

CITY COUNCIL ORDINANCE

ORDINANCE NO.: 2086

INTRODUCED BY: Meyers

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON PROHIBITING THE LICENSING AND OPERATION WITHIN THE CITY OF MEDICAL MARIJUANA CENTERS, OPTIONAL PREMISES CULTIVATION OPERATIONS AND MEDICAL MARIJUANA-INFUSED PRODUCTS MANUFACTURERS; PROHIBITING ON THE EFFECTIVE DATE OF THIS ORDINANCE THE CULTIVATION AND SALE OF MEDICAL MARIJUANA WITHIN THE CITY EXCEPT BY REGISTERED PATIENTS AND PRIMARY CARE-GIVERS; ADOPTING PENALTIES AND DECLARING A NUISANCE; STATING DEFENSES TO ALLEGED VIOLATIONS, CLARIFYING APPLICATION OF THE ORDINANCE TO REGISTERED PATIENTS AND PRIMARY CARE-GIVERS; AND SETTING FORTH DETAILS RELATED TO THE FOREGOING.

WHEREAS, on June 15, 2010, the City Council adopted Ordinance No. 2058, as an emergency ordinance, which declared a moratorium on the acceptance, processing and approval of applications for a use permit of any nature, variance, building permit, business license, sales tax license or other applicable entitlement for use of any property, space or location for a medical marijuana center, optional premises cultivation license, medical marijuana-infused product license, places for cultivation of marijuana, and other related activities within the City in any manner during the moratorium; and

WHEREAS, the moratorium established in Ordinance No. 2058 is to terminate on July 1, 2011, the effective date of the rules adopted by the Colorado Department of Revenue in accordance with C.R.S. 12-43.3-101, *et seq.*, or further action by the City Council, whichever shall occur first; and

WHEREAS, the Colorado General Assembly adopted House Bill 10-1284 and it was signed into law by Governor Ritter; and

WHEREAS, House Bill 10-1284 authorizes a municipality, by either a majority vote of the municipality's registered electors or by a majority vote of the municipality's governing board, to prohibit within the municipality's boundaries the licensing and operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers, as such facilities are authorized to be licensed under the Colorado Medical Marijuana Code adopted in House Bill 10-1284; and

WHEREAS, in addition, House Bill 10-1284 clarifies Colorado law regarding the scope and extent of Amendment 20 to the Colorado Constitution, which added Article XVIII, Section 14 to the Constitution, and at the same time establishes in the Colorado Medical Marijuana Code a licensing and regulatory scheme for the retail sale, distribution, cultivation and dispensing of

medical marijuana to be licensed as medical marijuana centers, and further authorizes licenses for optional premises cultivation operations and medical marijuana-infused manufacturers; and

WHEREAS, C.R.S. §12-43.3-310(1) of 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 [the Colorado Medical Marijuana Code]"; and

WHEREAS, C.R.S. §12-43.3-308(1)(c) of the Colorado Medical Marijuana Code 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"; and

WHEREAS, C.R.S. §12-43.3-103(2)(a) of the Colorado Medical Marijuana Code also authorizes the City Council to adopt prior to July 1, 2011, an ordinance "prohibiting the cultivation or sale of medical marijuana" within the City by all persons except those patients and primary care-givers registered under C.R.S. §25-1.5-106; and

WHEREAS, the City Council has carefully considered the provisions of House Bill 10-1284, Article XVIII, Section 14 of the Colorado Constitution, and the adverse impacts of medical marijuana centers, optional premises cultivation operations, and medical marijuana - infused products manufacturers' licenses, as well as that of the continued cultivation and sale of medical marijuana by others within the City, on the health, safety and welfare of the City's inhabitants, and has determined, as an exercise of its local land use authority and in accordance with its other general police powers for the protection of the public's health, safety and welfare, that such medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers authorized under the Medical Marijuana Code should not be located within the City's corporate limits except by registered patients and primary care-givers; and

WHEREAS, the City Council has carefully considered the Controlled Substance Act (21 U.S.C. 811 *et. seq.*), the Colorado Uniform Controlled Substances Act (C.R.S. 18-18-101 *et. seq.*), and the real and possible adverse affects of cultivation and dispensing of marijuana and/or the manufacturing and sale of marijuana infused products on the health, safety, and welfare of the City and its residents; and

WHEREAS, the City Council has further considered the protections afforded to patients and primary care-givers by Article XVIII, Section 14 of the Colorado Constitution, and by C.R.S. § 25-1.5-106, that are not required to obtain a license under the Colorado Medical Marijuana Code, and desires to affirm those protections in this Ordinance.

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

Section 1. That the City Council hereby finds and determines that its authority to enact this Ordinance is granted to it and the City in the Colorado Medical Marijuana Code, § 12-43.3-101 *et seq.*; Article XVIII, Section 14 of the Colorado Constitution; and the City's Home Rule Charter.

Section 2. That a new Article 9-30 Medical Marijuana Center, Optional Premises Cultivation, and Medical Marijuana-Infused Products Manufacture - Prohibited is hereby added to the Brighton Municipal Code to read in full as follows:

Article 9-30 Medical Marijuana Center, Optional Premises Cultivation, and Medical Marijuana-Infused Products Manufacture – Prohibited

Section 9-30-10 Definitions

Section 9-30-20 Medical Marijuana Centers, Optional Premises Cultivation Operations, and Medical Marijuana-Infused Products Manufacturers' Licenses Prohibited

Section 9-30-30 Cultivation and Sale of Medical Marijuana Prohibited

Section 9-30-40 Patients and Primary Care-givers

Section 9-30-50 Penalties, Nuisance Declared

Section 9-30-10 Definitions

As used in this Article, the following words, terms and phrases shall have the following meanings:

- A. *Amendment 20* shall mean Article XVIII, Section 14 of the Colorado Constitution added to the Colorado Constitution by a statewide voter initiative adopted on November 7, 2000.
- B. *Colorado Medical Marijuana Code* shall mean Part 1 of Article 43.3 of Title 12 of the Colorado Revised Statutes, C.R.S. § 12-43.3-101, *et seq.*, as amended.
- C. *Medical marijuana* shall mean marijuana that is grown and sold pursuant to the provisions of the Colorado Medical Marijuana Code and for a purpose authorized by Amendment 20.
- D. *Medical marijuana center* shall mean a person licensed to operate a business as described in the Colorado Medical Marijuana Code that sells medical marijuana and medical marijuana-infused products to registered patients or primary care-givers as defined in Amendment 20, but is not a primary care-giver, and which a municipality is authorized to prohibit as a matter of law.
- E. *Medical marijuana-infused product* shall mean a product infused with medical marijuana that is intended for use or consumption other than by smoking, including, without limitation, to edible products, ointments, and tinctures.

- F. *Medical marijuana-infused products manufacturer* shall mean a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business manufacturing medical marijuana-infused products, and which a municipality is authorized to prohibit as a matter of law.
- G. *Optional premises cultivation operation* shall mean a person licensed pursuant to the Colorado Medical Marijuana Code to grow and cultivate medical marijuana for a purpose authorized by Amendment 20, and which a municipality is authorized to prohibit as a matter of law.
- H. *Patient* shall have the meaning set forth in Section 14(1)(c) of Amendment 20.
- I. *Person* shall mean a natural person, partnership, association, company, corporation, limited liability company, or other organization or entity, or a manager, agent, owner, director, servant, officer, or employee thereof.
- J. *Primary care-giver* shall have the same meaning as the term "primary care-giver" is given in Section 14(1)(f) of Amendment 20.

Section 9-30-20 Medical Marijuana Centers, Optional Premises Cultivation Operations, and Medical Marijuana-Infused Products Manufacturers' Licenses Prohibited

- A. The operation of medical marijuana centers, optional premises cultivation operations and medical marijuana-infused products manufacturers' licenses within the corporate limits of the City, which might otherwise be authorized under the Colorado Medical Marijuana Code, are hereby prohibited as authorized and provided in C.R.S. §12-43.3-106.
- B. It shall be unlawful and a violation under this Article for any person to establish, operate, continue to operate, cause to be operated, or permit to be operated within the corporate limits of the City, and within any area annexed into the City after the effective date of this ordinance, a facility, business or any other operation requiring a license under the Colorado Medical Marijuana Code to operate as a medical marijuana center, optional premises cultivation operation, or as a medical marijuana-infused products manufacturer.

Section 9-30-30 Cultivation and Sale of Medical Marijuana Prohibited

As authorized in C.R.S. §12-43.3-103(2)(a), no person shall cultivate or sell medical marijuana within the City's boundaries unless such person does so as a patient or primary care-giver registered in accordance with C.R.S. §25-1.5-106.

Section 9-30-40 Patients and Primary Care-givers

Nothing in this Article shall be construed to prohibit, regulate or otherwise impair the use, cultivation or possession of medical marijuana by a patient or the cultivation, possession or providing of medical marijuana by a primary care-giver for his or her patient(s), provided that any such patient or primary care-giver is doing so in accordance with all applicable provisions of Amendment 20; the Colorado Medical Marijuana Code, as amended; C.R.S. § 25-1.5-106, as amended; and the City's ordinances; and, in accordance with any applicable rules and regulations promulgated under State law.

Section 9-30-50 Penalties, Nuisance Declared

A. It is unlawful for any person to violate any of the provisions of this Article. Any such violation is hereby designated a criminal offense, and any person found guilty of violating any of the provisions of this Article shall, upon conviction thereof, be punished by a fine or imprisonment, or both, pursuant to Article 1-24. **General Penalty** of the Brighton Municipal Code, as it may be amended from time to time. Each day that a violation of any of the provisions of this Article continues to exist shall be deemed a separate and distinct violation.

B. The conduct of any activity or business in violation of this Article is hereby declared to be a public nuisance, which may be abated pursuant to the provisions for the abatement of nuisances provided in Article 8-24. **Nuisances** of the Brighton Municipal Code, as the same may be amended from time to time.

Section 3. **Section 9-28-70. Defenses** is amended by the addition of new subsections B) and C) to read as follows:

Section 9-28-70. Defenses

B) It shall be a defense to any violation charged under this Article that the alleged violator is either a registered *patient* as set forth in Section 14(1)(c) of Amendment 20, or a registered *primary care-giver* as set forth in Section 14(1)(f) of Amendment 20; and

1) has in his or her possession a valid unexpired registration card or a copy of the patient's or primary care-giver's application along with proof of the date of submission; and

2) the use, possession, or cultivation of medical marijuana by the registered patient or primary care-giver is in accordance with the provisions of Section 14 of Article XVIII of the state constitution, C.R.S. §25-1.5-106, and the rules of the state health agency.

C) A patient or primary care-giver may assert an affirmative defense to any alleged violation for use, possession, or cultivation of medical marijuana as provided in Section 14(4)(b) of Article XVIII of the state constitution. As provided in C.R.S. §25-1.5-106(14), as amended, if a patient or primary care-giver raises such an affirmative defense, confidentiality privileges related to the condition or conditions that were the basis for the recommendation shall be waived.

Section 4. **Section 9-28-80. Offenses relating to marijuana** is amended by the addition of a new subsection (g) to read as follows:

(g) Registered patients and primary care-givers are not subject to criminal prosecution under this Article for use, possession, or cultivation of medical marijuana or the possession of paraphernalia prohibited in this Article provided that the same is in accordance with Section 14, Article XVIII of the state constitution, C.R.S. §25-1.5-106(14), and the rules of the state health agency. If the use, possession, or cultivation of marijuana or possession of paraphernalia is not in accordance therewith the patient or primary care-giver may be subject to criminal prosecution for violations of this Article.

Section 5. That as of the effective date of this Ordinance, the moratorium Ordinance No. 2058 shall be repealed and superseded in all respects by this Ordinance unless for any reason this Ordinance does not become law and go into effect. In such event, Ordinance No. 2058 shall continue in full force and effect in accordance with its provisions until amended or repealed by the City Council.

Section 6. The recitals of this Ordinance are hereby adopted by Council as additional findings. The City Council hereby finds, determines, and declares that this Ordinance is enacted under the City's general police powers and as specifically authorized by State law; that it is enacted for the public's health, safety and welfare; and that it is necessary for the preservation of the public's health, safety and welfare.

Section 7. Validity. If any part or parts of this ordinance are for any reason be held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid.

INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED THIS 1st DAY OF March, 2011.

CITY OF BRIGHTON, COLORADO

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

ATTEST:

Natalie Hoel
Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker
Margaret R. Brubaker, City Attorney

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PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED BY TITLE
ONLY THIS 22nd DAY OF March, 2011.

CITY OF BRIGHTON, COLORADO

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

ATTEST:

Natalie Hoel
Natalie Hoel, City Clerk

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