

ORDINANCE NO. 16-57

AN ORDINANCE CREATING A TWELVE (12) MONTH MORATORIUM ON THE PROCESSING OF ANY LAND USE APPROVAL OR LICENSING APPLICATION FOR A NEW MEDICAL MARIJUANA FACILITY OR THE CHANGE OF LOCATION OF A CURRENTLY OPERATING MEDICAL MARIJUANA FACILITY WITHIN THE CITY LIMITS

WHEREAS, the City of Colorado Springs ("City") is a home rule city and Colorado municipal corporation created and organized pursuant to Art. XX of the Colorado Constitution and the Charter of the City of Colorado Springs; and

WHEREAS, City Code § 7.2.102 sets forth the purpose and intent of the City's zoning and land use regulations as "to protect property values, to preserve neighborhoods and to protect private property from adjacent nuisances such as noise, excessive traffic, incompatibility of uses, inappropriate design of buildings, and visual obstructions"; and

WHEREAS, in November 2000 the voters of the State of Colorado approved Amendment 20, adding Art. XVIII, Sec. 14 to the Colorado Constitution which permits the medical use of marijuana for persons suffering from debilitating medical conditions; and

WHEREAS, City Code § 2.2.101 "declares it to be in the interest of the health, safety and welfare of the citizens of the City, and a proper exercise of the police power, to require the licensing of persons and businesses providing medical marijuana related services"; and

WHEREAS, when the City's licensing and land use regulations for medical marijuana related services and medical marijuana facilities were adopted in 2011, retail marijuana sales and related businesses were not yet sanctioned in Colorado; and

WHEREAS, in the November 2012 general election, the voters of the State of Colorado approved Amendment 64; and

WHEREAS, Amendment 64 added Section 16 of Article XVIII to the Colorado Constitution and created a limited exception from criminal liability under Colorado law for the cultivation, manufacturing, and transportation of marijuana and marijuana products; and

WHEREAS, Amendment 64 authorizes the City to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, marijuana retail stores, and retail marijuana establishments; and

WHEREAS, the City has exercised its local option and ordained it "unlawful for any person to operate a retail marijuana establishment within the City of Colorado Springs"; and

WHEREAS, the situation regarding marijuana uses statewide and within the City has fundamentally changed since the initial land use and licensing provisions related to medical marijuana facilities were adopted in 2011 and requires a new analysis regarding the land uses related to approval of new medical marijuana facilities in the future and the change of location or expansion of currently operating medical marijuana facilities; and

WHEREAS, the increasing number of and new types of uses for medical marijuana facilities has created increasing health, safety and welfare concerns throughout the City; and

WHEREAS, the City currently lacks comprehensive licensing regulations for the cultivation, manufacture or sale of medical marijuana or medical marijuana-infused products for caregivers; and

WHEREAS, the rapidly changing situation regarding marijuana regulation statewide and the considerable interest in the establishment of new medical marijuana facilities and the change of location or expansion of currently operating medical marijuana facilities within the City has illustrated the need for continued study of the impacts of new marijuana uses to determine the appropriateness and sufficiency of existing and proposed zoning and land use regulations to ensure the protection of the public health, safety and welfare in accord with City Code § 7.2.102; and

WHEREAS, under the City Code the approval of any licensing applications for medical marijuana facilities requires land use and zoning approval; and

WHEREAS, the City Council believes the processing of any land use approvals for new establishments of new medical marijuana facilities, certain licensing applications, or any other approvals requesting establishment of new medical marijuana facilities or the change of location of currently operating medical marijuana facilities prior to the City thoroughly studying adoption of updated land use, zoning or other necessary regulations will cause irreparable harm to the public health, safety and welfare; and

WHEREAS, on November 10, 2015 the City Council ordained a six (6) month moratorium on the processing of any land use approval or licensing application for a new medical marijuana facility or the change of location of a currently operating medical marijuana facility within the City limits in order grant the City time to study the issues related to land use, zoning, licensing and other necessary regulations with respect to medical marijuana facilities; and

WHEREAS, pursuant to Ordinance 15-79 a Task Force was appointed to study the issues related to land use, zoning, licensing and other necessary regulations with respect to medical marijuana facilities; and

WHEREAS, the Task Force met regularly and has recommended certain changes to current land use and licensing regulations; and

WHEREAS, the Task Force was directed by Ordinance 15-79 to review, study, develop, evaluate, and review appropriate laws and regulations pertaining to marijuana businesses for presentation to the City Council including but not limited to location and licensing criteria, fees, advertising, and other time, place, manner, and number regulations; and

WHEREAS, although the Task Force has made recommendations to City Council on some zoning and licensing criteria, the Task Force has not had sufficient time to complete all of the tasks assigned to it, including making, reviewing, studying, developing, evaluating and reviewing appropriate laws and regulations regarding fees and advertising; and

WHEREAS, in the course of its work, the Task Force has identified more issues that need further review, study, and evaluation, including but not limited to potential changes to the fire code to address hazards associated with cultivating horticulture in residential dwellings, balancing caretaker rights under Amendment 20 with the City's obligation to protect the life and property interests of its citizens through the adoption of land use and licensing regulations, cultivation in zones other than residential, and allowing co-op cultivation of medical marijuana with other types of marijuana; and

WHEREAS, the Task Force recommends instituting a new twelve (12) month moratorium on the processing of any land use approval or licensing application for a new medical marijuana facility or the change of location of a currently operating medical marijuana facility within the City limits for the purpose of granting the Task Force time to study the issues that have arisen in order to develop a comprehensive licensing and land use regulatory plan; and

WHEREAS, the City Council believes the processing of any land use approvals for new establishments of new medical marijuana facilities, certain

licensing applications, or any other approvals requesting establishment of new medical marijuana facilities or the change of location of currently operating medical marijuana facilities prior to the City studying the unresolved issues of adoption of updated land use, zoning or other necessary regulations will cause irreparable harm to the public health, safety and welfare.

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

Section 1. City Council finds and determines a situation affecting the life, health, property, and the public peace exists in that requests for any new land use, zoning or licensing approvals to establish new medical marijuana facilities or changes of location of currently operating medical marijuana facilities within the City limits are imminent and the City does not have adequate zoning or land use regulations in place to mitigate the impacts of this type of activity to preserve the public health, safety and welfare. For purposes of this Ordinance, "medical marijuana facility" shall have the same meaning as defined in the "Zoning Code of the City of Colorado Springs."

Section 2. To address this situation, City Council hereby institutes a moratorium on the processing of any new land use or licensing approvals for any new medical marijuana facility or the change of location of an existing medical marijuana facility within the City limits, for a twelve (12) month period to run to and including May 25, 2017. All existing locations of marijuana facilities will be allowed to operate at their current locations with the current effective licensing criteria. Any expanded facilities must conform to zoning regulations in effect at the time of the expansion approval process.

Section 3. City Council hereby directs City staff not to process any land use or licensing reviews or approvals for any new medical marijuana facility or the change of location of an existing medical marijuana facility unless through a fully completed medical marijuana business license application submitted to the City Clerk prior to 5:00 p.m. on November 25, 2015. Provided, however, that if an existing licensee of a medical marijuana facility provides evidence of hardship to the City Clerk that such licensee occupies premises through a leasehold expiring during the moratorium, the licensee may seek a change of location and land use and licensing approvals may commence for such change in location. The sufficiency of the evidence of hardship shall be determined in the discretion of the City Clerk and shall require, at a minimum, proof that the

current leasehold may not be extended or held over, that the licensee has received written notice of termination that will occur during the moratorium based solely on the expiration of the lease, and that there is no applicable option to purchase the leased property.

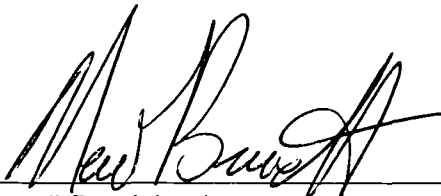
Section 4. City Council finds that a new moratorium period of twelve (12) months is reasonable and necessary to permit the City to study the impacts of new types of marijuana-related land uses and develop a comprehensive licensing and land use regulatory plan to protect and preserve the public health, safety and welfare.

Section 5. This Ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 6. City Council deems it appropriate that this Ordinance be published by title and summary prepared by the City Clerk and that this Ordinance shall be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this 26th day of April, 2016.

Finally passed: May 10, 2016



Council President

Mayor's Action:

- Approved on May 13, 2016.
- Disapproved on _____, based on the following objections:


John W. Suthers
Mayor

Council Action After Disapproval:

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of _____, on _____.
- Council action on _____ failed to override the Mayor's veto.

ATTEST:

Sarah B. Johnson
Sarah B. Johnson, City Clerk

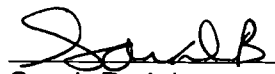



Council President

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I HEREBY CERTIFY, that the foregoing ordinance entitled **“AN ORDINANCE CREATING A TWELVE (12) MONTH MORATORIUM ON THE PROCESSING OF ANY LAND USE APPROVAL OR LICENSING APPLICATION FOR A NEW MEDICAL MARIJUANA FACILITY OR THE CHANGE OF LOCATION OF A CURRENTLY OPERATING MEDICAL MARIJUANA FACILITY WITHIN THE CITY LIMITS”** was introduced and read at a regular meeting of the City Council of the City of Colorado Springs, held on April 26, 2016; that said ordinance was finally passed at a regular meeting of the City Council of said City, held on the 10th day of May, 2016, and that the same was published by title and summary, in accordance with Section 3-80 of Article III of the Charter, in the Transcript, a newspaper published and in general circulation in said City, at least ten days before its passage.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City, this 13th day of May, 2016.


Sarah B. Johnson, City Clerk



1st Publication Date: April 29, 2016
2nd Publication Date: May 18, 2016

Effective Date: May 23, 2016

Initial: SBJ
City Clerk