

COUNCIL BILL NO. 11-022
ORDINANCE NO. 4270

AN ORDINANCE ADOPTING PROVISIONS RELATING TO MEDICAL MARIJUANA, INCORPORATING SUCH PROVISIONS INTO HERETOFORE-RESERVED CHAPTER 53 OF THE CODE OF THE CITY OF ARVADA, COLORADO, ENTITLING SUCH CHAPTER "MEDICAL MARIJUANA," AND FURTHER AMENDING ARTICLE III ("NUISANCES") OF CHAPTER 38 ("ENVIRONMENT") OF THE SAME CODE

WHEREAS, the City Council of the City of Arvada previously adopted an ordinance imposing a moratorium on the submission, acceptance, processing, or approval of any application to the City of Arvada for any permit, license, plan approval, or other type of approval related to the operation of a business that acquires, possesses, cultivates, manufactures, produces, uses, sells, distributes, dispenses, or transports medical marijuana pursuant to the authority granted by Article 18, § 14 of the Colorado Constitution; and

WHEREAS, a subsequently-adopted extension of such moratorium remains in effect through June 30, 2011, unless earlier terminated; and

WHEREAS, during the pendency of the moratorium period, a new Article 43.3, known as the Colorado Medical Marijuana Code ("CMMC"), was adopted and added to Title 12 of the Colorado Revised Statutes; and

WHEREAS, the CMMC clarifies Colorado law regarding the scope and extent of Amendment 20 to the Colorado Constitution (Article XVIII, § 14) and, in addition, establishes licensed-based, regulatory schemes for specific activities involving the sale, distribution, cultivation, dispensing, or manufacture of medical marijuana or medical marijuana-infused products, and encompassed within defined and described terms and concepts, including "Medical Marijuana Center," "Optional Premises Cultivation Operation," and "Medical Marijuana-Infused Products Manufacturer;" and

WHEREAS, § 106 of the CMMC (C.R.S. § 12-43.3-106) specifically authorizes the governing body of a municipality to "vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses;" and

WHEREAS, § 310 of the CMMC (C.R.S. § 12-43.3-310) 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 this article;" and

WHEREAS, § 308(1)(c) of the CMMC (C.R.S. § 12-43.3-308(1)(c)) also provides that the state and local licensing authorities shall not receive or act upon a new application pursuant to the CMMC "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, city and county, or county;" and

WHEREAS, the City of Arvada is a home-rule municipality and the City Council is empowered, independent of the CMMC, to adopt such ordinances as are necessary and convenient to protect the health, safety, and welfare of the community; and

WHEREAS, the City Council has carefully considered Article XVIII, § 14 of the Colorado Constitution and the provisions of the CMMC; and

WHEREAS, the City Council has reviewed the “White Paper on Marijuana Dispensaries” by the California Police Chief Association’s Task Force on Medical Marijuana Dispensaries (Exhibit A hereto), detailing some of the adverse impacts of dispensaries experienced by communities in which such dispensaries are located, including increased violent crime, increased traffic problems, increased organized gang activity, and a decrease in the quality of life for those communities; and

WHEREAS, the City Council has reviewed other information, accounts, and reports (*inter alia*, Exhibit B hereto) bearing on the secondary effects and impacts and potential secondary effects and impacts to the health, safety, and welfare of a community and its inhabitants from activities associated with the sale, distribution, cultivation, dispensing, or manufacture of medical marijuana or associated products; and

WHEREAS, the City Council has otherwise carefully considered the secondary effects and impacts and potential secondary effects and impacts of medical marijuana businesses, including medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturing on the health, safety, and welfare of the City and the inhabitants thereof, and has determined as an exercise of its police powers and local land use and zoning authority that such medical marijuana businesses should be prohibited within the City; and

WHEREAS, while the City Council recognizes the protections afforded by Article XVIII, § 14 of the Colorado Constitution, and affirms the ability of patients and primary caregivers to otherwise be afforded the protections of such constitutional provisions and those of C.R.S. § 25-1.5-106, the City Council has reviewed certain information, accounts, and reports (*inter alia*, Exhibit C hereto) and also recognizes that activities associated with the growing, cultivation, or processing of medical marijuana in or from a residential environment have the potential to produce secondary effects and impacts detrimental to the health, safety, and welfare of a community and its inhabitants, and that therefore such activities are subject to reasonable regulation at the local level.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO:

Section 1. The following provisions are hereby adopted as Chapter 53 (“Medical Marijuana”) of the Code of the City of Arvada, Colorado:

CHAPTER 53. MEDICAL MARIJUANA

ARTICLE I. IN GENERAL

Sec. 53-1. Definitions.

For purposes of this Chapter, the words and phrases used herein, unless the context otherwise indicates, shall have the following meanings:

Accessory Building or Structure shall have that meaning set forth in Article 10 of Part III (Land Development Code) of this Code. Notwithstanding any other provision of this Code, any mini-structure lawfully utilized pursuant to Article III of this Chapter for the growing, cultivation, or processing of medical marijuana shall meet all separation and setback requirements of § 53-42(c).

Authorized Public Inspector shall mean and include the Chief of Police and any duly-appointed police officer, the Chief Building Official and any duly-appointed building or technical code enforcement officer, and the Code Enforcement Manager and any duly-appointed zoning code enforcement officer of the City.

City Clerk means the city clerk of the City of Arvada, acting in the capacity of local licensing authority, as provided in the Colorado Medical Marijuana Code, for the limited purpose of administering the provisions of this Chapter 53 relating to existing medical marijuana businesses qualifying as a legal nonconforming use.

Colorado Medical Marijuana Code means Article 43.3 of Title 12, C.R.S., as amended from time to time.

Colorado Medical Marijuana Program means Section 25-1.5-106, C.R.S., as amended from time to time.

Growing and cultivating are interchangeable and mean and encompass all steps or stages in the process of producing, developing, tending, and keeping a medical marijuana plant through harvest (or, in the alternative, to serve as a “mother plant”) including, but not limited to, planting, germination, cloning, vegetative growth, flowering, and harvest.

Legally established, for purposes of determining nonconforming use status as to an existing medical marijuana business pursuant to § 53-25 hereof, means established as a specific medical marijuana use with the knowledge and permission of the City, and in accordance with the zoning regulations and any City interpretation of such zoning regulations then prevailing, prior to the adoption of this Chapter and operating continuously as such since being so established.

Medical marijuana means marijuana that is grown and sold for a purpose authorized by Article XVIII, § 14 of the Colorado Constitution.

Medical marijuana business means any endeavor, except as excluded herefrom, whether or not for profit, and regardless of organizational or ownership structure, to acquire, possess, cultivate, manufacture, produce, use, sell, distribute, or dispense medical marijuana. The term includes, but is not necessarily limited to, medical marijuana centers, medical marijuana-infused products manufacturers, and

optional premises cultivation operations, but excludes patients and primary caregivers acting in compliance with Article XVIII, § 14 of the Colorado Constitution, applicable state statutes and regulations, and the provisions of Article III hereof, and excludes lawfully authorized deliveries of medical marijuana from outside the City in accordance with state statutes and regulations and § 53-52 hereof.

Medical marijuana center shall have the meaning set forth in the Colorado Medical Marijuana Code and shall include the business or business operations contemplated, referenced, and described in §§ 12-43.3-104 and 12-43.3-402 thereof, whether licensed or not.

Medical marijuana-infused products manufacturer shall have the meaning set forth in the Colorado Medical Marijuana Code and such term, along with the term *medical marijuana-infused products manufacturing facility*, shall include the business or business operations contemplated, referenced, and described in §§ 12-43.3-104 and 12-43.3-404 thereof, whether licensed or not.

Multi-Unit Dwelling means any type of dwelling (whether specifically defined in Article 10 of Part III (Land Development Code) of this Code or not) except a single-family detached dwelling including, but not limited to, a multi-family dwelling, a town home dwelling, a two-family dwelling or duplex, or a single-family attached dwelling.

Optional premises cultivation operation shall have the meaning set forth in the Colorado Medical Marijuana Code and shall include the business or business operations contemplated, referenced, and described in §§ 12-43.3-104 and 12-43.3-403 thereof, whether licensed or not.

Patient shall have the meaning set forth in Article XVIII, § 14 of the Colorado Constitution, as more fully defined in any applicable state statutes, or rules or regulations promulgated thereunder.

Person means a natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof.

Primary caregiver shall have the same meaning as *primary care-giver* set forth in Article XVIII, § 14 of the Colorado Constitution, as more fully defined in the Colorado Medical Marijuana Code, the Colorado Medical Marijuana Program, or the rules or regulations promulgated thereunder.

Primary residence means the place that a person, by custom and practice, makes his or her principal domicile and address, and to which the person intends to return following any temporary absence, such as a vacation. Residence is evidenced by actual daily physical presence, use, and occupancy of a habitable structure on the premises and the use of the residential address for domestic purposes, such as, but not limited to, sleep, preparation and consumption of meals, regular mail delivery, vehicle

and voter registration, or credit, water and other utility billing. A person shall have only one primary residence.

Processing means and encompasses all steps or stages in the process of preparing a harvested medical marijuana plant for utilization as a usable form of marijuana including, but not limited to, cutting, manicuring, drying, curing, extracting, packaging, and storing. To the extent authorized by law, the term also includes all processes associated with preparing medical marijuana infused-products from medical marijuana lawfully acquired; provided, however, that the use of standard baking equipment, as may be typically contained within a residential kitchen, shall be exempted from the square-footage limitations on processing activities as set forth herein, provided the resulting product is kept in the secure, defined area required by Section 53-42(c).

Residential accessory dwelling unit shall have that meaning set forth in Article 10 of Part III (Land Development Code) of this Code.

Residential structure means a structure or that portion of a structure devoted to a single-family detached dwelling or multi-unit dwelling; or, in the alternative, an allowed accessory building or structure or residential accessory dwelling unit associated with and on the same lot as such dwelling. For purposes of the growing, cultivation, or processing of medical marijuana by a patient or primary caregiver, such activities shall be carried out in either the dwelling or the associated accessory building, structure, or dwelling, but not both.

Single-Family Detached Dwelling shall have the meaning set forth in Article 10 of Part III (Land Development Code) of this Code.

Secure means an area that is accessible only to the patient or primary caregiver, and located, partitioned off, or locked so as to prevent access by children, visitors, passersby, thieves, vandals, or anyone else not licensed to possess medical marijuana.

Secs. 53-2 – 53-20. Reserved.

ARTICLE II. MEDICAL MARIJUANA BUSINESSES

Sec. 53-21. Intent, findings of fact, applicability, and authority.

(a) It is the intent of this Article II to prohibit certain land uses related to medical marijuana within the City and, in furtherance of its intent, the City Council makes the following findings:

- (1) The Colorado Medical Marijuana Code, C.R.S. § 12-43.3-101, *et seq.*, clarifies Colorado law regarding the scope and extent of Article XVIII, § 14 of the Colorado Constitution;

- (2) The Colorado Medical Marijuana Code specifically authorizes the governing body of a municipality to “vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses;”
- (3) The Colorado Medical Marijuana Code 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 this article;”
- (4) The Colorado Medical Marijuana Code specifically provides that the state and local licensing authorities shall not receive or act upon a new application pursuant to the Colorado Medical Marijuana Code “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, city and county, or county;”
- (5) The City of Arvada is a home-rule municipality and the City Council is empowered, independent of the Colorado Medical Marijuana Code, to adopt such ordinances as are necessary and convenient to protect the health, safety, and welfare of the City and its inhabitants;
- (6) Based upon careful consideration of the secondary effects and impacts and potential secondary effects and impacts of medical marijuana businesses, including medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturing, such uses have an adverse effect on the health, safety, and welfare of the City and its inhabitants, and this ordinance is necessary to protect and is enacted in furtherance of the public health, safety, and welfare of the City and its inhabitants; and
- (7) Medical marijuana patients in the City of Arvada will retain reasonable access to medical marijuana through primary caregivers who are not affected by the prohibition on medical marijuana businesses specified in this Article II.

(b) This Article II shall apply to all property and persons situated within the municipal boundaries of the City, as such are now or in the future defined, and all businesses and business enterprises operating within the City.

(c) The City Council has the power and authority to adopt this Article II pursuant to:

- (1) the Arvada Charter and the authority granted to home rule municipalities by Article XX of the Colorado Constitution;

- (2) the Colorado Medical Marijuana Code, C.R.S. § 12-43.3-101, *et seq.*;
- (3) the Local Government Land Use Control Enabling Act, C.R.S. § 29-20-101, *et seq.*;
- (4) C.R.S. § 31-23-101, *et seq.* (concerning municipal zoning powers);
- (5) C.R.S. § 31-15-103 and 31-15-401 (concerning municipal police powers);
and
- (6) C.R.S. § 31-15-501 (concerning municipal power to regulate businesses).

Sec. 53-22. Uses prohibited.

Medical marijuana businesses, including medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturing facilities, and the use of any property for such purposes, are prohibited within the municipal boundaries of the City. It is unlawful for any person to operate, cause to be operated, or permit to be operated a medical marijuana business, including a medical marijuana center, an optional premises cultivation operation, or a medical marijuana-infused products manufacturing facility in the City.

Sec. 53-23. Other prohibitory provisions not affected.

Nothing in this Article II shall be construed as repealing, modifying, or negating any other prohibitory provision of this Code including, but not limited to, § 5.1.1(C) of Article 5 of Part III (Land Development Code).

Sec. 53-24. Patients and primary caregivers.

Nothing in this Article II shall be construed to prohibit, regulate, or otherwise impair the protections of the use of medical marijuana by patients or the provision of medical marijuana by a primary caregiver to a patient in accordance with Article XVIII, § 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, the Colorado Medical Marijuana Program, any rules or regulations promulgated thereunder, and Article III hereof.

Sec. 53-25. Existing medical marijuana business as nonconforming use.

(a) Notwithstanding § 53-22, an existing medical marijuana business legally established in the City may continue operations as a legal nonconforming use pursuant to Article 8 of Part III (Land Development Code) of this Code, provided all applicable terms, provisions, standards, requirements, limitations, and conditions of such Article 8, this Article II, the Colorado Medical Marijuana Code, and any rules or regulations promulgated thereunder have been and continue to be met.

(b) An existing medical marijuana business desiring to establish and confirm such legal nonconforming use status shall, prior to August 1, 2011, file an application

with the City Clerk for a medical marijuana business license pursuant to § 53-26 hereof and the Colorado Medical Marijuana Code, together with all information necessary to a determination of whether such business should be accorded legal nonconforming use status including, but not limited to, the following:

- (1) the date on which such use is claimed to have been legally established;
- (2) the date on which the business began operations, if different;
- (3) a detailed description of the business, as of the date set forth in (1) above, with respect to its operations, equipment, inventory or products, services, and physical lay-out;
- (4) a detailed description of any changes to the business, with respect to its operations, equipment, inventory or products, services or physical lay-out, and the date thereof;
- (5) a detailed description of the manner and circumstances including, but not limited to, communications with or permissions granted by the City, by which such use is claimed to have been legally established;
- (6) documentary evidence (e.g., correspondence, leases, permits, licenses, etc.) or other actions, events, or conditions relied upon, in whole or in part, to claim legal establishment of such use and entitlement to nonconforming use status; and
- (7) documentary evidence of timely compliance with all previously- or currently-applicable requirements of the Colorado Medical Marijuana Code or regulations promulgated thereunder including, but not limited to, filing deadlines.

The applicant shall provide such additional information as may thereafter be requested by the City Clerk, relevant to a determination of legal nonconforming use status.

(c) The obligation and burden shall rest with the applicant to establish entitlement to legal nonconforming use status.

Sec. 53-26. Licensure of nonconforming use.

(a) In addition to and contemporaneous with the filing of such information as may be required pursuant to § 53-25 with respect to a determination of legal nonconforming status, an existing medical marijuana business shall file with the City Clerk, on forms provided by the City Clerk, its application for a medical marijuana business license.

(b) A complete application for a medical marijuana business license shall contain the following information and shall be accompanied by the following documents:

- (1) all information required by the application form including, but not limited to, the type of medical marijuana business license for which application is being made, as provided in § 301 of the Colorado Medical Marijuana Code and consistent with the existing use for which legal nonconforming use status is being requested;
- (2) a complete copy of any application and accompanying documents submitted, or required to be submitted, to the state licensing authority for a state medical marijuana license pursuant to the Colorado Medical Marijuana Code or any rules or regulations promulgated thereunder, together with a declaration, under oath or affirmation and signed by the principals of the applicant, as to the continued truth, correctness, and completeness of such submittal (and, if necessary, indicating revisions to such);
- (3) an operating plan for the business which accurately and completely describes or depicts the following:
 - a. all current operations, equipment, inventory or products, and services of the business;
 - b. a floor plan encompassing the physical area in which the business is conducted, depicting the lay-out and all interior dimensions thereof, and indicating the principal use or uses of each distinct interior space therein;
 - c. all systems or measures in operation to mitigate any noise or odors associated with the business; and
 - d. interior and exterior security systems or measures in operation with respect to the business;
- (4) a fingerprint card for the applicant and each officer, director, manager, and employee thereof, completed by the City's police department. The police department maintains a schedule of days on which fingerprints are taken and on which a completed fingerprint card may be obtained, and may require an individual to appear for processing in accordance with such schedule. The police department may charge its standard processing fee to cover the costs associated therewith;
- (5) proof of ownership or legal possession of the premises on which the business is conducted and, if leased, the written consent of the owner of the property to the use and licensing of the premises as a medical marijuana business of the type for which application is being made;
- (6) payment of applicable fees, as required by § 53-27 hereof;

- (7) such additional information as the applicant may wish to submit establishing compliance with this Article II and the standards for issuance of a license as set forth herein; and
- (8) any additional information that the City Clerk reasonably determines to be necessary in connection with the investigation and review of the application.

(c) The City Clerk may request that the state licensing authority conduct a concurrent review of a license application, pursuant to § 302 of the Colorado Medical Marijuana Code, and, to that end, may require the applicant to file an application with the state licensing authority and may withhold final review and action on the locally-filed application until the state licensing authority's concurrent review is concluded and the results thereof communicated to the City Clerk. Notwithstanding the foregoing, the City Clerk is authorized and empowered to conduct such independent investigations including, but not limited to, criminal background checks, building inspections, and financial investigations as are, in the City Clerk's discretion, necessary and desirable for the proper consideration of a license application and may be assisted, in the performance of such activities, by the Chief of Police, the Chief Building Official, and such other personnel as may be designated by the City Manager.

(d) Within thirty (30) days after completion of the City Clerk's application investigation, the City Clerk shall issue a decision, in writing, approving, approving with conditions, or denying an application for a license and stating the reasons therefor, and shall thereafter send a copy of the decision by certified mail to the applicant at the address shown in the application.

(e) The City Clerk, after considering the application and accompanying documents (including information submitted pursuant to § 53-25 (b) hereof), the facts and evidence adduced as a result of any investigation conducted by the City Clerk or the state licensing authority, and any other facts or matters pertinent to the license for which application has been made or affecting the qualifications of the applicant, shall:

- (1) approve an application for a license if the City Clerk determines that:
 - a. the existing medical marijuana business for which application for a license is being made was legally established in the City and therefore should be accorded legal nonconforming use status;
 - b. the applicant and the operation of the existing medical marijuana business are in compliance with all applicable terms, provisions, standards, requirements, limitations, and conditions of this Article II, Article 8 of Part III (Land Development Code) of this Code, the Colorado Medical Marijuana Code, and any rules or regulations promulgated thereunder;

- c. the application does not contain any material falsehood, omission, or misrepresentation;
- d. none of the grounds for denial of a license, as set forth in subsection (2) hereof, exists;
- e. the application (including any required attachments and submissions) is complete;
- f. the applicant has paid the application fee and any other applicable fees required by this Code; and
- g. the applicant is not overdue in payment to the City of any fees, assessments, taxes, fines, or penalties associated with the applicant's ownership or operation of the business; but

(2) deny an application for a license if the City Clerk determines that:

- a. the applicant has failed to establish that the existing medical marijuana business for which application for a license is being made was legally established in the City and therefore should be accorded legal nonconforming use status;
- b. the applicant or the operation of the existing medical marijuana business has violated, does not meet, or has failed to comply with any of the applicable terms, provisions, standards, requirements, limitations, or conditions of this Article II, Article 8 of Part III (Land Development Code) of this Code, the Colorado Medical Marijuana Code, or any rules or regulations promulgated thereunder;
- c. the application contains false information in any material respect, including by material omission or material misrepresentation, or information otherwise provided by the applicant in connection with the application is of such a nature; or
- d. the existing medical marijuana business has been operated in a manner that adversely affects the public health or welfare or the safety of the immediate neighborhood in which the establishment is located.

(f) Before issuing a decision, the City Clerk may, in the City Clerk's discretion, allow the applicant to take corrective action with respect to an incomplete application, existing payment arrearages, or similar technical or non-substantive license disqualifications. The time period for issuing a decision, as set forth in subsection (d) hereof, shall be stayed during any such period of corrective action.

(g) The City Clerk shall have the authority to impose such reasonable terms and conditions on a license as may be necessary to protect the public health, safety, and welfare, and to obtain compliance with the requirements of this Code, the

Colorado Medical Marijuana Code, and any rules or regulations promulgated thereunder.

(h) Any decision made by the City Clerk to grant or deny a license, to revoke or suspend a license, or to renew or not renew a license shall be subject to judicial review pursuant to § 24-4-106, C.R.S., as amended.

(i) Any medical marijuana business license issued pursuant to this Article II shall be valid for a period of two years from the date of issuance, unless otherwise revoked or suspended.

(j) The business of any applicant that is denied a license shall be terminated and all operations ceased within sixty (60) days of such denial.

Sec. 53-27. Payment of fees by applicant for licensed nonconforming use.

(a) Each applicant for a medical marijuana business license pursuant to this Article II shall pay a nonrefundable application fee in the amount of \$1500.00 at the time of filing an application for such, to cover the administrative costs of determining legal nonconforming use status and processing the application including, but not limited to, submittal review, building inspections, and background investigations.

(b) Contemporaneous with payment of the application fee, each applicant for a medical marijuana business license pursuant to this Article II shall also pay a license fee in the amount of \$2500.00, to cover the costs of administration, monitoring, oversight, enforcement, and similar activities related to the regulation of a licensed, nonconforming use otherwise prohibited by this Code. Such fee shall thereafter be due with each application for biennial renewal of any license issued pursuant to this Article II. This fee shall be refunded in the event the application for the initial license is denied, and any subsequent license fee paid as part of an application for renewal of a license shall be refunded in the event such license is not renewed. In the event of a suspension or revocation of a license, or the cessation of a licensed medical marijuana business, no portion of the license fee shall be refunded.

(c) Additional fees shall include the following, as applicable:

- (1) License renewal application fee: \$1500.00;
- (2) License renewal application for license expired not more than ninety (90) days: \$500.00 (in addition to standard renewal fee);
- (3) Transfer of ownership: \$750.00;
- (4) Modification of premises: \$500.00.

Sec. 53-28. Additional restrictions on licensed nonconforming use.

(a) In addition to the limitations on nonconforming uses established in Article 8 of Part III (Land Development Code) of this Code, no existing medical marijuana business granted legal nonconforming use status for a specific, existing use pursuant to § 53-25 and licensed by the City pursuant to § 53-26 and the Colorado Medical Marijuana Code shall be eligible for any other type or category of medical marijuana business license from the City or any additional medical marijuana license from the City that otherwise may be available under the Colorado Medical Marijuana Code.

(b) Notwithstanding the provisions of § 310 of the Colorado Medical Marijuana Code (C.R.S. 12-43.3-310), no existing medical marijuana business granted legal nonconforming use status pursuant to § 53-25 and licensed by the City pursuant to § 53-26 and the Colorado Medical Marijuana Code shall be allowed to change the location of such business within the City.

(c) Notwithstanding the provisions of § 8.6.1 D of Article 8 of Part III (Land Development Code) of this Code, no medical marijuana business granted legal nonconforming use status, licensed by the City, and located within the Clear Creek (“CC”) zoning district shall be exempt from restrictions on the expansion of buildings or uses otherwise applicable, nor shall such nonconforming use be enlarged, expanded, or extended to occupy any interior parts of the building housing such use that were not specifically designed or arranged for such use at the time the use was legally established.

(d) In order to ensure compliance with prohibitions on changes to a structure devoted to a nonconforming use, as provided in § 8.6.1 A of Article 8 of Part III (Land Development Code) of this Code, no change to the floor plan of the interior of the business or similar changes to either the interior or exterior of the physical area devoted to the business shall be made unless such modification is approved by the City Clerk prior to the time such modification is made. The City Clerk may charge a processing and inspection fee to cover any associated processing and inspection costs.

(e) An existing medical marijuana business granted legal nonconforming use status pursuant to § 53-25 and licensed by the City pursuant to § 53-26 and the Colorado Medical Marijuana Code shall comply with all applicable requirements of this Code including, but not limited, to those concerning lighting and noise, and shall ensure that the smell or odor of marijuana, or unusual smells or odors generated by the medical marijuana business and associated with marijuana, are not perceptible from the exterior of the structure in which the business is conducted by a person with a normal sense of smell.

(f) All signage for a medical marijuana business granted legal nonconforming use status pursuant to § 53-25 and licensed by the City pursuant to § 53-26 and the Colorado Medical Marijuana Code shall comply with the requirements of Part III (Land Development Code) of this Code, and no such signage shall include the word “marijuana,” “cannabis,” or any other word or phrase commonly understood to refer to marijuana unless such word or phrase is immediately preceded by the word “medical” or the message of such signage includes the words “for medical use” or “for medical purposes” in letters that are no smaller than the largest letter on the signage.

(g) Acceptance of a medical marijuana business license from the City shall constitute, as applicable, consent, permission, and authorization by the licensee, and any officers, directors, managers, and employees thereof, to or for the following actions to the fullest extent not otherwise prohibited by law:

- (1) initial background investigations and such subsequent background investigations by the City as, from time to time, the City Clerk deems necessary and desirable to secure the purposes and intent of this Article II and the Colorado Medical Marijuana Code;
- (2) such periodic inspections of the licensed medical marijuana business by the City as, from time to time, the City Clerk deems necessary and desirable to secure the purposes and intent of this Article II and the Colorado Medical Marijuana Code including, but not limited to, ensuring compliance with security requirements or other aspects of the business operating plan, investigating complaints, and auditing records; and
- (3) the disclosure to the City of such information as the City Clerk deems necessary and desirable to show fully the business transactions under such license including, but not limited to, books of account, invoices, copies of orders and sales, shipping receipts, bills of lading, tax returns, product source information, number of patients and primary caregivers, transaction dates, prices, and correspondence. Any records provided by the licensee that include patient or caregiver confidential information may be submitted in a manner that maintains the confidentiality of the document(s) under the Colorado Open Records Act (C.R.S. § 24-72-201 *et seq.*) or other applicable law. Any document that the applicant considers eligible for protection under such Act shall be clearly marked as confidential and the basis for such claim of confidentiality shall be stated on or accompany the document. The City will not disclose documents appropriately submitted under the Colorado Open Records Act as confidential documents to any party other than law enforcement agencies.

Sec. 53-29. Other actions concerning licensed nonconforming use.

(a) Transfer of ownership of any license issued pursuant to § 53-26 shall be governed by the standards and procedures set forth in the Colorado Medical Marijuana Code and any rules or regulations promulgated thereunder.

(b) Renewal of an existing license issued pursuant to § 53-26 shall be governed by the standards and procedures set forth in the Colorado Medical Marijuana Code and any rules or regulations promulgated thereunder, except that the following shall constitute additional grounds for non-renewal of an existing license:

- (1) legal nonconforming use status has been lost, pursuant to § 8.6.2 B of the Land Development Code, due to discontinuance and abandonment of such use;

- (2) legal nonconforming use status has been lost, pursuant to § 8.6.3 of the Land Development Code, due to damage or destruction of the structure in which such use is carried on; or
- (3) legal nonconforming use status has been lost, pursuant to § 8.6.1 of the Land Development Code, due to expansion or enlargement of the use or the structure in which such use is carried on, in violation of such section.

(c) Suspension or revocation of an existing license issued pursuant to § 53-26 shall be governed by the standards and procedures set forth in the Colorado Medical Marijuana Code and any rules or regulations promulgated thereunder, except that the following shall constitute additional grounds for revocation of an existing license:

- (1) legal nonconforming use status has been lost, pursuant to § 8.6.2 B of the Land Development Code, due to discontinuance and abandonment of such use;
- (2) legal nonconforming use status has been lost, pursuant to § 8.6.3 of the Land Development Code, due to damage or destruction of the structure in which such use is carried on; or
- (3) legal nonconforming use status has been lost, pursuant to § 8.6.1 of the Land Development Code, due to expansion or enlargement of the use or the structure in which such use is carried on, in violation of such section.

Secs. 53-30 – 53-40. Reserved.

ARTICLE III. PATIENTS AND PRIMARY CAREGIVERS

Sec. 53-41. Intent, findings of fact, applicability, and authority.

(a) It is the intent of this Article III to reasonably regulate certain land use activities relating to the growing, cultivation, or processing of medical marijuana by patients and/or primary caregivers within a residential environment within the City, so as to ensure that such activities are conducted in a safe manner and, in furtherance of its intent, the City Council makes the following findings:

- (1) Article XVIII, § 14 of the Colorado Constitution, in primary part, establishes an affirmative defense to or exception from state criminal laws for patients or primary caregivers acting in conformance with the provisions thereof, and further contemplates cultivation activities associated with patients as generally being on a small scale (e.g., six plants per patient);
- (2) Section 25-1.5-106, Colorado Revised Statutes (2010) clarifies Colorado law regarding the scope and extent of Article XVIII, § 14 of the Colorado Constitution, as it relates to patients and primary caregivers, and further

contemplates primary caregiver operations as generally being on a small scale (e.g., five patients per primary caregiver);

- (3) The previously-referenced scale of patient and primary caregiver activities lends itself to the establishment and conduct of such activities in and from noncommercial settings, including residential structures;
- (4) Notwithstanding the above, activities associated with the growing, cultivation, or processing of medical marijuana in or from a residential environment have the potential to produce secondary effects and impacts detrimental to the health, safety, and welfare of not only the occupants of the residential structure in which such activities are carried on, but also nearby inhabitants and visitors, the immediate neighborhood, and the community as a whole;
- (5) Neither Article XVIII, § 14 of the Colorado Constitution nor § 25-1.5-106 purports to comprehensively regulate patient and primary caregiver activities, particularly as such activities interrelate with land use, zoning, building code, and other responsibilities traditionally reserved to a home-rule municipality in the exercise of its police powers for the protection of the health, safety, and welfare of such municipality and its inhabitants; nor do either purport to preempt or restrict a home-rule municipality in exercising such powers;
- (6) The City of Arvada is a home-rule municipality and the City Council is empowered, independent of state statutes such as C.R.S. 25-1.5-106 to adopt such ordinances as are necessary and convenient to protect the health, safety, and welfare of the City and its inhabitants; and
- (7) The provisions of this Article III are necessary to protect and are enacted in furtherance of the public health, safety, and welfare of the City and its inhabitants.

(b) This Article III shall apply to all patients and primary caregivers engaged in the growing, cultivation, or processing of medical marijuana within the municipal boundaries of the City, as such are now or in the future defined.

(c) The City Council has the power and authority to adopt this Article III pursuant to those sources of authority referenced in § 53-21 of Article II hereof.

Sec. 53-42. Regulations for growing, cultivating, or processing medical marijuana in a residential structure.

Medical marijuana may not be grown, cultivated, or processed in or around any residential structure within the City except in full compliance with Article XVIII, § 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, the Colorado Medical Marijuana Program, any rules or regulations promulgated thereunder, any other applicable law, and the following regulations:

(a) Medical marijuana may be grown, cultivated, or processed only at a patient's primary residence or the primary residence of the patient's primary caregiver. Medical marijuana may not be grown, cultivated, or processed outdoors in the yard, curtilage, or other area outside of a residential structure.

(b) Medical marijuana may be grown, cultivated, or processed within the primary residence of a primary caregiver only by such primary caregiver for his or her patients (and, if such primary caregiver is a patient, for himself or herself), subject to the square-footage limitations set forth in subsection (c) hereof. Medical marijuana may be grown, cultivated, or processed within the primary residence of a patient only by such patient for himself or herself, or by the patient's primary caregiver for such patient, subject to the square-footage limitations set forth in subsection (c) hereof. A primary caregiver may not lawfully grow, cultivate, or process medical marijuana for a patient in another patient's primary residence unless such is also the primary residence of that patient.

(c) The growing, cultivation, and processing of medical marijuana shall be limited to one of the two following areas within a residential structure of a patient's or primary caregiver's primary residence:

(1) A single secure, defined area of no more than eighty (80) contiguous square feet either within that portion of a residential structure devoted to a single-family detached or multi-family dwelling, or within a garage attached to a single-family dwelling, or within an accessory dwelling unit on the same lot, whether attached to or detached from such dwelling; provided, however, an additional separate, secure, defined area of no more than twenty (20) contiguous square feet may be utilized strictly for the processing of medical marijuana; or

(2) A single secure, defined area of no more than one hundred and sixty (160) contiguous square feet within an accessory building or structure detached from that portion of a residential structure devoted to the dwelling (whether single-family detached or multi-family), separated from such dwelling or any other dwelling by a minimum of ten (10) feet, and set back from any property line adjoining another residential lot by a minimum of ten (10) feet; provided, however, an additional separate, secure, defined area of no more than thirty (30) contiguous square feet may be utilized strictly for the processing of medical marijuana. The referenced minimum setback from the property line may be reduced to a minimum of three (3) feet, provided the wall of the accessory building or structure on any side thereof facing or adjoining such property line is fire-rated in accordance with all applicable technical codes and contains no windows or other openings.

(d) Notwithstanding the square-footage limitations set forth in subsections (c)(1) and (c)(2) hereof, any area lawfully devoted or to be devoted to growing and cultivation may be enlarged to include an additional forty (40) square feet contiguous to the original area, provided a specific request is submitted to the City by the primary

resident for an inspection by an authorized public inspector for the City of the area devoted or to be devoted to growing and cultivation, any necessary building or technical code permit(s) are issued, and any construction, alteration, or other activity authorized or required by such permit(s) is completed, re-inspected, and approved.

(e) In no event shall the growing, cultivation, or processing of medical marijuana by a patient or primary caregiver at the primary residence of the patient or primary caregiver be carried out within any common areas of any real property associated with such primary residence.

(f) Any area, building, or structure utilized for growing, cultivating, or processing medical marijuana shall meet all applicable requirements of this Code including, but not limited to, zoning district, setback, and other standards of Part III (Land Development Code), the building, safety, and technical codes adopted in Chapter 18, requirements with respect to obtaining necessary building, plumbing, electrical, mechanical, or other permits as set forth in said Chapter 18, and the prohibition on the use of any unsafe equipment.

(g) The growing, cultivation, and processing of medical marijuana shall not be perceptible from the exterior of the residential structure in which any such activities occur, by or through any of the following means, or as a result of the generation of any of the following impacts or effects:

- (1) Common visual observation (e.g., through a window) by a person of normal vision;
- (2) Light pollution, glare, or brightness that reasonably could be expected to disturb the repose of another person of normal visual sensitivities;
- (3) The smell or odor of marijuana, or unusual smells or odors generated by or connected to such growing, cultivation, or processing and not generally found in a residential environment, as detectable by a person with a normal sense of smell;
- (4) Undue or unusually high volumes of vehicular or pedestrian traffic, including unusually heavy or frequent parking in front of or in the immediate vicinity of the residence or residential structure; or
- (5) Noise from exhaust fans, other equipment, or other sources associated with or connected to such growing, cultivation, or processing in excess of any applicable permissible noise level set forth in Chapter 38 of this Code.

(h) The following activities shall not be permitted or conducted within a residential structure, but such restrictions shall not be deemed to prohibit lawful fertilizers, additives, supplements, or nutrients:

- (1) Any activity involving the use of a chemical to enhance tetrahydrocannabinol (THC) in medical marijuana; or

- (2) Any activity involving the use of a chemical extraction method, including but not limited to any method using butane, acetate, isopropyl alcohol, ethyl alcohol, white gas, sulfuric acid, or hydrochloric acid, in the processing of any part of the marijuana plant into any usable form of medical marijuana, including but not limited to hashish, hash oil, or cannabis oil.

(i) If a patient or primary caregiver grows, cultivates, or processes medical marijuana within any residential structure that he or she does not own, such patient or primary caregiver shall obtain the written consent of the property owner before commencing to grow, cultivate, or process medical marijuana on the property. Such written documentation shall also include the owner's express consent to any material alterations to the property associated with the growing, cultivation, or processing of medical marijuana including but not limited to alterations to walls, windows, ventilation, plumbing, or electrical; shall be maintained on the premises; and shall be shown to any authorized public inspector upon request. In the event that a primary caregiver grows, cultivates, or processes medical marijuana for a patient in the patient's primary residence, which primary residence is not owned by the patient, the primary caregiver shall not commence such activities until the patient provides written confirmation of the property owner's consent.

(j) If a patient or primary caregiver is authorized by law to grow, cultivate, and process quantities of medical marijuana requiring more than the maximum square footage established herein, such patient or primary caregiver must act only in full compliance with subsection 14 of the Colorado Medical Marijuana Program, all other applicable laws, and the following conditions:

- (1) Such patient or primary caregiver may grow, cultivate, and process medical marijuana plants in excess of the square footage limitations established herein only within the Clear Creek (CC) zoning district;
- (2) Such patient or primary caregiver shall ensure that the premises so utilized are secure, as that term is defined herein, and that no children, visitors, passersby, thieves, vandals, or anyone else not licensed to possess medical marijuana may access the premises;
- (3) The premises so utilized shall be subject to the requirements of subparagraph (g) hereof, and such patient or primary caregiver shall ensure that the premises are in full compliance therewith; and
- (4) Such patient or primary caregiver shall ensure that the premises so utilized are in full compliance with all other applicable requirements of this Code including, but not limited to, the building, safety, and technical codes adopted in Chapter 18, and requirements with respect to obtaining necessary building, plumbing, electrical, mechanical, or other permits, inspection of the premises, and the issuance of a certificate of occupancy, as set forth in said Chapter 18.

Sec. 53-43. Right of entry for inspection purposes.

(a) In the interest of public safety, and subject to the requirements and limitations herein, an authorized public inspector of the City shall have the right during reasonable hours to enter upon and into any residential structure within the City where medical marijuana is being grown, cultivated, or processed for the purpose of conducting an inspection of the premises to determine if the premises comply with the requirements of this Article III.

(b) Such entry shall be with the permission of the owner or occupant of the residential structure; provided, however, if such permission is refused, or the premises are locked and the public inspector has been unable to obtain such permission, the public inspector may request, and the municipal court judge may issue, an inspection warrant pursuant to Rule 241 of the Colorado Municipal Court Rules of Procedure.

(c) In case of an emergency involving imminent danger to public health, safety, or welfare, the public inspector may enter any residential structure with the City to conduct an emergency inspection related to the growing, cultivation, or processing of medical marijuana without a warrant and without complying with the requirements of this § 53-43.

(d) The City Council finds and declares that the ordinance by which this Article III is adopted is an ordinance the violation of which involves a serious threat to public safety or order within the meaning of Rule 241(a)(1) of the Colorado Municipal Court Rules of Procedure.

(e) The refusal of any owner or occupant to allow the public inspector access to the residential structure to conduct an inspection after such inspector has presented an inspection warrant issued pursuant to this § 53-43 is a violation punishable in accordance with § 53-53(a) of this Chapter.

(f) Nothing herein shall be construed to limit the availability of other types of warrants under Rule 241 of the Colorado Municipal Court Rules of Procedure, or the applicability of Rule 241 to other articles or provisions of this Chapter.

Secs. 53-44 – 53-50. Reserved.

ARTICLE IV. MISCELLANEOUS

Sec. 53-51. Sales and use tax obligations; license and permit obligations.

(a) Nothing herein shall exempt or relieve any person or entity who engages in any act, action, transaction, or event otherwise constituting a taxable event or creating a tax liability to the City from the collection and/or remittance of such taxes in accordance with Article III of Chapter 98 of this Code. The violation of any such requirement or obligation, or any other applicable provision of Chapter 98, shall be punishable in accordance with the provisions of such chapter.

(b) Nothing herein shall exempt or relieve any person or entity from any requirement to otherwise obtain a license, permit, or other approval prior to engaging in any act, action, transaction, or event requiring such license, permit, or other approval including, but not limited to, a land use approval, sales or use tax license, or building, mechanical, plumbing, electrical, or other type of permit. The violation of any such requirement or obligation shall be punishable in accordance with such provision of this Code or other law establishing such requirement or obligation.

Sec. 53-52. Tax requirements for entities outside jurisdiction.

It shall be unlawful for any person lawfully authorized to deliver medical marijuana to do so into or within the City in any form to any person who is lawfully entitled to possess or use medical marijuana under the provisions of Article XVIII, § 14 of the Colorado Constitution without first having obtained a sales and use tax license from the City pursuant to Article III of Chapter 98 of this Code. Any deliveries of medical marijuana into or within the City by any person lawfully authorized to make such deliveries shall be subject to the City's sales tax pursuant to Article III of Chapter 98 of this Code.

Sec. 53-53. Penalties.

(a) Any person violating any applicable provision of this Chapter may be punished pursuant to § 1-5 of this Code.

(b) Each of the following is hereby declared to be a public nuisance, which may be abated pursuant to the provisions of Article III of Chapter 38 of this Code:

- (1) The conduct of any activity or business prohibited by, or in violation of, § 53-22 of this Chapter;
- (2) The operation of an existing medical marijuana business (granted legal nonconforming status pursuant to § 53-25 and licensed by the City pursuant to § 53-26 and the Colorado Medical Marijuana Code) in any manner that is not in compliance with the requirements of Article II hereof, Article 8 of Part III (Land Development Code) of this Code, the Colorado Medical Marijuana Code, and any rules or regulations promulgated thereunder; and
- (3) The distribution, cultivation, dispensing, manufacture, or production of medical marijuana by a patient or primary caregiver in any manner that is not in compliance with the requirements of Article III hereof, the Colorado Medical Marijuana Code, the Colorado Medical Marijuana Program, and any rules or regulations promulgated thereunder.

(c) In addition to any other remedies available to the City, the City may exercise any and all remedies available pursuant to the provisions of Article 9 of Part III (Land Development Code) of this Code.

Secs. 53-54 – 53-60. Reserved.

Section 2. Sections 38-142 to 38-160 of Article III (“Nuisances”) of Chapter 38 (“Environment”) of the Code of the City of Arvada, Colorado are hereby amended to read as follows:

Sec. 38-142. Medical marijuana.

(a) The conduct of any activity or business prohibited by, or in violation of § 53-22 of Chapter 53 of this Code, concerning medical marijuana businesses, is hereby declared to be a nuisance and prohibited.

(b) The operation of an existing medical marijuana business (granted legal nonconforming status pursuant to § 53-25 and licensed by the City pursuant to § 53-26 and the Colorado Medical Marijuana Code) in any manner that is not in compliance with the requirements of Article II of Chapter 53 of this Code, Article 8 of Part III (Land Development Code) of this Code, the Colorado Medical Marijuana Code, and any rules or regulations promulgated thereunder is hereby declared to be a nuisance and prohibited.

(c) The distribution, cultivation, dispensing, manufacture, or production of medical marijuana by a patient or primary caregiver in any manner that is not in compliance with the requirements of Article III of Chapter 53 of this Code, the Colorado Medical Marijuana Code, the Colorado Medical Marijuana Program, and any rules or regulations promulgated thereunder is hereby declared to be a nuisance and prohibited.

Sec. 38-143—38-160. Reserved.

Section 3. The City Clerk is hereby designated the local licensing authority for purposes of the Colorado Medical Marijuana Code, with respect to the City’s licensing of any legal nonconforming medical marijuana use pursuant to §§ 53-25 and 53-26 of Article II of Chapter 53 (“Medical Marijuana”) adopted hereby.

Section 4. If any article, section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. All other provisions shall be deemed severed or severable and shall continue in full force and effect. The City Council hereby declares that it would have passed this ordinance and each part or parts thereof, irrespective of the fact that any one part or parts may be declared invalid or unconstitutional.

Section 5. Ordinance No. 4240, extending a moratorium relating to medical marijuana businesses, is hereby repealed on the effective date of this ordinance. Notwithstanding such repeal, it is the intention of the City hereby to preserve any and all sanctions available to it, civil or criminal, for an act constituting a violation of such moratorium committed prior to the effective date of this repeal, and nothing herein shall be construed as limiting, modifying, prejudicing, or otherwise affecting the authority of the City to enforce the provisions of such

moratorium against any violation thereof occurring during the period in which such moratorium was in effect.

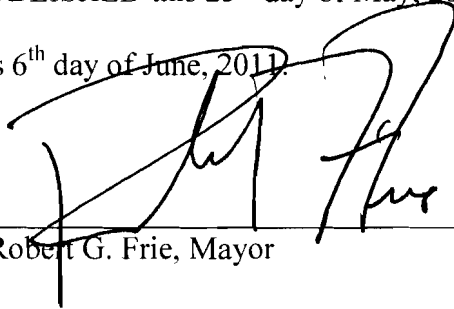
Section 6. This ordinance is deemed necessary for the protection of the health, welfare, and safety of the community.

Section 7. This ordinance shall take effect five (5) days after publication following final passage.

INTRODUCED, READ AND ORDERED PUBLISHED this 23rd day of May, 2011.

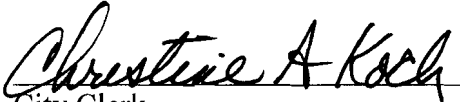
PASSED, ADOPTED AND APPROVED this 6th day of June, 2011.





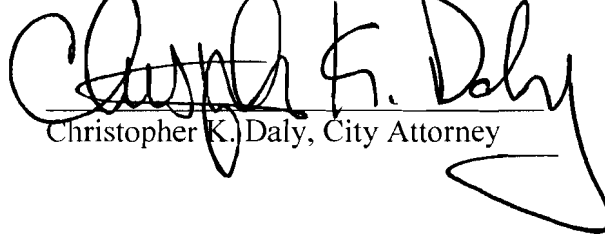
Robert G. Frie, Mayor

ATTEST:



Christine A. Koch
City Clerk

APPROVED AS TO FORM:



Christopher K. Daly, City Attorney

Publication dates: May 26, 2011
June 9, 2011