

TOWN OF PAGOSA SPRINGS, COLORADO

**ORDINANCE NO. 794
(SERIES 2013)**

**AN ORDINANCE OF THE TOWN OF PAGOSA
SPRINGS EXTENDING THE SUSPENSION OF THE
PROCESSING OF APPLICATIONS FOR MEDICAL
MARIJUANA CENTERS, MEDICAL MARIJUANA
OPTIONAL PREMISES CULTIVATION
OPERATIONS AND MEDICAL MARIJUANA
INFUSED PRODUCT MANUFACTURING
BUSINESSES, SUSPENDING THE DELIVERY OF
MEDICAL MARIJUANA PRODUCTS FROM
OUTSIDE OF ARCHULETA COUNTY, AND
ESTABLISHING A TEMPORARY MORATORIUM ON
THE OPERATION OF MARIJUANA CULTIVATION
FACILITIES, MARIJUANA PRODUCT
MANUFACTURING FACILITIES, MARIJUANA
TESTING FACILITIES, AND RETAIL MARIJUANA
STORES THROUGH JANUARY 31, 2014**

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, the Town as a home rule municipality has broad constitutional and statutory power to regulate the use of land within its boundaries; and

WHEREAS, pursuant to said authority and the provisions of Article 11 of the Town of Pagosa Springs Home Rule Charter (“Town Charter”) the Town has adopted certain policies, ordinances and resolutions pertaining to business licensing and the development of property within the Town, including the Town’s zoning and subdivision regulations; and

WHEREAS, the voters of Colorado and voters of Archuleta County approved at the 2000 general election an amendment to the Colorado Constitution, codified as Section 14 of Article XVIII (“Amendment 20”), which authorizes the medical use of marijuana by persons in Colorado suffering debilitating medical conditions; and

WHEREAS, the voters of Colorado approved at the 2012 general election an amendment to the Colorado Constitution, codified at Section 16 of Article XVIII



(“Amendment 64”), which authorizes the recreational use and sale of retail marijuana; and

WHEREAS, despite Colorado’s adoption of Amendments 20 and 64, the use of marijuana for any purpose, including the treatment of debilitating medical conditions and recreational uses, has remained unlawful under Federal law; and

WHEREAS, beginning in January 2012, the Federal government has sent letters to various Medical Marijuana Dispensaries in Colorado demanding that they close because their business is in violation of Federal law; and

WHEREAS, pursuant to Amendment 64, municipalities may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores (collectively “Retail Marijuana Establishments”) through the enactment of an ordinance ; and

WHEREAS, the Town has received inquiries regarding licensing Medical Marijuana Dispensaries within the Town, and the sale of both medical and retail marijuana is prohibited under the current Municipal Code Section 6.1.7 because the sale and use of marijuana for all purposes violates Federal law; and

WHEREAS, Amendment 20 references medical marijuana dispensaries, but makes no attempt whatsoever to regulate or define such dispensaries, other than to provide that they are subject to applicable state laws which require the collection and remittance of sales tax; and

WHEREAS, there currently are no provisions within the Town Ordinances which would allow or regulate Medical Marijuana Dispensaries or Retail Marijuana Establishments regarding their location relative to schools, amusement sites or other areas frequented by minors, their hours of operation, or other matters necessary to assure that such dispensaries are legitimately operating solely as a Medical Marijuana Dispensary in a manner compliant with the limited exceptions set forth in Amendment 20, or a Retail Marijuana Business in a manner compliant with Amendment 64; and

WHEREAS, marijuana remains a controlled substance, the possession or use of which is illegal under Federal law; and

WHEREAS, the Colorado General Assembly has adopted legislation that would provide a framework for implementing Amendment 20, and several court cases are pending which may provide instruction on the breadth and scope of the Town’s authority to regulate medical marijuana dispensaries; and

WHEREAS, the Town Council believes it to be in the best interest of the peace, health and safety to temporarily suspend the processing of applications for Medical Marijuana Dispensaries and Retail Marijuana Establishments until such time as it can



determine whether to allow such businesses, and if so, the appropriate zoning, business licensing and other regulations associated with them;

WHEREAS, by Ordinance No. 745 (Series 2009), the Town imposed a temporary moratorium upon the consideration of pending and future applications for Medical Marijuana Dispensaries; and

WHEREAS, by Ordinance No. 752 (Series 2010), the Town continued the temporary moratorium upon the consideration that the Colorado General Assembly was considering legislation that would provide a framework from implementing Amendment 20; and

WHEREAS, by Ordinance No. 756 (Series 2010), the Town continued the moratorium upon the consideration that the Colorado General Assembly was considering legislation that would provide a framework for implementing Amendment 20 by July 1, 2011; and

WHEREAS, by Ordinance No. 762 (Series 2011) the Town continued the moratorium upon the consideration that the Colorado General Assembly was considering additional legislation that would provide a framework for implementing Amendment 20 by July 31, 2012; and

WHEREAS, by Ordinance No. 779 (Series 2012) the Town suspended the processing of applications for Medical Marijuana Dispensaries until July 30, 2013; and

WHEREAS, State of Colorado House Bill 10-1284 signed by Governor Ritter on July 10, 2010 provides new definitions for Medical Marijuana Dispensaries defined as: Medical Marijuana Centers, Medical Marijuana Optional Premises Cultivation Operations and Medical Marijuana Infused Manufacturing Businesses and set July 1, 2011 as the date to implement final rules and regulations by the Colorado State Department of Revenue for these Medical Marijuana Dispensaries; and

WHEREAS, State of Colorado House Bill 11-1043 signed by Governor Ritter cleaned up some regulatory inconsistencies and provided new restrictions on licensed Medical Marijuana Dispensaries and caregivers, which became effect as of July 1, 2011; and

WHEREAS, the Colorado Department of Revenue promulgated regulations effective July 1, 2011 implementing the medical use of marijuana; and

WHEREAS, the Colorado Department of Public Health and Environment promulgated regulations effective December 31, 2011 implementing the medical use of marijuana; and



WHEREAS, pursuant to Amendment 64 and House Bill 13-1317, the State Licensing Authority adopted emergency rules for the regulation of Retail Marijuana Establishments on July 1, 2013 and has filed a notice of rulemaking with the Secretary of State on July 15, 2013 in order to adopt permanent rules for regulation of retail marijuana and Retail Marijuana Establishments and a revised set of rules governing medical marijuana and Medical Marijuana Dispensaries; and

WHEREAS, pursuant to Amendment 64 and House Bill 13-1317, the State Licensing Authority must begin accepting and processing applications for Retail Marijuana Establishments on October 1, 2013; and

WHEREAS, the Town Council believes it to be in the best interest of the peace, health and safety to continue the temporary suspension of the consideration of applications for Medical Marijuana Dispensaries and also impose a temporary moratorium on applications for Retail Marijuana Establishments pending further direction by the Colorado General Assembly, the Colorado judicial system and the State Licensing Authority; and

WHEREAS, the Town Council believes it to be in the best interest of the peace, health and safety to temporarily suspend the processing of applications for Medical Marijuana Dispensaries, including Medical Marijuana Centers, Medical Marijuana Optional Premises Cultivation Operations and Medical Marijuana Infused Product Manufacturing Businesses and Retail Marijuana Establishments, including marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores, and to temporarily prohibit the delivery of Medical Marijuana Dispensary Products from outside of Archuleta County until such time as the Town Council can determine whether to allow such businesses, and, if so, the appropriate zoning, business licensing and other regulations associated with them; and

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

Section 1. Findings of Fact. The Town Council of the Town of Pagosa Springs hereby makes the following findings of fact:

A. That the Town has received serious inquiries from applicants interested in opening up Medical Marijuana Dispensary businesses.

B. That the voters of the State of Colorado affirmed the medical use of marijuana by voting for Amendment 20 in November of 2000.

C. That the voters of the State of Colorado affirmed the recreational use of marijuana by voting for Amendment 64 in November of 2012.



D. That Federal law prohibits the sale of marijuana, and the Federal government has required some Medical Marijuana Dispensaries in Colorado to close.

E. That the Colorado Department of Revenue and the Colorado Department of Public Health and Environment promulgated separate regulations implementing the medical use of marijuana, which regulations became effective July 1, 2011 and December 30, 2011, respectively.

F. That the State Licensing Authority adopted emergency rules for the regulation of Retail Marijuana Establishments on July 1, 2013 and has filed a notice of rulemaking with the Secretary of State on July 15, 2013 in order to adopt permanent rules for regulation of retail marijuana and Retail Marijuana Establishments and a revised set of rules governing medical marijuana and Medical Marijuana Dispensaries.

G. That considerable study is needed in order to determine if the Town should allow Medical Marijuana Dispensaries and/or Retail Marijuana Establishments, and if so, the appropriate zoning considerations and licensing requirements for each.

H. That further study is needed to determine whether it is appropriate to license and allow the operation of Medical Marijuana Dispensaries and/or Retail Marijuana Establishments within the Town of Pagosa Springs jurisdiction, under Article 1 of Chapter 6 of the Town's current Municipal Code, Business Licenses.

I. That the approval of Medical Marijuana Dispensaries and Retail Marijuana Establishments, in the absence of appropriate regulatory guidelines, may have an irreversible negative impact upon the Town.

J. That it is necessary in the interest of public peace, health and safety to delay, until January 31, 2014, the processing of any applications for Medical Marijuana Dispensaries and Retail Marijuana Establishments to ensure that the legality, definition, zoning and licensing requirements are consistent with the long-term planning objectives of the Town, if so elected, and allowing Town Council ample time to review the State of Colorado's final medical and retail marijuana regulations.

K. That, during the above-mentioned period of time, the Town should:

1. Continue to monitor, analyze and implement any direction provided by legislation adopted by the Colorado General Assembly, regulations adopted by the State Licensing Authority, and binding decisions of the Colorado judicial system regarding Medical Marijuana Dispensaries and Retail Marijuana Establishments.



2. Review the Department of Revenue's existing regulations on medical and retail marijuana.

3. Analyze and determine if the Town of Pagosa Springs should amend its Municipal Code to allow Medical Marijuana Dispensaries and/or Retail Marijuana Establishments to operate within the Town's jurisdiction.

4. If it is determined that an amendment to the Municipal Code to allow Medical Marijuana Dispensaries and/or Retail Marijuana Establishments is appropriate and necessary, then to develop appropriate regulations for zoning and business licensing of such.

Section 2. Temporary Suspension of Applications. In order to study the legal, zoning and licensing issues regarding Medical Marijuana Dispensaries and Retail Marijuana Establishments, the temporary suspension placed upon the consideration of all pending and future applications for Medical Marijuana Dispensaries by Ordinance 779, Series 2011, is hereby readopted and a temporary moratorium on Retail Marijuana Establishments is hereby adopted. Such moratorium shall expire on midnight of January 31, 2014, unless expressly extended or earlier terminated by the Town Council.

Section 3. Definition of Medical Marijuana Dispensaries. For the purposes of this Ordinance, the term "Medical Marijuana Dispensaries" shall mean and include the use of any property or structure to distribute, transmit, give, or otherwise provide marijuana in any manner, in accordance with Section 14 of Article XVIII of the Colorado Constitution.

Section 4. Definition of Retail Marijuana Establishments. For the purposes of this Ordinance, the term "Retail Marijuana Establishments" shall mean and include all "marijuana establishments," as such term is defined in Section 16(2) of Article XVIII of the Colorado Constitution.

Section 5. Applicability. The provisions of the Ordinance shall affect the processing of any applications associated with Medical Marijuana Dispensaries.

Section 6. Direction to Staff. Town staff is hereby directed to develop, within the temporary suspension period provided by this Ordinance, recommendations to the Town Council regarding whether Medical Marijuana Dispensaries and/or Retail Marijuana Establishments shall be allowed within the Town's jurisdiction and if so, the appropriate restrictions on location, size, quantity and business license requirements, and to make specific recommendations regarding any proposed amendments to the Town's ordinances, including the allowing of, definition of, zoning of and offenses related to the operation of a Medical Marijuana Dispensaries and Retail Marijuana Establishments.



Section 7. Public Inspection. The full text of this Ordinance, with any amendments, is available for public inspection at the office of the Town Clerk.

Section 8. 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.

Section 9. Effective Date. This Ordinance shall become effective and be in force immediately upon final passage at second reading.

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 18TH DAY OF JULY, 2013.

TOWN OF PAGOSA SPRINGS,
COLORADO

By: Ross Aragón
Ross Aragón, Mayor

Attest:

April Hessman
April Hessman, Town Clerk

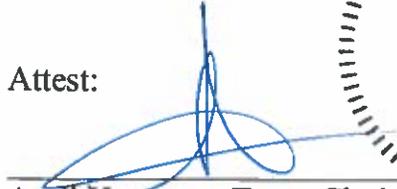


FINALLY ADOPTED, PASSED, APPROVED, AND ORDERED PUBLISHED BY TITLE ONLY PURSUANT TO SECTION 3.9, D) OF THE PAGOSA SPRINGS HOME RULE CHARTER, BY THE TOWN COUNCIL OF THE TOWN OF PAGOSA SPRINGS, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF PAGOSA SPRINGS, ON THE 6th DAY OF AUGUST, 2013.

TOWN OF PAGOSA SPRINGS,
COLORADO

By: Ross Aragón
Ross Aragón, Mayor

Attest:


April Hessman, Town Clerk



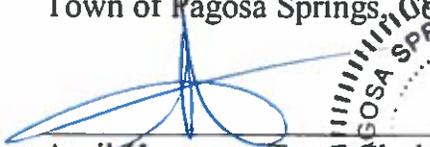
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June Madrid
Archuleta County

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. 794 (Series 2013) was approved by the Town Council of the Town of Pagosa Springs on first reading at its regular meeting held on the 18th day of July, 2013, and was published by title only, and that the full text of the Ordinance is available at the office of the Town Clerk, on the Town's official website, on July 19th, 2013, which date was at least ten (10) days prior to the date of Town Council consideration on second reading.

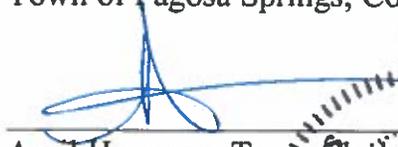
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Pagosa Springs, Colorado, this 30 day of July, 2013.


April Hessman, Town Clerk

(S E A L)

I, the duly elected, qualified and acting Town Clerk of the Town of Pagosa Springs, Colorado, do hereby certify the foregoing Ordinance No. 794 (Series 2013) was approved by the Town Council of the Town of Pagosa Springs on second reading, at its regular meeting held on the 6th day of August, 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 August 12, 2013.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Pagosa Springs, Colorado, this 12 day of August, 2013.


April Hessman, Town Clerk

(S E A L)

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