

ORDINANCE

**AN ORDINANCE REPEALING AND REENACTING TITLE 5 OF THE MANITOU SPRINGS MUNICIPAL CODE CONCERNING BUSINESS LICENSING**

**WHEREAS**, the City Council finds and determines that the City’s business licensing provisions contain numerous outdated provisions and is in need of revision to clarify the City’s requirements for the licensing of businesses within the City; and

**WHEREAS**, the City Council finds and determines that the revisions set forth herein are in the best interests of the public health, safety and welfare.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANITOU SPRINGS, COLORADO, THAT:**

**Section 1:** Title 5 of the Manitou Springs Municipal Code is hereby repealed and reenacted as follows:

**Title 5 - BUSINESS LICENSES AND REGULATIONS**

**CHAPTER 5.04 – BUSINESS LICENSES**

**5.04.010 – Purpose and Applicability.**

The purpose of this Chapter is to provide a uniform procedure for the issuance, suspension and revocation of business licenses issued by the City. The provisions of this Chapter shall apply to all licenses issued pursuant to this Title, except for those businesses which are subject to specific licensing procedures in this Title.

**5.04.020 - Definitions.**

The terms as used in this Chapter shall have the following meanings, unless the context specifically indicates otherwise or unless such meaning is expressly excluded.

"Business" includes vocations, occupations, professions, enterprises, establishments, and all other kinds of activities and matters, together with the devices, machines, vehicles and appurtenances used therein, any of which activities are conducted for the purpose of producing gain or income, either directly or indirectly, on any premises in this City or anywhere else within its jurisdiction. This definition shall not include long-term rental of dwellings containing less than five units. Nor shall it include activities of nonprofit state corporations, and of federal, state or municipal corporations.

“Dwelling” means an attached or detached building designated or used exclusively as a residence or sleeping place, but does not include boarding or lodging houses, motels, hotels, or tents.

"Employee" includes all persons working for pay under the control and direction of an employer.

"License" means a document issued by the City officially authorizing an applicant to operate a business pursuant to this Chapter.

"Licensee" means the person to whom a business license has been issued pursuant to this Chapter.

"Person" includes any individual, firm, partnership, joint venture, corporation, society, club, association, joint stock company, estate or trust, receiver, trustee, assignee, lessee, or any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit.

"Premises" includes all lands, structures, buildings, places, equipment and appurtenances connected or used therewith in any business.

“Public property” means any property owned or controlled by the City and open to the public or available for public use, including but not limited to public streets, rights of way, sidewalks, parks, and public buildings.

#### **5.04.030 - Business license required.**

A. It is unlawful for any person, either directly or indirectly, to conduct any business, for seven days or more within one calendar year, without first obtaining a business license. Said license must be kept current at all times during which the business is operated.

B. No business license should be issued for the sale or offering for sale of goods or services from public property, except when such activity is permitted pursuant to a valid City-issued special event permit.

#### **5.04.040 - Qualifications of applicants.**

Applicants for a business license shall meet all of the following qualifications:

A. Not have had a City business license revoked or suspended within the last twelve (12) months.

B. Not be in default, indebted or obligated in any manner to the City.

C. The business is ~~operated~~ inoperated in compliance with the applicable City regulations including, but not limited to, specific licensing requirements in this Chapter, zoning, building and fire codes, and any other applicable regulations.

D. All fees have been paid.

#### **5.04.050 - Applications for license.**

A. Any person required to obtain a license shall first apply in writing on forms prepared by the City for that purpose. The application shall give the name and location of the business, to the description of the nature of the business, names and addresses of the owners and/or operators, duration of the business, who to contact in emergencies after hours, and other information as may be deemed necessary by the City.

B. All applications for a new license shall be submitted to the City's Finance Director for approval with the applicable license fee. ~~—~~ The City shall approve, approve with conditions, or deny the application within thirty (30) days. Upon compliance with all requirements and payment of the fees as required, the finance director shall issue the license on a prescribed form.

C. At any time within thirty (30) days prior to the expiration of a current license, a licensee may file an application for a license renewal for the succeeding year and pay the required fees. All renewal applications shall be submitted to the Finance Director. Unless otherwise provided by this Chapter, the Finance Director shall approve a renewal application unless if there is a pending action or proceeding is against the licensee for suspension or revocation of his or her current license or licenses. The Finance Director shall approve, approve with conditions, or deny a renewal application within thirty (30) days.

D. Any person operating, conducting or carrying on any business within the City must obtain a separate license for each location of such business and a separate license for each business operated at the same location under a separate federal employer ID or Social Security number.

E. Applications for transfers of licensed premises during the license period shall be made in the same manner as application for a new license.

F. All licenses shall expire twelve (12) months from the date of issuance unless otherwise provided.

#### **5.04.060 - License fees.**

A. License Fees. The license fee for every license issued under the authority of the City shall be payable at the time of application. The Finance Director shall not accept an application for a license or renewal of a license unless accompanied by the required license fee. In the event that the City disapproves the application

for a new license or renewal, one-half of the license fee tendered hereunder shall be refunded.

B. Lost Licenses. Whenever a license is lost, the Finance Director is authorized to replace the license upon payment of a fee to defray the costs of replacement.

C. Rebate. In the event that the licensed premises is taken for public use or the improvements thereon destroyed by fire or other catastrophe, to such an extent that the continuation in business is impractical, the licensee may terminate the license and the license fee may be rebated in proportionate part to such fee as the number of months remaining in the license period, beginning with the first day of the month next following such termination.

D. If a licensee continues to engage in business past said renewal date, a penalty of fifty percent (50%) of the renewal fee shall be imposed and collected for renewal of the license, if applied for, and an additional five percent (5%) of the renewal fee shall be added on the first of each month thereafter; provided, however, that the total cumulative penalty shall not exceed one hundred percent (100%) of the renewal fee.

**5.04.070 - Issuance and conditions of licenses.**

A. Issuance or Denial. The Finance Director shall issue a license to an applicant if he or she finds after investigation:

1. The required license fee have been paid;
2. When required, proof that a sales tax license has been obtained, or that application for such has been made;
3. The proposed licensed premises do, or will conform to the requirements of applicable building, fire, safety and zoning regulations; and
4. All other specific requirements of the terms and provisions relating to the application for the particular license requested for use at the premises specified in the application have been, or will be, met.

B. The Finance Director may impose such restrictions and reasonable rules and regulations as he or she deems necessary to safeguard the public peace, health or welfare. The Finance Director shall receive the reviewing departments' written instructions regarding such conditions placed upon specific types of businesses, beyond the requirements of this Chapter, and shall impose such conditions on the license when issued.

C. If the Finance Director finds that the applicant does meet the qualifications set forth in this Chapter, he or she shall deny the application. The Finance Director shall notify the applicant of the denial by mailing the same to the applicant by

registered or certified mail at the business address shown on the application. Such denial shall be final immediately upon the date of mailing. The applicant may appeal denial of the license to the City Council within twenty (20) days of date of mailing.

D. Posting—Display of License.

1. Every license issued by the City under this Chapter shall be posted in a conspicuous place and shall be visible from the principal entrance of the business. When such license expires, it shall be removed; no license not in full force and effect shall remain posted.

2. It shall be the duty of each and every person to whom a license has been issued to exhibit the same upon the request of any peace officer, the finance director, or other official of the City.

**5.04.080 - Inspections.**

Upon the application for a license or renewal of a license, the City may conduct an inspection of the premises prior to the Finance Director's decision on the application. All persons authorized to inspect licensed premises and businesses shall have the authority to enter, with or without search warrant, at all reasonable times, and in a reasonable manner.

**5.04.090 - Suspension and revocation procedures.**

A. Grounds for Suspension or Revocation. The Finance Director may suspend or revoke any license issued by the City upon finding that:

1. The licensee has failed to pay the license fee;
2. The licensee has failed to file required reports or to furnish such other information as may be reasonably required by the Finance Director or other City official;
3. Licensee or any agent or employee of such licensee has violated any provisions of this Chapter applicable to the issued license or any condition imposed on the license;
4. The licensee or any agent or employee of such licensee has violated any law of the United States, of the state or the City when such violation occurred on the licensed premises, or relates to conduct or activity of any business required to be licensed by this Chapter;
5. The licensee makes misrepresentation to the public;

6. The actual operation of the licensed business is prejudicial to the public peace, health, morals, safety or welfare of the inhabitants or of visitors to the City;

7. The licensee is not conducting the business according to the detailed plan filed with the license application; or

8. The licensee intentionally, recklessly or through gross negligence made or makes misrepresentations on the license application or to City agents or officials, acting within the scope of their duties, at any time.

**B. Revocation and Suspension Procedures.**

1. Upon a determination to revoke or suspend a license, the Finance Director shall notify the licensee in writing of the decision to revoke or suspend the license and the licensee's right to have a hearing before the City Council.

2. The licensee must request in writing a hearing before City Council within ten (10) days of the written notification of revocation or suspension.

a. If such a request is received, the City shall schedule a hearing. A licensee may continue to operate its business prior to the hearing.

b. If the licensee does not request a hearing before City Council, it must cease business operations within ten (10) days of the date of notification from the Finance Director.

3. The City Clerk shall give the licensee notice of the time and place of the hearing. Such notice shall be served personally or by mailing by first class mail to the last address furnished to the Finance Director by the licensee, at least five (5) days, including Saturdays, Sundays, and legal holidays prior to the hearing. In lieu of such service, or in addition thereto, a copy of such notice may be affixed to the principal entrance of the licensed premises which shall be deemed to be the principal place of business or main office, or may be affixed to some prominent structure on such premises.

4. All evidence shall be recorded stenographically or by electronic recording device.

5. In all such proceedings, the City Attorney shall act on behalf of the City during the hearing.

6. The City Council shall conduct hearings for suspension or revocation of licenses granted pursuant to this section. The City Council shall make findings of fact and conclusions concerning the revocation or suspension of a license within fifteen (15) days after the close of the hearing. The City Clerk shall

transmit a copy of the final findings of fact and conclusion to the licensee as provided hereafter.

7. Upon suspension or revocation of any license required by this Chapter, notice of such suspension or revocation shall be given by personally serving the licensee with the order of suspension or revocation or by mailing such order to such person by certified or registered mail at the business address of the licensee as shown on the license or at the address of the designated agent. In lieu of such service, or in addition thereto, a copy of such order may be affixed to the principal entrance of the licensed premises which shall be deemed to be the principal place of business or main office, or may be affixed to some prominent structure on such premises.

8. The order shall be effective immediately upon service of notice thereof, unless the order provides otherwise. Service of such order shall be complete upon mailing or posting.

9. Upon the effective date of suspension or revocation of any license required for a business or activity, the licensee of such licensed business or activity shall cease and desist from further operation or activity.

**5.04.100 - Appeals.**

A. Cost of Transcript. Any aggrieved or affected person seeking review of a decision by the City Council shall pay to the City the estimated cost of preparing the transcript of the proceedings of testimony before said City Council. The cost of preparing the transcript of testimony before City Council shall be charged at rates ordinarily charged by certified shorthand reporters. The cost of preparing the transcript, as estimated by the City Clerk, shall be paid by the aggrieved or affected person at the time of filing the appeal. In the event the cost of the transcript is greater than the cost estimated by the City Clerk, the person filing the appeal shall pay this additional cost within ten (10) days after billing by the City Clerk. In the event that the cost of the transcript is less than the estimated sum paid by the person filing the appeal, the City Clerk shall refund the excess paid within ten (10) days after the actual cost of the transcript is determined.

B. Any decision of the City Council under this Chapter shall be final subject to judicial review.

**5.05 – SUPPLEMENTAL BUSINESS REGULATIONS**

These regulations shall apply to the specific businesses described in this Chapter. Nothing in this Chapter shall be construed as to exempt these businesses from the license requirement under Chapter 5.04.

**5.05.010 - Entertainment and Amusement Businesses**

A. Definition.

The term entertainment and amusement business, as used in this Section, is defined to mean any business providing mechanical entertainment to its patrons and any game or contest for which a fee, admission or membership charge is either directly or indirectly made to those participating either as spectators or as entrants in such game or contest. This includes only those games or contests which are not gambling or lottery devices and shall not include golf, tennis or like established sport tournaments, and shall not include coin-operated pinball games and other similar devices which are regulated by other ordinances of the City.

B. License—Not to be granted within residential districts.

No entertainment or amusement license shall be granted within any residential district of the City.

C. Special provisions for amusements not contained herein.

Nothing contained in this Section shall be construed to affect any special ordinance granting the license or fixing the license fee for a single amusement not defined in this Section, which ordinance is now in force or which hereafter shall be passed by the City council.

**5.05.020 – Restaurants**

All applications for a license or renewal shall be accompanied by a current inspection report from the El Paso County health department indicating approval or disapproval by the county health inspector.

**5.05.030 – Gas Station**

A. All applications for a license or renewal, which includes the operation of a food service establishment, shall be accompanied by a current inspection report from the El Paso County health department indicating approval or disapproval by the county health inspector.

B. All applicants are required to comply with all fire, safety, zoning, building, and electrical regulations as adopted by the City and shall be inspected annually by the appropriate department or agency prior to issuance of any license or renewal.

**5.05.040 – Horse Drawn Vehicles and Pedicabs**

A. All applications for a license or renewal, which includes the operation of horse-drawn vehicles or pedicabs, shall provide a list of the carriage(s), pedicab(s) and/or equipment to be used in the business and the planned route(s) to be used.

B. The applicant shall further file with the Finance Director proof of satisfactory insurance coverage as follows: public liability and property damage in

the amount of one hundred thousand dollars on any injury to one person, five hundred thousand dollars on any one accident involving more than one person and fifty thousand dollars coverage on property damage.

C. It is unlawful to operate with or without passengers prior to dawn or after dusk on any street in the City, unless the carriage or pedicab is provided with adequate lighting to conform with the requirements of the Model Traffic Code.

D. It is unlawful for the driver of any horse-drawn carriage or pedicab to impede traffic in such a manner as to cause a dangerous condition for pedestrian or vehicular traffic.

E. The driver of any horse-drawn carriage or pedicab shall maintain control over such carriage, pedicab and any animals used and shall not leave such animals, carriage or pedicab unattended at any time.

F. It is unlawful for any person to operate a horse-drawn carriage or pedicab in a careless and imprudent manner without due regard for the width, grade, curves, corners, traffic and use of the streets and highways and all other attendant circumstances.

G. It shall be the duty of the driver of any horse-drawn carriage to provide an adequate protective device for any horse to prevent manure from being deposited upon any street, or otherwise provide a system to clean-up manure on a timely basis.

## **CHAPTER 5.06 – LIQUOR LICENSES**

### **5.06.010 - Definitions.**

The following terms as used in this Chapter shall have the meanings hereinafter designated, unless the context specifically indicates otherwise or unless such meaning is excluded by express provision:

A. "Alcoholic beverages or alcoholic liquors" means malt, vinous, or spirituous liquors.

B. "Delivery" means the delivery of an alcoholic liquor or three and two-tenths percent (3.2%) beer off the premises of the person(s) selling the same; provided, however, this term shall not include wholesale deliveries or deliveries made to persons holding a license for the sale, service or distribution of alcoholic liquors or three and two-tenths percent (3.2%) beer under the same terms of this Chapter.

C. "Licensed premises" means the premises specified in an application for a license under this Chapter, which are owned or in possession of the licensee and within which such licensee is authorized to sell, dispense, or serve fermented malt beverages or alcoholic beverages in accordance with the provisions of this Chapter.

D. "Malt liquors" includes beers and means any beverages obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops or any other similar product or any combination thereof, in water containing more than three and two-tenths percent (3.2%) of alcohol by weight.

E. "Manager" means a person not licensed pursuant to this Chapter whose responsibilities may include the daily operation and control of any liquor establishment, purchasing, check disbursements or supervision of employees.

F. "Operator" means a person licensed by law to sell malt, vinous and spirituous liquors, or three and two-tenths percent (3.2%) beer, for beverage purposes at retail and who is engaged at any time during the calendar year in such operation within the City.

G. "Person" means a natural person, partnership, association, company, corporation, or organization or a manager, agent, servant, officer, or employee of any of them.

H. "Retail sale" means selling of malt, vinous and spirituous liquors or three and two-tenths percent (3.2%) beer for beverage purposes to the intended or potential consumer for consumption on or off the premises.

I. "Spirituous liquors" means any alcoholic beverages obtained by distillation, mixed with water or other substances in solution and include among other things, brandy, rum, whiskey, gin and every liquid or solid, patented or not, containing alcohol and is fit for use for beverage purposes. Any liquid or solid containing beer or wine in combination with any other liquid except as above provided shall not be construed to be malt or vinous liquor, but shall be construed to be spirituous liquor.

J. "Tastings" means the sampling of malt, vinous, or spirituous liquors that may occur on the premises of a retail liquor store licensee or liquor-licensed drugstore licensee by adult patrons of the licensee pursuant to the provisions of Section 5.20.120.

K. "Three and two-tenths percent beer" means a fermented alcoholic beverage containing not less than one-half of one percent (0.5%) and not more than three and two-tenths percent (3.2%) alcohol by weight.

L. "Vinous liquors" means and includes wines and fortified wines not exceeding twenty-one percent (21%) of alcohol by volume and shall be construed to mean alcoholic beverages obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar.

M. Those terms not herein defined shall have such definitions as indicated in C.R.S. 1973, Title 12, Articles 46, 47 and 48.

**5.06.020 - Local licensing authorities.**

The City council shall be the local licensing authority of the City for the licensing of the sale of three and two-tenths percent (3.2%) beer and alcoholic and the rules and regulations of the State Licensing Authority. The City council shall possess all powers given to local licensing authorities by the provisions of the statute and rules and regulations. The City council shall also be the local liquor licensing authority for the purpose of granting and/or denying applications for special event permits, except as otherwise provided in this Chapter.

**5.06.030 - Licenses required.**

A. It is unlawful for any person, either directly or indirectly to engage in the business of selling or serving any alcoholic liquors or three and two-tenths percent (3.2%) beer within the City without having first procured a license therefor from the City, and kept in effect at all such times as required by this Chapter.

B. It is unlawful for any person to operate a licensed premises under this Chapter without a business license pursuant to Chapter 5.04 of this Code.

**5.06.040 - License fees.**

All applications shall be accompanied by the payment of fees set forth in state statute and as set by resolution of the City council in the City's fee schedule.

**5.06.050 - Renewal applications.**

All applications for renewal must be submitted to the City Clerk not less than forty-five (45) days prior to the date of expiration of the license. The City Council may, for good cause, waive the forty-five-day time requirement upon request of the applicant made in writing to the City Clerk. In order to be eligible for issuance of a renewal license, the holder of any license issued hereunder must first be current in all financial obligations owed to the City.

**5.06.060 - Delegation of authority to City clerk.**

The City Clerk is authorized to act as the Local Licensing Authority for the following Colorado Liquor Code and Colorado Beer Code licensing functions:

A. Processing and issuance of special events permits pursuant to Article 48 of Title 12, C.R.S., provided that there are no parties filing a written objection to said permit;

B. Annual Colorado Liquor Code and Colorado Beer Code license renewals, provided that the licensee has not violated any provisions of the Colorado Liquor or Beer Codes and associated regulations during the preceding year;

C. Changes in shareholders, officers, directors or trade names of a licensee, provided that any investigation conducted by the City does not reveal information

that may reasonably form the basis of a determination that the applicant is not qualified to hold the respective license;

D. Changes in registered manager of a licensee, provided that any investigation conducted by the City does not reveal information that may reasonably form the basis of a determination that the proposed manager is not qualified to hold the position;

E. The issuance of temporary permits pursuant to and in compliance with the provisions of Section 12-47-303, C.R.S.;

F. The approval of applications for the use of Memorial Hall for events, at which alcohol will be served;

G. The issuance and renewal of tastings permits pursuant to Section 5.06.160.

The City Clerk may, nevertheless, refer any licensing decision authorized under this section to the Local Licensing Authority if, in the Clerk's discretion, the matter should be presented to the full Local Licensing Authority.

**5.06.070 - Public hearings.**

A. For public hearing purposes, the neighborhood shall mean all properties within one hundred (100) feet of the proposed licensed establishment's property boundaries.

B. For public hearing purposes, the persons who may testify as parties in interest, in addition to the applicant, shall mean all adult residents of the City and all owners or managers of businesses in the City.

**5.06.080 - Changing, altering or modifying a licensed premises.**

A. Whenever a person holding a license issued under the Colorado Liquor or Beer Code applies for consent to change, alter or modify a licensed premises, the local licensing authority shall grant (with or without conditions) or deny such consent in writing. When an application is denied, the grounds for denial shall be stated in the written decision.

B. When a licensee requests modifications that will not result in a change in the service capacity of the licensed premises, consent to the request may be granted or denied without a public hearing; provided that the application for modification is processed, considered and determined in a manner consistent with the requirements and provisions of Regulation 47-302, Colorado Code of Regulations, 1 C.C.R. 203-2. Examples of modifications that may be covered by this paragraph B include: remodeling of a kitchen or fixtures within a kitchen; changing an internal doorway from one location to another; and moving an existing bar from one location to another.

C. Examples of proposals that may require a public hearing prior to the local licensing authority's decision include, but are not limited to, those which request:

1. any increase or decrease in the total size or capacity of the licensed premises;
2. the sealing off, creation of or relocation of a common entryway, doorway, passage or other such means of public ingress and/or egress, when such common entryway, doorway or passage alters or changes the sale or distribution of alcohol beverages within the licensed premises;
3. any substantial or material enlargement of a bar, or the addition of a separate bar, or the installation of a bar or bar area within a premises that has no bar or bar area;
4. the installation of a stage, bandstand or dance floor in a premises where there is no existing stage, bandstand or dance floor, or a material enlargement or reduction in size of an existing stage, bandstand or dance floor;
5. any other material change in the interior of the premises that would affect the basic character of the premises or the physical structure that existed in the plan on file with the latest prior application.

D. Any required public hearing shall be preceded by public notice. A notice sign must be conspicuously posted at the physical location of the premises and must be in a place plainly visible to the public. The posted notice will provide details on the type of modification sought, the date, time and location of the hearing, and contact information where interested parties can acquire more information on the application. The same information must be published in the City's newspaper of record.

E. In any public hearing conducted pursuant to this section, it shall be the burden of the licensee seeking consent to change, alter or modify a licensed premises to establish the "needs and desires" of the neighborhood. Although the law does not require that an applicant petition the neighborhood, it is the most common form of evidence presented.

F. When a licensee requests consent to create or enlarge an outdoor service area in an application for modification of a premises and competent evidence is presented in a public hearing showing that the establishment or enlargement of such outdoor service area is likely to have an adverse impact within the immediate vicinity of the licensed premises if conditions protecting the immediate neighborhood are not imposed, the local licensing authority may, as an alternative to denying the application, make its consent to the requested modification conditional. Such conditional consent may:

1. restrict or limit the hours of operation of an outdoor service area;

2. require or limit lighting in and around such outdoor service area;
3. require fencing or other screening designed to discourage patrons of the licensed premises from entering into neighboring areas and to minimize light and noise impacts in such areas;
4. limit or prohibit live entertainment and amplified music in outdoor service areas;
5. contain other requirements, restrictions and/or limitations deemed necessary by the local licensing authority to eliminate or mitigate potential adverse impacts within neighborhoods in the immediate vicinity of the licensed premises.

G. Nothing in this section shall require a licensee to seek consent for modification of a premises, if the modification will not materially or substantially alter the licensed premises or the usage of the licensed premises. Examples of modifications for which written consent of the local licensing authority is not required include:

1. painting and redecorating of premises;
2. the installation or replacement of electric fixtures or equipment;
3. the lowering of ceiling;
4. the installation and replacement of floor coverings;
5. the replacement of furniture and equipment, and other similar changes;
6. any non-structural remodeling of a licensed premises where the remodel does not expand the existing licensed area.

**5.06.090 - Sale off-premises prohibited.**

No person shall sell, offer for sale, or solicit any order for the sale at retail of any alcoholic liquor or three and two-tenths percent (3 2/10 %) beer except within the licensed premises.

**5.06.100 - Special events permits.**

A. Pursuant to C.R.S. § 12-48-107(5)(a), the City's local licensing authority ("authority") elects not to notify the state licensing authority to obtain the state licensing authority's approval or disapproval of applications for special events permits.

B. Pursuant to Section 5.06.060(A), authority to process and issue special events permits is delegated to the City clerk provided that there are no parties filing a written objection to said permit.

C. The City clerk shall report to the Colorado liquor enforcement division, within ten (10) days after issuance of a special events permit, the name of the organization to which the permit was issued, the address of the permitted location, and the permitted dates of alcohol beverage service.

D. Upon receipt of an application for a special events permit, the City clerk shall, as required by C.R.S. § 12-48-107(5)(c), access information made available on the state licensing authority's website to determine the statewide permitting activity of the organization applying for the permit. The City clerk shall consider compliance with the provisions of C.R.S. § 12-48-105(3), which restricts the number of permits issued to an organization within a calendar year to fifteen (15), before approving any application.

E. A special events permit may be issued only upon a satisfactory showing by an organization or a qualified political candidate that:

1. Existing licensed facilities are inadequate for the purposes of serving members or guests of the organization or political candidate and that additional facilities are necessary by reason of the nature of the special events being scheduled; or

2. The organization or political candidate is temporarily occupying premises other than the regular premises of such organization or candidate during special events such as civic celebrations or county fairs and that members of the general public will be served during such special events.

F. Each application for a special events permit shall be accompanied by an application fee in an amount equal to the maximum local licensing fee established by C.R.S. § 12-48-107(2).

**5.06.110 - Consumption regulations.**

A. It is unlawful for any person to consume any alcoholic liquor or three and two-tenths percent beer purchased by the drink except on premises licensed hereunder to sell liquor by the drink for consumption on the premises.

B. It is unlawful for any person to consume any alcoholic liquor or three and two-tenths percent beer at any time, on any licensed premises other than such alcoholic liquor or three and two-tenths percent beer purchased at such licensed premises.

C. It is unlawful for any person to consume any alcoholic liquor or three and two tenths percent (3.2%) beer in any licensed premises during such hours as the sale of such liquor is by law prohibited.

**5.06.120 - Opened container in public prohibited.**

A. It is unlawful for anyone to possess or have, within their immediate reach, any opened container containing an alcoholic beverage, including fermented malt beverages, on any street, sidewalk, public park or alley, or other public place in the City, or on the grounds of any public or private school therein.

B. It is unlawful for anyone to possess or have, within their immediate reach, any opened container containing an alcoholic beverage, including fermented malt beverages, while in any vehicle on any street, sidewalk, public park or alley or other public place in the City, or on the grounds of any public or private school therein.

C. It is unlawful for the driver, owner or other person in control of a vehicle to permit anyone in the vehicle to possess, or have within their immediate reach, any opened container containing an alcoholic beverage, including fermented malt beverages.

D. The City council shall have the power to authorize the consumption of alcoholic beverages, including fermented malt beverages, in public parks or buildings. Council, at its option, may require that the applicant provide security for the event.

E. Notwithstanding any provision in this code of ordinances to the contrary, a hotel or restaurant licensed to serve alcoholic beverages may permit a customer of the hotel or restaurant to reseal and remove from the licensed premises one opened container of partially consumed vinous liquor purchased on the premises so long as the original container did not contain more than seven hundred fifty (750) milliliters of vinous liquor, and the provisions of subsections A, B and C of this section shall not be applicable to any such customer.

**5.06.130 - Conduct of establishments.**

A. It is unlawful for any licensee, agent or employee or manager by force or threat of force, including any letter or other communication threatening such force, to endeavor to intimidate, obstruct or impede any law enforcement officer or inspectors of the Liquor Enforcement Division from exercising their duties under the provisions of this Chapter or any other rule, regulation or provision of the State Liquor Code.

B. It is unlawful for any person to sell, serve, give away, dispose of, or permit the sale, serving, giving or procuring of any alcoholic liquor or three and two-tenths percent (3.2%) beer to or for any person who has become or is reasonably certain to be visibly intoxicated or a known habitual drunkard.

C. It is unlawful for any person to sell, serve, or deliver or cause or permit to be sold, served or delivered any alcoholic liquor within the City to any person under the age of twenty-one (21) years.

D. It is unlawful for any person to serve any alcoholic liquor to any adult person and permit the adult person to serve or give the same on the licensed premises to any person under the age of twenty-one (21) years.

E. It is unlawful for any person to sell, serve or deliver three and two-tenths percent beer to any person under the age of twenty-one (21) years.

G. It is unlawful for any person under the age of twenty-one (21) years to purchase any malt, vinous or spirituous liquors, or to purchase three and two-tenths percent (3.2%) beer.

H. Except as permitted in the course of lawful employment, it is unlawful for any person under the age of twenty-one (21) years to have in his or her possession, malt, vinous, spirituous liquor or for any person whose birth date is after July 29, 1969 to have three and two-tenths percent (3.2%) beer in his or her possession in any public street, alley, road, park, or highway or any other public place whatsoever within the jurisdiction of this City.

I. It is unlawful for any licensee to employ any person under the age of twenty-one years (21) to sell, serve, distribute or in any way handle spirituous liquors, or to permit any such employee to sell, serve, distribute or in any way handle spirituous liquors in or upon the licensed premises under the control of such licensee.

J. No person under twenty-one (21) years of age who is employed by an establishment licensed as a tavern, and which does not regularly serve meals, shall sell or serve malt, vinous or spirituous liquors; however, a person under the age of twenty-one years may be employed by a hotel or restaurant to sell or serve malt, vinous or spirituous liquors so long as he or she is supervised by another person who is on premise and who is at least twenty-one (21) years of age.

K. It is unlawful for any person to sell, cause or permit to be sold, or offer for sale, any fermented malt beverage containing not more than three and two-tenths percent (3.2%) alcohol by weight without having posted on the outside and inside of such establishment in a plainly visible location, signs with the letters not less than ten inches tall each containing the words "only 3.2 beer sold here."

L. It is unlawful for any licensee, manager or agent of any establishment licensed for on-premises consumption to permit the removal from the licensed premises of any alcoholic liquors in sealed or unsealed containers.

#### **5.06.140 - Responsibility of determining age.**

Every person selling, serving or delivering alcoholic liquors or three and two-tenths percent (3.2%) beer shall have the responsibility of determining the age of any person to whom he or she shall sell, serve or deliver alcoholic liquors or three and

two-tenths percent (3.2%) beer and shall be responsible for all sales, service and gifts made on the licensed premises.

**5.06.150 - Distance from public schools.**

Any establishment seeking licensing for alcoholic beverages as a hotel or restaurant must be not less than four hundred ninety-five (495) feet from the nearest school building. The measurement shall be made on the ground from the point of the school building nearest the establishment to the nearest point of the building for which licensing is sought.

**5.06.160 - Tastings.**

A. The City authorizes tastings to be conducted by retail liquor store or liquor-licensed drugstore licensees in accordance with this section and pursuant to C.R.S. Section 12-47-301. Within the City, it is unlawful for any person or licensee to conduct tastings unless a permit has been obtained in accordance with this section. The Local Licensing Authority is authorized to issue tasting permits in accordance with the requirement of this section

B. A retail liquor store or liquor-licensed drugstore licensee that wishes to conduct tastings shall submit an application for a tastings permit to the Local Licensing Authority. The Local Licensing Authority may reject the application if the applicant fails to establish that the licensee is able to conduct tastings without violating the provisions of this section or creating a public safety risk to the neighborhood. The Local Licensing Authority shall establish the application procedure.

C. Tastings shall be subject to the following limitations:

1. Tastings shall be conducted only by a person who has completed a server training program that meets the standards established by the Liquor Enforcement Division of the Department of Revenue and who is either a retail liquor store licensee or a liquor-licensed drugstore licensee, or an employee of a licensee, and only on a licensee's licensed premises. A certificate of training shall be provided to the Local Licensing Authority with the application form attached hereto.

2. The alcohol used in tastings shall be purchased through a licensed wholesaler, licensed brew pub, or winery licensed pursuant to C.R.S. Section 12-47-403 at a cost that is not less than the laid-in cost of such alcohol.

3. The size of an individual alcohol sample shall not exceed one (1) ounce of malt or vinous liquor or one-half of one ounce of spirituous liquor.

4. Tastings shall not exceed a total of five (5) hours in duration per day, which need not be consecutive.

5. Tastings shall be conducted only during the operating hours in which the licensee on whose premises the tastings occur is permitted to sell alcohol beverages, and in no case earlier than eleven (11:00) a.m. or later than seven (7:00) p.m.

6. Tastings may occur on no more than four (4) of the six (6) days from a Monday to the following Saturday, not to exceed one hundred four (104) days per year.

7. The Licensee shall prohibit patrons from leaving the licensed premises with an unconsumed sample.

8. The Licensee shall promptly remove all open and unconsumed alcohol beverage samples from the licensed premises or shall destroy the samples immediately following the completion of the tasting.

9. The Licensee shall not serve a person who is under twenty-one (21) years of age or who is visibly intoxicated.

10. The Licensee shall not serve more than four (4) individual samples to a patron during a tasting.

11. Alcohol samples shall be in open containers and shall be provided to a patron free of charge.

12. No manufacturer of spirituous or vinous liquors shall induce a licensee through free goods or financial or in-kind assistance to favor the manufacturer's products being sampled at a tasting. The Licensee shall bear the financial and all other responsibility for a tasting.

13. A violation of any of the limitations specified herein by a retail liquor store or liquor-licensed drugstore licensee, whether by his or her employees, agents, or otherwise, shall be the responsibility of the retail liquor store or liquor-licensed drugstore licensee who is conducting the tasting and shall be subject to the same revocation, suspension and enforcement provisions as otherwise apply to the licensee.

D. Renewal. Tastings permits must be renewed annually subject to the same criteria as issuance of the initial license, as set forth in subsection B of this section.

**5.06.170 - Violation—Penalty.**

Any person, firm or corporation violating any of the provisions of this Chapter, upon conviction, shall be punishable as provided in Section 1.01.100, as amended. In addition, the City council may hold a hearing to suspend or revoke any license issued pursuant to this Chapter.

**5.07 - REGULATION OF MASSAGE PARLORS**

**5.07.010 - Purpose.**

This Chapter is enacted for the purpose of promoting the health, safety, and welfare of the citizens of the City by regulating and licensing massage parlors.

**5.07.020 - Definitions.**

As used in this Chapter, unless the context otherwise requires, the following words and terms shall be defined as follows:

A. "Massage" means a method of treating the body of another for medical, remedial or hygienic purposes, including, but not limited to, rubbing, stroking, kneading, or tapping with the hand or an instrument or both, and for purposes of this Chapter, massage shall include any services which are offered or performed for compensation, which are advertised or represented as massage, or which involve the touching of the body with the purpose of inducing any type of pleasurable experience by a person who is not licensed as a massage therapist.

B. "Massage parlor" means an establishment providing massage, but it does not include training rooms of public or private schools accredited by the state board of education or approved by the division charged with the responsibility of approving private occupational schools, training rooms of recognized professional or amateur athletic teams, or licensed health care facilities. A facility which is operated for the purpose of massage therapy performed by a massage therapist is not a massage parlor. For purposes of this subsection, massage therapist means a person who was graduated from a massage therapy school accredited by the state educational board or division charged with the responsibility of approving private occupational schools, or from a school with comparable approval or accreditation from another state with transcripts indicating completion of at least five hundred hours of training in massage therapy. For purposes of this subsection, a massage therapy school may include an equivalency program approved by the state educational board or division charged with the responsibility of approving private occupational schools.

**5.07.030 - Licensing authority established.**

A. There is an established massage parlor licensing authority, which shall have and is vested with the authority to grant or refuse licenses for massage parlors based upon the criteria set forth herein and state law, to conduct investigations, and to suspend or revoke such licenses for cause in the manner provided by this Chapter.

B. The massage parlor licensing authority shall be the City Council.

C. The City Clerk shall receive all applications for licenses and shall issue all licenses granted by the authority, upon receipt of all fees as are required by this Chapter. All public notices required by this Chapter shall be accomplished by the City Clerk. The Chief of Police or the chief of police's designee shall be the

massage parlor inspector, who shall perform routine periodic inspections of the licensed premises and such other duties as the massage parlor licensing authority may reasonably direct.

**5.07.040 - License required—Display.**

A. It is unlawful for any person to operate a massage parlor within the City unless such person shall have first obtained a massage parlor license from the City. Such license shall be prominently displayed at all times upon the premises for which the license was issued.

B. It is unlawful for any person operated a massage parlor within the City without a business license pursuant to Chapter 5.04 of this Code.

**5.07.050 - Application fee.**

Each applicant, whether an individual, partnership, or corporation, shall pay an application fee in an amount set by resolution of the City Council at the time of filing an application. Such application fee shall be nonrefundable.

**5.07.060 - License application.**

A. Applications for a license under the provisions of this Chapter shall be on forms prepared and furnished by the City Clerk, which shall set forth such information as the licensing authority requires to enable the authority to determine whether a license should be granted. Each individual applicant, partner of a partnership, officer, director, and holder of over ten percent of the corporate stock of the corporate applicant, and all managers shall be named in each application form, and each of them shall be photographed and fingerprinted by the Manitou Springs Police Department. Each individual applicant, partnership, and corporate applicant shall also furnish evidence from the City planning department, building department, and public works department that the proposed establishment meets the requirements of the City zoning ordinances, proof of the applicant's right to possession of the premises, complete plans and specifications for the premises, a financial questionnaire, a background investigation report, and consent to release financial information and any other information necessary to complete the investigation of the applicant. Each corporate applicant shall furnish evidence that it is in good standing under the statutes of the State of Colorado, or in the case of a foreign corporation, evidence that it is currently authorized to do business in the State of Colorado.

B. The City Clerk shall not accept any application that is not complete in every detail. If an omission or error is discovered by the City Clerk, the application shall be rejected and returned to the applicant for completion or correction without further action by the City Clerk. For purposes of this Chapter, the date the City clerk accepts an application which is complete in every detail shall be the filing date.

C. The boundaries of the neighborhood to be considered pursuant to Section 5.07.090(B) of this Chapter in determining whether or not to grant said license shall be the entire City of Manitou Springs.

D. Any massage parlor existing as of the effective date of this Chapter shall file a license application as set forth herein within sixty (60) days of the effective date. Any such massage parlor existing as of the effective date of this chapter shall be subject to closure by appropriate enforcement action of the City pursuant to Section 5.07.210; if a license has not been successfully obtained within one hundred eighty (180) days of the effective date of this Chapter. Any application for a massage parlor business license pending as of the effective date of this chapter shall be subject to the requirements of this Chapter.

**5.07.070 - Public notice; posting and publication.**

A. Upon receipt of a complete application, except an application for renewal or for transfer of ownership, the licensing authority shall schedule a public hearing upon the application not less than thirty (30) days after the filing date of the application and shall post and publish the public notice thereof not less than ten (10) days prior to such 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 in the City.

B. Notice given by posting shall include a sign of suitable material, stating the type of license applied for, the date of the application, the date of the hearing, 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, association, or other organization, the sign shall contain the names and addresses of the president, vice-president, secretary, and manager.

C. Notice given by publication shall contain the same information as that required for signs.

D. Any sign posted as required in subsections (A) and (B) of this section, shall be placed so as to be conspicuous and plainly visible to the general public.

E. At the public hearing, held pursuant to this section, any party in interest shall be allowed to present evidence and cross-examine witnesses. As used in this Chapter, party in interest includes the applicant, a resident of the neighborhood under consideration, or the owner or manager of a business located in the neighborhood under consideration.

F. The licensing authority, in its discretion, may limit the presentation of evidence and cross-examination so as to prevent repetitive and cumulative evidence or examination.

**5.07.080 - Investigation.**

A. When a complete application has been accepted for filing, the required individuals have been fingerprinted and photographed, and the license fee has been paid, the City Clerk shall transmit the application to the Manitou Springs Police Department for investigation of the background and financial interest of each individual applicant, each partner holding over ten percent(10%) interest of a partnership, each officer, director, and holder of over ten percent (10%) of the stock of a corporation of a proposed massage parlor establishment. The police department shall also investigate the source of funds for the business. Each applicant shall pay a nonrefundable investigation fee at the time the application is filed in the amount then charged by the Colorado Department of Public Safety for each person who will be investigated.

B. The investigation conducted by the Manitou Springs Police Department shall be sufficient to verify the accuracy of all the information submitted as part of the application.

1. The Manitou Springs Police Department shall make a recommendation to the licensing authority to approve or deny the license based on its investigation. In investigating the qualifications of any applicant, licensee, employee, or agent of the licensee or applicant, the licensing authority may have access to criminal history record information furnished by criminal justice agencies subject to any restrictions imposed by such agencies. In the event the licensing authority takes into consideration information concerning the applicants criminal history record, the licensing authority shall also consider any information provided by the applicant regarding such criminal history record, including, but not limited to, evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of his application for a license.

2. As used in this subsection (B), criminal justice agency means any federal, state, municipal court or any governmental agency or subunit of such agency which performs the administration of criminal justice; pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

C. No application for a massage parlor license, at a particular location by or on behalf of the same person, shall be received or acted upon concerning a location for which, within two (2) years preceding, the local licensing authority has refused to approve a license on the ground, in whole or in part, that the licenses already granted for the particular locality were adequate for the reasonable requirements of the neighborhood and the desires of the inhabitants at the time of such refusal.

**5.07.090 - Results of investigation; decision of authority; change of financial interest.**

A. Not less than five (5) days prior to the date of the hearing, the City shall make known its findings, based upon its investigation, in writing to the applicant and other interested parties. The licensing authority has authority to refuse to issue any license, subject to judicial review.

B. Before entering any decision approving or denying the application, the licensing authority shall consider, except where this Chapter specifically provides otherwise, the facts and evidence produced as a result of the investigation, including the reasonable requirements of the neighborhood for the license for which application has been made, the desires of the inhabitants, the number, type, and availability of other massage parlors located in or near the neighborhood under consideration, and any other pertinent matters affecting qualifications of the applicant for the conduct of the business proposed.

C. Any decision of a licensing authority approving or denying an application shall be in writing stating the reasons therefore and shall be made within thirty (30) days after the date of the public hearing, and a copy of such decision shall be sent by certified mail to the applicant at the address shown in the application.

D. No license shall be issued by the licensing authority after approval of an application until the building in which the business is to be conducted is ready for occupancy with furniture, fixtures, and equipment in place as are necessary to comply with the provisions of this Chapter, and then, only after inspection of the premises has been made by the licensing authority to determine that the applicant has complied with the plans and specifications submitted upon application. If the building has not been constructed or placed in operation within one (1) year after approval of the license application or construction of the building has not been commenced within one year after such approval, the licensing authority, in its discretion, may revoke or elect not to renew the license.

E. Any change in the partners holding over ten percent (10%) in interest of a partnership or in the officers, directors, or holders of over ten percent (10%) of the stock of a corporate licensee holding a massage parlor license shall result in termination of the license of the partnership or corporation, unless such licensee within thirty (30) days after such change files a written notice of such change with the City Clerk on forms provided by the City Clerk, together with the required fees, fingerprints, and photographs. The Manitou Springs Police Department shall thereafter conduct an investigation and make a recommendation as set out in Section 5.07.080.

F. Each license issued under this Chapter is separate and distinct, and no person shall exercise any of the privileges granted under any license other than that which he holds. A separate license shall be issued for each specific business or business entity and each geographical location.

#### **5.07.100 - Renewals.**

Application for the renewal of an existing license shall be made to the licensing authority not less than forty-five (45) days prior to the date of expiration. The licensing authority may cause a hearing on the application or renewal to be held. No such renewal hearing shall be held by the licensing authority until a notice of hearing has been conspicuously posted on the licensed premises for a period of ten (10) days and notice of the hearing has been provided to the applicant at least ten (10) days prior to the hearing. The licensing authority, in its discretion, may revoke or elect not to renew a license if it determines that the licensed premises have been inactive for at least three (3) months. The licensing authority may also refuse to renew any license for good cause, subject to judicial review.

**5.07.110 - Transfer of ownership.**

A. Application shall be made to the licensing authority prior to any transfer of ownership on forms prepared and furnished by the licensing authority. In determining whether to permit a transfer of ownership, the licensing authority shall consider the requirements of Section 5.07.160. The licensing authority may cause a hearing on the application for transfer of ownership to be held. No such hearing shall be held by the licensing authority until the notice of hearing has been conspicuously posted on the licensed premises for a period of ten (10) days and written notice of the hearing has been provided to the applicant at least ten (10) days prior to the hearing.

B. When a 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 such survivors for the balance of the license.

**5.07.120 - Location of massage parlors.**

A. It is unlawful to operate or cause to be operated a massage parlor which is in violation of the Manitou Springs zoning ordinances.

B. No changes of location for a licensed massage parlor shall be allowed.

**5.07.130 - License term; fees.**

A. All licenses granted pursuant to this Chapter shall be for a term of one (1) year. Said term shall commence on the date the license is issued or renewed.

B. The license fee for a new license shall be determined by resolution of the City Council. The annual license renewal fee shall also be determined by resolution of the City Council.

C. In the event of a suspension, revocation, or cessation of business, no portion of the license fee shall be refunded.

**5.07.140 - Identity cards.**

A. Every applicant, licensee, agent or employee of said applicant or licensee who administers massages shall, prior to commencing work in or upon the licensed premises, obtain an identity card from the City Clerk and shall carry said identity card at all times while in or upon the licensed premises.

B. The identity card shall include the location of the massage parlor, the name, signature, and photograph of the individual. A fee in an amount set by resolution of the City Council shall be charged for each card, said fee to be collected by the City Clerk and used to defray the expenses of providing such identity cards. A separate identity card shall be required for each person for each place of employment.

C. Each applicant for an identity card shall be photographed and fingerprinted by the police department and must submit an application form, background investigation report, a copy of a valid picture driver's license or other form of acceptable picture identification, and the required identity card and investigation fees to the City Clerk. Upon receipt of a properly completed application form, acceptable form of identification, and fee, the City Clerk shall transmit the application to the Manitou Springs Police Department for investigation of the applicant's background. The City Clerk shall reject any application that is not complete in every detail.

D. Within forty-five (45) days after filing of a properly completed application for an identity card, the City Clerk will either issue the requested identity card or notify the applicant that the police department has recommended denial of the identity card. The police department may request a reasonable extension of time from the City Clerk if such extension of time is necessary in order to complete its investigation. Notice of denial of an identity card setting out the grounds for denial shall be sent by certified mail to the applicant at the address provided by the applicant. The grounds for denial shall be those set out in this section and Section 5.07.160 herein. In the event of a denial, an applicant shall have the right to a hearing before the licensing authority as set forth in Section 5.07.150.

E. Should any identity card be lost, stolen, or otherwise missing, the person to whom the identity card was issued shall report the missing card to the City Clerk within forty-eight (48) hours of discovery that the identity card is missing. Replacement identity cards shall be issued within five (5) business days of receipt of an application for a replacement identity card. The fee for a replacement card shall be in an amount set by resolution of the City Council.

**5.07.150 - Suspension; revocation; denial of identity card; hearings.**

A. The licensing authority may suspend or revoke any license granted pursuant to this Chapter upon a finding of the following:

1. That repeated disturbances of the public peace involving patrons, agents or employees, or the licensee of the establishment have occurred within the licensed establishment or upon any parking areas, sidewalks, access ways or grounds within the neighborhood of the licensed establishment;

2. That the licensee or any agents or employees thereof are illegally offering for sale or illegally allowing to be sold or consumed upon the licensed premises, or upon any parking areas, sidewalks, walkways, access ways or grounds immediately adjacent to the licensed premises, narcotics or dangerous drugs, fermented malt beverages, or malt, vinous or spirituous beverages;

3. That the licensee or any agents or employees thereof permitted patrons to engage in indecent, obscene or immoral conduct as prohibited by Manitou Springs Municipal Code Section 9.12.010 et seq., or upon any parking areas, sidewalks, access ways, or grounds immediately adjacent to the licensed establishment, when the licensee or agent or employee knew or should have known such displays or acts were taking place;

4. That the licensee made a false statement or gave false information in connection with an application for or renewal of a massage parlor license; or

5. That the licensee violated or permitted a violation of any provisions of this Chapter.

B. Nothing in this Chapter shall prohibit the City from taking any other enforcement action provided for by the Manitou Springs Municipal Code, the laws of the state of Colorado, or of the United States.

C. A licensee shall be entitled to a hearing before the licensing authority if the City Administrator files a written complaint with the licensing authority seeking to suspend or revoke a license.

1. When there is probable cause to believe that a licensee has committed, or has allowed to be committed acts, which are grounds for suspension or revocation under this Chapter, the City Administrator may file a written complaint with the licensing authority setting forth the circumstances of such acts.

2. The licensing authority shall provide a copy of the complaint to the licensee, together with notice to appear before the licensing authority or his or her designee for the purpose of a hearing on a specified date to show cause why the licensee's license should not be suspended or revoked.

3. At the hearing referred to above, the licensing authority shall hear and consider relevant evidence from any witness. Evidence in support of the charges shall be given first, followed by cross-examination of those testifying thereto. The licensee, in person or by counsel, shall then be permitted to give evidence in defense and in explanation, and shall be allowed to give evidence and statements in mitigation of the charges. In the event the licensee is found to have

committed the violation charged, evidence and statements in aggravation of the offense shall also be permitted. The licensing authority shall make findings of fact from the evidence as to whether a violation has occurred. If the licensing authority determines that a violation did occur, it shall issue an order within thirty (30) days after the hearing suspending or revoking the licensee's license based on its findings of facts. No suspension shall be for a longer period than six (6) months. A copy of the findings and order shall be mailed to or served on the licensee at the address on the license.

4. The order of the licensing authority made pursuant to subsection (C)(3) above, shall be a final decision, subject to judicial review. Failure of a licensee to appeal said order in a timely manner shall constitute a waiver of any right a licensee may otherwise have to contest the suspension or revocation of his license.

5. The licensing authority has the power to administer oaths and issue subpoenas to require the presence of persons and production of papers, books, and records necessary to the determination of any hearing which the licensing authority conducts. It is unlawful for any person to fail to comply with any subpoena issued by the licensing authority.

6. A subpoena shall be served in the same manner as a subpoena issued by the district court of the state of Colorado. Upon failure of any witness to comply with such subpoena, the City Attorney shall:

a. Petition the municipal court of the City, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, that the court after hearing evidence in support of or contrary to the petition, enter its order compelling the witness to attend and testify or produce books, records or other evidence, under penalty of punishment for contempt in case of willful failure to comply with such order of court; or

b. Petition the district court in and for El Paso County, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, that the court after hearing evidence in support of or contrary to the petition, enter its order as in other civil actions, compelling the witness to attend and testify or produce books, records or other evidence, under penalty of punishment for contempt in case of willful failure to comply with such order of court.

D. All hearings held before the licensing authority under this Chapter shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall post a deposit in the amount required by the City Clerk, and shall pay all costs of preparing such record.

**5.07.160 - Persons prohibited as licensees.**

No license provided by this Chapter shall be issued to or held by:

- A. Any corporation, any of whose officers, directors, or stockholders holding more than ten percent (10%) of the stock thereof are not of good moral character;
- B. Any partnership, association, or company, any of whose officers, or any of whose members holding more than ten percent (10%) interest therein, are not of good moral character;
- C. Any person employing, assisted by, or financed in whole or in part by any other person who is not of good character and reputation satisfactory to the licensing authority; and
- D. Any sheriff, deputy sheriff, police officer, or prosecuting officer or any of the licensing authority's inspectors or employees.

**5.07.170 - Unlawful acts.**

- A. It is unlawful for any person:
  - 1. To operate a massage parlor anywhere within the City without holding a valid Manitou Springs massage parlor license;
  - 2. To work in or upon the licensed premises of a massage parlor administering massages without obtaining and displaying a valid identity card pursuant to Section 5.72.140 of this Chapter;
  - 3. To be in or upon the premises of a massage parlor or to obtain the services provided in a massage parlor by misrepresentation of age or by any other method in any place where massage is practiced when such person is under eighteen (18) years of age, unless such person is accompanied by his parent or legal guardian, or has a physician's prescription for such massage services;
  - 4. To allow the sale, giving, or procuring of any massage services to any person under the age of eighteen (18) years, unless such person is accompanied by his parent or legal guardian, or has a physician's prescription for such massage services;
  - 5. To employ any person under the age of eighteen (18) years in a massage parlor; however, if any person who is not eighteen (18) years of age exhibits a fraudulent proof of age that he is eighteen (18) years of age or older, any action relying on such fraudulent proof of age shall not constitute grounds for the revocation or suspension of any license issued under this Chapter for violation of subsection (A)(3) through (5) of this section, unless the person inspecting such proof of age knew or should have known that it was fraudulent;
  - 6. To fail to display, at all times, in a prominent place on the licensed premises a printed card with a minimum height of fourteen (14) inches and a width

of eleven (11) inches with each letter a minimum of one-half (0.5) inch in height, which shall read as follows:

WARNING

IT IS ILLEGAL FOR ANY PERSON UNDER EIGHTEEN (18) YEARS OF AGE TO BE IN OR UPON THESE PREMISES AT ANY TIME UNLESS HE IS ACCOMPANIED BY HIS PARENT OR LEGAL GUARDIAN, OR HAS A PHYSICIAN'S PRESCRIPTION FOR SUCH MASSAGE SERVICES.

IT IS ILLEGAL FOR ANY PERSON TO ALLOW A PERSON UNDER EIGHTEEN YEARS OF AGE TO BE IN OR UPON THESE PREMISES AT ANY TIME, UNLESS HE IS ACCOMPANIED BY HIS PARENT OR LEGAL GUARDIAN, OR HAS A PHYSICIAN'S PRESCRIPTION FOR SUCH MASSAGE SERVICES.

FINES OR IMPRISONMENT MAY BE IMPOSED BY THE COURTS FOR VIOLATION OF THESE PROVISIONS UNDER THE MANITOU SPRINGS MUNICIPAL CODE AND ARTICLE 48.5 OF TITLE 12, COLORADO REVISED STATUTES.

7. To permit any narcotics or dangerous drugs on the licensed premises;

8. To permit any fermented malt beverages, or malt, vinous, or spirituous liquors on the licensed premises;

9. To administer a massage or permit any massage to be administered to a patron whose genitals, anus, or female breasts are exposed during the massage treatment, and no patron of a massage parlor shall knowingly expose his or her genitals, anus, or female breasts during a massage;

10. To intentionally touch or permit any other person to touch the genitals, anus, or female breasts of any other person while on the licensed premises;

11. To engage in, encourage, or request, or to permit any person to engage in, encourage, or request acts of masturbation while on the licensed premises;

12. To fail to have exterior windows (without shades) of sufficient size to permit observation of the inside of the premises by a law enforcement officer standing outside of the premises; and

13. To interfere with or refuse to permit any inspection of the licensed premises by the Manitou Springs Police Department or agent of the City.

B. No massage parlor shall be open for business between the hours of 10:00 p.m. and 8:00 a.m.

**5.07.180 - Employee apparel.**

All employees shall wear clothing that covers the pubic area, perineum, buttocks, cleft of the buttocks, and entire chest to four (4) inches below the collar bone and legs not exposed more than six (6) inches above the knees. No transparent clothing shall be permitted.

**5.07.190 - Right of entry.**

The application for a massage parlor license shall constitute consent of the licensee and his or her agents or employees to permit the Manitou Springs Police Department or any other agent of the City to conduct routine inspections of any licensed massage parlor during the hours the establishment is conducting business and at other times during which activity on the premises is in evidence.

**5.07.200 - Exemptions.**

The following classes of persons and establishments are exempted from this ordinance:

- A. Physicians, osteopaths, physical therapists, chiropodists, chiropractors or podiatrists licensed or registered to practice in this state while performing such services in the practice of their respective professions;
- B. Registered nurses and licensed practical nurses that are licensed to practice in this state while performing such services in their usual nursing duties;
- C. Barbers and cosmetologists duly licensed under the laws of this state in the course of practice of their usual and ordinary licensed vocation and profession, as defined in C.R.S. § 12-8-101 et seq., as the same may be amended;
- D. Hospitals, clinics, nursing and convalescent homes and other similar institutions dedicated to medical or nursing practices licensed under the laws of this state where massage and baths may be given;
- E. Massage practiced in an institution of learning established for such instruction under C.R.S. § 12-35.5-101 et seq., as the same may be amended;
- F. Training rooms of public and private schools accredited by the State Board of Education or approved by the State Board for Community Colleges and Occupational Education, and training rooms of recognized professional or amateur athletic teams;
- G. Health care facilities licensed by the state of Colorado, and not specified in this Chapter; and
- H. Massage therapists as defined in Section 5.07.020 of this Chapter.

**5.07.210 - Penalty.**

A. Violations of this Chapter are punishable as provided in Section 1.01.100 of this code. Each violation or noncompliance shall be considered a separate and distinct offense. Further, each day of continued violation shall be considered as a separate offense.

B. Nothing herein contained shall prevent or restrict the City from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or noncompliance. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.

C. All remedies and penalties provided for in this section shall be cumulative and independently available to the City, and the City shall be authorized to pursue any and all remedies set forth in this section to the full extent allowed by law.

D. The penalties provided in this section shall not be affected by the penalties provided in any other section of this Chapter but shall be construed to be an addition to any other penalties.

**CHAPTER 5.08 - MEDICAL MARIJUANA**

**5.08.010 - Definitions.**

As used in this Chapter, unless the context otherwise requires, the following words and terms shall be defined as follows:

A. “Good cause”, for purposes of refusing or denying a license renewal, reinstatement, or initial license issuance, means:

1. The licensee or applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of this Chapter, the Colorado Medical Marijuana Code, or any rules or regulations promulgated pursuant to this Chapter or the Colorado Medical Marijuana Code;

2. The licensee or applicant has failed to comply with any special terms or conditions that were placed on its license; or

3. The licensed premises have been operated in a manner that adversely affects the public health or welfare or the safety of the immediate neighborhood in which the establishment is located.

B. “License” means to grant a license or registration pursuant to this Chapter and the Colorado Medical Marijuana Code.

C. “Licensed premises” means the premises specified in an application for a license under this Chapter and the Colorado Medical Marijuana Code, which is

owned or in possession of the licensee and within which the licensee is authorized to distribute or sell medical marijuana in accordance with the provisions of this Chapter and the Colorado Medical Marijuana Code.

D. “Licensee” means a person licensed or registered pursuant to this Chapter and Colorado Medical Marijuana Code.

E. “Local licensing authority” means the City Council of the City of Manitou Springs, unless the City Council of Manitou Springs designates other persons to serve as the local licensing authority.

F. “Location” means a particular parcel of land that may be identified by an address or other descriptive means.

G. “Medical marijuana” means marijuana that is grown and sold for a purpose authorized by Article XVIII, § 14 of the Colorado Constitution.

H. “Medical marijuana center” means a person licensed to operate a business as described in the Colorado Medical Marijuana Code that sells medical marijuana and medical marijuana-infused products to registered patients or primary caregivers as defined in Article XVIII, § 14 of the Colorado Constitution, but is not a primary caregiver, and which a municipality is authorized to regulate as a matter of law.

I. “Medical marijuana-infused products manufacturer” means a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business manufacturing medical marijuana-infused products, and which a municipality is authorized to prohibit as a matter of law.

J. “Optional premises cultivation operation” means a person licensed pursuant to the Colorado Medical Marijuana Code to grow and cultivate marijuana for a purpose authorized by Article XVIII, § 14 of the Colorado Constitution, and which a municipality is authorized to prohibit as a matter of law.

K. “Patient” has the meaning set forth in Article XVIII, § 14(1)(c) of the Colorado Constitution.

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

M. “Premises” means a distinct and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

N. “Primary caregiver” has the meaning set forth in Article XVIII, § 14 (1)(f) of the Colorado Constitution.

O. “School” means a public or private preschool or a public or private elementary, middle, junior high, or high school.

P. “State licensing authority” means the state authority created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of medical marijuana in this state, pursuant to C.R.S. § 12-43.3-201.

**5.08.020 - License required.**

A. No person shall operate a medical marijuana center within the City without a valid license issued in accordance with this Chapter.

B. No person shall operate a medical marijuana center within the City without a business license pursuant to Chapter 5.04 of this code.

**5.08.030 - Fee.**

An applicant shall pay to the City a nonrefundable application fee when the application is filed. The purpose of the application fee is to cover the administrative costs of processing the application. An application fee, renewal fee, and annual license fee shall be fixed by the City Council by resolution.

**5.08.040 - Local licensing authority established.**

The City Council shall be the local licensing authority of the City for the licensing of medical marijuana centers, pursuant to this Chapter, unless the City Council designates other persons to serve as the local licensing authority. The local licensing authority shall possess all powers given to local licensing authorities by the provisions of the Colorado Medical Marijuana Code and related rules and regulations. Any decision made by the local licensing authority to grant or deny a license, to revoke or suspend a license, or to renew or not renew a license shall be a final decision, subject to judicial review.

**5.08.050 - Prohibitions—Cultivation and manufacturing.**

Medical marijuana-infused products manufacturing and optional premises cultivation operations are prohibited in the City.

**5.08.060 - Persons prohibited as licensees.**

A license shall not be issued to or held by any person prohibited as a licensee under C.R.S. § 12-43.3-307, as amended.

**5.08.070 - Medical marijuana center requirements.**

A. Zoning District. Medical marijuana centers shall only be located in the Commercial Zoning District. Medical marijuana centers are not permitted within any other zoning district including the downtown zoning district or within any building that contains a residential dwelling or lodging unit.

B. Conditional Use Approval. No license shall be issued unless a medical marijuana center is approved as a conditional use pursuant to the criteria and procedures for conditional uses set forth in Chapter 18.30 of Title 18 of this Code. When considering whether to grant conditional use approval, the requirements of this section shall be considered in addition to the criteria set forth in Chapter 18.30 of Title 18 for conditional uses.

C. Location. Medical marijuana centers shall meet the following location requirements:

1. As measured from the property boundary, no medical marijuana center shall be located within five hundred (500) feet of the following:

- a. Any educational institution or school, either public or private;
- b. Any licensed child care facility;
- c. Any alcohol or drug rehabilitation facility.

2. As measured from the property boundary, no medical marijuana center shall be located within two hundred (200) feet of any existing medical marijuana business whether such business is located within or outside of the City.

3. Although there is no minimum distance standard from the following locations, when reviewing an application, the proximity and compatibility with the following uses shall be considered:

- a. The exterior boundary of any residential zone district; and
- b. Any public community center, park, designated recreation trail, library, hotel, or recreation center, or any publicly owned or maintained building open for use to the general public.

4. No more than two (2) medical marijuana centers may be licensed or located within the City at any given time. If the maximum number of medical marijuana center licenses have been issued, the City shall not accept any further applications for such uses until an existing license is either revoked or expires. When the number of licensed medical marijuana centers is less than this limit for any reason, including the cessation of operation of a medical marijuana center either by license revocation or expiration, notice shall be posted on the City's website indicating that applications for the applicable medical marijuana use shall be accepted for a sixty-day period. At the end of the sixty-day period, the City shall review the applications by a random selection process. The first complete application randomly selected will be reviewed, and if it is denied, then the local licensing authority shall review the next complete application randomly selected. Only fully complete applications will be eligible for review. Once a license has been issued, all unselected or rejected applications shall be discarded. The City

shall notify each applicant that is not selected for formal review by the local licensing authority, and shall refund the operating fee, but not the application fee.

D. Advertisements. Advertisements, signs, displays or other promotional material depicting medical marijuana uses or symbols shall not be shown or exhibited off the premises or in any manner which is visible to the public, from roadways, pedestrian sidewalks or walkways, or from other public areas. No signage associated with a medical marijuana center shall use the word "marijuana," "cannabis," or any other word or phrase commonly understood to refer to marijuana unless such word or phrase is immediately preceded by the word "medical."

E. Indoor Use. All business related to medical marijuana shall be conducted indoors, and all building openings, entries, and windows shall be located, covered, or screened in such a manner as to prevent a view into the interior; and for new construction, the building shall be constructed so as to prevent any possibility of viewing the interior from the exterior of such structure.

F. Security. Medical marijuana centers shall provide adequate security on the premises. At a minimum, such security shall include the following:

1. All buildings shall be secured with a locked door system which requires an employee to allow entrance into the building or center if the dispensing area is separated from other areas of the building by a waiting room or other retail services;

2. Security surveillance cameras installed to monitor the main entrance and the exterior of the premises to discourage and to facilitate the reporting of criminal acts as well as nuisance activities. Security video shall be preserved for at least seven (7) days; and

3. Robbery and burglary alarm systems which are professionally monitored and maintained in good working condition.

G. Additional Limitations. Medical marijuana centers shall be subject to the following additional requirements:

1. The business may only be open for the sale or distribution of medical marijuana during the hours of 8:00 a.m. to ~~9~~7:00 p.m.

2. No on-site consumption of marijuana is allowed.

3. All centers shall be equipped with a secure safe that is utilized for the purposes of storing marijuana during non-business hours.

4. A City business license is required.

5. No mobile structure may be used to dispense medical marijuana.

6. No alcohol sales or consumption shall be permitted on site.

**5.08.080 - Application requirements.**

A. An application, verified by oath or affirmation, must be submitted for the medical marijuana center to ensure compliance with this Code. The application must contain the following items:

1. The applicant's name, address, telephone number and social security number;
2. The street address and unit number, if applicable, of the proposed medical marijuana center, and a complete description of the site for which the license is being obtained;
3. If the applicant is not the owner of the proposed location of the medical marijuana center, a notarized statement from the owner of such property authorizing the submission of the application;
4. A deed, lease, or other contractual document showing that the applicant has a right of possession of the proposed location for the medical marijuana center for the full duration of the license period;
5. A completed set of the applicant's fingerprints;
6. An acknowledgement that the City will conduct a background investigation;
7. A business plan, which shall include:
  - a. A description of proposed security provisions and systems;
  - b. Proposed hours of operation;
  - c. A lighting plan (interior and exterior);
  - d. Plans and specifications for the interior, if the building is already in existence, or a plot plan and detailed sketch for the interior and architect's drawing of the building to be constructed;
  - e. A plan for the legal disposal of any unused and unmarketable marijuana; and
8. Any additional information that the local licensing authority reasonably determines to be necessary in connection with the investigation and review of the application.

B. **Criminal Background Check.** A criminal background investigation shall be performed on all applicants and all owners, officers, managers, and employees of applicants. No applicant, or owner, officer, manager, or employee of an applicant shall have discharged a sentence in the five (5) years immediately preceding the application date for a conviction of a felony or have at any time been convicted of a felony pursuant to any state or federal law regarding the possession, distribution, or use of a controlled substance. The conviction for a felony by a licensee or owner, officer, manager, or employee of a licensee, shall be grounds for the revocation of an existing license. If the local licensing authority considers an individual's criminal history, the local licensing authority shall also consider any information provided by the individual regarding such criminal history record, including, but not limited to, evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the individual's criminal history. If there is any change in ownership, officers, managers or employees, a background check must be performed on the new individuals. The licensee has thirty (30) days in which to report any change of ownership, officers, managers or employees.

C. The applicant(s) must provide a state sales tax number to the City at the time of business license application.

D. The local licensing authority shall not receive or act upon an application for a license if the application concerns a particular location that is the same as or within one thousand (1,000) feet of a location for which, within the two (2) years immediately preceding the date of the application, the state or a local licensing authority denied an application for the same class of license due to the nature of the use or other concern related to the location.

**5.08.090 - Standards for issuance of license.**

The local licensing authority shall issue a license under this Chapter when, from a consideration of the application and from such other information as may otherwise be obtained, the local licensing authority determines that the application complies with all of the requirements of this Chapter and the Colorado Medical 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 Code;
3. The application does not contain a material falsehood or misrepresentation;

4. The location of the medical marijuana center has been approved as a conditional use, pursuant to the requirements of this Code; and

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

**5.08.100 - Authority to impose conditions on license.**

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 Chapter and applicable law.

**5.08.110 - Application review procedure.**

**A. Public Hearing—Posting and Publication.**

1. Upon receipt of an application for a local license, except an application for renewal or for transfer of ownership, the local licensing authority may schedule a public hearing upon the application to be held not less than thirty (30) days after the date of the application. If the local licensing authority schedules a hearing for a medical marijuana center application, it shall post and publish public notice thereof not less than ten (10) days prior to the hearing. The local licensing authority shall give public notice by the posting of a sign in a conspicuous place on the medical marijuana center premises for which application has been made and by publication in a newspaper of general circulation in El Paso County.

2. Public 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 of the application, the date of the hearing, 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. The sign shall contain the names and addresses of the officers, directors, or manager of the facility to be licensed.

3. Public notice given by publication shall contain the same information as that required for the posting of signs.

4. If the building in which medical marijuana is to be sold is in existence at the time of the application, the sign shall be posted 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 a sign at 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.

**B. Results of Investigation.**

1. Not less than five (5) days prior to the date of the public hearing, the local licensing authority shall make known its findings, based on its investigation, in writing to the applicant and other parties of interest. The local licensing authority has authority to refuse to issue a license provided for in this section for good cause, subject to judicial review.

2. Before entering a decision approving or denying the application for a local license, the local licensing authority may consider, except where this Chapter specifically provides otherwise, the facts and evidence adduced as a result of its investigation, as well as any other facts pertinent to the type of license for which application has been made, including the number, type, and availability of medical marijuana outlets located in or near the premises under consideration, and any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed.

3. Within thirty (30) days after the public hearing or completion of the application investigation, a local licensing authority shall issue its decision approving or denying an application for local licensure. The decision shall be in writing and shall state the reasons for the decision. The local licensing authority shall send a copy of the decision by certified mail to the applicant at the address shown in the application.

4. After approval of an application, a local licensing authority shall not issue a local license until the building in which the business to be conducted is ready for occupancy with such furniture, fixtures, and equipment in place as are necessary to comply with the applicable provisions of this Chapter, and then only after the local licensing authority has inspected the premises 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.

5. After approval of an application for local licensure, the local licensing authority shall notify the state licensing authority of such approval.

**5.08.120 - Transfer of ownership.**

In determining whether to permit a transfer of ownership, the local licensing authority shall consider only the requirements of this Chapter, the Colorado Medical Marijuana Code, and any related rules or regulations. The local licensing authority may hold a hearing on the application for a transfer of ownership; provided the local licensing authority shall not hold a hearing pursuant to this section until the local licensing authority has posted a notice of hearing in the manner described in Section 5.88.110 on the licensed medical marijuana center premises for a period of ten (10) days and provided notice of the hearing to the applicant at least ten (10) days prior to the hearing.

**5.08.130 - Renewals.**

A. A licensee shall apply for the renewal of an existing license to the local licensing authority not less than forty-five (45) days prior to the date of expiration. The local licensing authority shall not accept an application for renewal of a license after the date of expiration, except as provided in Subsection B. The local licensing authority, in its discretion, subject to the requirements of this section, and based upon reasonable grounds, may waive the forty-five-day time requirement. The local licensing authority may hold a hearing on the application for renewal only if the licensee has had complaints filed against it, has a history of violations, or there are allegations against the licensee that would constitute good cause. The local licensing authority shall not hold a renewal hearing provided for by this Subsection A for a medical marijuana center until it has posted a notice of hearing on the licensed medical marijuana center premises in the manner described in Section 5.88.110 for a period of ten days and, provided notice to the applicant at least ten (10) days prior to the hearing. The local licensing authority may refuse to renew any license for good cause, subject to judicial review.

B. Notwithstanding the provisions of Subsection A., a licensee whose license has been expired for not more than ninety (90) days may file a late renewal application upon the payment of a nonrefundable late application fee in an amount set by resolution of the City Council to the local licensing authority. A licensee who files a late renewal application and pays the requisite fees may continue to operate until both the state and local licensing authorities have taken final action to approve or deny the licensee's late renewal application unless the state or local licensing authority summarily suspends the license.

#### **5.08.140 - Suspension and revocation.**

A. The local licensing authority may revoke or elect not to renew any license if it determines that the licensed premises have been inactive, without good cause, for at least one (1) year.

B. In addition to any other sanctions prescribed by this Chapter, the Colorado Medical Marijuana Code, or related rules and regulations, the local licensing authority has the power, on its own motion or on complaint, after investigation and opportunity for a public hearing at which the licensee shall be afforded an opportunity to be heard, to suspend or revoke a license issued by the local licensing authority for a violation by the licensee or by any of the agents or employees of the licensee of the provisions of this Chapter, the Colorado Medical Marijuana Code, or related rules and regulations, or of any of the terms, conditions, or provisions of the license. 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 a hearing that the state or local licensing authority is authorized to conduct.

C. The state or local licensing authority shall provide notice of suspension, revocation, fine, or other sanction, as well as the required notice of the hearing pursuant to subsection B, by mailing the same in writing to the licensee at the

address contained in the license. Except in the case of a summary suspension, a suspension shall not be for a longer period than six (6) months. If a license is suspended or revoked, a part of the fees paid therefore, shall not be returned to the licensee. Any license or permit may be summarily suspended by the local licensing authority without notice pending any prosecution, investigation, or public hearing pursuant to the terms of C.R.S. § 24-4-104(4).

D. Whenever a decision of the local licensing authority suspending a license for fourteen (14) days or less becomes final, the licensee may, before the operative date of the suspension, petition for permission to pay a fine in lieu of having the license suspended for 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 which it deems desirable and may, in its sole discretion, grant the petition if the local licensing authority is satisfied that:

1. The public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes;

2. The books and records of the licensee 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; and

3. The licensee has not had his or her license suspended or revoked, nor had any suspension stayed by payment of a fine, during the two (2) years immediately preceding the date of the motion or complaint that resulted in a final decision to suspend the license or permit.

E. The fine accepted shall be not less than five hundred dollars (\$500.00) nor more than one hundred thousand dollars (\$100,000.00).

F. Payment of a fine shall be in the form of cash, a certified check or cashier's check made payable to the local licensing authority.

G. Upon payment of the fine pursuant to Subsection C, the local licensing authority shall enter its further order permanently staying the imposition of the suspension.

**5.08.150 - Penalty.**

Failure to comply with the terms of this Chapter shall constitute a violation of this Code. Any person found guilty of, or who pleads guilty or nolo contendere, to a violation of any section of this Chapter shall be subject to a fine not to exceed one thousand dollars (\$1,000.00) or a term of imprisonment not to exceed one (1) year, or both such fine and imprisonment.

**CHAPTER 5.09 - RETAIL MARIJUANA ESTABLISHMENTS**

### **5.09.010 - Findings**

The City Council makes the following legislative findings:

A. The City Council finds that on November 6, 2012, the voters of the State of Colorado approved Amendment 64. Amendment 64 added § 16 of Article 18 to the Colorado Constitution, and legalized the possession, use, display, purchase, transport, transfer, and consumption of marijuana accessories or one ounce or less of marijuana by persons twenty-one years of age or older within the State of Colorado (as opposed to federal law).

B. The City Council finds and determines that the enactment by the Colorado Legislature of the Colorado Retail Marijuana Code, C.R.S. § 12-43.4-101 et seq., clarifies Colorado law regarding the scope and extent of Amendment 64 to the Colorado Constitution.

C. The City Council finds and determines that the Colorado Retail Marijuana Code now provides a statutory framework for the regulation of retail marijuana stores.

D. The City Council finds and determines that the regulation of retail marijuana may provide an additional revenue source for the City while also promoting economic vitality through the creation of additional year-round employment opportunities.

E. The City Council finds and determines that, by requiring retail marijuana stores and retail marijuana testing facilities to be operated in a manner that minimizes potential health and safety risks, the negative impacts that such uses might have on surrounding properties and persons are mitigated.

F. The City Council finds and determines that through this Chapter it intends to establish a nondiscriminatory mechanism by which the City may control, through appropriate regulation, the location and operation of retail marijuana stores and retail marijuana testing facilities within the City so as to preserve community values and promote the health, safety and welfare of the City's residents.

G. The City Council recognizes and affirms the protections afforded by Article XVIII, Section 16 of the Colorado Constitution to persons twenty-one (21) years of age and older.

### **5.09.020 - Purpose.**

The purpose of this Chapter is to implement the provisions of the Colorado Retail Marijuana Code, C.R.S. § 12-43.4-101, et seq., which authorizes the licensing and regulation of retail marijuana businesses and affords local government the option to determine whether to allow retail marijuana businesses within their respective

jurisdictions and to adopt licensing requirements that are supplemental to or more restrictive than the requirements set forth in state law.

**5.09.030 - Incorporation of state law.**

The provisions of the Colorado Retail Marijuana Code and any rules and regulations promulgated thereunder as the same may be amended from time to time, are incorporated herein by reference except to the extent that more restrictive or additional regulations are set forth in this Chapter. In addition to the regulations set forth in this Chapter, the City may enforce any provision of the Retail Marijuana Code and any rules and regulations promulgated thereunder applicable to licensees.

**5.09.040 - Authority.**

The City Council hereby finds, determines and declares that it has the power to adopt this Chapter pursuant to:

1. Article XVIII, Section 16 of the Colorado Constitution;
2. The Colorado Retail Marijuana Code, C.R.S. § 12-43.4-101 et seq.;
3. The Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.;
4. Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers);
5. C.R.S. § 31-15-103 (concerning municipal police powers);
6. C.R.S. § 31-15-401 (concerning municipal police powers);
7. C.R.S. § 31-15-501 (concerning municipal authority to regulate businesses).

**5.09.050 - Definitions.**

For purposes of this Chapter, the following terms shall have the following meanings:

- A. "Applicant" means a person twenty-one (21) years of age or older who has submitted an application for a license or renewal of a license issued pursuant to this Chapter. If the applicant is an entity and not a natural person, applicant shall include all persons who are the members, managers, partners, officers or directors of such entity.
- B. "Colorado Medical Marijuana Code" means Article 43.3 of Title 12, Colorado Revised Statutes.

C. "Consumer" means a person twenty-one (21) years of age or older who purchases marijuana or marijuana products for personal use by a person twenty-one (21) years of age or older, but not for resale to others.

D. "Cultivation" or "cultivate" means the process by which a person grows a marijuana plant.

E. "Dual operation" means a business that operates as both a licensed medical marijuana center and a licensed retail marijuana store in accordance with Section 5.09.100 of this code.

F. "Industrial hemp" means the plant of the genus cannabis and any part of such plant, whether growing or not, with a Delta-9 tetrahydrocannabinol concentration that does not exceed three-tenths percent (0.3%) on a dry weight basis.

G. "Good cause" means: (1) the licensee has violated, does not meet, or has failed to comply with any of the terms, conditions or provisions of this Chapter or the Colorado Retail Marijuana Code and any rule and regulation promulgated pursuant to this Chapter or the Colorado Retail 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, or that were placed on its license in prior disciplinary proceedings or that arose in the context of potential disciplinary proceedings; or (3) the licensee's retail marijuana store, retail marijuana products manufacturing operation, or retail marijuana cultivation facility has been operated in a manner that adversely affects the public health, welfare or safety of the immediate neighborhood in which the retail marijuana store, retail marijuana products manufacturing operation, or retail marijuana cultivation facility is located. Evidence to support such a finding can include: (i) a continuing pattern of offenses against the public peace, as defined in Chapter 4 of Title 9 of the Manitou Springs Municipal Code; (ii) a continuing pattern of drug-related criminal conduct within the premises or in the immediate area surrounding the premises arising out of the operation of the store; or (iii) a continuing pattern of criminal conduct directly related to or arising from the operation of the retail marijuana store.

F. "License" means a document issued by the City officially authorizing an applicant to operate a retail marijuana store or retail marijuana testing facility pursuant to this Chapter.

G. "Licensee" means the person to whom a license has been issued pursuant to this Chapter.

H. "Licensed premises" means the premises specified in an application for a license under this Chapter, which is owned or in possession of the licensee and within which the licensee is authorized to distribute, sell or test retail marijuana or retail marijuana products in accordance with state and local law.

I. "Local licensing authority" means the City Council of the City of Manitou Springs.

J. "Marijuana" means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. Marijuana does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

K. "Marijuana accessories" means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

L. "Medical marijuana business" means a medical marijuana center, optional premises cultivation operation, or medical marijuana-infused products manufacturer as defined in the Colorado Medical Marijuana Code.

M. "Person" means a natural person, partnership, association, company, corporation, limited liability company or organization.

N. "Retail marijuana" means marijuana that is cultivated, manufactured, distributed or sold by a licensed retail marijuana establishment.

O. "Retail marijuana cultivation facility" means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

P. "Retail marijuana establishment" means a retail marijuana store, a retail marijuana cultivation facility, a retail marijuana products manufacturing operation or a retail marijuana testing facility.

Q. "Retail marijuana products" means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients that are intended for use or consumption, such as, but not limited to, edible products, ointments and tinctures.

R. "Retail marijuana product manufacturing facility" means an entity licensed to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

S. "Retail marijuana store" means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

T. "Retail marijuana testing facility" means an entity licensed by the City and State of Colorado to analyze and certify the safety and potency of marijuana.

U. "School" means a public or private preschool or a public or private elementary, middle, junior high or high school.

V. "State licensing authority" means the authority created by the Colorado Department of Revenue for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, sale and testing of retail marijuana in the State of Colorado pursuant to C.R.S. § 12-43.4-201.

In addition to the definitions provided in Subsection (a) hereof, other terms used in this Chapter shall have the meaning ascribed to them in Article XVIII, § 16 of the Colorado Constitution, or the Colorado Retail Marijuana Code, and such definitions are hereby incorporated into this Chapter by reference.

**5.09.060 - License required for operation of retail marijuana stores and retail marijuana testing facilities.**

The City hereby authorizes the operation of retail marijuana stores and retail marijuana testing facilities in the City as set forth in this Chapter. It shall be unlawful for any person to establish or operate a retail marijuana store or retail marijuana testing facility in the City without first having obtained a license for such business from the local licensing authority. Such license shall be kept current at all times, and the failure to maintain a current license shall constitute a violation of this section.

**5.09.070 - Retail marijuana products manufacturer facilities, and retail marijuana cultivation facilities—Prohibited.**

Retail marijuana products manufacturing facilities and retail marijuana cultivation facilities are prohibited in the City of Manitou Springs.

**5.09.080 - Requirements of application for license; payment of application fee; denial of license.**

A. A person seeking a license or renewal of a license issued pursuant to this Chapter shall submit an application to the local licensing authority on forms provided by the City Clerk. At the time of application, each applicant shall pay an operating fee to the City in an amount to be determined by the City by separate resolution to defray the costs incurred by the City for costs including, but not limited to, inspection, administration, and enforcement of retail marijuana stores

and retail marijuana testing facilities. The operating fee shall be refunded to applicants whose applications are not passed on for formal review because the numeric limitation has been met by previous applications. In addition, the applicant shall present one of the following forms of identification:

1. An operator's, chauffer's or similar type of driver's license issued by the State of Colorado;
2. An identification card, issued by any state for purpose of proving age using requirements similar to those in C.R.S. §§ 42-2-302 and 42-2-303;
3. A United States military identification card;
4. A valid passport; or
5. An enrollment card issued by the government authority of a federally recognized tribe located in the State of Colorado.

B. The applicant shall also provide the following information on a form approved by, or acceptable to the City, which information shall be required for the applicant, all employees, including the proposed manager of the retail marijuana store or retail marijuana testing facility and all persons having a ten percent(10%) or more financial interest in the retail marijuana store or retail marijuana testing facility that is the subject of the application or, if the applicant is an entity, having a ten percent (10%) or more financial interest in the entity:

1. Name, address, date of birth;
2. An acknowledgment and consent that the City will conduct a background investigation, including a criminal history check, and that the City will be entitled to full and complete disclosure of all financial records of the retail marijuana store, including records of deposit, withdrawals, balances and loans;
3. Suitable evidence of proof of lawful presence, residence, if applicable, and good character and reputation that the City may request;
4. 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;
5. The name and complete address of the proposed retail marijuana store, including the facilities to be used in furtherance of such business, whether or not such facilities are, or are planned to be, within the territorial limits of the City;
6. A copy of any deed, lease, contract or other document reflecting the right of the applicant to possess the proposed licensed premises along with the conditions of occupancy of the premises, and if by leasehold or similar means, the

lease shall specifically recognize and authorize the applicant's use of the premises for the licensed purposes; provided that if the lease does not specifically authorize the use of the premises for the licensed purposes, the applicant shall provide a notarized statement from the owner of such property authorizing the use of the property for the licensed purposes;

7. Evidence of a valid sales tax license for the business;

8. A "to scale" diagram of the premises, showing, without limitation, a site plan, building layout, all entry ways and exits to the marijuana store and, loading zones and all areas in which retail marijuana will be stored or dispensed;

9. Any additional information that the local licensing authority reasonably determines to be necessary in connection with the investigation and review of the application.

10. A comprehensive business operation plan for the retail marijuana establishment which shall contain, without limitation, the following:

a. A security plan meeting the requirements of Section 5.91.200 of this Chapter;

b. A description by category of all products to be sold;

c. A signage plan that is in compliance with all applicable requirements of Section 5.91.190 and other applicable provisions of the Manitou Springs Municipal Code, as well as the Colorado Retail Marijuana Code and all rules and regulations promulgated thereunder; and

d. A plan for the disposal of marijuana and related byproducts meeting the requirements of Section 5.91.240 of this Chapter.

C. A license issued pursuant to this Chapter does not eliminate the need for the licensee to obtain other required permits or licenses related to the operation of the retail marijuana store or retail marijuana testing facility, including, without limitation, a license from the state licensing authority and any development approvals or building permits required by this Chapter and any other applicable provisions of the Manitou Springs Municipal Code.

D. Upon receipt of an application for a new license, the local licensing authority shall schedule a public hearing on the application to be held not less than thirty (30) days after the date of the completed application. The local licensing authority shall cause a notice of such hearing to be posted in a conspicuous place upon the proposed licensed premises and published in a newspaper of general circulation within the City not less than ten (10) days prior to the hearing. Such posted notice given by posting shall include a sign of suitable material in dimensions and with lettering as required by the Planning Department. Both the posted and the published notice shall state the type of license applied for, the date

of the hearing, 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.

E. Not less than five (5) days prior to the date of the public hearing for a new license, the local licensing authority shall cause its preliminary findings based on its investigation to be known in writing to the applicant and other parties in interest. The local licensing authority shall deny any application that does not meet the requirements of this Chapter. The local licensing authority shall also deny any application that contains any false, misleading or incomplete information. The local licensing authority shall also deny or refuse to issue a license for good cause. Denial of an application for a license shall not be subject to further administrative review but only to review by a court of competent jurisdiction. At any time prior to commencement of the public hearing, licensee may withdraw its application, and the public hearing shall be cancelled.

F. Before entering a decision approving or denying the application for a local license, the local licensing authority may consider, except where this Chapter specifically provides otherwise, the facts and evidence adduced as a result of its investigation, as well as any other facts pertinent to the type of license for which application has been made, including the number, type and availability of retail marijuana stores located in or near the premises under consideration, and any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed. The local licensing authority shall issue its decision within ninety (90) days of the receipt of the complete license application. Such decision shall be by resolution and shall state the reasons for the decision. The resolution shall be sent via certified mail to the state licensing authority and the applicant at the address shown in the application.

G. The City shall, prior to issuance of the license, perform an inspection of the proposed licensed premises, including, without limitation, any associated dual operation facility, if applicable, to determine compliance with any applicable requirements of this Chapter or other applicable requirements of the Manitou Springs Municipal Code.

**5.09.090 - Retail marijuana stores.**

A. A licensed retail marijuana store may sell retail marijuana or retail marijuana products to persons twenty-one (21) years of age or older in the following manner:

1. Up to one ounce of retail marijuana or its equivalent in retail marijuana products during a single sales transaction to Colorado residents; or
2. Up to one-quarter ounce of retail marijuana or its equivalent in retail marijuana products during a single sales transaction to a non-Colorado resident.

3. Only one sales transaction per customer per day is permitted regardless of the amount of marijuana sold.

B. Prior to any sale of retail marijuana, the age of the consumer must be verified by one of the following forms of identification:

1. An operator's, chauffer's or similar type of driver's license issued by any state within the United States or a U.S. Territory;

2. An identification card, issued by any state for purpose of proving age using requirements similar to those in C.R.S. §§ 42-2-302 and 42-2-303;

3. A United States military identification card;

4. A valid passport; or

5. An enrollment card issued by the government authority of a federally recognized tribe located in the State of Colorado.

The following forms of identification may be accepted for purposes of determining Colorado residency: a valid State of Colorado driver's license; a valid state of Colorado identification card; or any other valid government-issued picture identification that demonstrates that the holder of the identification is a Colorado resident.

C. All consumer packaging exiting a retail marijuana store shall remain free of advertising, including any business name. The licensee shall distribute a flier outlining the City's retail marijuana consumption laws to each retail marijuana consumer upon the completion of any retail marijuana sale. The City shall prepare the retail marijuana consumption flier, and licensees shall be responsible for the cost of reproducing such fliers for public distribution.

D. Retail marijuana store licensees are prohibited from dispensing marijuana to a person that is, or appears to be, under the influence of alcohol or under the influence of any controlled substance, including marijuana.

E. All marijuana, marijuana products and marijuana concentrates sold at retail marijuana stores shall be tested for contaminants and potency, and shall be labeled with the results of those tests. The sale of marijuana that is not tested for contaminants and potency is prohibited. Testing for contaminants and potency must comply with the requirements of all rules and regulations promulgated by the State of Colorado, including the Permanent Rules Related to the Colorado Retail Marijuana Code, promulgated by the Colorado Department of Revenue, and specifically 1 CCR 212-2 Series R-1005, R-1006, and R-1007, as those regulations may be amended.

**5.09.100 - Dual operations.**

A. A medical marijuana center that does not authorize patients under the age of twenty-one (21) years to be on the premises may hold a retail marijuana store license and operate a dual operation retail business at a shared licensed premises.

B. Provided that a medical marijuana center licensee posts signage that clearly conveys that persons under the age of twenty-one (21) years may not enter, such licensee may share the same entrances and exits to the shared premises with the retail marijuana store and medical and retail marijuana may be separately displayed on the same floor. Recordkeeping for the business operations of both businesses must allow the City to clearly distinguish the inventories and business transactions of medical marijuana and medical marijuana-infused products from retail marijuana and retail marijuana products.

**5.09.110 - Location criteria.**

Prior to the issuance of a license for a retail marijuana store or retail marijuana testing facility, the local licensing authority shall determine whether the proposed location of the retail marijuana store or retail marijuana testing facility complies with the requirements of this section. Failure to comply with the requirements of this section shall preclude issuance of a license.

A. Retail marijuana stores and retail marijuana testing facilities shall only be located in the Commercial Zone District.

B. No more than two (2) retail marijuana stores may be licensed or located within the City at any given time. Only licensed medical marijuana centers in good standing existing in the City may apply for a retail store license before July 1, 2014. If the maximum number of retail marijuana store licenses have been issued, the City shall not accept any further applications for such uses until an existing license is either revoked or expires. When the number of licensed retail marijuana stores is less than this limit for any reason, including the cessation of operation of a retail marijuana store either by license revocation or expiration, notice shall be posted on the City's website indicating that applications for the applicable retail marijuana use shall be accepted for a sixty-day period. At the end of the sixty-day period, the City shall review the applications by a random selection process. The first complete application randomly selected will be reviewed, and if it is denied, then the local licensing authority shall review the next complete application randomly selected. Only fully complete applications will be eligible for review. Once a license has been issued, all unselected or rejected applications shall be discarded. The City shall notify each applicant that is not selected for formal review by the local licensing authority, and shall refund the operating fee, but not the application fee.

C. Conditional Use Approval. No license shall be issued unless a retail marijuana store is approved as a conditional use pursuant to the criteria and procedures for conditional uses set forth in Chapter 18.30 of this Code. When considering whether to grant conditional approval, the requirements of this Chapter shall be considered in addition to the criteria set forth in Chapter 18.30.

D. No retail marijuana store shall be located at the following locations:

1. Within five hundred (500) feet of any educational institution or school, whether public or private (this distance limitation shall not apply to property owned by an educational institution or school unless an actual school building is located on the property);
2. Within five hundred (500) feet of a licensed child care facility;
3. Within five hundred (500) feet of any alcohol or drug rehabilitation facility;
4. Within any building or structure that contains a residential dwelling or lodging unit; or
5. Upon any City of Manitou Springs owned property.

E. Although there is no minimum distance standard from the following locations, when reviewing an application, the proximity and compatibility with the following uses shall be considered:

1. The exterior boundary of any residential zone district; and
2. Any public community center, park, designated recreation trail, library, hotel or recreation center, or any publicly owned or maintained building open for use to the general public.

F. The distances described in this section shall be computed by direct measurement, as a crow flies, from the nearest property line of the land used for the above purposes to the nearest property line of the property upon which the retail marijuana store is located.

G. Each retail marijuana store or retail marijuana testing facility shall be operated from a permanent location. No retail marijuana store or retail marijuana testing facility shall be permitted to operate from a moveable, mobile or transitory location.

H. The suitability of a location for a retail marijuana store or retail marijuana testing facility shall be determined at the time of the issuance of the first license for such business and shall be reviewed every five (5) years thereafter by applying the same criteria used for the initial application set forth in this section.

**5.09.120 - Persons prohibited as licensees and employees.**

A. No license shall be issued to, held by, or renewed by any of the following:

1. Any person until all applicable fees have been paid;

2. Any person who is not of good moral character satisfactory to the local licensing authority;

3. Any corporation, any of whose officers, directors or stockholders are not of good moral character satisfactory to the local licensing authority;

4. Any partnership, association or company, any of whose officers are not of good moral character satisfactory to the local licensing authority;

5. Any person employing, assisted by, or financed, in whole or in part, by any other person who is not of good character and reputation satisfactory to the local licensing authority;

6. Any sheriff, deputy sheriff, police officer, prosecuting officer, and state or local licensing authority or any of its members, inspectors or employees;

7. Any natural person under twenty-one (21) years of age;

8. Any person for a licensed location that is also a retail food establishment or wholesale food registrant;

9. Any person who has not been a resident of Colorado for at least two (2) years prior to the date of the application;

10. Any person who has discharged a sentence for a felony conviction within the past five (5) years;

11. Any person who, at any time, has been convicted of a felony for drug possession, distribution or use, unless such felony drug charge was based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offense on the date he or she applied for the license;

12. Any entity whose directors, shareholders, partners or other persons having a financial interest in said entity do not meet the criteria set forth above;

13. Any person who has made a false, misleading or fraudulent statement on his or her application.

B. All persons employed or contracted by a licensee, shall possess a valid occupational license as required by all rules and regulations promulgated by the State of Colorado, including the Permanent Rules Related to the Colorado Retail Marijuana Code, promulgated by the Colorado Department of Revenue, and specifically 1 CCR 212-2 Series R-233, as those regulations may be amended.

C. Jurisdiction.

1. In investigating the qualifications described herein, the local licensing authority may have access to criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency. In the event the local licensing authority takes into consideration information concerning the applicant's criminal history record, the local licensing authority shall also consider any information provided by the applicant regarding such criminal history record, including, but not limited to, evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license.

2. As used in subsection (C)(1) of this section, "criminal justice agency" means any federal, state, or municipal court or any governmental agency or sub-unit of such agency that performs the administration of criminal justice pursuant to a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice.

3. By filing an application with the City, applicants consent to the City accessing all information possessed by the Colorado Marijuana Enforcement Division relating to their application for a license to operate a retail marijuana store or testing facility, and consent to the release of such information to the City.

**5.09.130 - Issuance of license; duration; renewal.**

A. Upon issuance of a license, the City shall provide the licensee with one (1) original of such license for each retail marijuana store or retail marijuana testing facility to be operated by the licensee in the City. Each such copy shall show the name and address of the licensee, and the address of the facility at which it is to be displayed.

B. Each license issued pursuant to this Chapter shall be valid for one (1) year from the date of issuance and may be renewed only as provided in this Chapter. All renewals of a license shall be for no more than one (1) year. An application for the renewal of an existing license shall be made to the local licensing authority not more than sixty (60) days and not less than thirty (30) days prior to the date of expiration of the license. A licensee may submit to the local licensing authority a late renewal application on the prescribed forms and pay a non-refundable late application fee in an amount set by the City Council via resolution for a renewal application made less than thirty days prior to the date of the expiration of the license. All other provisions concerning renewal applications apply to a late renewal application. The timely filing of a completed renewal application or a late renewal application shall extend the current license until a decision is made on the renewal.

C. A licensee whose license expires shall not distribute or sell retail marijuana or retail marijuana products until all necessary new licenses have been obtained.

**5.09.140 - Authority to impose conditions on license.**

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 Chapter and applicable law.

**5.09.150 - Annual Operations fee.**

Upon issuance of a license or any renewal of a license, the licensee shall pay to the City a fee in an amount determined by the City, by separate resolution, to be sufficient to cover the annual cost of regulating retail marijuana stores and testing facilities, including, without limitation, inspections, administration, and enforcement conducted pursuant to Section 5.91.260 of this Chapter by the Manitou Springs Police Department, and such other departments of the City as may be designated by the local licensing authority, for the purpose of determining compliance with the provisions of this Chapter and any other applicable state or local laws or regulations.

**5.09.160 - Display of license.**

- A. Each license shall be limited to use at the premises specified in the application for such license.
- B. Each license shall be continuously posted in a conspicuous location at the retail marijuana store or testing facility.

**5.09.170 - Transfer of ownership; change of location.**

- A. **Transfer of Ownership.** For a transfer of ownership, a license holder shall apply to the local licensing authority on forms provided by the state licensing authority. In considering whether to permit a transfer of ownership, the local licensing authority shall consider only the requirements of this Chapter, the Colorado Retail Marijuana Code, and the regulations promulgated in conformance therewith. The local licensing authority may hold a hearing on the application for a transfer of ownership, but such hearing shall not be held until a notice of such hearing has been posted on the premises of the licensed retail marijuana store or retail marijuana testing facility for a period of at least ten (10) days prior to such hearing, and the applicant has been provided at least ten (10) days prior notice of such hearing.
- B. **Change of Location.** Licensees from other jurisdictions may not transfer their licenses to the City of Manitou Springs. Licensees with a permanent retail store or testing facility in the City may transfer their license to another location within the City so long as the applicant and the new location conform to the requirements of this Chapter, including the requirement that the location be reviewed as a conditional use, pursuant to Section 5.09.110(C).

**5.09.180 - Hours of operation.**

A retail marijuana store may open no earlier than 8:00 a.m. and shall close no later than 9:00 p.m. the same day. A retail marijuana business may be open seven (7) days a week. There shall be no hourly restrictions on retail marijuana testing facilities.

**5.09.190 - Signage and advertising.**

All signage and advertising for a retail marijuana store shall comply with all applicable state laws, as well as, the provisions of this Chapter and other applicable provisions of the Manitou Springs Municipal Code, including Chapter 15.16 of the Manitou Springs Municipal Code. Advertisements, signs, displays or other promotional material depicting retail marijuana uses or symbols shall not be shown or exhibited off the premises; or in any manner which is visible to the public from roadways, pedestrian sidewalks or walkways, or from other public areas. No signage associated with a retail marijuana store shall use the word "marijuana," "cannabis," or any other word or phrase commonly understood to refer to marijuana, unless such word or phrase is immediately preceded by the word "retail"; provided that no signage shall contain words such as "reefer," "ganja," "weed" or other similar slang references to marijuana or cannabis.

**5.09.200 - Security requirements.**

A. Security measures at retail marijuana stores shall include at a minimum the following:

1. Security surveillance cameras installed to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises;
2. Robbery and burglary alarm systems which are professionally monitored and maintained in good working condition;
3. A locking safe permanently affixed to the premises that is suitable for storage of all marijuana and cash stored overnight on the licensed premises;
4. Exterior lighting that illuminates the exterior walls of the licensed premises and complies with applicable provisions of this Chapter and other applicable provisions of the Manitou Springs Municipal Code; and
5. Deadbolt locks on all exterior doors.

B. All security recordings shall be preserved for at least forty (40) days by the licensee and shall be in a format that can be easily accessed for viewing by Manitou Springs Police Department upon request for inspection.

**5.09.210 - Required notices.**

A. There shall be posted in a conspicuous location inside each retail marijuana store, at least one legible sign containing the following warnings:

1. That on-site consumption of marijuana is illegal;
2. That the open and public consumption of marijuana in the City of Manitou Springs is illegal, and that individuals consuming marijuana within the City in parks, on sidewalks and streets, or at other public locations will risk criminal prosecution;
3. That the use of marijuana or marijuana products 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;
4. That loitering in or around a retail marijuana store is prohibited by law;
5. That possession and distribution of marijuana is a violation of federal law; and
6. That no one under the age of twenty-one (21) years is permitted on the premises.

B. There shall be, posted in a conspicuous location at the exterior of each retail marijuana store near the entrance, one (1) legible sign warning that the facility is monitored by video cameras.

**5.09.220 - On-site consumption of marijuana.**

The use, consumption, ingestion or inhalation of retail marijuana or retail marijuana products on or within the premises of a retail marijuana store or retail marijuana testing facility is prohibited.

**5.09.230 - Visibility of activities; paraphernalia; control of emissions.**

A. All activities of retail marijuana stores or retail marijuana testing facilities shall be conducted indoors.

B. 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 retail marijuana store. No retail marijuana or paraphernalia shall be displayed or kept in a retail marijuana store so as to be visible from outside the licensed premises.

C. Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting a retail marijuana store or retail marijuana testing facility must be provided at all times. In the event that any odors, debris,

dust, fluids or other substances exit a retail marijuana store or retail marijuana testing facility, 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.

D. Retail marijuana testing facilities are prohibited from selling retail products.

**5.09.240 - Disposal of marijuana byproducts.**

The disposal of marijuana, marijuana products, byproducts and paraphernalia shall be done in accordance with plans and procedures approved in advance by the local licensing authority.

**5.09.250 - Business license required.**

At all times while a permit is in effect the licensee shall possess a valid business license as required by this Code.

**5.09.260 - Sales tax.**

Each licensee shall collect and remit City sales tax on all retail marijuana, retail marijuana products, paraphernalia and other tangible personal property sold by the licensee.

**5.09.270 - Inspection of licensed premises.**

During all business hours and other times of apparent activity, all licensed premises shall be subject to inspection by the local licensing authority, the Manitou Springs Police Department, by law enforcement officers, or such other departments or individuals duly authorized by the City for the purpose of investigating and determining compliance with the provisions of this Chapter and any other applicable state and local laws or regulations. Said inspection may include, but need not be limited to, the inspection of books, records and inventory. Where any part of the licensed premises consists of a locked area, such area shall be made available for inspection, without delay, upon request.

**5.09.280 - Nonrenewal, suspension or revocation of license.**

A. The local licensing authority may, after notice and hearing, suspend, revoke or refuse to renew a license for good cause, including suspension or revocation of the licensee's license. The local licensing authority is authorized to adopt rules and procedures governing the conduct of such hearings.

B. The local licensing authority may, in its discretion, revoke or elect not to renew any license if it determines that the licensed premises has been inactive, without good cause, for at least three months.

**5.09.290 - Violations and penalties.**

In addition to the possible denial, suspension, revocation or nonrenewal of a license under the provisions of this Chapter, any person, including, but not limited to, any licensee, manager or employee of a retail marijuana store or retail marijuana testing facility, or any customer of such business, who violates any of the provisions of this Chapter, shall be subject to the following penalties:

1. Any person convicted of having violated any provision of this Chapter shall be punished as set forth in Chapter 1.16 of the Manitou Springs Municipal Code.

2. The operation of a retail marijuana establishment without a valid license issued pursuant to this Chapter may be enjoined by the City in an action brought in a court of competent jurisdiction, including the Manitou Springs Municipal Court.

3. The operation of a retail marijuana establishment without a valid license issued pursuant to this Chapter is also specifically determined to be a public nuisance pursuant to Chapter 6.08 of the Manitou Springs Municipal Code.

**5.09.300 - No City liability; indemnification.**

A. By accepting a license issued pursuant to this Chapter, the licensee waives and releases the City, 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 retail marijuana store or retail marijuana testing facility owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations.

B. By accepting a license issued pursuant to this Chapter, all licensees, jointly and severally, if more than one, agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, attorneys, agents, insurers and self-insurance pool against all liability, claims and demands on account of any 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 arising out of or in any manner connected with the operation of the retail marijuana store or retail marijuana testing facility that is the subject of the license.

**5.09.310 - No waiver of governmental immunity.**

In adopting this Chapter, the City Council is relying on, and does not waive or intend to waive, by any provision of this Chapter, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq., as from time to time amended, or any other limitation, right, immunity, or protection otherwise available to the City, its officers or its employees.

**5.09.320 - Other laws remain applicable.**

A. To the extent the State has adopted or adopts in the future any additional or stricter law or regulation governing the sale, distribution or testing of retail marijuana or retail marijuana products, the additional or stricter regulation shall control the establishment or operation of any retail marijuana store or retail marijuana testing facility in the City. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any license under this Chapter, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

B. Any licensee may be required to demonstrate, upon demand by the local licensing authority, the Manitou Springs Police Department, by law enforcement officers, or such other departments or individuals duly authorized by the City, that the source and quantity of any marijuana found upon the licensed premises are in full compliance with any applicable state law or regulation.

C. If the State prohibits the sale or other distribution of marijuana through retail marijuana stores or the testing of marijuana through retail marijuana testing facilities, any license issued hereunder shall be deemed immediately revoked by operation of law, with no ground for appeal or other redress on behalf of the licensee.

D. The issuance of any license pursuant to this Chapter shall not be deemed to create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the cultivation, possession, sale, distribution or use of marijuana.

**5.09.330 - Rules and regulations.**

The City Administrator shall have the authority from time to time to adopt, amend, alter and repeal administrative rules and regulations, and file the same with the City Clerk, as may be necessary for the proper administration of this Chapter.

**5.09.340 - Judicial review.**

In accordance with Article 18, § 16 of the Colorado Constitution, decisions by the local licensing authority are subject to judicial review.

## **CHAPTER 5.10 - NON-CIGARETTE TOBACCO PRODUCT LICENSING ORDINANCE**

### **5.10.010 - Short title.**

This Chapter shall be known and may be cited as the "Non-cigarette Tobacco Product Licensing Ordinance."

### **5.10.020 - Purpose.**

Recognizing the harmful effects of tobacco products on persons under the age of eighteen (18) and that the sale of tobacco products to persons under the age of eighteen (18) is illegal pursuant to Section 121 of Chapter 13 of Title 18, C.R.S., it is the purpose of this Chapter to:

- A. Require that sellers of non-cigarette tobacco products operate in a manner that does not condone the selling of non-cigarette tobacco products to persons under the age of eighteen (18) years of age;
- B. Regulate sellers of non-cigarette tobacco products to reduce the likelihood of selling such products to persons under the age of eighteen (18) years of age; and
- C. Establish a licensing system within the City of Manitou Springs for the sale of non-cigarette tobacco products which encourages sellers of non-cigarette tobacco products to follow the law as it relates to the prohibition of selling non-cigarette tobacco products to persons under the age of eighteen (18) years.

### **5.10.030 - Definitions.**

A. As used in this Chapter, the following words shall have the following meanings, unless the context clearly requires otherwise:

- 1. "Cigarette" means any product that contains tobacco or nicotine, that is intended to be burned or heated under ordinary conditions of use, and consists of or contains: (1) any roll of tobacco or tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco in any form that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette. The term includes all "roll-your-own", i.e., any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by consumers as tobacco for making cigarettes.

2. "Department" means the City of Manitou Springs Police Department, and any agency or person designated by the City Administrator to enforce or administer the provisions of this Chapter.

3. "License" refers to the non-cigarette tobacco product retailer license.

4. "Licensee" means the owner or holder of a non-cigarette tobacco product retailer license.

5. "Non-cigarette tobacco product" includes: 1) any product, other than a cigarette, that contains tobacco or nicotine or is made or derived from tobacco that is intended or expected to be ingested, smoked, inhaled, placed in oral or nasal cavities, or applied to the skin of an individual; or (2) any electronic device that can be used to deliver nicotine or tobacco to the person using the device, including, but not limited to, an electronic cigarette, cigar, cigarillo or pipe. The term "non-cigarette tobacco product" does not include any product specifically approved by the United States Food and Drug Administration for use in reducing, treating or eliminating nicotine or tobacco dependence, or for other medical purposes, when such product(s) is being marketed and sold solely for such an approved purpose.

6. "Non-cigarette tobacco product retail location" means any area of the premises where non-cigarette tobacco products are sold or distributed to a consumer including, but not limited to, the grounds occupied by a retailer and any store, stand, outlet, vehicle, cart, location, vending machine or structure where non-cigarette tobacco products are sold.

7. "Non-cigarette tobacco product retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, a non-cigarette tobacco product.

8. "Non-cigarette tobacco product retailing" means the selling, offering for sale, or exchanging for any form of consideration a non-cigarette tobacco product.

9. "Self-service display" means the open display or storage of non-cigarette tobacco products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and without a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

10. "Vending machine" shall mean any mechanical, electrical, or electronic self-service device which, upon insertion of money, tokens, or any other form of payment, dispenses product.

#### **5.10.040 - Requirements and prohibitions.**

A. Non-cigarette tobacco product retailer license required.

1. It shall be unlawful for any person to act as a non-cigarette tobacco product retailer in the City of Manitou Springs without first obtaining and maintaining a valid non-cigarette tobacco product retailer license pursuant to this Chapter for each location where non-cigarette tobacco product retailing occurs.

2. No license may be issued to authorize non-cigarette tobacco product retailing anywhere other than at a fixed location. Non-cigarette tobacco product retailing by persons on foot or from vehicles is prohibited.

3. Non-cigarette tobacco product retailing without a valid non-cigarette tobacco product retailer license is a nuisance as a matter of law.

B. Lawful Business Operation. In the course of non-cigarette tobacco product retailing or in the operation of the business or maintenance of the location for which a license is issued, it shall be a violation of this Chapter for a licensee, or any of the licensee's agents or employees, to violate any local, state, or federal law applicable to the sale of non-cigarette tobacco products.

C. Display of License. Each non-cigarette tobacco product retailer license shall be prominently displayed in a publicly visible location at the licensed non-cigarette tobacco product retail location.

D. Other Prohibitions.

1. A non-cigarette tobacco product retail location may only have one (1) active license at one time.

2. In the event a license is revoked for a particular non-cigarette tobacco product retail location, no new license shall issue for such location for a period of one (1) year following the revocation.

3. No license shall be issued to any person under eighteen (18) years of age.

**5.10.050 - Conditions of the non-cigarette tobacco product retailer license.**

The following conditions shall apply to the licensee:

1. Self-service displays prohibited. Non-cigarette tobacco product retailing by means of a self-service display is prohibited.

2. Requirements of positive identification. No person engaged in non-cigarette tobacco product retailing shall sell or transfer a non-cigarette tobacco product to another person who appears to be under the age of thirty (30) years without first examining the identification of the recipient to confirm that the

recipient is at least the minimum age under state law to purchase and possess the non-cigarette tobacco product.

**5.10.060 - Application procedure.**

A. An application for a license shall be submitted and signed in the name of each proprietor or an authorized agent thereof. It is the responsibility of each proprietor to be informed regarding all laws applicable to tobacco retailing, including those laws affecting the issuance of said license. No proprietor may rely on the issuance of a license as a determination by the City that the proprietor has complied with all applicable tobacco retailing laws.

B. All applications shall be submitted on a form supplied by the City.

C. A licensed non-cigarette tobacco product retailer shall inform the City in writing of any change in the information submitted on an application for a license within thirty (30) business days of a change.

**5.10.070 - Issuance of a non-cigarette tobacco product license.**

Upon the receipt of a completed application for a non-cigarette tobacco product retailer license as required by this Chapter, the City Administrator shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

1. The information presented in the application is incomplete, inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this Chapter;

2. The applicant seeks authorization for a license and the applicant's current license is suspended or revoked; or

3. The applicant is under eighteen (18) years of age.

**5.10.080 - License term; renewal; expiration.**

A. Term of License. The term of a non-cigarette tobacco product retail license is one (1) year. A license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired.

B. Renewal of License. Each licensee shall apply for the renewal of the license and submit the license fee no later than thirty (30) days prior to expiration of the one-year term.

C. Expiration of License. A license that is not timely renewed shall expire at the end of its term. To renew a license not timely renewed pursuant to subparagraph (A), the proprietor must submit a new application form and license fee and shall

not sell any non-cigarette tobacco products after the license expiration date and before the new license is issued.

**5.10.090 - Non-transferable.**

A. A license may not be transferred from one person to another or from one location to another. A new license is required whenever a non-cigarette tobacco product retailing location has a change in proprietor(s).

B. When a 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 for the remainder of the term of that license. All rights and privileges granted under the original license shall continue in full force and effect as to such survivors for the balance of term of the license.

**5.10.100 - Fee for license.**

The fee to issue or to renew a license shall be established from time to time by resolution of the City Council. The fee shall be calculated so as to recover the cost of administration and enforcement of this Chapter. Fees are nonrefundable except as may be required by law.

**5.10.110 - Compliance monitoring.**

A. Compliance with this Chapter shall be monitored by the Department. Any peace officer may enforce this Chapter.

B. The Department shall not enforce any law establishing a minimum age for tobacco product purchases or possession against a person who otherwise might be in violation of such law because of the person's age (hereinafter "youth decoy") if the potential violation occurs when:

1. The youth decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the Department;

2. The youth decoy is acting as an agent of a person designated by the City to monitor compliance with this Chapter; or

3. The youth decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the El Paso County Department of Health and Environment or the Colorado Department of Health and Environment.

C. A licensee shall comply with the Department when compliance checks are being conducted. A licensee's failure to comply with the reasonable lawful requests and demands of the Department during the course of a compliance check shall be considered to be a violation of the license, and the licensee shall be penalized according to Section 5.89.110(A).

### **5.10.120 - Penalties and fines.**

A. Licensees: penalties and fines. In addition to any other penalty authorized by law, a licensee shall be penalized according to this paragraph if the municipal court determines, based on a preponderance of the evidence, after the licensee is afforded notice and an opportunity to be heard, that the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of this Chapter, or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law relating to the sale of tobacco to minors including but not limited to C.R.S. §§ 18-13-121 and 24-35-503. Each such violation shall be subject to the following penalties:

1. One (1) violation within one (1) year: a fine not to exceed one hundred dollars (\$100.00).

2. Two (2) violations within one (1) year: a fine not to exceed two hundred dollars (\$200.00) and a mandatory suspension of license for up to seven (7) days.

3. Three (3) violations within one (1) year: a fine not to exceed three hundred dollars (\$300.00) and a minimum ten-day and maximum thirty-day suspension of license.

4. Four (4) violations within one (1) year: a fine not to exceed four hundred ninety-nine dollars (\$499.00) and revocation of license. A licensee whose license has been revoked shall not be issued a new license until a period of one (1) year has passed from the date the revocation occurred. The revocation of a licensee's license at one location shall not affect the status of other licenses the licensee holds at separate locations.

5. Licensees are prohibited from selling non-cigarette tobacco products when the license has been suspended or revoked at the location subject to the suspension or revocation.

B. Sales of non-cigarette tobacco products with a suspended license, revoked license, or without a license: penalties and fines. Any non-cigarette tobacco product retailer found to have sold a non-cigarette tobacco product without a license as mandated under this Chapter, or with a suspended or revoked license, shall be fined up to four hundred ninety-nine dollars (\$499.00) for each separate non-cigarette tobacco product sold during the period of non-compliance with this Chapter.

C. Any other violation of the provisions of this Chapter shall subject the offender to a fine of up to one hundred dollars (\$100.00).

### **5.10.130 - Enforcement.**

A. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

B. Violations of this Chapter are subject to a civil action in municipal court punishable by a civil fine, license suspension or revocation, or both pursuant to Section 5.10.110.

C. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall cause the offender to be subject to a fine not to exceed one hundred dollars (\$100.00).

D. Violations of this Chapter are hereby declared to be public nuisances.

**5.10.140 - Compliance with C.R.S. § 39-22-623.**

This Chapter does not, nor shall not, be construed in any way as imposing a fee, license or tax as a condition for engaging in the business of selling cigarettes or imposing a tax on cigarettes. The non-cigarette tobacco product retailer license does not apply to the sale of cigarettes. If any part of this Chapter is found to impose a fee, license, or tax as a condition for engaging in the business of selling cigarettes, then that part shall be deemed void.

**Chapter 5.11 - RESTRICTIONS ON YOUTH ACCESS TO TOBACCO PRODUCTS**

**5.11.010 - Short title.**

This Chapter shall be known and may be cited as the "Youth Access to Tobacco Products Ordinance."

**5.11.020 - Purpose.**

Recognizing the harmful effects of tobacco products on persons under the age of eighteen (18) and that the sale of tobacco products to persons under the age of eighteen (18) is illegal pursuant to Section 121 of Chapter 13 of Title 18, C.R.S., it is the purpose of this Chapter to:

1. Require sellers of tobacco products to operate in a manner that does not condone the selling of tobacco products to persons forbidden by law from purchasing such products;

2. Regulate sellers of tobacco products to reduce the likelihood of selling such products to persons under the legal age for purchasing tobacco; and

3. Regulate sellers of tobacco products to reduce the likelihood that such sellers' employees under the legal age to purchase tobacco products are restricted from accessing all tobacco products.

### **5.11.030 - Definitions.**

A. As used in this Chapter, the following words shall have the following meanings:

1. "Retail tobacco business" means a sole proprietorship, corporation, limited liability company, partnership, or other enterprise engaged primarily in the sale, manufacture, or promotion of tobacco, tobacco products, or smoking devices or accessories, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is less than five percent (5%) gross sales receipts. For purposes of enforcement of this Chapter, retail tobacco business includes, but is not limited to, a sole proprietorship, corporation, limited liability company or other enterprise engaged primarily in the sale or manufacture of hookah or shisha products and related smoking products, including, but not limited to, any plant or other organic matter packaged for smoking or held out as a smoking product, or any sole proprietorship, corporation, limited liability company, partnership, or other enterprise engaged in the promotion of hookah or shisha smoking, sometimes referred to as a hookah bar, café, or lounge.

2. "Tobacco product" includes (1) any product that contains tobacco or nicotine, or is made or derived from tobacco that is intended or expected to be ingested, smoked, inhaled, placed in oral or nasal cavities, or applied to the skin, or (2) any electronic device that can be used to deliver nicotine or tobacco to the person using the device, including, but not limited to, an electronic cigarette, cigar, cigarillo or pipe. The term "tobacco product" does not include any product specifically approved by the United States Food and Drug Administration for use in reducing, treating or eliminating nicotine or tobacco dependence, or for other medical purposes, when such product(s) is being marketed and sold solely for such an approved purpose.

3. "Self-service display" means the open display or storage of tobacco products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

4. "Vending machine" shall mean any mechanical, electrical, or electronic self-service device which, upon insertion of money, tokens, or any other form of payment, dispenses product.

### **5.11.040 - Minimum age for persons selling and handling tobacco products.**

No person in the course of employment who is younger than the minimum age established by the laws of Colorado for the purchase of tobacco products shall sell, stock, retrieve, or otherwise handle tobacco products.

### **5.11.050 - Positive identification required.**

No person shall sell or transfer a tobacco product to another person who appears to be under the age of thirty (30) years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under the laws of Colorado to purchase and possess tobacco products.

**5.11.060 - No minors permitted in a retail tobacco business.**

No person who is younger than the minimum age established by the laws of Colorado for the purchase of tobacco products shall be admitted to or be on the premises of a Retail Tobacco Business unless accompanied by his or her parent or guardian.

**5.11.070 - Prohibition of self-service displays.**

Retailers shall stock and display all tobacco products in a manner so as to make all such products inaccessible to customers without the assistance of a retail clerk, thereby requiring a direct face-to-face exchange of the tobacco product from an employee of the business to the customer.

**5.11.080 - Penalty for violations.**

- A. Any retail establishment or adult found to be in violation of any provision of this Chapter shall be subject to a fine of up to three hundred dollars (\$300.00).
- B. Any minor found to be in violation of any provision of this Chapter shall be subject to a fine of up to one hundred dollars (\$100.00). Within the discretion of the court, this fine may be made payable at a rate of five dollars (\$5.00) an hour for services provided to the City of Manitou Springs by the offending minor.

**Section 2:** Title 6 of the Manitou Springs Municipal Code shall be amended by the addition of a new subsection 6.27 as follows:

**Chapter 6.27 - RESIDENTIAL WASTE/RECYCLABLES COLLECTION PROGRAM**

**6.27.010 - Purpose and authority.**

The purpose of the residential waste/recyclables collection program is to promote public health, safety and welfare by reducing the number of collection vehicles on public roadways, providing reliable weekly pickup of waste/recyclables and increasing recycling levels by creating a convenient, standardized curbside recycling program. The residential waste/recyclables collection program is part of the City's overall efforts to lower its carbon footprint and will ultimately extend the life of the area's landfills and promote efficient use of our natural resources.

In enacting this program, the City is acting under C.R.S. § 30-15-401(7.5), which authorizes the City to require the use of a single residential waste services provider and to impose a user fee for the provision of such services. The scope of this Chapter is limited solely to residential waste services. Nothing within this Chapter shall be construed to apply to providers of nonresidential waste services, delivery vehicles, or other uses of City streets and rights-of-way.

**6.27.020 - Definitions.**

For the purposes of this Chapter, the following terms shall have the following meanings:

- A. "City" means the City of Manitou Springs, Colorado.
- B. "Collection bin" means a container utilized by the City's contractor in the performance of the terms and conditions of their contract with the City for the collection of waste/recyclables.
- C. "Contractor" means the person or corporation holding a contract with the City to perform waste/recyclables collection services within the City.
- D. "Participant" means all residents of dwellings of seven units or less of the City that elect to participate in the program.
- E. "Recyclables" means aluminum/tin cans, plastics 1-7, cardboard, glass and paper including: newspaper, magazines, and junk mail and other materials mutually agreed to by the contractor and the City.
- F. "Residential waste services" shall mean the collection and transportation of ashes, trash, waste, rubbish, garbage or industrial waste products, or any other discarded materials from sources other than industrial or commercial establishments or multifamily residences of eight (8) or more units.
- G. "Waste" means ashes, trash, rubbish, garbage or industrial waste products, or any other discarded materials from sources other than industrial or commercial establishments or multifamily residences of eight (8) or more units.

**6.27.030 - Participation in program.**

- A. All areas of the City are subject to a single residential waste services provider requirement pursuant to C.R.S. § 30-15-401(7.5), and the provision of residential waste services by any person other than the City's approved residential waste services provider is prohibited.
- B. Waste/recyclables may be placed curbside in the collection bins for collection by the contractor on their scheduled pickup date. It is unlawful to place or leave in the public right-of-way any waste/recyclables, or collection bins for a period greater than twenty-four hours proceeding the scheduled day of collection.

Collection bins shall be removed within twelve hours following collection of the recyclable materials.

C. It is unlawful for any person to intentionally place, in any collection bin, anything other than the appropriate collection materials, and to place that collection bin at curbside for collection.

**6.27.040 - Mandatory program costs.**

A. All participants shall pay the fees for residential waste/recyclables collection as set forth in the agreement between the City and the contractor, unless exempted pursuant to Section 5.84.050. These fees include contractor collection charges as well as a City fee. The City fee shall be for City expenses relating to the residential waste services, including, without limitation, administering the agreement with the contractor, enforcing the provisions of this Chapter, and maintaining the public rights-of-way used for the provision of residential waste services.

B. All accounts shall be kept in the name of the owner of the property or his legally authorized agent, who shall be held responsible for collection payments. In cases where an owner may rent his property, any agreement made between such property owners and a tenant shall not be binding upon the City and shall not relieve the property owner of this responsibility. All statements for waste/recyclables collection shall be mailed to the address of the property receiving service with the name of the owner and/or tenant unless the property owner has, in writing, notified the contractor that statements should be mailed to the name and address of a duly authorized agent.

**6.27.050 - Exemption from waste/recyclables collection program.**

Residents may elect not to receive residential waste/recyclables collection service and thus shall be exempted from the program. Non-participants shall be exempt from contractor collection charges and the City fee. Non-participants may not contract residential waste collection services with another provider.

**6.27.060 - Penalty provisions.**

It is unlawful for any person to fail to comply with the terms of this Chapter. Any person convicted of violating any provisions of this Chapter shall be punished pursuant to Section 1.01.100 of this Code. All amounts not paid within thirty days of notice by the Contractor will result in discontinuation of residential waste/recyclables collection services.

**Section 3:** The following definition in Section 18.060.010 of the Manitou Springs Municipal Code shall be amended as follows:

"Dual operation" means a business that operates as both a licensed medical marijuana center and a licensed retail marijuana store in accordance with Section 5.09.100 of City Code.

**Section 4:** If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

**Section 5:** This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Passed on first reading and ordered published this 2<sup>nd</sup> day of May, 2017.

/s/ Donna Kast  
City Clerk, Donna J. Kast

A Public Hearing on this ordinance will be held at the May 16, 2017, City Council meeting. The Council Meeting will be held at 6:00 P.M. at City Hall, 606 Manitou Avenue, Manitou Springs, Colorado.

Ordinance Published: May 4, 2017 (in full)  
*City's Official Website and City Hall*

Passed on second reading and adopted by City Council this 16<sup>th</sup> day of May, 2017.

/s/ Nicole Nicoletta  
Mayor, Nicole Nicoletta

Attest: /s/ Donna Kast  
City Clerk, Donna Kast

Ordinance Published: May 18, 2017 (in full)  
*City's Official Website and City Hall*