

FIRST READING: July 20, 2010

SECOND READING: August 3, 2010

ORDINANCE #5517

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOVELAND PROHIBITING THE LICENSING AND OPERATION WITHIN THE CITY OF MEDICAL MARIJUANA CENTERS, OPTIONAL PREMISES CULTIVATION OPERATIONS AND MEDICAL MARIJUANA-INFUSED PRODUCTS MANUFACTURERS PENDING THE SUBMISSION OF A BALLOT QUESTION TO THE CITY'S VOTERS CONCERNING THIS PROHIBITION; PROHIBITING ON MARCH 1, 2011, THE CULTIVATION AND SALE OF MEDICAL MARIJUANA WITHIN THE CITY EXCEPT BY REGISTERED PATIENTS AND PRIMARY CAREGIVERS IF THE VOTERS DO NOT APPROVE THE BALLOT QUESTION; AND PLACING LIMITATIONS ON PRIMARY CAREGIVERS CONDUCTING A HOME OCCUPATION UNDER CITY CODE CHAPTER 18.48

WHEREAS, on November 17, 2009, the City Council adopted Ordinance No. 5474, as an emergency ordinance, which declared an eight-month moratorium on the acceptance by the City of any applications for City licenses, permits or other approvals related to the establishment or operation of "medical marijuana dispensaries," as this term is defined in Section 2. of Ordinance No. 5474; and

WHEREAS, the moratorium established in Ordinance No. 5474 began on November 17, 2009, and terminated on July 16, 2010; and

WHEREAS, on July 6, 2010, the City adopted Ordinance No. 5512, as an emergency ordinance, which extended the moratorium imposed by Ordinance No. 5474 from beginning on July 16, 2010, to at least through December 31, 2010; and

WHEREAS, subsequent to the Council's enactment of Ordinance No. 5474, the Colorado General Assembly adopted House Bill 10-1284 and it was signed into law by Governor Ritter; and

WHEREAS, House Bill 10-1284 authorizes a municipality, by either a majority vote of the municipality's registered electors or by a majority vote of the municipality's governing board, to prohibit within the municipality's boundaries the licensing and operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers, as such facilities are authorized to be licensed under the Colorado Medical Marijuana Code adopted in House Bill 10-1284 ("MMC"); and

WHEREAS, in addition, House Bill 10-1284 clarifies Colorado law regarding the scope

and extent of Amendment 20 to the Colorado Constitution, which added Article XVIII, Section 14. to the Constitution, and at the same time establishes in the MMC a licensing and regulatory scheme for the retail sale, distribution, cultivation and dispensing of medical marijuana to be licensed as medical marijuana centers, and further authorizes licenses for optional premises cultivation operations and medical marijuana-infused manufacturers; and

WHEREAS, C.R.S. § 12-43.3-310(1) of the MMC specifically authorizes a municipality “to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses...based on local government zoning, health, safety, and public welfare laws for the distribution of medical marijuana that are more restrictive than [the MMC]”; and

WHEREAS, C.R.S. § 12-43.3-308(1)(c) of the MMC provides that the state and local licensing authorities shall not receive or act upon a new application pursuant to the MMC “for a location in an area where the cultivation, manufacture, and sale of medical marijuana as contemplated is not permitted under the applicable zoning laws of the municipality”; and

WHEREAS, C.R.S. § 12-43.3-103(2)(a) of the MMC also authorizes the City Council to adopt prior to July 1, 2011, an ordinance “prohibiting the cultivation or sale of medical marijuana” within the City by all persons except those patients and primary caregivers registered under C.R.S. § 25-1.5-106; and

WHEREAS, while C.R.S. § 12-43.3-106 of the MMC specifically authorizes the City Council by a majority vote to prohibit within the City the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses, the Council has decided to do so only initially in this Ordinance and to hereafter submit to the City’s registered electors at a special City election on November 2, 2010, the ballot question of whether the voters wish for this prohibition to continue, as is also authorized in C.R.S. § 12-43.3-106; and

WHEREAS, the City Council has carefully considered the provisions of House Bill 10-1284, Article XVIII, Section 14 of the Colorado Constitution, and the adverse impacts of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses, as well as that of the continued cultivation and sale of medical marijuana by others within the City, on the health, safety and welfare of the City’s inhabitants, and has determined, as an exercise of its local land use authority and in accordance with its other general police powers for the protection of the public’s health, safety and welfare, that such medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers authorized under the MMC should not be located within the City’s corporate limits pending the aforesaid vote of the City’s registered electors nor should the cultivation or sale of medical marijuana be allowed in the City pending such vote except by registered patients and primary caregivers; and

WHEREAS, the City Council has further considered the protections afforded to patients and primary caregivers by Article XVIII, Section 14 of the Colorado Constitution, and by C.R.S.

§ 25-1.5-106, that are not required to obtain a license under the MMC, and desires to affirm those protections in this Ordinance; and

WHEREAS, in doing so, however, the Council also wishes to place limitations on such primary caregivers providing medical marijuana to its patients as part of a minor home occupation under City Code Section 18.48.020 to prevent negative impacts on other surrounding residential properties.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO as follows:

Section 1. That the City Council hereby finds and determines that its authority to enact this Ordinance is granted to it and the City in: the Colorado Medical Marijuana Code, § 12-43.3-101 *et seq.*; Article XVIII, Section 14 of the Colorado Constitution; the City’s Home Rule Charter; the Local Government Land Use Control and Enabling Act of 1974 in Article 20 of Title 29 of the Colorado Revised Statutes; Part 3 of Article 23 of Title 31 of the Colorado Revised Statutes; C.R.S. § 31-15-103; C.R.S. § 31-15-401; and C.R.S. § 31-15-501.

Section 2. That a new Chapter 7.60 is hereby added to the Loveland Municipal Code to read in full as follows:

Chapter 7.60

Medical Marijuana

Section 7.60.010 Definitions

As used in this Chapter, the following words, terms and phrases shall have the following meanings:

- A. *Amendment 20* shall mean Article XVIII, Section 14 of the Colorado Constitution added to the Colorado Constitution by a statewide voter initiative adopted on November 7, 2000.
- B. *Colorado Medical Marijuana Code* shall mean Part 1 of Article 43.3 of Title 12 of the Colorado Revised Statutes, C.R.S. § 12-43.3-101, *et seq.*, as amended.
- C. *Medical marijuana* shall mean marijuana that is grown and sold pursuant to the provisions of the Colorado Medical Marijuana Code and for a purpose authorized by Amendment 20.
- D. *Medical marijuana center* shall mean a person licensed to operate a business as described in the Colorado Medical Marijuana Code that sells medical marijuana and medical marijuana-infused products to registered patients or primary caregivers as defined in Amendment 20, but is not a primary caregiver, and which a municipality is authorized to prohibit as a matter of law.

- E. *Medical marijuana-infused product* shall mean a product infused with medical marijuana that is intended for use or consumption other than by smoking, including, without limitation, to edible products, ointments, and tinctures.
- F. *Medical marijuana-infused products manufacturer* shall mean a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business manufacturing medical marijuana-infused products, and which a municipality is authorized to prohibit as a matter of law.
- G. *Optional premises cultivation operation* shall mean a person licensed pursuant to the Colorado Medical Marijuana Code to grow and cultivate medical marijuana for a purpose authorized by Amendment 20, and which a municipality is authorized to prohibit as a matter of law.
- H. *Patient* shall have the meaning set forth in Section 14(1)(c) of Amendment 20.
- I. *Person* shall mean a natural person, partnership, association, company, corporation, limited liability company, or other organization or entity, or a manager, agent, owner, director, servant, officer, or employee thereof.
- J. *Primary caregiver* shall have the same meaning as the term “primary care-giver” is given in Section 14(1)(f) of Amendment 20.

Section 7.60.020 Medical Marijuana Centers, Optional Premises Cultivation Operations, and Medical Marijuana-Infused Products Manufacturers’ Licenses Prohibited

- A. The operation of medical marijuana centers, optional premises cultivation operations and medical marijuana-infused products manufacturers’ licenses within the City’s boundaries, which might otherwise be authorized under the Colorado Medical Marijuana Code, are hereby prohibited as authorized and provided in C.R.S. § 12-43.3-106.
- B. It shall be unlawful and a violation under this Chapter for any person to establish, operate, continue to operate, cause to be operated, or permit to be operated within the city’s current boundaries, and within any area annexed into the City after July 20, 2010, a facility, business or any other operation requiring a license under the Colorado Medical Marijuana Code to operate as a medical marijuana center, optional premises cultivation operation, or as a medical marijuana-infused products manufacturer.

Section 7.60.030 Cultivation and Sale of Medical Marijuana Prohibited

As authorized in C.R.S. § 12-43.3-103(2)(a), no person shall cultivate or sell medical marijuana within the City’s boundaries unless such person does so as a patient or primary caregiver registered in accordance with C.R.S. § 25-1.5-106. This Section shall not go into effect

until March 1, 2011, and only if a majority of the City's registered electors vote not to approve at the City's November 2, 2010, special election the ballot question submitted to the electors in City Council's Ordinance No. 5519.

Section 7.60.040 Patients and Primary Caregivers

Nothing in this Chapter shall be construed to prohibit, regulate or otherwise impair the use, cultivation or possession of medical marijuana by a patient or the cultivation, possession or providing of medical marijuana by a primary caregiver for his or her patients, provided that any such patient or primary caregiver is doing so in accordance with all applicable provisions of Amendment 20; the Colorado Medical Marijuana Code, as amended; C.R.S. § 25-1.5-106, as amended; and the City's ordinances, and in accordance with any applicable rules and regulations promulgated under State law.

Section 7.60.050 Penalties

A violation of any provision of this Chapter 7.60 shall constitute a misdemeanor offense punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for a term not exceeding one (1) year, or both such fine and imprisonment. A person committing any such offense shall be guilty of a separate offense for each and every day, or any portion thereof, during which the offense is committed or continued to be permitted by such person, and shall be punished accordingly.

Section 3. That Section 18.48.010.B.9. of the Loveland Municipal Code is hereby amended to read in full as follows:

Section 18.48.010 Defined.

....

B. Accessory buildings and uses may include, but are not limited to, the following:

....

9. Cultivation, storage and sale of crops, vegetables, plants and flowers produced on the premises, except that the cultivation and storage of medical marijuana grown for sale pursuant to the provisions of Article XVIII, Section 14 of the Colorado Constitution, whether at cost or for profit, shall not be considered as an accessory use under this Section 18.48.010 unless conducted as a home occupation in accordance with all applicable requirements of this Chapter 18.48, but nothing herein shall be construed as authorizing the operation of any business required to be licensed under the Colorado Medical Marijuana Code, which businesses are prohibited by City Code Chapter 7.60;

Section 4. That Section 18.48.020.C.1. of the Loveland Municipal Code shall be amended to read in full as follows:

Section 18.48.020 Home occupations.

....

- C. Definitions. As used in this section, the following words and phrases shall have the meanings set out in this subsection:
1. "Home occupation" means any activity undertaken for monetary gain within or associated with any dwelling unit within the City's corporate limits, and shall include, without limitation, a primary caregiver cultivating, storing, manufacturing and/or providing medical marijuana in any form for his or her patients in accordance with Article XVIII, Section 14 of the Colorado Constitution and C.R.S. § 25-1.5-106, as amended, whether at cost or for profit, provided the primary caregiver is not required to have a license under the Colorado Medical Marijuana Code.

Section 5. That a new subparagraph o. shall be added to Section 18.48.020.D.1. of the Loveland Municipal Code to read in full as follows:

Section 18.48.020 Home occupations.

....

D. Limitations on Home Occupations. The following limitations are designed to minimize the impact of home occupations upon the surrounding residential neighborhood:

1. General Requirements. The following standards apply to all home occupations except as modified in subsections (D)(3) and (D)(4):

....

- o. There shall not be more than one primary caregiver per dwelling unit cultivating, storing, manufacturing or providing medical marijuana in any form to his or her patients in accordance with Article XVIII, Section 14 of the Colorado Constitution and C.R.S. § 25-1.5-106, as amended, and the primary caregiver shall not have more than thirty (30) medical marijuana plants being grown on the premises of the dwelling unit at any given time.

Section 6. That a new subparagraph h. shall be added to Section 18.48.020.D.3. of the Loveland Municipal Code to read in full as follows:

Section 18.48.020 Home occupations.

....

A. Limitations on Home Occupations. The following limitations are designed to minimize the impact of home occupations upon the surrounding residential neighborhood:

....

3. Minor Home Occupations. A use shall be classified as a minor home occupation and allowed without a business occupancy permit in all residential districts provided that the general provisions of subsection (D)(1) and the following standards are met:

....

- h. Notwithstanding any other provision of this Section 18.48.020 to the contrary, a primary caregiver providing medical marijuana in any form to his or her

patients in accordance with Article XVIII, Section 14 of the Colorado Constitution and C.R.S. § 25-1.5-106, as amended, shall not provide such medical marijuana to his or her patients in or on the premises of the primary caregiver's home, except for those patients whose residence is also the primary caregiver's home, but a primary caregiver shall only deliver medical marijuana to his or her patients off of the premises from which the primary caregiver conducts his or her minor home occupation.

Section 7. That for the purpose of determining under C.R.S. § 12-43.3-103(1)(a) whether any person was operating within the City prior to or on July 1, 2010, an "established locally approved business for the purpose of cultivation, manufacture, or sale of medical marijuana or medical marijuana-infused products," those "medical marijuana dispensaries," as they are defined in Section 2. of Ordinance No. 5474, that were exempted in Section 4. of Ordinance No. 5474 from the eight-month moratorium imposed by Ordinance No. 5474, shall be deemed to have received such local approval. Those medical marijuana dispensaries so exempted are required to have satisfied all of the following requirements prior to November 17, 2009: (a) had been issued a City sales tax license; (b) had opened for business at the location designated in their sales tax application; (c) had begun the *legal sale* of marijuana at that location; and (d) were in full compliance with the City's zoning regulations for that location. Accordingly, if the Colorado Department of Revenue requests the City to verify, certify or otherwise identify those medical marijuana businesses which the City considers "locally approved" under C.R.S. § 12-43.3-103(1)(a), the City Manager and the City Attorney are authorized and directed to respond that the City has given such approval to those medical marijuana dispensaries that have satisfied all of these said requirements imposed by Section 4. of Ordinance No. 5474 to be so exempted from the eight-month moratorium.

Section 8. That as of the effective date of this Ordinance, as provided in Section 11. below, Ordinance No. 5512 shall be repealed and superseded in all respects by this Ordinance unless for any reason this Ordinance does not become law and go into effect as provided in Section 11. of this Ordinance. In such event, Ordinance No. 5512 shall continue in full force and effect in accordance with its provisions until amended or repealed by the City Council.

Section 9. That in the event a majority of the City's registered electors vote to approve a ballot question allowing within the City's boundaries the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses, the City Manager and City Attorney are directed to bring back to the City Council on or before February 1, 2011, an ordinance that, if adopted, would enact the City's licensing and regulatory Code provisions for medical marijuana businesses in accordance with and as authorized in the Colorado Medical Marijuana Code and any other applicable State laws and rules and regulations hereafter adopted. Such ordinance shall also include provisions repealing and superseding those provisions adopted in this Ordinance that are inconsistent with the licensing and regulatory provisions in the ordinance required in this Section to be presented to the City Council for its consideration, which shall include, without limitation, the provisions of Section 2. of this Ordinance.

Section 10. The recitals of this Ordinance are hereby adopted by Council as additional findings. The City Council hereby finds, determines and declares that this Ordinance is enacted under the City's general police powers and as specifically authorized by State law; that it is enacted for the public's health, safety and welfare; and that it is necessary for the preservation of the public's health, safety and welfare.

Section 11. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading, in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).


Dated this 3rd day of August, 2010.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney