

ORDINANCE NO. 025, 2010
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ADDING AN ARTICLE TO CHAPTER 15 OF THE CITY CODE
GOVERNING THE LICENSING, LOCATION AND OPERATION OF
MEDICAL MARIJUANA BUSINESSES

WHEREAS, on November 7, 2000, the voters of the state of Colorado approved Amendment 20 to the Colorado Constitution, which created a limited exception from criminal liability under Colorado law for persons suffering from debilitating medical conditions who are in need of marijuana for medical purposes and who obtain and use medical marijuana under the circumstances specified in Amendment 20; and

WHEREAS, the possession, use, sale, distribution or transportation of marijuana is still a violation of federal law and, when possessed, used, sold, distributed or transported for any purpose other than medical use, a violation of state law as well; and

WHEREAS, accordingly, the possession, use, sale, distribution, and transportation of marijuana for medical use as contemplated by Amendment 20 should be closely monitored and regulated by the City; and

WHEREAS, if not closely monitored and regulated, the manner in which medical marijuana is possessed, used and distributed may adversely affect the health, safety, and welfare of the residents of the City as well as the health, safety and welfare of the patients and primary caregivers whose possession and use of marijuana for medical purposes is permitted by Amendment 20; and

WHEREAS, on December 1, 2009, the City Council adopted Ordinance No. 128, 2009, and, for the reasons stated therein, imposed a moratorium on the establishment of any medical marijuana dispensaries that had not theretofore been established in the City, so that the status quo could be maintained while proposed regulations governing the same were developed by City staff; and

WHEREAS, City staff has, pursuant to City Council direction, reviewed the issues, concerns and secondary effects that may be associated with the operation of medical marijuana dispensaries in the City and has presented proposed regulations pertaining to the same for the City Council's consideration; and

WHEREAS, the City Council believes that medical marijuana dispensaries, if properly regulated, can provide a valuable service to persons that are suffering from debilitating medical conditions and such dispensaries and related facilities should therefore be allowed as a conditional use on certain properties in the City, subject to licensing requirements and other regulations; and

WHEREAS, by adoption of this Ordinance, the City Council does not intend to authorize or make legal any act that is not permitted under federal or state law but rather to establish local regulations governing the possession and use of medical marijuana under Amendment 20; and

WHEREAS, the City Council has determined that, for the reasons set forth above and for the purpose of protecting the public health, safety and welfare of the residents and visitors of Fort Collins, it is in the best interests of the City to amend the City Code as provided herein.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the recitals contained in this Ordinance and in Ordinance No. 128, 2009, are hereby adopted and incorporated herein as findings of fact of the City Council.

Section 2. That Chapter 15 of the Code of the City of Fort Collins is hereby amended by the addition of a new Article XVI which shall read in its entirety as follows:

ARTICLE XVI. MEDICAL MARIJUANA

Sec. 15-450. Purpose.

(a) The provisions of this Article are intended to acknowledge and protect the rights of patients and their primary caregivers under the provisions of Article XVIII, Section 14 of the Colorado Constitution, while also protecting the health, safety, and welfare of the public; and curtailing to the extent reasonably possible, the possession, use, distribution, or transportation of marijuana for unlawful purposes by:

- (1) requiring that medical marijuana businesses be operated in a manner that minimizes potential health and safety risks and mitigates the negative impacts that a medical marijuana dispensary might have on surrounding properties and persons;
- (2) regulating the conduct of persons owning, operating and using medical marijuana dispensaries and cultivation facilities in order to protect the public health, safety and welfare; and
- (3) regulating the location and operation of medical marijuana dispensaries and cultivation facilities.

(b) By adoption of this Article, the City Council does not intend to authorize or make legal any act that is not permitted under federal or state law

Sec. 15-451. Definitions.

(a) The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

Alcohol beverage shall have the meaning ascribed to such term in the Colorado Liquor Code.

Amendment 20 shall mean that certain voter initiated amendment to the Colorado Constitution adopted November 7, 2000, which added Section 14 of Article XVIII to the Colorado Constitution.

Applicant shall mean any person or entity who has submitted an application for a license or renewal of a license issued pursuant to this Article. If the applicant is an entity and not a natural person, *applicant* shall include all persons who are the members, managers, officers and directors of such entity.

Building Official shall mean the Building Code Official as defined in Chapter 5 of this Code.

Cultivation shall mean the process by which a person grows a marijuana plant.

Dwelling unit shall mean one (1) or more rooms and a single kitchen and at least one (1) bathroom, designed, occupied or intended for occupancy as separate quarters for the exclusive use of a single family for living, cooking and sanitary purposes, located in a single-family, two-family or multi-family dwelling or mixed-use building.

Financial interest shall mean any ownership interest, including, without limitation, a membership, directorship or officership; or any creditor interest, whether or not such interest is evidenced by any written document.

Good cause, for the purpose of denying, refusing to renew, suspending or revoking a license under this Article, shall mean:

- (1) the applicant has violated, does not meet, or has failed to comply with, any of the terms, requirements, conditions or provisions of this Article or with any applicable state or local law or regulation;
- (2) the applicant has failed to comply with any special terms or conditions of a license, including those terms and conditions that were established at the time of issuance of the license and those imposed as a result of disciplinary proceedings held subsequent to the date of issuance of the license; or
- (3) the medical marijuana dispensary or cultivation facility has been operated in a manner that adversely affects the public health, welfare or safety of the immediate neighborhood in which the dispensary or cultivation facility is located. Evidence to support such a finding can include, without limitation, a continuing pattern of disorderly conduct, a continuing pattern of drug-related criminal conduct within the premises of the medical marijuana dispensary or cultivation facility or in the immediate area surrounding such facility, a continuing pattern of criminal conduct directly related to or arising from the operation of the medical marijuana dispensary or

cultivation facility, or an ongoing nuisance condition emanating from or caused by the medical marijuana dispensary or cultivation facility.

License shall mean a document issued by the City officially authorizing an applicant to operate a medical marijuana business pursuant to this Article.

Licensee shall mean the person to whom a license has been issued pursuant to this Article.

Licensed premises shall mean that portion of a property, building or other structure used for the purpose of cultivating, storing, processing, displaying for sale, selling or otherwise distributing medical marijuana or other products by a licensee.

Medical marijuana shall mean marijuana or cannabis approved under state law to treat persons suffering from debilitating medical conditions as defined in Amendment 20 and other laws and regulations of the State, including, without limitation, cancer, glaucoma, human immunodeficiency virus, or chronic or debilitating diseases such as seizures, severe pain, severe nausea, persistent muscle spasms and epilepsy.

Medical marijuana business shall mean any person acting alone or in concert with another person, whether for profit or not for profit, who cultivates, grows, harvests, processes, packages, transports, displays, sells, dispenses or otherwise distributes the stalks, stems, roots, seeds, leaves, buds or flowers of the plant (genus) cannabis, or any mixture or preparation thereof, for medical use as authorized by Amendment 20.

Medical marijuana cultivation facility or *cultivation facility* shall mean a building, structure or premises used for the cultivation or storage of medical marijuana that is physically separate and off-site from any medical marijuana dispensary and that is designated as part of the premises of a medical marijuana dispensary licensed pursuant to this Article.

Medical marijuana delivery business shall mean a medical marijuana business that delivers medical marijuana to a patient or primary caregiver at a location other than a licensed premises.

Medical marijuana dispensary or *dispensary* shall mean a property or structure used to sell, distribute, transmit, give, dispense or otherwise provide marijuana in any manner to patients or primary caregivers pursuant to the authority contained in Amendment 20 and the implementing state statutes and administrative regulations.

Medical marijuana paraphernalia or *paraphernalia* shall mean devices, contrivances, instruments and paraphernalia for inhaling or otherwise consuming medical marijuana, including, but not limited to, rolling papers, related tools, water pipes and vaporizers.

Minor patient shall mean a patient less than eighteen (18) years of age.

Patient shall mean a person who has a debilitating medical condition as defined in Amendment 20.

Person shall mean a natural person or business entity such as, without limitation, a corporation, association, firm, joint venture, estate, trust, business trust, syndicate, fiduciary, partnership or any group or combination thereof.

Place of worship or religious assembly shall mean a building containing a hall, auditorium or other suitable room used for the purpose of conducting religious services or meetings of the occupants of such structure.

Premises shall mean the entire parcel of property upon which a medical marijuana dispensary or cultivation facility is located.

Primary caregiver shall mean a person, other than the patient and the patient's physician, who is eighteen (18) years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition.

Registry identification card shall mean that document, issued by the Colorado Department of Public Health and Environment, which identifies a patient authorized to engage in the medical use of marijuana and such patient's primary caregiver, if any has been designated.

(b) In addition to the definitions provided in Subsection (a) of this Section, other terms used in this Article shall have the meaning ascribed to them in Amendment 20, and such definitions are hereby incorporated into this Article by this reference.

Sec. 15-452. License required; exemption.

(a) Except as provided in Subsection (b) of this Section, it shall be unlawful for any person to establish or operate a medical marijuana business in the City without first having obtained a license for such business from the City Manager. Such license shall be kept current at all times, and the failure to maintain a current license shall constitute a violation of this Section.

(b) Primary caregivers who cultivate, possess or dispense medical marijuana to a single patient, and patients who cultivate or possess medical marijuana for their own medical use, are exempt from the licensing requirements of this Article, but shall be subject to the following limitations:

- (1) All such cultivation shall be conducted entirely within a building or other fully enclosed structure.
- (2) Not more than twelve (12) marijuana plants may be cultivated or kept at any dwelling unit, of which no more than six (6) plants may be mature.
- (3) In no event shall a patient or primary caregiver keep, cultivate, grow or process more medical marijuana than such person is entitled to possess under Amendment 20.

Sec. 15-453. Requirements of application for license; payment of application fee; denial of license.

(a) A person seeking a license or renewal of a license issued pursuant to this Article shall submit an application to the City Manager on forms provided by the City. At the time of application, each applicant shall pay a nonrefundable application fee to defray the costs incurred by the City for background investigations and inspection of the proposed premises, as well as any other costs associated with the processing of the application. In addition, the applicant shall present for recording one (1) of the following forms of identification:

- (1) an identification card issued in accordance with Section 42-2-302, C.R.S.;
- (2) a valid state driver's license;
- (3) a valid driver's license containing a picture issued by another state;
- (4) a military identification card;
- (5) a valid passport; or
- (6) an alien registration card.

The applicant shall also provide the following information on a form approved by, or acceptable to, the City, which information shall be required for the applicant, the proposed manager of the medical marijuana business, and all persons having a ten-percent or more financial interest in the medical marijuana business that is the subject of the application or, if the applicant is an entity, having a ten-percent or more financial interest in the entity:

- (1) name, address, date of birth;
- (2) a complete set of fingerprints;
- (3) an acknowledgment and consent that the City will conduct a background investigation, including a criminal history check, and that the City will be

entitled to full and complete disclosure of all financial records of the medical marijuana business, including records of deposit, withdrawals, balances and loans;

- (4) if the applicant is a business entity, information regarding the entity, including, without limitation, the name and address of the entity, its legal status, and proof of registration with, or a certificate of good standing from, the Colorado Secretary of State, as applicable;
- (5) the name and complete address of the proposed medical marijuana business, including the facilities to be used in furtherance of such business, whether or not such facilities are, or are planned to be, within the territorial limits of the City;
- (6) if the applicant is not the owner of the proposed licensed premises, a notarized statement from the owner of such property authorizing the use of the property for a medical marijuana dispensary or cultivation facility;
- (7) a copy of any deed reflecting the ownership of, or lease reflecting the right to possess, the proposed licensed premises;
- (8) evidence of a valid sales tax license for the business;
- (9) if the medical marijuana dispensary will be providing medical marijuana in edible form, evidence of any food establishment license or permit that may be required by the State;
- (10) a “to scale” diagram of the premises, showing, without limitation, a site plan, building layout, all entry ways and exits to the dispensary and cultivation facility, loading zones and all areas in which medical marijuana will be stored, grown or dispensed;
- (11) a comprehensive business plan for the medical marijuana business which shall contain, without limitation, the following:
 - a. a security plan meeting the requirements of § 15-463,
 - b. a description of all products to be sold,
 - c. a signage plan that is in compliance with all applicable requirements of this Code and the Land Use Code,
 - d. a plan for the disposal of medical marijuana and related byproducts to ensure that such disposal is in compliance with all applicable federal, state and local laws or regulations; and

- (12) any additional information that the City Manager reasonably determines to be necessary in connection with the investigation and review of the application.

(b) A license issued pursuant to this Article does not eliminate the need for the licensee to obtain other required permits or licenses related to the operation of the medical marijuana dispensary and cultivation facility, including, without limitation, any development approvals or building permits required by this Code and the Land Use Code.

(c) Upon receipt of a completed application, the City Manager shall circulate the application to all affected service areas and departments of the City to determine whether the application is in full compliance with all applicable laws, rules and regulations.

(d) The Building Official shall, prior to issuance of the license, perform an inspection of the proposed licensed premises, including, without limitation, the proposed cultivation facility, to determine compliance with any applicable requirements of this Article or other provisions of this Code or the Land Use Code.

(e) The City Manager shall deny any application that does not meet the requirements of this Article. The City Manager shall also deny any application that contains any false, misleading or incomplete information. Denial of an application for a license shall not be subject to administrative review but only to review by a court of competent jurisdiction.

Sec. 15-454. Location criteria.

(a) No medical marijuana dispensary shall, at the time it is established and first licensed by the City, be located within one thousand (1,000) feet of another dispensary.

(b) No medical marijuana dispensary shall be allowed except in accordance with the following location requirements:

- (1) No medical marijuana dispensary shall, at the time it is established and first licensed by the City, be located:
 - a. within one thousand (1,000) feet of any private or public preschool, elementary, secondary, vocational or trade school.
 - b. within five hundred (500) feet of:
 1. any college or university;
 2. any child care center;

3. any place of worship or religious assembly;
 4. any public or private park, pool, playground or recreational facility;
 5. any juvenile or adult halfway house, correctional facility, or substance abuse rehabilitation or treatment center; or
 6. the boundary of any RUL, UE, RF, RL, LMN, MMN, NCL, NCM, NCB or HMN residential zone district.
- c. upon any City property; or
- d. in a residential unit, except as permitted under Section 3.8.3 of the Land Use Code.
- (2) No medical marijuana business shall operate as an outdoor vendor as defined in §15-381 of this Chapter

(c) The distances described above shall be computed by direct measurement in a straight line from the nearest property line of the land used for the purposes stated in Subsections (a) and (b) above to the nearest portion of the building or unit in which the medical marijuana dispensary or cultivation facility is located.

Sec. 15-455. Persons prohibited as licensees.

- (a) No license shall be issued to, held by, or renewed by any of the following:
- (1) any natural person who is not a patient or primary caregiver, as evidenced by a registry identification card or its functional equivalent under Section 14(3)(d) of Amendment 20 and, in the case of a primary caregiver, his or her patient's written designation of the applicant as the patient's primary caregiver, as submitted to the Colorado Department of Public Health and Environment;
 - (2) any person who has been released within the ten (10) years immediately preceding the application from any form of incarceration or court-ordered supervision, including a deferred sentence, resulting from a conviction of any felony or any crime which under the laws of the State would be a felony; or any crime of which fraud or intent to defraud was an element, whether in this state or elsewhere;
 - (3) any entity whose directors, shareholders, partners, or other persons having a financial interest in said entity have been convicted of any of the offenses set forth in Paragraph (2) above;

- (4) any person under the age of twenty-one (21) years;
- (5) any person who has made a false, misleading or fraudulent statement on his or her application for a license;
- (6) any person who has not paid all applicable fees;
- (7) any person whose license for a medical marijuana business in another city, town, county or state has been revoked;
- (8) any peace officer as defined in Section 16-2.5-101, C.R.S., or family member of a peace officer; or
- (9) any applicant who already holds three (3) medical marijuana business licenses in the City.

Sec. 15-456. Issuance of license; duration; renewal.

(a) Upon issuance of a license, the City shall provide the licensee with one (1) original of such license for each dispensary or cultivation site to be operated by the licensee in the City. Each such copy shall show the name and address of the licensee, the type of facility or business for which it is issued, and the address of the facility at which it is to be displayed, if any, pursuant to Subsection 15-458(c).

(b) Each license issued pursuant to this Article shall be valid for one (1) year from the date of issuance and may be renewed only as provided in this Article. All renewals of a license shall be for no more than one (1) year. An application for the renewal of an existing license shall be made to the City Manager not more than sixty (60) days and not less than thirty (30) days prior to the date of expiration of the license. No application for renewal shall be accepted by the City Manager prior to or after such date. The timely filing of a renewal application shall extend the current license until a decision is made on the renewal.

Sec. 15-457. Annual license fee.

Upon issuance of a license or any renewal of a license, the licensee shall pay to the City a fee in an amount determined by the City Manager to be sufficient to cover the annual cost of inspections conducted pursuant to § 15-475 of this Article by Police Services, or such other departments of the City as may be designated by the City Manager, for the purpose of determining compliance with the provisions of this Article and any other applicable state or local laws or regulations.

Sec. 15-458. Use and display of license.

- (a) A license shall not be transferable to another person.

(b) Each license shall be limited to use at the premises specified in the application for such license. Any change in location shall require the filing of an application for, and issuance of, a new license under the provisions of §15-453 above.

(c) Each license shall be continuously posted in a conspicuous location at the medical marijuana dispensary and at the cultivation facility.

(d) Any person delivering medical marijuana in the City on behalf of a medical marijuana business shall have in his or her possession a true and accurate copy of the license held by said business and shall, upon request by any member of Police Services or by any other duly authorized law enforcement officer, produce the same for inspection.

Sec. 15-459. Management of licensed premises.

Licensees who are natural persons shall either manage the licensed premises themselves or employ a separate and distinct manager on the premises and report the name of such manager to the City Manager. Licensees that are entities shall employ a manager on the premises and report the name of the manager to the City Manager. All managers must be natural persons who are patients or primary caregivers at least twenty-one (21) years of age. No manager shall be a person having a criminal history as described in Paragraph 15-455 (a)(2).

Sec. 15-460. Change in manager; change in financial interest.

(a) Each licensee shall report any change in managers to the City Manager within thirty (30) days after the change. Such report shall include all information required for managers under § 15-453 of this Article.

(b) Each licensee shall report in writing to the City Manager any transfer or change of financial interest in the license holder or in the medical marijuana business that is the subject of the license. Such report must be filed with the City Manager within thirty (30) days after any such transfer or change. A report shall be required for any transfer of the capital stock of a public corporation totaling more than ten-percent of the stock in any one (1) year, as well as any transfer of a controlling interest in the corporation whenever a sufficient number of shares have been transferred to effectuate the transfer of a controlling interest. No person having or acquiring a financial interest in the medical marijuana business that is the subject of a license shall be a person having a criminal history as described in Paragraph 15-455(a)(2).

Sec. 15-461. Hours of operation.

Medical marijuana dispensaries may be open for business only between the hours of 8:00 a.m. and 8:00 p.m.

Sec. 15-462. Signage and advertising.

All signage and advertising for a medical marijuana dispensary shall comply with all applicable provisions of this Code and the Land Use Code. In addition, no signage or advertising shall use the word “marijuana” or “cannabis,” or any other word, phrase or symbol commonly understood to refer to marijuana unless such word, phrase or symbol is immediately preceded by the word “medical” in type and font that is at least as readily discernible as all other words, phrases or symbols. Such signage and advertising must clearly indicate that the products and services are offered only for medical marijuana patients and primary caregivers.

Sec. 15-463. Security requirements.

(a) Security measures at dispensaries and cultivation facilities shall include at a minimum the following:

- (1) security surveillance cameras installed to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises;
- (2) robbery and burglary alarm systems which are professionally monitored and maintained in good working condition;
- (3) a locking safe permanently affixed to the premises that is suitable for storage of all medical marijuana and cash stored overnight on the licensed premises;
- (4) exterior lighting that illuminates the exterior walls of the licensed premises and complies with applicable provisions of this Code and Land Use Code; and
- (5) deadbolt locks on all exterior doors.

(b) All security recordings shall be preserved for at least seventy-two (72) hours by the licensee and be made available to Police Services upon request for inspection.

Sec. 15-464. Required notices.

There shall be posted in a conspicuous location in each medical marijuana dispensary a legible sign containing warnings that:

- (1) the possession, use or distribution of marijuana is a violation of federal law;

- (2) the possession, use or distribution of marijuana for nonmedical purposes is a violation of state law;
- (3) it is illegal under state law to drive a motor vehicle or to operate machinery when under the influence of, or impaired by, marijuana; and
- (4) no one under the age of eighteen (18) years is permitted on the premises except minor patients accompanied by a parent or legal guardian in possession of a state registry card for such minor patient.

Sec. 15-465. Cultivation, growing and processing by licensees.

The cultivation, growing, processing, display or storage of marijuana plants within a medical marijuana dispensary shall be limited to nonflowering plants that are kept by the licensee solely for the purpose of cloning. The cultivation, growing and processing of marijuana plants other than for cloning shall be conducted by the licensee only at the cultivation facility shown on the application.

Sec. 15-466. Sale of edible products.

(a) Medical marijuana dispensaries may not be co-located with facilities used to prepare, produce or assemble food, whether for medical or nonmedical purposes.

(b) Any food products sold by a medical marijuana dispensary shall either be inspected by an agency of the Colorado Department of Public Health and Environment or, if no such inspection has occurred, shall contain a label indicating the lack of any such inspection.

Sec. 15-467. Labeling.

All marijuana sold or otherwise distributed by the licensee shall be packaged and labeled in a manner that advises the purchaser that the marijuana is intended for use solely by the patient to whom it is sold and that any resale or redistribution of the marijuana to any person other than a patient or primary caregiver is a criminal violation.

Sec. 15-468. On-site consumption of medical marijuana.

The consumption, ingestion or inhalation of medical marijuana on or within the premises of a medical marijuana dispensary or cultivation facility is prohibited. These restrictions shall not apply to medicinal products such as tinctures.

Sec. 15-469. Prohibited acts.

It shall be unlawful for any licensee to:

- (1) employ any person to manage a medical marijuana dispensary or cultivation facility or to dispense medical marijuana who is not a patient or primary caregiver at least twenty-one (21) years of age or who has a criminal history as described in Paragraph 15-455 (a)(2);
- (2) sell, give, dispense or otherwise distribute medical marijuana to anyone other than a patient or primary caregiver;
- (3) sell, give, dispense or otherwise distribute to any patient or primary caregiver more than two (2) ounces of any usable form of medical marijuana within any seven-day period of time;
- (4) purchase or otherwise obtain from any source more than two (2) ounces of medical marijuana in any usable form within any seven-day period of time;
- (5) permit on the licensed premises any person other than:
 - (a) the licensee, the licensee's manager, employees and financial interest holders,
 - (b) a patient in possession of a registry identification card or its functional equivalent under Section 14(3)(d) of Amendment 20,
 - (c) a minor patient accompanied by a parent or lawful guardian in possession of the minor patient's registry identification card,
 - (d) a primary caregiver in possession of his or her patient's registry identification card or its functional equivalent under Section 14(3)(d) of Amendment 20 and the patient's written designation of said person as the patient's primary caregiver, as submitted to the Colorado Department of Public Health and Environment,
 - (e) a person whose physical presence and assistance are necessary to assist a patient,
 - (f) a person who is actively engaged in the maintenance, repair or improvement of the licensed premises or in the provision of accounting or other professional services directly related to the conduct of the licensee's medical marijuana business, r
 - (g) law enforcement officers, inspectors and other officials or employees of any federal, state or local government or agency engaged in the lawful performance of their official duties;
- (6) dispense medical marijuana in or upon its cultivation facility;

- (7) permit the sale or consumption of alcohol beverages on the licensed premises; or
- (8) post or allow to be posted signs or other advertising materials identifying cultivation facilities as being associated with the use or cultivation of marijuana.

Sec. 15-470. Visibility of activities; control of emissions.

(a) All activities of medical marijuana dispensaries and cultivation facilities, including, without limitation, cultivating, growing, processing, displaying, selling and storage, shall be conducted indoors.

(b) No medical marijuana or paraphernalia shall be displayed or kept in a dispensary or cultivation facility so as to be visible from outside the licensed premises.

(c) Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting a dispensary or cultivation facility must be provided at all times. In the event that any odors, debris, dust, fluids or other substances exit a medical marijuana dispensary or cultivation facility, the owner of the subject premises and the licensee shall be jointly and severally liable for such conditions and shall be responsible for immediate, full clean-up and correction of such condition. The licensee shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations.

Sec. 15-471. Disposal of marijuana byproducts.

The disposal of medical marijuana, byproducts and paraphernalia shall be done in accordance with plans and procedures approved in advance by the City Manager.

Sec. 15-472. Deliveries of medical marijuana.

Deliveries of medical marijuana and paraphernalia by licensees operating a medical marijuana delivery business, whether or not such business is conducted in conjunction with a local dispensary or cultivation facility, shall be made only to patients and primary caregivers and only in the amounts specified in Paragraph 15-469(3) above. All such deliveries shall be subject to the record keeping requirements contained in § 15-474 below.

Sec. 15-473. Sales tax.

Each licensee shall collect and remit City sales tax on all medical marijuana, paraphernalia and other tangible personal property sold by the licensee at the medical marijuana dispensary.

Sec. 15-474. Required books and records.

(a) Every licensee shall maintain an accurate and complete record of all medical marijuana purchased, sold or dispensed by the medical marijuana business in any usable form. Such record shall include the following:

- (1) the identity of the seller and purchaser involved in each transaction;
- (2) the total quantity of, and amount paid for, the medical marijuana; and
- (3) the date, time and location of each transaction.

(b) Every patient or primary caregiver shall provide to the licensee, and the licensee shall record, the following information for such books and records:

- (1) the patient or primary caregiver's name, date of birth, and current street address, including city, state and zip code;
- (2) the form of identification that was presented by the patient or primary caregiver, which may include any of the following, and the identifying number, if any, from such form:
 - a. an identification card issued in accordance with Section 42-2-302, C.R.S.,
 - b. a valid state driver's license,
 - c. a valid driver's license containing a picture issued by another state,
 - d. a military identification card,
 - e. a valid passport, or
 - f. an alien registration card;
- (3) a registry identification card or its functional equivalent under Section 14(3)(d) of Amendment 20 and, in the case of a primary caregiver, the date the primary caregiver was designated by the patient for whom the medical marijuana was purchased.

(c) Information provided to the licensee by a patient or primary caregiver under the provisions of this Section need not include any information regarding the patient's physician or medical condition.

(d) All transactions shall be kept in a numerical register in the order in which they occur.

(e) All records required to be kept under this Article must be kept in the English language in a legible manner and must be preserved and made available for inspection for a period of three (3) years after the date of the transaction. Information inspected by Police Services or other City departments pursuant to this Article shall be used for regulatory and law enforcement purposes only and shall not be a matter of public record.

Sec. 15-475. Inspection of licensed premises.

(a) During all business hours and other times of apparent activity, all licensed premises shall be subject to inspection by Police Services and all other City departments designated by the City Manager for the purpose of investigating and determining compliance with the provisions of this Article and any other applicable state and local laws or regulations. Said inspection may include, but need not be limited to, the inspection of books, records and inventory. Where any part of the licensed premises consists of a locked area, such area shall be made available for inspection, without delay, upon request.

(b) If a medical marijuana delivery business does not maintain a dispensary or cultivation facility within the territorial limits of the City, the licensee for such business shall, upon receipt of notification from the City, make available for inspection by the City all books and records of the medical marijuana business as required in said notice. For the purpose of this provision, notice of request for inspection shall be deemed received ten (10) days from the date of mailing of the notice to the licensee's address as shown on the license.

Sec. 15-476. Nonrenewal, suspension or revocation of license.

The City Manager may, after notice and hearing, suspend, revoke or refuse to renew a license for good cause. The City Manager is authorized to adopt rules and procedures governing the conduct of such hearings. Licensees requesting a hearing shall, at the time of filing the request, pay the City a fee in the amount of fifty dollars (\$50.) to defray the cost of the hearing.

Sec. 15-477. Violations and penalties.

In addition to the possible denial, suspension, revocation or nonrenewal of a license under the provisions of this Article, any person, including, but not limited to, any licensee, manager or employee of a medical marijuana business, or any customer of such business, who violates any of the provisions of this Article, shall be guilty of a misdemeanor punishable in accordance with § 1-15 of this Code.

Sec. 15-478. No City liability; indemnification.

(a) By accepting a license issued pursuant to this Article, the licensee waives and releases the City, its officers, elected officials, employees, attorneys and agents

from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of dispensary owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations.

(b) By accepting a license issued pursuant to this Article, all licensees, jointly and severally if more than one, agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, attorneys, agents, insurers and self-insurance pool against all liability, claims and demands on account of any 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 arising out of or are in any manner connected with the operation of the medical marijuana business that is the subject of the license.

Sec. 15-479. Other laws remain applicable.

(a) To the extent the State has adopted or adopts in the future any additional or stricter law or regulation governing the sale or distribution of medical marijuana, the additional or stricter regulation shall control the establishment or operation of any medical marijuana business in the City. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any license under this Article, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

(b) Any licensee may be required to demonstrate, upon demand by the City Manager or by law enforcement officers, that the source and quantity of any marijuana found upon the licensed premises are in full compliance with any applicable state law or regulation.

(c) If the State prohibits the sale or other distribution of marijuana through medical marijuana dispensaries, any license issued hereunder shall be deemed immediately revoked by operation of law, with no ground for appeal or other redress on behalf of the licensee.

(d) The issuance of any license pursuant to this Article shall not be deemed to create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the cultivation, possession, sale, distribution or use of marijuana.

Sec. 15-480. Severability.

If any section, sentence, clause, phrase, word or other provision of this Article is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this Article or the validity of this Article as an entirety, it being

the legislative intent that this Article shall stand, notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 3. That, until such date, if any, that is established by the City Council pursuant to the provisions of Section 9(b) below, no application for approval of a medical marijuana business shall be accepted by the City except applications for the licensing of an existing medical marijuana business. For the purposes of this Ordinance, an “existing medical marijuana business” shall mean a medical marijuana business that on or before December 11, 2009, was issued a sales and use tax license by the City and that, on or before the effective date of this Ordinance, had actually commenced operation.

Section 4. That any owner or operator of an existing medical marijuana business shall, on or before June 30, 2010, submit an application for a license under the provisions of Section 15-453 of the City Code as enacted by the adoption of this Ordinance, whether or not such owner or operator has previously obtained any other license or permit related to such business. Said application shall be submitted to the City in the same business name and owner’s name as appear on any other license or permit previously issued to such business by the City. If such application is for a location different than the present location of the medical marijuana business, said location must be consistent with the location requirements contained in Section 15-454 of the City Code, as enacted by the adoption of this Ordinance, and consistent with the zoning requirements contained in Ordinance No. 026, 2010. If such application is approved by the City, the establishment of the medical marijuana business at such new location shall be subject to all relevant provisions and requirements of the Land Use Code.

Section 5. Any person owning or operating an existing medical marijuana business in the City who fails to submit an application as required in Section 4 above, on or before June 30, 2010, shall, as of 12:00 a.m. on July 1, 2010, immediately cease operating said business until such time, if at all, that a new opportunity to submit an application for a license is made available by the City Council under Section 7 below and such license has been issued by the City.

Section 6. That any person who submits an application for an existing medical marijuana business under Section 4 above and is denied the issuance of such license for any reason other than failure to meet a location requirement contained in Section 15-454 of the City Code, as enacted by the adoption of this Ordinance, or a zone district standard contained in the Land Use Code shall, immediately upon receipt of such notice of denial, cease operating said business. For the purpose of this provision, notice of denial shall be deemed to have been received ten (10) days from the date of mailing of the notice.

Section 7. That any existing medical marijuana business whose application for licensing is timely filed under Section 4 above and is approved by the City shall be issued a one-year provisional license and shall, upon issuance of the license, be subject to all of the provisions of Chapter 15, Article XVI of the City Code, as enacted by the adoption of this Ordinance, except that:

(a) the location requirements contained in Section 15-454 and the zone district standards contained in Article IV of the Land Use Code shall not be applicable to such business pending further action by the City Council by ordinance; and

(b) applicants for issuance of such licenses shall not be required to pay the annual license fee required under Section 15-457 as enacted by the adoption of this Ordinance, until such time, if at all, that the City Council confirms by ordinance, after receiving the report and recommendation of the City Manager as required in Section 8 below, that the existing medical marijuana business for which a particular provisional license has been issued shall be permitted to remain in operation in its current location. All existing medical marijuana businesses approved by the City Council in their present locations shall then be issued a non-provisional license for the remainder of the term of the provisional license, upon payment of the annual license fee.

Section 8. That, notwithstanding any other provision of this Ordinance to the contrary, any medical marijuana business for which a home occupation license has been issued by the City under Section 3.8.3 of the Land Use Code shall cease all medical marijuana cultivation activities at the premises for which such license was issued and shall remove from such premises all medical marijuana in any usable form on or before the date specified in Land Use Code Section 3.8.3(10)(h).

Section 9. That the City Manager is hereby directed to present for the City Council's consideration, on or before September 1, 2010, recommendations as to the following:

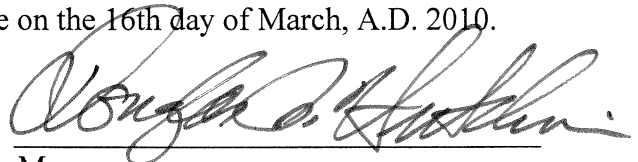
a. whether to make the above referenced location requirements applicable to existing medical marijuana businesses; and

b. when, if at all, the City should begin accepting applications for new medical marijuana businesses. .

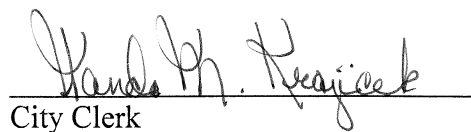
Section 10. The knowing failure to cease operation of an existing medical marijuana business in violation of Section 5 or 6 of this Ordinance shall constitute the commission of a misdemeanor criminal offense by the licensee and manager of the medical marijuana business, punishable as provided in Section 1-15 of the City Code.

Section 11. That the moratorium imposed by Ordinance No. 128, 2009, shall expire as of the effective date of this Ordinance, and the provisions of Ordinance No. 128, 2009, shall thereafter be of no further force and effect.

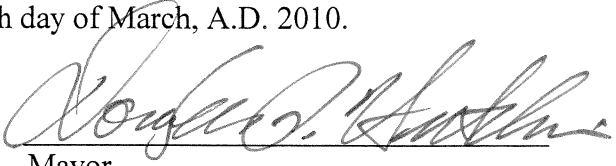
Introduced, considered favorably on first reading, and ordered published this 2nd day of March, A.D. 2010, and to be presented for final passage on the 16th day of March, A.D. 2010.


Mayor

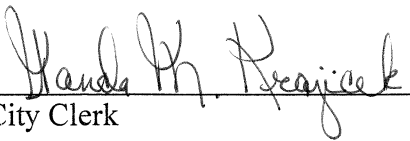
ATTEST:


City Clerk

Passed and adopted on final reading on the 16th day of March, A.D. 2010.


Mayor

ATTEST:


City Clerk