ORDINANCE NO. 17, 2018

AN ORDINANCE OF THE CITY OF DELTA, COLORADO, HEREBY AMENDING THE DELTA MUNICIPAL CODE TO PROVIDE ZONING AND LAND USE REGULATIONS FOR MEDICAL MARIJUANA FACILITIES

WHEREAS, the Constitution of the State of Colorado, Article XVIII, Section 14, authorizes the medical use of marijuana for persons suffering from debilitating medical conditions; and

WHEREAS, the Colorado legislature has enacted C.R.S. § 44-11-101, *et seq.* providing for the regulation of medical marijuana; and

WHEREAS, prior to November 2018, the City of Delta Municipal Code banned the sale, cultivation, and production of any form of marijuana, medical or otherwise, within the City of Delta, subject only to individual rights relating to marijuana as set forth in the Colorado Constitution; and

WHEREAS, at the general election in November 2018, a majority of the electorate voted to authorize the sale, manufacturing, research and development, testing, and cultivation of medical marijuana within the City but also voted against legalizing any such activities relating to "retail marijuana" as defined in C.R.S. § 44-12-103; and

WHEREAS, the City's zoning and land use regulations do not currently allow for medical marijuana facilities; and

WHEREAS, the City of Delta Planning Commission has made recommendations to the Delta City Council regarding proposed zoning regulations in anticipation of potential voter authorization of retail marijuana, which was not approved, but the City Council finds and determines that such recommendations are applicable to medical marijuana; and

WHEREAS, the City Council finds the Planning Commissions' recommendations to be reasonable and in the public interest, subject to the modifications and amendments set forth in this Ordinance; and

WHEREAS, The City has the authority to regulate zoning designations under the United States Constitution, the Constitution of the State of Colorado, and the Home Rule Charter of the City of Delta;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DELTA, COLORADO, AS FOLLOWS:

Section 1:

Chapter 8.34 of the Delta Municipal Code, which previously prohibited Medical Marijuana Businesses and Operations, is hereby repealed.

Section 2:

Section 8.38.010 of the Delta Municipal Code is hereby repealed and replaced with the following provision:

8.38.010 Definitions

The terms used in this Chapter, unless the context otherwise requires, shall have the same meanings defined in the Colorado Retail Marijuana Code, Title 44, Article 12, Colorado Revised Statutes, as now existing or as hereafter amended by the state legislature.

Section 3:

Section 17.04.020(A) is hereby amended to add the following definitions, with all other definitions renumbered accordingly so as to remain in alphabetical order:

MEDICAL MARIJUANA: As defined in C.R.S. § 44-11-104.

MEDICAL MARIJUANA CULTIVATION: The cultivation of medical marijuana as a licensed "optional premises cultivation operation" as defined in C.R.S. § 44-11-104.

MEDICAL MARIJUANA FACILITY: A facility licensed for medical marijuana cultivation, medical marijuana infused products manufacturing, medical marijuana sales, or medical marijuana testing.

MEDICAL MARIJUANA INFUSED PRODUCTS MANUFACTURING: The manufacturing of "medical marijuana infused products" by a licensed "medical marijuana infused products manufacturer" as defined in C.R.S. § 44-11-104.

MEDICAL MARIJUANA RESEARCH AND DEVELOPMENT: Scientific, medical or industrial investigation, research and development regarding the uses, effects, benefits and/or dangers of medical marijuana under circumstances that do not require a separate State or City license, or such activities conducted in connection with a licensed medical marijuana facility.

MEDICAL MARIJUANA SALES: The sale of medical marijuana as a licensed "medical marijuana center" as defined in C.R.S. § 44-11-104.

MEDICAL MARIJUANA TESTING: The testing of medical marijuana by a licensed testing facility as described in C.R.S. § 44-11-405.

RETAIL MARIJUANA: As defined in C.R.S. § 44-12-103.

RETAIL MARIJUANA ESTABLISHMENT: As defined in C.R.S. § 44-12-103.

Section 4:

Chapter 17.04.040 A-1 District is hereby amended as follows:

17.04.040 A-1 District.

A. INTENT: The intent of this District is to provide a district with a rural atmosphere for residential uses and agriculturally related uses.

B. USES BY RIGHT:

1. Single family homes and duplexes.
2. Farms and ranches, including keeping livestock and poultry.
3. Farming and truck gardening, including sales of produce grown on the premises.
4. Golf courses.
5. Grange halls.
6. Public utility service facilities.
7. Government buildings and facilities.
8. Parks and recreation facilities owned or operated by a homeowners' association.
9. Churches.
10. Rodeo grounds.
11. Accessory uses.
12. Assisted living facilities with no more than 8 residents.
13. Cemeteries.
14. Horse training facilities with adequate offstreet loading and parking areas, and dust control, and no more than one horse per acre on the site at any time.
15. Greenhouses

C. CONDITIONAL USES:

1. Turf and sod farms, nurseries.
2. Fur farms, kennels, commercial poultry farms, and commercial feed yards and lots.
3. Bed and breakfast operations.
4. Child care facilities not allowed as an accessory use.
5. Horse training facilities with more than one horse per acre on the premises at any time.
6. Adult care facilities.
7. Medical marijuana cultivation

D. PERFORMANCE STANDARDS:

1. Both site built and factory built housing shall be constructed in compliance with applicable provisions of Chapters 15.04 or 15.05 of the Delta Municipal Code, shall be permanently attached to a permanent foundation, shall have brick, wood, masonry, stucco or cosmetically equivalent exterior surfaces, shall have a minimum width and length of not less than 20' each, and a minimum eave overhang of 12 inches. Provided, however, if a lawfully existing factory built or site built structure is determined by the City to be unsafe pursuant to §102 of the Uniform Building Code, or substantially substandard with respect to current provisions of the building, plumbing, mechanical, fire, and electrical codes, it may, if removed from the premises, be replaced by a site built or factory built house which meets all of the above minimum criteria other than the width and length and eave overhang requirements. (Ord. 4, §1, 1999; Ord. 31, §5, 2000; Ord. 9, §5, 8 & 9, 2004; Ord. 9, §3, 2005)

2. Greenhouses.

a. No noise, dirt, smoke, or odor shall be observable from Greenhouses.

b. All lighting fixtures shall be shielded so that the light source is not directly visible off the premises

3. Medical marijuana cultivation facilities must be licensed through the State of Colorado and the City of Delta and shall comply with the following additional standards:

a. No noise, dirt or smoke shall be observable off of the premises.

b. No owner of real property or person in charge thereof shall allow, permit or cause the odor of marijuana to emanate from that premises to any other property.

c. All outdoor lighting fixtures shall be shielded so that the light source is not directly visible off the premises.

d. No medical marijuana cultivation facility shall be located within one hundred feet (100') of any dwelling unit, except dwelling units located within the A-1 District on the same property.

e. Must be fully enclosed by a building or structure including a roof.

Section 5:

Chapter 17.04.150 B.2 is hereby amended as follows:

17.04.150 B-2 District.

A. INTENT: The B-2 District is intended for a large variety of uses to conveniently serve customers. (It shall include all areas previously classified before November of 2011 as being within the B-4 District.)

B. USES BY RIGHT:

1. Those listed in the B-1 District as "uses by right."
2. Laundromats.

3. Bowling alleys.
4. Car washes.
5. Rental storage units with a maximum rental unit size of three hundred (300) square feet.
6. Veterinary clinics or hospitals for small animals.
7. Nursing homes, sanatoriums, and hospitals.
8. Retail building material supply businesses.
9. Gas stations and vehicle repair businesses.
10. Farm implement and vehicle sales and service establishments.
11. Wholesale distribution.
12. Greenhouses.

C. CONDITIONAL USES:

1. Those "conditional uses" listed for the B-1 District not listed as a use by right in (B) above, except small manufacturing specified in Subsection 17.04.140(C)(1).
2. Travel home parks.
3. Small manufacturing operations which meet the following criteria in addition to the criteria of Section 17.04.250:
   a. The manufacturing activities shall be totally enclosed within a building.
   b. All storage of equipment, supplies, materials and inventory shall be within an enclosed building. No exterior storage is allowed.
   c. Trucks, trailers and other vehicles shall not be parked on the public street.
   d. The activity shall not result in any public or private nuisance.
   e. Off street parking is required.
4. Mobile home sales establishments.
5. Medical marijuana cultivation
6. Medical marijuana sales

D. The following uses are not to be construed as a "use by right" or "conditional use" in the B-2 District:

1. Bulk Feed and storage and sales establishments.
2. Veterinary clinics or hospitals for large animals.
3. Construction and contractor's equipment storage facilities.
4. Machine and welding shops.
5. Aboveground storage facilities for hazardous fuels.
6. Manufacturing and industrial uses except as specifically allowed above.
7. Storage facilities (small rental storage units are allowed).

E. PERFORMANCE STANDARDS:

1. No use shall be established, maintained or conducted in any B-2 District that will result in any public or private nuisance.

2. No Factory Built Housing, except for Allowed Modular Housing as defined in Section 17.04.020(A)(9), shall be authorized. Any Allowed Modular Unit(s) must be permanently attached to an engineered foundation and properly connected, completed and inspected on site in accord with the reasonably applicable provisions of Chapter 15.04 of the Delta Municipal Code as outlined in the pertinent building permit.

3. In addition to other applicable requirements, rental storage operations must be constructed and maintained in compliance with the following performance standards:

a. Rental storage buildings must either be located a minimum of 300 feet from any state or federal highway or shall be screened by landscaping or masonry or wood fences so they are not visible from state or federal highways.

b. All driveways and parking spaces shall be paved for a distance of 40 feet from the curb, with a minimum paving width matching the width of the curb cut concrete apron. This requirement may be reduced by 25% if the driveway slopes down towards the property from the City street.

c. The site shall be graded to provide adequate drainage.

d. The site shall be either hard surfaced or graveled with adequate amounts of rock. If a gravel surface is used, it must be maintained from time to time in a manner which prevents the movement of mud from the site onto the City streets.

e. (1) Storage buildings shall be designed and built with a minimum of one foot (1') of change in the planes of the walls per each hundred feet (100') of building length, and with a minimum of twenty percent (20%) of the wall and door areas of a different color than the rest of the building.

(2) The maximum height for storage buildings shall be 17 feet.

(3) Individual storage units must be no larger than 300 square feet in floor area.

f. The site must have a minimum five foot wide strip abutting adjacent streets landscaped in accordance with a landscape plan approved by the City, which shall include substantial vegetation. The property owner shall be responsible for maintenance of the landscape strip.

g. The operation must be maintained in good safe and sanitary condition in compliance with these standards and shall not create any nuisance by dust, light or other factors to other property in the area.

h. The mini-storage buildings must be located northerly of First Street extended.

4. Antennae for "personal wireless services" shall be incorporated into other existing structures in an unobtrusive fashion and shall be subject to the same setback requirements as buildings. (Ord. 4, §1, 1999; Ord. 3, §11, 2008; Ord. 4, §10, 2008)

5. Mobile home sales establishments:

a. Lot size must be adequate for the proposed use.

b. Display units may not encroach on, into or above the setbacks.

c. All storage of equipment, supplies, and materials shall be within an enclosed building. No exterior storage is allowed, except the inventory of display models to be sold. No used modular, or mobile homes may be stored on the lot, except those in like new

condition and ready for sale. Steel frames may be stored no longer than seven (7) days after removed from a modular or mobile home that has been placed at another location.

d. Trucks, trailers and other vehicles shall not be parked on the public streets.

e. Display units shall not be lived in. A display unit may be used for an office if a building permit is obtained for setting up the unit and a Certificate of Occupancy has been issued for use as an office. No more than one unit may be set up as an office.

f. Off street parking is required.

g. Backing onto arterials is not allowed; either by the public or maneuvering of the modular or mobile home. Site must be large enough to accommodate maneuvering of units for display on site.

6. Greenhouses
   a. No noise, dirt, smoke, or odor shall be observable from Greenhouses.
   b. All lighting fixtures shall be shielded so that the light source is not directly visible off the premises.

7. Medical marijuana facilities must be licensed through the State of Colorado and the City of Delta and shall comply with the following additional standards:
   a. No noise, dirt or smoke shall be observable off of the premises.
   b. No owner of real property or person in charge thereof shall allow, permit or cause the odor of marijuana to emanate from that premises to any other property.
   c. All outdoor lighting fixtures shall be shielded so that the light source is not directly visible off the premises.
   d. No medical marijuana facility shall be located within one hundred feet (100') of any dwelling unit, except dwelling units located within the A-1 District on the same property.
   e. Must be fully enclosed by a building or structure including a roof.

Section 6:

Chapter 17.04.160 B-3 District is hereby amended as follows:

17.04.160 B-3 District.

A. INTENT: The B-3 District is intended for a large variety of uses that require large storage areas to conveniently serve customers.

B. USES BY RIGHT:
   1. Uses listed as "uses by right" in the B-1 and B-2 Districts.
   2. Electronic and telecommunications antennas, receivers and transmitters.
   3. Mobile home sales or service establishments.
   4. Machine and welding shops.
   5. Large equipment rental businesses.
   6. Feed storage and sales establishments.
   7. Construction and contractors' office and equipment storage facilities.

8. Aboveground fuel storage facilities for hazardous fuels.

9. Warehouses and storage facilities. (Excluding bulk storage of materials that are flammable or explosive or that create hazardous or commonly recognized offensive conditions)

10. Veterinary clinics or hospitals for large animals.

11. Medical marijuana testing.

C. CONDITIONAL USES:

1. Uses listed as conditional uses in the B-1 and B-2 Districts not listed as a specified Use by Right in (B) above.

2. Manufacturing not allowed as a Use by Right in (B)(1) above.

3. Storage of non-fuel hazardous materials including explosives.

4. Medical marijuana products manufacturing.

5. Medical marijuana research and development.

D. PERFORMANCE STANDARDS:

1. No use shall be established, maintained, or conducted in any B-3 District that will result in any public or private nuisance.

2. No Factory Built Housing, except for Allowed Modular Housing as defined in Section 17.04.020(A)(9), shall be authorized. Any Allowed Modular Unit(s) must be permanently attached to an engineered foundation and properly connected, completed and inspected on site in accord with the reasonably applicable provisions of Chapter 15.04 of the Delta Municipal Code as outlined in the pertinent building permit.

3. Rental storage operations must meet the criteria set out in Subsection 17.04.150(E)(3).

4. With regard to storage of explosives, chemicals and other allowed hazardous materials (excepting stored fuels), the following additional performance standards shall apply:

   a. No materials shall be allowed other than those that are identified, classified and regulated by a State or Federal agency.
   b. No materials shall be allowed where a regulatory agency is found to lack significant and regular oversight adequate to ensure compliance with respective regulations.
   c. No materials shall be allowed without adequate separation from existing and/or potential future habitable sites or structures.
   d. In all cases, conditional use approvals shall be limited to the specified owner and the specific location, type and operation of all facilities approved for the conditional use. Any changes in ownership, location of or specified type or operation of facilities will constitute revocation of the conditional use.

5. Greenhouses.

   a. No noise, dirt, smoke, or odor shall be observable from Greenhouses.
   b. All lighting fixtures shall be shielded so that the light source is not directly visible off the premises.

6. Medical marijuana facilities must be licensed through the State of Colorado and the City of Delta and shall comply with the following additional standards (multiple licenses may be allowed on a single parcel):

a. No noise, dirt, or smoke shall be observable off of the premises.

b. no owner of real property or person in charge thereof shall allow, permit or cause the odor of marijuana to emanate from that premises to any other property.

c. All outdoor lighting fixtures shall be shielded so that the light source is not directly visible off the premises.

d. No medical marijuana facility shall be located within one hundred feet (100') of any dwelling unit, except for dwelling units located within the A-1 District on the same property.

e. Must be fully enclosed by a building or structure including a roof.

7. Medical marijuana research and development that does not require a license shall be subject to the same performance standards set forth above in Sections 6(a) through (e).

Section 7:
Chapter 17.04.190 I District is hereby amended as follows:

17.04.190 I District.

A. INTENT: The purpose of the I District is to accommodate manufacturing, commercial, and most industrial uses which need adequate space, light, and air, and whose operations are quiet and clean provided that they do not create a nuisance to other property by reasons of dust, odor, noise, light, smoke, vibrations or other adverse effects which cannot be effectively confined on the premises. This promotes the creations and maintenance of an environment which will serve the mutual interests of the community as a whole, of any adjacent residential areas and of the occupants of the industrial area.

B. USES BY RIGHT:

1. Uses which meet the intent of Subsection (A) and the performance standards of Subsection (C) of this Section, not including residential uses, are uses by right. Typical examples of such manufacturing and nonmanufacturing uses include warehouses, wholesalers, and manufacturing contained within buildings and accessory retail sales.

2. Industrial uses, including those with accessory retail sales operations such as:

a. Manufacturing of any product.

b. Wholesaling of any product.

c. Warehousing and storage. (Excluding bulk storage of materials that are flammable or explosive or that create hazardous or commonly recognized offensive conditions)

d. Bulk storage.

e. Processing of any manufactured product.

f. General service and repair of automobiles, trucks, farm implements and construction equipment.

g. Parking lots.

h. Fabrication of any product.

i. Agricultural products processing.

j. Offices.

k. Freight hauling facilities.

l. Sawmills or planing mills.

m. Aboveground fuel storage facilities for hazardous fuels.

n. Parks and open spaces.

o. Government buildings and facilities.

p. Public utility service facilities.

q. Electronic and telecommunications antennas, receivers and transmitters.

r. Accessory uses.

s. Sexually oriented business complying with the provisions of Chapter 8.32.

t. Greenhouses.

u. Medical marijuana testing facilities.

C. CONDITIONAL USES:

1. Any commercial or industrial use other than the uses by right which comply with the performance standards of Subsection D and are consistent with the intent of Subsection A above.

2. Automobile wrecking and savage yards.

3. Junk yards.

4. Animal sales yards.

5. Mineral extraction and processing.

6. Trash disposal and recycling facilities.

7. Quarries and gravel operations.

8. Storage of non-fuel hazardous materials including explosives.

9. Medical marijuana cultivation

10. Medical marijuana products manufacturing.

11. Medical marijuana research and development.

12. Medical marijuana sales.

D. PERFORMANCE STANDARDS:

1. No use shall be established, maintained or conducted in any I District that will result in any public or private nuisance.

2. No industrial structure shall be constructed within one hundred feet (100') of any existing Residential District, unless effectively buffered by landscaping, berms, fencing, or screening.

3. No use shall be established in the I District which results in an unreasonable hazard to the community or creates a public or private nuisance.

4. No noise, dirt, smoke, or odor shall be observable off of the premises.

5. Automobile wrecking and salvage yards and junk yards shall have screening.

6. Additionally, all outdoor storage may require screening to prevent industrial blight.

7. With regard to storage of explosives, chemicals and other allowed hazardous materials (excepting stored fuels), the following additional performance standards shall apply:

a. No materials shall be allowed other than those that are identified, classified and regulated by a State or Federal Agency.

b. No materials shall be allowed where a regulatory agency is found to lack significant and regular oversight adequate to ensure compliance with respective regulations.

c. No materials shall be allowed without adequate separation from existing and/or potential future habitable sites or structures.

d. In all cases, conditional use approvals shall be limited to the specified owner and the specific location, type and operation of all facilities approved for the conditional use. Any change in ownership, location of or specified type or operation of facilities will constitute revocation of the conditional use.

8. Greenhouses.

a. No noise, dirt, smoke, or odor shall be observable from Greenhouses.

b. All lighting fixtures shall be shielded so that the light source is not directly visible off the premises.

9. Medical marijuana facilities must be licensed through the State of Colorado and the City of Delta and shall comply with the following additional standards:

a. No noise, dirt or smoke shall be observable off of the premises.

b. No owner of real property or person in charge thereof shall allow, permit or cause the odor of marijuana to emanate from that premises to any other property.

c. All outdoor lighting fixtures shall be shielded so that the light source is not directly visible off the premises.

d. No medical marijuana facility shall be located within one hundred feet (100') of any dwelling unit, except dwelling units located within the A-1 District on the same property.

e. Must be fully enclosed by a building or structure including a roof.

10. Medical marijuana research and development that does not require a license shall be subject to the same performance standards set forth above in Sections 9(a) through (e).

Section 8:

Section 17.04.290(H) Review Procedure is hereby amended as follows:

H. 1. The Planning Commission's decision with respect to requests for changes to the Zoning Map shall be submitted to the City Council as a recommendation. The Council may without further review implement such recommended change by adoption of a rezoning ordinance or take no action if no change is recommended, unless an appeal is filed as set out below, or it may decide in its discretion to hear the matter de novo as set out in Subsection (3) below.

2. The Planning Commission's decision with respect to an application for approval of a conditional use permit for any Medical Marijuana Facility shall be submitted to the City Council as a recommendation, which shall be considered by the City Council at a noticed public hearing to be scheduled at the same City Council meeting as the public hearing for a Medical Marijuana License for the subject property in accordance with Chapter 5.22 of the City Code.

3. The Planning Commission's decision with respect to other applications shall be final unless an appeal is filed as set out below.

4. An appeal of any decision of the Planning Commission may be filed with the City Clerk within 5 days of the date of its decision by the City Manager, the applicant or any interested person appearing at the hearing. The Council shall thereafter decide the matter de novo by holding a new hearing substantially in conformity with the procedures of this section, or by review of the tape-recording or transcript and record of the hearing before the Planning Commission, as Council determines in its discretion.

Section 9.

Severability. Each subsection of this Ordinance is an independent subsection and a holding of any subsection or part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other subsection or part thereof.

ADOPTED ON FIRST READING AND ORDERED PUBLISHED THIS 18th DAY OF DECEMBER, 2018.

R. G. Hunt

Mayor

ATTEST:

Jane E Nelson

City Clerk

Adopted on second and final reading and ordered published this 22nd day of January, 2019.

Mayor

ATTEST:

City Clerk