

BILL NO.
(Establish Henderson Municipal Code Chapter 4.116)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HENDERSON,
NEVADA, TO ESTABLISH CHAPTER 4.116 – MEDICAL MARIJUANA-
REGULATIONS AND LICENSES - OF THE HENDERSON MUNICIPAL
CODE AND MATTERS PROPERLY RELATED THERETO.

WHEREAS, in November 2000, Nevada voters passed an initiative amending Article 4 of the Nevada Constitution to allow use of marijuana for medicinal purposes; and

WHEREAS, Senate Bill 374, now codified in NRS 453A, which allows for the creation of medical marijuana establishments in Nevada was passed by the State Legislature during the 77th Legislative Session; and

WHEREAS, it is the desire of the City Council to provide access to medical marijuana to patients within the City of Henderson consistent with the provisions of NRS 453A; and

WHEREAS, regulation and licensing of medical marijuana establishments is necessary to protect the safety and welfare of the patients and citizens of the City of Henderson; and

NOW, THEREFORE, the City Council of the City of Henderson, Nevada, does ordain:

SECTION 1. Title 4 Business Regulations and Licenses of the Henderson Municipal Code is hereby amended to include a new chapter 4.116 – Medical Marijuana-Regulations and Licenses as follows:

Sections:

- 4.116.010 Definitions.
- 4.116.020 Purpose and intent.
- 4.116.030 License required—Issuance prohibited to designated persons.
- 4.116.040 Unlawful to operate without license.
- 4.116.050 Medical marijuana establishment types.
- 4.116.060 Multiple Locations—Operating names.
- 4.116.070 Conditions applying to specific license location/business types for a combination ownership license.
- 4.116.080 License—Application—Contents—General.
- 4.116.090 Annual application process.
- 4.116.100 License—Applicant—Business premises required.
- 4.116.110 License fees—Non-refundable.
- 4.116.120 Investigation fees—Required—Fees charged.
- 4.116.130 License—Issuance restrictions—Proximity of medical marijuana establishments specified.
- 4.116.140 License—Change of location—Restrictions—Medical marijuana establishment origination fee.
- 4.116.150 License—Permit—Transfer or assignment—Council approval required.

- 4.116.160 Closure or non-operational status—Responsibility of licensee to maintain use.
- 4.116.170 License—Issuance moratorium.
- 4.116.180 Land use and location requirements—Compliance with HMC title 19 - Development Code.
- 4.116.190 Establishments—Interconnectivity allowed.
- 4.116.200 Distributing off premises prohibited.
- 4.116.210 Intoxication of licensee or employees on premises.
- 4.116.220 Distributing to non-registered persons—Establishment of policy—Copy on premises—Requirement to show.
- 4.116.230 Minor—Employment in licensed establishments.
- 4.116.240 License—Suspension—Revocation—Limitation.
- 4.116.250 Licensee responsible for the acts of employees.
- 4.116.260 Medical marijuana establishments subject to local government audit.
- 4.116.270 Appeals-Judicial review.

4.116.010 Definitions.

Whenever used in this chapter, the following words must have the meanings ascribed in this section, unless the context clearly indicates a different meaning:

Class I medical marijuana establishment means a business operating a cultivation facility and a medical marijuana dispensary at the same location.

Class II medical marijuana establishment means a business operating a cultivation facility, facility for production of edible marijuana products or marijuana-infused products and a medical marijuana dispensary at the same location.

Class III medical marijuana establishment means a business operating a cultivation facility, facility for production of edible marijuana products or marijuana-infused products and a medical marijuana dispensary, at one or more locations, but limited to one location per establishment type.

Class IV medical marijuana establishment means a business operating a medical marijuana dispensary operation only.

Class V medical marijuana establishment means a business operating a cultivation facility only.

Class VI medical marijuana establishment means a business operating a facility for production of edible marijuana products or marijuana-infused products only.

Cultivation facility shall have the same meaning as set forth in NRS 453A.056, as may be amended or renumbered.

Designated primary caregiver shall have the same meaning as set forth in NRS 453A.080, as may be amended or renumbered.

Edible marijuana products shall have the same meaning as set forth in NRS 453A.101, as may be amended or renumbered.

Electronic verification system shall have the same meaning as set forth in NRS 453A.102, as may be amended or renumbered.

Facility for production of edible marijuana products or marijuana-infused products shall have the same meaning as set forth in NRS 453A.105, as may be amended or renumbered.

Finding of suitability means that, after investigation as provided in this title, a person is found to comply with the requirements of this title which are prerequisite to involvement with a privileged license. This title authorizes the council to require that certain persons who are directly or indirectly involved with privileged licenses be found suitable for such involvement so long as that relationship continues. A finding of suitability relates only to the specific involvement for which it is made. If the nature of the involvement changes from that for which the applicant is found suitable, or if, in the judgment of the council, new information concerning the applicant's suitability has become available, he may be made to submit himself for a new determination of suitability.

Gross revenue, as used in connection with the determination of license fees, means the total amount of the sale price of all goods sold, originating in the city and regardless of destination. All such totals are to be calculated without any deduction therefrom on account of the cost of the property sold, cost of materials used, labor or service costs, interest paid or payable, or any other expense whatsoever; provided, however, that cash discounts allowed or taken on sales or services, all taxes, all allowances for bad debts, and all revenues derived from business operations covered by another city business license or licenses, shall be excluded from gross sales.

Independent testing laboratory shall have the same meaning as set forth in NRS 453A.107, as may be amended or renumbered.

Inventory control system shall have the meaning set forth in NRS 453A.108, as may be amended or renumbered.

Marijuana shall have the same meaning as set forth in NRS 453.096, as may be amended or renumbered.

Marijuana-infused products shall have the same meaning as set forth in NRS 453A.112, as may be amended or renumbered.

Medical use of marijuana shall have the same meaning as set forth in NRS 453A.120, as may be amended or renumbered.

Medical marijuana dispensary shall have the same meaning as set forth in NRS 453A.115, as may be amended or renumbered.

Medical marijuana establishment shall have the same meaning as set forth in NRS 453A.116, as may be amended or renumbered.

Medical marijuana establishment agent shall have the same meaning as set forth in NRS 453A.117, as may be amended or renumbered.

Medical marijuana establishment agent registration card shall have the same meaning as set forth in NRS 453A.118, as may be amended or renumbered.

Origination fee is a one-time fee that is due and payable prior to issuance of a new license and is related to the specific operations of a medical marijuana establishment as specified in this chapter.

Paraphernalia shall have the same meaning as set forth in NRS 453A.125, as may be amended or renumbered.

Preliminary finding of suitability for a medical marijuana establishment means that the Director makes a preliminary finding that the applicant, including all of the principals, is suitable for involvement with the operations of a medical marijuana establishment. Such finding shall be valid for one year and is intended to be provided to the Nevada Division of Public and Behavioral Health in conjunction with appropriate zoning entitlements for the desired establishment location.

Registry identification card shall have the same meaning as set forth in NRS 453A.140, as may be amended or renumbered.

RFID means radio frequency identification and is the use of a wireless non-contact system that uses radio frequency electromagnetic fields to transfer data from a tag attached to an object, for the purpose of automatic identification and tracking.

4.116.020 Purpose and intent.

A. In November 2000, the voters of the State of Nevada passed an initiative amending Article 4 of the Nevada Constitution to allow the use of marijuana for medical purposes. In 2013, the Nevada State Legislature passed, and the Governor signed into law, Senate Bill 374, now codified in NRS 453A, to allow the establishment of medical marijuana establishments within the state of Nevada.

B. While the council recognizes that medical marijuana provides treatment for persons suffering from debilitating diseases and ailments, there are many negative secondary effects that have been reported in communities

that authorize the use of medical marijuana, such as an increase in violent crimes, theft, traffic, noise, drug and gang activity, and firearms violations. Therefore, the public health, safety, and welfare of the inhabitants of the city require the regulation of all businesses engaged in the business of medical marijuana sales, cultivation, infusion or testing.

C. Federal law makes it unlawful to cultivate, possess, distribute, or dispense marijuana. However, on August 29, 2013, the United States Department of Justice ("DOJ") issued a memorandum advising that the DOJ would allow enforcement of state laws that authorize marijuana production, distribution, and possession to be handled primarily by state and local law enforcement regulatory bodies as long as the state and local governments enact laws that implement "strong and effective regulatory enforcement systems" to address the federal government's identified enforcement priorities. The following enforcement priorities were specified by the DOJ as being particularly important to the federal government:

1. Preventing the distribution of marijuana to minors;
2. Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
3. Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
4. Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
5. Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
6. Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
7. Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
8. Preventing marijuana possession or use on federal property.

Accordingly, in addition to protecting the public health, safety, morals, good order and general welfare of the inhabitants of the city and to safeguard the public, this chapter is intended to adequately address these enforcement priorities.

D. The right to obtain a license under this chapter is a privilege and the operation of such medical marijuana dispensing, cultivation, infusion or testing facilities, when authorized by such license, is a privileged business subject to regulations. The license may be revoked for violation of the conditions of this chapter, the laws of the State of Nevada, other ordinances of the city, the DOJ enforcement priorities cited in paragraph C of this section, or for any other cause deemed sufficient by the council in the exercise of its sole discretion.

4.116.030 License required—Issuance prohibited to designated persons. All such establishments as defined in this chapter shall be licensed and controlled so as to protect the public health, safety, morals, good order and general welfare of the inhabitants of the city and to safeguard the public.

A. In conformity with the policy of this chapter, the following persons are declared unqualified to hold a license under the provisions of this chapter:

1. A person who is under the age of 21 years;
2. A person who has been convicted of a crime of moral turpitude as may be further defined in HMC 4.04;
3. A person who the council, after investigation as provided in this title, determines is not a suitable person to receive or hold a license, after due consideration for the protection of the public health, safety, morals, good order and general welfare of the inhabitants of the city;
4. A person who illegally resides in the United States;
5. A person who is not a resident of the State of Nevada and requests a license as a sole-proprietorship;
6. A person whose license, issued under the provisions of this chapter or those ordinances or statutes of any other agency lawfully engaged in the licensing or regulation of medical marijuana dispensing, cultivation, infusion or laboratory services, has been suspended or revoked for cause;
7. A person, who at the time of renewal of any license issued under this chapter, would not be eligible for such license upon a first application;
8. A partnership, limited partnership, association or limited liability company, unless all of the partners, managers and members of such partnership, limited partnership, association or limited liability company required to submit to a background investigation under the provisions of HMC 4.03 have been found suitable;
9. A corporation, if any principal officer required to submit to a background investigation under the provisions of HMC 4.03 is not found suitable;
10. A corporation, partnership, limited partnership, association or limited liability company that does not have at a minimum a 20% interest owned by a resident of the State of Nevada;
11. A person who does not beneficially own the premises for which a license is sought or does not have a lease thereon for the full period for which the license is to be used; or
12. Any employee of the City of Henderson.

B. In conformity with the policy of this chapter, the council may deny a license upon its discretion when:

1. In the judgment of the council the granting of such license may tend to create or constitute a public nuisance;
2. By the granting of such license, a disorderly establishment or place may be maintained;

3. The granting of such license may seriously and adversely affect the valuation of neighboring, adjoining, and/or contiguous property;
4. The council, after investigation, is satisfied that the applicant is not a fit and proper person to operate the business contemplated by his application;
5. In the judgment of the council there are ample and sufficient licensees and establishments in the area or place for which the license is to be used to properly serve such area or place;
6. Violations of the DOJ enforcement criteria set forth in HMC 4.116.020(C) of this chapter occur; or
7. Any other good and sufficient reason is presented.

C. For the purposes of this chapter only medical marijuana establishments that will cultivate, dispense, infuse/produce edible medical marijuana products or provide laboratory testing at an approved location pursuant to HMC title 19 - Development Code may be licensed as a medical marijuana establishment.

4.116.040 Unlawful to operate without license.

It is unlawful for any person to operate, conduct, carry on, or maintain any medical marijuana establishment as described in this chapter, without first having obtained a license as herein required and paying the license fee as set forth in HMC 4.115. Notwithstanding this provision, marijuana is currently classified as a Schedule I drug under the Controlled Substances Act ("CSA") 21 U.S.C. Section 841(a)(1), and federal law makes it unlawful to manufacture, distribute, dispense or possess any controlled substance.

4.116.050 Medical marijuana establishment types.

All medical marijuana establishments may have vertically integrated ownership and may have multiple establishment types at one location. Medical marijuana establishments shall be determined to be one of six classes or an independent testing laboratory:

Class I – a cultivation facility and medical marijuana dispensary at the same location. A Class I medical marijuana establishment must cultivate at a minimum 70% of marijuana products sold at the onsite dispensary.

Class II – a cultivation facility, medical marijuana dispensary and facility for production of edible marijuana products or marijuana-infused products at the same location. A Class II medical marijuana establishment must cultivate at a minimum 70% of marijuana products, including edible marijuana products or marijuana-infused products, sold at the onsite dispensary.

Class III – a cultivation facility, medical marijuana dispensary and facility for production facilities of edible marijuana products or marijuana-infused products at one or more locations, but limited to one location per establishment type. A Class III medical marijuana establishment must cultivate at a minimum 70% of marijuana products, including edible marijuana products

or marijuana-infused products, sold at the dispensary included in this license type.

Class IV – a medical marijuana dispensary only.

Class V – a cultivation facility only.

Class VI – a facility for production of edible marijuana products or marijuana-infused products only.

Independent testing laboratory.

4.116.060 Multiple Locations—Operating names.

Class III medical marijuana establishments operating at multiple locations must utilize the same entity name filed with the Nevada Secretary of State's Office, or, if using a fictitious firm name pursuant to NRS 602, must use that fictitious firm name for all Class III facilities.

4.116.070 Conditions applying to specific location/business types for a combination ownership license.

A. General requirements for all medical marijuana establishments except independent testing laboratories:

1. Medical marijuana establishments must make available to the division at any time a list of employees that are authorized to be on premises.
2. Medical marijuana establishment employees must have on their person a medical marijuana establishment agent identification card issued by the State of Nevada at all times when at the medical marijuana establishment location.
3. All licensed contractors, maintenance and business professionals allowed access to medical marijuana establishment must be logged and given visitor identification. This identification must be displayed on the person of the individual at all times while on the premises of the medical marijuana establishment.
4. A medical marijuana establishment may not allow the use, smoking, ingestion or consumption of any marijuana, edible marijuana product, or marijuana-infused product on the licensed premises.
5. Any theft in excess of \$250 in retail value of marijuana seedlings, clones, plants, or other plant materials, extract, marijuana-infused product, or other item containing marijuana must be reported to the Henderson Police Department and the division in writing within 24 hours of the theft.
6. To prevent unauthorized access to medical marijuana at a medical marijuana establishment, the establishment must have:
 - a. Security equipment to deter and prevent unauthorized entrance into limited areas that includes, without limitation:

1. Devices or a series of devices to detect unauthorized intrusion, which may include a signal system interconnected with a radio frequency method, such as cellular, private radio signals, or other mechanical or electronic device.
2. Exterior lighting to facilitate surveillance.
3. Electronic monitoring including, without limitation:
 - i. At least one 19-inch or greater call-up monitor;
 - ii. A video printer capable of immediately producing a clear still photo from any video camera image;
 - iii. Video cameras with a recording resolution of at least 704 x 480 or the equivalent providing coverage of all entrances to and exits from limited access areas and all entrances to and exits from the building, capable of identifying any activity occurring in or adjacent to the building;
 - iv. A video camera at each point of sale location allowing for the identification of any person who holds a valid registry identification card or his or her designated primary caregiver purchasing medical marijuana;
 - v. A video camera in each grow room capable of identifying any activity occurring within the grow room in low light conditions;
 - vi. A method for storing video recordings from the video cameras for a least 30 calendar days;
 - vii. A failure notification system that provides an audible and visual notification of any failure in the electronic monitoring system; and
 - viii. Sufficient battery backup for video cameras and recording equipment to support at least five minutes of recording in the event of a power outage.
- b. Immediate automatic or electronic notification to alert the Henderson Police Department of an unauthorized breach of security at the medical marijuana establishment in the interior of each building of the establishment.
7. Medical marijuana establishments must develop and enforce policies and procedures:
 - a. That restrict access to the areas of the establishment that contain marijuana to persons authorized to be in that area only;
 - b. That provide for the identification of persons authorized to be in the areas of the establishment that contain marijuana;
 - c. That prevent loitering;
 - d. For conducting electronic monitoring;
 - e. For the use of the automatic or electronic notification to alert the Henderson Police Department of an unauthorized

breach of security at the medical marijuana establishment;
and

f. That prevent the distribution of marijuana to minors.

8. Medical marijuana establishments must have an agreement with an authorized waste management service or other approved plan to remove and destroy all waste generated from the cultivation, infusion or dispensing of medical marijuana from the location. Disposal of waste must meet all state and federal guidelines. Waste must be maintained in a secure location until removal from the location. Waste must be rendered unusable by grinding and incorporating the marijuana waste with non-marijuana waste, such that the resulting mixture is at least 50 percent non-marijuana waste.
9. Medical marijuana establishments are required to use a RFID inventory control system to track all inventories that includes marijuana clones, marijuana plants, harvested marijuana product for dispensing, edible or infused items or harvested marijuana product sent to independent testing laboratories.
10. Medical marijuana establishments are required to comply with all standards set forth by Henderson Building and Fire safety officials prior to conducting business.
11. All owners, officers, board members, employees and volunteers of the medical marijuana establishment shall be required to obtain and maintain a medical marijuana establishment agent registration card in compliance with NRS 453A.

B. Medical marijuana dispensaries.

1. A medical marijuana dispensary shall have a lobby waiting area at the entrance to the dispensary to receive clients, and a separate and secure designated area for dispensing medical marijuana to patients or designated primary caregivers with a valid registry identification card. The primary entrance and exit shall be separated and shall be located and maintained clear of barriers, landscaping and similar obstructions so that it is clearly visible from public streets, sidewalks or site parking areas.
2. If employing private security the security licensee must be licensed in accordance with this title and NRS 648.
3. Medical marijuana dispensaries must display in the lobby waiting area a placard no smaller than 18" tall by 20" wide that states the following:
 - a. Federal law makes it unlawful to possess and consume marijuana products;
 - b. Marijuana products cannot be transferred, shared or gifted to any other individual;
 - c. Do not operate heavy machinery or automobiles while under the influence of marijuana;
 - d. Marijuana has intoxicating effects and may be habit forming;

- e. There may be health risks associated with consumption of marijuana;
 - f. Marijuana should not be used by women who are pregnant or breast feeding; and
 - g. Marijuana should be kept in a secure location and out of reach of minors and pets.
- 4. Medical marijuana dispensary employees may not offer consultation services on medical marijuana products and accept payment for the same transaction.
- 5. Medical marijuana registry identification cardholders may not handle marijuana products unless under the direct supervision of a medical marijuana establishment agent.
- 6. Except as otherwise provided in this subsection, it shall be unlawful for any person licensed under this chapter or any other person to advertise any medical marijuana, edible marijuana product or marijuana-infused product anywhere in the city where the advertisement is visible to members of the public from any street, sidewalk, park or other public place, including advertising utilizing any of the following media:
 - a. Any hand-held, human signage or other portable sign;
 - b. Any handbill, leaflet or flier directly handed to any person, deposited, fastened, thrown, scattered, cast or placed in a public place, left upon a motor vehicle, or posted upon any public property, right of way or private property without the consent of the property owner;
 - c. Any sign mounted or displayed on a vehicle;
 - d. Any free promotional materials.
- 7. It shall be unlawful to advertise any medical marijuana, edible marijuana product or marijuana-infused product by means of any video, print, online media, newspaper, magazine, other periodical of general circulation, radio or broadcast medium that is generally or specifically marketed to minors, or in a manner appealing to minors.
- 8. The following forms of advertisements for medical marijuana establishments are permitted:
 - a. An informational website operated by the medical marijuana establishment proprietor or authorized third party;
 - b. Advertising which is purely incidental to sponsorship of a charitable event approved by the city manager or his or her designee; and
 - c. Advertising in online or paper editions of newspapers, magazines or other periodicals.
- 9. Medical marijuana dispensaries shall not use loyalty or rewards programs for discounts on medical marijuana, edible marijuana products, or marijuana-infused products.
- 10. Medical marijuana dispensaries are prohibited from offering for sale items other than products defined in this chapter as medical marijuana, edible products, or marijuana-infused products and paraphernalia. Any paraphernalia offered for sale must be

designed for individual use only. A medical marijuana dispensary is limited to 10% of retail space for paraphernalia, not to include the lobby area.

11. All medical marijuana products sold to medical marijuana registry identification cardholders or their designated primary caregiver must be enclosed in childproof packaging. The container must be designed or constructed to be significantly difficult for minors under five years of age to open and must not allow the medical marijuana to be visible without opening the packaging material. This includes all edible marijuana products, marijuana-infused products and any other products derived from marijuana plants.

C. Cultivation facilities.

1. Cultivation areas of the establishment must be in compliance with regulations set forth in NRS 453A. The City reserves the right to enforce these sections and may levy sanctions to a medical marijuana establishment based on non-compliance that may include business license citations and fines, and suspension and revocation of license pursuant to HMC 4.06.
2. Areas designated for deliveries from suppliers or couriers must be separated from cultivation areas by floor to ceiling walls and locking doors.
3. Licensees are encouraged to use the most efficient process for the conservation of water resources.

D. Facilities for the production of edible marijuana or marijuana-infused products.

1. Production of edible and infused marijuana products must be in compliance with NRS 453A. The City reserves the right to enforce these sections and may levy sanctions to a medical marijuana establishment based on non-compliance that may include business license citations and fines, and suspension and revocation of licensing pursuant to HMC 4.06.
2. Areas designated for deliveries from suppliers or couriers must be separated from production areas by floor to ceiling walls and locking doors.
3. Use of flammable materials including, but not limited to, butane, ethanol or glycerin based compounds, is prohibited for the extraction of oils from marijuana plants.
4. Production of edible and infused marijuana products must be in compliance with all current and future standards set by the Nevada Division of Public and Behavioral Health and the Southern Nevada Health District for preparation and handling of items meant for human consumption.

E. Independent testing laboratories.

Independent testing laboratories for marijuana products must be in compliance with NRS 453A. The City reserves the right to enforce these sections and may levy sanctions to a medical marijuana establishment based on non-compliance that may include business license citations and fines, and suspension and revocation of licensing pursuant to HMC 4.06.

4.116.080 License—Application—Contents—General.

A. Whenever a person desires to open, keep, carry on or conduct any medical marijuana establishment in the city, or engage in the business thereof, such person must make application in writing to the division to obtain a license therefor. The application must be submitted at the time of application for purposes of receiving written approval on distance and zoning requirements pursuant to HMC title 19 – Development Code that may be used in the Nevada Division of Public and Behavioral Health provisional certification process.

B. Prior to issuance of a medical marijuana establishment business license, all persons receiving such licenses shall execute an indemnification and release agreement with the City on a form approved by the City Attorney and pay the non-refundable indemnification and release agreement fee set forth in HMC 4.115.050.

C. Medical Marijuana Establishment applications must contain.

1. Completed Henderson application and attestations.
2. Documentation from an in-state or out-of-state financial institution which demonstrates that the applicant has liquid assets as required by NRS 453A.322 which are unencumbered and can be converted within 30 days and the source of such assets. Liquid asset amounts required for medical marijuana classes are as follows and are based on the \$250,000 required by the Nevada Division of Public and Behavioral Health for each establishment type:

<u>a.</u>	<u>Class I -</u>	<u>\$500,000</u>
<u>b.</u>	<u>Class II -</u>	<u>\$750,000</u>
<u>d.</u>	<u>Class III -</u>	<u>\$750,000</u>
<u>e.</u>	<u>Class IV -</u>	<u>\$250,000</u>
<u>f.</u>	<u>Class V -</u>	<u>\$250,000</u>
<u>g.</u>	<u>Class VI -</u>	<u>\$250,000</u>
<u>h.</u>	<u>Independent testing laboratory – No Henderson requirement</u>	

3. Evidence of the amount of taxes paid to, or other beneficial financial contributions made to, the State of Nevada and its political subdivisions within the last five years by the applicant or the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment.
4. Proposed organizational structure that lists all owners and board members by name and percentage of ownership.

5. Security plan that includes customer, building and product security measures.
6. Business plan with a description of the electronic verification system and inventory control system to include RFID tracking capabilities of the proposed medical marijuana establishment.
7. Staffing plan that will insure proper management and education of employees.
8. Detailed budget for the proposed establishment, including pre-opening, construction and first year operating expenses.
9. Operations manual that demonstrates compliance with all state and local laws and ordinances.
10. A plan to minimize the environmental impact of the proposed establishment.
11. Background information/resume highlighting any previous experience at or operating other businesses or non-profit organizations, including educational achievements and demonstrated knowledge of the medical marijuana industry.

4.116.090 Annual application process.

- A. Annually the division shall accept medical marijuana establishment applications for a period of eight Henderson business days to conclude at 5:30 p.m. pacific standard time on the eighth application day. This process will only take place in years when there are medical marijuana establishment licenses available.
- B. Concurrently with HMC title 19 – Development Code zoning approval processes the Director will review all applications for a preliminary finding of suitability.

1. A preliminary finding of suitability will be based on the following criteria:
 - a. All applicants must be 21 years or older;
 - b. All applicants shall not have been convicted of a felony or any crime of moral turpitude as may be further defined in HMC 4.04 and must provide an *Identity History Summary Check* provided by the Federal Bureau of Investigation or similar background check document deemed sufficient by the division at the cost of the applicant;
 - c. All applicants must legally reside in the United States;
 - d. All applicants shall not have had a license, issued under the provisions of this chapter or those ordinances or statutes of any other agency lawfully engaged in the licensing or regulation of medical marijuana sales, cultivation, infusion or laboratory services that has been suspended or revoked for cause;
 - e. All applicants must not be full-time employees of the City of Henderson; and
 - f. All applicants must provide proof of the liquid asset requirement stated in HMC 4.116.080(C)(2).

2. Applicants found unsuitable by the division shall be notified in writing within **four** Henderson business days after the close of the application period. **HMC 4.04.210 does not apply to any applicant found unsuitable by the division during the preliminary finding of suitability process. Applicants found unsuitable may request a review of the preliminary finding of suitability by submitting a request for review to the city manager and filing written notice of the same with the city clerk no later than the close of business on the fifth Henderson business day after the letter is sent from the division to the applicant via certified mail.**
3. **All applicants that satisfy the preliminary finding of suitability will be forwarded to the Community Development Department for the distance/zoning preliminary check. All applicants that satisfy the preliminary finding of suitability and receive approval from the Community Development Department for distance/zoning will be provided documentation that may be used to satisfy requirements of the Nevada Division of Public and Behavioral Health provisional certification process.**
4. At the conclusion of the state provisional certification process all applicants that have received a provisional medical marijuana establishment registration certificate and a ranking by the Nevada Division of Public and Behavioral Health will be submitted to the council for final selection of up to the maximum number of medical marijuana establishment privileged licenses allowed within Henderson.

The council shall utilize a merit based approach that will include, but not be limited to, the following criteria:

- a. Ranking provided by the Nevada Division of Public and Behavioral Health;
- b. Demonstration of applicant's ability to vertically integrate cultivation, production and dispensary facilities;
- c. Location of each facility contained in the application;
- d. Plan for integration within the surrounding area;
- e. Demonstration of water conservation plan;
- f. Demonstration of Henderson community involvement and/or proposed Henderson community involvement by the applicants;
- g. **The amount of taxes paid to, or other beneficial financial contributions made to, the State of Nevada or its political subdivisions by the applicant or the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment;**
- h. All items requested in HMC 4.116.080 may be utilized in the evaluation process;
- i. Information regarding any bankruptcy proceedings involving owners or board members; and

j. Information regarding any litigation/legal proceedings, regardless of disposition, dealing with business interests of all owners and board members.

5. All applicants selected by the council must satisfy all required building and fire inspection criteria, Nevada Division of Public and Behavioral Health inspections and applicable food safety inspections by the Southern Nevada Health District before beginning operations.

4.116.100 License—Applicant—Business premises required.

The division shall not issue a license for a medical marijuana establishment to any applicant unless the applicant has an established place of business in a properly zoned area in accordance with HMC title 19 – Development Code and has been recommended by the Nevada Division of Public and Behavioral Health as an approved applicant.

4.116.110 License fees—Non-refundable.

A. License fees must be paid in advance for the license periods as set forth in this title.

B. Initial license fees are due at the time of application. No license will be issued until the appropriate fees are paid.

C. No license fees paid under this title shall be refunded after the start of the license period for which the fee has been paid, regardless of whether the operation of the business has been voluntarily terminated or the license has been revoked under the provisions of this title or for any other reason, except in the case of a clerical error or duplicate payment.

D. License fees paid for applications that are denied by the council may be refunded unless designated as a non-refundable by HMC 4.115.

E. No license fee may be prorated unless specifically stated elsewhere in the title.

4.116.120 Investigation fees—Required—Fees charged.

Any person applying for a medical marijuana establishment license of any of the several types enumerated herein is required to submit to the City an investigation fee as set forth in HMC 4.03, for each per person required to be investigated if deemed necessary by the Director.

4.116.130 License—Issuance restrictions—Proximity of medical marijuana establishments specified.

Pursuant to its general regulatory authority to regulate the sale, cultivation, infusion or testing of medical marijuana, the council declares that the health,

safety, morals and welfare of the inhabitants of the city are best promoted and protected by requiring a separation between certain medical marijuana uses. All distance requirements between medical marijuana establishments and any developed residential zoning district with an "R" designation are as set forth in HMC title 19 – Development Code. The council retains all discretion to approve or disapprove medical marijuana establishment license applications.

4.116.140 License—Change of location—Restrictions—Medical marijuana establishment origination fee.

No medical marijuana establishment license is transferable to a new location unless such proposed change of location complies with and meets all requirements of this title and HMC title 19 – Development Code. The council may authorize such change of location, which authorization may be withheld for any reason deemed sufficient by the council. Location changes are subject to an administrative fee as set forth in HMC 4.04. There shall be no medical marijuana establishment license origination fee required for a change of location. A change of location must also be approved by the Nevada Division of Public and Behavioral Health pursuant to NRS 453A.

4.116.150 License—Permit—Transfer or assignment—Council approval required.

Any assignee or transferee of a valid medical marijuana establishment license is required to obtain a separate medical marijuana establishment license prior to engaging in the sale, cultivation or production of edible marijuana products or marijuana-infused products. It is unlawful for any licensee to permit the licensed premises to be managed or utilized by a lessee or other transferee who has not first obtained a separate medical marijuana establishment license. No permit granted or license issued under this chapter can be assigned or transferred except with the approval of the council and must follow all Nevada Division of Public and Behavioral Health policies and procedures for transferring of ownership.

4.116.160 Closure or non-operational status—Responsibility of licensee to maintain use.

A. In the event a medical marijuana establishment licensee desires to close or discontinue their business operations for any period of time in excess of three months, they must submit a written notification to the division within 30 calendar days of the closure or discontinuance requesting approval for non-operational status beyond the initial three-month period. The notification must include a closure plan detailing the length of closure or period of non-operational status and the licensee's plans for reopening, relocating, selling, or otherwise divesting themselves of the business. The licensee may not discontinue operation of the business for more than a three-month period and maintain a valid license without council approval. The council may approve non-operational status of the business beyond the initial three-month period in

time increments not to exceed one year but in no event shall the council approve any non-operational status beyond a maximum of two years. A license shall be automatically revoked at the expiration of the time periods provided by this section unless council approval has been granted pursuant to this section. All semiannual license fees must be paid notwithstanding the licensee's non-operational status. Failure to maintain the fees will result in automatic revocation of the license and termination of the established use.

B. It shall be the responsibility of the licensee to maintain, extend, or renew any necessary land use approvals under HMC title 19 – Development Code.

4.116.170 License—Issuance moratorium.

The council may declare a moratorium by resolution on any or all medical marijuana establishment applications or licenses if, in its discretion, it is found to be in the best interests of the city.

4.116.180 Land use and location requirements—Compliance with HMC title 19 – Development Code.

A. Locations for certain medical marijuana establishment licenses are subject to distance restrictions as set forth in HMC title 19 – Development Code.

B. The floor plan of an establishment to be licensed under this chapter must be approved pursuant to the requirements of HMC title 19 – Development Code.

C. A medical marijuana license will not be issued unless the location is in accordance with HMC title 19 – Development Code.

D. Approval of a location or of a use permit pursuant to HMC title 19 – Development Code does not guarantee or constitute approval of any medical marijuana establishment license.

E. Licensees shall maintain compliance with the requirements set forth in HMC title 19 – Development Code related to the operation of their establishment.

4.116.190 Medical marijuana establishments—Interconnectivity allowed.

Medical marijuana establishments required to be licensed pursuant to this chapter may be interconnected in the interior subject to the following:

A. Interconnectivity is limited to dispensary, cultivation and infusion facilities only;

B. The cultivation and infusion facilities shall not be open or available for public ingress or egress except in an emergency;

C. The interconnected establishments shall be subject to the provisions of HMC title 19 – Development Code;

D. The interconnected establishments shall comply with all applicable regulations of the Nevada Division of Public and Behavioral Health and the Southern Nevada Health District; and

E. Operations of interconnected establishments may be impacted due to enforcement actions related to any of the interconnected facilities.

4.116.200 Distributing off premises prohibited.

A. It is unlawful for any medical marijuana establishment licensee, or any agents or employees of such licensee to sell, serve, give away or otherwise distribute any medical marijuana products outside the premises described in the application of such license.

B. Off-site delivery services either associated with the licensee or a third party are prohibited pursuant to this chapter.

4.116.210 Intoxication of licensee or employees on premises.

It is unlawful for any licensee or any of his agents or employees, while engaged in the performance of his duties, to be under the influence of alcohol, marijuana, any other controlled substance that is prohibited pursuant to state or federal law, or an illegally obtained or ingested controlled substance that is available by prescription, in or about the premises where the business of dispensing medical marijuana products is being conducted and while such licensee, agent or employee is engaged in the performance of his ownership or employment duties.

4.116.220 Distributing to non-registered persons—Establishment of policy—Copy on premises—Requirement to show.

A. Every medical marijuana licensee who sells, gives, or otherwise furnishes medical marijuana, edible marijuana products, or medical marijuana-infused products shall adopt a policy to prevent any non-registered person from obtaining medical marijuana, edible marijuana products, or medical marijuana-infused products from that licensee.

B. The policy shall be in accordance with all provisions of the Henderson Municipal Code and Nevada Revised Statutes.

C. A copy of the policy shall be kept on the premises at all times and shall be made known to and available to all employees.

D. The policy shall be available upon request by the division or Henderson Police Department.

4.116.230 Minor—Employment in licensed establishments.

Except as otherwise provided by state law, it is unlawful for any licensee to employ a person under the age of 21 years or to permit a person under the age of 21 years to sell medical marijuana, edible marijuana products, or medical marijuana-infused products.

4.116.240 License—Suspension—Revocation—Limitation.

Any activity on the part of the licensee, his agents or employees, or a person previously found suitable, which is contrary to the purpose and intent of this chapter, or which violates any ordinance or regulation of the city or the State of Nevada is grounds for disciplinary action which may result in a revocation, suspension, or limitation of a medical marijuana establishment license. Without limiting the generality of the foregoing, each of the following licensees is declared to be subject to disciplinary action:

A. Each licensee who violates any provision of HMC title 4 Business Regulations and Licenses of this Code;

B. Each licensee who knowingly does any act to sell, lease or purchase a medical marijuana establishment business operation or any portion thereof without taking immediate and affirmative steps to obtain approval;

C. Each licensee who knowingly fails to report or conceals a full disclosure of the names of persons having an interest in the ownership of or having an equitable or beneficial right to the profits under a license in which he has an interest;

D. Each licensee who knowingly fails to report or conceals from proper authority any information which it is his duty to supply under any statute, ordinance, and/or regulation of the state or city;

E. Each licensee who, for conduct subsequent to the issuance of a license, becomes ineligible to hold a medical marijuana establishment license as set out in the statutes, ordinances, and/or regulations of the state or city;

F. Each licensee who makes a misrepresentation of a material fact in his application to obtain a license;

G. Each licensee whose medical marijuana establishment license in any place in the State of Nevada or any other state in the United State of America has been revoked for cause

H. Failure to comply in any way with the following factors established by the United States Department of Justice in its Memorandum titled “Guidance Regarding Marijuana Enforcement” dated August 29, 2013:

1. Preventing the distribution of marijuana to minors;

2. Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
3. Preventing revenue from the sale of marijuana from states where it is legal under state law in some form to other states;
4. Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
5. Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
6. Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
7. Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
8. Preventing marijuana possession or use on federal property.

4.116.250 Licensee responsible for the acts of employees.

Every licensee shall be responsible for the acts of his employees and agents committed while on the licensed premises and during the course and scope of employment. Every licensee shall accordingly use adequate care in the selection of his employees and agents. In any license suspension, limitation or revocation proceedings, the fact that the licensee did not have actual knowledge of the events complained of shall be no defense and every licensee accepts his license subject to said condition.

4.116.260 Medical marijuana establishments subject to local government audit.

In addition to the provisions of HMC 4.04.090, medical marijuana establishments shall maintain records at the location accurately and truthfully documenting:

- A. All receipts of the establishment, including, but not limited to, all contributions, reimbursements, and reasonable compensation, whether in cash or in kind, and all expenditures incurred by the business for the cultivation, production, sale or dispensing of marijuana or marijuana products;
- B. All receipts for the retail sale, transfer or wholesale sale of any marijuana or marijuana product and the corresponding electronic tracking inventory reference;
- C. An inventory record documenting the dates, amounts, and content testing results of all marijuana cultivated by business, including the amounts of marijuana stored at the location at any given time;
- D. A log documenting each transfer of marijuana reflecting the amount transferred, the date transferred, and the full name of the member to whom it was transferred;

E. A log documenting each transfer of marijuana in any form reflecting the amount transferred, the date delivered, and the full name of the employee whom transferred it to another medical marijuana establishment;

F. Any loss, damage or destruction of the records shall be reported to the City of Henderson within twenty four (24) hours of the loss, destruction or damage; and

G. Surveillance cameras must be directly positioned over the cash register in order to provide clear view over the:

1. Area where the tender type (cash, credit card or checks) is exchanged between the buyer and seller; and
2. Register or computer keys utilized to enter the sales information.

4.116.270 Appeals—Judicial review.

Except as otherwise provided in this chapter, appeal rights for aggrieved parties are set forth in HMC 4.04.210. Procedures for judicial review of final decisions are the same as those set forth in HMC 4.06.300.

END OF ORDINANCE