

ORDINANCE NO. 041, 2014
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ADDING A NEW ARTICLE XVIII TO CHAPTER 15 OF THE CODE OF THE
CITY OF FORT COLLINS TO GOVERN THE LICENSING, NUMBER, LOCATION
AND OPERATION OF RETAIL MARIJUANA ESTABLISHMENTS

WHEREAS, on November 6, 2012, Colorado voters approved an amendment to the state constitution that added Article XVIII, Section 16 to the constitution (“Amendment 64”); and

WHEREAS, Amendment 64 allows for the licensing of marijuana cultivation facilities, marijuana testing facilities, marijuana product manufacturing facilities, and retail marijuana stores; and

WHEREAS, on May 28, 2013, the governor signed House Bill 13-1317 into law enacting Title 12-43.3-201 of the Colorado Revised Statutes (“The Colorado Retail Marijuana Code”), which regulates the cultivation, manufacture, distribution, sale and testing of retail marijuana and retail marijuana products as a matter of state-wide concern; and

WHEREAS, the Colorado Retail Marijuana Code sets up a state licensing system for retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana product manufacturers, and retail marijuana testing facilities; and

WHEREAS, the Colorado Retail Marijuana Code states that no retail marijuana establishment licenses for previously existing medical marijuana businesses shall be effective until January 1, 2014; and

WHEREAS, Amendment 64 and the Colorado Retail Marijuana Code authorize counties and municipalities in Colorado to prohibit retail marijuana establishments or to regulate the time, place, and manner in which such establishments may operate; to limit the total number of retail marijuana establishments; and to adopt regulations consistent with the intent of the state law that are more restrictive than the state’s; and

WHEREAS, on September 17, 2013, the City Council adopted an ordinance establishing, until March 31, 2014, a temporary ban on marijuana establishments within the City; and

WHEREAS, the purpose of the temporary ban was to allow City staff sufficient time to develop proposed regulations after reviewing and considering the Department of Revenue’s final rules, analyzing the outcomes of the November 2013 ballot questions, and conducting public outreach to determine the desires of the adult residents in the City; and

WHEREAS, City staff has conducted such outreach and has extensively reviewed the Colorado Retail Marijuana Code and the rules and regulations promulgated thereunder, and recommends the following local regulations to govern the licensing, number, location and operation of retail marijuana establishments; and

WHEREAS, the City Council has reviewed these staff recommendations and has concluded that the recommended regulations are in the best interests of the City and necessary to protect the health, safety and welfare of the residents of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Chapter 15, Article XVII of the Code of the City of Fort Collins is hereby amended by the addition of a new section to read as follows:

**ARTICLE XVII.
RETAIL MARIJUANA**

DIVISION I. IN GENERAL

Sec. 15-601. Purpose.

(The purpose of this Article is to implement the provisions of Article 43.4 of Title 12, C.R.S., known as the Colorado Retail Marijuana Code.

Sec. 15-602. Incorporation of state law.

The provisions of the Colorado Retail 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. 15-603. 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 Retail Marijuana Code shall mean Title 12, Article 43.4 of the Colorado Revised Statutes and any rules or regulations promulgated thereunder.

Cultivate or *cultivation* shall mean the process by which an individual 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 permitting an applicant to operate a retail marijuana business pursuant to this Article.

Licensed premises shall mean the premises specified in an application for a license under the provisions of this Article, the Colorado Retail Marijuana Code, and rules and regulations promulgated thereunder, that are owned or in the possession of the licensee and within which the licensee is permitted to cultivate, manufacture, distribute, sell, or test retail marijuana in accordance with 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.

Marijuana products shall mean concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients that are intended for use or consumption such as, but not limited to, edible products, ointment and tinctures.

Owner shall mean the person or persons who have a controlling interest in a retail marijuana establishment license, bear a risk of loss other than as an insurer, have an opportunity to gain profit from the operation or sale of the establishment, and have a controlling interest in the license issued to such establishment.

Person shall mean a natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof; provided, however, that *person* shall not include any governmental organization.

Retail marijuana shall mean marijuana that is grown and sold pursuant to the Colorado Retail Marijuana Code.

Retail marijuana establishment or establishment shall mean a retail marijuana cultivation facility, a retail marijuana testing facility, a retail marijuana product manufacturing facility, or a retail marijuana store as defined in the Colorado Retail Marijuana Code.

Retail marijuana cultivation facility shall mean an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

Retail marijuana product manufacturing facility shall mean an entity licensed to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

Retail marijuana store shall mean an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

Retail marijuana testing facility shall mean an entity licensed to analyze and certify the safety and potency of marijuana.

(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 16 of the Colorado Constitution or the Colorado Retail Marijuana Code, and such definitions are hereby incorporated into this Article by this reference.

DIVISION 2. RETAIL MARIJUANA LICENSING AUTHORITY

Sec. 15-604. Creation.

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

Sec. 15-605. Composition.

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

Sec. 15-606. Functions.

(a) The Authority shall have the duty and authority pursuant to the Colorado Retail Marijuana Code and this Article to grant or refuse an application and levy penalties against licensees in the manner provided by law.

(b) The Authority shall consider applications for licensure, new business premises, transfer of ownership, change of location, premises modification, changes in trade name, and any other appropriate application.

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

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

(e) The Authority shall have the power to require any applicant or licensee to furnish such information to the Authority as may be reasonably necessary in order for the Authority to perform the duties and functions authorized by this Article.

(f) 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 a District Court of the state.

(g) Notwithstanding the provisions of Section 16 of Article XVIII of the Colorado Constitution, the Authority shall not act upon any application for local licensing of a retail marijuana establishment in circumstances where the state has failed to issue the applicant an annual license within ninety (90) days after its receipt of such application.

DIVISION 3

LICENSES, FEES, REGULATIONS AND PROCEDURES

Sec. 15-607. Retail marijuana store.

(a) No person may operate a retail marijuana store in the City without having obtained a license under the provisions of this Article.

(b) Only a licensed medical marijuana center in good standing with state and local licensing authorities may be licensed as, or may operate, a retail marijuana store in the City.

(c) A retail marijuana store and medical marijuana center held by the same licensee shall be located on the same legal parcel.

(d) All retail marijuana stores shall affix labels to all containers on the licensed premises that hold retail marijuana or retail marijuana products, which labels shall clearly display potency profiles and contaminant results from licensed retail marijuana testing facilities.

OPTION:

(e) All retail marijuana stores shall prohibit the entrance of persons under the age of twenty-one (21) to the licensed premises, including that portion of the premises that is licensed as a medical marijuana center.

OPTION:

(f) No retail marijuana store shall sell any edible marijuana products.

Sec. 15-608. Retail marijuana cultivation facility.

(a) Only a licensed retail marijuana store or retail marijuana products manufacturing facility may be licensed as, or operate, a retail marijuana cultivation facility in the City.

(b) All retail marijuana cultivation facilities shall have their harvest and production batches tested for labeling purposes prior to any sale of marijuana or marijuana product.

Sec. 15-609. Retail marijuana products manufacturing facility.

(a) Any person who meets the requirements of this Division may be licensed as, and may operate, a retail marijuana products manufacturing facility in the City.

(b) All retail marijuana products manufacturing facilities shall have their production batches tested for labeling purposes prior to any sale of marijuana or marijuana product.

OPTION:

Retail marijuana products manufacturing facilities are prohibited in the City.

Sec. 15-610. Retail marijuana testing facility.

Any person who meets the requirements of this Division and is not an owner of a retail marijuana cultivation facility, a retail marijuana products manufacturing facility, a retail marijuana store, or a medical marijuana business may be licensed as, and may operate, a retail marijuana testing facility in the City.

Sec. 15-611. Requirements of application for license; payment of application fee.

(a) Any person seeking a license for any retail marijuana establishment under the provisions of the Colorado Retail Marijuana Code and this Article shall submit an application to the Authority on forms provided by the Authority. At the time of application, each applicant shall pay a nonrefundable 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.

(b) The applicant shall also provide any information that is deemed necessary by the Authority in connection with the investigation and review of the application regarding the applicant, the proposed manager of the retail marijuana establishment, and any person having a financial interest in the retail marijuana establishment that is the subject of the application or, if the applicant is an entity, having a financial interest in the entity.

Sec. 15-612. Denial of application.

The Authority shall deny any application that does not meet the requirements of the Colorado Retail Marijuana Code, the rules and regulations promulgated thereunder, or the provisions of this Article.

Sec. 15-613. Persons prohibited as licensees.

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

- (1) any person who is, at the time of application for a retail marijuana store, not currently licensed to operate a medical marijuana center and in good standing under both the Colorado Medical Marijuana Code and the City Code.
- (2) any person prohibited pursuant to 12-43.4-306, C.R.S.;
- (3) 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;
- (4) 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 (3) above;
- (5) any person whose criminal history renders them ineligible under paragraph (2) above, or who employs a person at a retail marijuana establishment who has a criminal history that renders said person ineligible;
- (6) any applicant who has made a false, misleading or fraudulent statement, or who has omitted pertinent information, on his or her application for a license;
- (7) any applicant whose license for a medical or retail marijuana establishment in this state or any other state has been revoked.

Sec. 15-614. Location criteria.

- (a) No applicant shall be issued a retail marijuana store license if, at the time of application for such license, the proposed location is not in the same as the location of the medical marijuana center operated by the applicant, or if such 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; or
 - d. 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;
- (6) within 500 feet of a residential unit; or
- (7) within one-thousand (1,000) feet of another medical marijuana or retail marijuana store.

(b) The distances described above shall be computed by direct measurement in a straight line from the nearest property line of the parcel of land on which the protected use is located to the nearest portion of the building or unit in which the proposed retail marijuana store would be located.

(c) Subsection (a) above shall not apply to an applicant seeking a retail marijuana store license at the same location as his or her currently licensed medical marijuana center. The intent of this Subsection is to permit previously licensed medical marijuana centers to apply for and receive a retail marijuana store license for the same premises for which the medical marijuana center license has been issued, regardless of the location requirements contained in Subsection (a) above.

(d) A previously licensed medical marijuana center that seeks to change locations and that applies for and receives a retail marijuana store license is subject to the location requirements in Subsection (a) above.

Sec. 15-615. Operating Fee.

Upon issuance of a license, and upon renewal thereafter, the licensee shall pay to the City an operating fee in an amount to be determined by the City Manager to be sufficient to cover the costs associated with processing the application, inspecting the premises before and after issuance, and otherwise administering and enforcing the provisions of this Article.

Sec. 15-616. Signage and advertising.

(a) All signage and advertising for a retail marijuana store shall comply with all applicable provisions of this Code, the Land Use Code and state law. In addition, no advertising for marijuana or marijuana products shall be permitted on signs mounted on vehicles, hand-held or other portable signs, handbills, leaflets or other flyers directly handed to any person in a public place, left upon a motor vehicle or posted upon any public property or private property without consent of the property owner. This prohibition shall not apply to any advertisement contained within a newspaper, magazine or other periodical of general circulation within the City, or that is purely incidental to

sponsorship of a charitable event by a retail marijuana establishment. Such signage and advertising must not be misleading, false, or infringe upon any state or federal trademark.

(b) It shall be unlawful for any retail marijuana cultivation facility or any retail marijuana products manufacturing facility to post, or allow to be posted, signs or other advertising materials identifying the premises as being associated with the cultivation or use of marijuana.

Sec. 15-617. Warning signs.

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

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

(2) 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

(3) no one under the age of twenty one (21) years is permitted on the premises.

Sec. 15-618. 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 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. 15-619. Prohibited acts.

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

(b) It shall be unlawful for any retail marijuana establishment to permit the sale of or transport to a retail marijuana store without contaminant and potency testing.

OPTION: (c) It shall be unlawful for any retail marijuana cultivation facility or marijuana products manufacturing facility to operate in the City unless the licensee who is authorized to operate such facility also operates a retail marijuana store in the City pursuant to the provisions of this Article.

(d) It shall be unlawful for any licensee to permit the consumption of retail marijuana or retail marijuana products on the licensed premises.

(e) It shall be unlawful for any licensee, or for any agent, manager or employee thereof, to:

(1) sell, give, dispense or otherwise distribute retail marijuana or retail marijuana products from any location other than the licensed premises;

(2) sell, give, dispense or otherwise distribute any retail marijuana or retail marijuana products to persons under the age of twenty one (21);

(3) display signs that are inconsistent with Sections 15-617 and 15-618 of this Article;

(f) It shall be unlawful for any licensee or for any agent, manager or employee to conduct the sale of retail marijuana by telephone, internet, or other means of remote purchase.

(g) It shall be unlawful for retail marijuana establishments to distribute marijuana or marijuana-infused products to a consumer free of charge.

(h) It shall be unlawful for any licensee to fail to designate areas of ingress and egress for limited-access areas or to post signs in conspicuous locations as required by the Colorado Retail Marijuana Code.

(i) It shall be unlawful for any licensee to sell marijuana or marijuana products at a licensed retail marijuana store at any time other than between the hours of 8:00 a.m. and 7:00 p.m. daily.

Sec. 15-620. Visibility of activities; control of emissions.

(a) All activities of retail marijuana establishments, including, without limitation, cultivating, growing, processing, displaying, manufacturing, selling and storage, shall be conducted indoors.

(b) No retail marijuana or paraphernalia shall be displayed or kept in a business so as to be visible from outside the licensed premises.

(c) No marijuana cultivation activity shall result in the emission of any gas, vapors, odors, smoke, dust, heat or glare that is noticeable at or beyond the property line of the establishment at which the cultivation occurs. Sufficient measures and means of preventing the escape of such substances from a retail marijuana establishment must be provided at all times. In the event that any gas, vapors, odors, smoke, dust, heat or glare or other substances exit a retail marijuana establishment, 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. 15-621. 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. 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.

Sec. 15-622. Nonrenewal, suspension or revocation of license.

(a) The Authority may, after notice and hearing, pursuant to this Article, 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 retail marijuana establishment has been abandoned or 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 retail marijuana establishment or in the immediate area surrounding such business, a continuing pattern of criminal conduct directly related to or arising from the operation of the retail marijuana establishment, or an ongoing nuisance condition emanating from or caused by the retail marijuana establishment.

Sec. 15-623. 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 retail marijuana establishment, 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. 15-624. 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 retail marijuana establishment that is the subject of the license, unless the act or omission by the officer, elected official, or employee that causes the loss or damage is willful and wanton as provided in the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S.

Sec. 15-625. 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 retail marijuana, the additional or stricter regulation shall control the establishment or operation of any retail marijuana establishment 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 retail marijuana establishments, 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 under federal law for the cultivation, possession, sale, distribution or use of marijuana.

Sec. 15-626. 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. 15-627. Administrative regulations.

The City Manager is authorized to promulgate such rules and regulations as are necessary to effectuate the implementation, administration and enforcement of this Article.

Introduced, considered favorably on first reading, and ordered published this 4th day of March, A.D. 2014, and to be presented for final passage on the 18th day of March, A.D. 2014.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 18th day of March, A.D. 2014.

Mayor

ATTEST:

City Clerk