Town of Silver Plume

ORDINANCE NO. 335

AN ORDINANCE PROVIDING FOR THE REGULATION AND OPERATION OF RETAIL AND DUAL RETAIL AND MEDICAL MARIJUANA STORES WITHIN THE BOUNDARIES OF THE TOWN AND REPEALING PORTIONS OF TOWN OF SILVER PLUME ORDINANCE NO. 331, WHICH DECLARED A TWELVE-MONTH MORATORIUM ON THE OPERATION OF CERTAIN MARIJUANA-RELATED BUSINESSES, INCLUDING RETAIL MARIJUANA STORES WITHIN THE MUNICIPAL BOUNDARIES OF THE TOWN OF SILVER PLUME AND EXTENDING AND MAKING THE MORATORIUM PERMANENT WITH RESPECT TO ALL OTHER TYPES OF MARIJUANA BUSINESSES OR FACILITIES.

WHEREAS, the Town of Silver Plume (the "Town") is a home rule municipal corporation created and organized pursuant to Article 20 of the Colorado Constitution and the Home Rule Charter of the Town of Silver Plume; and

WHEREAS, pursuant to Article 20 of the Colorado Constitution and §§ 31-15-401 and 31-23-301 of the Colorado Revised Statutes (the "C.R.S."), the Town has broad authority to exercise its police powers to protect the health, safety, and welfare of the community and its citizens; and

WHEREAS, pursuant to § 31-23-301, C.R.S., such police powers include the power to regulate the location and use of land within the community for trade, industry, or other purposes; and

WHEREAS, on November 6, 2012 the voters of the State of Colorado approved Amendment 64, which adds a new Section 16 to Article XVIII of the Colorado Constitution and creates a limited exception from criminal liability under Colorado law (as opposed to federal law) for the operation of marijuana cultivation facilities, marijuana manufacturing facilities, marijuana testing facilities and retail marijuana stores, unless prohibited by a local government, and operating in a system of licensed establishments regulated by state and local governments; and

WHEREAS, the Colorado Department of Revenue Marijuana Enforcement Division has adopted licensing regulations implementing Section 16 of Article XVIII of the Colorado Constitution; and

WHEREAS, on September 9, 2013, the Silver Plume Town Board of Trustees (the "Board of Trustees") introduced, read, adopted, approved, passed and ordered published Town of Silver Plume Ordinance No. 331, which contained the title: "An Ordinance Declaring a Temporary Moratorium on the Operation of Marijuana Cultivation Facilities, Marijuana Product Manufacturing Facilities, Marijuana Testing Facilities, or Retail Marijuana Stores within the Municipal Boundaries of the Town of Silver Plume pursuant to the authority granted by Article XVIII, Section 16 of the Colorado Constitution; Directing the Prompt Investigation of the City's Regulatory Authority over such

Businesses; and Declaring the Intention of the Board of Trustees to consider the Adoption of Appropriate Town Regulations with respect to such Businesses or Prohibition thereof; and Declaring an Emergency" (the "Moratorium"); and

WHEREAS, the Town has had time to investigate and consider the adoption of appropriate Town regulations with respect to such businesses to protect the health, safety, welfare and economic well-being of the Town and its citizens through regulating retail marijuana stores through comprehensive local regulations as more specifically set forth herein.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF SILVER PLUME, COLORADO:

Section 1. Repeal of Retail Store Moratorium.

Upon the adoption of this Ordinance, the Moratorium is repealed only to the extent necessary to enable the Town to regulate Retail and Dual-Use (Retail and Medical) Marijuana stores, consistent with this Ordinance. The Moratorium is extended and made permanent with respect to all other types of marijuana businesses or facilities, including but not limited to retail marijuana cultivation facilities, retail marijuana product manufacturing facilities, marijuana testing facilities, optional premises cultivation operations, and medical marijuana-infused products manufacturers.

Section 2. Findings. The Board of Trustees makes the following legislative findings:

(A) The Board of Trustees 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 (only under state law, as opposed to federal law) the possession, use, display, purchase, transport, transfer, and consumption of marijuana accessories of one ounce or less of marijuana by persons twenty-one years of age or older ("Adult Use Marijuana") within the State of Colorado.

(B) The Board of Trustees finds and determines that the enactment by the Colorado Legislature of the Colorado Retail Marijuana Code, § 12-43.4, C.R.S., clarifies Colorado law regarding the scope and extent of Amendment 64 to the Colorado Constitution.

(C) The Board of Trustees finds and determines that the Colorado Retail Marijuana Code now provides a statutory framework for the regulation of retail marijuana establishments.

(D) The Board of Trustees finds and determines that it has a substantial interest in the protection of its residents, including minors, from the potential health and safety risks associated with the sale and distribution of marijuana products. By requiring that retail marijuana stores be operated in a manner that minimizes potential health and safety risks, it mitigates the negative impacts that retail marijuana stores might have on surrounding properties and persons, including minors. For these and other reasons, the Board of Trustees further finds cause to limit and carefully control the number of retail marijuana

stores licensed in the Town and further finds that it has a compelling interest in a discretionary decision to regulate the number of retail marijuana licenses or, alternatively, providing a right of first refusal to any current licensee to obtain an additional license, in the event, and to the extent, the Board of Trustees determines, in its discretion that additional retail marijuana licenses are available.

(E) The Board of Trustees finds and determines that through this Ordinance it intends to establish a nondiscriminatory mechanism by which the Town can control, through appropriate regulation, the location, and operation of retail marijuana stores within the Town.

(F) The Board of Trustees recognizes and affirms the protections afforded by Article XVIII, Section 16 of the Colorado Constitution and desires to provide the ability of persons twenty-one (21) years of age and older, to provide or purchase marijuana pursuant to the limitations and protections of Article XVIII, Section 16 of the Colorado Constitution, the Retail Marijuana Code, and all associated regulations, as the same may be amended from time to time.

Section 3. Purpose.

The purpose of this Ordinance is to implement the provisions of the Colorado Retail Marijuana Code, § 12-43.4, C.R.S., which authorizes the licensing and regulation of retail marijuana businesses and affords local government the option to determine whether or not 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.

Section 4. 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 Ordinance.

Section 5. Authority.

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

(A) Article XVIII, Section 16 of the Colorado Constitution;

(B) The Colorado Retail Marijuana Code, § 12-43.4, C.R.S.;

(C) The Local Government Land Use Control Enabling Act, § 29-20, C.R.S.;

(D) Part 3 of § 31-23, C.R.S. (concerning municipal zoning powers);

(E) § 31-15-103, C.R.S. (concerning municipal police powers);

(F) § 31-15-401, C.R.S. (concerning municipal police powers); and

(G) § 31-15-501, C.R.S. (concerning municipal authority to regulate businesses).

Section 6. Definitions.

(A) For purposes of this Ordinance, the following terms shall have the following meanings:

(1) 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 Ordinance. If the applicant is an entity and not a natural person, applicant shall include all persons who are the members, managers, officers, and directors of such entity.

(2) Colorado Retail Marijuana Code means Article 43.4 of Title 12, C.R.S. and Colorado Medical Marijuana Code means Article 43.3 of Title 12, C.R.S.

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

(4) Cultivation or cultivate means the process by which a person grows a marijuana plant.

(5) Dual operation means a business that operates as both a licensed medical marijuana center and a licensed retail marijuana store in accordance with state law.

(6) 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 on a dry weight basis.

(7) Good cause (for the purpose of refusing or denying a license renewal under this Ordinance) means: (1) the licensee has violated, does not meet, or has failed to comply with any of the terms, conditions or provisions of this Ordinance and any rule and regulation promulgated pursuant to this Ordinance; (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 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 is located. Evidence to support such a finding can include: (i) a continuing pattern of offenses against the public peace; (ii) a continuing pattern of drug-related criminal conduct within the premises of the retail marijuana store or in the immediate area surrounding the retail marijuana store, 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.

(8) License means a document issued by the Town officially authorizing an applicant to operate a retail marijuana store pursuant to this Ordinance.

(9) Licensee means the person to whom a license has been issued pursuant to this Ordinance.

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

(11) Local licensing authority means the Board of Trustees.

(12) 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 that 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.

(13) 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.

(14) 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.

(15) Person means a natural person, partnership, association, company, corporation, limited liability company, or organization.

(16) Retail marijuana means marijuana that is cultivated, manufactured, distributed, or

sold by a licensed retail marijuana establishment.

(17) 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.

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

(19) Retail marijuana establishment means a retail marijuana store, a retail marijuana cultivation facility, or a retail marijuana products manufacturing operation.

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

(21) Retail marijuana store means an entity licensed to purchase marijuana from marijuana cultivation facilities or marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

(22) Silver Plume Town Code, or Code, means all ordinances, regulations, resolutions, and other laws of the Town, whether or not codified.

(23) 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 § 12-43.4-201, C.R.S.

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

Section 7. License required for operation of a retail marijuana store.

The Town hereby authorizes the operation of retail marijuana stores in the Town as set forth in this Ordinance. It shall be unlawful for any person to establish or operate a retail marijuana store in the Town 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. As justified by the above Findings, the Town hereby reserves its discretionary right to limit the number of retail marijuana store licenses approved and its discretionary right to offer current licensees a right of first refusal to obtain additional licenses as they become available.

Section 8. Requirements of application for license; payment of fee; denial of license.

(A) A person seeking a license or renewal of a license to operate a retail marijuana store issued pursuant to this Ordinance shall submit an application to the local licensing authority on forms provided by the Town Clerk. At the time of application, each applicant shall pay a nonrefundable operating fee to the Town in an amount to be determined by the Town by separate Resolution to defray the costs incurred by the Town for costs including but not limited to inspection, administration, and enforcement of retail marijuana stores and present proof of residency acceptable to the Town. In the event the Town determines that no additional licenses are available, either because the Town will not approve additional licenses, or because a current licensee opts to exercise a right of first refusal provided by the Town, the fee shall be returned to the applicant.

(B) The applicant shall provide the following information on a form approved by, or acceptable to the Town, which information shall be required for the applicant, all employees, including the proposed manager of the retail marijuana store, and all persons having a ten percent (10%) or more financial interest in the retail marijuana store 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) A complete set of fingerprints;

(3) Suitable evidence of proof of lawful presence, residence, if applicable, and good character and reputation that the Town may request;

(4) An acknowledgment and consent that the Town will conduct a background investigation, including a criminal history check, and that the Town will be entitled to full and complete disclosure of all financial records of the retail marijuana store, including records of deposit, withdrawals, balances and loans;

(5) 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;

(6) 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 Town;

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

(8) If the retail marijuana store will be providing retail marijuana products in edible form, evidence of, at a minimum, a pending application for any food establishment license or permit that may be required by the State;

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

(10) A security plan in conformity with Section 22 of this Ordinance and a plan for the disposal of marijuana and related byproducts meeting the requirements of Section 27 of this Ordinance; and

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

(12) The local licensing authority may require the information required by this Section to be verified under oath.

(C) 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 fourteen (14) 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 posted at the Town Hall not less than seven (7) days prior to the hearing. The notice to be given by posting on the proposed licensed premises shall include a sign of suitable material, provided by the applicant, not less than twenty-two (22) inches wide and twenty-six (26) inches high, composed of letters of not less than one (1) inch in height. Both the posted notices 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.

(D) 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 Ordinance. 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.

(E) Before entering a decision approving or denying the application for a local license, the local licensing authority may consider, except where this Ordinance 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 sixty (60) days of 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.

(F) The Town 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 Ordinance or other applicable requirements of the Silver Plume Town Code.

(G) A license issued pursuant to this Ordinance does not eliminate the need for the licensee to obtain other required permits or licenses related to the operation of the retail marijuana store, including, without limitation, a license from the state licensing authority and any development approvals or building permits required by this Ordinance or any other applicable provisions of the Silver Plume Town Code or state law.

Section 9. 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 quantities:

(1) Up to one (1) ounce of retail marijuana or its equivalent in retail marijuana products during a single sales transaction to a Colorado resident; or

(2) Up to one-quarter (1/4) ounce of retail marijuana or its equivalent in retail marijuana products during a single sales transaction to a non-Colorado resident.

(B) 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) The retail marijuana offered for sale and distribution must be packaged and labeled in accordance with state law.

(D) From January 1, 2014 to September 30, 2014, a retail marijuana store licensee shall only sell retail marijuana that was grown in its commonly owned retail marijuana cultivation facility and subsequently purchased or transferred from the cultivation facility, with the

following exceptions:

(1) A retail marijuana store licensee may purchase not more than thirty percent (30%) of its total on-hand retail marijuana inventory, in aggregate, from other retail marijuana stores with which it does not share common ownership.

(2) A retail marijuana store licensee may sell not more than thirty percent (30%) of its total on-hand retail marijuana inventory, in aggregate, to other retail marijuana stores with which it does not share common ownership.

(3) For purposes of calculating the percentage limitations detailed in this subsection (D), the licensee shall use the total weight of its on-hand inventory at the end of the month preceding the purchase.

(E) Retail marijuana store licensees are prohibited from selling or soliciting orders for retail marijuana or retail marijuana products over the internet.

(F) With the exception of medical marijuana products sold in a dual operation facility pursuant to Section 10, retail marijuana store licensees are prohibited from selling or giving away any consumable product that is not a retail marijuana product, including but not limited to cigarettes or tobacco products, alcohol beverages, and food products or non-alcohol beverages that are not retail marijuana products.

Section 10. Dual operations.

(A) A state-licensed medical marijuana business may share its existing premises with a retail marijuana store as follows:

(1) 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 posts signage that clearly conveys that persons under the age of twenty-one (21) years may not enter, such center 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. Record keeping for the business operations of both businesses must allow the Town to clearly distinguish the inventories and business transactions of medical marijuana and medical marijuana-infused products from retail marijuana and retail marijuana-infused products.

(C) Licensees who operate a medical marijuana business and a retail marijuana store dual operation shall maintain separate and distinct inventory tracking processes for medical and retail marijuana inventories. The inventories must be clearly tagged or labeled so that

the products can be reconciled to a particular medical or retail business.

Section 11. Location criteria. Prior to the issuance of a license for a retail marijuana store, the local licensing authority shall determine whether the proposed location of the retail marijuana store complies with the requirements of this Section. Failure to comply with the requirements of this Section shall preclude issuance of a license.

(A) No retail marijuana store shall be located outside of a commercial zone or at the following locations:

(1) Within 1000 feet of any other retail marijuana business;

(2) Within 1000 feet of any medical marijuana business unless the retail store is operated as a dual operation business;

(3) Within 1000 feet of any dual-operation marijuana business;

(4) Within any building or structure that contains a residential unit; or

(5) Upon any Town of Silver Plume owned property.

(B) The distances described in subsection (A) shall be computed by direct measurement from the nearest property line of the land used for the above purposes to the unit within a building or structure housing the retail marijuana store using a direct measurement rather than measured indirectly.

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

(D) The suitability of a location for a retail marijuana store shall be determined at the time of the issuance of the first license for such business. The fact that changes in the neighborhood, that occur after the issuance of the first license, might render the site unsuitable for a retail marijuana store under this Section shall not be grounds to suspend, revoke, or refuse to renew the license for such business so long as the license for the business remains in effect.

(E) In addition to the foregoing location restrictions, no retail marijuana store shall be located more than 200 feet from an interstate highway interchange, measured directly from the closest portion of the licensed premises to the center point of the overpass for that interchange, and the primary access to the retail marijuana store from the interchange must be entirely on paved surfaces. Notwithstanding subsection (D) above, in the event that the relevant interchange is ever relocated such that a licensed premises no longer

meets the foregoing location requirement, the retail marijuana store must cease functioning at its original location within six (6) months after the new interchange is opened to the public.

Section 12. 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 entity or natural person 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 officers, 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 employs another person at a retail marijuana store who has not submitted fingerprints for a criminal record history check or whose criminal record history check reveals the employee is ineligible;

(14) Any person who has made a false, misleading, or fraudulent statement on his or her application; or

(15) Any person who does not have at least two (2) years' experience managing a licensed marijuana business.

(B) No licensee shall employ or contract with any person to perform work functions directly related to the possession, cultivation, dispensing, selling, serving, or delivering of marijuana for a licensed retail marijuana store, to any of the following:

(1) Any person who is not of good moral character satisfactory to the local licensing authority;

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

(3) Any person who is not currently a resident of Colorado;

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

(5) 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; or

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

(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, including police or other law enforcement, 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.

Section 13. Issuance of license; duration; renewal.

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

(B) Each license issued pursuant to this Ordinance shall be valid for one (1) year from the date of issuance and may be renewed only as provided in this Ordinance. 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 ninety (90) 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 of five hundred dollars ($500.00) for a renewal application made less than thirty (30) 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) Notwithstanding state law to the contrary, a licensee whose license expires and for which a renewal application has not been received by the expiration date shall be deemed to have forfeited its license under this Ordinance. The Town shall not accept renewal applications after the expiration date of such license.

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

Section 14. 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, or to obtain compliance with the requirements of this Ordinance and applicable law.

Section 15. Annual Operations Fee.

Upon issuance of a license or any renewal of a license, the licensee shall pay to the Town a fee in an amount determined by the Town by separate Resolution to be sufficient to cover the annual estimated cost of inspections conducted pursuant to Section 30 of this Ordinance by the applicable law enforcement authority, and such other departments as may be designated by the local licensing authority, for the purpose of determining compliance with the provisions of this Ordinance and any other applicable state or local laws or regulations.

Section 16. 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.

Section 17. Management of licensed premises.

Licensees who are natural persons shall either manage the licensed premises themselves or employ a separate and distinct manager on the premises and report the name of such manager to the local licensing authority. Licensees that are entities shall employ a manager on the premises and report the name of the manager to the local licensing authority. All managers must be natural persons who are at least twenty-one (21) years of age. No manager shall be a person who has discharged a sentence for a felony conviction within the past five (5) years, or who 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.

Section 18. Change in manager; change in financial interest.

(A) Each licensee shall report any change in managers to the local licensing authority within thirty (30) days after the change. Such report shall include all information required for managers under this Ordinance.

(B) Each licensee shall report in writing to the local licensing authority any transfer or change of financial interest in the license holder or in the retail marijuana store, that is the subject of the license. Such report must be filed with the local licensing authority within thirty (30) days after any such transfer or change. A report shall be required for any transfer of the capital stock of a public corporation totaling more than ten percent (10%) of the stock in any one (1) year, as well as any transfer of a controlling interest in the company whenever a sufficient number of shares or ownership interests have been transferred to effectuate the transfer of a controlling interest. No person having or acquiring a financial interest in the retail marijuana store that is the subject of a license shall be a person who

has discharged a sentence for a felony conviction within the past five (5) years, or who 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.

(C) Whenever any licensee causes a change in its officers, directors, or manager, and a license addendum is required to be filed with the State, an application fee in the amount of one hundred dollars ($100.00) shall be paid to the Town at the time of filing the addendum with the Town.

Section 19. Transfer of ownership; change of location.

For a transfer of ownership or change of location, a license holder shall apply to the state and local licensing authority on forms provided by the state licensing authority. In considering whether to permit a transfer of ownership or change of location, the local licensing authority shall consider only the requirements of this Ordinance, 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 or change of location, but such hearing shall not be held until a notice of such hearing has been posted on the licensed retail marijuana store premises 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.

Section 20. 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; provided, however, no medical marijuana sales may be made after 7:00 p.m. on any day. A retail marijuana store may be open seven (7) days a week.

Section 21. Signage. Coordination clause--where in conflict, this Ordinance to partially amend and supersede Ordinance 201.

All signage and advertising for a retail marijuana store shall comply with all applicable state laws as well as the provisions of this Ordinance and other applicable provisions of the Silver Plume Town Code; however, this Ordinance shall partially amend and supersede the Town sign ordinance, Ordinance No. 201, only to the extent necessary to allow for one sign (the "Sign") against the building which may, in the discretion of the local licensing authority, be up to fifty-five (55) square feet in total area and project no more than five and one-half (5.5) feet above the roofline of the building. The Sign may be highlighted with front lighting. In addition to the Sign, the Town will promote any licensed retail marijuana store on any Town sign that promotes other businesses located in the Town; therefore, this Ordinance shall authorize the holder of a retail marijuana license to work with the Town administration in the proposed construction of one or more Town signs to be erected within six (6) months from the date of adoption of this Ordinance, and to be placed in conspicuous places on Town property that will be readable from Interstate-70 in one or both directions and provide sufficient information to travelers on Interstate 70 of the availability of retail marijuana in the Town.

Section 22. 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 criminal acts and nuisance activities and facilitate the reporting of criminal acts and nuisance activities occurring at the premises;

(2) Robbery and burglary alarm systems that 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 Ordinance and other applicable provisions of the Silver Plume Town Code; and

(5) Deadbolt locks on all exterior doors.

(B) All security recordings shall be preserved for at least seventy-two (72) hours by the licensee and be made available to the applicable law enforcement authority upon request for inspection.

Section 23. Required notices.

There shall be posted in a conspicuous location in each retail marijuana store, a legible sign containing the following warnings:

(A) 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;

(B) That loitering in or around a retail marijuana store is prohibited by law;

(C) That possession and distribution of marijuana is a violation of federal law; and that no one under the age of twenty-one (21) years is permitted on the premises.

Section 24. Onsite 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 is prohibited.

Section 25. Prohibited acts.

It shall be unlawful for any licensee to:

(A) Employ any person at a retail marijuana store who is not at least twenty- one (21) years of age or who has a criminal history as described in this Ordinance;

(B) Purchase or otherwise obtain retail marijuana from any source that is not properly authorized under state and local law to sell or dispense retail marijuana;

(C) Permit the sale or consumption of alcoholic beverages on the licensed premises; or

(D) Dispense 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.

Section 26. Visibility of activities; paraphernalia; control of emissions.

(A) All activities of retail marijuana stores, including, without limitation, displaying, selling, and storage, 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 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 must be provided at all times. In the event that any odors, debris, dust, fluids, or other substances exit a retail marijuana store, 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 cleanup 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.

Section 27. 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.

Section 28. Sales Tax and Special Use Tax.

Each licensee shall collect and remit Town sales tax and any special use tax properly assessed on all retail marijuana, retail marijuana products, paraphernalia, and other tangible personal property sold by the licensee.

Section 29. Required books and records.

(A) Every licensee shall maintain an accurate and complete record of all retail marijuana purchased, sold, or dispensed by the retail marijuana store in any usable form. Such record shall include the following:

(1) The identity of the seller and purchaser involved in each transaction;

(2) The total quantity of, and amount paid for, the retail marijuana and the retail marijuana product(s); and

(3) The date, time, and location of each transaction.

(B) All transactions shall be kept in a numerical register in the order in which they occur.

(C) All records required to be kept under this Ordinance must be kept in the English language in a legible manner and must be preserved and made available for inspection for a period of three (3) years after the date of the transaction. Information inspected by the applicable law enforcement authority or any Town trustee or designated Town employee or contactor pursuant to this Ordinance shall be used for regulatory and law enforcement purposes only and shall not be a matter of public record, except as required by law.

Section 30. Inspection of licensed premises.

During all business hours and other times of apparent activity, all licensed premises shall be subject to inspection by the applicable law enforcement agency and all Town trustees or other representatives designated by the local licensing authority for the purpose of investigating and determining compliance with the provisions of this Ordinance 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.

Section 31. Non-renewal, revocation, or suspension 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 state 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 one year.

Section 32. Violations and penalties.

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

(A) It shall be a misdemeanor offense for any person to violate any provision of this Ordinance. Any person convicted of having violated any provision of this Ordinance shall be punished as set forth in the Silver Plume Town Book of Ordinances.

(B) The operation of a retail marijuana store without a valid license issued pursuant to this Ordinance may be enjoined by the Town in an action brought in a court of competent jurisdiction.

(C) The operation of a retail marijuana store without a valid license issued pursuant to this Ordinance is specifically determined to be a public nuisance.

Section 33. No Town liability; indemnification.

(A) By accepting a license issued pursuant to this Ordinance, the licensee waives and releases the Town, its officers, elected officials, employees, attorneys, and agents from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of retail marijuana store 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 Ordinance, all licensees, jointly and severally, if more than one (1), agree to indemnify, defend and hold harmless the Town, 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 that is the subject of the license. Losses covered by this subsection include reasonable attorneys' fees and costs and the cost of police services as provided for in Section 38.

Section 34. No waiver of governmental immunity.

In adopting this Ordinance, the Board of Trustees is relying on and does not waive or intend to waive by any provision of this Ordinance, the monetary limitations, or any other rights, immunities and

protections provided by the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S., as from time to time amended, or any other limitation, right, immunity, or protection otherwise available to the Town, its officers, its Trustees, or its employees.

Section 35. 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 or distribution of retail marijuana or retail marijuana products, the additional or stricter regulation shall control the establishment or operation of any retail marijuana store in the Town. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any license under this Ordinance, 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 or by law enforcement officers 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, 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 Ordinance 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 possession, sale, distribution, or use of marijuana.

Section 36. Rules and regulations.

The Board of Trustees or the Mayor or Town manager shall have the authority from time to time to adopt, amend, alter, and repeal administrative rules and regulations, and file the same with the Town Clerk, as may be necessary for the proper administration of this Ordinance.

Section 37. Judicial review.

In accordance with Article 18, § 16 of the Colorado Constitution, decisions by the local licensing authority are subject to judicial review pursuant to § 24-4-106, C.R.S.

Section 38. Cost of Police Services.

The Town does not have a police force of its own. If the need for police services in the Town is ever required in connection with a marijuana store licensed under this Ordinance or with any activity occurring on premises licensed under this Ordinance, the licensee shall be responsible for any costs associated therewith charged or assessed against the Town.

Section 39. Short title.

This Ordinance may be known and referred to as the "Marijuana Ordinance".

INTRODUCED, READ, ADOPTED, APPROVED, PASSED, AND ORDERED PUBLISHED by the Board of Trustees of the Town of Silver Plume, Colorado AND ORDERED POSTED this 14th day of July, 2014.

MAYOR

ATTEST:

CLERK

July 23, 2014.

CERTIFICATION

I, TAMMY A. SANFORD, certify that the foregoing Ordinance No. 335 was introduced, read, adopted, approved, passed, and ordered published in full at a regular meeting of the Board of Trustees of the Town of Silver Plume, Colorado on the 14th day of July, 2014. This Ordinance was published in the Clear Creek Courant by title only on July 23, 2014.

DATED: July 23, 2014

[SEAL]

Town Clerk