

ORDINANCE OF THE TOWN COUNCIL OF BASALT, COLORADO, AMENDING ARTICLE V TO CHAPTER 6, BUSINESS LICENSES AND REGULATIONS, OF THE MUNICIPAL CODE OF THE TOWN OF BASALT, COLORADO ADDING LICENSE REQUIREMENTS FOR RETAIL MARIJUANA STORES AND AMENDING THE LICENSE REQUIREMENTS FOR MEDICAL MARIJUANA CENTERS AND FACILITIES; AND AMENDING THE TOWN'S FEE SCHEDULE

**Town of Basalt, Colorado
Ordinance No. 17
Series of 2014**

RECITALS

A. The Town of Basalt ("Town") acting by and through its Town Council has the power to amend the Municipal Code of the Town of Basalt ("Town Code") pursuant to Section 1.3, Home Rule Charter, and Section 1-58, Town Code, and all such amendments shall become a part of the Town Code.

B. At a public meeting of the Basalt Town Council held on May 27, 2014 the Town Council considered the following amendments to the Town Code on first reading and scheduled a public hearing and second reading for this ordinance at a public meeting beginning no earlier than 6:00 pm at the Basalt Town Hall, 101 Midland Avenue, Basalt, Colorado on Tuesday, June 10, 2014.

C. At a public hearing held on June 10, 2014, the Town Council considered the following amendments to the Town Code on second reading and heard comments from Town Staff and the public.

D. The Town Council finds and determines the amendments contained herein are reasonable and necessary to promote the legitimate public purposes of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of Basalt, Colorado as follows:

A. Findings. The Town Council hereby conclusively finds and concludes as follows.

1. The Town is authorized and empowered to enact this Ordinance by the Town Home Rule Charter.

2. The provisions of Colorado Constitution Article XVIII § 14; C.R.S. § 18-18-406.3, and C.R.S. § 25-1.5-106 and Article XVIII § 16 and C.R.S. § 12-43.3-101 et seq. authorize the use of marijuana. Marijuana is considered an illegal drug under

Federal Law. The Town is merely acknowledging medical and retail marijuana as authorized under State law and is no way endorsing or taking a position on the use of medical or retail marijuana.

3. The Basalt Town Council finds, determines and concludes that it has a legitimate public purpose in regulating licenses for marijuana establishments to protect the health, safety, welfare and quality of life for the citizens of the Town.

B. Revisions to Town Code.

Article V, Chapter 6 of the Basalt Municipal Code currently entitled "Medical Marijuana Facilities" is hereby deleted and is replaced with the language as provided in **Exhibit A**.

C. Fee Schedule.

The Fee Schedule for the Police Department is hereby amended to delete the current Fee schedule for medical marijuana centers and replace it with the fee schedule as provided in **Exhibit B** for medical marijuana centers and marijuana retail stores.

D. Miscellaneous

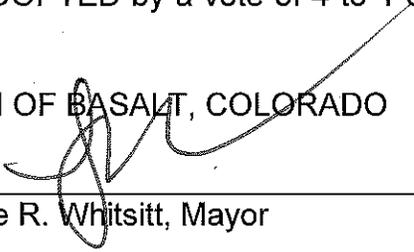
1. This ordinance shall be effective fourteen days after final publication.

2. If any part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance and the Town Council hereby declares it would have passed this Ordinance and each part, section, subsection, sentence, clause or phrase thereof regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING TO BE HELD ON June 10, 2014, by a vote of 5 to 0 on May 27, 2014.

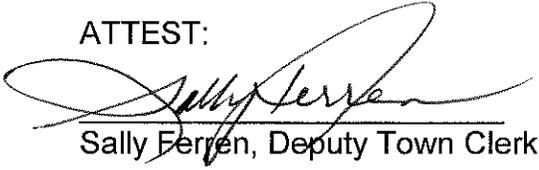
READ ON SECOND READING AND ADOPTED by a vote of 4 to 1 on June 10, 2014.

TOWN OF BASALT, COLORADO

By: 
Jacques R. Whitsitt, Mayor



ATTEST:


Sally Ferren, Deputy Town Clerk

First Publication on: Thursday, June 5, 2014
Second Publication on: Thursday, June 19, 2014
Effective on: Thursday, July 3, 2014

Article V as included in the Basalt Town Code is being deleted and is replaced with the following.

Exhibit A

ARTICLE V

Medical Marijuana Centers & Retail Marijuana Stores

- Sec. 6-119. Classes of licensing authorized.**
- Sec. 6-120. Relationship to state law.**
- Sec. 6-121. Definitions.**
- Sec. 6-122. Local licensing authority.**
- Sec. 6-123. Transition provisions.**
- Sec. 6-124. Application requirements.**
- Sec. 6-125. Requirements for obtaining licensing of medical marijuana centers.**
- Sec. 6-126. Investigation of application.**
- Sec. 6-127. Procedure for granting or denying application.**
- Sec. 6-128. Operation of licensed medical marijuana centers and retail marijuana stores.**
- Sec. 6-129. Inspection and monitoring of licensed facilities.**
- Sec. 6-130. Immunity of Town.**
- Sec. 6-131. Unlawful acts.**
- Sec. 6-132. Criminal penalties.**
- Sec. 6-133. Civil disciplinary actions.**
- Sec. 6-134. Transfer of ownership.**
- Sec. 6-135. Change of location; modification of premises.**
- Sec. 6-136. Term of licenses; renewals.**
- Sec. 6-137. Operating fees.**

Sec. 6-119. Classes of licensing authorized.

For the purpose of regulating the cultivation, manufacture, distribution, offering for sale, and sale of marijuana or marijuana products, the Town only authorizes issuance of licenses to medical marijuana centers and retail marijuana stores, subject to the provisions provided in this Article V. No other classes of medical marijuana or retail marijuana facilities are authorized for licensing.

Sec. 6-120. Relationship to state law.

Except as otherwise specifically provided herein, this Article V incorporates the requirements and procedures set forth in Sections 14 and 16(2) of Article XVIII of the Colorado Constitution, as well as in the Colorado Medical Marijuana Code, § 12-43.3-101 *et. seq.*, C.R.S., (“CMMC”), as amended, 1 CCR 212-1, Permanent Rules Related to the Colorado Medical Marijuana Code, Marijuana Enforcement Division, Colorado Department of Revenue, hereinafter referred to as “1 CCR 212-1,” the Colorado Retail Marijuana Code, § 12-43.4-103, C.R.S., (“CRMC:”), as amended, and 1 CCR 212-2, Permanent Rules Related to the Colorado Retail Marijuana Code, Marijuana Enforcement Division, Colorado Department of Revenue, hereinafter referred to as “1 CCR 212-2,” In the event of any conflict between

the provisions of this Chapter 5.25 and the provisions of the CMMC, 1 CCR 212-1, CRMC, or 1 CCR 212-2, or any other applicable state or local law, the more restrictive provision shall control.

Sec. 6-121. Definitions.

The definitions set forth in Sections 14 and 16(2) of Article XVIII of the Colorado Constitution, as well as in the CMMC, 1 CCR 212-1, CRMC, or 1 CCR 212-2, as amended, shall apply equally to this Article V. All definitions contained in Chapter 16 of this Code and are incorporated herein. In addition, the following terms shall have the meanings respectively assigned to them:

- (1) *Co-located* refers to a medical marijuana center and a retail marijuana store that are side by side but with separate entrances.
- (2) *Coterminous* refers to a medical marijuana center and a retail marijuana store in a completely shared space.
- (3) *Primary home* means that home or place in which a person's habitation is fixed and to which the person, whenever absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of such absence. A primary home is a permanent building or part of a building and may include, by way of example, a house, condominium, apartment, room in a house, or manufactured housing. No rental property, vacant lot, vacant house or cabin, or other premises used solely for business purposes shall be considered a primary home.

Sec. 6-122. Local licensing authority.

The Town Manager or his or her designee shall act as the licensing official. In the case of an application for a medical marijuana center or a retail marijuana store within the Town, no later than five (5) business days of the completion of the Investigation of the Application pursuant to Section 6-126, the Town Manager shall either notify the state licensing authority in writing that:

- (1) The proposed licensed premises violates any zoning law or other restriction on location set forth in Town laws and that the application is disapproved by the Town. Any failure to make such a determination upon the initial review of a state license application shall not preclude the Town from later determining that proposed license is in violation of Town zoning laws or any other restriction on location set forth in Town laws, and disapprove the issuance of a state or Town license on this basis; or
- (2) The application that is not disapproved as provided in paragraph (1) above, and the Town's ultimate decision to approve or deny the issuance of the state license in the Town is subject to the completion of the local licensing process as set forth in this Article V, after which the Town will notify the state licensing authority in writing of whether or not the medical marijuana center or retail marijuana store proposed in the application has or has not been approved by the Town.

Sec. 6-123. Transition provisions.

- (1) Between June 26, 2014 and August 26, 2014, only medical marijuana center license holders that are currently licensed by the Town and under the CMMC and that are operating in good standing may apply for licensing of a retail marijuana store. Any such application must either propose to:

(a) Surrender the existing medical marijuana center license upon receipt of a retail marijuana store license, thereby entirely converting an existing medical marijuana center into a retail marijuana establishment; or

(b) Retain the existing medical marijuana license while locating a retail marijuana establishment under common ownership and exercise the option for either co-located or coterminous licensed premises, to the extent allowed by the Colorado Retail Marijuana Code and applicable state rules and regulations.

(2) Until September 30, 2014, the temporary wholesale sales and purchase limitation imposed on retail marijuana stores pursuant 1 CCR 212-2 Rule 402 shall remain in place in the Town.

Sec. 6-124. Application requirements.

(1) Complete Application. The application for licensing of a medical marijuana center or retail marijuana store shall be comprised of a Town of Basalt Medical Marijuana Center application for all applications seeking licensure of medical marijuana centers, the Town of Basalt Retail Marijuana Store application for all applications seeking licensure of retail marijuana stores, a copy of all completed and executed forms and applications required to be submitted to the Marijuana Enforcement Division, Colorado Department of Revenue, and any additional information requested by the Town in order for the Town to fully investigate the application to demonstrate compliance with this Code. The failure to provide the information required by this section may be grounds for the denial of the application.

(2) Fees. Applicants must include payment in full of all non-refundable application fees.

(3) Residency. The applicant seeking licensure must provide the Town with the name of an owner or partial owner of the proposed medical marijuana center or retail marijuana store who shall have a primary home (as the term is defined in this Article V) within the following Colorado zip codes: 81611 – Aspen; 81615 – Snowmass Village; 81654 – Old Snowmass; 81656 – Woody Creek; 81642 – Meredith and Thomasville; 81621 – Basalt; 81623 – Basalt; and 81601 – Glenwood Springs.

Sec. 6-125. Requirements for obtaining licensing of medical marijuana centers and retail marijuana stores.

(1) No more than two (2) medical marijuana centers and no more than two (2) retail marijuana stores shall be licensed within the Town limits.

(2) Any person, partnership, or corporation must have a separate license for each medical marijuana center or retail marijuana store, including those that are co-located or coterminous.

(3) Neither medical marijuana centers nor retail marijuana stores shall be permitted within any of the following locations:

(a) 500 feet of the following major parks: Arbaney Park, Lions Park, Southside Park, Willis Linear Park, and Willits Soccer Field;

(b) 500 feet of a licensed child care facility;

(c) 1000 feet of an elementary school, middle school or high school;

(d) in a building where the use would abut the following school routes: Two Rivers Road from Homestead Drive to Elk Run Drive; Southside Drive from the High School Property to Fiou Lane; Fiou Lane from Southside Drive to Basalt Avenue; Basalt Avenue from Fiou Lane to Two Rivers Road; or Cottonwood Drive from Two Rivers Road to Riverside Drive; or

(e) any location that is not permitted by the CMMC or the CRMC.

The distances referred to in the above subparagraphs (a), (b), and (c) are to be computed by direct measurement from the nearest property line of the land used for a school, park, or child care facility to the nearest portion of the building in which medical or retail marijuana is to be sold. The above provisions shall not affect the renewal or reissuance of a license once granted by the Town, nor shall the provision apply to an existing licensed premises on land owned by the state or apply to a license in effect and actively doing business before said facility listed above was constructed.

Sec. 6-126. Investigation of application.

Upon receipt of an application for a medical marijuana center license or a retail marijuana store license properly filed with the Town and upon payment of the nonrefundable application fee, the local licensing official shall mark the application as received and send photocopies of the application to the Building and Zoning Department, Police Department, Town Clerk's office and any other agency responsible under law for investigating compliance, such as health inspection services or Fire Department. Each department or agency shall promptly conduct an investigation of the applicant, application, and the proposed medical marijuana center in accordance with its responsibilities under law. Said investigations shall be completed by the Building and Zoning Department, Police Department, Building Inspection Department and any other agency within forty five (45) days of receipt of the application by the local licensing official. At the conclusion of its investigation, each department or agency shall indicate on the photocopy of the application its approval or disapproval of the application, date it, signs it and, in the event of disapproval, state the reasons therefor. In particular:

- (1) The Police Department shall disapprove the application if it finds that the security measures are not in compliance with this Code, the CMMC, or the CRMC.
- (2) The Zoning Department shall determine whether the proposed medical marijuana center or retail marijuana store complies with all location and zoning requirements of this Code.
- (3) The Town Clerk's office shall obtain information from the Colorado Bureau of Investigation to determine whether an applicant has been convicted of a crime.
- (4) The Building Inspection Department shall inspect the proposed medical marijuana center or retail marijuana store in order to ascertain whether it is in compliance with applicable statutes and ordinances.

Sec. 6-127. Procedure for granting or denying application.

- (1) Scheduling of Public Hearing. Following the investigation of the application, pursuant to Section 6-126 above, the Town Manager shall schedule a public hearing to consider the application for licensing of the medical marijuana center or retail marijuana store.

(2) Public Hearing. The following public hearing procedure applies when an application has been deemed complete and has been found to comply with all zoning laws and other restrictions set forth in Town laws. This public hearing procedure applies to any application for licensing renewal.

(a) Based on the results of the investigation of the application, pursuant to Section 6-126, Town staff shall submit its recommendations and comments to the Town Council for consideration. Copies of staff recommendations shall be available to the applicant prior to the public hearing.

(b) At a duly noticed public hearing, the Town Council shall consider the application and Town staff comments and recommendations.

(c) The Town Council must make a finding and determination as to the good moral character of the applicant.

(d) The Town Council may deny the application for licensing renewal if there is evidence that the licensed premises have been previously operated in a manner that adversely affects the public health, welfare, or safety of residents of the Town.

(e) The Town Council shall consider the facts and evidence adduced as a result of its investigation, as well as any other facts, the number, type, and availability of the same type of retail marijuana establishment in the Town, and any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed.

(f) The Town Council has authority to refuse to issue any license for good cause, subject to judicial review. The term "good cause" means that the applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of the CMMC, the CRMC, or any rule and regulations promulgated pursuant thereto, or this Article V or any rules and regulations promulgated pursuant to this title. "Good cause" also means that the proposed licensed premise cannot be supported by the existing infrastructure of the Town.

(g) Any decision of the Town Council approving or denying an application shall be in writing stating the reasons there for, within thirty (30) days after the date of the public hearing, and the Town Clerk shall send a copy of such decision by certified mail to the state licensing authority and to applicant at the address shown in the application. The license, if granted, shall state on its face the name of the person or entity, to whom it is granted, the expiration date, and the address of the medical marijuana center or retail marijuana store. The license shall be posted in a conspicuous place at or near the entrance to the licensed premises so that it can be easily read at any time.

Sec. 6-128. Operation of licensed medical marijuana centers and retail marijuana stores.

In addition to the requirements contained in this Code, the CMMC, the CRMC, 1 CCR 212-1, and 1 CCR 212-2, the following general requirements for medical marijuana centers and retail marijuana stores shall apply:

(1) Relevant zoning requirements are contained in Chapter 16 of this Code and are incorporated herein. Any applicant for a license under this article must obtain zoning approval prior to the issuance of a license.

(2) Hours of operation for medical marijuana centers and retail marijuana stores will be from 9:00 a.m. to 7:00 p.m. Monday through Saturday.

(3) Marijuana clubs, businesses, or other places of assembly where customers, members, or the like, are invited for the purpose of using or consuming marijuana or marijuana products on-site are prohibited in the Town limits.

(4) The consumption, inhalation, or use of marijuana or marijuana products is not allowed on or within the licensed premises.

(5) All sales, distribution, and transfers of marijuana, marijuana products, or paraphernalia by a licensed medical marijuana center, retail marijuana store, or its employees or agents, shall occur only upon the licensed premises from within a permanent building. The licensee is prohibited from delivering marijuana, marijuana products, or associated paraphernalia to any person or business at any other location.

(6) No alcohol sales or consumption of alcohol shall be permitted in or upon the licensed premises.

(7) No medical marijuana center licensee or its employees and no retail marijuana stores shall permit individuals to loiter or stay in the licensed premises. Exceptions to this are granted for individuals conducting business with the medical marijuana center or retail marijuana store, their contractors, or individuals making deliveries to the license premises.

(8) The growing, cultivation, or processing of marijuana or marijuana products within the licensed premises of a medical marijuana center or retail marijuana store is prohibited.

(9) The licensed premises shall be monitored and secured twenty-four (24) hours a day including, at a minimum, the following security measures:

(a) Installation and use of digital security cameras, capable of recording and duplicating color video and still images that are identifiable in all lighting conditions twenty-four (24) hours per day, to monitor all areas of the licensed premises where persons may gain or attempt to gain access to marijuana, marijuana products, paraphernalia, or monies maintained by the center or store. Security surveillance cameras shall also monitor the main entrance along the interior and exterior of the premises to discourage crime and to facilitate the reporting of criminal acts as well as nuisance activities. Security camera surveillance recordings, from all security cameras at the licensed premises, shall be preserved for at least one hundred eighty (180) days, by the business, and be made available law enforcement officers upon request.

(b) Exterior lighting shall illuminate all exterior windows and doors of the center or store which are accessible from the exterior of the building during non-daylight hours. All exterior lighting must be in compliance with the Town Code.

(c) All exterior windows shall not be covered by window shades or other material and shall be of sufficient size to permit observation of the interior of the licensed premise by law enforcement officers standing outside the center or store.

(d) Installation and use of a locking burglary safe for storage of all marijuana, marijuana products, and /or monies on the licensed premises during non-business hours. The safe shall be incorporated into the building structure or securely attached thereto.

(e) Written documentation of security measures, video surveillance systems, and drawings of licensed premises shall be included with the application for a medical marijuana center license or retail marijuana store.

Sec. 6-129. Inspection and monitoring of licensed facilities.

(1) During all business hours, and other times of apparent activity, all licensed premises shall be subject to inspection by the Chief of Police, Building Official, local licensing official, Fire Department or their authorized representatives for the purpose of investigating and determining compliance with the provision of this article and any other applicable state or local law or regulation. Such inspection may include, but need not be limited to, the inspection of books, records, inventory, security measures, and video surveillance recordings.

(2) Where any part of the licensed premises consists of a locked or inaccessible area, such area shall be made available for inspection, without delay, upon request.

(3) The Police Department shall provide ongoing monitoring of the licensed premise to ensure compliance with all applicable security measures.

Sec. 6-130. Immunity of Town.

By accepting a license issued pursuant to this Article, a licensee, jointly and severally if more than one (1), agrees to indemnify and defend the Town, its officers, elected officials, employees, attorneys, agents, insurers and self-insurance pool against all liability, claims and demands on account of injury, loss or damage, including without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the operation of the medical marijuana center or retail marijuana store that is the subject of the license. The licensee further agrees to investigate, handle, respond to and provide defense for and defend against any such liability, claims or demands at its expense and to bear all other costs and expenses related thereto, including court costs and attorney fees. The Town Manager may require a licensee to execute a written instrument confirming the provisions of this section.

Sec. 6-131. Unlawful acts.

It shall be unlawful for any person:

(1) To operate any medical marijuana center in the Town without a license duly issue by the state licensing authority under the CMMC and in compliance with any and all applicable state laws;

(2) To operate any retail marijuana store in the Town without a license duly issued by the state licensing authority under the CRMC and in compliance with any and all applicable state laws;

(3) To operate any medical marijuana center or retail marijuana store in the Town without a license duly issued by the Town under this Article V. and in compliance with any and all applicable Town laws;

(4) To engage in any form of business or commerce involving the cultivation, processing, manufacturing, storage, sale, distribution or consumption of medical marijuana other than those forms that are expressly contemplated by Section 14 or 16 of Article XVIII of the Colorado Constitution, the CMMC, or the CRMC;

(5) To sell marijuana or marijuana products from marijuana plants possessed, grown, processed, or transported for personal use pursuant to Subsection 16(3) of Article XVIII of the Colorado Constitution;

(6) To work in the medical or retail marijuana industry without first obtaining occupational licensing through the Marijuana Enforcement Division of the State of Colorado; or

(7) Operating a medical marijuana center or retail marijuana store to refuse to permit any lawful inspection of the licensed premises.

Sec. 6-132. Criminal penalties.

If any person fails or refuses to obey or comply with or violates any of the provisions contained in this Article, or a license issued pursuant thereto, such person, upon conviction of such offense, shall be guilty of a misdemeanor and shall be punished by a fine as shown on the Town's fee schedule. If no specific criminal penalty exists under this Section, the penalty shall be as shown under Section 1-82 of this Code for violations not otherwise specifically provided in this Code or the fee schedule. For violations that are of a continuing nature, each day that the violation continues to occur shall be considered a separate offense.

Sec. 6-133. Civil disciplinary actions.

(1) Any violation of the terms and conditions of a license for a medical marijuana center or retail marijuana store or any violation of the CMMC, 1 CCR 212-1, the CRMC, 1 CCR 212-2, or this Code may result in fines, suspension, or revocation of the license, in addition to any other fines or remedies available to the Town pursuant to other provisions of the Town Code.

(2) In lieu of any license suspension or revocation, the Town Council may assess a fine against the licensee not to exceed one thousand dollars (\$1,000) per violation. Whether a fine should be assessed and the amount of such fine shall be determined by the Town Council in its discretion, based upon the nature of the offense, the licensee's record, whether the violation presents a threat to public health, safety or welfare, the duration of the violation, and any other mitigating or aggravating circumstances present.

(3) Procedures for investigation of license violations for suspension and revocation as a result of any such violation are provided in the CMMC, 1 CCR 212-1, the CRMC, 1 CCR 212-2.

Sec. 6-134. Transfer of ownership.

Transfer of ownership of any local license issued pursuant to this Article V shall be governed by the standards and procedures set forth in the CMMC, 1 CCR 212-1, the CRMC, 1 CCR 212-2, and the Town Council shall administer transfers of local licenses in the same manner as the state licensing authority administers transfers of state licenses. In addition, the public hearing requirements from this Article V shall apply to all applications for transfer of ownership of any local license.

Sec. 6-135. Change of location; modification of premises.

Any change of the location of any license or any modification of the licensed premises shall be governed by the standards and procedures set forth in the CMMC, 1 CCR 212-1, the CRMC, 1 CCR 212-2, and the Town Council shall administer applications to change location or modify premises in the same manner as the state licensing authority administers changes of location and modification of premises for state licenses. Any proposed modification and any new location to which an existing licensed business is transferred shall fully comply with spacing requirements as set forth in this Article V, as well as the zoning requirements set forth in Chapter 16 of the Town Code.

Sec. 6-136. Term of licenses; renewals.

Any local license issued pursuant to this Article V shall be valid for a period of one (1) year from the date of issuance. Application for renewal of a license shall be made at least forty-five (45) days before the expiration date of the current license. Any renewal of the license shall be governed by the standards and procedures set forth in the CMMC, 1 CCR 212-1, the CRMC, 1 CCR 212-2, subject to any additional restrictions as provided in this Article V.

Exhibit B
Fee Schedule

The fee schedule for medical marijuana centers is deleted and replaced with the following:

Operating fees for medical marijuana centers and retail marijuana stores are as follows:

	medical marijuana centers	retail marijuana stores	Combined medical marijuana center and retail store
Application Fee (nonrefundable)	\$2,500	\$5,000	\$7,500
Individual Fingerprint Fee	\$20.00 per card	\$20.00 per card	\$20 per card
Basalt Business and Sales Tax License	\$35.00	\$35.00	\$70
State Fingerprint Processing Fee	\$39.50 per card	\$39.50 per card	\$39.50 per card
New License	\$1000	\$2000	\$3000
License Renewal	\$500	\$1000	\$1500
Transfer to new owner applicants	\$300	\$300	\$600
Transfer of location	\$500	\$500	\$1000
Modification/alteration of premises	\$500	\$500	\$1000