

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S BILL

ORDINANCE NO.

No. CB-1721
Series of 2010

Series of 2010

A BILL FOR AN ORDINANCE AMENDING ARTICLE 14 OF CHAPTER 18 OF THE NORTHGLENN MUNICIPAL CODE REGARDING MEDICAL MARIJUANA

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

Section 1. Article 14 of Chapter 18 of the Northglenn Municipal Code is hereby amended to read as follows:

ARTICLE 14
MEDICAL MARIJUANA

Section 18-14-1. Short title. This Article shall be known and may be cited as the "City of Northglenn Medical Marijuana Code."

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) The Colorado Medical Marijuana Code, C.R.S. § 12-43.3-101, *et seq.*, clarifies Colorado law regarding the scope and extent of Amendment 20 to the Colorado Constitution, and at the same time authorizes a mechanism for the retail sale, distribution, cultivation and dispensing of medical marijuana known as a "Medical Marijuana Center," and further authorizes licensing mechanisms known as an "Optional Premises Cultivation Operation" and a "Medical Marijuana-Infused Products Manufacturers' License".

(f) No person, business, activity or use that distributed or involved the distribution of marijuana within the City prior to the amendment of this Article by adoption of this amended Ordinance effective July, 1, 2010 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, unless they hold an active permit issued by the City Manager Ordinance pursuant to the provisions of Ordinance No. 1550, Series of 2009.

(g) Nothing in this Article 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.

(h) 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.

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 centers, optional premises cultivation operations, and medical marijuana-infused products manufacturing licenses 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 previously permitted medical marijuana dispensary (as defined by Ordinance No. 1550, Series of 2009)) be operated in a safe manner that does not endanger the public welfare.

(c) Mitigate potential negative impacts that a previously permitted medical marijuana

dispensary might cause on surrounding properties and persons.

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

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.
- (h) Section 12-43.3-101, *et seq.*, C.R.S. (known as the Colorado Medical Marijuana Code)

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.

Colorado Medical Marijuana Code means C.R.S. § 12-43.3-101 *et seq.* as may be amended.

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, approved by the City in accordance with the provisions of Ordinance No. 1550, Series of 2009.

Patient has the meaning provided in Amendment 20.

Permit means a permit to operate a medical marijuana dispensary issued by the City pursuant to the provisions of Ordinance No. 1550, Series of 2009.

Permittee means the person to whom a permit has been issued pursuant to the provisions of Ordinance No. 1550, Series of 2009.

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 and the Colorado Medical Marijuana Code are incorporated into this Article by reference.

Section 18-14-6. Permit required. Between July 1, 2010, and July 1, 2011, no person shall operate a medical marijuana dispensary within the City without a valid permit issued in accordance with the provisions of Ordinance No. 1550, Series of 2009.

Section 18-14-7. Reserved.

Section 18-14-8. Reserved.

Section 18-14-9. Reserved.

Section 18-14-10. Reserved.

Section 18-14-11. Reserved.

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. Reserved.

Section 18-14-14. Reserved.

Section 18-14-15. Reserved.

Section 18-14-16. Reserved.

Section 18-14-17. Permit not transferable. A permit issued pursuant to the provisions of Ordinance No. 1550, Series of 2009 is nontransferable and nonassignable. Any attempt to transfer or assign a permit voids the permit.

Section 18-14-18. Reserved.

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

(a) Each permit issued pursuant to the provisions of Ordinance No. 1550, Series of 2009 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 this Article and the Colorado Medical Marijuana Code 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 as defined by the Colorado Medical Marijuana Code.

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.

(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; the Colorado Medical Marijuana Code; Section 18-18-406.3, C.R.S.; any administrative regulations issued by the Colorado Department of Public Health and Environment found at 5 CCR 1006-2, and any administrative regulations issued by the Colorado Department of Revenue, 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 or the Colorado Medical Marijuana Code;

(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 of Ordinance No. 1550, Series of 2009.

- (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.
- (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. Reserved.

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. Cultivation.

(a) On site cultivation. The growing, cultivation or processing of marijuana on or within the premises of a medical marijuana dispensary is prohibited.

(b) Cultivation pursuant to C.R.S. § 12-43.3.103(2)(b). Prior to September 1, 2010, any medical marijuana dispensary with a permit issued in accordance with Ordinance No. 1550, Series of 2009 shall certify to the City Clerk that it is cultivating at least seventy percent (70%) of the medical marijuana necessary for its operation.

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 as of September 24, 2009. 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.

Section 18-14-46. Permitted Dispensary as of June 30, 2010. Any previously permitted medical marijuana dispensary (as defined by Ordinance No. 1550, Series of 2009) as of June 30, 2010, may continue to operate within the City pursuant to the provisions of this Article and C.R.S. § 12-43-103 only if the permittee on or before August 1, 2010 completes the forms provided by the Department of Revenue and pays the fees established by the Department of Revenue pursuant to C.R.S. § 12-43.3-103(1)(b).

Section 18-14-47. Temporary Suspension on Acceptance of Licenses for Medical Marijuana Centers, Optional Premises Cultivation Operations, and Medical Marijuana-Infused Products Manufacturing Licenses. In accordance with the Colorado Medical Marijuana Code, the City shall not accept any applications for a local license for medical marijuana centers, optional premises cultivation operations, or medical marijuana-infused products manufacturing licenses until July 1, 2011, or such sooner time as may be determined by the City Council by ordinance.

INTRODUCED, READ AND ORDERED POSTED this ____ day of _____, 2010.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

PASSED ON SECOND AND FINAL READING this ____ day of _____,
2010.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney