

**TOWN OF MILLIKEN**

**ORDINANCE NO. 795**

**AN ORDINANCE REPEALING ARTICLES V AND VI OF CHAPTER 6 OF THE MILLIKEN MUNICIPAL CODE AND ENACTING A NEW ARTICLE VII OF CHAPTER 6 OF THE MILLIKEN MUNICIPAL CODE REGARDING THE LICENSING AND REGULATION OF RETAIL MARIJUANA BUSINESSES AND MEDICAL MARIJUANA BUSINESSES**

**WHEREAS**, the Town of Milliken, Colorado (“Town”) is authorized under Title 31 of the Colorado Revised Statutes to adopt and amend ordinances in furtherance of governmental administrations and the Town’s police powers;

**WHEREAS**, the Colorado Constitution specifically authorizes the Town to prohibit or regulate medical and retail marijuana businesses and to adopt regulations consistent with the intent of state law;

**WHEREAS**, the Town Board of Trustees (“Board”) on or about October 17, 2017, adopted ordinance number 753, “An Ordinance Enacting A New Article V Of Chapter 6 Of The Milliken Municipal Code Regarding The Licensing And Regulation Of Medical Marijuana Establishments” as well as ordinance number 754, “An Ordinance Enacting A New Article VI Of Chapter 6 Of The Milliken Municipal Code Regarding The Licensing And Regulation Of Retail Marijuana Establishments;”

**WHEREAS**, the provisions of ordinance numbers 753 and 754 were carefully crafted in light of the Colorado Medical Marijuana Code, which was at that time codified in Article 11 of Title 44 of the Colorado Revised Statutes (“Statutes”), and the Colorado Retail Marijuana Code, which was at that time codified in Article 12 of Title 44 of the Statutes;

**WHEREAS**, the Statutes have since been modified, including terminology changes, and the Colorado Medical Marijuana Code has been consolidated with the Colorado Retail Marijuana Code into what is now known as the Colorado Marijuana Code, which is codified in Article 10 of Title 44 of the Statutes; and

**WHEREAS**, the Board desires to update the Town of Milliken Municipal Code to reflect statutory changes in the area of medical and retail marijuana regulation;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF MILLIKEN, COLORADO:**

**Section 1. Incorporation of Recitals.** The foregoing recitals are hereby affirmed and incorporated herein by this reference as findings of the Town Board.

**Section 2. Repeal of Articles V and VI of Chapter 6 of the Municipal Code.** Articles V and VI of Chapter 6 of the Milliken Municipal Code are hereby repealed in their entirety.

**Section 3. Enactment of Article VII of Chapter 6 of the Municipal Code.** A new Article VII of Chapter 6 of the Milliken Municipal Code is hereby enacted to read in in full as follows:

**CHAPTER 6**

**ARTICLE VII – CONSOLIDATED MEDICAL AND RETAIL MARIJUANA BUSINESS REGULATIONS AND LICENSING**

**Sections:**

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6-7-200	Duties of licensee; records to be maintained
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6-7-240	Signage and advertising
6-7-250	Taxes
6-7-260	Penalties; injunctive relief
6-7-270	No waiver of governmental immunity
6-7-280	No Town liability and indemnification of Town
6-7-290	Other laws remain applicable
6-7-300	Compliance with state law

**Sec. 6-7-10 – Findings and legislative intent.**

- (a) Section 16 of Article XVIII of the Colorado Constitution and Article 12 of Title 44, C.R.S., vest the Town Board with the option to determine whether to license retail

marijuana establishments within the boundaries of the Town. The purpose of the provisions in this Article related to retail marijuana businesses is to authorize such licensing for permitted retail marijuana businesses and to regulate such permitted retail marijuana businesses in the Town pursuant to the requirements of this Article. Such provisions are intended to exercise the authority granted by Section 16 of Article XVIII of the Colorado Constitution and the provisions of the Colorado Marijuana Code related to retail marijuana businesses for the Town to adopt licensing requirements that are supplemental to and/or stricter than the requirements set forth in state law. The purpose of such provisions is to license and regulate permitted retail marijuana businesses in the interest of public health, safety, and general welfare of the community. Except as otherwise specifically provided herein, this Article incorporates requirements and procedures set forth in the Colorado Marijuana Code. In the event of any conflict between the provisions of this Article and the provisions of the Colorado Marijuana Code or any other applicable state or local law, the more restrictive provision shall control.

(b) The Town Board of Trustees adopts the provisions of this Article related to medical marijuana businesses based upon the following findings of fact:

- a. On November 7, 2000, the voters of the State of Colorado approved Amendment 20. Amendment 20 added Section 14 of Article XVIII to the Colorado Constitution and created a limited exception from criminal liability under state law (as opposed to federal law) for seriously ill persons who are in need of marijuana for specified medical purposes and who obtain and use medical marijuana under the limited, specified circumstances described in Amendment 20.
- b. The intent of Amendment 20 is to enable certain specified persons who comply with the registration provisions of the law to legally obtain, possess, cultivate, grow, use and distribute marijuana without fear of criminal prosecution under state law.
- c. Despite the adoption of Amendment 20, marijuana is still a controlled substance under state and federal law. As a result, making it legal for a person to obtain, possess, cultivate, grow, use and distribute marijuana, even for medical use as contemplated by Amendment 20, has the potential for abuse that should be closely monitored and regulated by local authorities to the extent possible.
- d. If not closely monitored and regulated, the presence of marijuana, even for the purposes legally permitted by Amendment 20, can cause an increase in illegal activities within the Town affecting the health, safety, order, comfort, convenience and general welfare of the residents of the Town.
- e. If medical marijuana businesses operating pursuant to Amendment 20 were allowed to be established and to operate without appropriate local regulation of their location, medical marijuana businesses might be established in areas that would conflict with the Town's comprehensive land use plan; be inconsistent with surrounding uses; or otherwise be detrimental to the public health, safety and welfare.

(c) Nothing in this Article is intended to allow a person to:

- a. Engage in conduct that endangers others or causes a public nuisance;

- b. Possess, cultivate, grow, use or distribute marijuana that is otherwise illegal under applicable law; or
- c. Engage in any activity related to the possession, cultivation, growing, use or distribution of marijuana that is otherwise not permitted under the laws of the Town or the state.

(d) This Article is necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the order, comfort and convenience of the Town and the inhabitants thereof.

**Sec. 6-7-20 – Legal authority.**

Town Board of Trustees hereby finds, determines and declares that it has the power to adopt this Article pursuant to:

- (a) The Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.;
- (b) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers);
- (c) Section 31-15-103, C.R.S. (concerning municipal police powers);
- (d) Section 31-15-401, C.R.S. (concerning municipal police powers);
- (e) Section 31-15-501, C.R.S. (concerning municipal authority to regulate businesses);
- (f) Sections 14 and 16 of Article XVIII of the Colorado Constitution; and
- (g) The Colorado Marijuana Code, Article 10 of Title 44, C.R.S.

**Sec. 6-7-30 - Definitions.**

- (a) As used in this Article, the following words shall have the following meanings:

"Amendment 20" means a voter-initiated amendment to the Colorado Constitution adopted November 7, 2000, codified as Section 14 of Article XVIII to the Colorado Constitution.

"Amendment 64" means a voter-initiated amendment to the Colorado Constitution adopted November 6, 2012, codified as Section 16 of Article XVIII of the Colorado Constitution.

"Applicant" means a person who has submitted an application for a license to operate a permitted medical marijuana business or a permitted retail marijuana business pursuant to this Article.

"Application" means an application for a license submitted pursuant to this Article.

"Authority" or "Local Licensing Authority" means the Town Board or such entity or individual as the Town Board may designate by resolution sitting and acting as Milliken Marijuana Licensing Authority.

"Town" means the Town of Milliken, Colorado.

"Town Board" means the Town of Milliken Board of Trustees.

"Town Clerk" means the Town of Milliken Town Clerk or his or her designee.

"Colorado Marijuana Code" means Article 10 of Title 44 of the Colorado Revised Statutes, inclusive of rules and regulations promulgated thereunder, and as the same may be amended from time to time.

"Crime of violence" shall have the same meaning as set forth in Section 18-1.3-406, C.R.S., whether committed in Colorado or another state.

"Cultivation" means the process by which a person promotes the germination and growth of a seed to a mature marijuana plant.

"Day" means a calendar day, unless otherwise indicated.

"Good cause" means and includes: (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 or the Colorado Marijuana Code; (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 pursuant to an order of the Colorado Department of Revenue or the Local Licensing Authority; or (3) the licensee's marijuana business has been operated in a manner that adversely affects the public health, welfare or safety of the immediate neighborhood in which the marijuana business is located.

"Good moral character" means an individual with a personal history demonstrating honesty, fairness, and respect for the rights of others and for the law in accordance with the provisions of C.R.S. § 24-5-101(2).

"License" means a license to operate a marijuana business issued pursuant to this Article.

"Licensee" means a person licensed pursuant to this Article and the Colorado Marijuana Code.

"Marijuana" shall have the same meaning as set forth in Article XVIII, Section 16 of the Colorado Constitution.

"Marijuana accessories" shall have the same meaning as set forth in Article XVIII, Section 16 of the Colorado Constitution.

"Marijuana business" means any permitted medical marijuana business or any permitted retail marijuana business.

"Marijuana store" means any medical marijuana store or any retail marijuana store.

"Marijuana hospitality business" means a facility, which may be mobile, licensed to permit the consumption of marijuana pursuant to this article 10; rules promulgated pursuant to this article 10; and the provisions of an enacted, initiated, or referred ordinance or resolution of the local jurisdiction in which the licensee operates.

"Permitted medical marijuana business" means any of the following entities licensed pursuant to this article: a medical marijuana store, a medical marijuana cultivation facility, a medical marijuana products manufacturer, or a medical marijuana testing facility.

"Medical marijuana business" means any of the following entities: a medical marijuana store, a medical marijuana cultivation facility, a medical marijuana products manufacturer, a

medical marijuana testing facility, a marijuana research and development licensee, a medical marijuana business operator, or a medical marijuana transporter.

"Medical marijuana store" means a person licensed pursuant to this article 10 and the Colorado Marijuana Code to operate a business as described in section 44-10-501, C.R.S., that sells medical marijuana to registered patients or primary caregivers as defined in section 14 of article XVIII of the state constitution, but is not a primary caregiver.

"Medical marijuana product" means a product infused with medical marijuana that is intended for use or consumption other than by smoking, including but not limited to edible products, ointments and tinctures.

"Medical marijuana products manufacturer" means a person licensed pursuant to this Article and the Colorado Marijuana Code to operate a business as described in Section 44-10-503, C.R.S.

"Medical marijuana testing facility" means a person licensed pursuant to this Article and the Colorado Marijuana Code to operate a business as described in Section 44-10-504, C.R.S.

"Medical marijuana cultivation facility" means a person licensed pursuant to this Article and the Colorado Marijuana Code to operate a business as described in Section 44-10-502, C.R.S.

"Medical Marijuana Transporter" means an entity or person licensed to transport medical marijuana and medical marijuana products from one medical marijuana business to another medical marijuana business and to temporarily store the transported medical marijuana and medical marijuana products at its licensed premises, but is not authorized to sell medical marijuana or medical marijuana products under any circumstances.

"Marijuana fees" means such fees as the Authority may lawfully impose for costs such as those incurred for inspection, administration, and enforcement of the provisions of this article, including without limitation those referred to in section 16 (5)(f) of article XVIII of the state constitution.

"Owner" means a person or persons who have a controlling interest in a marijuana business license, bear a risk of loss other than as an insurer, have an opportunity to gain profit from the operation or sale of the marijuana business, and have a controlling interest in the license(s) issued to such marijuana business.

"Person" means a natural person, partnership, association, company, corporation, limited liability company, or organization; except that "person" does not include any governmental organization.

"Permitted retail marijuana business" means a retail marijuana store, a retail marijuana cultivation facility, a retail marijuana products manufacturer, or a retail marijuana testing facility licensed pursuant to this article or the Colorado Marijuana Code.

"Retail marijuana business" means a retail marijuana store, a retail marijuana cultivation facility, a retail marijuana products manufacturer, a marijuana hospitality business, a retail marijuana hospitality and sales business, a retail marijuana testing facility, a retail marijuana business operator, or a retail marijuana transporter.

"Retail marijuana business operator" means an entity or person that is not an owner and that is licensed to provide professional operational services to a retail marijuana business for direct remuneration from the retail marijuana business.

**"Retail marijuana cultivation facility"** means an entity licensed to cultivate, prepare, and package marijuana and to sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities and to other marijuana cultivation facilities, but not to consumers in accordance with Amendment 64, the Colorado Marijuana Code, and this Article.

**"Retail marijuana hospitality and sales business"** means a facility, which cannot be mobile, licensed to permit the consumption of only the retail marijuana or retail marijuana products it has sold pursuant to the provisions of an enacted, initiated, or referred ordinance or resolution of the local jurisdiction in which the licensee operates.

**"Retail marijuana products manufacturer"** has the same meaning as "marijuana product manufacturing facility" as defined in section 16 (2)(j) of article XVIII of the state constitution.

**"Retail marijuana store"** means an entity licensed to purchase marijuana from marijuana cultivation facilities, to purchase marijuana and marijuana products from marijuana product manufacturing facilities, and to sell marijuana and marijuana products to consumers, in accordance with Amendment 64, the Colorado Marijuana Code, and this Article.

**"Retail marijuana testing facility"** means an entity licensed to analyze and certify the safety and potency of marijuana in accordance with Amendment 64, the Colorado Marijuana Code, and this Article.

**"Retail marijuana transporter"** means an entity or person that is licensed to transport retail marijuana and retail marijuana products from one retail marijuana business to another retail marijuana business and to temporarily store the transported retail marijuana and retail marijuana products at its licensed premises, but is not authorized to sell retail marijuana or retail marijuana products under any circumstances.

**"Party in interest"** means a person allowed to present evidence and to cross-examine witnesses at public hearings pertaining to medical or retail marijuana license applications. Only the following persons may be a party in interest:

- (1) The applicant;
- (2) An adult who resides within the corporate limits of the Town of Milliken;
- (3) An owner or manager of a business located within the corporate limits of the Town of Milliken.

**"Patient"** has the meaning provided in Section 14(a)(d) of Article XVIII of the Colorado Constitution as further defined and regulated in 5 C.C.R. 1006-2.

**"Primary caregiver"** has the meaning provided in Section 14(1)(f) of Article XVIII of the Colorado Constitution as further defined and regulated in 5 C.C.R. 1006-2.

**"School"** means a public or private preschool or a public or private elementary, middle, junior high, high school, or institution of higher education. School shall not include administration buildings.

**"State licensing authority"** means the authority created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, sale, and testing of regulated marijuana in Colorado, pursuant to C.R.S. § 44-10-201.

(b) In addition to the definitions provided in subsection (a) above, the other defined terms in Amendment 20, Amendment 64, and the Colorado Marijuana Code are incorporated into this Article by reference.

**Sec. 6-7-40 - Local licensing authority.**

The Authority shall have the following powers and authority:

(a) The Authority shall have the power to require any applicant or licensee to furnish any relevant information required by the Authority.

(b) The Authority shall have the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books and records at any hearing that the Authority is authorized to conduct. The Authority may adopt public hearing procedures by resolution.

(c) The Authority shall possess all powers given to local licensing authorities by the provisions of the Colorado Marijuana Code and rules and regulations promulgated thereunder. For the purpose of regulating the operation of marijuana businesses, the Authority in its discretion, upon application in the prescribed form, may approve, conditionally approve, or deny an applicant a local license for a marijuana business, subject to the provisions and restrictions provided in this Article, Sections 14 and 16 of Article XVIII of the Colorado Constitution, and the Colorado Marijuana Code.

(d) The Authority shall have the authority to from time to time to adopt, amend, alter and/or repeal this Article and to adopt rules and regulations as may be necessary for the proper administration of this Article.

(e) Any decision made by the Authority to approve, conditionally approve, or deny a license application, to revoke or suspend a license, or to renew or not renew a license shall be a final decision which may be appealed to the District Court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. No defense or objection may be presented for judicial review unless it is first presented to the Authority prior to the effective date of the Authority's decision.

**Sec. 6-7-50 - License required for marijuana business.**

(a) No person shall operate a marijuana business within the Town without a valid license.

(b) Except as expressly modified herein, any requirements set forth in this Article shall be in addition to, and not in lieu of, any other requirements imposed by any state or local law.

(c) The issuance of any license pursuant to this Article does not create an 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.

**Sec. 6-7-60 - Application for license.**

(a) The Town shall not issue a local license unless the applicant produces a valid corresponding license issued by the State Licensing Authority.

(b) The Town shall not accept an application for a local permitted retail marijuana business license unless and until the Town has received from the state licensing authority a copy of the applicant's application for a state marijuana business license for the proposed licensed premises and one-half of the state license application fee, which shall constitute the local license



application fee. Any issuance of a license by the Town will be contingent on approval by the State Licensing Authority.

(c) The Town may accept an application for a permitted medical marijuana business license at any time, but any issuance of the license by the Town will be contingent on approval by the State Licensing Authority.

(d) For permitted retail marijuana business applications, after the Town has received a copy of the state application and the local license application fee, an applicant seeking to obtain a license pursuant to this Article may file an application for a local license by appointment with the Town Clerk at Town offices between the hours of 8 a.m. to 5 p.m. on regular Town business days. The application shall be on forms provided by the state and the Town, as approved by the Town Attorney, and shall include all information required by this Article and any additional information requested by the Town Clerk if such information, in his or her opinion, is reasonably necessary to complete the investigation and review of the application. An application shall not be deemed complete until the Town Clerk has confirmed all documents and information have been submitted and all applicable fees have been paid to the Town.

(e) For permitted medical marijuana business applications, an applicant shall file an application for a local license by appointment with the Town Clerk at Town offices between the hours of 8 a.m. to 5 p.m. on regular Town business days. The application shall be on forms provided by the state and the Town, as approved by the Town Attorney, and shall include all information required by this Article and any additional information requested by the Town Clerk if such information, in his or her opinion, is reasonably necessary to complete the investigation and review of the application. An application shall not be deemed complete until the Town Clerk has confirmed all documents and information have been submitted and all applicable fees have been paid to the Town.

(f) At the time of application, each applicant shall present a suitable form of identification and the following information, which information may be required for the applicant, the proposed manager of the marijuana business, and all persons having a financial interest in the business that is the subject of the application or, if applicant is an entity, holding any ownership interest in the issued and outstanding capital stock or other ownership interest of the entity:

(1) Name, address, and date(s) of birth of the owner(s) and any managers of the applicant, and names and locations of other marijuana businesses of the owner(s);

(2) If the owner is a corporation, partnership, limited liability company, or other business entity, the name(s), date(s) of birth, and address(es) of any officer or director of the entity and of any person holding any of the issued and outstanding capital stock or other ownership interest in the entity.

(3) A completed set of the fingerprints of each person specified in subsections 1 and 2 of this Section 6-7-60(f).

(4) A statement of whether or not any person holding any ownership interest in the proposed marijuana business has:

a. Been denied an application for a permitted medical marijuana business license or permitted retail marijuana business license by the state or any other local jurisdiction in the state, or has had such a license suspended or revoked; and

b. Been convicted of a felony or has completed any portion of a sentence due to a felony charge within the preceding five (5) years.

(5) Proof that the applicant has paid all application and other applicable fees.

(6) If the applicant is a business entity, information regarding the entity, including, without limitation, the name and address of the entity, its legal status, and proof of registration with, or a certificate of good standing from, the Colorado Secretary of State, as applicable.

(7) An acknowledgement and consent that the Town may conduct a background investigation, including a criminal history check, and that the Town will be entitled to full and complete disclosure of all financial records of the applicant, including records of deposit, withdrawals, balances, and loans and also including standard financial reports such as balance sheet, income statements, cash flow statements, and accounts receivable and budget versus actual reports.

(8) A copy of any deed reflecting the applicant's ownership of, or lease reflecting the right of applicant to possess the proposed licensed premises.

(9) If the applicant is not the owner of the proposed licensed premises, a notarized statement from the owner of such property authorizing the use of the property for a marijuana business and authorizing the Town to enter the property for inspection of the proposed licensed premises on a form approved by the Town.

(10) Evidence of a valid Town business license and sales tax license (if applicable) and state sales tax license for the business.

(11) Proof that the proposed marijuana business will be located in a location that permits such land use under this Article and other applicable provisions of this Code.

(12) An area map, drawn to scale, indicating, within a radius of one-quarter mile from the boundaries of the property upon which the marijuana business is proposed to be located, the distance between the nearest property line of the land used for any school, licensed child care facility or alcohol or drug treatment facility, and the nearest portion of the building in which the marijuana business is proposed to be located, measured in feet. If the application seeks licensure for a marijuana store, the map shall also indicate, within a radius of one-quarter mile from the boundaries of the property upon which the marijuana store is proposed to be located, the distance between the nearest property line of land for which any marijuana store license has been approved or issued and the nearest portion of the building in which the marijuana store that is the subject of the application is proposed to be located, measured in feet.

(13) A "to scale" diagram of the proposed licensed premises, no larger than eleven (11) inches by seventeen (17) inches, showing, without limitation, building layout, all interior dimensions of the proposed licensed premises, including all limited access areas, areas of ingress and egress from the proposed licensed premises, loading zones, all areas in which marijuana will be grown, stored, manufactured, processed, tested, and/or sold, and location(s) of all security cameras. Such diagram shall also show the principal uses of the floor area depicted therein, and shall include separate pages for each floor level if applicable.

(14) A comprehensive business operation plan for the marijuana business that shall contain, at a minimum, the following:

a. A security plan indicating how the applicant intends to comply with the requirements of this Article, the Colorado Marijuana Code, and any other applicable law, rule or regulation as adopted and amended. The security plan shall include specialized details of security arrangements.

b. A description of the products and services to be provided and/or sold by the marijuana business.

c. A plan for exterior signage that complies with all applicable requirements of this Code, including photographs and/or illustrations of proposed signage.

(15) Any additional information that the Authority or Town Clerk reasonably determines to be necessary in connection with the investigation and review of the application.

(g) A license issued pursuant to this Article does not eliminate the need for the licensee to comply with other provisions of this Code and to obtain other required Town licenses and licenses related to the operation of the approved marijuana business, including, without limitation:

(1) Any required land use approval, if applicable;

(2) A Town business license and sales tax license (if applicable) and State sales tax license; and

(3) Any building permits, including mechanical, plumbing, or electrical permits.

**Sec. 6-7-70 - Co-location.**

A licensee may operate both a permitted medical marijuana business and a permitted retail marijuana business in the same premises ("dual operation") provided they meet the requirements of the Colorado Marijuana Code, this Code, and all applicable rules and regulations.

**Sec. 6-7-80 – Fees.**

(a) The Town Board shall from time to time by resolution establish, identify, amend, and set the amount and deadlines for payment of marijuana fees to be assessed, including without limitation fees for application receipt and processing, licensing, operations (including but not limited to building inspection and re-inspection fees), renewals, late filing, transfers of ownership, changes of location, and premises modifications, as well as amounts of deposits required in advance for payment of anticipated consultant and legal expenses, and all other fees necessary for the administration, regulation, and implementation of this Article.

(b) At least annually, the Town Board of Trustees may review the marijuana fees charged pursuant to this Article and, if necessary, may adjust such fees to reflect the direct and indirect costs incurred by the Authority and the Town in connection with the administration and enforcement of this Article, including costs of unannounced compliance checks. The Board of Trustees shall adjust such fees by resolution.

(c) Every licensee and applicant under this Article shall pay all those marijuana fees established pursuant to this section in compliance with the deadlines set for such payment.

**Sec. 6-7-90 - Investigation of application.**

Upon receipt of an application for a marijuana business license, transfer of ownership, or change of location, the Town Clerk shall determine whether the application is complete and notify the applicant in writing of any deficiencies. Upon receipt of a properly completed application, together with all information required in connection therewith and the payment of all fees as required by this Article, the Town Clerk shall circulate copies of the application to the community development department, the police department, the building official and to any other Town department, Town staff, or external agency, including the applicable fire protection district, the Clerk deems necessary in order to determine whether the proposed licensee and facility is or will be in compliance with any and all applicable local laws, rules and regulations. License applications shall be processed in order of submittal date of a complete application as determined by the Town Clerk. The Authority is authorized to adopt administrative policies to establish criteria for processing initial applications and subsequent applications to fill any vacancy in the number of licenses.

**Sec. 6-7-100 - Maximum number of marijuana businesses and licensees; common ownership requirements.**

(a) Operation of the following classes of marijuana businesses in the Town of Milliken shall be prohibited:

- (1) a marijuana hospitality business;
- (2) a retail marijuana hospitality and sales business;
- (3) a retail marijuana business operator;
- (4) a retail marijuana transporter; provided that such a business licensed in another jurisdiction shall not be prohibited from travel through the Town of Milliken;
- (5) a marijuana research and development licensee;
- (6) a medical marijuana business operator;
- (7) a medical marijuana transporter; provided that such a business licensed in another jurisdiction shall not be prohibited from travel through the Town of Milliken; and
- (8) any other class of marijuana business recognized by the State of Colorado but not specifically authorized to operate in the Town of Milliken.

(b) Each class of marijuana business located and operating within the Town shall be limited in number as follows:

- (1) Retail marijuana store: No more than two (2) licenses that must be held by separate owners;
- (2) Retail marijuana cultivation facility: No more than two (2) licenses that must be held by separate owners subject to subsection (d) below;
- (3) Retail marijuana products manufacturer: No more than two (2) licenses that must be held by separate owners subject to subsection (d) below;
- (4) Retail marijuana testing facility: No more than two (2) licenses.

(5) Medical marijuana store: No more than two (2) licenses, each of which shall be held by separate owners;

(6) Medical marijuana cultivation facility: No more than two (2) licenses, each of which shall be held by separate owners subject to subsection (e) below;

(7) Medical marijuana products manufacturer: No more than two (2) licenses, each of which shall be held by separate owners subject to subsection (e) below; and

(8) Medical marijuana testing facility: No more than two (2) licenses.

(c) The Town Clerk shall keep accurate records of the number of licenses issued for each class of marijuana business.

(d) A retail marijuana cultivation facility, retail marijuana testing facility, or retail marijuana products manufacturer license shall not be issued unless such license is issued to the same owner or licensee of a retail marijuana store.

(e) A medical marijuana cultivation facility, medical marijuana testing facility, or medical marijuana products manufacturer license shall not be issued unless such license is issued to the same owner or licensee of a medical marijuana store.

#### **Sec. 6-7-110 - Persons prohibited as licensees and managers.**

(a) It shall be unlawful for any of the following persons to have an ownership or a financial interest in a marijuana business, and no license provided by this Article shall be issued to, or held by, and no marijuana business shall be managed by:

(1) Any person until all applicable fees for the license have been paid;

(2) Any person whose criminal history indicates he or she is not of good moral character;

(3) Any corporation, partnership, limited liability company, or other entity whose officers, members, partners, directors or stockholders criminal history indicates he or she is not of good moral character;

(4) Any natural person who is under twenty-one (21) years of age;

(5) Any person who, in the immediately preceding twelve (12) months had a marijuana business license revoked or suspended by the state, or by a local licensing authority in the Town or any other jurisdiction;

(6) Any person who has been convicted of a felony that is deemed a crime of violence or has completed any portion of a felony sentence within the preceding five years;

(7) A person licensed pursuant to this Article who, during a period of licensure, or who, at the time of application, has failed to remedy an outstanding delinquency for taxes owed, or an outstanding delinquency for judgments owed to a government;

(8) A sheriff, deputy, police officer, or prosecuting officer, or an officer or employee of the state licensing authority, the Authority, or the Town; or

(9) Any other person prohibited as a licensee pursuant to the Colorado Marijuana Code.

(b) All natural persons, corporations, partnerships, limited liability companies, and other entities are prohibited from holding or having a financial interest in more than one of each of the following in the Town:

(1) Medical marijuana store; and

(2) Retail marijuana store.

(c) Notwithstanding any provision in this article to the contrary, within the Town there shall be no more than two licenses total issued for marijuana stores.

#### **Sec. 6-7-120 - Location restrictions.**

Prior to approving an application for a permitted retail marijuana business license, the Authority shall determine whether the proposed location of the permitted retail marijuana business complies with the requirements of this section and Chapter 16 of this Code. Failure to comply with the requirements of this section shall preclude approval and issuance of a license. An existing licensed permitted retail marijuana business shall not be subject to license revocation or suspension if operational and existing before any of the uses subject to the distance requirements below is constructed.

(a) Each marijuana business shall be operated from a permanent location. No marijuana business shall be permitted to operate from a moveable, mobile, or transitory location.

(b) A marijuana business may be located only in zoning districts in which marijuana businesses are listed as a permitted use (either by right or conditional) under Chapter 16 of this Code and only in compliance with all lawful zoning processes set forth therein.

(c) A permitted retail marijuana business may be co-located with a permitted medical marijuana business if the two are under the same ownership subject to compliance with this Article, the Colorado Marijuana Code, and all applicable state and local regulations.

(d) No marijuana store license shall be issued for a location within one thousand (1,000) feet of a school; alcohol or drug treatment facility, or a licensed child care facility existing at the time of the submittal of an applicant's application.

(e) No marijuana store shall be located within five hundred (500) feet of any other marijuana store. This restriction shall not apply to a licensee's dual operation of a medical marijuana store and a retail marijuana store.

(f) Nothing in this section shall prohibit marijuana businesses of different classes held under one ownership from being located within the same premises or on the same lot, subject to the other provisions of this Article.

(g) The foregoing distance requirements shall be computed by direct measurement in a straight line from the nearest property line of the land used for a school, alcohol or drug treatment facility or licensed child care facility or licensed or approved marijuana store to the nearest portion of the building in which the marijuana business that is the subject of the application is proposed to be located.

**Sec. 6-7-130 – Public hearing requirement.**

(a) The Authority shall approve, deny, or conditionally approve an application within ninety (90) days of the receipt of the completed application and shall comply with any additional deadlines established by statute. Notwithstanding this timeframe, the Authority may extend the time in which it must make a decision on an application in order to obtain additional information pertaining to the application or qualifications of the applicant upon written consent of the applicant. A license application shall not be deemed approved if the Authority fails to render a decision on such application within the time specified in this subsection (a).

(b) Prior to making a decision on an initial application, an application for a transfer of ownership, or a change in location, the Authority shall hold a public hearing if a hearing is permitted by state law. The Town Clerk may administratively approve license renewals, unless there is any evidence in the application documents or other information indicating a basis for denial. For any public hearing, the Town Clerk shall set the date and time and send written notice of the hearing to the applicant by regular mail, postage prepaid. The Authority shall post notice of such public hearing on the proposed premises and shall publish public notice thereof not less than ten (10) days prior to the hearing. Public notice shall be given by the posting of a sign in a conspicuous place on the premises for which application has been made and by publication in a newspaper of general circulation.

(c) Notice given by posting shall include a sign of suitable material, not less than twenty-two (22) inches wide and twenty-six (26) inches high, composed of letters not less than one (1) inch in height and stating the type of license applied for, the date the complete application was filed with the Town, the date of the hearing, and the name and address of the applicant.

(d) Notice given by publication shall contain the same information as that required for signs.

(e) If the building in which the proposed marijuana business is to occur exists at the time the application is filed, any sign posted as required in this section shall be placed so as to be conspicuous and plainly visible to the general public. If the building is not constructed at the time the application is filed, the applicant shall post the premises upon which the building is to be constructed in such a manner that the notice shall be conspicuous and plainly visible to the general public.

(f) The Authority will hear testimony and evidence from parties in interest at the public hearing concerning the following issues:

(1) Whether the applicant has violated, does not meet, or has failed to comply with the Colorado Marijuana Code, any rules and regulations promulgated pursuant thereto, or the requirements of this Article;

(2) Whether the issuance of the license will adversely impact the health, safety, or welfare of the residents of the Town; and

(3) For applications seeking licensure of any marijuana business in the same location where any other marijuana business is or has previously been licensed, whether the licensed

premises have been previously operated in a manner that adversely affects the public health, safety, or welfare of the residents of the Town.

**Sec. 6-7-140 – Decision on application.**

(a) The Authority may approve an initial application and an application to change location or transfer ownership and may issue a license under this Article when, after consideration of the application, and from review of such other information as required by this Article or the Colorado Marijuana Code, the Authority determines that the applicant complies with all of the requirements of this Article and the Colorado Marijuana Code, including the following:

(1) The application, including any required attachments and submissions, is complete and signed by the applicant;

(2) The applicant has paid the application fee and any other fees required by this Article;

(3) The application does not contain a material falsehood or misrepresentation;

(4) The location of the marijuana business is proposed to be located in a location permitted by this Article and other applicable provisions of this Code;

(5) The criminal history of the applicant, and the applicant's owners, officers, and managers, does not disqualify the applicant from holding a license;

(6) The applicant demonstrates, to the satisfaction of the Authority, the ability to operate a marijuana business in accordance with all applicable laws, ordinances and regulations;

(7) The issuance of the license will not adversely impact the health, safety, or welfare of the residents of the Town in terms of noise, odor, traffic, or other negative impacts;

(8) The applicant meets or otherwise will meet all the requirements of this Article and the Colorado Marijuana Code, including but not limited to Section 44-10-307, C.R.S., as it may from time to time be amended or recodified and any rules or regulations promulgated pursuant thereto; and

(9) The applicant demonstrates that it has a net worth of at least one million, five hundred thousand dollars (\$1,500,000.00), which amount may be revised at any time by resolution of the Board of Trustees of the Town of Milliken.

(b) Prior to approving any application for a license or a transfer of ownership, the Authority shall make a finding and determination as to the good moral character of the applicant in accordance with the standards and procedures set forth in the Colorado Marijuana Code. In so doing, the Authority may incorporate any findings as to good moral character previously made by the state licensing authority. The Authority shall not be required to perform a criminal background check: (i) if the state licensing authority has performed a criminal background check on the applicant to the satisfaction of the Authority; or (ii) if the Authority issues a license conditioned on the completion and successful review of the criminal background check prior to the approval of the license.

In evaluating the good moral character of the individual identified on an application or amendment thereof, the Authority shall consider the following:



(1) Laws, rules and regulations applicable to evaluation of other types of licenses issued by governments that consider the good moral character of the applicants;

(2) Any findings as to good moral character previously made by the state licensing authority; and

(3) Any additional information the Authority may request of the individual if the individual has a history of violation of any laws, or items disclosed by the individual which require additional information in order for the Authority to make a determination regarding issuance of the license.

(c) Prior to approving any application for a license, the Authority shall determine whether the proposed location violates any location restrictions established by this Article.

(d) The Authority may impose reasonable terms and conditions on a license as may be necessary to protect the public health, safety and welfare, or to ensure compliance with the requirements of this Article, the Colorado Marijuana Code, or other applicable law.

(e) The decision and the reasons for the decision, as well as any conditions of approval, shall be in writing. The Town Clerk shall send a copy of the decision to the applicant by regular mail at the mailing address shown in the application.

(f) The Authority shall deny any application for a license that does not comply with this Article, the Colorado Marijuana Code, or any other applicable state or local law or regulation. The Authority may also deny a license when it finds any one or more of the following circumstances exist:

(1) The applicant fails to cooperate with the Town during the application phase.

(2) The applicant fails to meet all of the standards set forth in this Article.

(3) The applicant fails to provide any application materials to the Town in accordance with Section 6-7-60 above.

(4) The applicant provides inaccurate or false information to the Town during the application phase.

(5) The applicant fails to obtain any other required Town license or approval, including but not limited to those required by Section 6-7-60 above.

(6) The applicant fails to demonstrate, to the satisfaction of the Authority, the ability to operate the proposed marijuana business in accordance with all applicable laws, ordinances and regulations.

(7) The applicant has violated, does not meet, or has failed to comply with the Colorado Marijuana Code, regulations adopted pursuant thereto, or Town marijuana business regulations.

(8) The issuance of the license will adversely impact the health, safety, or welfare of the citizens of the Town in terms of noise, odor, traffic, or other negative impacts.

(9) A marijuana business operated in the location in question was previously operated in a manner that adversely affected the public health, safety, or welfare of the citizens of the Town.

**Sec. 6-7-150 - Inspection of premises; license issuance; commencement of operations.**

(a) After approval of an application and prior to the issuance of a license, the premises proposed to be licensed shall be inspected by the Town building official to determine compliance with the Town's building and technical Codes set forth in Chapter 18 of this Code and with the drawings and schematics submitted with the application. The Authority shall not issue a license if the proposed licensed premises do not comply with (1) the application drawing and schematics or (2) the Town's building and technical Codes as identified by the building official in writing provided to the applicant. Throughout the term of the license, the building official may inspect the licensed premises to determine continuing compliance with the Town's building and technical Codes.

(b) An application approval shall expire if the applicant fails to fulfill all conditions and requirements for license issuance within one (1) year from the date of the written decision approving the application. An application with an expired approval shall be deemed null and void, and the Town shall take no further action on such application.

(c) In the event that a marijuana business does not commence operations within one (1) year of issuance of a license from the Town, the license shall be deemed forfeited and the business may not commence operations.

**Sec. 6-7-160 - Contents of 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 marijuana business;
- (4) Any special conditions of approval imposed upon the license or the licensee by the Authority;
- (5) The date of the expiration of the license; and
- (6) The class of marijuana business being licensed.

(b) A license must be signed by the applicant, a designated representative of the Authority, and the Town Clerk to be valid.

**Sec. 6-7-170 - License non-transferable; exceptions; dual licenses.**

(a) A marijuana business license is valid only for the owner specifically identified on the license and the specific location for which the license is issued and is not transferable or assignable except in accordance with this section.

(b) The Authority may approve an application to transfer or assign ownership, rights and interests in a license subject to compliance with Section 44-10-312, C.R.S., and the provisions of this Article. An application for any transfer of a marijuana business license shall contain, at a minimum, all of the information and fees required by Section 6-7-60 of this Article and any supplemental information requested in writing by the Authority. The Town Clerk shall refer a transfer application to the Authority for a public hearing provided that notice of the public hearing is posted on the licensed premises in conformance with Section 44-10-303, C.R.S., and the

applicant has been provided with at least ten (10) days advance notice of the hearing. The Authority shall decide whether or not to approve an application to transfer ownership in accordance with the process set forth in Section 6-7-140 of this Code. Any attempt to transfer or assign a license in violation of this section voids the license.

(c) A license issued under this Article shall not preclude the operation of a licensed medical marijuana store, medical marijuana cultivation facility, or medical marijuana products manufacturer at the same licensed premises for dual operation subject to the requirements of this Article and the Colorado Marijuana Code.

(d) A licensee of a marijuana business may change the location of its licensed premises subject to approval of an application for a change in location submitted to the state and the Authority and licensee's compliance with the Colorado Marijuana Code and this Article. The location requirements set forth in Section 6-7-120 of this Article and the requirements for conformance with current zoning as set forth this Code shall apply to a previously licensed permitted retail marijuana business that seeks to change location.

#### **Sec. 6-7-180 - Duration of license; renewals; late renewals.**

(a) Each license issued pursuant to this Article shall be valid for one year from the date of issuance and may be renewed as provided in this section. The license shall expire on the last day of the month in which the license is issued in the year following issuance or renewal of the license.

(b) A licensee shall renew their license issued pursuant to this Article annually. Any renewal of the license shall be governed by the standards and procedures set forth in the Colorado Marijuana Code, subject to any additional restrictions on renewal as provided in this Article or promulgated by the Authority.

(c) The licensee shall apply for renewal of the marijuana business license at least forty-five (45) days before the expiration of the license. The licensee shall apply for renewal using forms provided by the Town. If the applicant fails to apply for renewal at least forty-five (45) days before the expiration of the license, but does apply for renewal prior to expiration of the license, the Town may process the renewal application if the applicant submits any applicable late filing fee established pursuant to Section 6-7-80 at the time of submittal of the renewal application.

(1) The renewal license fee, and late filing fee if applicable, shall accompany the application. Such fee is nonrefundable.

(2) In the event there has been or is anticipated to be any change to any of the plans then on file with the Town, including but not limited to the operating plan or security plan, the renewal application shall include specifics of the changes or proposed changes in any of such plans.

(3) The renewal application shall include verification that the marijuana business has a valid state license issued by the state licensing authority, and that such license is in good standing.

(4) A licensee whose license has expired for not more than ninety (90) days may file an expired license renewal application, upon applicant's payment of any applicable late filing fee established pursuant to Section 6-7-80. A licensee who files such application and pays any applicable late filing fee may continue to operate until both the state and the Town have taken final action to approve or deny the late renewal application. If more than ninety (90) days have elapsed since the expiration of a permanent annual license, the licensee must file a new license application.

(d) Failure of the licensee to renew and keep its state or local license current and valid or to make timely payment of the local licensing or other applicable marijuana fees shall be grounds for revocation of any license issued pursuant to this Article.

**Sec. 6-7-190 – Non-renewal, suspension or revocation of license.**

(a) The Authority may, after notice and a hearing, suspend, revoke, or refuse to renew a license issued pursuant to this Article for any one or more of the following reasons:

(1) Fraud, misrepresentation, or a false statement of material fact contained in the license application;

(2) A violation of any Town, 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 20 or Amendment 64;

(3) A violation of any of the terms and conditions of the license;

(4) A violation of any law which, if occurring prior to the submittal of the application, could have been cause for denial of the license application;

(5) Failure to timely correct any violation of any law, or comply with any order to correct a violation of any law within the time stated in the notice or order;

(6) A violation of any of the provisions of this Article including but not limited to any violation of the duties set forth in Section 6-7-200; or

(7) Good cause.

(b) Hearing, Burden of Proof.

(1) The Town Clerk or the police chief may request in writing that a license issued under this Article be suspended, revoked, or not renewed. The Authority also may, on its own motion or on complaint, after investigation and opportunity for a public hearing, revoke, suspend or not renew a license. The written request or complaint to suspend, revoke, or not renew must include the allegations upon which the proposed action is based and must be provided to the licensee.

(2) The Authority, shall preside over the public hearing.

(3) The date and time of the hearing must be set, written notice of which must be sent by regular mail, postage prepaid, to the licensee at least ten (10) days prior to the hearing date.

(4) Notice of the public hearing shall comply with any other applicable provisions of the Colorado Marijuana Code.

(5) The hearing must be conducted based on the allegations provided in the written request or complaint. The burden shall be on the Town to prove by a preponderance of the evidence that the licensee has violated the provisions of subsection (a) above.

(6) The Authority will hear testimony and evidence from parties in interest at the public hearing.

(7) A written decision must be provided to the licensee within ten (10) business days of the conclusion of the hearing. Notice shall be given by mailing a copy of the decision to the licensee by regular mail, postage prepaid, at the address shown in the license. Notice is deemed to have been properly given upon mailing.

(c) In connection with the suspension of a license, the Authority may impose reasonable conditions. The Authority shall be authorized to enter into stipulations with any licensee at or following the public hearing.

(d) In the event a marijuana business or licensee is charged with violation of any law, upon which a final judgment would be grounds for suspension, revocation, or non-renewal of the license, the Authority may suspend the license pending the resolution of the alleged violation.

(e) If the Authority revokes, suspends, or does not renew a license pursuant to the provisions of this Section 6-7-190, the retail marijuana business may not move or remove any marijuana from the premises except under the supervision of the police department.

(f) Any decision made by the Authority 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 licensee's failure to timely appeal the decision is a waiver of the licensee's right to contest the suspension or revocation of the license.

**Sec. 6-7-200 - Duties of licensee; records to be maintained.**

(a) 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;
- (2) Comply with all of the requirements of this Article;
- (3) Comply with all other applicable Town ordinances;
- (4) Comply with the Colorado Marijuana Code;
- (5) Comply with all state laws and administrative regulations pertaining to marijuana;
- (6) Comply with all applicable federal laws, rules or regulations, other than a federal law, rule or regulation concerning the possession, sale or distribution of marijuana which conflicts with Amendment 20 or Amendment 64;
- (7) Permit inspection of its records and the licensed premises by authorized Town staff including law enforcement officers for the purpose of determining the licensee's compliance with the terms and conditions of the license; and
- (8) Post the license in a conspicuous location at the marijuana business.

(b) Each licensee shall keep a complete set of books of account, invoices, copies of orders and sales, correspondence, bank statements, and all other records necessary to show fully the business transactions of such licensee. The records of the licensee shall clearly track inventory purchased and sales and disposal thereof to clearly track revenue from sales of any marijuana, paraphernalia, marijuana accessories, and any other products offered by the marijuana business. All such books and records shall be open at all times during business hours for the inspection and examination of the Town or its duly authorized representatives, including any auditor selected by

the Town pursuant to this section. The Town may require any licensee to furnish such information as the Town deems necessary for the proper administration of this Article. The records shall clearly show the source, amount, price, and dates of all marijuana received or purchased, and the amount, price, and dates for all marijuana sold.

(c) The Town may require an audit to be made of the books and records of a marijuana business on such occasions as it may consider necessary. Such audit may be made by an auditor selected by the Town. The expense of any audit determined necessary by the Town shall be paid by the marijuana business.

**Sec. 6-7-210 – Prohibited acts.**

(a) It shall be unlawful to cultivate marijuana on or within the licensed premises of a marijuana store. For purposes of this subsection, “premises” shall mean all areas in which the marijuana store is authorized to conduct business activities related to the license including, but not limited to, a building, part of a building, room, or other definite contiguous area.

(b) It shall be unlawful to grow, cultivate, manufacture, prepare, process or package marijuana or marijuana products for personal use anywhere in the Town other than an enclosed space within a primary residence which is not open or public in conformance with the Colorado Marijuana Code and any applicable provisions of this Code.

(c) It shall be unlawful for any licensee to permit the sale or consumption of alcoholic beverages, as defined in the Colorado Liquor Code, on the licensed premises.

(d) It shall be unlawful to smoke, eat, or otherwise consume or ingest marijuana on the licensed premises.

(e) It shall be unlawful for any marijuana business to employ any person at a licensed premises who is younger than twenty-one (21) years of age.

**Sec. 6-7-220 - Marijuana business requirements and restrictions.**

(a) Marijuana stores approved pursuant to this Article shall not sell, serve, or distribute marijuana at any time except between the hours of 8:00 a.m. and 9:00 p.m., seven days per week.

(b) The licensee shall post the marijuana business license, the business license, and the sales tax license in the facility in a conspicuous location.

(c) The licensee shall post the name and contact information for the owner or owners and any manager of the marijuana business in the facility, together with the name and contact information of any person designated by the owner to be contacted in the event of an emergency. Such posting shall be in a conspicuous location.

(d) All permitted retail marijuana businesses shall post in a conspicuous location a sign printed in 36-point text or larger stating as follows:

**"IT IS ILLEGAL TO TRANSFER MARIJUANA TO ANYONE UNDER THE AGE OF TWENTY-ONE. IT IS ILLEGAL TO SEND OR TRANSPORT MARIJUANA TO ANOTHER STATE.**

**THE POSSESSION OF MARIJUANA REMAINS A CRIME UNDER FEDERAL LAW."**

(e) There shall be posted in a conspicuous location in each permitted medical marijuana business a legible sign containing the following warnings:

(1) A warning that the diversion of marijuana for nonmedical purposes is a violation of state law;

(2) A warning that the use of medical marijuana may impair a person's ability to drive a motor vehicle or operate machinery, and that it is illegal under state law to drive a motor vehicle or to operate machinery when under the influence of or impaired by marijuana;

(3) A warning that loitering in or around the permitted medical marijuana business is prohibited by state law; and

(4) A warning that possession and distribution of marijuana is a violation of federal law.

(f) No change shall be made to the floor plan of the interior of any licensed premises unless such modification is approved by the Authority and all other appropriate Town departments prior to the time the change is made. The Authority may charge a processing and inspection fee to cover any processing or inspection costs.

(g) The licensed premises shall be monitored and secured twenty-four (24) hours a day in compliance with the Colorado Marijuana Code and including, at a minimum, the following security measures:

(1) Installation and use of security cameras to monitor all areas of the licensed premises where persons may gain or attempt to gain access to marijuana, marijuana products, or monies maintained by the facility.

(2) Video surveillance shall be compliant with the Colorado Marijuana Code and any other applicable state or local regulations.

(3) Installation and use of a safe for overnight storage of any marijuana or marijuana products, and/or monies on the licensed premises, with the safe being incorporated into the building structure or securely attached thereto.

(4) Installation of a monitored user alarm system compliant with the Colorado Marijuana Code and any other applicable state or local regulations.

(5) Robbery and burglary alarm systems that are professionally installed, monitored, and maintained in good working condition.

**Sec. 6-7-230 - Visibility of activities; control of emissions.**

(a) All activities of marijuana businesses, including, without limitation, cultivating, growing, processing, displaying, manufacturing, selling, testing, and storage, shall be conducted indoors.

(b) A marijuana business shall be ventilated so that the odor of marijuana cannot be detected by a person with a normal sense of smell at the exterior of the marijuana business or at any adjoining use or property. Marijuana cultivation facilities must implement appropriate ventilation and filtration systems to satisfy this odor nuisance standard.

(c) During nighttime hours, marijuana cultivation facilities shall not emit more than 0.1 foot-candle of light measured at a point ten feet (10') beyond any property line as a result of interior lighting, regardless of what type or types of lighting are used. Marijuana cultivation facilities shall install, aim, shield, and maintain all interior lighting and take other appropriate measures to satisfy this light trespass standard.

(d) The licensee shall provide sufficient measures and means of preventing smoke, debris, dust, fluids, and other substances from exiting a marijuana business at all times, in accordance with this Code and all applicable state law and regulations. In the event that any odors, light, debris, dust, fluids, or other substances exit a marijuana business, the owner of the subject premises and the licensee shall be jointly and severally liable for such conditions and shall be responsible for immediate, full clean-up and correction of such condition. The licensee shall properly dispose of all such materials, items, and other substances in a safe, sanitary, and secure manner and in accordance with all applicable federal, state, and local laws and regulations.

(e) In the event the Town incurs costs in the inspection, clean-up, or any other measures to remove marijuana from any marijuana business, the licensee shall reimburse the Town all actual costs incurred by the Town for such inspection, clean-up, or other measures.

**Sec. 6-7-240 - Signage and advertising.**

All signage for a marijuana business shall comply with the requirements of Division 6 in Article III of Chapter 16 of this Code and the Colorado Marijuana Code. In addition, no sign shall contain:

- (1) Any nickname or abbreviation of "Marijuana" or slang name used for marijuana.
- (2) Any photograph or likeness of smoke or any person smoking marijuana.
- (3) Any photograph or likeness of any cigarette or cigarette type apparatus or any paraphernalia for inhaling marijuana smoke or vapors.
- (4) Any statement that is false, misleading or inaccurate.

**Sec. 6-7-250 - Taxes.**

Each licensee shall pay sales tax on all marijuana, marijuana accessories, paraphernalia, and other tangible personal property sold by the licensee at a marijuana store.

**Sec. 6-7-260 - Penalties; injunctive relief.**

(a) It is a municipal 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 Section 1-4-20 of this Code.

(b) In addition to all other remedies available to the Town under this Code and by law, the operation of a marijuana business without a valid license issued pursuant to this Article may be enjoined by the Town in an action brought in a court of competent jurisdiction.

**Sec. 6-7-270 - No waiver of governmental immunity.**

In adopting this Article, the Town Board is relying on and does not waive or intend to waive by any provision of this Article the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*,



C.R.S., or any other limitation, right, immunity, or protection otherwise available to the Town, its officers, or its employees.

**Sec. 6-7-280 - No Town liability and indemnification of Town.**

By accepting a license issued pursuant to this Article, a licensee releases the Town, its officers, elected officials, employees, attorneys, and agents from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of marijuana business owners, operators, employees, clients, or customers for a violation of state or federal laws, rules, or regulations. By accepting a license issued pursuant to this Article, a licensee, jointly and severally if more than one, agrees to indemnify and defend the Town, its officers, elected officials, employees, attorneys, agents, and insurers against all liability, claims, and demands on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the operation of the marijuana business that is the subject of the license. The licensee further agrees to investigate, handle, respond to, and provide defense for and defend against any such liability, claims, or demands at its expense and to bear all other costs and expenses related thereto, including court costs and attorney fees.

**Sec. 6-7-290 - Other laws remain applicable.**

The provisions of this Article do not protect licensees, operators, employees, customers, or clients of a licensed marijuana business from prosecution pursuant to any laws that may prohibit the cultivation, sale, use, or possession of controlled substances. In addition, as of the date of the adoption of this Article, the cultivation, sale, possession, distribution, and use of marijuana remain violations of federal and state law (except for conduct covered by Amendment 20 or Amendment 64), and this Article affords no protection against prosecution under such federal and state laws. Licensees, operators, employees, customers, and clients of a licensed marijuana business assume any and all risk and any and all liability arising or resulting from the operation of the marijuana business under any state or federal law. Further, to the greatest extent permitted by law, any actions taken under the provisions of this Article by any public officers, elected or appointed officials, employees, attorneys, or agents of the Town shall not become a personal liability of such person or of the Town.

**Sec. 6-7-300 - Compliance with state law.**

(a) To the extent the state has adopted or adopts in the future any additional or stricter laws or regulations governing the sale or distribution of marijuana, the additional or stricter regulations shall control the establishment or operation of any marijuana business in the Town. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance, or basis for denial, of any license under this Article, and noncompliance with any applicable state law or regulation shall be grounds for revocation, suspension, or non-renewal of any license issued hereunder.

(b) Any marijuana business licensed pursuant to this Article may be required to demonstrate, upon demand by the Authority or by law enforcement officers, that the source and quantity of any marijuana found upon the licensed premises is in full compliance with any applicable state laws or regulations.

(c) Except as otherwise provided herein, the Authority shall be governed by the Colorado Marijuana Code now in effect or as it may from time to time be amended. In the event of any conflict between the provisions of this Article and those in the Colorado Marijuana Code, the more restrictive provision shall control.

(d) If the state prohibits the cultivation, production, possession, or other distribution of marijuana through marijuana businesses, or if a marijuana business is denied a license through the state licensing authority or has such license revoked pursuant to the Colorado Marijuana Code, or if a court of competent jurisdiction determines that the federal government's prohibition of the cultivation, production, possession, or other distribution of marijuana through retail marijuana businesses supersedes state law, any license issued pursuant to this Article shall be deemed to be immediately revoked by operation of law, with no ground for appeal or other redress on behalf of the licensee.

(e) A license for a marijuana business is a revocable privilege, and no applicant therefore or holder thereof shall be deemed to have acquired any property interest therein.

**Sec. 6-7-310 – Severability.**

Should any one or more sections or provisions of this article be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this article of the Municipal Code, the intention being that the various sections and provisions are severable.

**Section 4.** “Table 1” in section 4-6-30 of the Milliken Municipal Code is amended to read in its entirety as follows:

<b>AMOUNT OF SALES TRANSACTION</b>	<b>TAX ON SALES TRANSACTION</b>
\$0.00—\$49.99	\$0.00 - Exempt from tax
\$50.00—\$249.99	\$5.00 per Transaction
\$250.00 or more	\$10.00 per Transaction

**Section 5.** Section 4-6-40(a) of the Milliken Municipal Code is amended to read in its entirety as follows:

- (a) Every vendor located in the Town of Milliken providing Retail Marijuana taxable under this Article shall remit such tax on or before the twentieth (20<sup>th</sup>) day of each month on account of Retail Marijuana Sales Transactions in the preceding month. Said payment shall be accompanied by a return which shall contain such information and be in such form as the Town Clerk may prescribe. The return and payment are due the 20th day of the month following the reporting period. If the 20th day falls on a weekend or holiday, the due date is the next business day. The applicable sales tax return(s) must be filed even if no sales were made or if no tax is due for the period. Returns with "zero" tax must be filed to avoid non-filer notices and penalty assessments.

**Section 6.** Section 4-6-90(b) of the Milliken Municipal Code is amended to read in its entirety as follows:

(b) A penalty in the amount of ten percent (10%) of the tax due or the sum of ten dollars (\$10.00), whichever is greater, shall be imposed upon the Retail Marijuana Business and become due in the event the tax is not remitted by the twentieth (20th) day of the month as required by this Article, or such other date as prescribed by the Town Clerk, and one and one-half percent (1.5%) interest shall accrue each month on the unpaid balance. The Town Clerk is hereby authorized to waive, for good cause shown, any penalty assessed.

**Section 7. Codification Amendments.** The codifier of Milliken's Municipal Code is hereby authorized to make such numerical, technical, and formatting changes as may be necessary to incorporate the provisions of this ordinance within the Milliken Municipal Code.

**Section 8. Remaining provisions.** Except as specifically amended hereby, all other provisions of the Milliken Municipal Code and the various secondary codes adopted by reference therein shall continue in full force and effect.

**Section 9. Severability.** Should any one or more sections or provisions of this ordinance be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this ordinance or of the Municipal Code, the intention being that the various sections and provisions are severable.

**Section 10. Repeal.** Any and all ordinances or codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such ordinance or code or part thereof shall not revive any other section or part of any ordinance or code provision heretofore repealed or superseded and this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance or code hereby repealed prior to the taking effect of this ordinance.

Introduced, read, adopted, signed and ordered published in full by the Board of Trustees of the Town of Milliken this 13 day of October, 2021.

TOWN OF MILLIKEN

  
Elizabeth Austin, Mayor

ATTEST:

  
Caree Rinebarger, Town Clerk

APPROVED AS TO FORM:

  
Matthew T. Gould, Town Attorney

Published: 10/21/2021