

TOWN OF DOLORES, COLORADO

ORDINANCE NO. 547-Series 2020

AN ORDINANCE AMENDING THE LAND USE CODE OF THE TOWN OF DOLORES (DOLORES LAND USE CODE) FOR THE PURPOSES OF AMENDING SPECIFIC ZONE DISTRICTS, USES, AND STANDARDS TO ENSURE CONSISTENCY WITH THE TOWN OF DOLORES MARIJUANA CODE

WHEREAS, the Town of Dolores is a statutory town and the Town Trustees are empowered to adopt such ordinances as are necessary and convenient to protect the health, safety and welfare of the community, and,

WHEREAS, pursuant to C.R.S. § 31-23-301, the Town possesses the authority to zone, rezone, change, supplement, and revise the zoning classifications or designation of property and to regulate land uses within the Town; and

WHEREAS, by Resolution 2002-138 the Town Council adopted the 2020 Comprehensive Master Plan (Comprehensive Plan) and Land Use Code;

WHEREAS the Town is considering the passage of the Dolores Mariana Code that will regulate the time, place, manner and number of marijuana businesses permitted within the Town;

WHEREAS the Town Trustees find it necessary to protect the health, safety and welfare of the citizens of the Town of Dolores to make certain changes to the Land Use Code consistent with the intent and provisions of provisions of the Dolores Marijuana Code;

WHEREAS, public hearings have been held on this Ordinance before the Planning Commission and Town Trustees as provided by law;

NOW, THEREFORE, IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DOLORES, COLORADO AS FOLLOWS:

SECTION 1. Chapter 5.16 of the Dolores LAND USE CODE is hereby amended as follows. Additions are shown in underline and deletions are shown in ~~strikeout~~:

Article II.B, Definitions, is amended to add:

Marijuana for the purposes of this Article shall have the same meaning as set forth in the Recreational Marijuana Amendment or as may be more fully defined in any applicable State or local law or regulation.

Medical marijuana shall have the same meaning as set forth in Section 44-10-103, C.R.S.

Medical marijuana business shall mean a person holding a medical marijuana center license, as defined in Section 44-10-501, C.R.S.; a medical marijuana-infused products manufacturer license, as defined in Section 44-10-503, C.R.S.; and/or an optional premises cultivation operation license, as defined in Section 44-10-502, C.R.S. For the purposes of this Article, a patient who cultivates, produces, possesses or transports medical marijuana or a primary caregiver who cultivates, produces, sells, distributes, possesses, transports or makes available marijuana in any form to one (1) or more patients shall not be deemed a medical marijuana business .

Medical marijuana center shall have the same meaning as set forth in Section 44-10-103, C.R.S.

Medical marijuana-infused products manufacturer shall have the same meaning as set forth in Section 44-10-103, C.R.S.

Recreational marijuana means any marijuana intended for recreational use which meets all of the requirements for recreational marijuana contained in this Article, the Recreational Marijuana Amendment, and any other applicable State or local law.

Article III.A, District Established is amended as follows:

~~LI Industrial District~~

Article III.C, Use Regulations, Schedule of Use Regulations is amended as follows:

The LI Industrial District is deleted as are all uses assigned to that district.

Marijuana business uses, as regulated by Ordinance 546 Series 2020, are added to the Schedule of Uses as shown below.

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SCHEDULE OF USE REGULATIONS

Use Type	Zoning Districts										
	R-1	LLR	MFR	MH	R-10	R-35	CB-1	CB-2	CH	U	P
Residential Uses											
Apartments (a.)	P		P	P			P	P	P		
Dwelling, single-family	P	P	P	P	P	P	P	P	P		
Dwelling, two-family (b.)	P		P	P					P		
Dwelling, multi-family (c.)			P	P					C		
Dwelling, mobile home (d.)				P							
Mobile home park or subdivision (e.)				P							
Accessory and Temporary Uses											
Accessory use or structure (f.)	P	P	P	P	P	P	P	P	P	P	P
Asphalt or concrete batch plant, temporary (g.)		T						P		T	
Caretaker or guard residence, accessory										P	P
Dwelling unit, accessory (h.)	P	P			P	P	P	P	P		
Field office, temporary (i.)		T	T	T						T	
Home occupation (j.)	P	P	P	P	P	P	P	P	P	P	
Public and Civic Uses											
Charitable, civic, youth, social and fraternal organization		C	P	P			P	P	P	P	P
Church or place of worship	P	P	P	P			P	P	P	P	P
Day care center (for more than six (6) children)	C	C	P	P			P	P	P	P	P
Day care home (for up to six (6) children)	P	P	P	P			P	P	P	P	P
Essential facilities (p.)	P	P	P	P	P	P	P	P	P	P	P
Group home and Assisted Living Facility (k. a,b)	P	P	P	P	P	P			P		
Hospital or clinic	C	C	C	C			P	P	P	P	P

Municipal facilities	P	P	P	P	P	P	P	P	P	P	P
Nursing home							P	P	P		
Park maintenance or storage structures										P	P
Post office							P	P	P	P	P
School (elementary or secondary)	C	C	C		C	C			P		P
Retail, Commercial, and Personal Service Uses											
Animal Pound or Kennel (public or private)											
Bed and breakfast (l.)	P	P	P		P	P	P	P	P		
Boarding or rooming house (l.)	P	P	P					P	P		
Building materials, sales and yard								P	P		
Custom personal services	P	P	P	P	P	P	P	P	P	P	
General retail (indoors) (m.)							P	P	P		
General retail (outdoors)										P	
Hotel or motel							P	P	P		
Office, business or professional							P	P	P	P	P
Recreational vehicle, travel trailer park (n.)		C									
Restaurant, fast food									P		
Restaurant, general							P	P	P		
Street vendor, temporary							T		T		T
Theater							P	P	P		C
Industrial, Communications, Transportation, and Automobile-Related Uses											
Auto repair garage (o.)				C			P	P	P	P	
Bus station or terminal									P	P	
Car wash									P	P	
Gasoline service station									P	P	
Manufacturing, hazardous/ objectionable										€	

Manufacturing, light							C	C	C	P	
Repair services, general								P	P	P	
Repair services, limited							P	P	P	P	
RV and boat storage									P	P	
Telecommunications towers or facilities (p.)					C	C				P	P
Warehouse, commercial or self-storage									P	P	
Medical Marijuana Businesses (per Ordinance 546 Series 2020)											
Medical marijuana centers, optional premises cultivation operation, medical marijuana infused products manufacturing	P	P	P	P	P	P	P	P	P	P	P
Growing medical marijuana by caregivers and patients											
Cultivation Operation							C	C	P		
Infused Products Manufacturing							C	C	P		
Medical Marijuana Center							C	C	P		
Recreational Marijuana Center							C	C	P		
Retail Marijuana Testing Facility							C	C	P		

Article III.C.2.q, Growing Medical Marijuana by Patients and Caregivers, is deleted as follows:

~~q. Growing Medical Marijuana by Patients and Caregivers:~~

~~1. The cultivation, production, or possession of marijuana plants for medical use by a patient or primary caregiver as such terms are defined by Article XVIII, Section 14 of the Colorado Constitution, shall be allowed in residential structures subject to the following conditions:~~

~~(a) — Such cultivation, production, or possession of marijuana plants must be in full compliance with all applicable provisions of Article XVIII, Section 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, C.R.S. §§12-43.3-101 et seq., and the Medical Marijuana Program established by C.R.S. §25-1.5-106; and~~

~~(b) — Such marijuana plants are cultivated, produced, or possessed within a licensed patient's or registered caregiver's primary residence, as defined by paragraph (h) below; and~~

~~(c) — The patient or caregiver must reside in the primary residence where the medical marijuana is grown; and~~

~~(d) — The cultivation, production, or possession of such marijuana plants must not be perceptible from the exterior of the primary residence, including but not limited to:~~

~~(1) — Common visual observation, which also prohibits any form of signage;~~

~~(2) — Unusual odors, smells, fragrances, or other olfactory stimulus;~~

~~(3) — Light pollution, glare, or brightness that disturbs the repose of another;~~

~~(4) — Undue vehicular or foot traffic, including excess parking within the residential zone; and~~

~~(5) — Excess noise from the primary residence which noise is created as a consequence of growing medical marijuana.~~

~~(e) — Such marijuana plants shall not be grown or processed in the common areas of a multi-family or attached residential development; and~~

~~(f) — Such marijuana plants are used exclusively by a licensed patient for the patient's personal use and solely to address a debilitating medical condition; and~~

~~(g) — Such cultivation, production, or possession of marijuana plants shall be limited to the following space limitations within a primary residence:~~

~~1) — Within a single family dwelling unit (Group R-3 as defined by the International Building Code, as adopted in Title 15, Section 15.04.010 of the Dolores Municipal Code: a secure, defined, contiguous 150 square foot area within the primary residence of the licensed patient or registered caregiver.~~

~~2) — Within a multi-family dwelling unit (Group R-2 as defined by the International Building Code, as adopted in title 15 Section 15.04.010 of the Dolores Municipal Code: a secure, defined, contiguous 100 square foot area~~

~~within the primary residence of the patient or registered caregiver.~~

~~(h) — Such cultivation, production, or possession of marijuana plants shall meet the requirements of all adopted Town of Dolores building, life/safety codes and other applicable state electrical and other codes.~~

~~(i) — For purposes of this ordinance, "primary residence" means the place that a person, by custom and practice, makes his or her principle domicile and address and to which the person intends to return, following any temporary absence, such as vacation.~~

~~Residence is evidenced by actual daily physical presence, use, and occupancy of the primary residence and the use of the residential address for domestic purposes, such as, but not limited to, slumber, preparation of and partaking of meals, regular mail delivery, vehicle and voter registration, or credit, water, and utility billing. A person shall have only one primary residence. A primary residence shall not include accessory buildings.~~

~~(j) — For purposes of this ordinance, "a secure" area means an area within the primary residence accessible only to the patient or primary caregiver. Secure premises shall be locked or partitioned off to prevent access by children, visitors, casual passersby, vandals, or anyone not licensed and authorized to possess medical marijuana.~~

~~(k) — If a licensed patient or registered caregiver raises quantities of marijuana requiring more than the square footage limitations of paragraph (g) above, such patient or caregiver must be in full compliance with the Colorado medical marijuana program as provided in C.R.S. §25-1.5-106 (14); and~~

~~(1) — Such patient or caregiver may grow medical marijuana for personal use and solely to address a debilitating medical condition within the zoned districts of the Town; and~~

~~(2) — Such patient or caregiver must submit plans, obtain a building permit, and pass inspections to ensure that the, CBD or C premises are in compliance with the Town of Dolores Building Code, State Electrical Code, Fire Code, and all other relevant life/safety codes in order to obtain a certificate of occupancy from the Town of Dolores Building Division.~~

~~(3) — Such patient or caregiver must ensure that the premises are secure, as defined in paragraph (j) above; however, within the setting, so that no children, visitors, passersby, vandals, or anyone else not licensed to possess medical marijuana may access the premises.~~

~~(4) The patient or caregiver must reside on premises in an apartment or living area constructed in compliance with the Town of Dolores Building Code, State Electrical Code and all other relevant live/safety codes.~~

Article III.K, CB-1, Community Business District, is amended as follows:

2. Conditional uses. Conditional uses shall be allowed in accordance with Article V.K.

Manufacturing, Light

Marijuana Businesses (as defined in Ordinance 546 Series 2020), as permitted in Article III.C, Schedule of Use Regulations.

Article III.K, CB-2, Community Business District, is amended as follows:

3. Conditional uses. Conditional uses shall be allowed in accordance with Article V.K.

Manufacturing, Light

Marijuana Businesses (as defined in Ordinance 546 Series 2020), as permitted in Article III.C, Schedule of Use Regulations.

Article III.L, CH, Commercial Highway District, is amended as follows:

2(c) Retail, commercial, and personal service uses.

Bed and breakfasts, subject to the supplementary standards of Article III.C.2.l.

Boarding or rooming house, subject to the supplementary standards of Article III.C.2.l.

Custom personal services

General retail (indoors), subject to the supplementary standards of Article III.C.2.m.

Hotel or motel

Marijuana Businesses (as defined in Ordinance 546 Series 2020), as permitted in Article III.C, Schedule of Use Regulations.

Article IV.C.9.c, Alley Easements Required, is amended as follows:

Alley easements shall be provided in all residential areas unless otherwise approved by the Planning Commission and in commercial ~~and industrial~~ districts. The Planning Commission may waive the requirement where other definite and assured provision is made for service access such as off-street and parking consistent with and adequate for the uses proposed.

Article IV.E.1, Utility Easements Required, is amended as follows:

Utility easements shall be provided in all residential areas unless otherwise approved by the Planning Commission and in commercial ~~and industrial~~ districts, except that the Planning Commission may waive the requirement where other definite and assured provision is made for service access consistent with and adequate for the uses proposed.

Article V.C.1, Applicability, is amended as follows:

This section is intended to ensure pedestrian access is available to serve uses that need and benefit from such access. Builders shall be required to build sidewalks on all streets adjacent to their building sites, except in the LLR, Large Lot Residential District ~~and the LI, Light Industrial District~~. Builders in all districts shall be required to dedicate trails easements (but not to build trails) in accordance with the Dolores Comprehensive Plan. No Certificate of Occupancy shall be issued until the requirements of this section are met.

Article VI.K, Conditional Use Permits, is amended to add a new Subsection 6 and renumber the following sections, as follows:

6. Review Criteria

Any application for a marijuana use shall comply with following specific criteria:

- a. The proposed use is consistent with Dolores land use plans and policies;
- b. The proposed use complies with all applicable provisions of Ordinance 546 Series 202 and the provisions of this LUC;
- c. The proposed use will not have a negative impact on the value of surrounding property or the general neighborhood;
- d. The location and size of the use, the nature and intensity of the operation involved or conducted in connection with is, and the location of the site with respect to streets giving access to it are such that the condition use will not dominate the immediate neighborhood so as to prevent the development and use of neighborhood property in accordance with the applicable zoning district regulations. In determining whether the use will dominate the immediate neighborhood, consideration shall be given to:
 - (1) The location, nature, and height of buildings, structures, walls, and fences on the site; and
 - (2) The nature and extend of the proposed landscaping and buffering on the site.
 - (3) Whether adequate utility, drainage, and other necessary facilities have or will be provided; and
 - (4) Whether adequate access roads or entrance and exit drives will be provided and shall be designed to prevent traffic hazards and minimize traffic congestion.

~~67~~.Records. A file containing all documents relevant to the application and disposition of such Conditional Use Permits shall be maintained by the Town Clerk.

~~78~~.Maximum density. The maximum density allowed by Conditional Use Permit shall be no greater than that permitted in the underlying zone district.

Article VII.A.3.c, Change of Use, is amended as follows:

A change from one (1) nonconforming use to another nonconforming use may be made by securing a Zoning Development Permit provided such change is to a permitted use in a more restrictive zoning district classification. For the purpose of interpreting these provisions, the zoning districts shall be considered to be arranged in a hierarchy as they are listed in Article III.A. Districts established, from the most restrictive R-1, Residential District to the least restrictive ~~LI, Light Industrial~~ ~~CH Commercial Highway~~ District. The P and PUD Districts shall not be considered part of the hierarchy. In addition, for the purpose of interpreting this paragraph C, a use that is authorized in a district with a conditional use permit shall not be considered a permitted use in such district.

SECTION 2. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 3. This Ordinance shall take effect January 4, 2020 or thirty (30) days after final publication whichever is sooner.

Passed, adopted and approved on the first reading this 23rd day of November, 2020.

DOLORES BOARD OF TRUSTEES:

By: _____

Attest:

By: _____

PUBLIC HEARING. This ordinance shall be considered for second or final reading on the 23rd day of November, 2020, in the Town Board Chambers in Town Hall, Dolores, Colorado, at which time and place all persons may appear and be heard concerning the same.

Passed, adopted and approved on the second reading this 14th day of December, 2020.

DOLORES BOARD OF TRUSTEES:

By: _____

Attest:

By: _____