

SPONSORED BY _____

COUNCILMAN'S BILL

ORDINANCE NO.

No. _____
Series of 2009

_____ Series of 2009

A BILL FOR AN ORDINANCE AMENDING THE NORTHGLENN MUNICIPAL CODE BY THE ADDITION OF A NEW ARTICLE 14 OF CHAPTER 18 ENTITLED MEDICAL MARIJUANA DISPENSARIES

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Northglenn Municipal Code is hereby amended by the addition of a new Article 14 of Chapter 18 entitled "Medical Marijuana Dispensaries," to read as follows:

ARTICLE 14
MEDICAL MARIJUANA DISPENSARIES

Section 18-14-1. Short title. This Article shall be known and may be cited as the "Medical Marijuana Dispensary Ordinance."

Section 18-14-2. Findings. The City Council adopts this Article based upon the following findings of fact:

(a) On November 7, 2000, the voters of the State of Colorado approved Amendment 20. Amendment 20 added § 14 of Article 18 to the Colorado Constitution, and created a limited exception from criminal liability under Colorado law (as opposed to federal law) for seriously ill persons who are in need of marijuana for specified medical purposes and who obtain and use medical marijuana under the limited, specified circumstances described in Amendment 20.

(b) The intent of Amendment 20 was to enable certain specified persons who comply with the registration provisions of the law to legally obtain, possess, cultivate, grow, use and distribute marijuana without fear of criminal prosecution under Colorado (as opposed to federal) law.

(c) Despite the adoption of Amendment 20, marijuana is still a controlled substance under Colorado and federal law. As a result, making it legal for a person to obtain, possess, cultivate, grow, use and distribute marijuana, even for medical use as contemplated by Amendment 20, has the potential for abuse that should be closely monitored and regulated by local authorities to the extent possible.

(d) If not closely monitored and regulated, the presence of marijuana, even for the purposes legally permitted by Amendment 20, can cause an increase in illegal activities within the City affecting the health, safety, order, comfort, convenience and general welfare of the residents of the City.

(e) If medical marijuana dispensaries operating pursuant to Amendment 20 were allowed to be established and to operate without appropriate local regulation of their location, medical marijuana dispensaries might be established in areas that would be inconsistent with surrounding uses; or otherwise be detrimental to the public health, safety and welfare.

(f) Nothing in this Chapter allows a person to:

(1) engage in conduct that endangers others or causes a public nuisance;

(2) possess, cultivate, grow, use or distribute marijuana for any purpose other than for use as medical marijuana as authorized and limited by Amendment 20, and the implementing state statutes and administrative regulations;

(3) possess, cultivate, grow, use or distribute marijuana that is otherwise illegal under applicable law; or

(4) engage in any activity related to the possession, cultivation, growing, use or distribution of marijuana that is otherwise not permitted under the laws of the City or the State of Colorado.

(g) This Article is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the City and the inhabitants thereof.

(h) No person, business, activity or use that distributed or involved the distribution of marijuana within the City prior to the enactment of this Article shall be deemed to have been legally established under this Code, and no such person, business, activity or use shall be entitled to claim legal, nonconforming status under any provision of this Code or applicable law.

Section 18-14-3. Purpose. Recognizing that there is a potential conflict between federal and state law with respect to the operation of medical marijuana dispensaries, it is the purpose of this Article to:

(a) Impose specific requirements and limitations for those individuals registering with the State of Colorado as a “patient” or “primary care-giver” as those terms are defined in Amendment 20, and the statutes and administrative regulations implementing Amendment 20.

(b) Require that a medical marijuana dispensary (as defined in this Article) be operated in a safe manner that does not endanger the public welfare.

(c) Mitigate potential negative impacts that a medical marijuana dispensary might cause on surrounding properties and persons.

(d) Regulate the conduct of persons owning, operating, and using a medical marijuana dispensary in order to protect the public health, safety and welfare.

(e) Establish a nondiscriminatory mechanism by which the City can control, through appropriate regulation, the location and operation of medical marijuana dispensaries within the City.

Section 18-14-4. Authority. The City Council hereby finds, determines and declares that it has the power to adopt this Article pursuant to:

- (a) The Local Government Land Use Control Enabling Act, article 20 of title 29, C.R.S.;
- (b) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers);
- (c) Section 31-15-103, C.R.S. (concerning municipal police powers);
- (d) Section 31-15-401, C.R.S. (concerning municipal police powers);
- (e) Section 31-15-501, C.R.S. (concerning municipal authority to regulate businesses);
- (f) The authority granted to home rule municipalities by Article XX of the Colorado Constitution; and
- (g) The powers contained in the City of Northglenn Home Rule Charter.

Section 18-14-5. Definitions.

(a) As used in this Article, the following words shall have the following meanings, unless the context clearly requires otherwise:

Alcoholic beverage has the meaning provided in Section 9-9-1(a)(3) of the Northglenn Municipal Code.

Amendment 20 means a voter-initiated amendment to the Colorado Constitution adopted November 7, 2000. Amendment 20 added §14 of Article 18 to the Colorado Constitution.

Applicant means a person eighteen (18) years of age or older who has submitted an application for permit pursuant to this Article.

Application means an application for permit submitted pursuant to this Article.

Cultivation means the process by which a person promotes the germination and growth of a seed to a mature marijuana plant. *Cultivation* does not include the storing or watering of mature marijuana plants without the aid of grow lighting.

Day means a calendar day, unless otherwise indicated.

Good cause (for the purpose of refusing or denying a permit renewal under this Article) means: (1) the permittee has violated, does not meet, or has failed to comply with any of the terms, conditions or provisions of this Article and any rule and regulation promulgated pursuant to this Article; (2) the permittee has failed to comply with any special terms or conditions that were placed on its permit at the time the permit was issued, or that were placed on its permit in prior disciplinary proceedings or that arose in the context of potential disciplinary proceedings; or (3) the permittee's medical marijuana dispensary has been operated in a manner that adversely affects the public health, welfare or safety of the immediate neighborhood in which the medical marijuana dispensary is located. Evidence to support such a finding can include: (i) a

continuing pattern of offenses against the public peace, as defined in Article 4 of Chapter 9 of the Northglenn Municipal Code; (ii) a continuing pattern of drug-related criminal conduct within the premises of the medical marijuana dispensary or in the immediate area surrounding the medical marijuana dispensary; or (iii) a continuing pattern of criminal conduct directly related to or arising from the operation of the medical marijuana dispensary.

Medical marijuana dispensary or *dispensary* means the use of any property or structure within the City to distribute, transmit, give, dispense or otherwise provide marijuana in any manner to patients or primary care-givers in accordance with Amendment 20, and the implementing state statutes and administrative regulations.

Patient has the meaning provided in Amendment 20.

Permit means a permit to operate a medical marijuana dispensary issued by the City pursuant to this Article.

Permittee means the person to whom a permit has been issued pursuant to this Article.

Primary caregiver has the meaning provided in Amendment 20.

City means the City of Northglenn, Colorado.

City Manager means the City Manager of the City or designee.

(b) In addition to the definitions provided in Subsection (a) of this Section, the other defined terms in Amendment 20 are incorporated into this Article by reference.

Section 18-14-6. Permit required. No person shall operate a medical marijuana dispensary within the City without a valid permit issued in accordance with this Article.

Section 18-14-7. Application for permit.

(a) A person seeking to obtain a permit pursuant to this Article shall file an application with the City Manager. The form of the application shall be provided by the City Manager.

(b) A permit issued pursuant to this Article does not eliminate the need for the permittee to obtain other required City licenses and permits related to the operation of the approved medical marijuana dispensary, including, without limitation:

- (1) any required land use approval, if applicable
- (2) a City business and sales tax license; and
- (3) a building permit, mechanical permit, plumbing permit or electrical permit.

(c) An application for a permit under this Article shall contain the following information:

- (1) the applicant's name, address, telephone number and social security number;
- (2) the street address, and unit number, if applicable, of the proposed medical marijuana dispensary, and a complete description of the site for which the permit is being obtained;
- (3) if the applicant is not the owner of the proposed location of the medical marijuana dispensary, a notarized statement from the owner of such property authorizing the submission of the application;
- (4) a completed set of the applicant's fingerprints;
- (5) a statement to be initialed by the applicant that the applicant and the employees of the medical marijuana dispensary may be subject to prosecution under federal marijuana laws;
- (6) a statement to be initialed by the applicant that the City accepts no legal liability in connection with the approval and subsequent operation of the medical marijuana dispensary;
- (7) an acknowledgement that the City will conduct a background investigation as specified in Section 18-4-9 of this Article; and
- (8) any additional information that the City Manager reasonably determines to be necessary in connection with the investigation and review of the application.

Applications shall be processed by the City Manager in order of receipt.

Section 18-14-8. Application fee. An applicant shall pay to the City a nonrefundable application fee when the application is filed. The purpose of the fee is to cover the administrative costs of processing the application. For applications filed in 2009 the application fee is \$2,000. Thereafter, the amount of the application fee shall be fixed by the City Council by resolution.

Section 18-14-9. Investigation of application.

(a) Upon receipt of a properly completed application, together with all information required in connection therewith, and the payment of the application fee as required by Section 18-4-8, the City Manager shall transmit copies of the application to:

- (1) the Police Department;
- (2) the Department of Planning and Development; and
- (3) any other person or agency which the City Manager determines should properly investigate and comment upon the application.

(b) Upon receipt of a completed application the Police Department shall obtain and review a criminal background records search on the applicant from the Colorado Bureau of Investigation.

(c) Within twenty (20) days of receipt of a completed application those City departments and other referral agencies described in Subsection (a) of this Section shall provide the City Manager with comments concerning the application.

Section 18-14-10. Standards for issuance of permit.

The City Manager shall issue a permit under this Article when, from a consideration of the application and from such other information as may otherwise be obtained, the City Manager determines that:

(a) The application (including any required attachments and submissions) is complete and signed by the applicant;

(b) The applicant has paid the application fee and any other fees required by Section 18-4-8.

(c) The application does not contain a material falsehood or misrepresentation;

(d) The application complies with all of the requirements of this Article;

(e) The applicant has not previously been convicted of a felony violation related to the sale, possession or use of a scheduled control substance. In making this determination the City Manager shall be governed by the provisions of Section 24-5-101, C.R.S.; and

(f) The proposed location of the medical marijuana dispensary is permitted under Section 18-14-24.

Section 18-14-11. Denial of permit.

(a) The City Manager shall deny an application for a permit under this Article, if the City Manager determines that:

(1) Information contained in the application or supplemental information requested from the applicant is found to be false in any material respect; or

(2) The application fails to meet any of the standards sets forth in Section 18-14-10.

(b) If an application is denied the application fee shall not be refunded.

Section 18-14-12. Authority to impose conditions on permit. The City Manager shall have the authority to impose such reasonable terms and conditions on a permit as may be necessary to protect the public health, safety and welfare, and to obtain compliance with the requirements of this Article and applicable law.

Section 18-14-13. Decision by City Manager.

(a) The City Manager shall approve, deny or conditionally approve an application within thirty (30) days of the receipt of the completed application, unless, by written notice to the applicant, the decision period is extended for an additional ten (10) days if necessary for the City Manager to complete the review of the application.

(b) If an application is denied, the City Manager shall clearly set forth in writing the grounds for denial.

(c) In the event an application is conditionally approved, the City Manager shall clearly set forth in writing the conditions of approval.

Section 18-14-14. Notice of Decision. The City Manager shall notify the applicant of the decision on the application within three (3) business days of rendering the decision. Notice shall be given by mailing a copy of the City Manager's decision to the applicant by regular mail, postage prepaid, at the address shown in the application. Notice is deemed to have been properly given upon mailing.

Section 18-14-15. Appeal of denial or condition approval of permit.

(a) An applicant has the right to appeal the City Manager's denial or conditional approval of an application to the City Council by filing a written request with the City Manager within twenty (20) days of the date of the notice of the decision described in Section 18-4-14 of this Code.

(b) The applicant shall be provided with not less than ten (10) days' prior written notice of the appeal hearing to be held by the City Council.

(c) The burden of proof in an appeal filed under this Section shall be on the applicant.

(d) If the City Council finds by a preponderance of the evidence that the decision of the City Manager was correct, the City Council shall uphold the decision of the City Manager. If the City Council finds by a preponderance of the evidence that the decision of the City Manager was incorrect, the City Manager's decision shall be set aside and the permit issued (if it was previously denied) or the conditions of approval stricken or modified.

(e) Any decision made by the City Council pursuant to this Section shall be a final decision and may be appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The applicant's failure to timely appeal the decision is a waiver the applicant's right to contest the denial or conditional approval of the application.

Section 18-14-16. Contents of permit.

(a) A permit shall contain the following information:

- (1) The name of the permittee;
- (2) The date of the issuance of the permit;

(3) The address at which the permittee is authorized to operate the medical marijuana dispensary;

(4) Any special conditions of approval imposed upon the permit by the City Manager, pursuant to Section 18-14-12; and

(5) The date of the expiration of the license.

(b) A permit must be signed by both the applicant and the City Manager to be valid.

Section 18-14-17. Permit not transferable. A permit is nontransferable and nonassignable. Any attempt to transfer or assign a permit voids the permit.

Section 18-14-18. Notice of issuance of permit. Immediately upon the issuance of a permit, the City Manager shall send a copy of the permit to:

(a) The City Council, and verbal notification shall also be made by the City Manager to the City Council at a regular City Council meeting;

(b) The Police Department;

(c) The Community Development Department;

(d) The Finance Director; and

(e) Any other person or agency as determined by the City Manager.

Section 18-14-19. Duration of permit; renewal.

(a) Each permit issued pursuant to this Article shall be valid for one (1) year from the date of issuance, and may be renewed as provided in this Section.

(b) An application for the renewal of an existing permit shall be made to the City Manager not less than forty-five (45) days prior to the date of expiration. No application for renewal shall be accepted by the City Manager after the date of expiration. The City Manager may waive the forty-five (45) days time requirement set forth in this Subsection, if the applicant demonstrates an adequate reason.

(c) The provisions of Sections 18-14-9 through 18-14-15, inclusive, shall apply to the processing of an application to renew a permit. The timely filing of a renewal application shall extend the current permit until a final decision is made on the renewal application, including any appeal of the City Manager's decision to the City Council.

(d) The applicant shall at the time of an application to renew a permit not be delinquent on any applicable City fees or taxes.

(e) At the time of the filing of an application for the renewal of an existing permit the applicant shall pay a renewal fee in an amount fixed by resolution by the City Council.

- (f) The City Manager may refuse to renew a permit for good cause.

Section 18-14-20. Duties of permittee. It is the duty and obligation of each permittee to do the following:

- (a) Comply with all of the terms and conditions of the permit, and any special conditions on the permit imposed by the City Manager, pursuant to Section 18-4-12.

- (b) Comply with all of the requirements of this Article;

- (c) Comply with all other applicable City ordinances;

- (d) Comply with all state laws and administrative regulations pertaining to the medical use of marijuana, including, but not limited to, Amendment 20; Section 18-18-406.3, C.R.S.; and the administrative regulations issued by the Colorado Department of Public Health and Environment found at 5 CCR 1006-2, all as amended from time to time.

- (e) Comply with all applicable federal laws, rules or regulations, other than a federal law, rule or regulation concerning the possession, sale or distribution of marijuana that conflicts with Amendment 20; and

- (f) Permit inspection of its records and operation by the City Manager for the purpose of determining the permittee's compliance with the terms and conditions of the permit.

Section 18-14-21. Posting of permit. A permit shall be continuously posted in a conspicuous location at the medical marijuana dispensary.

Section 18-14-22. Suspension or revocation of permit.

- (a) A permit issued pursuant to this Article may be suspended or revoked by the City Manager for the following reasons:

- (1) fraud, misrepresentation, or a false statement of material fact contained in the permit application;

- (2) a violation of any City, state, or federal law or regulation, other than a federal law or regulation concerning the possession, sale or distribution of marijuana that conflicts with Amendment 20;

- (3) a violation of any of the terms and conditions of the permit, including any special conditions of approval imposed upon the permit by the City Manager pursuant to Section 18-4-12.

- (4) a violation of any of the provisions of this Article;

- (5) operations have ceased at the medical marijuana dispensary for more than thirty (30) days, including during a change of ownership of the dispensary; or

- (6) ownership of the medical marijuana dispensary has been transferred

without the new owner obtaining a permit pursuant to this Article.

(b) In connection with the suspension of a permit, the City Manager may impose reasonable conditions.

(c) The City Manager shall notify the permittee of the decision to suspend or revoke the permit within three (3) business days of rendering the decision. Notice shall be given by mailing a copy of the City Manager's decision to the permittee by regular mail, postage prepaid, at the address shown in the permit. Notice is deemed to have been properly given upon mailing.

(d) No suspension or revocation shall be final until the permittee has been given the opportunity for a hearing to address the suspension or revocation. The permittee has the right to appeal the City Manager's suspension or revocation to the City Council by filing a written request with the City Manager within twenty (20) days of the date of the Notice of Decision issued by the City Manager, as described in Section 18-14-22(c).

(1) The burden of proof in an appeal filed under this Section shall be on the permittee.

(2) If the City Council finds by a preponderance of the evidence that the decision of the City Manager was correct, the City Council shall uphold the decision of the City Manager. If the City Council finds by a preponderance of the evidence that the decision of the City Manager was incorrect, the City Manager's decision shall be set aside or modified and any conditions imposed by the City Manager related thereto shall be stricken or modified.

(3) Any decision made by the City Council shall be a final decision and may be appealed to the district court, pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The permittee's failure to timely appeal the decision is a waiver of the permittee's right to contest the suspension or revocation of the permit.

Section 18-14-23. Limitation on the sale of marijuana. No marijuana may be sold, given away or transferred at a medical marijuana dispensary, except to patients and to primary caregivers.

Section 18-14-24. Prohibited Locations; Permanent Location Required. Prior to the issuance of a permit for a medical marijuana dispensary, the City Manager shall determine whether the proposed location of the medical marijuana dispensary complies with the requirements of this Section. Failure to comply with the requirements of this Section shall preclude issuance of a permit.

(a) No medical marijuana dispensary shall be located at the following locations:

(1) within 200 feet of any single or multi-family residential structure or unit, or parcel or lot;

(2) within 500 feet of a licensed child care facility;

(3) within 500 feet of any educational institution or school, college or university, either public or private;

(4) within 500 feet of any public park, public pool, or public or private recreational facility;

(5) within 1000 feet of any halfway house or correctional facility;

(6) within 1000 feet of any other medical marijuana dispensary;

(7) within any building or structure that contains a residential unit; or

(8) upon any City of Northglenn owned property.

(b) The distances described in subsection (a) shall be computed by direct measurement from the nearest property line of the land used for the above purposes to the nearest portion of the building housing the medical marijuana dispensary using a straight line.

(c) Each medical marijuana dispensary shall be operated from a permanent location. No medical marijuana dispensary shall be permitted to operate from a moveable, mobile or transitory location.

(d) The suitability of a location for a medical marijuana dispensary shall be determined at the time of the issuance of the first permit for such dispensary. The fact that changes in the neighborhood that occur after the issuance of the first permit might render the site unsuitable for a medical marijuana dispensary under this Section shall not be grounds to suspend, revoke or refuse to renew the permit for such dispensary so long as the permit for the dispensary remains in effect.

Section 18-14-25. Hours of operation.

A medical marijuana dispensary may open no earlier than 9:00 a.m. and shall close no later than 7:00 p.m. the same day. A medical marijuana dispensary may be open seven (7) days a week.

Section 18-14-26. Signage. All signage for a medical marijuana dispensary shall comply with the requirements of Article 35 of Chapter 11 of the Northglenn Municipal Code. In addition, no permittee shall display a sign for the medical marijuana dispensary that contains the word “marijuana” or a graphic/image of any portion of a marijuana plant.

Section 18-14-27. Required warnings to be posted. There shall be posted in a conspicuous location in each medical marijuana dispensary a legible sign containing the following warnings:

(a) A warning that the diversion of marijuana for nonmedical purposes is a violation of state law;

(b) A warning that the use of medical marijuana may impair a person’s ability to drive a motor vehicle or operate machinery, and that it is illegal under state law to drive a motor

vehicle or to operate machinery when under the influence of or impaired by marijuana;

(c) A warning that loitering in or around the medical marijuana dispensary is prohibited by state law; and

(d) A warning that possession and distribution of marijuana is a violation of federal law.

Section 18-14-28. On-site consumption. The consumption or inhalation of marijuana on or within the premises of a medical marijuana dispensary is prohibited.

Section 18-14-29. Paraphernalia. Devices, contrivances, instruments and paraphernalia for inhaling or otherwise consuming marijuana, including, but not limited to, rolling papers and related tools, water pipes, and vaporizers may lawfully be sold at a medical marijuana dispensary. Such items may be sold or provided only to patients or primary caregivers.

Section 18-14-30. On-site cultivation prohibited. The growing, cultivation or processing of marijuana on or within the premises of a medical marijuana dispensary is prohibited.

Section 18-14-31. Alcohol. The sale or consumption of an alcoholic beverage within a medical marijuana dispensary is prohibited.

Section 18-14-32. Age Restrictions. No person under the age of eighteen (18) shall be allowed in any portion of a medical marijuana dispensary.

Section 18-14-33. Ledger Required. A permittee shall keep a ledger which shall record the following information, and which shall be made available to the City upon demand:

- (a) The quantity of medical marijuana dispensed in each transaction;
- (b) The type and source of medical marijuana dispensed;
- (c) The total amount paid by the patient for the transaction for all goods and services provided;
- (d) The patient's medical marijuana Identification Card Number, and any other identifying information permitted by law;
- (e) Confirmation that the permittee confirmed the identity of the patient receiving the medical marijuana with a valid photo identification
- (f) The date and time dispensed.

Section 18-14-34. Limitations on Quantity Dispensed. A permittee may not dispense more than two ounces of a usable form of medical marijuana, or in the alternative, six marijuana plants, three or fewer of which may be mature flowering plants per patient, per day.

Section 18-14-35. Security requirements. A permittee shall provide adequate security on the premises of a medical marijuana dispensary including, but not limited to, the following:

(1) Security surveillance cameras installed to monitor the main entrance along with the interior and exterior of the premises to discourage and to facilitate the reporting and investigation of criminal acts and nuisance activities occurring at the premises. Security video shall be preserved for at least seventy-two (72) hours by the permittee, and be made available to law enforcement officers upon demand;

(2) A locking safe or secure vault permanently affixed to or built into the premises that is suitable for storage of all of the saleable inventory of marijuana;

(3) Exterior windows (without shades) of sufficient size to permit observation of the inside of the dispensary premises by a law enforcement officer standing outside of the dispensary; and

(4) Exterior lighting that illuminates the exterior walls of the business.

Section 18-14-36. Sales and business license required. At all times while a permit is in effect the permittee shall possess a valid license issued under Section 5-319 of the Northglenn Municipal Code.

Section 18-14-37. Taxes. Each permittee shall pay sales tax on all medical marijuana, paraphernalia and other tangible personal property sold by the permittee at the medical marijuana dispensary.

Section 18-14-38. Penalties; injunctive relief.

(a) It is a misdemeanor offense for any person to violate any provision of this Article. Any person convicted of having violated any provision of this Article shall be punished as set forth in Section 1-1-10 of the Northglenn Municipal Code.

(b) The operation of a medical marijuana dispensary without a valid permit issued pursuant to this Article may be enjoined by the City in an action brought in a court of competent jurisdiction, including the Northglenn Municipal Court.

(c) The operation of a medical marijuana dispensary without a valid permit issued pursuant to this Article is also specifically determined to be a public nuisance pursuant to Section 9-11-3 of the Northglenn Municipal Court.

Section 18-14-39. No waiver of governmental immunity. In adopting this Article, the City Council is relying on and does not waive or intend to waive by any provision of this Article, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S., as from time to time amended, or any other limitation, right, immunity, or protection otherwise available to the City, its officers or its employees.

Section 18-14-40. No City liability. By accepting a permit issued pursuant to this

Article, a permittee releases the City, its officers, elected officials, employees, attorneys and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of dispensary owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations. The City Manager may require a permittee to execute a written instrument confirming the provisions of this Section.

Section 18-14-41. Indemnification of City.

By accepting a permit issued pursuant to this Article a permittee, jointly and severally if more than one, agrees to indemnify and defend the City, its officers, elected officials, employees, attorneys, agents, insurers, and self-insurance pool against all liability, claims, and demands, on account of 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, which arise out of or are in any manner connected with the operation of the medical marijuana dispensary that is the subject of the permit. The permittee further agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at its expense, and to bear all other costs and expenses related thereto, including court costs and attorney fees. The City Manager may require a permittee to execute a written instrument confirming the provisions of this Section.

Section 18-14-42. Other laws remain applicable.

The provisions of this Article do not protect permittees, operators, employees, customers and clients of a permitted medical marijuana dispensary from prosecution pursuant to any laws that may prohibit the cultivation, sale, use or possession of controlled substances. In addition, as of the date of the adoption of this Article the cultivation, sale, possession, distribution and use of marijuana remain violations of federal and state law (except for conduct covered by Amendment 20), and this Article affords no protection against prosecution under such federal and state laws. Permittees, operators, employees, customers and clients of a permitted medical marijuana dispensary assume any and all risk and any and all liability arising or resulting from the operation of the dispensary under any state or federal law. Further, to the greatest extent permitted by law, any actions taken under the provisions of this Article by any public officer or officers, elected or appointed officials, employees, attorneys and agents of the City shall not become a personal liability of such person or of the City.

Section 18-14-43. Rules and regulations. The City Manager shall have the authority from time to time to adopt, amend, alter and repeal administrative rules and regulations as may be necessary for the proper administration of this Article.

Section 18-14-44. Severability. If any provision of this Ordinance or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 18-14-45. Existing Dispensary. Any medical marijuana dispensary existing and having filed an application for a Business and Sales Tax License as of September 24, 2009

shall be exempt from the distance limitations in Section 18-14-24(a), but shall otherwise comply with all provisions of this Article 14 of Chapter 18 within thirty (30) days of adoption of this Ordinance.

INTRODUCED, READ AND ORDERED POSTED this ____ day of _____, 2009.

KATHLEEN M. NOVAK
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

PASSED ON SECOND AND FINAL READING this ____ day of _____, 2009.

KATHLEEN M. NOVAK
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney