

ORDINANCE NO. 7707

AN EMERGENCY ORDINANCE ADOPTING INTERIM REGULATIONS THROUGH MARCH 31, 2010, REGARDING MEDICAL MARIJUANA BUSINESSES NEAR SCHOOLS, RESIDENCES, OR OTHER MEDICAL MARIJUANA BUSINESSES, SPECIFYING THE ZONE DISTRICTS WHERE MEDICAL MARIJUANA BUSINESSES MAY BE LOCATED, AND PROVIDING RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO MAKES THE FOLLOWING FINDINGS OF FACT:

- A. Article XVIII, Section 14 of the Colorado Constitution (the "Medical Marijuana Amendment") allows the use, acquisition, possession, production, or transportation of marijuana or related paraphernalia for medical use by patients and their primary caregivers.
- B. The Medical Marijuana Amendment to the Colorado Constitution does not provide a legal manner for patients to obtain medical marijuana unless the patient grows the marijuana or the marijuana is grown by the patient's primary caregiver.
- C. In order to grow and provide marijuana for medical use, some businesses have borrowed the concept of a 'dispensary' from medical marijuana laws of other states. In Colorado, the position of most dispensaries is that such businesses can serve as the primary caregiver for several patients. The dispensaries either grow marijuana for their patients or contract with marijuana grow operations to obtain marijuana. However the Medical Marijuana Amendment does not define a "dispensary." On October 29, 2009, the Colorado Court of Appeals announced a decision that seems to invalidate the dispensary position.
- D. More than 35 medical marijuana dispensaries for the sale of medical marijuana, and several businesses growing medical marijuana, have recently opened in the city. Other cities in Boulder County and the Denver metropolitan area have established temporary or permanent regulation regarding medical marijuana, placing further pressure on Boulder as a potential location for such businesses.
- E. Evidence exists to suggest that a number of additional such businesses may try to establish themselves within the city over the coming months.
- F. Use, sale, production, possession, and transportation of medical marijuana remains illegal under federal law and marijuana remains classified as a Controlled Substance by both Colorado and federal law.
- G. The regulations for medical marijuana uses are not adequately articulated at the state level, making it appropriate for local regulation of the impacts of such uses.

- H. The Boulder Revised Code does not include medical marijuana dispensaries or marijuana production as uses that are specifically allowed or prohibited. As a result, the city manager is required to make case-by-case determinations about whether proposed marijuana related uses are substantially similar to other uses identified in the Code. A better process will exist if the Code is amended to specifically deal with medical marijuana businesses.
- I. Residents of the city have expressed concern that marijuana businesses are being established in significant numbers in the city and that, in the absence of specific regulatory provisions, the businesses are being located in ways that create conflicts with surrounding uses or otherwise harm the public health, safety, and welfare.
- J. The city has a valid interest in regulating zoning and other impacts of medical marijuana businesses in a manner that is consistent with the Medical Marijuana Amendment.
- K. The city desires to facilitate the provision of quality medical marijuana in a safe manner consistent with the Medical Marijuana Amendment through well considered land use planning and regulations. The interim limitations of this ordinance are to protect existing uses within the city and permit the established medical marijuana businesses to operate where allowed under current zoning.
- L. Some operators of medical marijuana businesses have expressed that appropriate regulations by the city will be helpful to facilitate the provision of medical marijuana in a safe manner. In other states and areas where medical marijuana dispensaries have been unregulated, an increase in crime near dispensaries has occurred. Over the past year in Boulder, several violent crimes have occurred near (or in a manner related to) medical marijuana dispensaries.
- M. It is necessary for the city council to consider land use and other regulatory measures regarding medical marijuana dispensaries in order to avoid negative secondary impacts related to increases in violent crime or other problems created by incompatible land uses. Regulation of the manner of operation and location of medical marijuana uses is necessary to protect the health, safety, and welfare of both the public and the patients.
- N. Time is required for the city manager to develop and present options to the city council with regard to appropriate zoning and other regulatory provisions that should be applicable to medical marijuana businesses. Time is also required for the city council to study and implement land use and regulatory provisions that will appropriately address the impacts of medical marijuana businesses while also being consistent with applicable state law.
- O. It is in the best interest of those who operate medical marijuana businesses and members of the community that the land use and other regulatory provisions that will be applicable to medical marijuana businesses be clearly understood before more such businesses are established in areas where they are not a use by right.
- P. A suspension on the establishment of new medical marijuana businesses near schools or near each other or in certain zone districts until March 31, 2010, (the "suspension period") is necessary for the evaluation of potential land use and other regulatory options relating to medical marijuana businesses to keep options available to the city for appropriate locations of such businesses.

- Q. During the suspension period the public interest requires that no business, activity, or use involving the distribution of marijuana in a manner inconsistent with this ordinance or applicable law shall be deemed to have been legally established.

The Planning Board held a public hearing on potential regulations for medical marijuana uses on November 5, 2009, and the terms of the suspension period described below are consistent with the recommendations of the Planning Board

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

Section 1. The city council adopts the findings in this ordinance and incorporates them herein by this reference.

Section 2. Until after 5:00 p.m. on March 31, 2010:

A. No medical marijuana business shall continue in operation unless:

1. it was legally established before November 6, 2009; or
2. the application for a business license, land use approval, building permit, or certificate of occupancy was received by the Planning Department by November 5, 2009, and the business is in operation by December 1, 2009.

B. No application for a business license, land use approval, issuance of a building permit, or issuance of a certificate of occupancy that involve or are related to the operation of businesses that sell or grow medical marijuana that were received by the city after November 5, 2009 shall be processed, received, reviewed, approved, or otherwise acted upon by the city manager unless it is for a location that meets all of the following conditions:

1. The location of the business is not within 500 feet of a public or private, primary or secondary school, or a licensed day care center.
2. The location of the business is not within 500 feet of three other medical marijuana businesses that are in operation.

3. The proposed business qualifies as a use permitted as a matter of right in the zone district it is proposed to be located, either as "retail," "professional/office," or a "greenhouse/nursery," all as defined in Chapter 9-16, "Definitions," B.R.C. 1981.

4. The proposed business is not in a dwelling unit or in a residential zoning district as described in Table 5-1 of Section 9-5-2, "Zoning Districts," B.R.C. 1981, or as an accessory use of a dwelling unit or within a residential zoning district.

Section 3. For purposes of this ordinance, the following definitions shall apply:

A. "Medical marijuana business" means: (a) any establishment that makes available marijuana in any form to any other person in exchange for money, goods or services, or (b) possession of more than six marijuana plants and two ounces of a usable form of marijuana, unless the possession is by a patient or primary caregiver as defined in Article XVIII, Section 14 of the Colorado Constitution.

B. "In operation" or "open for operation" means any business or person that has opened to the public, either by appointment or regular hours, or signed a lease for, a medical marijuana business.

Section 4. The council finds that the businesses, at the addresses that are listed on Exhibit A of this ordinance are medical marijuana businesses in operation for the purposes of this ordinance, provided that said businesses are open for business by December 1, 2009.

Section 5. No person shall violate any provision of this ordinance. Any such violation shall be enforced or otherwise prosecuted as a misdemeanor under the provisions of Title 5, "General Offenses," B.R.C. 1981.

Section 6. Nothing herein is intended to legalize any medical marijuana business that is not legal under existing applicable Colorado law. To the extent any current ordinance or provision

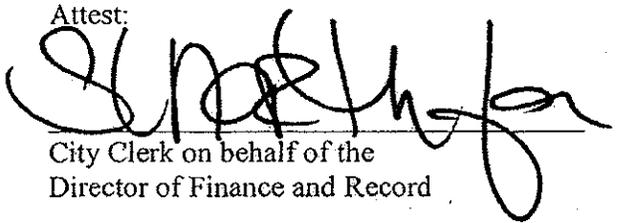
of the Boulder Revised Code is inconsistent with this ordinance, this ordinance such ordinance shall be suspended for the limited purpose of the implementation of this ordinance until March 31, 2010.

Section 7. The city council directs the city manager to study, develop, evaluate and review appropriate regulations and ordinances pertaining to medical marijuana businesses for presentation to and consideration by the city council. In the event that any recommendations involve amendment to land use regulations of the city, those recommendations shall be presented to the planning board for recommendation to the city council.

Section 8. The city council finds that a public health and safety justifies the adoption of the interim development regulations described by this ordinance as an emergency measure. The nature of the emergency is described, in part, by the findings of fact set forth in this ordinance. The city council further finds that time is required to consider reasonable regulations for medical marijuana businesses. The city council also needs sufficient time to evaluate approaches to avoiding negative impacts associated with a concentration of medical marijuana businesses and to avoid the establishment of incompatible uses located in close proximity to each other. Also, the city council needs time to consider legislation that will increase security for and mitigate or avoid any increase in violence or criminal activities attendant to unregulated medical marijuana businesses. Therefore, the city council orders that this ordinance shall be effective immediately upon its passage.

Section 9. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ, PASSED, AND ADOPTED AS AN EMERGENCY MEASURE
BY TWO-THIRDS COUNCILMEMBERS PRESENT, AND ORDERED PUBLISHED BY TITLE
ONLY this 10th DAY OF NOVEMBER, 2009.

Attest:

City Clerk on behalf of the
Director of Finance and Record

acting Mayor 