

TOWN OF WINTER PARK

RESOLUTION NO. 1935
SERIES OF 2021

A RESOLUTION APPROVING A PROCESS FOR IMPLEMENTING SECTION 3-7-5(C) OF THE WINTER PARK TOWN CODE TO ENSURE FAIRNESS IN THE REGULATED MARIJUANA BUSINESS LICENSE APPLICATION PROCESS

WHEREAS, pursuant to Title 3, Chapter 7 of the Winter Park Municipal Code (the "Code"), the Town Council shall serve as the local licensing authority (the "Authority") for matters relating to regulated marijuana business licenses and applications;

WHEREAS, Section 3-7-5(C) of the Code provides, in part, that "[n]o person or entity may apply on behalf of another person or entity," and that an "applicant for a license must be the true applicant and may not be a shell or strawman for a third party";

WHEREAS, pursuant to Section 3-7-4(B) of the Code, the Authority shall promulgate rules and regulations as are reasonable and necessary to implement and administer the requirements of Chapter 7 of the Code;

WHEREAS, pursuant to Section 3-7-5(C) of the Code, as amended by Emergency Ordinance No. 569, Series of 2021, the Authority shall promulgate rules and regulations as needed to carry out the intent of Section 3-7-5(C) to ensure and confirm that each Phase 1 applicant entered into the random selection process is a wholly separate business owned, operated, funded and controlled by a wholly separate person; and

WHEREAS, Town Council acting as the Authority desires to adopt additional processes for the review of regulated marijuana business applications to ensure compliance with the intent of the Code.

NOW THEREFORE, BE IT RESOLVED by the Town Council of the Town of Winter Park, Colorado as follows:

1. The Town Council acting as the Authority hereby approves the Process for Implementing Section 3-7-5(C) of the Winter Park Town Code attached hereto as Exhibit A.

PASSED, ADOPTED AND APPROVED this ___ day of _____, 2021.

TOWN OF WINTER PARK

ATTEST:

Nick Kutrumbos, Mayor

Danielle Jardee, Town Clerk

Regulated Marijuana Business License
Process for Implementing Section 3-7-5(C) of the Winter Park Town Code

I. Information and Background

On November 10, 2021, the Town paused the random selection process among Phase 1 applicants to address fairness concerns raised by some applicants. On December 1, 2021, the Town Council adopted Emergency Ordinance No. 569, Series 2021, requiring each applicant in the Phase 1 random selection process to agree and represent as follows:

- Applicant has and can demonstrate a funding plan sufficient to capitalize and cover the cost of initial construction and startup for the proposed business that is not shared with or spoken for by another applicant;
- If a license is issued, the licensee shall not transfer its license during the first two license years following the random selection process; and
- During the first two license years following the random selection process, a licensee shall not alter its ownership, ownership structure, name, or trade name.

Winter Park Town Code (the "Code"), Section 3-7-5(C), as amended by Emergency Ordinance No. 569, Series of 2021.

Also on December 1, 2021, the Town Council approved the processes and criteria set forth in Section II below to improve, clarify and implement the stated intent of the regulated marijuana business licensing framework, restated in part as follows:

- Multiple Phase 1 applications by the same person or entity or applications by multiple entities with **substantially the same ownership** or who are **affiliated entities** are prohibited and will be rejected.
- "**Substantially the same ownership**" means that entities share 50% or more ownership in common, as determined by the Town Clerk.
- "**Affiliated entities**" means means a person, as defined by the Colorado Marijuana Code, having ownership or any level of control in common with an entity, in whole or in part, including, without limitation, an entity's parent corporation, franchisor, licensor, and any subsidiaries or affiliates of such parent corporations. "Affiliated entities" also means a person that has direct business or an immediate familial relationship with another person or a person using the same trade name as another person.
- No person or entity may apply on behalf of another person or entity. **The applicant for a license must be the true applicant and may not be a shell or strawman for a third party.** The selected applicant may not transfer an application to a third party at any time during the Phase 1 and Phase 2 review process.

Finally, Town Council approved the procedure set forth in Section III below to address the Phase 1 applications currently on file with the Town Clerk.

II. Common Control and Separate Financing

Pursuant to Section 3-7-5(C) of the Winter Park Town Code, as amended by Emergency Ordinance No. 569, Series of 2021, to be entered into the Phase 1 random selection process, an applicant must be a wholly separate business owned, operated, funded and controlled by a wholly separate person, as defined by the Colorado Marijuana Code. Applications in violation of this requirement are prohibited and shall be rejected.

In determining whether an applicant meets this standard, the Town Clerk shall consider the following non-exhaustive list of factors and circumstances as they may exist between and among applicants ("Common Control Review").

- a. An applicant's percentage of ownership in other applications, if any;
- b. An applicant's ability to influence the decision of another regulated marijuana business applicant;
- c. The applicant is a manager of a regulated marijuana business applicant;
- d. The applicant has a close relationship, familial tie, or common purpose or motive with one or more persons in control of another regulated marijuana business applicant;
- e. The applicant has substantial business relationship(s) with another regulated marijuana business applicant;
- f. The applicant has the ability to control the proxy machinery or to win a proxy contest;
- g. The applicant is a primary creditor of another regulated marijuana business applicant;
- h. The applicant is the original incorporator of another regulated marijuana business applicant;
- i. There are demonstrable common interest between or among applicants, as shown by a co-agency relationship such as, without limitation, co-worker applicants, spousal applicants, and subsidiary-like applicants;
- j. More than one application submitted by affiliated entities; or
- k. Proof of a plan for funding sufficient to capitalize the business and cover the cost of initial construction and startup.

The Town Clerk may request, and the applicant shall provide, such documentation as is reasonably necessary to confirm or deny common control between and among applicants and to

establish funding plan sufficient to capitalize and cover the cost of initial construction and startup for the proposed business, which funding is not shared with or spoken for by another applicant.

Common Control Review shall occur between and among applicants and all owners, officers, directors, partners, managing members, business managers, and controlling beneficial owners identified in each application.

If the Town Clerk determines there is evidence of common control between or among applicants including, without limitation, reliance on shared funding, or if an applicant fails or refuses timely to provide documentation reasonably needed to confirm or deny common control between and among applications, the Town Clerk shall reject such application or applications ("Common Control Rejection"). Those applicants with demonstrable common control shall be limited to one application. In cases of impermissible common control, the Town Clerk shall allow one applicant to remain and shall reject all subsequent applicants with common control according to the order in which the applications were received. The applicant first in time may remain.

If an application is rejected, the process set forth in Code, Sec. 3-7-5(D)(2) applies, and the applicant may appeal the Town Clerk's decision. At a hearing on a Common Control Rejection, the applicant shall be required to disprove common control and has the burden to show itself to be a wholly separate business owned, operated, funded and controlled by a wholly separate person, as defined by the Colorado Marijuana Code.

III. Pending Applications

Immediately following Town Council approval of this process, the Town Clerk shall prepare a supplemental Phase 1 application. The supplemental application shall require each applicant to acknowledge and agree to the following provisions from the Code, Section 3-7-5(C), as amended by Emergency Ordinance No. 569, Series of 2021:

- Applicant has demonstrated a funding plan sufficient to capitalize and cover the cost of initial construction and startup for the proposed business that is not shared with or spoken for by another applicant;
- If a license is issued, the licensee shall not transfer its license during the first two license years following the random selection process; and
- If a license is issued, during the first two license years following the random selection process, a licensee shall not alter its ownership, ownership structure, name, or trade name.

Applicants shall have until 5:00 p.m. on December 9, 2021, to complete and return the supplemental Phase 1 application with such accompanying documentation as the applicant provides to show applicant as a wholly separate business owned, operated, funded and controlled by a wholly separate person, as defined by the Colorado Marijuana Code.

Applicants that do not return the supplemental Phase 1 application or applicants that cannot agree to the requirements of Code, Section 3-7-5(C), shall be rejected.

Among the applicants who timely return an acceptable supplemental Phase 1 application, the Town Clerk shall conduct Common Control Review as outlined in Section II of this process. The Town Clerk may request additional or clarifying documentation as part of Common Control Review.

Those applicants with a demonstrable common control, as determined by the Town Clerk, shall be limited to one application. If the Town Clerk determines applicants impermissibly share common control, the Town Clerk shall allow one applicant to remain and shall reject all subsequent applicants with common control according to the order in which the supplemental Phase 1 applications were returned. The applicant first in time to submit the supplemental Phase 1 application may remain, and all subsequent applicants with impermissible common control shall be rejected.

The Town Clerk shall complete the Common Control Review and shall send notice of Common Control Rejection, if any, on or before 5:00 p.m. on December 16, 2021. When Common Control Review is complete, rejected applicants, if any, may appeal pursuant to Code, Sec. 3-7-5(D)(2).

Immediately following resolution of appeals based on Common Control Rejection, if any, the Town Clerk shall set a new date and time for the random selection process among the remaining qualified Phase 1 applicants. The new date for the random selection process will be announced by email communication with all remaining applicants and by posting on the Town's website.

Remaining applicants will be assigned a number in order of the Town Clerk's completion of the Common Control Review. This number will be publicly posted and emailed to the applicants at least 48 hours prior to the selection. The random selection process as adopted by Resolution No. 1911, Series of 2021, will be applied to the extent it remains applicable.

Any current applicant may withdraw from consideration before 5:00 p.m. on December 10, 2021, for a full refund of its application fee. After that date and time, no refund shall be provided, even if an applicant is later rejected.

When this process requires notice or communication in writing, it may be done by email from the Town Clerk using the email address provided by the applicant. Email communication is considered effective upon sending.