

STATE OF COLORADO
COUNTY OF HUERFANO
CITY OF WALSENBURG
Regular Session Meeting
April 6, 2010 6:00 p.m.

Mayor Quintana called the meeting to order at 6:00 p.m. The Pledge of Allegiance was recited. Council members present were: Silvana Lind, James England, Nick Vigil, David Mockmore, Erin Jerant, Craig Lessar, and James Moore. Rick Jennings was absent. Others in attendance were City Administrator Alan Hein, Assistant Administrator Beth Neece, City Attorney Dan Hyatt, and City Clerk Lori Sheldon.

Silvana Lind gave a brief report regarding testifying before a Senate Energy Committee at the request of Senator Ken Kester regarding his bill that would allow our city, as well as other cities, to lease land that they own. As the statute stands right now, we would be unable to lease this 2400 acre parcel that the City Owns. We requested that the statute would be changed and that would allow our City, and others as well, to lease land. It would allow us to lease this parcel and put a wind farm there which would bring in an income of over \$10,000,000.00 over a 25 year span of time. She and Mayor Quintana and Councilperson Moore all testified. The senate committee voted unanimously to approve the bill. It will go to the floor of the legislature and will be voted on by June or possibly before. Mayor Quintana gave kudos to Councilpersons Lind and Moore. Councilperson Moore remarked about how supportive our representatives (Ken Kester and Wes McKinley) have been in getting this bill to the committee. He suggested that staff draft a letter of recognition and thanks. Mayor Quintana also suggested that we send a letter to the representative from CML (Jeff Wilson).

APPROVAL OF MINUTES

Mayor Quintana asked for a motion to accept the minutes from the March 16th Regular City Council meeting. Councilperson Moore asked for a several corrections: There are 2 “ifs” on the 3rd page before and after “Mr. Brozowski”. Also, 6 lines from the top of the 2nd to last page reads “a budget amendment resolution would only be needed if the funds already allocated were to change.” He recommends that the wording be changed to “if the total expenditure amount were to increase.” Councilperson Lind also asked for a change on page 4 at about the middle of the first big paragraph where it states that she had heard the same thing as Councilperson Jerant. She asked that her comment to Mr. Brozowski that she was aware that facilities such as the care center did receive periodic state inspections and she wondered if there had been any problems that the state saw regarding the viability of the building be added. James England moved, seconded by Nick Vigil, that the minutes from the March 16th Regular City Council meeting be accepted. Motion passed on a Roll Call vote of 7-1 with the no vote being from Erin Jerant.

Committee Reports

Finance Committee Chairman James England reported that the Finance Committee met on Monday, April 5th at 5:30 p.m. Those in attendance were himself, Mayor Quintana, Councilpersons Rick Jennings, Silvana Lind, Nick Vigil, David Mockmore, Erin Jerant, Craig Lessar, and Jim Moore. Also in attendance were City Administrator Alan Hein, Assistant Administrator Beth Neece, County Administrator John Galusha,

Renee Rinehart of the Signature, and Larry Patrick representing the new Huerfano World Journal. Agenda items were as follows:

- ◆ John Galusha presented an interesting proposal to the committee regarding the Indian Pool Ranch project. This would basically be a joint venture with the County, the City, and Faris Land and Cattle in which the County would receive 35 acres of land for an industrial park adjacent to the Northlands, Faris Land and Cattle would receive an easement from the City and the City would receive the surplus funds from the County's grant dollars for our new lift station and much-needed infrastructure in the Northlands. This would also lead out closer to connecting the City water lines with Toltec. There will be more on this as staff continues to work with the County and it will come back for future consideration.
- ◆ The wastewater treatment plant – currently the City, after all the trimming and the influx of dollars that will be coming into the City from the Kincaid Ranch sale which will be finalized hopefully later in the meeting. It will still leave the City half a million dollars short on the waste water treatment plant. After discussion it was the Committee's suggestion to Council to use the Kincaid proceeds to secure either grants, bonds or loans to complete this project. It was also the Committee's suggestion that the City proceed with the project as a sign of good faith toward the state that we are trying to fulfill our obligations toward taking this project to its completion.

At the next Finance Committee Meeting, Summit Utilities (a private gas firm) is interested in the City's gas and it's infrastructure and they will be presenting some things for the City to consider.

Councilperson Lessar stated that some of the bills are not being paid on time. One in particular is the bill for the advertising (from KSPK for the 2010 season) for Walsenburg Wild Waters. The original agreement was for \$2,700.00. There has been a \$79.00 penalty added to that. Mr. England stated that this needs to be added to the agenda for the next Finance meeting. Councilperson Moore pointed out that the advertising has not yet occurred and that it would be very unusual to pre-pay an advertising bill and that it would not be proper to expend any money until the City actually incurs services.

Parks and Recreation Committee Chairman Erin Jerant reported that the P&R committee met directly following the Finance Committee meeting and all the same people were in attendance. Items of discussion included:

- ◆ a report from Alicia and Charles Bryant regarding the skate park. Some of the kids have dropped out of the fund raising effort. The Committee gave the Bryants several ideas for fundraising in order to keep that project alive.
- ◆ There was discussion regarding whether or not to open the pool this Summer. After all the discussion it was decided to allow staff a 2 week period to pull together a plan before making a decision. The reason for this discussion is that the pool lost money last year and we need a viable way to keep that from happening this year because we can't afford it in our budget this year to lose money.
- ◆ Finally there was discussion about how good all the parks are looking and that they're open and ready for the community to enjoy.

The next P&R committee meeting will be on April 19th following the Finance

meeting.

Safety Committee Chairman Craig Lessar had no report.

Public Resources Committee Mayor Quintana stated that there is no update at this time.

CITIZEN FORUM

Maryann Romero gave a short presentation regarding the Census. She wanted to invite the Council and citizens to an event being held at Cimino Park in Trinidad this Saturday (April 10th). It's the last big push (called March to the Mailbox) for the Census. There will be drawings for gift certificates to local Trinidad and Walsenburg restaurants. The Early Learning Center will also have a family fun day during this event with fun things for the kids. If there is enough interest they are going to see about getting a COG van to shuttle people to Trinidad for the day. She also spoke briefly about completion of the SCCOG strategic plan. She handed out copies to Council. Mayor pro tem England stressed how important it is for everyone to complete and mail in their census forms.

A representative (Greg Mitchell) from Mitchell Hauz Industries spoke regarding the move of his company to Walsenburg. His company was founded in 1950 by his Grandfather. He has recently purchased 86% of the company back and he wants to move it all here. He spoke to the owner of the 200 acres where he wants to build a technology park. He has been working with Bill Shepard who will be a 50% stake owner in the tech park. They are in talks with the Library to take over the 3rd floor and completely remodel and renovate it. They would like to make a presentation at the next GID meeting. They are an alternate energy company but they are also in mining, hotels, restaurants and they are in talks with Michigan regarding building a plant to make recycling and solar equipment. Right now they work with a Chinese partner. They would like to see their corporate headquarters here. They can help the City out with the Northlands issues and would like to make a presentation at the next GID meeting. Councilperson Jerant asked for clarification on what they do. Mr. Mitchell replied that they would sell modular solar panels and wind chargers. They can install systems in buildings in town. They also broker solar bonds (they buy them from solar companies and then trade them). They are also into partnerships with different hotel systems, mainly in Wisconsin, who are looking to branch out. They have several restaurants in the Mitchell name. Mayor pro tem England asked if it would be an industrial park. Mr. Mitchell responded that it would be a technology park. Mr. England asked if they have a website. Mr. Mitchell replied that they did but it had been taken down to create a new one but that will be up this week. It is www.mitchellHauzind.org. Mayor Quintana stated that Walsenburg is looking toward green power and asked that Mr. Mitchell be put on the agenda for the next GID meeting on April 19th at 5:30.

REPORTS

Administrator Alan Hein reported on the following:

- ◆ **Martin Lake Valve Replacement:** Mr. Hein tries to visit the site every day. He was out there today and they are approximately $\frac{3}{4}$ of the way done on pouring their casement on the pipe. In the last week or so they have advanced tremendously. They are down to the manhole that accommodates the valve. It is going very well.

- ◆ **Grocery Store Update:** All the details have been worked between the City and the developer. It's just a matter of Council approving the contract later in the agenda.
- ◆ **Siren Status:** It will be tested on the afternoon of the 14th.
- ◆ **Wastewater Treatment Plant:** Councilperson England covered this very well and Mr. Hein has nothing else to add at this time.
- ◆ **Indian Pool Ranch:** Ditto
- ◆ **Northlands Project:** The refinance that we've been trying to coordinate has fallen through. There is a meeting with Leniece (Saracino) with USDA tomorrow and they very much want to help us to help get this off the ground. She has some other ideas as far grant opportunities. It has to do with the health department and the lagoons and some of the deficiencies we've seen over several years. He will pass on further information as it becomes available.
- ◆ **Walsenburg Care Center:** A surveyor has met with a nursing home representative and they've come up with metes and bounds. He handed out a map of the project. The red outline is the area. It's 4 acres. Councilperson Jerant asked if they've come up with a price. Mr. Hein replied that they had not. Mayor Quintana asked what the topography is. Mr. Hein did not know. He is going to meet with John Branstetter at the first of next week on the next phase of what we need to do to secure this property. There are a couple of names that the Mayor has given him of representatives from the State that he has calls into at this time.
- ◆ **Franchise Fees:** The information that Council requested on this is that it's \$1.09 per residential customer per month and \$1.18 per month for general service customers. San Isabel is proposed in the budget for \$26,047.00. Bresnan is \$22,461.00 Quest is \$3,600.00. Mayor pro tem England asked when they were set and if they are adjustable. Mr. Hein replied that he would have to read the ordinance. Councilperson Moore asked Mr. Hyatt if he was familiar with the franchise fee structures and how that's updated. Mr. Hyatt replied that he is not with this particular fee. Mr. Hein said that the ordinance would have to be reviewed. Mr. England asked that it be added to the next Finance Committee agenda.
- ◆ **The cost of the gas for last year:** There was a question from the finance committee last night about the cost of the gas for last year ('09). That was \$5,649.00
- ◆ **Red/Green voting lights for Council:** Mr. Hein met with the electrician and the IT guy today about the method of construction. There has also been a new staff seating structure constructed and that will be installed in the near future. Mayor Quintana asked whether the table would be elongated. Mr. Hein replied that it would and that some of the structure in front of the dais would be eliminated so that the new table would not block the outside exit.

Mayor Quintana asked if any of the grants discussed earlier would be in conflict with the Northlands Annexation ordinance. Mr. Hein replied that there would not be any conflict. Mr. Quintana asked Mr. Hyatt if he would review them to make sure there won't be any conflict.

Chief of Police Mr. Hein introduced and welcomed James Chamberlain as the interim Chief of Police. Chief Chamberlain reported that since he took the position (about 3 weeks ago) there have been a lot of changes – cleaning, sorting, going through things and making sure that the police department is doing what we need to do to make the citizens happy and to provide them the best service we can. He understands that in the past the perception of the department has not been great. He grew up here and has heard just about everything as far as rumors about the police – some have been really wild. In his first weeks in his new capacity he has been doing paperwork in the morning and then visiting the downtown businesses in the afternoon. The on Sunday night is being investigated by the CBI. They were called in immediately after it happened. Their report should be completed soon. We are taking care of our officers including counseling opportunities. He will have a detailed report on calls for service, etc. at the next meeting. Mayor pro tem England informed Chief Chamberlain that he has spoken with an individual who recently moved to Walsenburg who worked in law enforcement and would like to donate one new and one almost-new bullet-proof vests. Chief Chamberlain stated that he would be more than happy to accept any donations of that nature.

Unfinished Business

James England moved, seconded by James Moore, that Council instruct staff to begin the initial proceedings toward groundbreaking of the wastewater treatment plant. Motion passed on a roll call vote of 8-0.

James England moved, seconded by James Moore, that the City approve the agreement by and between the City of Walsenburg, a Municipal Corporation, and HD Brown Investments, LLC, and allow the Mayor to sign any documents required. After a question and answer session with Mr. Brown regarding the construction timeline (hope to be open between October 1st and the end of the year), and whether local citizenry will be employed in the construction phase (local contractors will have the opportunity to bid) and site preparation (they've done work on geotechnical and developed a site plan; trees and poles still need to be removed) the motion passed on a roll call vote of 8-0.

James England moved, seconded by James Moore, on 2nd reading that

ORDINANCE NUMBER 992 AN ORDINANCE CLARIFYING AND RATIFYING CITY COUNCIL'S ACTION ON MAY 5, 2009 WITH RESPECT TO CITY COUNCIL REMUNERATION

WHEREAS, the Walsenburg City Council approved an increase in the Mayor's remuneration and the remuneration for City Council members on May 5, 2009 prior to the November 2009 municipal election to become effective January 1, 2010; and

WHEREAS, one City Council cannot bind a future City Council on certain financial matters; and

WHEREAS, it is necessary to ratify the action of the City Council on May 5, 2009 as a matter of form; and

WHEREAS, it is also necessary to clarify part of the City Council's action regarding pay for committee meetings and such clarification does not increase the remuneration to the Mayor or Council

members above that approved prior to the election.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WALSENBURG AS FOLLOWS.

1. The pay increase approved on May 5, 2009 for City Council members in the following amounts is hereby ratified: Mayor, four-hundred dollars (\$400.00) per month; Mayor pro-tem, three-hundred-fifty dollars (\$350.00) per month; City Council Members, three-hundred dollars (\$300.00) per month.
2. Each member of the City Council including the Mayor and Mayor pro-tem duly appointed to an official City committee and who is therefore obligated by virtue of the appointment to attend shall receive an additional twenty-five dollars (\$25.00) per month for each of those committee meetings actually attended up to a maximum of eight committee meetings per month or a maximum of two-hundred dollars (\$200.00) per month.

INTRODUCED, READ, ADOPTED AND ORDERED PUBLISHED this 2nd DAY OF MARCH, 2010.

PASSED ON SECOND READING, ADOPTED AND ORDERED PUBLISHED BY TITLE this _____ day of _____, 20__.

CITY OF WALSENBURG

ATTEST:

Bruce Quintana, Mayor

Loretta Sheldon, City Clerk

be approved and published in the paper of record. Motion passed on a roll call vote of 7-1 with the no vote being from Nick Vigil.

After a question from Mayor pro tem England regarding adding an emergency clause to make the ordinance effective immediately and clarification of the language by Mr. Hyatt, Mr. England moved, seconded by Nick Vigil, that

ORDINANCE NUMBER 993

AN ORDINANCE PROVIDING FOR THE SALE OF CERTAIN REAL PROPERTY NOT PREVIOUSLY USED FOR A GOVERNMENTAL PURPOSE

WHEREAS, C.R.S. §31-15-713 provides that a municipality may sell real property by ordinance where the real property was not previously used for a governmental purpose; and

WHEREAS, the City of Walsenburg owns certain ranch property known as the Kincaid Ranch not previously used for any governmental purpose; and

WHEREAS, the City of Walsenburg desires to sell said real property.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF

WALSENBURG AS FOLLOWS.

1. The City Council of the City of Walsenburg declares that the real property known as the Kincaid Ranch, which common address is 1233 Co. Rd. 350, La Veta, Colorado more specifically described in the plat and legal description attached hereto as Exhibit A, is surplus property that has never been used for a governmental purpose.
2. The City Council of the City of Walsenburg approves the following conditions of and the sale of said property pursuant to C.R.S. 31-15-713(2) (2009).
 - a. The sale price shall be five-hundred-fifty-thousand dollars (\$550,000.00).
 - b. The property will sell without any water rights, said water rights having been severed previously from the property.
 - c. The City will reserve unto itself the 7/8 mineral rights previously attached to the property.
 - d. Total settlement costs including commissions and pro-rated rent income from the property will total approximately \$35,704.28.
3. These terms will not lead to speculation.
4. Emergency Declaration: The City Council finds and determines that this ordinance is necessary for the immediate preservation of public property, health, peace, or safety. Accordingly, this ordinance shall take effect immediately upon approval of this ordinance upon second reading.

INTRODUCED, READ, ADOPTED AND ORDERED PUBLISHED this
16th DAY OF MARCH, 2010.

PASSED ON SECOND READING, ADOPTED AND ORDERED
PUBLISHED BY TITLE this _____ day of _____, 20__.

CITY OF WALSENBURG

ATTEST:

Bruce Quintana, Mayor

Loretta Sheldon, City Clerk

be accepted as amended to include an Emergency Declaration as follows: The City Council finds and determines that this ordinance is necessary for the immediate preservation of public property, health, peace, or safety. Accordingly, this ordinance shall take effect immediately upon approval of this ordinance upon second reading. Motion passed on a roll call vote of 7-1 with the “no” vote being from Erin Jerant.

New Business

Deborah Malone, the project manager for the Scenic Highway of Legends Interpretive Signage project, gave a presentation regarding placing a sign at the Railroad Depot/Heritage Park. There will be 2 historical facts and 1 legend per panel. We can do a single or double panel sign. There was concern expressed about whether the material would resist "tagging". Ms. Malone said she would check into it. Mayor pro tem asked if it would need to go to P&Z before it is placed. Mr. Hyatt replied that, as long as it is compliant with the current zoning code the board would not need to approve it. After further discussion regarding the theme, James England moved, seconded by Nick Vigil, that, provided the sign meets standard ordinances and codes from Planning and Zoning, that the Scenic Highway of Legends marketing committee be allowed to place a single or double panel sign at the location marked on the map near the Railroad Depot/Visitor's Center/Heritage Park on Main Street. Motion passed on a roll call vote of 8-0.

After a question regarding whether the entire ordinance needs to be read (not if copies are provided to anyone who wants one) James England introduced

ORDINANCE NUMBER 994

AN ORDINANCE ESTABLISHING A LOCAL LICENSING AUTHORITY AND LICENSING FOR MEDICAL MARIJUANA DISPENSARIES

WHEREAS, §14 of Article XVIII to the Colorado Constitution provides for the medical use of marijuana for persons suffering from debilitating medical conditions; and

WHEREAS, §14 of Article XVIII to the Colorado Constitution also provides that a person suffering from debilitating medical conditions may have a primary care-giver who has significant responsibility for managing the well-being of that person and who can possess marijuana for that person; and

WHEREAS, it is necessary and in the best interest of the city of Walsenburg to establish an ordinance providing for the licensing of medical marijuana dispensaries.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WALSENBURG, COLORADO, THAT:

Section 1. This Ordinance establishes a local licensing authority and licensing for medical marijuana dispensaries.

CHAPTER 6

ARTICLE 11

MEDICAL MARIJUANA DISPENSARIES

Section 6-11-1. Short title. This Ordinance shall be known and may be cited as the "Medical Marijuana Dispensary Ordinance."

Section 6-11-2. Findings. The City Council adopts this Ordinance 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 § 14 of Article XVIII to the Colorado Constitution, and created a limited exception from criminal liability under Colorado law (as opposed to federal law) for seriously ill persons 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 was 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 Colorado (as opposed to federal) law.
- c. Despite the adoption of Amendment 20, marijuana remains a controlled substance under Colorado 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 city affecting the health, safety, order, comfort, convenience and general welfare of the residents of the city.
- e. If medical marijuana dispensaries operating pursuant to Amendment 20 were allowed to be established and to operate without appropriate local regulation of their location, medical marijuana dispensaries might be established in areas that would be inconsistent with surrounding uses; or otherwise be detrimental to the public health, safety and welfare.
- f. Nothing in this Chapter allows a person to:
 1. engage in conduct that endangers others or causes a public nuisance;
 2. possess, cultivate, grow, use or distribute marijuana for any purpose other than for use as medical marijuana as authorized and limited by Amendment 20, and the implementing state statutes and administrative regulations;
 3. possess, cultivate, grow, use or distribute marijuana that is otherwise illegal under applicable law; or
 4. 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 city or the state of Colorado.
- g. This ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the city and the inhabitants thereof.

- h. No person, business, activity or use that distributed or involved the distribution of marijuana within the city prior to the enactment of this Ordinance shall be deemed to have been legally established under this ordinance, and no such person, business, activity or use shall be entitled to claim legal, nonconforming status under any provision of this ordinance or applicable law.

Section 6-11-3. Purpose.

- a. Recognizing that there is a potential conflict between federal and state law with respect to the operation of medical marijuana dispensaries, it is the purpose of this ordinance to:
 - 1. require that a medical marijuana dispensary (as defined in this ordinance) be operated in a safe manner that does not endanger the public welfare;
 - 2. mitigate potential negative impacts that a medical marijuana dispensary might cause on surrounding properties and persons;
 - 3. regulate the conduct of persons owning, operating, and using a medical marijuana dispensary in order to protect the public health, safety and welfare;
 - 4. establish a nondiscriminatory mechanism by which the city can control, through appropriate regulation, the location and operation of medical marijuana dispensaries within the city.

Section 6-11-4. Authority.

- a. The city council of the City of Walsenburg hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to:
 - 1. The Local Government Land Use Control Enabling Act, article 20 of title 29, C.R.S.;
 - 2. Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers);
 - 3. Section 31-15-103, C.R.S. (concerning municipal police powers);
 - 4. Section 31-15-401, C.R.S. (concerning municipal police powers) and;
 - 5. Section 31-15-501, C.R.S. (concerning municipal authority to regulate businesses).

Section 6-11-5. Definitions.

- a. As used in this ordinance, the following words shall have the following meanings, unless the context clearly requires otherwise.
 - 1. “*Alcoholic beverage*” means fermented malt beverage or malt, vinous, or

spirituous liquors.

2. “*Amendment 20*” means a voter-initiated amendment to the Colorado Constitution adopted November 7, 2000. Amendment 20 added §7 of Article 4 to the Colorado Constitution.
3. “*Applicant*” means a person twenty-one (21) years of age or older who has submitted an application for a license pursuant to this ordinance.
4. “*Application*” means an application for a license submitted pursuant to this ordinance.
5. “*City*” means the City of Walsenburg, Colorado.
6. “*City Council*” means the governing body of the city.
7. “*Cultivation*” means the process by which a person promotes the germination and growth of a seed to a mature marijuana plant. *Cultivation* does not include the storing or watering of mature marijuana plants without the aid of grow lighting.
8. “*Day*” means a calendar day, unless otherwise indicated.
9. “*Good cause*” (for the purpose of refusing or denying a license renewal under this ordinance) means:
 - A. the licensee has violated, does not meet, or has failed to comply with any of the terms, conditions or provisions of this Ordinance and any rule and regulation promulgated pursuant to this Ordinance;
 - B. the licensee has failed to comply with any special terms or conditions that were placed on its license at the time the license was issued, or that were placed on its license in prior disciplinary proceedings or that arose in the context of potential disciplinary proceedings; or
 - C. the licensee’s medical marijuana dispensary has been operated in a manner that adversely affects the public health, welfare or safety of the immediate neighborhood in which the medical marijuana dispensary is located. Evidence to support such a finding may include:
 - i. a continuing pattern of offenses against the public peace, as defined in Title 7 of the Walsenburg Municipal Code;
 - ii. a continuing pattern of drug-related criminal conduct within the premises of the medical marijuana dispensary or in the immediate area surrounding the medical marijuana dispensary; or
 - iii. a continuing pattern of criminal conduct directly related to or arising from the operation of the medical marijuana dispensary.
10. “*License*” means a license to operate a medical marijuana dispensary issued by the City pursuant to this Article.

11. *“Licensee”* means the person to whom a license has been issued pursuant to this ordinance.
 12. *“Local Licensing Authority”* means the city council sitting as the medical marijuana licensing authority for the city.
 13. *“Medical marijuana dispensary”* or *“dispensary”* means the use of any property or structure within the City to distribute, transmit, give, dispense or otherwise provide marijuana in any manner to patients or primary care-givers in accordance with Amendment 20, and the implementing state statutes and administrative regulations.
 14. *“Patient”* has the meaning provided in Amendment 20.
 15. *“Primary caregiver”* means a person, other than the patient and the patient’s physician, who is eighteen years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition as defined by Colorado Constitution, Art. XVIII, Section 14(1)(a).
- b. In addition to the definitions provided in Subsection (a) of this Section, the other defined terms in Amendment 20 are incorporated into this Ordinance by reference.

Section 6-11-6. Licenses required.

- a. No person shall operate a medical marijuana dispensary within the City without a valid license issued in accordance with this ordinance.
- b. No person shall operate a medical marijuana dispensary within the City without a business license issued in accordance with local law.
- c. No person shall operate a medical marijuana dispensary within the City without a sales tax license.

Section 6-11-7. Establishment of local licensing authority.

- a. The city council of the city of Walsenburg shall set as the medical marijuana Local Licensing Authority (“Local Licensing Authority”).
- b. For the purpose of regulating the cultivation, sale and distribution of medical marijuana, the licensing authority in its discretion, upon application in the prescribed form made to it, may issue and grant to the applicant a Medical Marijuana Dispensary License, subject to the provisions and restrictions provided by this ordinance.
- c. All licenses granted pursuant to this ordinance shall be valid for a period of one year from the date of issuance unless revoked or suspended as provided by this ordinance.

LICENSING

Section 6-11-8. Application for license.

- a. An applicant shall file an application for approval with the Local Licensing Authority, including a fee determined by the Local Licensing Authority, on forms provided by the Local Licensing Authority and containing such information as the Local Licensing Authority may require. Each application shall be verified by the oath or affirmation of each person who completes any portion of the application.
- b. A license issued pursuant to this Ordinance does not eliminate the need for the licensee to obtain other required City licenses and licenses related to the operation of the approved medical marijuana dispensary, including, without limitation:
 1. any required land use approval, if applicable
 2. a City business and sales tax license; and
 3. a building license, mechanical license, plumbing license or electrical license.
 4. An application for a license under this Ordinance shall contain the following information:
 - A. the applicant's name, address, telephone number, birth date and social security number;
 - B. the street address, and unit number, if applicable, of the proposed medical marijuana dispensary, and a complete description of the site for which the license is being obtained;
 - C. a scaled diagram of the site and structure where the dispensary will be located including all interior walls, doorways, windows and stairwells and shall indicate the intended uses of each room;
 - D. if the applicant is not the owner of the proposed location of the medical marijuana dispensary:
 - i. a notarized statement from the owner of such property authorizing the submission of the application;
 - ii. a lease showing that the applicant has legal possession of the proposed location for the duration of the license term;
 - E. a completed set of the applicant's fingerprints;

- F. a statement to be initialed by the applicant that the applicant and the employees of the medical marijuana dispensary may be subject to prosecution under federal marijuana laws;
- G. a statement to be initialed by the applicant that the City accepts no legal liability in connection with the approval and subsequent operation of the medical marijuana dispensary;
- H. an acknowledgement that the City will conduct a background investigation as specified in Section 6-11-11(b) of this ordinance; and
- I. any additional information that the Local Licensing Authority reasonably determines to be necessary in connection with the investigation and review of the application.

Section 6-11-9. Application fee.

- a. An applicant shall pay to the City a nonrefundable application fee when the application is filed. The purpose of the fee is to cover the administrative costs of processing the application and enforcement of this ordinance.
- b. For applications filed in 2010 the application fee is \$3,000. Thereafter, the amount of the application fee shall be fixed by the City Council by resolution.

Section 6-11-10. Public notice.

- a. Upon receipt of an application, except an application for renewal or for transfer of ownership, the Local Licensing Authority shall schedule a public hearing on the application to be held not sooner than thirty days after the filing date of the application and shall post and publish the public notice thereof not less than ten days prior to the hearing. Public notice shall be given by the applicant posting a sign in a conspicuous place on the premises for which application has been made and by publication in a newspaper of general circulation in the City.
- b. Notice given by posting shall include a sign of suitable material, not less than twenty-two inches wide and twenty-six inches high, composed of letters not less than one inch in height and stating the type of license applied for, the date of the application, the date of the hearing, and the name and address of the applicant, and such other information as may be required to fully apprise the public of the nature of the application. If the applicant is a partnership, the sign shall contain the names and addresses of all partners, and if the applicant is a corporation, an association, a limited liability company or another organization, the sign shall contain the names and addresses of the president, vice-president, secretary, and manager or other managing officers or managing members.

- c. Notice given by publication shall contain the same information as that required for signs.
- d. If the building in which the medical marijuana is to be sold is in existence at the time of the application, any sign posted as required in this ordinance shall be placed so as to be conspicuous and plainly visible to the general public. If the building is not constructed at the time of the application, the applicant shall post the notice on 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.
- e. The Local Licensing Authority shall give notice to the applicant of the date, time and location of the hearing at least fifteen (15) days prior to the hearing.

Section 6-11-11. Investigation of application.

- a. Upon receipt of a properly completed application, together with all information required in connection therewith, and the payment of the application fee as required by Section 6-11-9, the city clerk shall transmit copies of the application or sections of the application as appropriate to:
 - 1. the Police Department; and
 - 2. any other person or agency which the Local Licensing Authority determines should properly investigate and comment upon the application.
- b. Upon receipt of a completed application the Police Department shall obtain and review a criminal background records search on the applicant from the Colorado Bureau of Investigation.
- c. Within twenty (20) days of receipt of a completed application those City departments and other referral agencies described in Subsection (a) of this Section shall provide the Local Licensing Authority with comments concerning the application.

Section 6-11-12. Findings of local investigation.

- a. Not less than five days prior to the date of the hearing required in this ordinance, the Local Licensing Authority shall make known its findings, based on the information in the application, in writing to the applicant and any party in interest that has filed an entry of appearance or a written request for the findings with the city clerk.
- b. The Local Licensing Authority has authority to refuse to issue an approval for good cause, subject to judicial review.

Section 6-11-13. Public hearing.

- a. At the public hearing held pursuant to this section, each party in interest that has filed an entry of appearance or a written request to participate in the hearing with the city clerk by 10 a.m. the business day prior to the hearing shall be allowed to present evidence and to cross-examine witnesses except that the Local Licensing Authority may waive this entry of appearance requirement for good cause shown.
- b. As used in this ordinance “Party in Interest” means any of the following:
 1. The Applicant;
 2. An adult resident of the neighborhood under consideration who does not represent a group identified in subparagraph “5” of this paragraph “b”;
 3. The owner or manager of a business located in the neighborhood under consideration;
 4. The principal or representative of a school or day care center located within the neighborhood and within one thousand feet of the premises for which a medical marijuana dispensary license is under consideration;
 5. One representative of an organized neighborhood group that encompasses part or all of the neighborhood under consideration from presenting evidence subject to this section. The representative shall reside within the neighborhood group’s geographic boundaries and shall be a member of the neighborhood group;
 6. A representative of a local law enforcement agency.
- c. The Local Licensing Authority in its discretion may limit the presentation of evidence and cross-examination so as to prevent repetitive and cumulative evidence or examination.

Section 6-11-14. Decision of local licensing authority.

1. Before entering a decision approving or denying an application, the Local Licensing Authority shall consider, except where this ordinance specifically provides otherwise:
 - A. The facts and evidence adduced as a result of its investigation and hearing, as well as any other facts of which the Local Licensing Authority takes notice;
 - B. The reasonable requirements of the neighborhood for the type of license for which application has been made;
 - C. The desires of the adult inhabitants of the neighborhood;

- D. The number, type, and availability of medical marijuana outlets located in or near the neighborhood under consideration; and
- E. Any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed.
- F. The Local Licensing Authority may, but is not required to consider the reasonable requirements of the neighborhood in considering the conversion or transfer of a license.
- G. A decision of the Local Licensing Authority approving or denying the application shall be released in writing stating the reasons for the decision within thirty days after the date of the public hearing; except that a Local Licensing Authority may delay approving an application if necessary of the provisions of subsection (4) of this section. The Local Licensing Authority shall send a copy of the decision by certified mail to the applicant at the address shown in the application.
- H. The Local Licensing Authority shall not approve an application until the building in which the business is to be conducted is ready for occupancy with the furniture, fixtures, and equipment in place as necessary to comply with the applicable provisions of this ordinance, and then only after inspection of the premises has been made by the Local Licensing Authority to determine that the applicant has complied with the architect's drawing and the plot plan and detailed sketch for the interior of the building submitted with the application including all security requirements.

Section 6-11-15. Denial of application for license.

- a. The Local Licensing Authority shall deny an application for a license under this Ordinance, if the Local Licensing Authority determines that:
 - 1. the application submitted is incomplete; or
 - 2. information contained in the application or supplemental information requested from the applicant is found to be false in any material respect; or
 - 3. the applicant has not paid the local licensing fee; or
 - 4. the person is prohibited as a licensee under Section 6-11-18(a) of this ordinance;
 - 5. the premises on which the applicant proposes to conduct its business do not meet the requirements of this ordinance; or
 - 6. the character of the applicant is such that violations of the Ordinance would be

likely to result if a license were granted; or

7. the Local Licensing Authority determines the licenses already granted for the particular locality are adequate for the reasonable needs of the community based on the testimony and evidence of the medical needs and necessity of the potential customers for the approval of the license at the proposed location for the sale of the medical marijuana.
 8. the Local Licensing Authority shall not deny a medical marijuana dispensary license except upon conclusion of a hearing conducted after fifteen days' notice to the applicant. The notice shall be in writing and shall state the grounds upon which the application may be refused. If the applicant does not respond to the notice within fifteen days after the date of the notice, the Local Licensing Authority shall deny the application for a license.
- b. If an application is denied the application fee shall not be refunded.

Section 6-11-16. Authority to impose conditions on license.

- a. The Local Licensing Authority shall have the authority to impose such reasonable terms and conditions on a license as may be necessary to protect the public health, safety and welfare, and to obtain compliance with the requirements of this ordinance and applicable law.

Section 6-11-17. Notice of decision; appeal of decision; finality.

- a. The Local Licensing Authority shall notify the applicant of the decision on the application within thirty (30) business days of rendering the decision. Notice shall be given by mailing a copy of the Local Licensing Authority's decision to the applicant by certified mail, postage prepaid, at the address shown in the application. Notice is deemed to have been properly given upon mailing.
- b. Any decision made by the Local Licensing Authority pursuant to this Section shall be a final decision and may be appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The applicant's failure to timely appeal the decision is a waiver of the applicant's right to contest the denial or conditional approval of the application.

Section 6-11-18. Licensing provisions

- a. Persons Prohibited as licensees.
 1. A medical marijuana dispensary license issued pursuant to this ordinance shall not be issued to or held by:
 - A. A person who is not of good moral character. The applicant for a medical marijuana dispensary license shall present testimony and opinion evidence as well as petitions and documentation at the hearing to prove that the applicant is qualified to hold a license based upon satisfactory proof of good moral character as well as the testimony of business persons and neighbors from inside the designated neighborhood of the relevant area under consideration, as determined by the Local Licensing Authority.
 - B. A natural person under twenty-one years of age;
 - C. A licensed physician;
 - D. A peace officer, as defined in section 16-2.5-101, C.R.S., or a family member of a peace officer.
 - E. A person who is delinquent in filing any tax returns with a taxing agency; paying any taxes, interest, or penalties; paying any judgments due to a government agency; repaying government-insured student loans; or paying child support;
 - F. A person who has been convicted of any felony or of a misdemeanor pursuant to part 4 of article 18 of title 18, C.R.S.;
 - G. A person who employs a person at the medical marijuana dispensary who has not passed a criminal history record check; or
 - H. A person who holds an elected office in the City.
 - b. In making a determination as to character when considering the conviction of a crime, the Local Licensing Authority shall be governed by the provisions of section 24-5-101, C.R.S. A medical marijuana dispensary operation shall have legal possession of its physical location at all times during the license term. The physical location shall meet all applicable local zoning laws.

Section 6-11-19. Transfer of ownership and temporary licenses.

- a. A medical marijuana dispensary license granted under the provisions of this ordinance shall not be transferable except as provided in this subsection.
- b. When a medical marijuana dispensary license has been issued to a husband and wife, or to general or limited partners, the death of a spouse or partner shall not require the

surviving spouse or partner to obtain a new license. All rights and privileges granted under the original license shall continue in full force and effect as to the surviving spouse or partners for the balance of the licensing period.

- c. For any other transfer of ownership, a medical marijuana dispensary licensee shall apply to the Local Licensing Authority on forms prepared and furnished by the Local Licensing Authority. In determining whether to license a transfer of ownership, the Local Licensing Authority shall consider only the requirements of section 6-11-18 of this ordinance. The Local Licensing Authority may hold a hearing on the application for transfer of ownership. The Local Licensing Authority shall not hold a hearing provided for by this paragraph until it has conspicuously posted a notice of hearing on the licensed premises for a period of ten days and provided notice of the hearing to the applicant at least ten days prior to the hearing. Any transfer of ownership hearing by the Local Licensing Authority shall be held pursuant to section 6-11-13 of this ordinance.
- d. Notwithstanding any provisions of this Ordinance to the contrary, the Local Licensing Authority shall have discretionary authority to issue a temporary license to a transferee of a medical marijuana dispensary license application approved by the Local Licensing Authority. A temporary license shall authorize a transferee to continue selling medical marijuana as licensed under the permanent license during the period in which an application to transfer the ownership of the license is pending.
- e. A temporary license shall authorize a transferee to conduct business, sell and cultivate medical marijuana in accordance with the medical marijuana dispensary license of the transferor subject to compliance with all of the following conditions.
 1. The premises where medical marijuana is sold or cultivated shall have been previously licensed by the Local Licensing Authority, and the medical marijuana dispensary license shall have been valid at the time the applicant filed the application for transfer of ownership with the Local Licensing Authority.
 2. The applicant has filed with the Local Licensing Authority on forms provided by the Local Licensing Authority an application for the temporary license. The application shall include, but need not be limited to, the following information:
 - A. The name and address of the applicant;
 - B. The applicant's financial interest in the proposed transfer;
 - C. The premises for which the temporary license is sought;
 - D. Such other information as the Local Licensing Authority may require; and
 - E. A statement that all accounts for medical marijuana sold to the applicant are paid which statement shall be a public record and open to inspection by the public.

3. The applicant shall file the application for a temporary license no later than thirty days after the filing of the application for transfer of ownership and shall include with the application payment of a temporary license fee of one-hundred dollars.
4. The Local Licensing Authority shall issue or deny a temporary license at the next regular meeting of the Local Licensing Authority after receiving the application provided that the application was filed by the Wednesday prior to the next regular meeting to allow sufficient time for notice pursuant to the Colorado Open Meetings Act. A temporary license issued pursuant to this section shall be valid until such time as the application to transfer ownership of the medical marijuana dispensary license to the applicant is granted or denied or for one-hundred-twenty days, whichever occurs first; except that, if the application to transfer the license has not been granted or denied within the one-hundred-twenty-day period and the transferee demonstrates good cause, the Local Licensing Authority may, in its discretion, extend the validity of the temporary license for an additional period not to exceed sixty days.
5. The Local Licensing Authority shall issue a temporary license in the event of a transfer of possession of the licensed premises by operation of law, a petition in bankruptcy pursuant to federal bankruptcy law, the appointment of a receiver, a foreclosure action by a secured party, or a court order dispossessing the prior medical marijuana dispensary licensee of all rights of possession pursuant to Article 40 of title 13, C.R.S.
6. The Local Licensing Authority may cancel, revoke, or summarily suspend a temporary license if it determines there is probable cause to believe that the transferee has violated any provision of this Ordinance or has violated any rule adopted by the Local Licensing Authority or has failed to truthfully disclose those matters required pursuant to the application forms required by the Local Licensing Authority.

Section 6-11-20. General license provisions.

- a. A medical marijuana dispensary shall notify the Local Licensing Authority in writing within ten days after an officer or employee ceases to work at or otherwise be associated with the center. Where the Local Licensing Authority previously issued an identification card, the officer or employee shall surrender his or her identification card to the Local Licensing Authority.
- b. A medical marijuana dispensary shall notify the Local Licensing Authority in writing of the name, address, and date of birth of an officer or employee before the new officer or employee begins working at or is associated with the center operation. The officer or employee shall pass a criminal history record check prior to being associated with or working at the medical marijuana dispensary.
- c. A medical marijuana dispensary shall not acquire, possess, cultivate, deliver, transfer, transport, supply, or dispense marijuana for any purpose except to assist patients, as

defined by Section 14(1)(d) of Article XVIII of the state constitution.

- d. A medical marijuana dispensary shall not allow firearms on the premises except that a peace officer certified by the peace officer standards and training board and any person with a concealed weapons permit in his or her possession may possess a firearm on the premises.

Section 6-11-21. Medical marijuana dispensary requirements.

- a. A medical marijuana dispensary may operate only between the hours of 8:00 a.m. and 5:00 p.m. Monday through Sunday. A medical marijuana dispensary shall not permit smoking, inhaling or consumption of medical marijuana in any form on its premises.
- b. A medical marijuana dispensary may possess no more than six medical marijuana plants and two ounces of medical marijuana for each patient who has registered the center as his or her primary center; except that a medical marijuana dispensary may have a total of no more than two hundred-ten medical marijuana plants and no more than one-thousand ounces of medical marijuana in its inventory at any one time.
- c. A medical marijuana dispensary shall enter into a written agreement with each patient who shall be identified only by the patient's state marijuana registration number and shall keep a copy of each agreement on file at the dispensary. The agreement shall state with specificity the significant responsibilities assumed by the dispensary for managing the well-being of the patient in addition to the supplying or transporting of marijuana. The dispensary shall make said agreements available to law enforcement officials upon request.
- d. All operators of a medical marijuana dispensary shall be residents of Colorado.

Section 6-11-22. 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 medical marijuana dispensary;
 - 4. Any special conditions of approval imposed upon the licensee by the Local Licensing Authority; and
 - 5. The date of the expiration of the license.

- b. A license must be signed by both the chairman of the Local Licensing Authority and the applicant to be valid.

Section 6-11-23. Notice of issuance of license.

- a. Immediately upon the issuance of a license, the city clerk shall send a copy of the license to:
 - 1. The Police Department;
 - 2. The Finance Director; and
 - 3. Any other person or agency as determined by the local licensing authority.

Section 6-11-24. Duration of license; renewal.

- a. Each license issued pursuant to this ordinance shall be valid for one (1) year from the date of issuance, and may be renewed as provided in this Section.
- b. An application for the renewal of an existing license shall be made to the Local Licensing Authority not less than forty-five (45) days prior to the date of expiration. No application for renewal shall be accepted by the Local Licensing Authority after the date of expiration. The Local Licensing Authority may waive the forty-five (45) days time requirement set forth in this Subsection, if the applicant demonstrates an adequate reason.
- c. The provisions of Sections 6-11-15 through 6-11-18, inclusive, shall apply to the processing of an application to renew a license. The timely filing of a renewal application shall extend the current license until a final decision is made on the renewal application, including any appeal of the Local Licensing Authority's decision.
- d. At the time of the filing of an application for the renewal of an existing license the applicant shall pay a renewal fee in an amount fixed by resolution by the city council.
- e. The Local Licensing Authority may refuse to renew a license for good cause.

Section 6-11-25. Duties of licensee.

- 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, and any special conditions on the license imposed by the Local Licensing Authority, pursuant to Section 6-11-16.
 2. Comply with all of the requirements of this ordinance;
 3. Comply with all other applicable city ordinances;
 4. Comply with all state laws and administrative regulations pertaining to the medical use of marijuana, including, but not limited to, Amendment 20; Section 4-4-406.3, C.R.S.; and the administrative regulations issued by the Colorado Department of Public Health and Environment found at 5 CCR 1006-2, all as amended from time to time.
 5. 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 that conflicts with Amendment 20; and
 6. Cooperate with inspection of its records and operation by the licensing authority or its employees or agents for the purpose of determining the Licensee's compliance with the terms and conditions of the license.

Section 6-11-26. Posting of license.

- a. A license shall be continuously posted in a conspicuous location at the medical marijuana dispensary.

Section 6-11-27. Suspension or revocation of license.

- a. A license issued pursuant to this ordinance may be suspended or revoked by the Local Licensing Authority for the following reasons:
1. fraud, misrepresentation, or a false statement of material fact contained in the license application;
 2. a violation of any City, state, or federal law or regulation, other than a federal law or regulation concerning the possession, sale or distribution of marijuana that conflicts with Amendment 20;
 3. a violation of any of the terms and conditions of the license, including any special conditions of approval imposed upon the license by the Local Licensing Authority pursuant to Section 6-11-16.
 4. a violation of any of the provisions of this Ordinance;

5. operations have ceased at the medical marijuana dispensary for more than thirty (30) days, including during a change of ownership of the dispensary; or
 6. ownership of the medical marijuana dispensary has been transferred without the new owner obtaining a license pursuant to this Ordinance.
- b. In connection with the suspension of a license, the Local Licensing Authority may impose reasonable conditions.
 - c. The Local Licensing Authority shall notify the Licensee of the decision to suspend or revoke the license within three (3) business days of rendering the decision. Notice shall be given by mailing a copy of the Local Licensing Authority's decision to the Licensee by regular mail, postage prepaid, at the address shown in the license or by personal service on the licensee. Notice is deemed to have been properly given upon mailing.
 - d. No suspension or revocation shall be final until the Licensee has been given the opportunity for a hearing to address the suspension or revocation.
 - e. Any decision made by the Local Licensing Authority following a hearing 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.

Section 6-11-28. Limitation on the sale of marijuana.

- a. No marijuana may be sold, given away or transferred at a medical marijuana dispensary, except to patients and to primary caregivers.

Section 6-11-29. Prohibited locations; permanent location required.

- a. Prior to the issuance of a license for a medical marijuana dispensary, the police chief or marshal shall determine whether the proposed location of the medical marijuana dispensary complies with the requirements of this Section. Failure to comply with the requirements of this Section shall preclude issuance of a license.

1. No medical marijuana dispensary shall be located at the following locations:

- A. within 500 feet of any single or multi-family residential structure or unit, or parcel or lot;

- B. within 500 feet of a licensed child care facility;
 - C. within 500 feet of any educational institution or school, college or university, either public or private;
 - D. within 500 feet of any public park, public pool, or public or private recreational facility;
 - E. within 500 feet of any area designated as blighted pursuant to the Colorado Urban Renewal Law, C.R.S. § 31-25-101, *et seq.*
 - F. within 1000 feet of any state, county, city or multi-jurisdictional facility that houses prisoners as set forth in C.R.S. Title 17 or C.R.S. §31-15-401(1)(J) including, but not limited to, correctional facilities, community corrections facilities, reformatories and jails.;
 - G. within 1000 feet of any other medical marijuana dispensary; or
 - H. within any building or structure that contains a residential unit.
- b. The distances described in subsection (a) shall be computed by direct measurement from the nearest property line of the land used for the above purposes to the nearest portion of the building housing the medical marijuana dispensary using a straight line.
 - c. Each medical marijuana dispensary shall be operated from a permanent location. No medical marijuana dispensary shall be licensed to operate from a moveable, mobile or transitory location.
 - d. The suitability of a location for a medical marijuana dispensary shall be determined at the time of the issuance of the first license for such dispensary. The fact that changes in the neighborhood that occur after the issuance of the first license might render the site unsuitable for a medical marijuana dispensary under this Section shall not be grounds to suspend, revoke or refuse to renew the license for such dispensary so long as the license for the dispensary remains in effect.

Section 6-11-30. Signage.

- a. All signage for a medical marijuana dispensary, including, but not limited to, any words, symbols or graphics indicating the sale or use of marijuana on the structure or any of its component parts, shall comply with the requirements of the City zoning code and sign code.

Section 6-11-31. Required warnings to be posted.

- a. There shall be posted in a conspicuous location in each medical marijuana dispensary 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 possession and distribution of marijuana is a violation of federal law.

Section 6-11-32. On-site consumption.

- a. The consumption or inhalation of marijuana on or within the premises of a medical marijuana dispensary is prohibited.

Section 6-11-33. Paraphernalia.

- a. Devices, contrivances, instruments and paraphernalia for inhaling or otherwise consuming marijuana, including, but not limited to, rolling papers and related tools, water pipes, and vaporizers may lawfully be sold at a medical marijuana dispensary. Such items may be sold or provided only to patients or primary caregivers.

Section 6-11-34. On-site cultivation prohibited.

- a. The growing, cultivation or processing of marijuana on or within the premises of a medical marijuana dispensary is prohibited.

Section 6-11-35. Alcohol.

- a. The sale or consumption of an alcoholic beverage within a medical marijuana dispensary is prohibited.

Section 6-11-36. Age restrictions.

- a. No person under the age of eighteen shall be allowed in any portion of a medical marijuana dispensary.

Section 6-11-37. Ledger required.

- a. A Licensee shall keep a ledger which shall record the following information, and which shall be made available to the City or law enforcement officers or the Colorado Department of Revenue upon demand:
 1. The quantity of medical marijuana dispensed in each transaction;
 2. The type and source of medical marijuana dispensed;
 3. Description of paraphernalia sold and number of each item sold;
 4. The amount paid by the patient for each unit of marijuana sold;
 5. The amount paid by the patient for each item of paraphernalia sold;
 6. The amount paid for each service provided;
 7. The total amount paid by the patient for the transaction for all goods and services provided;
 8. The patient's medical marijuana Identification Card Number, and any other identifying information permitted by law; and
 9. The date and time dispensed.

Section 6-11-38. Limitations on quantity dispensed.

- a. A Licensee may not dispense more than two ounces of a usable form of medical marijuana, or six marijuana plants, three or fewer of which may be mature flowering plants per patient, per day.

Section 6-11-39. Method of Payment

- a. All payments for the purchase of medical marijuana or paraphernalia shall be made by credit or debit card or by the patient's personal check.

Section 6-11-40. Security requirements.

- a. A Licensee shall provide adequate security on the premises of a medical marijuana dispensary including, but not limited to, the following:

1. Security surveillance cameras installed to monitor the main entrance along with the interior and exterior of the premises to discourage and to facilitate the reporting of criminal acts and nuisance activities occurring at the premises. Security video shall be preserved for at least seventy-two (72) hours by the Licensee, and be made available to law enforcement officers upon demand;
2. A locking safe permanently affixed to the premises that is suitable for storage of all of the saleable inventory of marijuana;
3. Exterior windows (without shades) of sufficient size to license observation of the inside of the dispensary premises by a law enforcement officer standing outside of the dispensary; and
4. Exterior lighting that illuminates the exterior walls of the business.

Section 6-11-41. Sales and business license required.

- a. At all times while a license is in effect the Licensee shall possess a valid Colorado sales tax license and a business license where such a license is required of businesses located within the City.

Section 6-11-42. Taxes.

- a. Each licensee shall pay sales tax on all medical marijuana, paraphernalia and other tangible personal property sold by the Licensee at the medical marijuana dispensary.

Section 6-11-43. Penalties; injunctive relief.

- a. It is a misdemeanor offense for any person to violate any provision of this ordinance. Each day a particular offense occurs shall constitute a separate offense. Any person convicted of having violated any provision of this ordinance shall be punished by a fine of three-hundred-dollars per offense.
- b. The operation of a medical marijuana dispensary without a valid license issued pursuant to this ordinance may be enjoined by the City in an action brought in a court of competent jurisdiction, including the Walsenburg Municipal Court.
- c. The operation of a medical marijuana dispensary without a valid license issued pursuant to this ordinance is specifically determined to be a public nuisance.
- d. The remedies set forth in this section shall not be interpreted so as to be mutually exclusive remedies.

Section 6-11-44. No waiver of governmental immunity.

- a. In adopting this Ordinance, the City Council is relying on and does not waive or intend to waive by any provision of this Ordinance, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S., as from time to time amended, or any other limitation, right, immunity, or protection otherwise available to the City, its officers or its employees.

Section 6-11-45. No city liability.

- a. By accepting a license issued pursuant to this Ordinance, a Licensee releases the City, its officers, elected officials, appointed officials, employees, attorneys and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of dispensary owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations. The Licensee shall execute a written instrument confirming the provisions of this Section.

Section 6-11-46. Indemnification of city.

- a. By accepting a license issued pursuant to this Ordinance a Licensee, jointly and severally if more than one, agrees to indemnify and defend the City, its officers, elected officials, employees, attorneys, agents, insurers, and self-insurance pool 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 medical marijuana dispensary that is the subject of the license. The Licensee further agrees to investigate, handle, respond to, and to 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. The Local Licensing Authority shall require a Licensee to execute a written installment confirming the provisions of this Section.

Section 6-11-47. Other laws remain applicable.

- a. The provisions of this Ordinance do not protect Licensees, operators, employees, customers and clients of a licensed medical marijuana dispensary 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 Ordinance the cultivation, sale, possession, distribution and use of marijuana remain violations of federal and state law (except for conduct covered by Amendment 20), and this Ordinance affords no protection against prosecution under such federal and state laws. Licensees, operators, employees, customers and clients of a licensed medical marijuana dispensary assume any and all risk and any and all liability arising or

resulting from the operation of the dispensary under any state or federal law. Further, to the greatest extent permitted by law, any actions taken under the provisions of this Ordinance by any public officer or officers, elected or appointed officials, employees, attorneys and agents of the City shall not become a personal liability of such person or of the City.

Section 6-11-48. Rules and regulations.

- a. The Local Licensing Authority shall have the authority from time to time to adopt, amend, alter and repeal administrative rules and regulations as may be necessary for the proper administration of this Ordinance.

Section 6-11-49. Disciplinary Actions: Suspension, Revocation, Fines

- a. In addition to any other penalties prescribed by this ordinance, the Local Licensing Authority has the power, on its own motion or on complaint, after investigation and public hearing at which the licensee shall be afforded an opportunity to be heard, to suspend or revoke a medical marijuana dispensary license issued by the authority. The Local Licensing Authority may suspend or revoke a license for any violation by the licensee or by a principal officer, a board member, an agent, or an employee of the licensee of the provisions of this Ordinance or any of the rules authorized pursuant to this ordinance of any of the terms, conditions or provisions of the license issued by the Local Licensing Authority.
- b. The Local Licensing Authority has the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of any hearing that the Local Licensing Authority is authorized to conduct.
- c. The Local Licensing Authority shall provide notice of suspension or revocation, as well as any required notice of a hearing, by mailing the same in writing to the medical marijuana dispensary at the address contained in the medical marijuana dispensary license.
- d. A suspension shall not be for a longer period than six months. If a license is suspended or revoked, no part of the fees paid for the license shall be returned to the licensee.
- e. The Local Licensing Authority may summarily suspend a license without notice pending any prosecution, investigation, or public hearing. Nothing in this ordinance shall prevent the summary suspension of a license for a temporary period of not more than fifteen (15) days.
- f. Whenever a decision of the Local Licensing Authority suspending a medical marijuana dispensary license for fourteen days or less becomes final, whether by failure of the licensee to appeal the decision or by exhaustion of all appeals and judicial review, the licensee may, before the operative date of the suspension, petition for permission to pay a fine in lieu of having the license suspended or all or part of

the suspension period. Upon the receipt of the petition, the Local Licensing Authority may, in its sole discretion, stay the proposed suspension and cause any investigation to be made that it deems desirable and may, in its sole discretion, grant the petition if it is satisfied:

1. that the public welfare and morals would not be impaired by
2. permitting the medical marijuana dispensary to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes;
3. that the books and records of the medical marijuana dispensary are kept in such a manner that the loss of sales that the licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy therefrom; and
4. that the medical marijuana dispensary licensee has not had his or her medical marijuana dispensary license suspended or revoked, nor had any suspension stayed by payment of a fine, during the two years immediately preceding the date of the motion or complaint that has resulted in a final decision to suspend the license.
5. The fine accepted shall be not less than one-thousand dollars nor more than one-hundred-thousand dollars.
6. Payment of a fine shall be in the form of cash, certified check or cashier's check made payable to the City.
7. Upon payment of a fine pursuant to this section, the Local Licensing Authority shall enter its further order permanently staying the imposition of the suspension.
8. In connection with any petition pursuant to this section, the Local Licensing Authority shall grant such stays only as are necessary for it to complete its investigation and make its findings and, if it makes such findings, to the granting or an order permanently staying the imposition of the entire sentence or that portion of the suspension not otherwise conditional stayed.
9. If the Local Licensing Authority does not make the findings required in paragraph "F" of this section and does not order the suspension permanently stayed, the suspension shall go into effect on the operative date finally set by the medical marijuana licensing authority.

Section 6-11-50. Use of medical marijuana.

- a. The use of medical marijuana is allowed under state law to the extent that it is carried out in accordance with the provisions of section 14 of Article XVIII of the state constitution.

1. A patient or primary caregiver shall not:
 - I. Engage in the medical use of marijuana in a way that endangers the health and well-being of a person;
 - II. Engage in the medical use of marijuana in plain view of or in a place open to the general public;
 - III. Engage in the use of medical use of marijuana in any form on the licensed premises or on any premises connected to the licensed premises by a door, hallway, window or other opening;
 - IV. In a vehicle or motorboat;
 - V. Operate, navigate, or be in actual physical control of any vehicle or motorboat while under the influence of medical marijuana; or
 - VI. Use medical marijuana if the person does not have a debilitating medical condition as diagnosed by the person's physician in the course of a bona fide physician-patient relationship and for which the physician has recommended the use of medical marijuana.
 - VII. A person shall not establish a business to license patients to congregate and smoke or otherwise consume medical marijuana.
 - VIII. Only registered patients, licensed primary caregivers, and licensed medical dispensaries may cultivate medical marijuana.
- b. A medical marijuana dispensary may manufacture or sell a food product that contains medical marijuana where:
 1. The medical marijuana dispensary has passed all state and county health department inspections required for the manufacture or sale of a food product; and
 2. The medical marijuana dispensary has passed all fire code inspections required for the manufacture or sale of a food product; and
 3. the food product is labeled as containing medical marijuana and the label accurately specifies the amount of medical marijuana contained in the food product; and
 4. the medical marijuana dispensary does not permit consumption of any food products containing medical marijuana on the dispensary premises.

Section 6-11-51. Severability.

- a. If any provision of this Ordinance or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or

applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 6-11-52. Emergency declaration.

- a. The City Council finds and determines that this ordinance is necessary for the immediate preservation of public property, health, peace, or safety in that the unregulated operation of medical marijuana dispensaries detrimentally impairs the health, safety and welfare of the citizens of the City of Walsenburg. Accordingly, this ordinance shall take effect immediately upon approval of this ordinance upon second reading.

INTRODUCED, READ, ADOPTED AND ORDERED PUBLISHED this
_____ DAY OF _____, 2010.

PASSED ON SECOND READING, ADOPTED AND ORDERED PUBLISHED
BY TITLE this _____ day of _____, 20__.

CITY OF WALSENBURG

ATTEST:

Bruce Quintana, Mayor

Loretta Sheldon, City Clerk

Dan Hyatt gave an explanation regarding the basis for the way the ordinance was written and the reasons for some of the language. He also answered questions from Councilpersons and several citizens. James England then moved, seconded by Nick Vigil, that Ordinance 994 be approved and published in full in the paper of record, and that The City Council finds and determines that this ordinance is necessary for the immediate preservation of public property, health, peace, or safety in that the unregulated operation of medical marijuana dispensaries detrimentally impairs the health, safety and welfare of the citizens of the City of Walsenburg. Accordingly, this ordinance shall take effect immediately upon approval of this ordinance upon second reading. Motion passed on a roll call vote of 8-0.

James England moved, seconded by Nick Vigil that Council go into executive session for a conference with the City Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b). Motion passed on a roll call vote of 7-1 with the "no" vote being from David Mockmore. Mayor Quintana then stated: It's April 6, 2010 and the time is 7:40 p.m. For the record, I am the presiding officer, Mayor Bruce Quintana. As required by the Open Meetings Law, this executive session is being electronically recorded.

Also present at this executive session are the following persons: Councilperson Silvana Lind, Mayor pro tem James England, Councilperson Nick Vigil, Councilperson David

Mockmore, Councilperson Erin Jerant, Councilperson Craig Lessar, Councilperson James Moore, Attorney Dan Hyatt, City Administrator Alan Hein and Assistant City Administrator Beth Neece.

This is an executive session for the following purpose: for a conference with the City Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b). I caution each participant to confine all discussion to the stated purpose of the executive session, and that no formal action may occur in the executive session.

If at any point in the executive session any participant believes that the discussion is going outside the proper scope of the executive session, please interrupt the discussion and make an objection.

At the conclusion of the executive session Mayor Quintana stated: The time is now 8:37 p.m. and the executive session has been concluded. The participants in the executive session were: Councilperson Silvana Lind, Mayor pro tem James England, Councilperson Nick Vigil, Councilperson David Mockmore, Councilperson Erin Jerant, Councilperson Craig Lessar, Councilperson James Moore, and myself Mayor Bruce Quintana. Attorney Dan Hyatt, City Administrator Alan Hein and Assistant City Administrator Beth Neece were also in attendance. For the record, if any person who participated in the executive session believes that any substantial discussion of any matters not included in the motion to go into the executive session occurred during the executive session, or that any improper action occurred during the executive session in violation of the Open Meetings Law, I would ask that you state your concerns for the record.

Adjournment

With no further items on the agenda, the City Council meeting adjourned at 6:40 p.m.

CITY OF WALSENBURG

ATTEST:

Bruce A. Quintana,
Mayor

Lori Sheldon
City Clerk

The preceding minutes were prepared according to §47 of Robert's Rules of Order, i.e. they contain a record of what was *done* at the meeting, not what was *said* by the members. Tape recordings of the meeting are available for 6 months thereafter only for listening in the City Clerk's Office as well as copies of Ordinances and Resolutions.