



**TOWN OF PAGOSA SPRINGS, COLORADO**

**ORDINANCE NO. 796  
(SERIES 2013)**

**AN ORDINANCE OF THE TOWN OF PAGOSA SPRINGS  
AMENDING CHAPTER 6 OF THE PAGOSA SPRINGS  
MUNICIPAL CODE BY THE ADDITION THERETO OF A NEW  
ARTICLE 5 PROHIBITING THE SALE AND CULTIVATION OF  
MEDICAL MARIJUANA, INCLUDING MEDICAL MARIJUANA  
CENTERS, OPTIONAL PREMISES CULTIVATION OPERATIONS  
AND MEDICAL MARIJUANA-INFUSED PRODUCTS  
MANUFACTURING, AND A NEW ARTICLE 6 PROHIBITING  
THE OPERATION OF MARIJUANA CLUBS, MARIJUANA  
CULTIVATION FACILITIES, MARIJUANA PRODUCT  
MANUFACTURING FACILITIES, MARIJUANA TESTING  
FACILITIES AND RETAIL MARIJUANA STORES; WHICH  
ORDINANCE WILL AUTOMATICALLY EXPIRE ON MARCH 1,  
2015, UNLESS EXTENDED OR READOPTED**

WHEREAS, the Town of Pagosa Springs (“Town”) is a home rule municipality duly organized and existing under Article XX of the Colorado Constitution and the Pagosa Springs Home Rule Charter of 2003, as amended on April 3, 2012; and

WHEREAS, on November 7, 2000, the voters of the state of Colorado approved Amendment 20 enacted as Article XVIII, Section 14 of the Colorado Constitution (“Amendment 20”), which authorizes, subject to certain limitations, the medical use of marijuana by patients who have been advised by their physician, in a bona fide physician-patient relationship, that the patient might benefit from the medical use of marijuana in connection with the patient’s debilitating medical condition; and

WHEREAS, Amendment 20 further provides such patients and their primary caregivers an affirmative defense, subject to certain limitations, to a state law charge regarding the use and possession of marijuana; and

WHEREAS, the Colorado Legislature has adopted and the Governor has signed into law, legislation that in pertinent part adds a new Article 43.3 to Title 12 of the Colorado Revised Statutes, to be known as the Colorado Medical Marijuana Code (“CMMC”); and

WHEREAS, C.R.S. Section 12-43.3-103(2)(a) of the CMMC, provides that municipalities such as the Town may adopt and enforce an ordinance prohibiting the cultivation or sale of medical marijuana; and

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PO Box 1859  
Pagosa Springs CO 81147



WHEREAS, C.R.S. Section 12-43.3-106 of the CMMC establishes a local option allowing a municipality, by a majority of the members of the governing body, to vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations and medical marijuana-infused product manufacturing “based on local government zoning, health, safety and public welfare laws for the distribution of medical marijuana that are more restrictive than this article”; and

WHEREAS, the Town Council has carefully considered the provisions of the CMMC, Amendment 20, and the impact of medical marijuana centers, optional premises cultivation operations, medical marijuana-infused products manufacturers and the operation of primary care-givers and hereby finds and declares that it is necessary to the preservation and furtherance of the health, safety and welfare of the citizens of the Town to exercise its local land use authority to prohibit the operation of medical marijuana centers, optional premises cultivating operations and medical marijuana-infused products manufacturers and the cultivation and sale of medical marijuana within the Town, except as required by C.R.S. §25-1.5-106; and

WHEREAS, any primary care-giver who sells medical marijuana or charges for providing primary care-giver services is operating a business and shall be required to obtain a business license from the Town; and

WHEREAS, the Town Council wishes to conform the Pagosa Springs Municipal Code to the requirements of Amendment 20 and C.R.S. § 25-1.5-106, as the same may be amended from time to time, regarding patients and primary care-givers, subject to the Town’s business license and zoning regulations; and

WHEREAS, on November 6, 2012, the voters of the state of Colorado approved Amendment 64 enacted as Article XVIII, Section 16 of the Colorado Constitution (“Amendment 64”), which requires the Town to allow the use and possession of one ounce of marijuana or less and cultivation of up to six plants by adults 21 of age and older, and allows the Town to authorize or prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores (collectively, “marijuana establishments”); and

WHEREAS, the Town Council has carefully considered the provisions of Amendment 64 and the impact of the operation of marijuana establishments on the health, safety and welfare of the Town and the inhabitants thereof, and has determined, as an exercise of its local land use authority and authority under Amendment 64, that such marijuana establishments shall not be located within the corporate limits of the Town; and

WHEREAS, Amendment 64 also provides in part that the consumption of marijuana shall not be conducted openly and publicly; and



WHEREAS, the Town Council finds that the personal use of marijuana within the meaning of Amendment 64 does not contemplate the open and public consumption of marijuana for personal use in a place of assembly that allows members, their guests, and any other person to consume marijuana; and

WHEREAS, the Town Council finds and declares that it is necessary to the preservation and furtherance of the health, safety and welfare of the citizens of the Town to prohibit the operation of marijuana establishments within the Town of Pagosa Springs.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PAGOSA SPRINGS, COLORADO, as follows:

I. Adoption of Article 5 of Chapter 6 of the Municipal Code. The Town of Pagosa Springs Municipal Code is amended by the addition thereto of a new Article 5 of Chapter 6 entitled "Medical Marijuana," as attached hereto on Exhibit A and incorporated herein.

II. Adoption of Article 6 of Chapter 6 of the Municipal Code. The Town of Pagosa Springs Municipal Code is amended by the addition thereto of a new Article 6 of Chapter 6 entitled "Retail Marijuana Establishments," as attached hereto on Exhibit B and incorporated herein.

III. Public Inspection. The full text of this Ordinance, with any amendments, is available for public inspection at the office of the Town Clerk.

IV. Severability. If any portion of this Ordinance is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect.

V. Effective date. This Ordinance shall become effective and be in force immediately upon final passage at second reading.

VI. Termination. This Ordinance shall automatically terminate and the provisions of the Pagosa Springs Municipal Code adopted hereby shall be automatically repealed as of March 1, 2015 unless extended or readopted by subsequent Ordinance validly adopted.

INTRODUCED, READ, AND ORDERED PUBLISHED BY TITLE ONLY  
PURSUANT TO SECTION 3.9, B) OF THE PAGOSA SPRINGS HOME RULE  
CHARTER, BY THE TOWN COUNCIL OF THE TOWN OF PAGOSA SPRINGS,  
COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS  
REGULAR MEETING HELD AT THE TOWN OF PAGOSA SPRINGS, ON THE  
3 DAY OF Sept, 2013.

TOWN OF PAGOSA SPRINGS,



21306612 10/2/2013 2:45 PM  
4 of 11 ODC R\$61.00 D\$0.00

June Madrid  
Archuleta County

COLORADO



By: Ross Aragón  
Ross Aragón, Mayor

Attest:

April Hessman  
April Hessman, Town Clerk

FINALLY ADOPTED, PASSED, APPROVED, AND ORDERED PUBLISHED BY TITLE ONLY PURSUANT TO SECTION 3.9, D) OF THE PAGOSA SPRINGS HOME RULE CHARTER, BY THE TOWN COUNCIL OF THE TOWN OF PAGOSA SPRINGS, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF PAGOSA SPRINGS, ON THE 1st DAY OF Oct, 2013.

TOWN OF PAGOSA SPRINGS,  
COLORADO



By: Ross Aragón  
Ross Aragón, Mayor

Attest:

April Hessman  
April Hessman, Town Clerk



21306612  
5 of 11 ODC

10/2/2013 2:45 PM  
R\$61.00 D\$0.00

June Madrid  
Archuleta County

**CERTIFICATE OF PUBLICATION**

I, the duly elected, qualified and acting Town Clerk of the Town of Pagosa Springs, Colorado, do hereby certify the foregoing Ordinance No. 796 (Series 2013) was approved by the Town Council of the Town of Pagosa Springs on first reading at its regular meeting held on the 3 day of Sept, 2013, and was published by title only, along with a statement indicating that a violation of the Ordinance is subject to enforcement and punishment pursuant to Article 3, Chapter 1 of the Pagosa Springs Municipal Code (P.S.M.C.), and specifically Section 1.3.3, which provides for a fine not exceeding \$1,000 or incarceration not to exceed one year, or both, that violation of the ordinance constitutes a public nuisance that may be abated pursuant to Article 2, Chapter 11 of the P.S.M.C., that the Town may seek injunction, abatement, or restitution in case of violation, and any other remedies provided by law or equity, and that the full text of the Ordinance is available at the office of the Town Clerk, on the Town's official website, on Sept 20, 2013, which date was at least ten (10) days prior to the date of Town Council consideration on second reading.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Pagosa Springs, Colorado, this 2 day of Oct, 2013.

  
\_\_\_\_\_  
April Hessman, Town Clerk  
(SEAL)  


I, the duly elected, qualified and acting Town Clerk of the Town of Pagosa Springs, Colorado, do hereby certify the foregoing Ordinance No. 796 (Series 2013) was approved by the Town Council of the Town of Pagosa Springs on second reading, at its regular meeting held on the 1 day of Oct, 2013, and was published by title only, along with a statement indicating the effective date of the Ordinance and that the full text of the Ordinance is available at the office of the Town Clerk, on the Town's official website, on October 2, 2013.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Pagosa Springs, Colorado, this 2 day of Oct, 2013.

  
\_\_\_\_\_  
April Hessman, Town Clerk  
(SEAL)  




**EXHIBIT A**

**ARTICLE 5. MEDICAL MARIJUANA**

**Section 6.5.1 Authority.**

**Section 6.5.2. Definitions.**

**Section 6.5.3. Findings.**

**Section 6.5.4. Prohibited Operations.**

**Section 6.5.5. Patients and Primary Care-givers.**

**Section 6.5.6. Penalty: Nuisance Declared.**

**Section 6.5.7. Automatic Repeal.**

**ARTICLE 5. MEDICAL MARIJUANA**

**Section 6.5.1 Authority.**

The Town Council hereby finds and determines and declares that it has the power and authority to adopt this Article pursuant to the following:

1. Article XVIII, Section 14 of the Colorado Constitution;
2. The authority granted to home rule municipalities by Article XX of the Colorado Constitution;
3. The powers contained in the Town of Pagosa Springs Home Rule Charter;
4. The Colorado Medical Marijuana Code, §12-43.3-101, *et seq.*, C.R.S.;
5. The Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.;
6. Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers);
7. Section 31-15-103, C.R.S. (concerning municipal police powers);
8. Section 31-15-401, C.R.S. (concerning municipal police powers); and
9. Section 31-15-501, C.R.S. (concerning municipal authority to regulate businesses).

**Section 6.5.2. Definitions**

The following words, terms and phrases when used in this Article shall have the following meanings unless the context clearly indicates otherwise:



(1) “Medical marijuana,” “medical marijuana center,” “medical marijuana-infused product,” “medical marijuana-infused products manufacturer,” “optional premises,” and “optional premises cultivation operation,” shall have the same meanings as set forth in the Colorado Medical Marijuana Code, Article 43.3, C.R.S., as the same may from time to time be amended.

(2) “Patient” shall have the same meaning as set forth in Article XVIII, Section 14(1) of the Colorado Constitution.

(3) “Primary Care-giver” or “Primary Caregiver” shall have the same meaning as set forth in Article XVIII, Section 14(1) of the Colorado Constitution and Section 25-1.5-106, C.R.S.

### **Section 6.5.3. Findings**

The Town Council makes the following findings:

(1) The Colorado Medical Marijuana Code, C.R.S. Section 12-43.3-101, *et seq.*, clarifies Colorado law regarding the scope and extent of Article XVII, Section 14 of the Colorado Constitution.

(2) This ordinance is necessary to protect and is enacted in furtherance of the public health, safety and welfare of the Town.

(3) This Article is intended to apply and shall apply to all property, businesses and business enterprises operating within the Town, whether stationary, mobile or virtual.

### **Section 6.5.4. Prohibited Operations.**

(1) It is unlawful for any person to operate, cause to be operated or permit to be operated a medical marijuana center, an optional premises cultivation operation or a medical marijuana-infused products manufacturing facility in the Town.

(2) Medical marijuana centers, medical marijuana-infused products manufacturers and optional premises cultivation operations may not be operated as a primary land use, or as an incidental activity to another lawful land use, or as a home occupation.

(3) It is unlawful for any person who is not registered as a Patient or Primary Care-giver pursuant to § 25-1.5-106, C.R.S. to cultivate or sell medical marijuana within the Town, except as permitted pursuant to Article XVIII, Section 16 of the Colorado Constitution. Any person cultivating or selling medical marijuana in violation of this Chapter and Section 25-1.5-106, C.R.S. shall not be entitled to the affirmative defense provided in Section 14 of Article XVIII of the Colorado Constitution.



**Section 6.5.5. Patients and Primary Care-givers.**

(1) Nothing in this Article shall be construed to prohibit or otherwise impair the use of medical marijuana by Patients, in accordance with the Colorado Constitution and consistent with Section 25-1.5-106, C.R.S. and rules promulgated thereunder, as may be amended from time to time.

(2) Primary Care-givers within the Town are authorized to engage only in those activities regarding medical marijuana that are set forth in Section 14 of Article XVIII of the Colorado Constitution, as defined and limited by Section 25-1.5-106, C.R.S. Primary Care-givers who engage in the sale of medical marijuana and/or who charge for care-giver services, shall be deemed to be operating a business within the Town and shall obtain a business license pursuant to Section 6.1.3 of the Town Code.

(3) Primary Care-givers and Patients who engage in the cultivation of medical marijuana or the provision of care-giver services within the Town, whether for compensation or not, shall comply with all regulations of general applicability within the Town, including zoning regulations and uniform codes.

**Section 6.5.6. Penalty: Nuisance Declared.**

(1) It is unlawful for any person to violate any provision of this Article. Any such violation is hereby designated a criminal offense and any person found guilty of violating any of the provisions of this Article shall, upon conviction thereof, be punished by a fine or imprisonment or both pursuant to Sections 1.3.3 of this Code. Each day that a violation of any of the provisions of this Article continues to exist shall be deemed a separate and distinct violation pursuant to Section 1.3.2 of this Code.

(2) The conduct of any activity or business in violation of this Article is hereby declared to be a public nuisance, which may be abated pursuant to the provisions for the enforcement of nuisances as provided in Article 2 of Chapter 11 of this Code. All violations of this Chapter shall be considered an emergency violation as provided in Section 11.2.2 of this Code.

(3) The Town is specifically authorized to seek an injunction, abatement, restitution or any other remedy necessary to prevent, enjoin, abate or remove the violation.

(4) Any remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law or in equity.

**Section 6.5.7. Automatic Repeal.**

This Article 5 shall be automatically repealed as of March 1, 2015, unless extended or readopted by subsequent Ordinance validly adopted.



**EXHIBIT B**

**ARTICLE 6. RETAIL MARIJUANA ESTABLISHMENTS**

**Section 6.6.1. Authority.**

**Section 6.6.2. Definitions.**

**Section 6.6.3. Prohibited Operations.**

**Section 6.6.4. Penalties: Nuisance Declared.**

**Section 6.6.5. Automatic Repeal.**

**ARTICLE 6. RETAIL MARIJUANA ESTABLISHMENTS**

**Section 6.6.1. Authority.**

The Town Council hereby finds and determines and declares that it has the power and authority to adopt this Article pursuant to the following:

1. Article XVIII, Section 16 of the Colorado Constitution;
2. The authority granted to home rule municipalities by Article XX of the Colorado Constitution;
3. The powers contained in the Town of Pagosa Springs Home Rule Charter;
4. The Colorado Retail Marijuana Code, §12-43.4-101, *et seq.*, C.R.S.;
5. The Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.;
6. Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers);
7. Section 31-15-103, C.R.S. (concerning municipal police powers);
8. Section 31-15-401, C.R.S. (concerning municipal police powers); and
9. Section 31-15-501, C.R.S. (concerning municipal authority to regulate businesses).

**Section 6.6.2. Definitions.**



The following words, terms and phrases when used in this Article shall have the following meanings unless the context clearly indicates otherwise:

A. “Marijuana” or “marihuana” shall have the same meaning as set forth in Article XVIII, Section 16(2)(f) of the Colorado Constitution.

B. “Marijuana club” means an entity or place of assembly that allows members and their guests, or any other persons, to consume marijuana or marijuana products whether for-profit or not-for-profit. Marijuana clubs shall not include social gatherings within a residential zoning district of adults 21 years of age and older as guests of a resident at the location, where a fee is not charged, goods are not sold, and no profit is made by the individual hosting the gathering.

C. “Marijuana cultivation facility” shall have the same meaning as set forth in Article XVIII, Section 16(2)(h) of the Colorado Constitution

D. “Marijuana establishment” shall have the same meaning as set forth in Article XVIII, Section 16(2)(i) of the Colorado Constitution.

E. “Marijuana product manufacturing facility” shall have the same meaning as set forth in Article XVIII, Section 16(2)(j) of the Colorado Constitution.

F. “Marijuana products” shall have the same meaning as set forth in Article XVIII, Section 16(2)(k) of the Colorado Constitution.

G. “Marijuana testing facility” shall have the same meaning as set forth in Article XVIII, Section 16(2)(l) of the Colorado Constitution.

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

I. “Retail marijuana store” shall have the same meaning as set forth in Article XVIII, Section 16(2)(n) of the Colorado Constitution.

### **Section 6.6.3. Prohibited Operations.**

A. It is unlawful for any person to operate, cause to be operated, or permit to be operated, any marijuana establishment or marijuana club within the Town, and all such uses are hereby prohibited in any location within the Town.

B. Marijuana establishments and marijuana clubs may not be operated as a primary land use, or as an incidental activity to another lawful land use, or as a home occupation.



**Section 6.6.4. Penalties: Nuisance Declared.**

(1) It is unlawful for any person to violate any provision of this Article. Any such violation is hereby declared a criminal offense and any person found guilty of violating any provision of this Article shall, upon conviction thereof, be punished by a fine or imprisonment, or both, pursuant to Section 1.3.3 of this Code. Each day that a violation of any provision of this Article continues to exist shall be deemed a separate and distinct violation.

(2) The conduct of any activity or business in violation of this Article is hereby declared to be a public nuisance, which may be abated pursuant to the provisions for the enforcement of nuisances as provided in Article 2 of Chapter 11 of this Code. All violations of this Article shall be considered an emergency violation as provided in Section 11.2.2 of this Code.

(3) The Town is specifically authorized to seek an injunction, abatement, restitution, or any other remedy necessary to prevent, enjoin, abate, or remove the violation.

(4) Any remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law or in equity.

**Section 6.6.5. Automatic Repeal.**

This Article 6 shall be automatically repealed as of March 1, 2015, unless extended or readopted by subsequent Ordinance validly adopted.

**Town of Pagosa Springs  
P.O. Box 1859  
Pagosa Springs, CO 81147**