

BY AUTHORITY

ORDINANCE NO. 39

COUNCIL BILL NO. 34

SERIES OF 2010

COMMITTEE OF REFERENCE:

**AS AMENDED 1-4-10**

SAFETY

A BILL

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

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

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

**Article XI. Medical Marijuana Dispensaries**

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

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

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

- 1 (2) *Marijuana* shall have the same meaning as the term “usable form of marijuana” as set  
2 forth in Article XVIII, Section 14(1)(i) of the Colorado Constitution, or as may be more  
3 fully defined in any applicable state law or regulation.  
4
- 5 (3) *Medical Marijuana dispensary* means a business that sells or otherwise distributes  
6 marijuana through one or more primary care-givers to six (6) or more patients for  
7 medical use, along with any cultivation of marijuana associated with such sale or  
8 distribution. The term “medical marijuana dispensary” shall not include any person or  
9 entity that distributes marijuana for medical use exclusively to five (5) or fewer patients,  
10 and shall not include the private possession and medical use of marijuana by an  
11 individual patient or caregiver to the extent permitted by Article XVIII, Section 14 of the  
12 Colorado Constitution and any other applicable state law or regulation.  
13
- 14 (4) *Medical use* shall have the same meaning as is set forth in Article XVIII, Section  
15 14(1)(b) of the Colorado Constitution, or as may be more fully defined in any applicable  
16 state law or regulation.  
17
- 18 (5) *Parent* shall have the same meaning as set forth in Article XVIII, Section 14 (1)(c) of the  
19 Colorado Constitution, or as may be more fully defined in any applicable state law or  
20 regulation.  
21
- 22 (6) *Patient* shall have the same meaning as is set forth in Article XVIII, Section 14(1)(d) of  
23 the Colorado Constitution, or as may be more fully defined in any applicable state law or  
24 regulation.  
25
- 26 (7) *Primary care-giver* shall have the same meaning as is set forth in Article XVIII, Section  
27 14(1)(f) of the Colorado Constitution, or as may be more fully defined in any applicable  
28 state law or regulation.  
29
- 30 (8) *School or child care establishment* means any public or private school meeting all  
31 requirements of the compulsory education laws of the state and providing instruction to  
32 students in kindergarten through grade twelve; any public or private schools or pre-  
33 schools that provide preparatory schooling for children of any age younger than the  
34 state age of mandatory attendance; or any child care establishment as defined by and  
35 regulated under Chapter 11 of this Code.  
36  
37

38 **Sec. 24-403. License Required.**  
39

- 40 (a) On and after March, 1, 2010 it shall be unlawful for any person to sell or otherwise  
41 distribute any marijuana for medical use in Denver without obtaining a license to operate  
42 as a medical marijuana dispensary pursuant to the requirements of this article. This  
43 licensing requirement shall apply regardless of whether or not a medical marijuana  
44 dispensary has commenced operation prior to March 1, 2010. Any medical marijuana  
45 dispensary that has commenced operation prior to March 1, 2010 and for which a  
46 license application has been filed pursuant to this article prior to that date may continue  
47 in operation pending final action by the director on the application. Any such preexisting  
48 medical marijuana dispensary that does not or cannot meet the licensing requirements  
49 set forth in this article and therefore fails to obtain a license shall be terminated  
50 immediately upon such denial.

1  
2 (b) The license requirement set forth in this article shall be in addition to, and not in lieu of,  
3 any other licensing and permitting requirements imposed by any other federal, state, or  
4 city law including, by way of example, a retail sales tax license, a retail food  
5 establishment license if applicable, any applicable zoning or building permit, and an  
6 alarm system permit.  
7

8  
9 **Sec. 24-404. General licensing procedures.**

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

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

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

- 23 (1) Name and address of the owner or owners of the medical marijuana dispensary in  
24 whose name the license is proposed to be issued.
- 25  
26 (2) If the owner is a corporation, the name and address of any officer or director of the  
27 corporation, and of any person holding ten percent (10%) or more of the issued and  
28 outstanding capital stock of the corporation.
- 29  
30 (3) If the owner is a partnership, association or company, the name and address of any  
31 member holding ten percent (10%) or more of the interest therein.
- 32  
33 (4) Name and address of any manager or managers of the medical marijuana dispensary, if  
34 the manager is proposed to be someone other than the owner.
- 35  
36 (5) A statement of whether or not any of the foregoing persons have:  
37
  - 38 a. Been denied an application for a medical marijuana dispensary license pursuant  
39 to this article or any similar state or local licensing law, or had such a license  
40 suspended or revoked.
  - 41 b. Been convicted of a felony or has completed any portion of a sentence due to a  
42 felony conviction within the preceding five (5) years.
- 43  
44 (6) Proof of ownership or legal possession of the licensed premises for the term of the  
45 proposed license. If the licensed premises will be leased, the application shall include  
46 written consent by the owner of the property to the licensing of the premises for a medical  
47 marijuana dispensary.
- 48  
49 (7) An operating plan for the proposed medical marijuana dispensary including the  
50 following information:

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

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

17  
18 (b) Any application for a medical marijuana dispensary permit shall be accompanied by  
19 the application fee, criminal background check fee, and annual fee as required by section 32-93.  
20

21 (c) Upon receipt of an application for a medical marijuana dispensary license, the director  
22 shall circulate the application to the Department of Community Planning and Development, the  
23 Department of Finance, the Department of Environmental Health, the Denver Police Department,  
24 and the Denver Fire Department to determine whether the proposed dispensary is in full  
25 compliance with any and all laws, rules and regulations administered by the respective  
26 departments.  
27

28 (d) The director shall perform a criminal background investigation for each applicant or  
29 manager to determine compliance with section 24-406.  
30

31 (e) The director shall perform an inspection of the proposed licensed premises to determine  
32 compliance with any applicable requirement of this article.  
33

34 (f) The director shall deny any application for a license that is not in full compliance with this  
35 article, any other applicable city law or regulation, or any state law or regulation governing medical  
36 marijuana dispensaries. The director shall also deny any application that contains any false or  
37 incomplete information.  
38  
39

40 **24-406. Persons prohibited as licensees and managers.**  
41

42 (a) No license provided by this article shall be issued to or held by:  
43

44 (1) Any person who, in the immediately preceding twelve months had a medical  
45 marijuana dispensary license revoked by the city.  
46

47 (2) Any person who has been convicted of a felony or has completed any portion of a  
48 felony sentence within the preceding five (5) years, with this prohibition applying to:  
49

50 a. Any owner who is a natural person.

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

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

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

11  
12  
13 **24-407. Prohibited locations.**

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

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

22  
23 (1) In any residential zone district as defined by the zoning code of the city, or in any other  
24 location where retail sales are prohibited by the zoning code.

25  
26 (2) Within one thousand (1,000) feet of any school or child care establishment, with the  
27 distance computed by direct measurement from the nearest property line of the land  
28 used for school or child care purposes to the nearest portion of the building in which the  
29 medical marijuana dispensary is located, using a route of direct pedestrian access. This  
30 restriction shall not apply to any applicant who submits a license for a medical marijuana  
31 dispensary prior to March 1, 2010 for any location where the same applicant had  
32 commenced operation of a dispensary on or before December 15, 2009, as evidenced  
33 by the fact that the applicant submitted an application for a retail sales license for the  
34 dispensary which was date-stamped as being received by the treasury division of the  
35 Denver department of finance on or before December 15, 2009, and thereby obtained a  
36 retail sales license for that location bearing an effective date of December 15, 2009 or  
37 earlier.

38  
39 (3) Within one thousand (1,000) feet of any other medical marijuana dispensary, with the  
40 distance computed by direct measurement from the nearest portion of the building in  
41 which one medical marijuana dispensary is located to the nearest portion of the building  
42 in which the other medical marijuana dispensary is located, using a route of direct  
43 pedestrian access. This restriction shall not apply to any applicant who submits a  
44 license for a medical marijuana dispensary prior to March 1, 2010 for any location where  
45 the same applicant had commenced operation of a dispensary on or before December  
46 15, 2009, as evidenced by the fact that the applicant submitted an application for a retail  
47 sales license for the dispensary which was date-stamped as being received by  
48 the treasury division of the Denver department of finance on or before December 15,  
49 2009, and thereby obtained a retail sales license for that location bearing an effective  
50 date of December 15, 2009 or earlier.

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3 **24-408. Requirements related to licensed premises.**  
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5 (a) No marijuana shall be smoked, eaten or otherwise consumed or ingested on the  
6 licensed premises.  
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8 (b) No person under eighteen years of age shall be permitted on the licensed  
9 premises, unless the person has been qualified to possess marijuana for medical use in  
10 accordance with Article XVIII, Section 14 (6) of the Colorado Constitution and the person is  
11 accompanied by a parent.  
12

13 (c) The name and contact information for the owner or owners and any manager of  
14 the medical marijuana dispensary shall be conspicuously posted in the dispensary.  
15

16 (d) Any and all cultivation, processing, storage, display, sales or other distribution of  
17 marijuana shall occur within an enclosed building and shall not be visible from the exterior of the  
18 building.  
19

20 (e) No licensed premises shall be managed by any person other than the owner or  
21 the manager listed on the application for the license.  
22

23 (f) The medical marijuana dispensary shall be closed to the public, and no sale or  
24 other distribution of marijuana shall occur upon the licensed premises or via delivery from the  
25 licensed premises between the hours of 9:00 p.m. and 7:00 a.m.  
26

27 (g) The licensed premises shall be monitored and secured 24-hours per day  
28 including, at a minimum, the following security measures:  
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- 31 (1) Installation and use of security cameras to monitor all areas of the licensed premises where  
32 persons may gain or attempt to gain access to marijuana or cash maintained by the  
33 medical marijuana dispensary. Recordings from security cameras shall be maintained for a  
34 minimum of seventy-two hours in a secure off-site location.  
35
- 36 (2) Installation and use of a safe for overnight storage of any processed marijuana, and cash  
37 on the licensed premises, with the safe being incorporated into the building structure or  
38 securely attached thereto.  
39
- 40 (3) Installation of a monitored user alarm system pursuant to Division 2 of Article IV of Chapter  
41 42 of this Code.  
42
- 43 (4) To the extent the licensee utilizes security guards to patrol the licensed premises, any such  
44 guards shall be duly licensed in accordance with Article V of Chapter 42 of this code.  
45  
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47 **24-409. Labeling.**  
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49 All marijuana sold or otherwise distributed by the licensee shall be packaged and labeled in  
50 a manner that advises the purchaser that the marijuana is intended for use solely by the patient to

1 whom it is sold, and that any re-sale or re-distribution of the marijuana to any third person is a  
2 criminal violation.

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5 **24-410. Compliance with state law.**

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7 (a) To the extent the state has adopted or adopts in the future any additional or  
8 stricter law or regulation governing the sale or distribution of marijuana for medical use, the  
9 additional or stricter regulation shall control the establishment or operation of any medical  
10 marijuana dispensary in the city. Compliance with any applicable state law or regulation shall be  
11 deemed an additional requirement for issuance or denial of any license under this article, and non-  
12 compliance with any applicable state law or regulation shall be grounds for revocation or  
13 suspension of any license issued hereunder.

14  
15 (b) Any medical marijuana dispensary licensed pursuant to this article may be  
16 required to demonstrate, upon demand by the director or by law enforcement officers, that the  
17 source and quantity of any marijuana found upon the licensed premises is in full compliance with  
18 any applicable state law or regulation.

19  
20 (c) If the state prohibits the sale or other distribution of marijuana through medical  
21 marijuana dispensaries, any license issued pursuant to this article shall be deemed to be  
22 immediately revoked by operation of law, with no ground for appeal or other redress on behalf of  
23 the licensee.

24  
25 (d) The issuance of any license pursuant to this article shall not be deemed to create  
26 an exception, defense, or immunity to any person in regard to any potential criminal liability the  
27 person may have for the cultivation, possession, sale, distribution, or use of marijuana.

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

33  
34 **Sec. 32-93. Medical marijuana dispensaries.**

35  
36 Application and license fees for medical marijuana dispensaries are as follows:

- 37  
38 (1) Application fee . . . . . \$2,000  
39 (2) Criminal background check fee, per person checked . . . . . Actual costs  
40 (3) License fee, per year . . . . . \$3,000  
41  
42  
43

44 COMMITTEE APPROVAL DATE: \_\_\_\_\_, 2010.

45 MAYOR-COUNCIL DATE: \_\_\_\_\_, 2010.

46 PASSED BY THE COUNCIL

*January 11*

2010

*[Signature]*  
- PRESIDENT

1 APPROVED: [Signature] - MAYOR JAN. 12 2010  
2 ATTEST: [Signature] - CLERK AND RECORDER,  
3 EX-OFFICIO CLERK OF THE  
4 CITY AND COUNTY OF DENVER  
5

6 NOTICE PUBLISHED IN THE DAILY JOURNAL JAN. 8, 2010; JAN. 15, 2010  
7

8 PREPARED BY: David W. Broadwell, Asst. City Attorney; DATE: December 29, 2010.  
9

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

15 City Attorney [Signature]  
16 BY: [Signature], \_\_\_\_\_ City Attorney  
17 DATE: 1-5-10

