shall pay to the City a non-refundable application fee to pick up an application and to file the application to cover the administrative costs of producing and processing the application. The amount of the application fees are set forth in Appendix A and may be amended by resolution of the City Council. An applicant shall further pay for the required background investigation as set forth in Appendix A and the actual cost of being fingerprinted and any outside professional costs incurred by the City related to the application.

6-9-90. Location Requirements.

A retail marijuana cultivation facility may only be located in the Light Industrial Zone District or Industrial Zone District and they are prohibited in all other zone districts, including

Light Industrial PUD. Prior to receiving a license pursuant to this Article, a retail marijuana cultivation facility must receive a conditional use permit from the City pursuant to Section 16-3-80 for the proposed location.

6-9-100. Denial of License.

- (a) The City Manager shall deny an application for a license under this Article, if the City Manager determines that:
- (1) information contained in the application or supplemental information requested from the applicant is found to be false in any material respect;
 - (2) the application fails to meet the location requirements set forth in Section 6-9-90.
 - (3) if the applicant or any owner of an applicant business has previously been convicted of a felony that is deemed a crime of violence or has completed any portion of a felony sentence within the past five (5) years.
 - (4) if the applicant or any owner of an applicant business has in the immediately preceding twelve (12) months had a medical marijuana license or retail marijuana establishment license revoked or suspended by the state or by the local licensing authority in this or any other jurisdiction.
 - (5) if any person named on the application is not of good moral character as defined by the Colorado Retail Marijuana Code
- (b) If an application is denied, the application fee shall not be refunded.

6-9-110. Decision by City Manager.

- (a) The City Manager shall approve, deny, or conditionally approve an application within forty five (45) days of the receipt of the completed application, unless, by written notice to the applicant, the decision period is extended for an additional ten (10) days if necessary for the City Manager to complete the review of the application or other such time to complete the background investigation.
- (b) If an applicant is denied, the City Manager shall clearly set forth in writing the grounds for denial.
- (c) The City Manager shall have the authority to impose such 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. In the event an application is conditionally approved, the City Manager shall clearly set forth in writing the conditions of approval.

6-9-120. Notice of Decision.

The City Manager shall notify the applicant of the decision on the application by mailing a copy of the City Manger's decision to the applicant by regular mail, postage prepaid, at the address shown in the application. Notice is deemed to have been properly given upon mailing.

6-9-130. Appeal of License Decision.

(a) An applicant has the right to appeal the City Manager's denial or conditional approval of an application to the City Council by filing a written request with the City Manager within twenty (20) days of the date of the notice of the decision described in Section 6-8-120 of this Code. An appealing applicant shall pay the appeal fee set forth in Appendix A and reimburse the City for any outside professional costs incurred by the City related to the appeal.

(b) The applicant shall be provided with not less than ten (10) days' prior written notice of an appeal hearing to be held by the City Council.

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

(d) Any decision made by the City Council 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 shall be a waiver of the applicant's right to contest the denial or conditional approval of the application.

6-9-140. License.

(a) A license shall contain the following information:

(1) The name of the licensee;

(2) The date of the issuance of the license;

(3) The address at which the licensee is authorized to operate the retail marijuana cultivation facility;

(4) Any special conditions of approval imposed upon the license by the City Manager; and

- (5) The date of the expiration of the license.
- (b) A license must be signed by both the applicant and the City Manager to be valid.
- (c) A license is non-assignable and any attempt to assign a license voids the license.
- (d) A license shall be continuously posted in a conspicuous location at the retail marijuana cultivation facility.
- (e) The change of the location of any license or any modification of the licensed premises shall be governed by the standards and procedures set forth in the Colorado Retail Marijuana Code and any regulations adopted pursuant thereto, and the City Manager shall administer applications to change location or modify premises in the same manner as the state licensing authority administers changes of location and modification of premises for state licenses. A license may only be transferred to a different location or a facility modified following the payment of the license transfer fee or modification of premises fee set forth in Appendix A, submitting the application materials and complying with the requirements relevant to location and structures contained in this Article, and approval of the license transfer or facility modification by the City Manager following the application process set forth in this Article.
- (f) The transfer of any interest in a retail marijuana cultivation facility must be reported to the City Manager prior to the change in ownership by submitting an application on forms approved by the City and payment of the change of ownership fee set forth in Appendix A. Transfer of ownership of any license issued pursuant to this Article shall be governed by the standards and procedures set forth in the Colorado Retail Marijuana Code.

6-9-150. Duration of License; Renewal.

- (a) Each license issued pursuant to this Article shall be valid for one (1) year from the date 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 City Manager not less than forty five (45) days prior to the date of expiration.
- (c) The provisions of Sections 6-9-70 through 6-9-130, inclusive, shall apply to the processing of an application to renew a license unless specifically waived by the City Manager based upon no changed circumstances. The timely filing of a renewal application shall extend the current license until a final decision is made on the renewal application, including any appeal of the City Manager's decision to the City Council. Any renewal of a license shall be governed by the standards and procedures set forth in this Article and the Colorado Retail Marijuana Code.

- (d) The applicant shall at the time of an application to renew a license not be delinquent on any applicable City's fees or taxes.
- (e) At the time of the filing of an application for the renewal of an existing license the applicant shall pay a renewal fee in an amount set forth in Appendix A which may be amended by resolution of the City Council.
- (f) The City Manager may refuse to renew a license for good cause.

6-9-160. Duties of Licensee.

It is the duty and obligation of each licensee to do the following:

- (1) Comply with all of the terms and conditions of the license, and any special conditions on the license imposed by the City Manager, pursuant to Section 6-9-110.
- (2) Comply with all of the requirements of this Article;
- (3) Comply with all other applicable City ordinances;
- (4) Comply with all state laws pertaining to the use of retail marijuana, including, but not limited to, Amendment 64, the Colorado Retail Marijuana Code, Article 43.4 of Title 12, C.R.S. and implementing administrative regulations, all as amended from time to time.
- (5) Allow inspection of its records and operation by the City Manager for the purpose of determining the licensee's compliance with the terms and conditions of the license and this Article.

6-9-170. Suspension or Revocation of License.

- (a) A license issued pursuant to this Article may be suspended or revoked by the City Manager for the following reasons:
 - (1) Fraud, misrepresentation, or a false statement of material fact contained in the license application;
 - (2) A violation of any City, state, or federal law or regulation, other than a federal law or regulation concerning the possession, sale or distribution of marijuana that conflicts with Amendment 64;

- (3) A violation of any of the terms and conditions of the license, including any special conditions of approval imposed upon the license by the City Manager;
 - (4) A violation of any of the provisions of this Article;
 - (5) Operations have ceased at the retail marijuana cultivation facility for more than thirty (30) days, including during a change of ownership of the dispensary or cultivation operation; or
 - (6) Ownership of the retail marijuana cultivation facility has been transferred without the new owner obtaining a license pursuant to this Article.
- (b) In connection with the suspension of a license, the City Manager may impose reasonable conditions.
- (c) No suspension or revocation shall be final until the licensee has been given the opportunity for a hearing to address the suspension or revocation. In deciding whether a license should be suspended or revoked in accordance with this section, and in deciding what conditions to impose in the event of a suspension, if any, the following shall be considered:
- (1) The nature and seriousness of the violation;
 - (2) Corrective action, if any, taken by the licensee;
 - (3) Prior violation(s), if any, at the licensed premises by the licensee and the effectiveness of prior corrective action, if any;
 - (4) The likelihood of recurrence;
 - (5) All circumstances surrounding the violation;
 - (6) Whether the violation was willful;
 - (7) The length of time the license has been held by the licensee;
 - (8) The number of violations by the licensee within the applicable twelve (12) month period;
 - (9) Previous sanctions, if any, imposed against the licensee; and
 - (10) Any other factor making the situation with respect to the licensee or the licensed premises unique or the violation of greater concern.

(d) The City Manager shall notify the licensee of the decision to suspend or revoke the license within three (3) business days of rendering the decision. The licensee has the right to appeal the City Manger's suspension or revocation to the City Council by filing a written request with the City Manager within twenty (20) days of the date of the Notice of Decision issued by the City Manager. The process for appeal of a suspension or revocation shall be as set forth in Section 6-9-130 of this Code. Notice shall be given pursuant to the procedure established in Section 6-9-120.

6-9-180. Operation of Retail Marijuana Cultivation Facility.

(a) No retail sale of marijuana may occur at a retail marijuana cultivation facility.

(b) Any signage for a retail marijuana cultivation facility shall comply with the requirements of Chapter 16, Article VIII of this Code. No sign shall contain a graphic/image of any portion of a marijuana plant.

(c) A retail marijuana cultivation facility must occur indoors and 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 cultivation operation or any adjoining business, parcel or tract of real property.

(d) A retail marijuana cultivation facility shall be required to have waste, chemical, and bioproduct storage and disposal measures as determined reasonably necessary by the City Manager.

6-9-190. Taxes.

Each licensee shall comply in full with the payment of City sales tax pursuant to Chapter 4 of this Code.

6-9-200. Penalties; Injunctive Relief.

(a) It is a Class 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 Chapter 1, Article IV of this Code.

(b) The operation of a retail marijuana cultivation facility without a valid license issued pursuant to this Article may be enjoined by the City in an action brought in a court of competent jurisdiction. In any case in which the City prevails in a civil action initiated pursuant to this section, the City may recover its reasonable attorney fees plus costs of the proceeding.

(c) The remedies provided in this Article IX are in addition to any other remedy provided by applicable law.

6-9-210. Rules and Regulations.

The City Manager shall have the authority from time to time to adopt, amend, alter and repeal administrative rules and regulations as may be necessary for the proper administration of this Article.

Section 3. If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 4. Appendix A of the Rifle Municipal Code shall be amended to include the following fee schedule:

Code §	Description	Fee
6-9-80	Retail marijuana cultivation facility application form	\$50.00
6-9-80	Retail marijuana cultivation facility application filing fee	\$5,000.00
6-9-80	Background investigation fee per person	\$100.00
6-9-130	Appeal fee (plus reimbursement of costs)	\$250.00
6-9-140	License transfer fee (location or ownership)	\$5,000.00
6-9-140	Facility modification fee	\$2,500.00
6-9-150	Retail marijuana cultivation facility renewal application filing fee/Annual operating fee	\$5,000.00

Section 5. If any part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not effect the validity of the remaining portions of this Ordinance; and the City Council hereby declares it would have passed this Ordinance, and each part, section, subsection, sentence, clause or phrase thereof, regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

Section 6. The City further determines that the adoption of this Ordinance is in the best interests and necessary to protect the health, safety and welfare of the citizens of the City of Rifle. The City also hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to Article XVIII, § 16(5)(f) and Article XX of the Colorado Constitution, the Home Rule Charter of the City of Rifle and the Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S., Section 31-15-401, C.R.S. (concerning municipal police powers), and Section 31-15-501 (concerning municipal power to regulate businesses).

INTRODUCED on October 16 2013, read by title, passed on first reading, and ordered published by title as required by the Charter.

INTRODUCED a second time at a regular meeting of the Council of the City of Rifle, Colorado, held on November 6, 2013, passed without amendment, approved, and ordered published in full as required by the Charter.

Dated this ____ day of _____, 2013.

CITY OF RIFLE, COLORADO

BY _____

Mayor

ATTEST:

City Clerk