

AN INITIATIVE TO STRICTLY REGULATE, CONTROL AND PERMIT A LIMITED NUMBER OF STATE-AUTHORIZED MEDICAL MARIJUANA BUSINESSES WITHIN THE CITY OF FORT COLLINS AND TO ESTABLISH REASONABLE RESTRICTIONS ON THE SIGNAGE AND ADVERTISING OF THESE BUSINESSES TO MATCH COMMUNITY NEEDS

WHEREAS, Amendment 20 of the Colorado State Constitution (codified as § 14 to Article XVIII) was approved by Colorado voters in 2000 to enable sick patients with HIV, Aids, cancer, cachexia, seizures, severe nausea and other debilitating medical conditions to access medical marijuana pursuant to their Doctor's recommendation;

WHEREAS the Colorado Legislature in 2010 enacted the Colorado Medical Marijuana Code permitting municipalities to license and regulate medical marijuana businesses in order to provide medicine to patients in a safe, professional and quality-controlled manner;

WHEREAS, qualifying patients in Fort Collins deserve to have access their doctor-recommended medicine from professional, regulated and taxed stores, not from alleyways or parks.

WHEREAS, it is the intent and desire of the citizens of the City of Fort Collins that the City Council of the City of Fort Collins, Colorado, adopt AN INITIATIVE TO STRICTLY REGULATE, CONTROL AND PERMIT A LIMITED NUMBER OF STATE-AUTHORIZED MEDICAL MARIJUANA BUSINESSES WITHIN THE CITY OF FORT COLLINS AND TO ESTABLISH REASONABLE RESTRICTIONS ON THE SIGNAGE AND ADVERTISING OF THESE BUSINESSES TO MATCH COMMUNITY NEEDS or, if the within Initiated Ordinance is not adopted by the City Council in the form presented herein, that the within Initiated Ordinance be referred in the form presented herein to the registered electors of the municipality at a special election, specifically the November 2012 coordinated election as provided by law.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT COLLINS, COLORADO OR THE REGISTERED ELECTORS OF THE CITY OF FORT COLLINS:

Section 1. That Sections 15-450 through 15-493 of Article XVI, Chapter 15 of the Code of the City of Fort Collins are hereby repealed and the following sections are reenacted to read as follows:

**ARTICLE XVI
MEDICAL MARIJUANA**

DIVISION 1. IN GENERAL

Sec. 15-450. Purpose

The purpose of this Article is to implement the provisions of Article 43.3 of Title 12, C.R.S., known as the Colorado Medical Marijuana Code.

Sec. 15-451. Incorporation of state law.

The provisions of the Colorado Medical Marijuana Code, and any rules and regulations promulgated thereunder, are incorporated herein by reference except to the extent that more restrictive or additional regulations are set forth in this Article.

Sec. 15-452. Definitions.

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

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, directors and shareholders of such entity

Colorado Medical Marijuana Code shall mean Title 12, Article 43.3 of the Colorado Revised Statutes and any rules or regulations promulgated thereunder.

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

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.

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.

Medical marijuana business or *business* shall mean a medical marijuana center, optional premises cultivation operation, or medical marijuana-infused products manufacturer as defined in the Colorado Medical Marijuana Code.

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.

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.

(b) In addition to the definitions contained in Subsection (a) of this Section, other terms used in this Article shall have the meaning ascribed to them in Article XVIII, Section 14 of the Colorado Constitution or the Colorado Medical Marijuana Code, and such definitions are hereby incorporated into this Article by this reference.

Secs. 15-453—15-460. Reserved.

DIVISION 2. MEDICAL MARIJUANA LICENSING AUTHORITY

Sec. 15-461. Creation.

There shall be and is hereby created a Medical Marijuana Licensing Authority, hereafter referred to in this Article as the "Authority".

Sec. 15-462. Composition.

The Authority shall be a person appointed by the City Manager.

Sec. 15-463. Functions.

(a) The Authority shall have the duty and authority pursuant to the Colorado Medical Marijuana Code and this Article to grant or refuse licenses; to grant or refuse transfers of ownership or location of the license; and levy penalties against licensees in the manner provided by law.

(b) The Authority shall have all the powers of a Local Licensing Authority as set forth in the Colorado Medical Marijuana Code.

(c) The Authority shall have the power to promulgate rules and regulations concerning the procedures for hearings before the Authority.

(d) The Authority shall have the power to require any applicant or licensee to furnish any relevant information required by the Authority.

(e) The Authority shall have the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books and records at any hearing which the Authority is authorized to conduct. Any such subpoena shall be served in the same manner as a subpoena issued by the District Court of the State.

Secs. 15-464—15-470. Reserved.

DIVISION 3. LICENSES, FEES, REGULATIONS AND PROCEDURES

Sec. 15-471. License required.

It shall be unlawful for any person to establish or operate a medical marijuana business in the City without first having obtained from the City and the State a license for each facility to be operated in connection with such business. Such license shall be kept current at all times, and the failure to maintain a current license shall constitute a violation of this Section.

Sec. 15-472. Requirements of application for license; payment of application fee; denial of license.

(a) A person seeking a license pursuant to the Colorado Medical Marijuana Code and the provisions of this Article shall submit an application to the City on forms provided by the State and 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 a suitable form of identification.

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

- (1) name, address, date of birth;
- (2) an acknowledgment and consent that the City may 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;
- (3) 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;

(4) 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 business;

(5) a copy of any deed reflecting the applicant's ownership of, or lease reflecting the right of the applicant to possess, the proposed licensed premises;

(6) evidence of a valid City and state sales tax license for the business;

(7) a "to scale" diagram of the proposed licensed premises, no larger than 11" x 17", showing, without limitation, building layout, all entry ways and exits to the proposed licensed premises, loading zones and all areas in which medical marijuana will be stored, grown, manufactured or dispensed;

(8) a comprehensive business operation plan for the medical marijuana business which shall contain, at a minimum, the following:

a. a security plan meeting the requirements of § 15-479 of this Article,

b. a description of all products to be sold,

c. a plan for exterior signage that is in compliance with all applicable requirements of this Code and the Land Use Code, including photographs and/or illustrations of proposed signage; and

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

(b) All medical marijuana businesses shall obtain other required permits or licenses related to the operation of the medical marijuana business, 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 may 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 City may, prior to issuance of the license, perform an inspection of the proposed licensed premises to determine compliance with any applicable requirements of this Article or other provisions of this Code or the Land Use Code.

Sec. 15-473. Denial of application.

The Authority may deny any application that does not meet the requirements of the Colorado Medical Marijuana Code or this Article. The Authority may deny any application that contains any false, misleading or incomplete information.

Sec. 15-474. Persons prohibited as licensees.

No license shall be issued to, held by, or renewed by any of the following:

- (1) any natural 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 the State or elsewhere; or any felonious crime of violence, whether in the State or elsewhere;
- (2) any entity whose directors, shareholders, members, partners or any other person with a financial interest in the entity, have been convicted of any of the offenses set forth in Paragraph (1) above;
- (3) any applicant who has made a false, misleading or fraudulent statement, or who has intentionally omitted pertinent information, on his or her application for a license;

Sec. 15-475. Location and Selection Criteria.

(a) No medical marijuana center shall be issued a license if, at the time of application for such license, the proposed location is:

- (1) within one thousand (1,000) feet of any private or public preschool, elementary, secondary, vocational or trade school, college or university;
- (2) within one thousand (1,000) feet of any public playground;
- (3) within five hundred (500) feet of:
 - a. any child care center,
 - b. any place of worship or religious assembly,
 - c. any public park, pool, or recreation facility,
 - e. any juvenile or adult halfway house, correctional facility or substance abuse rehabilitation or treatment center, or
- (4) within the boundaries of any R-U-L, U-E, R-F, R-L, L-M-N, M-M- N, N-C-L, N-C-M, N-C-B or H-M-N residential zone district;
- (5) in a residential unit, except as permitted under Section 3.8.3 of the Land Use Code.

(b) The location criteria contained in subsection (a) of this Section shall apply to all proposed changes in the location of an existing license.

(c) The distances described in Subsection (a) 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 Paragraphs (a)(1), (a)(2) and (a)(3) above to the nearest portion of the building or unit in which the medical marijuana center is located.

(d) No medical marijuana center shall be issued a license if, at the time of application for such license, there is more than one Fort Collins Medical Marijuana Center License per 500 registered medical marijuana patients in Larimer county according to the Colorado Department of Public Health and Environment. This subsection (d) shall not affect renewals.

(e) Subsection (a) shall not apply to a business that received a Fort Collins Medical Marijuana Center License prior to November 1st, 2011, if the business is proposed to be located on the same parcel they were licensed to operate on prior to November 1st, 2011, and the business applies for a license pursuant to this Code within 90 days of the application being made publicly available. The intent of this subsection (e) is to permit previously licensed medical marijuana centers to apply for and receive a license regardless of the location criteria of this Section.

(f) Subsection (d) shall not apply to a business that received a Fort Collins Medical Marijuana Center License prior to November 1st, 2011, if the business applies for a license pursuant to this Code within 90 days of the application being made publicly available. The intent of this subsection (f) is to permit previously licensed medical marijuana centers to apply for and receive a license regardless of the number of medical marijuana center licenses then issued by the City.

Sec. 15-476. Inspection fee.

(a) Upon issuance of a license, and upon renewal thereafter, the licensee shall pay to the City a fee in an amount determined by the City Manager to be sufficient to cover the cost of inspections conducted pursuant to this Article.

(b) The inspection fee required under Subsection (a) of this Section shall be due and payable prior to or upon issuance of each license and upon the renewal of any such license and shall not be refundable.

Sec. 15-477. Signage and advertising.

All signage and advertising for a medical marijuana center shall comply with all applicable provisions of this Code and the Land Use Code.

(a) In addition, it shall be unlawful for any licensee to:

- a. Use signage or advertising with 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;
- b. Use advertising materials that is misleading, deceptive, or false or that, as evidenced by the content of the advertising material or by the medium or the manner in which the advertising material is disseminated, is designed to appeal to minors;
- c. Advertise in a manner that is inconsistent with the medicinal use of medical marijuana or use advertisements that promotes medical marijuana for recreational or any use other than for medicinal purposes;
- d. To advertise with sign-waivers or other natural persons standing in public within one thousand (1,000) feet of the license premise;
- e. To advertise any medical marijuana or medical marijuana product in a publicly visible location within one thousand (1,000) feet of any public park or recreation center or any school.

(b) The prohibition set forth in subsection (e) shall not apply to:

- a. Any sign located upon the building in which a licensed medical marijuana center is located which exists solely for the purpose of identifying the business and which otherwise complies with the Land Use Code and this Article; or
- b. Any advertising contained solely within a newspaper magazine, or other periodical or publication distributed through news rack, newsstand or similar fixed location.

(c) The prohibition's set forth in this Section shall not apply to political speech or any signage advocating the passage or defeat of a city or state ballot measure.

(d) Violation of this Section shall result in a \$100 fine per day per violation. Such fine shall be levied on the licensee by the Authority upon the Authority finding by a preponderance of the evidence a violation of this Section. Repeated and continuous failure to comply with the requirements of this Section shall be considered by the Authority in any action relating to the issuance, revocation, suspension or nonrenewal of a license

Sec. 15-478. Warning signs.

The Authority may require any reasonable warning signs to be posted in a conspicuous location in each medical marijuana center.

Sec. 15-479. Security requirements.

Security measures at all licensed premises shall comply with the requirements of the Colorado Medical Marijuana Code and all applicable rules and regulations promulgated thereunder.

Sec. 15-480. Report of disturbances and unlawful activity.

(a) All licensees and any agent, manager or employee thereof, shall immediately report to Police Services any disorderly act, conduct or disturbance and any unlawful activity committed in or on the licensed premises, including, but not limited to, any unlawful resale of medical marijuana, and shall also immediately report any such activity in the immediate vicinity of the business.

(b) Each licensee shall post and keep at all times visible to the public in a conspicuous place on the premises, a sign with a minimum height of fourteen (14) inches and a minimum width of eleven (11) inches with each letter to be a minimum of one-half (½) inch in height, which shall read as follows:

WARNING:

Fort Collins Police Services must be notified of all disorderly acts, conduct or disturbances and all unlawful activities which occur on or within the premises of this licensed establishment.

(c) It shall not be a defense to a prosecution of a licensee under this Section that the licensee was not personally present on the premises at the time such unlawful activity, disorderly act, conduct or disturbance was committed; however, no agent, servant or employee of the licensee shall be personally responsible for failing to report any disorderly act, conduct or disturbance and any unlawful activity hereunder if such agent, servant or employee was absent from the premises at the time such activity was committed.

(d) Failure to comply with the requirements of this Section shall be considered by the Authority in any action relating to the issuance, revocation, suspension or nonrenewal of a license.

Sec. 15-482. Labeling.

All medical marijuana sold or otherwise distributed by the licensee shall be labeled in a manner that complies with the requirements of the Colorado Medical Marijuana Code and all applicable rules and regulations promulgated thereunder.

Sec. 15-483. Prohibited acts.

(a) It shall be unlawful for any licensee to permit the consumption of alcohol beverages, as defined in the Colorado Liquor Code, on the licensed premises.

(b) It shall be unlawful for any licensee holding a medical marijuana center licensed, or for any agent, manager or employee thereof, to:

(1) sell, give, dispense or otherwise distribute medical marijuana or medical marijuana paraphernalia from any outdoor location;

(2) sell, give, dispense or otherwise distribute to any patient or primary caregiver who is not a licensee more than two (2) ounces of any usable form of medical marijuana (excluding medical marijuana-infused products) within any seven-day period of time;

(c) It shall be unlawful for any optional premises cultivation operation to post or allow to be posted signs or other advertising materials identifying the premises as being associated with the cultivation or use of medical marijuana.

(d) It shall be unlawful for any medical marijuana-infused products manufacturer to post or allow to be posted signs or other advertising materials identifying the premises as being associated with the production or use of medical marijuana;

Sec. 15-484. Visibility of activities; control of emissions.

(a) All activities of medical marijuana businesses, including, without limitation, cultivating, growing, processing, displaying, manufacturing, selling and storage, shall be conducted out of public view.

(b) No medical marijuana or paraphernalia shall be displayed or kept in a business 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 medical marijuana business must be provided at all times. In the event that any odors, debris, dust, fluids or other substances exit a medical marijuana business, 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. 15-485. Sales tax.

Each medical marijuana business shall collect and remit City sales and use tax on all medical marijuana, paraphernalia and other tangible personal property used or sold at the licensed premises.

Sec. 15-487. Inspection of licensed premises.

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.

Sec. 15-488. Nonrenewal, suspension or revocation of license.

(a) The Authority may, after notice and hearing, suspend, revoke or refuse to renew a license for any of the following reasons:

(1) the applicant or licensee, or his or her agent, manager or employee, 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 or licensee, or his or her agent, manager or employee, have failed to comply with any special terms or conditions of its license pursuant to an order of the State or local licensing authority, including those terms and conditions that were established at the time of issuance of the license and those imposed as a result of any disciplinary proceedings held subsequent to the date of issuance of the license; or

(3) the medical marijuana business has been operated in a manner that adversely affects the public health, safety or welfare.

(b) Evidence to support a finding under Subsection (a) of this Section may include, without limitation, a continuing pattern of disorderly conduct, a continuing pattern of drug-related criminal conduct within the premises of the medical marijuana business or in the immediate area surrounding such business, a continuing pattern of criminal conduct directly related to or arising from the operation of the medical marijuana business, or an ongoing nuisance condition emanating from or caused by the medical marijuana business. Criminal conduct shall be limited to the violation of a state or city law or regulation.

(c) The Authority shall conduct a review of all licenses at least annually and in addition to examining the factors enumerated in this subsection, may hold a hearing on each license at which the general public shall be invited to appear and provide testimony as to the effects of the license on the surrounding community and the city at large and the Authority may take such views into consideration when deciding whether to continue or renew such license.

Sec. 15-489. 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, unless a different penalty is provided herein.

Sec. 15-490. 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 business 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 (1), 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 in any manner connected with the operation of the medical marijuana business that is the subject of the license.

Sec. 15-491. Other laws remain applicable.

(a) To the extent the State 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) If the State prohibits the sale or other distribution of marijuana through medical marijuana centers, any license issued hereunder shall be deemed immediately revoked by operation of law.

Sec. 15-492. 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.

Sec. 15-493. Administrative regulations; Action by Council.

- (a) The City Manager is authorized to promulgate such rules and regulations as are necessary to effectuate the implementation, administration and enforcement of this Article.
- (b) The City Council shall be permitted to lessen any restriction contained in this Article.

Section 2. Should the City Council refer this Initiated Ordinance Repeal to the registered electors of the City at a regular or special municipal election, this Initiated Ordinance Repeal shall take effect immediately upon certification by the designated election official that a majority of registered electors voted in favor of this Repeal at such regular or special election.

Section 3. If any section, sentence, clause, phrase, word or other provision of this Ordinance 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 Ordinance or the validity of this Ordinance 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