

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF _____

COUNCIL BILL NO. _____
COMMITTEE OF REFERENCE:

A BILL

For an ordinance concerning the licensing and regulation of medical marijuana dispensaries.

BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. That Chapter 24, D.R.M.C. (“Health and Sanitation”) shall be amended by adding a new Article XI, to read as follows:

Article XI. Medical Marijuana Dispensaries

Sec. 24-401. Purpose and legislative intent. Although the possession and use of marijuana is and remains unlawful under Federal law, Section 14 of Article XVIII of the Colorado Constitution (“Amendment 20”) provides an exception to prosecution under state criminal laws when marijuana is possessed and used for medicinal purposes by a patient who has been diagnosed with a debilitating medical condition and by the patient’s primary caregiver. Amendment 20 does not, however, contain any provision for the lawful sale or distribution of marijuana to patients and, to date, the State of Colorado has failed to adopt laws or regulations to clearly explain how and whether marijuana may be lawfully sold or otherwise distributed to patients. As a result of this ambiguity in the State law, unregulated medical marijuana dispensaries have proliferated in Denver and elsewhere in Colorado. The purpose of this Article is to license and regulate medical marijuana dispensaries in the interest of public health, safety and general welfare. In particular, this Article is intended to regulate the sale and distribution of marijuana in the interest of patients who qualify to obtain, possess and use marijuana for medical purposes under Amendment 20, while promoting compliance with other state laws that prohibit trafficking in marijuana for non-medical purposes. Nothing in this article is intended to promote or condone the sale, distribution, possession or use of marijuana in violation of any applicable law. Compliance with the requirements of this article shall not provide a defense to criminal prosecution under any applicable law.

Sec. 24-402. Definitions. The following words and phrases, when used in this article, shall have the meanings respectively assigned to them:

- (1) *Director* means the director of the department of excise and licenses, or the director’s duly authorized representative.

- 1 (2) *Marijuana* shall have the same meaning as the term “usable form of marijuana” as set
2 forth in Article XVIII, Section 14(1)(i) of the Colorado Constitution, or as may be more
3 fully defined in any applicable state law or regulation.
4
- 5 (3) *Medical Marijuana dispensary* means a business that sells or otherwise distributes
6 marijuana through one or more primary care-givers to six (6) or more patients for
7 medical use, along with any cultivation of marijuana associated with such sale or
8 distribution. The term “medical marijuana dispensary” shall not include any person or
9 entity that distributes marijuana for medical use exclusively to five (5) or fewer patients,
10 and shall not include the private possession and medical use of marijuana by an
11 individual patient or caregiver to the extent permitted by Article XVIII, Section 14 of the
12 Colorado Constitution and any other applicable state law or regulation.
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- 14 (4) *Medical use* shall have the same meaning as is set forth in Article XVIII, Section 14(1)(b)
15 of the Colorado Constitution, or as may be more fully defined in any applicable state law
16 or regulation.
17
- 18 (5) *Parent* shall have the same meaning as set forth in Article XVIII, Section 14 (1)(c) of the
19 Colorado Constitution, or as may be more fully defined in any applicable state law or
20 regulation.
21
- 22 (6) *Patient* shall have the same meaning as is set forth in Article XVIII, Section 14(1)(d) of
23 the Colorado Constitution, or as may be more fully defined in any applicable state law or
24 regulation.
25
- 26 (7) *Primary care-giver* shall have the same meaning as is set forth in Article XVIII, Section
27 14(1)(f) of the Colorado Constitution, or as may be more fully defined in any applicable
28 state law or regulation.
29
- 30 (8) *School or child care establishment* means any public or private school meeting all
31 requirements of the compulsory education laws of the state and providing instruction to
32 students in kindergarten through grade twelve; any public or private schools or pre-
33 schools that provide preparatory schooling for children of any age younger than the
34 state age of mandatory attendance; or any child care establishment as defined by and
35 regulated under Chapter 11 of this Code.
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38 **Sec. 24-403. License Required.**
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- 40 (a) On and after March, 1, 2010 it shall be unlawful for any person to sell or otherwise
41 distribute any marijuana for medical use in Denver without obtaining a license to operate
42 as a medical marijuana dispensary pursuant to the requirements of this article. This
43 licensing requirement shall apply regardless of whether or not a medical marijuana
44 dispensary has commenced operation prior to March 1, 2010. Any medical marijuana
45 dispensary that has commenced operation prior to March 1, 2010 and for which a
46 license application has been filed pursuant to this article prior to that date may continue
47 in operation pending final action by the director on the application. Any such preexisting
48 medical marijuana dispensary that does not or cannot meet the licensing requirements
49 set forth in this article and therefore fails to obtain a license shall be terminated
50 immediately upon such denial.

- 1
2 (b) The license requirement set forth in this article shall be in addition to, and not in lieu of,
3 any other licensing and permitting requirements imposed by any other federal, state, or
4 city law including, by way of example, a retail sales tax license, a retail food
5 establishment license if applicable, any applicable zoning or building permit, and an
6 alarm system permit.
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9 **Sec. 24-404. General licensing procedures.**

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11 Except as otherwise specifically provided in this article, the general procedures and
12 requirements for issuance and administration of licenses by the director, as more fully set forth in
13 Article I of Chapter 32, shall apply to medical marijuana dispensary licenses. To the extent there is
14 any conflict between the provisions of this article and Article I of Chapter 32, the provisions of this
15 article shall control.
16

17 **Sec. 24-405. Application.**

18
19 (a) Application for a medical marijuana dispensary license shall be made to the director
20 upon forms provided by the director for that purpose. In addition to the information required by
21 Chapter 32 of this Code, the application shall include the following information:
22

- 23 (1) Name and address of the owner or owners of the medical marijuana dispensary in
24 whose name the license is proposed to be issued.
25
26 (2) If the owner is a corporation, the name and address of any officer or director of the
27 corporation, and of any person holding ten percent (10%) or more of the issued and
28 outstanding capital stock of the corporation.
29
30 (3) If the owner is a partnership, association or company, the name and address of any
31 member holding ten percent (10%) or more of the interest therein.
32
33 (4) Name and address of any manager or managers of the medical marijuana dispensary, if
34 the manager is proposed to be someone other than the owner.
35
36 (5) A statement of whether or not any of the foregoing persons have:
37
38 a. Been denied an application for a medical marijuana dispensary license pursuant
39 to this article or any similar state or local licensing law, or had such a license
40 suspended or revoked.
41 b. Been convicted of a felony or has completed any portion of a sentence due to a
42 felony conviction within the preceding five (5) years.
43
44 (6) Proof of ownership or legal possession of the licensed premises for the term of the
45 proposed license. If the licensed premises will be leased, the application shall include
46 written consent by the owner of the property to the licensing of the premises for a medical
47 marijuana dispensary.
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49 (7) An operating plan for the proposed medical marijuana dispensary including the following
50 information:

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- a. A description of the products and services to be provided by the medical marijuana dispensary, including an indication of whether or not the dispensary proposes to engage in the retail sale of food for human consumption.
- b. A floor plan, drawn to scale, showing the layout of the medical marijuana dispensary and the principal uses of the floor area depicted therein, including a depiction of where any services other than the dispensing of medical marijuana are proposed to occur on the licensed premises.
- c. A security plan indicating how the applicant intends to comply with the requirements of section 24-408 (g), including an indication of whether or not the applicant intends to utilize licensed security guards.

(8) An area map, drawn to scale, indicating, within a radius of one-quarter mile from the boundaries of the property upon which the medical marijuana dispensary is located, the proximity of the property to any school or child care establishment, to any other medical marijuana dispensary, or to any residential zone district.

(b) Any application for a medical marijuana dispensary permit shall be accompanied by the application fee, criminal background check fee, and annual fee as required by section 32-93.

(c) Upon receipt of an application for a medical marijuana dispensary license, the director shall circulate the application to the Department of Community Planning and Development, the Department of Finance, the Department of Environmental Health, the Denver Police Department, and the Denver Fire Department to determine whether the proposed dispensary is in full compliance with any and all laws, rule and regulations administered by the respective departments.

(d) The director shall perform a criminal background investigation for each applicant or manager to determine compliance with section 24-406.

(e) The director shall perform an inspection of the proposed licensed premises to determine compliance with any applicable requirement of this article.

(f) The director shall deny any application for a license that is not in full compliance with this article, any other applicable city law or regulation, or any state law or regulation governing medical marijuana dispensaries. The director shall also deny any application that contains any false or incomplete information.

24-406. Persons prohibited as licensees and managers.

(a) No license provided by this article shall be issued to or held by:

(1) Any person who, in the immediately preceding twelve months had a medical marijuana dispensary license revoked by the city.

(2) Any person who has been convicted of a felony or has completed any portion of a felony sentence within the preceding five (5) years, with this prohibition applying to:

a. Any owner who is a natural person.

1 b. If the owner is a corporation, any officer or director of the corporation, and any
2 person holding ten percent (10%) or more of the issued and outstanding capital stock of
3 the corporation.

4
5 c. If the owner is a partnership, association or company, any member holding ten
6 percent (10%) or more of the interest therein.

7
8 (b) No licensed premises shall be managed by any person who has been convicted of a
9 felony or has completed any portion of a felony sentence within the preceding five (5) years.

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12 **24-407. Prohibited locations.**

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14 (a) All medical marijuana dispensary licenses shall be issued for a specific fixed
15 location which shall be considered the licensed premises. All sales or distribution of medical
16 marijuana shall be made directly by a primary care-giver to a patient upon the licensed premises,
17 or via personal delivery of the medical marijuana by the primary care-giver from the licensed
18 premises to the patient at the patient's residence.

19
20 (b) No medical marijuana dispensary license shall be issued for the following locations:

- 21
22 (1) In any residential zone district as defined by the zoning code of the city, or in any other
23 location where retail sales are prohibited by the zoning code.
- 24
25 (2) Within one thousand (1,000) feet of any school or child care establishment, with the
26 distance computed by direct measurement from the nearest property line of the land
27 used for school or child care purposes to the nearest portion of the building in which the
28 medical marijuana dispensary is located, using a route of direct pedestrian access. This
29 restriction shall not apply to any applicant who submits a license for a medical marijuana
30 dispensary prior to March 1, 2010 in any location where the same applicant had obtained
31 a retail sales tax license for the dispensary on or before January 1, 2010, regardless of
32 whether the actual sale or other distribution of medical marijuana had commenced at
33 that location as of January 1, 2010.
- 34
35 (3) Within one thousand (1,000) feet of any other medical marijuana dispensary, with the
36 distance computed by direct measurement from the nearest portion of the building in
37 which one medical marijuana dispensary is located to the nearest portion of the building
38 in which the other medical marijuana dispensary is located, using a route of direct
39 pedestrian access. This restriction shall not apply to any applicant who submits a
40 license for a medical marijuana dispensary prior to March 1, 2010 in any location where
41 the same applicant had obtained a retail sales tax license for the dispensary on or before
42 January 1, 2010, regardless of whether the actual sale or other distribution of medical
43 marijuana had commenced at that location as of January 1, 2010.
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1 **24-408. Requirements related to licensed premises.**

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3 (a) No marijuana shall be smoked, eaten or otherwise consumed or ingested on the
4 licensed premises.

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6 (b) No person under eighteen years of age shall be permitted on the licensed
7 premises, unless the person has been qualified to possess marijuana for medical use in
8 accordance with Article XVIII, Section 14 (6) of the Colorado Constitution and the person is
9 accompanied by a parent.

10
11 (c) The name and contact information for the owner or owners and any manager of
12 the medical marijuana dispensary shall be conspicuously posted in the dispensary.

13
14 (d) Any and all cultivation, processing, storage, display, sales or other distribution of
15 marijuana shall occur within an enclosed building and shall not be visible from the exterior of the
16 building.

17
18 (e) No licensed premises shall be managed by any person other than the owner or
19 the manager listed on the application for the license.

20
21 (f) The medical marijuana dispensary shall be closed to the public, and no sale or
22 other distribution of marijuana shall occur upon the licensed premises or via delivery from the
23 licensed premises between the hours of 9:00 p.m. and 7:00 a.m.

24
25 (g) The licensed premises shall be monitored and secured 24-hours per day
26 including, at a minimum, the following security measures:

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29 (1) Installation and use of security cameras to monitor all areas of the licensed premises where
30 persons may gain or attempt to gain access to marijuana or cash maintained by the medical
31 marijuana dispensary. Recordings from security cameras shall be maintained for a
32 minimum of seventy-two hours in a secure off-site location.
- 33
34 (2) Installation and use of a safe for overnight storage of any processed marijuana, and cash
35 on the licensed premises, with the safe being incorporated into the building structure or
36 securely attached thereto.
- 37
38 (3) Installation of a monitored user alarm system pursuant to Division 2 of Article IV of Chapter
39 42 of this Code.
- 40
41 (4) To the extent the licensee utilizes security guards to patrol the licensed premises, any such
42 guards shall be duly licensed in accordance with Article V of Chapter 42 of this code.
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45 **24-409. Labeling.**

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47 All marijuana sold or otherwise distributed by the licensee shall be packaged and labeled in
48 a manner that advises the purchaser that the marijuana is intended for use solely by the patient to
49 whom it is sold, and that any re-sale or re-distribution of the marijuana to any third person is a
50 criminal violation.

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24-410. Compliance with state law.

(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 marijuana for medical use, the additional or stricter regulation shall control the establishment or operation of any medical marijuana dispensary 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 non-compliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

(b) Any medical marijuana dispensary licensed pursuant to this article, may be required to demonstrate, upon demand by the director or by law enforcement officers, that the source and quantity of any marijuana found upon the licensed premises is 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 pursuant to this article shall be deemed to be 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.

Section 2. That Article II of Chapter 32, D.R.M.C. concerning License Fees shall be amended by adding a new section 32-93, to read as follows:

Sec. 32-93. Medical marijuana dispensaries.

Application and license fees for medical marijuana dispensaries are as follows:

- (1) Application fee \$2,000
- (2) Criminal background check fee, per person checked Actual costs
- (3) License fee, per year \$3,000

1 COMMITTEE APPROVAL DATE: _____, 2010.
2 MAYOR-COUNCIL DATE: _____, 2010.
3 PASSED BY THE COUNCIL _____ 2010
4 _____ - PRESIDENT
5 APPROVED: _____ - MAYOR _____ 2010
6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER
9
10 NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2010; _____ 2010
11
12 PREPARED BY: David W. Broadwell, Asst. City Attorney; DATE: _____
13

14 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the
15 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
16 ordinance. The proposed ordinance **is not** submitted to the City Council for approval pursuant to §
17 3.2.6 of the Charter.
18

19 City Attorney
20 BY: _____, _____ City Attorney
21 DATE: _____
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