

CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO. 5135

AN EMERGENCY ORDINANCE TO AMEND THE GRAND JUNCTION MUNICIPAL CODE REGARDING CANNABIS LICENSING

RECITALS:

By and with this Emergency Ordinance the City Council amends the Grand Junction Municipal Code (GJMC or Code) to clarify the randomized selection process for licensure of regulated cannabis businesses in Grand Junction.

On April 8, 2022, the City Council adopted and approved Ordinance 5064. With the adoption of the Ordinance, now codified as Chapter 5, Title 13 of the Code, the City Council created among other things a regulatory framework for reviewing and approving, or denying, applications for, and the issuance of cannabis business licenses in the City. That regulatory framework includes a *Randomized Selection Process*. That process when implemented will allocate marijuana business licenses among the applicants.

Because of a lawsuit challenging the denial of one application for a marijuana business license (*High Colorado LLC v. City of Grand Junction and City of Grand Junction Cannabis Licensing Authority*, 2022 CV 30501) (Litigation) together with the fact that the review process has been protracted due to the City having received and processed 42 license applications, the City Council considered if and how to begin the randomized selection process prior to the resolution of the Litigation.

Section 5.13.017 of the Code establishes a randomized selection process for complete marijuana business applications. Subsection (b) provides that if more than two applications are submitted for a location within Horizon Drive Association Business Improvement District (District), the City shall conduct a random selection process for the Horizon Drive applications only. The District is a defined and discrete area of the City, for which the Code provides that no more than two cannabis business licenses will be issued.

On February 13, 2023, the City Council discussed the selection process and the delay. The City Attorney reminded the Council of subsection (b) and that because there are more than two applications for possible licensure in the District, and that the Code calls for a random selection process for the District applications only, a District process could be offered. City Council directed that a District process take place.

On February 15, 2023, the City Clerk notified the Horizon Drive applicants that the City intended to conduct a District only selection process on March 2, 2023.

After the February 15th notification the City received objections from other applicants, which asserted inter alia, that the District only selection process would result in two licenses being awarded to applicants in the District and that such would violate the Code, including but not limited to section 5.13.020(b) which provides in relevant part that *no more than two cannabis business licenses may be issued in the Horizon Drive Association Business Improvement District*. While a District only process would not result in more than two licenses, it would, award two licenses.

As a result of the objections to a District only process, and in order to clarify section 5.13.070(b) and 5.13.020(b), the City Council further discussed the matter at its February 27, 2023 work session. The consensus among Council following that meeting was to direct the City Attorney to draft an emergency ordinance for Council's consideration at its March 15, 2023, meeting to 1) address the "two or not more than two" process question for possible licenses in the District and 2) to provide a process for the City to proceed with the selection of all 10 licenses as then provided in 5.13.020 notwithstanding the Litigation.

At its March 15, 2023, meeting the City Council considered this Ordinance and determined that amendment of the Code is necessary as an emergency measure and the City Council deems it necessary to immediately modify the Code as follows.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

In accordance with the Recitals and as provided herein, Title 5, Chapter 13, Sections 017 and 020 (in relevant part) of the Grand Junction Municipal Code are amended as follows (deletions are shown in ~~struck through~~; additions are shown as underlined):

5.13.017 Randomized selection process.

~~(a)~~ (b) All qualified applicants as determined by the application of this Code, including but not limited to those applications for locations from within Horizon Drive Association Business Improvement District (District) and the High Colorado LLC Application as provided in §5.13.020(c), will be placed ~~within the selection container and randomly selected and assigned a number. in the order they are drawn from first to last.~~

~~(b)~~ (d) Following the assignment of a random numbers to the applications as provided in (b) above, the numbers will be placed ~~back in the~~ a selection container and ten numbers will be randomly selected, and in the event the High Colorado LLC Application is drawn an eleventh (11th) number will be selected. The legal effect, if any, of the eleventh (11th) number will be determined in accordance with 5.13.017(e) and 5.13.020. ~~and those ten~~

(e) If more than two applications are selected from among the District applications pursuant to 5.13.017(d), then a separate random process shall be immediately conducted among the District applications and without regard to the random numbers

assigned in 5.13.017(b), two District applications will be selected for licensure. The eleventh (11th) number will then be designated to replace the disqualified District application and a twelfth (12th) number will be selected. The legal effect, if any, of the twelfth (12th) number will be determined in accordance with 5.13.020.

~~If more than two applications are submitted for a location(s) within the City shall conduct a random selection process for the Horizon Drive applications only~~

(f) The selected Applicants, including the Contingent Application as provided in 5.13.020, will be announced at the conclusion of the random selection process. Subject to full and faithful compliance with this Code, including but not limited to determination of the legal effect of the Contingent Application, those selected will have an opportunity to be issued a cannabis business license as provided in this Code and other applicable law, rules and regulations. The Authority will notify those selected in writing within seven (7) days of selection by United States mail return receipt requested at the address set forth in the application.

5.13.020 Number of licenses.

(a) No more than ten (10) regulated cannabis business licenses, excluding any cannabis testing facilities and any medical cannabis business license(s) co-located with a Retail Cannabis business license, shall be issued.

(b) Included within the ten (10) license limit referenced above in (a), no more than two (2) cannabis business licenses may be issued in the Horizon Drive Association Business Improvement District, (District) which is described as all commercial property bounded on the south by G Road, north on Horizon Drive through and including H Road, bounded on the west by 27 Road/15th Street, and on the east by 27 ½ Road northeast to Walker Field Airport Authority. The boundaries of the Horizon Drive Association District include, but are not limited to, Horizon Court, Compass Drive Association, Crossroads Boulevard, Crossroads Court, Skyline Court, Sundstrand Way, and Hilaria Avenue, ~~as otherwise amended.~~

(c) Notwithstanding the Litigation, and in accordance with the stipulation made by the parties to the Litigation, the City Council finds that it is in the best interest of the City to enter the Application of High Colorado LLC in the random selection process. That action is not and shall not be claimed or construed as a waiver of any decision(s), finding(s), or ruling(s) made by the Cannabis Licensing Authority and/or that the inclusion of the High Colorado LLC Application in the random selection process is an abrogation of any defense(s) made, or that may be made, by the City in the Litigation.

(d) In accordance with the stipulation made by the parties to the Litigation, if the High Colorado LLC Application is not drawn in the random selection process, then High Colorado LLC shall file a motion to dismiss the Litigation with prejudice, bear its costs and release any and all claims made by it in the Litigation.

(e) In accordance with the stipulation made by the parties to the Litigation, if the High Colorado LLC Application is drawn in the random selection process, then the eleventh or twelfth (11th or 12th) number as provided in 5.13.017(d) and (e) (Contingent Application) shall be drawn with the licensure of either or both the High Colorado LLC Application and/or the Contingent Application being conditional and subject to, as provided herein, resolution of the Litigation, whether by judgment or settlement, in favor of High Colorado LLC.

(f) If the Litigation is not resolved, whether by judgment or settlement, in favor of High Colorado LLC, then the selection of the High Colorado LLC Application in the random selection process shall be without legal effect and no license shall issue to High Colorado LLC and instead a license shall issue to the Contingent Application.

(g) If the Contingent Application does not commence operations as provided by this Code following resolution of the Litigation as provided above, or otherwise determines and advises the City in writing that the Applicant selected for the Contingent Application decides to withdraw, then the City shall conduct another randomized selection process for one (1) license (Replacement Application). The Replacement Application shall be determined from the unsuccessful Applicants that participated in the randomized selection process 5.13.017(b). Notwithstanding 5.13.017(e) the District application(s) not selected for purposes of the District only process will be eligible for the Replacement License process provided herein so long as two (2) applications for licensure in the District have not been previously selected in the randomized selection process.

(h) If the Litigation is resolved, whether by judgment or settlement, in favor of High Colorado LLC, then the selection of the Contingent Application in the random selection process shall be without legal effect and a license shall issue to High Colorado LLC.

(i) If a license is issued to High Colorado LLC the City acknowledges that the licensed premises is and will be nonconforming due to its location being closer than 1000 feet (980.21') to Grand Junction High School (GJHS). The City further acknowledges that the non-conforming distance may be a temporary condition due to the construction of a new GJHS. The non-conforming distance, if it is not resolved by construction of GJHS, shall not be a basis for a challenge to the issuance of a license as provided herein or to the conduct of business operations by High Colorado LLC.

(j) Furthermore, the existence of a non-conforming distance for High Colorado LLC shall not be, or be claimed to be, a waiver of any distance requirement for any other Application made, or to be made, pursuant to the Code.

City Council hereby declares that a special emergency exists and that this ordinance is necessary to preserve and advance the peace and the public health, safety, and welfare by effectuating the Council's purposes and policies, which are consistent with and supportive of the best interest of the citizens of the City.

This Ordinance, immediately on its final passage, shall be recorded in the City book of ordinances kept for that purpose, authenticated by the signatures of the Mayor and the City Clerk. The full text of the amending ordinance, in accordance with the Charter of the City of Grand Junction, is to be published in full within three days.

This Ordinance shall apply to the City of Grand Junction and the matters herein described. This Ordinance shall take effect immediately upon passage and with the unanimous approval of the City Council.

Severability.

This Ordinance is necessary to protect the public health, safety and welfare of the residents of the City. If any provision of this Ordinance is found to be unconstitutional or illegal, such finding shall only invalidate that part or portion found to violate the law. All other provisions shall be deemed severed or severable and shall continue in full force and effect.

All other provisions of Titles 5 and 21, Chapters 13 and 04 of the Grand Junction Municipal Code shall remain in full force and effect.



Anna M. Stout
President of the City Council

ATTEST:



Janet Harrell
Deputy City Clerk



I HEREBY CERTIFY THAT the foregoing Emergency Ordinance, being Ordinance No. 5135 was introduced by the City Council of the City of Grand Junction, Colorado at a regular meeting of said body held on the 15th day of March 2023.

I FURTHER CERTIFY THAT Ordinance No. 5135 was read, considered, adopted and ordered published in the Daily Sentinel by the Grand Junction City Council.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 20th day of March 2023.


Deputy City Clerk



Published: March 18, 2023 (full ordinance)
Effective: March 15, 2023 (date of adoption)