

## CITY COUNCIL ORDINANCE

ORDINANCE NO.: 2047

INTRODUCED BY: Rose

**AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, EXTENDING TO AND INCLUDING JUNE 15, 2010, THE TEMPORARY MORATORIUM RELATED TO MEDICAL MARIJUANA DISPENSARIES ADOPTED BY ORDINANCE NO. 2030; PROHIBITING THE ESTABLISHMENT OF A MEDICAL MARIJUANA DISPENSARY, PLACE OF CULTIVATION, STORAGE, AND OTHER RELATED ACTIVITIES WITHIN THE CITY IN ANY MANNER DURING THE MORATORIUM; DIRECTING THE CITY MANAGER AND STAFF TO MONITOR AND REVIEW ALL LEGISLATIVE ENACTMENTS ADOPTED BY THE GENERAL ASSEMBLY RELATED TO MARIJUANA; CONDUCT SUCH STUDIES AS MAY BE REQUIRED TO DETERMINE WHAT MEASURES RELATED TO MEDICAL MARIJUANA DISPENSARIES, CULTIVATION, STORAGE AND RELATED ACTIVITIES, IF ANY, SHOULD BE ADOPTED TO PROTECT THE PUBLIC HEALTH, SAFETY AND WELFARE; AND, MAKE RECOMMENDATIONS TO THE CITY COUNCIL AS TO MEDICAL MARIJUANA DISPENSARIES, CULTIVATION, STORAGE, AND OTHER RELATED ACTIVITIES WITHIN THE CITY OF BRIGHTON; DECLARING AN EMERGENCY; AND SETTING FORTH OTHER DETAILS RELATED THERETO.**

**WHEREAS**, on November 7, 2000, Colorado voters adopted Section 14 of Article XVIII of the Colorado Constitution permitting the use and possession of marijuana for medical purposes under limited and specific circumstances; and

**WHEREAS**, in accordance with Section 14, Article XVIII a "primary care-giver" may provide marijuana to a patient suffering from chronic pain or a debilitating health condition, but beyond that, it is not clear who or what constitutes a care-giver nor is there a definition of "medical marijuana dispensary" and as a result, it is the understanding and belief of the City Council that marijuana dispensaries, places of cultivation, storage, and related activities are operating in various local jurisdictions out of storefronts, strip malls, single rooms, apartments and homes; and

**WHEREAS**, pursuant to the Federal Controlled Substances Act, marijuana is classified as a Schedule 1 drug, meaning it has no accepted medical use, and the use, possession and distribution of marijuana is prohibited; except that statements by the Attorney General of the United States have been reported to the effect that medical marijuana dispensaries may not be subject to federal enforcement of the law; and

**WHEREAS**, if medical marijuana dispensaries are a violation of the Federal Controlled Substances Act, business licenses therefore may be prohibited pursuant to Section 5-4-60, of the Brighton Municipal Code;

**WHEREAS**, a Bill for an Act entitled *Regulation of Medical Marijuana* has been drafted to be introduced in the 2010 legislative session of the Colorado General Assembly with the stated purpose of adopting a statewide regulatory scheme related to dispensing, cultivating, providing and using medical marijuana and it is the information and belief of the City Council that some form of regulation of medical marijuana will be adopted by the 2010 General Assembly which may or may not be applicable to the City of Brighton;

**WHEREAS**, the City of Brighton has received inquiries from members of the public as to the permitting process and zoning regulations for operating medical marijuana dispensaries within the City and based on recent trends in Brighton and other local governments in Colorado, the City Council believes that it is likely that it will receive a growing number of inquiries for such dispensaries, including an application in the immediate future; and

**WHEREAS**, the City of Brighton *Land Use and Development Code* does not expressly allow as a use-by-right or conditional use medical marijuana dispensaries, cultivation, storage or related uses in any of the zone districts established pursuant thereto; and

**WHEREAS**, because both federal and state law, prior to the adoption of Section 14, Article XVIII, prohibited the possession and sale of marijuana generally, marijuana sales have never been addressed by the City's Municipal Code or land use regulations; and

**WHEREAS**, the advisability of approving and siting of medical marijuana dispensaries, places of cultivation, storage or related uses raises issues of first impression for the City of Brighton; and

**WHEREAS**, it is the information and belief of the City Council that other local jurisdictions that have permitted the establishment of medical marijuana dispensaries have experienced burglaries and robberies thereof, and the sale of illegal drugs in the areas immediately surrounding such dispensaries; and

**WHEREAS**, the City Council finds and determines that it is necessary for the City's Manager and staff to monitor and review legislation from the 2010 General Assembly related to marijuana, and conduct such studies and analysis of the potential negative impacts on the public health, safety and welfare arising from medical marijuana dispensaries, places of cultivation, storage or related activities, including, but not limited to, criminal incidents, loitering, disturbing the peace and adverse impacts on the surrounding neighborhood and properties; and

**WHEREAS**, it is anticipated that following the 2010 legislative session of the General Assembly that the City Council will require an opinion from the City Attorney relative to any legislation adopted, as well as the authority of the City of Brighton to adopt marijuana dispensary regulations that may be preempted by the Federal Controlled Substances Act; and

**WHEREAS**, if medical marijuana dispensaries, places of cultivation, storage and related activities were allowed to be established in the City without appropriate regulation, such uses might be established in areas that would conflict with the *Comprehensive Plan* and the *Land Use and*

*Development Code*, be inconsistent with surrounding uses, or be detrimental to the public health, safety and welfare; and

**WHEREAS**, issuing permits, business and tax licenses, or other applicable entitlements providing for the establishment and/or operation of medical marijuana dispensaries, places of cultivation, storage and related activities prior to any legislative enactments and the completion of the study of the potential impact of such facilities, poses a current and immediate threat to the public health, safety and welfare, and that a temporary moratorium on the issuance of such permits, licenses and entitlements is thus necessary; and

**WHEREAS**, for the protection of the public's health, safety and general welfare, the City Council desires to extend the adopted moratorium to maintain the current status quo, to provide time for the General Assembly to act; and the City Manager, City Attorney and staff to study applicable law, a permit or licensing procedure, the appropriate zoning and land use regulation for such uses; and, recommend adoption of regulatory standards and conditions to be imposed on such operations to comply with federal and state law; and

**WHEREAS**, in order to protect the public health, safety and general welfare of the inhabitants of the City of Brighton, and in order to eliminate any ambiguities as to whether medical marijuana dispensaries, places of cultivation, storage and related activities constitute a lawful use under the Brighton Municipal Code, the City Council of the City of Brighton, Colorado, hereby finds and determines that it is necessary and appropriate to extend the temporary suspension on the acceptance, processing and approval of use permits, variances, building permits, business licenses, sales tax licenses or other applicable entitlements for use; during which time the City Council shall consider the advisability of permitting medical marijuana dispensaries, places of cultivation, storage and related activities within the City; amendments to the Brighton Municipal Code concerning the location of medical marijuana dispensaries, places of cultivation, storage and related activities within the City of Brighton, and appropriate regulations and requirements governing such businesses and uses.

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

**Section 1.** Upon the effective date of this Ordinance as an emergency ordinance, and continuing until June 15, 2010, or until further action of the City Council by ordinance, whichever is earlier, no application for a use permit, variance, building permit, business license, sales tax license or other applicable entitlement for use as a medical marijuana dispensary, place of cultivation, storage and related activities shall be accepted or processed by the staff of the City; nor shall the same be approved or issued for the establishment of a medical marijuana dispensary, place of cultivation, storage and related activities, and no person shall otherwise establish a medical marijuana dispensary, place of cultivation, storage and related activities within the City of Brighton.

**Section 2.** For purposes of this Ordinance, a "medical marijuana dispensary" shall mean any facility or location where a primary care-giver intends to or does make available, sell, transmit, give, or otherwise provide medical marijuana to: a patient, a person with a registry identification card, or another primary care-giver.

**Section 3.** For purposes of this Ordinance, the terms “primary care-giver,” “patient,” and registry identification card” shall have the same meaning as that set forth in Section 14, Article XVIII of the Colorado Constitution.

**Section 4.** That the moratorium herein adopted shall expire by its own terms on June 15, 2010, unless earlier terminated or specifically extended by ordinance of the City Council.

**Section 5.** The City Manager, City Attorney and City staff are directed to monitor and review all legislative enactments from the 2010 session of the General Assembly related to medical marijuana, conduct such studies and analysis as herein above identified and to develop appropriate recommendations and proposed regulations or amendments to the Municipal Code, and to present to the City Council within a reasonable time, proposals related to medical marijuana dispensaries, places of cultivation, storage and related activities consistent with federal law, the Constitution of the State of Colorado, statutes, and the Charter of the City of Brighton.

**Section 6.** The provisions of this Ordinance are temporary in nature and are intended to be removed in totality or replaced by subsequent legislative enactment. Notwithstanding the terms of Sections 1 and 2 above, this Ordinance may be extended by action of the City Council, if the City Council finds that such an extension is necessary for the preparation and implementation of legislative enactments, and that such extension is in the public interest and would not result in undue hardship to affected parties.

**Section 7.** **Purpose.** The purpose of this Ordinance is to provide for the health, safety and welfare of the people.

**Section 8.** **Validity.** If any part or parts of this Ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. 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 be declared invalid.

**Section 9.** **Interpretation.** This Ordinance shall be so interpreted and construed as to effectuate its general purpose.

**Section 10.** **Emergency Declaration and Effective Date.** By reason of the fact that it is necessary to provide sufficient time for the 2010 session of the General Assembly to consider the issues related to implementation of Section 14 of Article XVIII of the Colorado Constitution; for the City Manager, City Attorney and City staff to complete its studies and analysis and provide findings and recommendations to the City Council; and, for the City Council to consider such recommendations, it is hereby declared that an emergency exists, that this ordinance is necessary to the immediate preservation of the public peace, health, safety and welfare, and that it shall be in full force and effect upon its adoption.

**INTRODUCED, ADOPTED ON FIRST AND FINAL READING AS AN EMERGENCY  
ORDINANCE AND ORDERED PUBLISHED THIS 15th DAY OF DECEMBER, 2009.**

CITY OF BRIGHTON, COLORADO

By: Richard N. McLean  
Richard N. McLean, Mayor

ATTEST:

Gayle Martinez  
Gayle Martinez, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker  
Margaret R. Brubaker Esq., City Attorney

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