



Ordinance No 17-01

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF GILPIN**

AN ORDINANCE: (1) CONTINUING THE PROHIBITION ON ALL RETAIL MARIJUANA ESTABLISHMENTS AND MEDICAL MARIJUANA OPERATIONS WITHIN UNINCORPORATED GILPIN COUNTY WITH THE EXCEPTION OF UP TO THREE MARIJUANA CULTIVATION FACILITIES AND ROCKY MOUNTAIN ORGANICS' CURRENT RETAIL MARIJUANA STORE; (2) APPLYING THE SPECIAL USE REVIEW PROCESS AND CREATING A LICENSING AUTHORITY AND PROCEDURE TO LICENSE UP TO THREE MARIJUANA CULTIVATION FACILITIES ON CERTAIN COMMERCIAL ZONED PROPERTY WITHIN UNINCORPORATED GILPIN COUNTY AND GIVING ROCKY MOUNTAIN ORGANICS A PREFERENCE FOR ONE OF THE THREE LICENSES; (3) CONDITIONALLY CONTINUING AUTHORIZATION FOR ROCKY MOUNTAIN ORGANICS' EXISTING RETAIL MARIJUANA STORE; (4) CONDITIONALLY ALLOWING DUAL OPERATIONS BY ROCKY MOUNTAIN ORGANICS OF ITS RETAIL MARIJUANA STORE AND A RETAIL MARIJUANA CULTIVATION FACILITY AT ITS SAME LOCATION IF ALLOWED BY AND IN COMPLIANCE WITH STATE LAW, GILPIN COUNTY'S ZONING REGULATIONS, AND GILPIN COUNTY'S SPECIAL USE REVIEW AND LICENSING PROCESS SET FORTH HEREIN; (5) LIMITING THE CULTIVATION, GROWTH, OR PRODUCTION OF MARIJUANA PLANTS ON RESIDENTIAL PROPERTY WITHIN UNINCORPORATED GILPIN COUNTY TO A MAXIMUM OF TWELVE MARIJUANA PLANTS PER RESIDENTIAL LOT OR PARCEL REGARDLESS OF THE NUMBER OF MEDICAL PATIENTS, MEDICAL CAREGIVERS, OR RECREATIONAL PERSONAL USE GROWERS OCCUPYING THE RESIDENTIAL LOT OR PARCEL; AND (6) REPEALING AND REPLACING ORDINANCE NO. 13-02 AND RESOLUTION NO. 12-21.

WHEREAS, the Board of County Commissioners are empowered under the Colorado Constitution Article 18, Section 16(5)(f), to regulate and prohibit or allow in whole or part or on condition marijuana establishments, as defined therein, within the unincorporated portions of Gilpin County;

WHEREAS, the Board of County Commissioners are empowered under the Colorado Constitution Article 18, Section 14, C.R.S. § 12-43.4-101 *et seq.*, and C.R.S. § 12-43.3-101 *et seq.*, and specifically C.R.S. § 12-43.3-106, to regulate and prohibit or allow in whole or part or on condition the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturer licenses, as defined therein, (collectively referred to herein as "medical marijuana operations") within the unincorporated portions of Gilpin County;

WHEREAS, the Board of County Commissioners are authorized pursuant to, *inter alia*, Colorado Constitution Article 18, Section 16, the Colorado Retail Marijuana Code, C.R.S. §§ 12-43.4-101, *et seq.* and the Colorado Constitution Article 18, Section 16, the Medical Marijuana Code, C.R.S. §§ 12-43.3-101 *et seq.*, as well as C.R.S. § 30-11-101 *et seq.* (county powers and functions), C.R.S. §§30-15-101, *et seq.* (county police powers), and C.R.S. §§ 30-28-101, *et seq.*, (county planning and building regulations) to regulate marijuana establishments and medical marijuana operations in the unincorporated areas of Gilpin County;

WHEREAS, under C.R.S. § 30-11-101(2), the Board of County Commissioners ("Board") is vested with general authority to adopt and enforce ordinances required to preserve the public health, safety and welfare;

WHEREAS, the Board is further empowered to enforce the law and to prevent and abate nuisances within the unincorporated portions of Gilpin County;



WHEREAS, the Board of County Commissioners has determined that it is in the interest of public health, safety and welfare of the residents of Gilpin County that regulations governing the local impacts of growing, cultivation and processing of marijuana be adopted;

WHEREAS, by Resolution No. 12-21, the Board of County Commissioners prohibited all medical marijuana operations with the exception of three nonconforming uses described in Resolution No. 12-21 (Rollinsville Mountain Meds, Alternative Medical Supply, and Rocky Mountain Organics) subject to certain requirements recited therein. By Ordinance No. 13-02, the Board of County Commissioner continued this prohibition and modified the exception for existing nonconforming uses to allowing just Alternative Medical Supply and Rocky Mountain Organics because Rollinsville Mountain Meds discontinued operations and was abandoned per Gilpin County Zoning Ordinance 2.4. Ordinance No. 13-02 also allowed these two businesses to obtain a dual operation for medical marijuana operations and a retail marijuana store or alternatively to operate only a retail marijuana store. Alternative Medical Supply subsequently discontinued operations and was abandoned per Gilpin County Zoning Ordinance 2.4.

WHEREAS, Ordinance No. 13-02 prohibited all other marijuana establishments and medical marijuana operations within the unincorporated portions of Gilpin County;

WHEREAS, the Colorado licensing authority responsible for issuing State medical and retail marijuana business licenses is the Executive Director of the Department of Revenue, who has created the Marijuana Enforcement Division ("MED") for this purpose. In September 2013, Rocky Mountain Organics obtained a license from MED for a medical marijuana center and a license for a medical marijuana optional premises cultivation operation (grow). In January 2014, Rocky Mountain Organics obtained a retail marijuana store license and a retail marijuana cultivation facility license from MED. In August 2014, Rocky Mountain Organics surrendered its medical marijuana center license and medical marijuana optional premises cultivation operation (grow) license. Rocky Mountain Organics' prior medical marijuana operations were discontinued and abandoned per Gilpin County Zoning Ordinance 2.4. Rocky Mountain Organics currently operates a MED licensed retail marijuana store and a MED licensed retail marijuana cultivation facility.

WHEREAS, Rocky Mountain Organics erroneously obtained a retail marijuana cultivation license from MED in contravention of Gilpin County's prohibition on such retail marijuana establishments pursuant to Ordinance No. 13-02. The issuance of this license was also in error as it allowed dual operation of Rocky Mountain Organics' retail marijuana cultivation facility with Rocky Mountain Organics' existing retail marijuana store, despite the absence of statutorily required authorization from Gilpin County allowing this dual operation.

WHEREAS, Gilpin County was not previously aware of these errors involving Rocky Mountain Organics' retail marijuana store and retail marijuana cultivation facility licenses. These errors need to be addressed and corrected.

WHEREAS, these errors violate State law that requires Gilpin County's approval allowing retail marijuana cultivation facilities in Gilpin County. These errors also violate State law that requires Gilpin County's approval in order to have dual operations for multiple marijuana establishments at the same location. These errors also violate Gilpin County's Zoning Regulations and Ordinance No. 13-02. Based on these violations, Rocky Mountain Organics is no longer entitled to operate its retail marijuana store as a nonconforming use per Ordinance No. 13-02.



WHEREAS, the Board otherwise authorizes Rocky Mountain Organics to continue to operate its existing retail marijuana store, subject to the conditions and requirements of this Ordinance.

WHEREAS, it is the finding of this Board that allowing marijuana cultivation facilities as that term is defined in Colorado Constitution Article 18, Section 16(2) though the Gilpin County's Zoning Regulations special use review process on certain commercially zoned property within the unincorporated portions of Gilpin County as set forth in this Ordinance is in the interest of the public health, safety, and welfare of the residents of Gilpin County;

WHEREAS, the Board desires to authorize licensing of up to three retail marijuana cultivation facilities on specifically commercially zoned property in unincorporated Gilpin County subject to State law and Gilpin County Zoning Regulations including without limitation special use review procedures. The Board wants to establish specific standards for local licensing, and prescribe the manner, zoning, distance, and other requirements by which marijuana cultivation facilities can be operated in Gilpin County;

WHEREAS, it is further the finding of this Board that continuing the prohibition on all other types of marijuana establishments as that term is defined in Colorado Constitution Article 18, Section 16(2) and medical marijuana operations as defined herein, with the exception of Rocky Mountain Organics' retail marijuana store, within the unincorporated portions of Gilpin County is in the interest of the public health, safety, and welfare of the residents of Gilpin County;

WHEREAS, the Board is empowered to allow a dual operation for medical marijuana operations and retail marijuana establishments at the same location pursuant to C.R.S. § 12-43.4-401(2). Specifically, the Board may allow Rocky Mountain Organics to operate a dual operation for its retail marijuana store and retail marijuana cultivation facility at its existing location if allowed by and in compliance with State laws, regulations, and rules and Gilpin County's Zoning Regulations including without limitation the special use review process and this Ordinance.

WHEREAS, the Colorado Legislature passed H.B. 17-1220 that limits the number of marijuana plants that can be cultivated, grown, or produced on residential property as that term is defined therein to a maximum of twelve (12) plants, regardless of whether the plants are for medical or recreational use and regardless of the number of persons residing temporarily or permanently at the residential property, subject to the discretionary power of counties and municipalities to allow up to twenty-four (24) plants if certain requirements enumerated in H.B. 17-1220 are met. H.B. 17-1220 by its terms takes effect January 1, 2018; and

WHEREAS, it is the intent of this Ordinance to regulate these matters and the local impacts of these matters as allowed under the Colorado Constitution, Article 18, Sec. 14; Colorado Constitution, Article 18, Sec 16; the Colorado Revised Statutes including without limitations the statutory provisions of H.B. 17-1220 effective January 1, 2018; and State rules and regulations including without limitations the Code of Colorado Regulations regarding the same.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS AS FOLLOWS:

PROVISIONS



1. Continued Prohibition of All Marijuana Establishments and Medical Marijuana Operations in Unincorporated Gilpin County Except One Existing Retail Marijuana Store Owned by Rocky Mountain Organics and Up to Three Retail Marijuana Cultivation Facilities as May Be Approved and Licensed per this Ordinance.

1.1. Subject to the exceptions described in ¶2 of this Ordinance (up to three marijuana cultivation facilities on certain commercially zoned property) and ¶3.2 (Rocky Mountain Organics' existing retail marijuana store), all marijuana establishments including marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores, as defined in Colo. Const. Art. 18, Sec. 16(2) and as defined in C.R.S. § 12-43.4-102, and all medical marijuana operations as described herein continue to be prohibited from operating within the unincorporated portions of Gilpin County.

2. Marijuana Cultivation Facilities on Certain Commercially Zoned Property – Special Use Review Approval Process and Licensing.

2.1 Up to a maximum of three (3) retail marijuana cultivation facilities as that term is defined by Colo. Const. Art. 18, § 16 on certain commercially zoned property within the unincorporated portions of Gilpin County are allowed by the Board of County Commissioners. Specific approval of such facilities shall be pursuant to this Ordinance, the Gilpin County Zoning Regulations including the Special Use Review process (SUR), Gilpin County Building Codes, and Gilpin County Marijuana Licensing Regulations as set forth herein.

2.2 Rocky Mountain Organics (Site Address: 5312 Highway 119), currently operating a retail marijuana store and a retail marijuana cultivation facility in Gilpin County is granted a preference in applying for one of the three retail marijuana cultivation facility licenses at its current location. The Board in its discretion offers this preference for several reasons including without limitation that Rocky Mountain Organics is an existing marijuana business in Gilpin County, has operated in compliance with Gilpin County and State requirements with the exception of the licensing error discussed herein. Rocky Mountain Organics is entitled to this preference for a period of six months from the date of enactment of ¶2 of this Ordinance to apply for SUR approval and start the process as provide herein.

2.3 Any person or entity ("Applicant") seeking to operate one of the three retail marijuana facilities shall first be required to go through Gilpin County's Zoning Regulations SUR process, Gilpin County Zoning Regulation 2.5.

2.4 If the Applicant is successful in obtaining SUR approval from the Board of County Commissioners for a retail marijuana cultivation facility, the Applicant will then be required to obtain a license from the Gilpin County Local Licensing Authority described in ¶2.5 of this Ordinance.

2.5 The Gilpin County Board of County Commissioners ("Board") shall be the Local Licensing Authority ("Authority") and may appoint in its sole discretion any individual, official, personnel or department to serve in this capacity. The Board hereby appoints the Director of Community Development or his designee to act in that capacity.



Ordinance 17-01
Page 5 of 14

- 2.6 On or after the effective date of ¶2 of this Ordinance as described in ¶7.8, Gilpin County shall accept applications for the three retail marijuana cultivation facilities, which shall be reviewed and considered on a first come first serve basis, subject to the preference given to Rocky Mountain Organics as described in ¶2.2. The Authority will not maintain a waiting list of those filing for licenses after the three licenses are issued. Any applications not approved at that point will be rejected. It will be up to rejected applicants to resubmit an application if and when licenses become available. The Authority has no obligation to inform past applicants of future available licenses but may, in its sole discretion, do so.
- 2.7 All applications shall be made on forms provided by the Authority or the State and shall include any supplemental materials as required by the Authority, this Ordinance, Gilpin County's Zoning Regulations, Gilpin County Building Codes, and as required by the State or under State law. Such supplemental materials shall include without limitation a map identifying the location of the proposed cultivation facility, legal boundary lines, and distance restrictions identified in Gilpin County's Zoning Regulations demonstrating such distance requirements are met.
- 2.8 Concurrent Application. As may be provided for under State Regulations, upon receipt of a local licensing application under this Ordinance, the Authority may request that the State Licensing Authority – MED conduct a concurrent review of a new license application and that MED advise the Authority on any items it finds could result in denial of the license. The Applicant shall be responsible for submitting any required fees and materials directly to the State Licensing Authority – MED under State Regulation when a request is made. If the Authority receives such notice from MED, the Authority shall suspend its review of the local license until it receives a notice from the State Licensing Authority – MED that the noted deficiencies have been corrected.
- 2.9 Before issuing a local license to operate a retail marijuana cultivation facility, the Authority shall require that the applicant provide the requisite information necessary to determine that all of the following requirements have been met by the Applicant. The Authority may waive, at its discretion, however, any submission requirements. The Authority may refuse to accept an incomplete application.
- 2.9.1 Applicant has obtained SUR approval for the retail marijuana cultivation facility;
 - 2.9.2 All application, renewal, operating and any other applicable fees have been paid;
 - 2.9.3 The application and all supplemental and required forms have been correctly completed and submitted;
 - 2.9.4 The Applicant has obtained a Certificate of Occupancy confirming the building and any part of the same that will be used for the retail marijuana cultivation facility complies with all applicable Building Code provisions;
 - 2.9.5 The Applicant has submitted a detailed report showing the mitigation measures taken to mitigate odors of the operation, including air and odor purification measures prepared and approved by a professional licensed mechanical engineer to the standards in the Zoning Regulations or as otherwise required to prove proper



ventilation systems so that odors are filtered and do not materially interfere with adjoining businesses or residences:

- 2.9.6 Proof that no zoning violations exist on the property;
 - 2.9.7 Proof of payment of all property taxes owing on the property and that no tax liens exist;
 - 2.9.8 Proof that all applicable state taxes have been paid during the prior licensed term;
 - 2.9.9 Proof of ownership and possession of the property;
 - 2.9.10 Proof that applicant has provided a copy of the Application to the Gilpin County Sheriff's Office and local fire district or department;
 - 2.9.11 Proof that that no violations of State law or regulations has occurred by Applicant and if they have occurred, how Applicant has satisfactorily corrected and mitigated any past violation;
 - 2.9.12 Applicant has submitted a copy of the State MED license(s) and proof of compliance with any State requirements related to the same;
 - 2.9.13 Proof that the nature and location of any existing or proposed exterior lighting and signage complies with all applicable signage provisions of the Gilpin County Zoning Regulations and any additional conditions as may be required by the Authority;
 - 2.9.14 Listing of all uses of the property and the uses of properties immediately surrounding the proposed licensed property;
 - 2.9.15 Proof of adequate water supply for the current and/or proposed retail marijuana cultivation facility;
 - 2.9.16 The Applicant must provide any other additional information or material that, in the discretion of the Authority, is necessary to make any determination under this Ordinance;
- 2.10 State License Requirements. Should the Authority approve an application for a license, no such license shall be issued or effective until and unless the State Licensing Authority – MED has approved the issuance of a State license for the proposed licensed retail marijuana cultivation facility premises. The Authority shall defer to the State MED to enforce the requirements of the State license and State Regulations.
- 2.11 Inspection and Certificate of Occupancy. All marijuana cultivation facilities, regardless of purpose or plant count, shall obtain a Certificate of Occupancy from the Gilpin County Community Development Department for all indoor space where marijuana would be cultivated, grown, or produced. Gilpin County personnel shall be entitled to inspect the property and the indoor space where marijuana would be cultivated, grown, or produced at reasonable times upon



Ordinance 17-01

Page 7 of 14

- 24-hour written or telephonic prior notice to the property owner. An inspection by Gilpin County confirming the cultivation facility is in compliance with Gilpin County's Building Codes and Colorado law is required for issuance of a Certificate of Occupancy. Applicant shall timely provide any records or documents requested by the Authority related to the license or cultivation facility.
- 2.12 The Authority shall grant, conditionally grant or deny a license based solely upon the Authority's investigation and findings, and no public hearing shall be required.
- 2.13 The Authority may deny any application or revoke any license that is not in full compliance with this Ordinance, Gilpin County Zoning Regulations, or State license requirements or law.
- 2.14 **Term of License.** Licenses are valid for a period of one year from the date of issuance. Licenses may be annually renewed at the discretion of the Authority subject to any changes in this Ordinance existing at the time of renewal. A licensee shall submit a renewal application at least forty-five days before the expiration date of the license. Upon denial or revocation of a State license, any license issued under these regulations shall be null and void. If a court of competent jurisdiction determines that the issuance of local licenses violates State or federal law, all licenses issued under these regulations shall be deemed immediately revoked by operation of law, with no ground for appeal or other redress on behalf of the licensee. Notwithstanding the provisions of this paragraph, a licensee whose license has been expired not more than 60 days may file a late renewal application upon payment of a nonrefundable late fee as provided herein to the Authority. Such fee shall be considered additional operating fees for the processing of the late application. A licensee who files a late renewal application and pays the requisite fees may continue to operate until the Authority takes final action to approve or deny the licensee's late renewal application. However, late renewal applications without good cause may be grounds for denial of the license renewal application.
- 2.15 **License and other Fees.** All fees are nonrefundable if and once the license is issued and will not be prorated if the licensed holder ceases operations for any reason or if the license is revoked as provided herein. The fees are to cover the County's costs including without limitation administration, inspections, enforcement, and attorney review and assistance in the application, approval, compliance, and enforcement process. Fees may be adjusted by the Board of County Commissioners as may be determined by the Board in its sole discretion. Fees apply to each license issued to the property. Gilpin County fees are as follows:
- 2.15.1 Initial License Application Fee: \$5,000.00
 - 2.15.2 Annual Operating Fee: \$15,000.00
 - 2.15.3 Annual License Renewal Fee: \$2,500.00
 - 2.15.4 Modification of Premises Fee: \$10,000.00
 - 2.15.5 Late Fee: 20 percent of the amount due
- 2.16 Retail marijuana cultivation facilities shall be located in accordance with Gilpin County Zoning Regulations.
- 2.17 Licensees shall at all times maintain the following:



- 2.17.1 An active, up to date State license for any operation requiring a license.
- 2.17.2 An active, up to date local license issued by the Authority.
- 2.17.3 All marijuana and cultivation operations shall be located completely within an enclosed, alarmed and secure building.
- 2.17.4 Marijuana cultivation facility activities shall only take place indoors and shall not be visible from the outside including but not limited to from a public sidewalk or right-of-way
- 2.17.5 The consumption or inhalation of marijuana on or within the property or premises is prohibited.
- 2.17.6 The sale or consumption of alcohol on the property or premises is prohibited.
- 2.17.7 The premises satisfy all Building Codes and Fire Codes and are equipped with proper ventilation systems so that odors are filtered and do not materially interfere with adjoining businesses or properties.
- 2.17.8 All signage must comply with Gilpin County Zoning Regulations.
- 2.17.9 Posted notice shall be onsite that provides the following warnings:
 - 2.17.9.1 Possession and distribution of marijuana is in violation of federal law;
 - 2.17.9.2 Loitering in and around a marijuana business is prohibited by Colorado law;
 - 2.17.9.3 The use or consumption of marijuana on site is prohibited and may impair a person's ability to drive a motor vehicle or operate machinery, and it is illegal to drive a motor vehicle or to operate machinery when under the influence or impaired by marijuana.
- 2.17.10 All business activities shall be done from a fixed location. No business shall be operated from a moveable, mobile, or transitory location.
- 2.17.11 Prior to operating, Applicant or licensee must obtain and comply with the terms of all applicable Gilpin County and State licensing.
- 2.18 Marijuana businesses requiring a State license shall be prohibited from operating as a Residential-based Business.
- 2.19 All permitted marijuana activity shall take place entirely indoors and in compliance with this Ordinance, Gilpin County Zoning Regulations, and Colorado law.
- 2.20 No Transfer of Ownership. Any license issued under this Ordinance is not transferrable or assignable. Any change in ownership shall require a new license.



- 2.21 Change of Location. Any license granted under this Ordinance is limited to the location specified in the license application. Operation of a marijuana cultivation facility at a new location requires a new license. Operating fees paid for a prior location may not be applied to the new location. When making a change of location application, any existing licensee in good standing shall be given a preference for a new license subject to the meeting the requirements for obtaining new license and authority of the Authority to approve or deny any license as set forth herein.
- 2.22 Hours of Operation. Activity, traffic, and outside work to and from and on the property on which a retail marijuana cultivation facility is located must cease between the hours of 10 p.m. and 7 a.m. Indoor work may continue without limitation so long as such work and noises and light from such work do not create a nuisance to the surrounding properties.
- 2.23 Violations. The Authority, in its reasonable discretion, may suspend or revoke a license for any of the reasons set forth in this Ordinance. If the Authority determines that a violation has occurred, it shall document the violation and notify the violator in writing of any suspension or revocation. Notifications and decisions of the Authority may be delivered by mailing to the address submitted to the Authority on the most recent application, posting on the premises, or by personal service. Notifications shall be deemed received three (3) business days after placement in the United States Mail, one (1) business day after posting on the licensed premises, and on the day of personal service. The Authority also has the ability to issue a notice to correct any continuing violation in lieu of a suspension or revocation. Licensees will comply with the notices to correct issued by the Authority within ten (10) days of notification. Failure to timely correct such violation will also be grounds for immediate suspension or revocation as may be ordered by the Authority in its discretion. The Authority, in its sole discretion, may accept a fine-in-lieu of suspension or revocation in an amount between \$500 and \$5,000.00 as determined by the Authority.
- 2.24 No Entitlements. No person shall have an entitlement or vested right to a license under this Ordinance, Gilpin County's Zoning Regulations, local zoning approvals, or any local building permits. Any license issued hereunder is a revocable privilege subject to the oversight and authority of Gilpin County and the State. This Ordinance, Gilpin County Zoning Regulations and Building Codes and applicable regulations, rules, requirements, and zoning may be changed or amended from time to time. Such changes or amendments may preclude the continuance, renewal, and/or further issuance of licenses previously granted or allowed. As of the date of the enactment of this Ordinance, the use, possession, distribution, and sale of marijuana is illegal under federal law and those engaged in such activities do so at their own peril and risk of criminal prosecution. Any license given hereunder does not provide any exception, defense, or immunity to any person in regard to any potential criminal liability the person may have for the production, distribution, or possession of marijuana.
- 2.25 Denial of License or Renewal. The Authority may deny a license or renewal for any reason articulated in State law, regulations and rules, the Gilpin County Zoning Regulations, Gilpin County Building Codes, and this Ordinance including, but not limited to, the following:
- 2.25.1 Submission of an incomplete application;



- 2.25.2 Submission of a late renewal without good cause for such delay;
 - 2.25.3 Violation or failure to comply with any terms, conditions, or provisions of State law or Regulations, the Gilpin County Zoning Regulations, Gilpin County Building Codes, or this Ordinance;
 - 2.25.4 Failure to comply with any special or other terms or conditions that were placed in the license by the State or this Authority. Pursuant to C.R.S. § 12-43.4-309, the Authority is authorized to impose any conditions that in its reasonable discretion are necessary or beneficial to address odors, neighborhood compatibility, and safety issues of any proposed license;
 - 2.25.5 Operation of the premises in a manner that adversely affects the public health, safety, or welfare of the immediate neighborhood in which the marijuana business is located;
 - 2.25.6 Failure by Applicant or an entity associated with or related to the Applicant to obtain or remain in good standing with an additional current or past retail marijuana cultivation facility license, other retail marijuana or medical marijuana license, or any other license.
 - 2.25.7 Exceeding the three-license cap set forth in ¶2.1 herein.
- 2.26 Decision and Appeal. Any decision of the Authority regarding an application, renewal, suspension or revocation shall be in writing specifying the reasons for the decision. Decisions may be delivered and will be deemed received as set forth in this Ordinance. Within ten (10) days of a decision, the Applicant or licensee may request that the Authority reconsider its decision by submitting a letter to the Authority clearly stating the grounds for the request. In response, the Authority may deny the request or issue a revised decision. The decision of the Authority shall constitute a final administrative agency decision appealable to the Gilpin County Board of County Commissioners. The procedures followed on such appeal shall be in the form provided by Gilpin County Zoning Regulation 1.5, with the exception that the Board of County Commissioners shall hear and decide the appeal. No additional hearing or appeal rights including, but not limited to, such hearings allowed under C.R.S. § 12-43.4-302, shall be provided to applicants under this Ordinance or otherwise. At all times, the licensee or applicant bears the burden of proving the Authority's denial of the license was arbitrary and capricious and an abuse of discretion. If an appeal is filed, the Authority's decision shall be stayed until such appeal is finally resolved by the Board of County Commissioners.
- 2.27 Severability. If any provision of this Ordinance is found to be invalid by a court of competent jurisdiction, only the provision subject to the court decision shall be repealed or amended. All other provisions shall remain in full force and effect; subject, however, to the Board of County Commissioners exercise of discretion to determine that such severed provision is too important, material or fundamental to the Ordinance that the entire Ordinance must be invalidated.
- 3. Conditionally Continuing Authorization for Rocky Mountain Organics' Existing Retail Marijuana Store**



- 3.1. Rocky Mountain Organics (Account #: P015383, Site Address: 5312 Highway 119), initially allowed to operate as a retail marijuana store in Gilpin County per Ordinance 13-02, shall not be subject to Gilpin County's prohibition on marijuana establishments under this Ordinance.
 - 3.2. Rocky Mountain Organics' retail marijuana store is limited to the floor area existing on August 20, 2013, the date of adoption of Ordinance No. 13-02 and there can be no change in ownership of the location or store.
 - 3.3. The Board of County Commissioners in its sole discretion may impose additional conditions and requirements on Rocky Mountain Organics retail marijuana store including without limitation imposition of licensing requirements and fees.
 - 3.4. Rocky Mountain Organics is required to comply with Colorado law and State MED license requirements, and all applicable Gilpin County Zoning Regulations and Building Codes, and this Ordinance. Any failure to do so may, in the Board's sole discretion, result in the Board revoking its authorization for the continued operation of this retail marijuana store.
- 4. Dual Operations by Rocky Mountain Organics for a Retail Marijuana Store and a Retail Marijuana Cultivation Facility at the Same Location**
- 4.1. Gilpin County will allow Rocky Mountain Organics to have a dual operation at its current 5312 Highway 119 location for its retail marijuana store and retail marijuana cultivation facility if a dual operation is allowed by and in compliance with State laws, regulations, and rules, Gilpin County's Zoning Regulations and Building Codes, and the other requirements of this Ordinance.
 - 4.2. Rocky Mountain Organics will only be allowed to operate a retail marijuana cultivation facility, however, if it complies with the requirements of ¶2 of this Ordinance including without limitation obtaining a special use permit approved by the Board of County Commissioners for that special use and the required Certificate of Occupancy from the Gilpin County Community Development Department.
- 5. Limitation on the number of marijuana plants that may be cultivated, grown, or produced on residential property as that term is defined in H.B. 17-1220.**
- 5.1. Marijuana plant cultivation, growth, or production is allowed by State law on residential property within unincorporated Gilpin County by registered medical marijuana patients and/or their caregivers, and by recreational marijuana users for personal use.
 - 5.2. A maximum of twelve (12) marijuana plants as that term is defined in H.B. 17-1220 may be cultivated, grown, or produced on a residential property which shall be further defined as a singular, specific, legal and defined lot or parcel, regardless of whether the plants are for medical or recreational use, and regardless of the number of medical patients, medical caregivers, or recreational personal use growers occupying the specific lot or parcel. The lot or parcel shall include all buildings or structures located on the specific lot or parcel.
 - 5.3. Any residential property on which marijuana is cultivated, grown, or produced, regardless of purpose or plant count, shall obtain a Certificate of Occupancy from the Gilpin County



Ordinance 17-01
Page 12 of 14

Community Development Department for all indoor space where marijuana would be cultivated, grown, or produced. The space within the residential property where marijuana is cultivated, grown or produced shall meet all applicable requirements of Gilpin County's Zoning Regulations and building codes including a mandatory occupancy class review and reclassification of any such spaces. Gilpin County personnel shall be entitled to inspect the property and the indoor space where marijuana would be cultivated, grown, or produced upon prior reasonable notice to the property owner. An inspection by Gilpin County personnel confirming the residential grow operation and space is in compliance with Gilpin County's Zoning Regulations and building codes and Colorado law is required for issuance of a Certificate of Occupancy.

5.4. A property owner shall not be in violation of this Ordinance if failure to obtain a Certificate of Occupancy is not due to actions by the property owner but are instead due to the Gilpin County Community Development Department's delay in conducting the required inspection.

6. Repeal of Ordinance No. 13-02 and Resolution No. 12-21. This Ordinance 17-01 repeals and replaces prior Resolution No. 12-21 and Ordinance No. 13-02.

7. General and Other Provisions.

7.1. **Inspection.** Subject to the requirements and limitations of this Ordinance and pursuant to applicable State statutes, upon showing proper identification, Gilpin Sheriff Office personnel and County building and zoning officials shall have the right to request entrance into any structure within the County where marijuana is being grown, cultivated, or processed during reasonable hours for the purpose of conducting a physical inspection of the premises to determine if the premises comply with the requirements of this Ordinance and all other applicable regulations. If such entry is refused, the County shall have recourse to every remedy provided by law to secure entry and take such other enforcement action as may be deemed appropriate.

7.2. **Penalties.** In addition to any penalties otherwise required or imposed by the County herein or by State law, any person who violates this Ordinance commits a class 2 petty offense and upon conviction thereof, shall be punished by a fine of not more than \$1000.00 for each separate violation, provided however that in the enforcement of this Ordinance, an arresting officer shall follow the penalty assessment procedure set forth in C.R.S. § 16-2-201. Each day after the issuance of the order of the county court during which such unlawful activity continues shall be deemed a separate violation and shall, in accordance with the subsequent provisions of this section, be the subject of a continuing penalty.

7.2.1. The Board of County Commissioners hereby adopt a graduated fine schedule for such violations as follows:

7.2.1.1. First violation: \$500.00 per violation

7.2.1.2. Second and all subsequent violations \$1000.00 per violation.

7.3. **Enforcement.** The issuance of a summons and complaint for violation of this Ordinance may be by the Gilpin County Sheriff, or by the Gilpin County Community Development Director, or their designee, who are both hereby granted such authorization pursuant to C.R.S. § 30-15-402.5.




Ordinance 17-01
Page 13 of 14

- 7.4. Notification of Violation. Written notice of any violation of this Ordinance shall be in accordance with ¶2.23 of this Ordinance, with the exception that if the violation does not involve a retail marijuana cultivation facility license holder notice shall be provided to the owner of the property upon which the violation occurred, as shown on records of the County Assessor.
- 7.5. Applicability. This Ordinance shall apply throughout the unincorporated area of Gilpin County including without limitation private property, Gilpin County owned public lands, and to any incorporated town or city within Gilpin County which shall elect by ordinance or resolution to have the provisions hereof applied.
- 7.6. Additional Remedy. In addition to any other remedy, legal or equitable, which may be available under the terms of this Ordinance, the County may institute an action for mandatory injunctive relief, abatement or other appropriate action, to compel any responsible party to remove and abate any condition cited as contrary to the provisions of this Ordinance.
- 7.7. Severability. In the event any portion of this Ordinance shall be declared null and void or unenforceable by any court of competent jurisdiction, such offending provisions/s shall be deemed to be deleted from this Ordinance, provided however that the remaining portions of this Ordinance shall remain in full force and effect and fully enforceable as written; subject, however, to the Board of County Commissioners exercise of discretion to determine that such severed provision is too important, material or fundamental to the Ordinance that the entire Ordinance must be invalidated.
- 7.8. Emergency Clause. The Board of County Commissioners finds and determines that the provisions of this Ordinance, with the exception of ¶5, are essential to the immediate protection of the public health, safety, and welfare of the residents of Gilpin County. This Ordinance, with the exception of ¶5, shall therefore take effect on the date of adoption of this Ordinance by the Board of County Commissioners. Paragraph 5 of this Ordinance shall not take effect until the effective date of H.B. 17-1220, which is January 1, 2018 or such later date as may be required by H.B. 17-1220 in the event a referendum petition is filed against it or any of its provisions.

Introduced and first read the 13th day of June, 2017, and ordered published in full in a newspaper of general circulation published in Gilpin County at least 10 days prior to final adoption.

ADOPTED ON 2nd READING THIS 11th day of July, 2017 by a vote of 3 to 0.


Gail Watson, Chair

Attest:


Deputy County Clerk

First reading: June 13, 2017



Ordinance 17-01
Page 14 of 14

CERTIFICATION OF THE COUNTY CLERK

Colleen Stewart, Gilpin County Clerk, hereby certifies that the foregoing ordinance was adopted by the Board of County Commissioners on the 11th day of July, 2017 at a regularly scheduled meeting of the Board of the County Commissioners, after a first reading on the 13th day of June 2017, at 11:10 a.m., at a regularly scheduled meeting of the Board of County Commissioners at the Gilpin County Courthouse, Central City, Colorado and that said ordinance was published in full in the *Weekly Register Call* at least ten (10) days prior to final adoption.

Colleen Stewart
Colleen Stewart, Gilpin County Clerk

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss
COUNTY OF GILPIN)

The foregoing Ordinance was acknowledged before me this 11 day of July, 2017 by Gail Watson, Chair, Sharon E. Cate, Deputy Clerk, and Colleen Stewart, County Clerk and Recorder, County of Gilpin.

My commission expires: 6/14/18
Witness my hand and official seal.

Notary Public

D. Watson

