

ORDINANCE #5474

AN EMERGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF LOVELAND IMPOSING A MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR THE ISSUANCE OF LICENSES, PERMITS AND OTHER APPROVALS RELATED TO PERSONS AND LEGAL ENTITIES ESTABLISHING MEDICAL MARIJUANA DISPENSARIES IN THE CITY

WHEREAS, at the general election held in November, 2000, the voters of the State of Colorado adopted Amendment 20 to the Colorado Constitution (the "Amendment") adding Article XVIII, Section 14 to the Constitution; and

WHEREAS, the Amendment creates an affirmative defense to, and exception from, state criminal laws pertaining to the possession and use of marijuana when such possession or use is for the treatment of debilitating medical conditions and when certain conditions specified in the Amendment are met; and

WHEREAS, over recent months, fourteen (14) businesses offering medical marijuana for sale have obtained sales tax licenses from the City, and the City is receiving inquiries on almost a daily basis from persons interested in establishing additional such businesses in the City; and

WHEREAS, under the general zoning laws of the City, these businesses, referred to herein as "medical marijuana dispensaries" or "MMDs," likely constitute retail sales operations or clinics that are uses permitted in a wide variety of the City's zone districts, including those that are primarily intended for residential use and, in some circumstances would be allowed in the City's zone districts as an accessory use for the cultivation, storage and sale of crops, plants and flowers; and

WHEREAS, with respect to most MMDs established in the City, the City probably has no land use or business regulations concerning their operations; and

WHEREAS, the unregulated operation of MMDs in the City presents serious health and safety concerns to the citizens of Loveland, including the following:

- operators of MMDs are subject to a greater risk of violent burglaries and robberies than the operators of most other businesses because of the presence of marijuana and substantial amounts of cash on the premises;
- it is very hard to determine which MMDs are lawful and which are not since there are no licensing or permit requirements for such businesses, no requirement that records be kept of the number of patients served, no limitations on quantities or on-site

consumption, and no other regulations that could help investigating officers make such determinations;

- the on-site production of marijuana can create unsafe conditions on the business premises such as excessive electrical connections that create fire hazards and mold and fungus in the areas used to grow the marijuana;
- in the absence of licensing requirements, such as those associated with liquor establishments, there is no way to limit the ownership and operation of MMDs to persons of good moral character, so as to minimize the illegal activity that can be associated with such businesses; and

WHEREAS, ambiguities in the wording of the Amendment have created uncertainty as to which MMDs may properly be considered "primary care-givers" under the Amendment for the purpose of providing medical marijuana to patients suffering debilitating medical conditions; and

WHEREAS, the Colorado Department of Public Health and Environment (the "CDPHE"), which is responsible for the administration of the medical marijuana program established by the Amendment, is continuing to consider changes in its administrative regulations that govern MMDs as primary caregivers; and

WHEREAS, the same question about MMDs as primary caregivers is currently under review by the Colorado appellate courts and may also be the subject of proposed legislation in the upcoming session of the Colorado General Assembly; and

WHEREAS, municipalities throughout Colorado are struggling to gain control over the recent proliferation of MMDs and have enacted various kinds of local regulations in an attempt to curtail abuses of the medical marijuana exception created by the Amendment; and

WHEREAS, a significant period of time will be required in order for the City Manager and City Attorney, and their respective staffs, to clarify the evolving state of the law with regard to MMDs, and to formulate recommended amendments to the City Code to deal with the subject; and

WHEREAS, with the influx of MMDs, the City Council is concerned about its ability to protect the public's health, safety and welfare and preserve the character of the City's neighborhoods and commercial areas where MMDs might be located; and

WHEREAS, the imposition of an eight-month moratorium on the submission, acceptance, consideration, and approval of all applications for City licenses, permits and other approvals related to the operation of MMDs, and on the establishment of MMDs in the City, will allow City staff and the City Council the time needed to investigate the

City's ability to regulate such businesses and develop and implement appropriate regulations; and

WHEREAS, eight (8) months is a reasonable period of time and no longer than necessary for the City to determine the extent to which MMDs will be regulated on a statewide basis and to properly investigate, develop, and, if appropriate, adopt and implement any local regulations related to MMDs; and

WHEREAS, neither the proprietors of existing and proposed MMDs nor the patients they serve or intend to serve will be unduly prejudiced by the imposition of such a moratorium, since the number of existing MMDs in the City should be adequate to meet the medical marijuana needs of such patients during this eight-month period; and

WHEREAS, Loveland Charter Section 4-10 authorizes the City Council to adopt at one reading emergency ordinances that go into effect immediately upon an affirmative vote of at least six members of the Council with a specific statement of the nature of the emergency set forth in the ordinance.

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

Section 1. That the recitals contained in this Ordinance are hereby adopted and incorporated as findings of fact of the City Council.

Section 2. That, for purposes of this Ordinance, “medical marijuana dispensary” or “MMD” shall mean a property, premises or structure used to sell, distribute, transmit, give, dispense or otherwise provide marijuana in any form and in any manner to a patient or primary caregiver. As used in this Ordinance, “patient” and “primary caregiver” shall have the meaning given to them in Amendment 20 as clarified by controlling case law, State statutes or CDPHE regulations interpreting the provisions of Amendment 20.

Section 3. That it is necessary for the immediate preservation of the public’s health, safety and welfare to delay the processing of applications for any and all City licenses, permits and any other approvals related to the establishment and operation of medical marijuana dispensaries in the City until the City has had a reasonable opportunity to determine the extent of the City's regulatory authority over such dispensaries and to further determine what regulations, if any, should be imposed by the City upon these dispensaries.

Section 4. That an eight-month moratorium is hereby imposed upon the acceptance by the City of any applications for City licenses, permits and any other approvals related to the establishment or operation of medical marijuana dispensaries in the City. In addition, no medical marijuana dispensary shall be established nor shall it be operated by any person or legal entity within the City during this moratorium, other than those medical marijuana dispensaries that prior to the effective date of this Ordinance

have been issued a sales tax license by the City, have opened for business at the location designated in the sales tax application, have begun the legal sale of marijuana at that location, and that are in full compliance with zoning regulations applicable to the property on which they are located. Further, no person or legal entity shall establish and operate a medical marijuana dispensary in the City and engage in the sale of tangible personal property or the sale of services without first having obtained from the City a validly issued sales tax license under the provisions of City Code Chapter 3.16. Also, any sales tax license issued by the City for a medical marijuana dispensary prior to the effective date of this Ordinance, shall not be transferable to a new physical location for that medical marijuana dispensary. Notwithstanding the foregoing, this moratorium and the provisions of this Section 4 shall not apply to any primary caregiver who is the designated primary caregiver for only five patients in the medical use of marijuana, provided such primary caregiver is doing so in full compliance with all the requirements of Amendment 20 and any applicable case law, State statutes and CDPHE regulations.

Section 5. That all persons and legal entities applying to the City for a sales tax license during the term of this moratorium shall state, on a form approved by the City, whether any part of the business that is the subject of the application involves the provision of marijuana to patients or primary caregivers.

Section 6. That, during the term of this moratorium, the City Manager and City Attorney are hereby directed to analyze and develop for City Council consideration regulations as they may deem necessary and appropriate to address the establishment and operation of MMDs in Loveland, with such issues to include, without limitation, the following:

- a. the extent to which MMDs are legally protected under the Amendment;
- b. the impact of MMDs on the character of residential neighborhoods and commercial areas where they may be located; and
- c. any increase that will likely occur in vehicular traffic or in nuisance or criminal activities in areas where MMDs are located.

Section 7. That the failure of any person or legal entity to comply with any of the provisions of Section 4 or Section 5 of this Ordinance shall constitute a misdemeanor offense punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for a term not exceeding one year, or both such fine and imprisonment. Each person and legal entity who commits any of these offenses shall be guilty of a separate offense for each and every day during any portion of which the offense is committed, continued or permitted by such person or legal entity and shall be punished accordingly.

Section 8. That this moratorium shall continue in effect until the 16th day of July, 2010, or such earlier date as may be determined by the City Council by ordinance.

Section 9. That nothing herein shall be construed as decriminalizing or making lawful in the City any MMD or other business involved in the acquisition, possession, manufacture, production, use, sale, distribution, dispensing, or transportation of marijuana or related paraphernalia that is not lawful under state criminal laws.

Section 10. That if any 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 and shall be severable from the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each part or parts hereof irrespective of the fact that any one part or parts may be declared unconstitutional or invalid.

Section 11. That all other ordinances or portions thereof, and all City Code provisions inconsistent or conflicting with this Ordinance or any portion hereof, are hereby superseded by this Ordinance and their legal effect held in abeyance but only to the extent of such inconsistency or conflict and only for the eight-month period of the moratorium herein imposed.

Section 12. That the likely future proliferation of unregulated medical marijuana dispensaries in the City before the City has the opportunity to consider and enact appropriate Code provisions to regulate their establishment and operations, creates an emergency situation because of the risks that such new dispensaries will cause:

- a. serious deterioration of residential and commercial areas in which they are located;
- b. bodily injury to occupants and patrons of medical marijuana dispensaries, either by reason of violent crimes committed against such persons or because of the health and safety hazards created by the condition and use of the buildings in which they are located;
- c. widespread violation of federal and state criminal laws that prohibit the manufacture and distribution of illegal drugs;
- d. increased exposure of youth in the community to a culture of illegal drug use; and
- e. influx of other persons from other communities who are involved in the manufacture and distribution of illegal drugs.

Accordingly, the City Council finds and determines that an emergency exists requiring the immediate passage of this Ordinance for the preservation of the health, safety, morals and welfare of the citizens of the City of Loveland.

Section 13. That pursuant to City Charter Section 4-10(b), this Ordinance shall become effective immediately upon its adoption by the City Council.

Signed this 17th day of November, 2009.

CITY OF LOVELAND, COLORADO



Enrique A. Gutierrez

Mayor

ATTEST:

Jannine M. Weaver

City Clerk *Deputy*

APPROVED AS TO FORM:

John R. Wood

City Attorney