

COUNCIL BILL NO. 13-023
ORDINANCE NO. 4392

AN ORDINANCE AMENDING CHAPTER 62, OFFENSES, BY REPEALING SECTION 62-67, OFFENSES RELATING TO MARIJUANA, AND SECTION 62-68, POSSESSION OF DRUG PARAPHERNALIA, AND ENACTING ARTICLE VIII, MARIJUANA OFFENSES, OF CHAPTER 62, OFFENSES, OF THE ARVADA CITY CODE AND IN CONNECTION THEREWITH, PROVIDING FOR PENALTIES FOR VIOLATIONS THEREOF

WHEREAS, in November of 2000, Colorado voters approved Amendment 20 to the Colorado Constitution, which amended Article XVIII of the Colorado Constitution by adding a new section 14, now entitled “Medical Use of Marijuana for Persons Suffering from Debilitating Medical Conditions” and which provided for the limited use of marijuana by certain persons and provided a regulatory framework for the cultivation and sale of medical marijuana; and

WHEREAS, during its 2010 legislative session, the Colorado General Assembly adopted the Colorado Medical Marijuana Code, C.R.S. §12-43.3-101, *et. seq.*, which established a legal structure for the cultivation, distribution, and sale of medical marijuana, and adopted a variety of other laws that affected the use and cultivation of small amounts of marijuana for medicinal use; and

WHEREAS, on November 6, 2012, Colorado voters passed Amendment 64, which amended Article XVIII of the Colorado Constitution by adding a new section 16 entitled “Personal Use and Regulation of Marijuana” allowing for the possession, use, display, purchase, or transport of marijuana accessories or one ounce or less of recreational, or retail, marijuana by those twenty-one years of age or older; and

WHEREAS, Amendment 64 also allowed for the possession, growing, or transporting of no more than six marijuana plants under certain conditions; and

WHEREAS, Amendment 64 also allows entities that occupy, own, or control property to prohibit or otherwise regulate the possession, consumption, use, display, transfer, distribution, sale, transportation, sale, or growing of marijuana on the property under their ownership or control; and

WHEREAS, during its 2013 legislative session, the Colorado General Assembly adopted the Colorado Retail Marijuana Code, C.R.S. §12-43.4-101 *et. seq.*, which established a legal framework for the cultivation, analysis, distribution, and sale of retail marijuana, and adopted a number of other laws that regulate the use and cultivation of small amounts of retail marijuana for recreational use; and

WHEREAS, the City of Arvada is a home rule municipality organized under the provisions of Article XX of the Colorado Constitution; and

WHEREAS, pursuant to the Constitution and C.R.S. §31-15-401, Arvada has extensive authority to exercise its police powers to promote and protect the health, safety, and welfare of citizens; and

WHEREAS, marijuana (or Tetrahydrocannabinols) is listed as a Schedule I controlled substance pursuant to the federal Controlled Substances Act, 21 U.S.C., §800, *et. seq.*, and the Colorado Controlled Substances Act of 1992, C.R.S. §18-18-101, *et. seq.*, which means that marijuana has a high potential for abuse, has no currently accepted medical use, and lacks accepted safety for use under medical supervision; and

WHEREAS, it is the desire of the City Council of the City of Arvada to pass legislation conforming, to the extent possible, city ordinances with Colorado state law while acknowledging that the possession, cultivation, use, and distribution of marijuana remains illegal under federal law.

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

Section 1. Section 62-67, Offenses relating to marijuana and section 62-68, Possession of drug paraphernalia, of Chapter 62, Offenses, of the Arvada City Code are hereby repealed in their entirety. This repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed prior to the effective date of this ordinance and that is in violation of any ordinance repealed by this ordinance.

Section 2. Article VIII, Marijuana Offenses, of Chapter 62, Offenses, of the Arvada City Code is hereby reenacted to read as follows:

ARTICLE VIII. MARIJUANA OFFENSES

Sec. 62-211. Definitions.

The following words, terms, and phrases, when used in this article, shall have the following meanings, unless the context requires otherwise:

Authorized person means a person twenty-one years of age or older lawfully permitted to engage in the personal use of marijuana, including growing and processing marijuana plants, pursuant to Article XVIII, §16 of the Colorado Constitution.

City means the City of Arvada.

City-owned property means any real property, building, structure, or other improvement or improvements thereon that is owned or leased for use by the city, including the banks and beds of any nonnavigable fresh water streams or creeks flowing through such real property.

Colorado Medical Marijuana Code means Article 43.3 of Title 12 of the Colorado Revised Statutes as may be from time to time amended and related provisions throughout the Colorado Revised Statutes that regulate the possession and use of medical marijuana.

Colorado Retail Marijuana Code means Article 43.4 of Title 12 of the Colorado Revised Statutes as may be from time to time amended and related provisions throughout the Colorado Revised Statutes that regulate the possession and use of retail marijuana, marijuana accessories, and marijuana products.

Display means to carry or possess an item in such a manner that it is visible or becomes visible to another in whole or in part and for any length of time.

Drug paraphernalia shall have the same meaning set forth in C.R.S. §18-18-426, as may be from time to time amended.

Non-medical marijuana means marijuana that is grown, processed, or otherwise utilized pursuant to and for a purpose authorized by Article XVIII, §16 of the Colorado Constitution.

Marijuana shall have the same meaning set forth in Article XVIII, §16 of the Colorado Constitution, and for purposes of this article, it includes marijuana products.

Marijuana accessories shall have the same meaning set forth in Article XVIII, §16 of the Colorado Constitution.

Marijuana products shall have the same meaning set forth in Article XVIII, §16 of the Colorado Constitution.

Medical marijuana means marijuana that is grown pursuant to the provisions of the Colorado Medical Marijuana Code and for a purpose authorized by Article XVIII, §14 of the Colorado Constitution.

Motor vehicle shall have the same meaning set forth in C.R.S. §42-4-1305.5(1)(b) as may be from time to time amended.

Open and public, or openly and publicly, means a place that is commonly or usually open or accessible by the general public including but not limited to parks, open space areas, trails, paths, sidewalks, streets, highways, and public rights-of-way, mercantile establishments, shopping centers, places of business open to the general public, the common areas of any multi-family dwelling units, parking lots, and vehicles in or upon such places. Open and public does not include the yard, deck, or patio of a single family dwelling unit, condominium, duplex, or town home that is completely enclosed by a solid privacy fence or otherwise screened from ordinary view such that the activity within is not readily apparent to neighbors or passersby. For purposes of enforcement of section 62-213(c), the fact that the display, use, or consumption of marijuana may be viewed incidentally from an adjoining private property does not render the activity open and public.

Open marijuana container shall have the same meaning set forth in C.R.S. §42-4-1305.5(1)(c) as may be from time to time amended, and includes all medical or non-medical marijuana or all marijuana products that are grown or produced by an individual for his or her personal use.

Passenger area shall have the same meaning set forth in C.R.S. §42-4-1305.5(1)(d) as may be from time to time amended.

Patient shall have the same meaning set forth in Article XVIII, §14 of the Colorado Constitution.

Primary caregiver shall have the same meaning set forth in means Article XVIII, §14 of the Colorado Constitution, and such person shall be registered as a primary caregiver with the State of Colorado under C.R.S. §25-1.5-106.

Sale or *sell* shall have the same meaning set forth in C.R.S. §12-43.4-103 as may be from time to time amended.

Sec. 62-212. Purpose and intent, findings of facts, applicability, and authority.

- (a) *Purpose and intent.* The purpose of this article is to protect the public health, safety, and welfare by reasonably regulating and in some instances prohibiting the possession, use, display, purchase, or transportation of marijuana, marijuana accessories, and marijuana products. The intent of this article is to provide for such regulations or prohibitions consistent with and conforming to the regulatory framework set forth in Section 14 of Article XVIII of the Colorado Constitution regulating medical marijuana, and the Colorado Medical Marijuana Code, and in Section 16 of Article XVIII of the Colorado Constitution regulating recreational or retail marijuana, and the Colorado Retail Marijuana Code.
- (b) *Findings of fact.* In furtherance of the purpose and intent of this ordinance, the city council makes the following findings:
 - (1) Section 14 of Article XVIII of the Colorado Constitution establishes an affirmative defense to or exception from state criminal laws for patients or primary caregivers acting in conformance with the provisions thereof, and further contemplates cultivation activities associated with patients as being on a small scale (e.g., six plants per patient);
 - (2) C.R.S. §25-1.5-103 clarifies Colorado law regarding the scope and extent of Section 14 of Article XVIII of the Constitution, as it relates to patients and primary caregivers, and further contemplates primary caregiver operations as generally being on a small scale (e.g., five patients per primary caregiver);
 - (3) Section 16 of Article XVIII of the Colorado Constitution creates an exception from state and local criminal laws relating to aspects of the possession, consumption, and use of recreational, or retail, marijuana for persons twenty-one (21) years of age or older acting in conformance with the provisions thereof, and further contemplates cultivation activities associated with such persons as being on that same small scale (e.g., no more than six plants per authorized person);
 - (4) Marijuana is currently categorized in the Controlled Substances Act as a Schedule I drug, 21 U.S.C. §812(c). Activities associated with the possession, cultivation, and use of even relatively small amounts of marijuana have the potential to produce residual and secondary effects and impacts detrimental to the health, safety and welfare not only of primary users of marijuana, but also of those in the community as a whole;
 - (5) The above-referenced constitutional and statutory provisions do not purport to comprehensively regulate the possession, consumption, and use of marijuana

from a criminal perspective, nor do they purport to completely preempt or restrict a Colorado home-rule municipality from regulating the possession, consumption or use of marijuana through the exercise of its police powers;

- (6) The City of Arvada is a home-rule municipality and the city council is empowered to adopt such ordinances as are necessary and convenient to protect the health, safety, and welfare of the city and its inhabitants; and
 - (7) The provisions of this Article VIII are necessary to protect and are enacted in furtherance of the public health, safety, and welfare of the city and its inhabitants.
- (c) *Applicability.* This Article VIII shall apply to all patients, primary caregivers, and other persons within the municipal boundaries of the city, as such boundaries are now or in the future defined. If Section 14 or 16, or any provision thereof, of Article XVIII of the Colorado Constitution is declared to be unconstitutional by a court of competent jurisdiction, nothing in this Code shall be deemed to permit the possession, consumption, or use of marijuana, marijuana accessories, or marijuana products for medical or any other purpose in light of the decision declaring part or all of said sections to be unconstitutional. Nothing in this ordinance shall be deemed to prevent the prosecution of offenses under the state or federal controlled substances acts or other related offenses occurring in the City of Arvada. Article, part, or section headings of this article shall not be deemed to govern, limit, modify, or in any manner limit the scope, meaning, or extent of the provisions of this article or any section thereof.
- (d) *Authority.* The city has the power and authority to adopt this Article VIII pursuant to:
- (1) The Home Rule Charter of the City of Arvada and the authority granted to home rule municipalities by Article XX of the Colorado Constitution;
 - (2) The Colorado Medical Marijuana Code as cited above;
 - (3) The Colorado Retail Marijuana Code as cited above; and
 - (4) C.R.S. §31-15-103 and §31-15-401 concerning municipal police powers.

Sec. 62- 213. Offenses related to marijuana.

- (a) *Possession – under twenty one.* It shall be unlawful for any person under twenty-one years of age to knowingly possess, use, display, transfer, transport, grow, or purchase marijuana subject to the provisions of Section 14 of Article XVIII of the Colorado Constitution.
- (b) *Possession – twenty-one or older.* It shall be unlawful for any person twenty-one years of age or older to knowingly possess more than one ounce of marijuana subject to the provisions of either Section 14 or Section 16 of Article XVIII of the Colorado Constitution.
- (c) *Open and public consumption.* It shall be unlawful for any person to openly and publicly display, consume, or use marijuana.

- (d) *Open marijuana container.* Except as otherwise permitted, a person while in the passenger area of a motor vehicle that is on a public highway of this state or the right-of-way of a public highway of this state or on a street, alley, or roadway of this city or the right-of-way of a street, alley, or road of this city shall not knowingly:

- (1) Use or consume marijuana; or
- (2) Have in his or her possession an open marijuana container.

Exceptions: The provisions of this subsection (d) shall not apply to:

- (i) Passengers, other than the driver or a front seat passenger, located in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation;
 - (ii) The possession by a passenger, other than the driver or a front seat passenger, of an open marijuana container in the living quarters of a house coach, house trailer, motor home, as defined in C.R.S. §42-1-102(57), or trailer coach, as defined in C.R.S. § 42-1-102(106)(a);
 - (iii) The possession of an open marijuana container in the area behind the last upright seat of a motor vehicle that is not equipped with a trunk; or
 - (iv) The possession of an open marijuana container in an area not normally occupied by the driver or a passenger in a motor vehicle that is not equipped with a trunk.
- (e) *Marijuana – transportation.* It shall be unlawful for any person to transport more than six plants at any time, with no more than three of those plants being mature, flowering plants.
- (f) *Prohibitions on city-owned property.* It shall be unlawful for any person to possess, use, display, transfer, transport, grow, or purchase marijuana, marijuana products, or marijuana accessories in or upon any city owned property, except that these products or items may be transported along public streets and highways in this city so long as the products or items are being transported in compliance with all other applicable state and local laws.

Sec. 62- 214. Offenses related to drug paraphernalia and marijuana accessories.

- (a) *Possession.* It shall be unlawful for any person to possess drug paraphernalia if that person knows or reasonably should know that the drug paraphernalia could be used under circumstances in violation of the laws of the State of Colorado.
- (b) *Possession of marijuana accessories - under twenty-one.* It shall be unlawful for any person under the age of twenty-one years of age to possess marijuana accessories.
- (c) *Manufacture, sale, or delivery.* It shall be unlawful for any person to sell or deliver, possess with intent to sell or deliver, or manufacture with intent to sell or deliver equipment, products, or materials knowing or under circumstances where one should

reasonably know that such equipment, products, or materials could be used as drug paraphernalia.

- (d) *Sale of marijuana accessories – under twenty-one.* It shall be unlawful for any person to sell marijuana accessories to any person under the age of twenty-one years of age.
- (e) *Advertisement.* It shall be unlawful for any person to place an advertisement in any newspaper, magazine, handbill, or other publication who intends thereby to promote the sale of equipment, products, or materials designed and intended for use as drug paraphernalia.
- (f) *Exemption.* It shall not be a violation of subsections (a), (c), or (e), if the person is twenty-one years of age or older and all drug paraphernalia involved are solely marijuana accessories.

Sec. 62-215. Paraphernalia and accessories determination.

- (a) In determining whether an object is drug paraphernalia or a marijuana accessory, a court, in its discretion, may consider, in addition to all other relevant factors, the following:
 - (1) Statements by an owner or by anyone in control of the object concerning its use,
 - (2) The proximity of the object to controlled substances,
 - (3) The existence of any residue or controlled substances on the object,
 - (4) Direct or circumstantial evidence of the knowledge of an owner, or of anyone in control of the object, or evidence that such person reasonably should know that it will be delivered to persons who such person knows or reasonably should know could use the object to facilitate a violation of this section,
 - (5) Instructions, oral or written, provided with the object concerning its use,
 - (6) Descriptive materials accompanying the object which explain or depict its use,
 - (7) National or local advertising concerning its use,
 - (8) The manner in which the object is displayed for sale,
 - (9) Whether the owner, or anyone in control of the object, is a supplier of like or related items to the community for legal purposes, such as an authorized distributor or dealer of tobacco products,
 - (10) The existence and scope of legal uses for the object in the community, and,

- (11) Expert testimony concerning its use.
- (b) In the event a case brought pursuant to this section is tried before a jury, the court shall hold an evidentiary hearing on issues raised pursuant to this section.

Sec. 62-216. Affirmative defenses.

- (a) Nothing in this article shall be construed to prohibit the assertion of an affirmative defense to any charge under this article to the extent provided in Section 14 of Article XVIII of the Colorado Constitution. Any person seeking to assert an affirmative defense to a charge under this article may present a medical marijuana registry identification card that is issued by the Colorado Department of Public Health and Environment and that is valid at the time of the alleged offense, or may present a primary caregiver license or other verification that is issued by the Colorado Department of Public Health and Environment and is valid at the time of the alleged offense, as may be appropriate. Such documentation may be presented at an arraignment or at a pre-trial conference on the offense and shall result in the dismissal of the charge as appropriate.
- (b) The affirmative defenses contained in Section 14 of Article XVIII of the Colorado Constitution shall not apply to any charge involving a sale, open and public consumption, an open marijuana container, or to any case involving prohibitions on city-owned property.

Sec. 62-217. Exemptions.

- (a) A person may be exempt from prosecution under certain sections of this article if, at the time of the alleged offense, he or she is in possession of a valid medical or retail marijuana transport manifest approved by the state Marijuana Enforcement Division at the time of the offense and is transporting the marijuana in accordance with the rules allowing transport that are promulgated by the Colorado Department of Revenue.
- (b) A person may be exempt from prosecution under certain section of this article if, at the time of the alleged offense, he or she holds a valid retail marijuana establishment license issued by the state Marijuana Enforcement Division, or is an owner, employee, or agent of such establishment and who is at the time of the alleged offense actually engaged in regular authorized work activities.
- (c) Documentation demonstrating any such exemption may be presented at an arraignment or a pre-trial conference on the offense and may result in dismissal of the charge as appropriate.

Sec. 62-218. Violations and penalties.

- (a) It shall be unlawful for any person to violate any of the provisions of this article, and any such violation shall be punishable by a fine not to exceed of section 1-5 and as set forth herein.

- (b) Any person who violates any provision of this article shall be guilty of a petty offense, punishable by:
- (1) A minimum fine of \$200.00 for the first violation.
 - (2) A minimum fine of \$300.00 for the second violation.
 - (3) A minimum fine of \$500.00 for each additional violation of this article.
- (c) Every day any violation of this article is committed or permitted to continue shall constitute a separate offense punishable as set forth herein.

Sec. 62-219—229. Reserved.

Section 3. If any section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality or the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 4. This ordinance shall take effect five days after publication following passage.

INTRODUCED, READ, AND ORDERED PUBLISHED this 17th day of June, 2013.

PASSED, ADOPTED, AND APPROVED this 1st day of July, 2013.

Marc Williams, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Christopher K. Daly, City Attorney

Publication Dates: June 20, 2013
July 4, 2013