

## TOWN OF NEDERLAND, COLORADO

## ORDINANCE NUMBER 739

## AN ORDINANCE AMENDING SECTIONS 6-284 AND 6-286 AND SUBSECTION 16-32(C) OF THE NEDERLAND MUNICIPAL CODE, TO ELIMINATE THE ALLOWANCE OF LICENSED MARIJUANA CULTIVATION AND TESTING FACILITIES IN RESIDENTIAL ZONE DISTRICTS BY SPECIAL REVIEW

**WHEREAS**, pursuant to C.R.S. § 31-23-301, the Board of Trustees (“Board”) of the Town of Nederland, Colorado (“Town”) possesses the authority to create regulations and restrictions concerning planning and zoning within the Town; and

**WHEREAS**, the Planning Commission has made certain recommendations to the Board of Trustees regarding amendments to the Town’s zoning regulations, specifically the allowance of marijuana cultivation and testing facilities in residential zone districts; and

**WHEREAS**, after due and proper notice as required by C.R.S. §§ 31-23-304 and 305, the Board of Trustees conducted a public hearing on this ordinance on January 5, 2016, as required by law because the same amends the Town’s zoning regulations; and

**WHEREAS**, the Board finds and determines that it is desirable to amend the Town’s existing zoning and licensing regulations to prohibit the establishment and operation of licensed commercial marijuana cultivation and testing facilities in residential zone districts, specifically finding that such prohibition would *not* affect an individual’s right or ability to cultivate and possess marijuana in residential districts for personal use, within the limitations imposed by all applicable law.

**NOW THEREFORE, BE IT ORDAINED** by the Board of Trustees of the Town of Nederland, Colorado, as follows:

**Section 1.** The above and foregoing recitals are adopted as specific findings of the Board of Trustees.

**Section 2.** Section 6-284 of the Nederland Municipal Code, concerning Place of Operation of Marijuana Establishments, is hereby amended as follows:

**Sec. 6-284. Place of operation.**

(a) No marijuana establishment shall be located at a location that does not conform to the requirements of this Section, except as provided in Subsection (h) of this Section (see Section 16-32 of this Chapter).

(b) No retail marijuana store shall be located except within zoning areas Neighborhood Commercial (NC), General Commercial (GC) and Central Business District (CBD).

(c) No marijuana product manufacturing facility shall be located except in zoning areas General Commercial (GC) and Industrial (I).

(d) No marijuana testing facility shall be located except in zoning areas ~~Residential (MR, LDR, MDR and HDR)~~, Neighborhood Commercial (NC) as a special review use, Central Business District (CBD), General Commercial (GC) and Industrial (I).

(e) No marijuana cultivation facility shall be located except in zoning areas Forestry (F), ~~Residential (MR, LDR, MDR and HDR)~~, Neighborhood Commercial (NC), Central Business District (CBD), General Commercial (GC) and Industrial (I).

(f) A cultivation facility may be located in ~~residential zoning as a licensed home occupation with an approved special review use permit, pursuant to Sections 16-32 and 16-76 of this Code~~ and in the Central Business District (CBD) and the Neighborhood Commercial (NC) District as a special review use (See Section 6-32 of this Chapter).

(g) ~~A marijuana testing facility may be located in residential zoning as a licensed home occupation with an approved special review use permit, pursuant to Sections 16-32 and 16-76 of this Code.~~

(h) — In addition to the zone district restrictions imposed by Subsections (b) through (g) above, no retail marijuana store shall be located:

(1) Within one hundred (100) feet of a licensed child care facility;

(2) Within one hundred (100) feet of any educational institution or school, college or university, either public or private;

(h i) The distances described in Subsection (h) shall be computed by direct measurement from the primary entrance of the structure used for child care, educational institution or school, college, university purposes to the primary entrance of the structure used for a retail marijuana store using a route of direct pedestrian access.

(i j) Each marijuana establishment shall be operated from a permanent and fixed location. No marijuana establishment shall be permitted to operate from a moveable, mobile or transitory location.

(j k) A person who holds both a business license pursuant to Article 43.3 of Title 12, C.R.S., and a business license pursuant to this Article may operate both licenses in the same premises provided they meet all applicable the requirements of the CRMC and of this Article.

(k l) The suitability of a location for a marijuana establishment shall be determined upon receipt of an application by certified mail. The fact that changes in the neighborhood that occur after the initial issuance of the license might render the site unsuitable for a marijuana establishment under this Section shall not be grounds to suspend, revoke or refuse to renew the license for such an establishment so long as the license for the establishment remains active.

**Section 3.** Subsection 6-286(10) of the Nederland Municipal Code, concerning certain unlawful acts, is hereby amended as follows:

(10) It shall be unlawful for any person to extract marijuana concentrates using any industrial grade solvents such as but not limited to butane, diethyl ether, hexane, naphtha, petroleum ether, propane or natural gas or super critical CO2 on any property zoned residential ~~unless authorized by a special review use pursuant to Section 6-284 of this Article.~~ This shall not apply to food grade ethanol. All extraction equipment in contact with solvents must be food grade stainless steel or glass.

**Section 4.** Subsection 16-32(c) of the Nederland Municipal Code, concerning Zoning Use Groups, is hereby amended by amending the “Marijuana Establishment Use Groups” portion of the Use Group Table, and the footnotes set forth under said Table, as follows:

USE GROUPS	DISTRICTS						
	F	MR LDR MDR HDR	NC	CBD	GC	I	P <sup>7</sup>
<i>Marijuana Establishment Use Groups:</i>							
Marijuana cultivation facility	Y	R <sup>9</sup> N	R	R	Y	Y	N
Marijuana product manufacturing facility	N	N	N	N	Y	Y	N
Marijuana testing facility	N	R <sup>9</sup> N	R	Y	Y	Y	N
Retail marijuana store	N	N	R	Y	Y	N	N
Medical marijuana center	N	N	Y	Y	Y	N	N
Medical marijuana optional premises for cultivation	N	N	Y	R	Y	Y	N
Medical marijuana infused product facility	Y	N	N	Y	Y	Y	N

"N" = use groups prohibited

"R" = use groups permitted by special review

"Y" = use groups permitted outright

Footnotes:

1 Private horse stables shall be permitted in the MR district only by special review. They shall not be permitted in the LDR, MDR or HDR districts.

2 One dwelling unit shall be permitted per property (contiguous properties in single ownership shall constitute one property) so long as the residential use is clearly incidental to the principal use.

3 Multi-family units proposed for development on a parcel or parcels that total 1 acre or more in size shall be required to meet the requirements of Section 16-152 of this Chapter.

4 These uses shall be permitted only in the HDR district through special review and as otherwise regulated by local ordinances and state statutes.

5 There must be a public hearing prior to issuing a building permit for any new facilities relying upon this use group.

6 For a multi-level structure, all of the street frontage on the street level, including at least 30% of the use abutting the street, shall be used for commercial and/or office uses only. For a single-level structure in the CBD and GC zoning districts, at least 30% of the total use shall be commercial and/or office uses, including all of the street frontage.

7 Uses permitted in this zone district must be publicly owned.

8 Caretaker units only.

~~9 A marijuana cultivation facility is permitted in the residential zoning areas as a home occupation, under the special review use permit process.~~

**Section 5.** Should any one or more sections or provisions of this Ordinance or of the Code provisions enacted hereby be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance or of such Code provision, the intention being that the various sections and provisions are severable.

**Section 6.** Any and all Ordinances or Codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such Ordinance or Code or part thereof shall not revive any other section or part of any Ordinance or Code provision heretofore repealed or superseded.

**INTRODUCED, ADOPTED AND ORDERED PUBLISHED THIS 5th DAY OF January, 2016.**

**TOWN OF NEDERLAND, COLORADO**

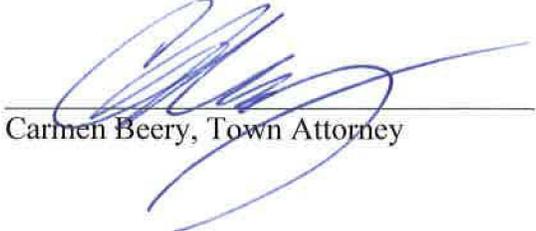
  
\_\_\_\_\_  
Joe Gierlach, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Laura Jane Baur, Town Clerk



**APPROVED AS TO FORM:**

  
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Carmen Beery, Town Attorney