

ORDINANCE NO. 10-107

AN ORDINANCE AMENDING SECTION 109 (CONFLICTING PROVISIONS) OF PART 1 (BASIC PROVISIONS) OF ARTICLE 2 (BASIC PROVISIONS, DEFINITIONS AND LAND USE TYPES AND CLASSIFICATIONS), SECTION 302 (DEFINITIONS OF USE TYPES) OF PART 3 (LAND USE TYPES AND CLASSIFICATIONS) OF ARTICLE 2 (BASIC PROVISIONS, DEFINITIONS AND LAND USE TYPES AND CLASSIFICATIONS), SECTION 105 (ADDITIONAL STANDARDS FOR SPECIFIC USES ALLOWED IN RESIDENTIAL ZONES) OF PART 1 (RESIDENTIAL DISTRICTS), SECTIONS 103 AND 203 (PERMITTED, CONDITIONAL AND ACCESSORY USES) AND 205 (ADDITIONAL STANDARDS FOR SPECIFIC LAND USES) OF ARTICLE 3 (LAND USE ZONING DISTRICTS), SECTIONS 203 (PARKING SPACE REQUIREMENTS BY USE) OF PART 2 (OFF-STREET PARKING STANDARDS) OF ARTICLE 4 (SITE DEVELOPMENT STANDARDS), AND SECTION 1503 (HOME OCCUPATION PERMIT STANDARDS AND CRITERIA) OF PART 15 (HOME OCCUPATIONS) OF ARTICLE 5 (ADMINISTRATION AND PROCEDURES), ALL OF CHAPTER 7 (PLANNING, DEVELOPMENT AND BUILDING) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO MEDICAL MARIJUANA LAND USE REGULATIONS

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

Section 1. Section 109 (Conflicting Provisions) of Part 1 (Basic Provisions) of Article 2 (Basic Provisions, Definitions and Land Use Types And Classifications) of the Code of the City of Colorado Springs 2001, as amended, is hereby amended to read as follows:

7.2.109: CONFLICTING PROVISIONS:

Where any provision of this Zoning Code conflicts with any other provision of this City Code, or any other law or ordinance, the more stringent requirement, regulation, restriction, or **land use** limitation shall apply. (Ord. 94-107; Ord. 01-42)

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Section 2. That Section 302 (Definitions of Use Types) of Part 3 (Land Use Types and Classifications) of Article 2 (Basic Provisions, Definitions and Land Use Types and

Classifications) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, is amended by adding the following amendment numerically and re-ordering the existing subsection designations accordingly:

7.2.302: DEFINITIONS OF USE TYPES:

* * *

A. Residential Use Types: Residential use types include uses providing wholly or primarily permanent living accommodations. They include institutional living arrangements providing twenty four (24) hour skilled nursing or medical care or therapeutic settings.

* * *

4. Human Service Establishment:

* * *

d. Human Service Facility:

* * *

(4) RESIDENTIAL CHILD CARE FACILITY: In accord with C.R.S. § 26.6.102(8), a Colorado state licensed establishment that provides twenty-four (24) hour care and treatment for five (5) or more children, up to the age of eighteen (18) years of age, or Court-appointed up to the age of twenty-one (21) years of age and operated under private, public, or nonprofit sponsorship. A Residential child care facility may include community-based residential child care facilities, shelter facilities, and therapeutic residential child care facilities as defined by the State of Colorado and psychiatric residential treatment facilities as defined in C.R.S. § 25.5-4-103(19.5).

* * *

e. Human Service Shelter:

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(2) DRUG OR ALCOHOL TREATMENT FACILITY: An establishment that may be Colorado State licensed or certified by the appropriate State agency that provides twenty-four (24) hour care, treatment, rehabilitation and counseling for persons with alcohol, narcotic or substance abuse or a combination thereof and operated under private, public or nonprofit sponsorship.

* * *

C. Commercial Use Types: Commercial uses include the sale, rental, service, and distribution of goods; and the provision of services other than those classified under other use types.

* * *

21. MEDICAL MARIJUANA FACILITY (MMJ Facility): An establishment licensed by the City of Colorado Springs and the State of Colorado for the growth, cultivation, acquisition, manufacture, storage, dispensing and/or sale of medical marijuana or medical marijuana infused products. The following are considered medical marijuana facility use types:

- a. **Medical Marijuana Center (MMC):** an establishment for the storage, dispensing and/or sale of medical marijuana or medical marijuana infused products.
- b. **Optional Premises Cultivation Operation (OPCO):** an establishment for the growth, cultivation, and storage of medical marijuana.
- c. **Medical Marijuana Infused Products Manufacturer (MMIPM):** an establishment for the manufacture and storage of medical marijuana infused products.

* * *

Section 3. That Section 105 (Additional Standards for Specific Uses Allowed in Residential Zones) of Part 1 (Residential Districts) of Article 3 (Land Use Zoning Districts) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

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7.3.105: ADDITIONAL STANDARDS FOR SPECIFIC USES ALLOWED IN RESIDENTIAL ZONES:

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R. Medical Marijuana Exception – Patient or Primary Caregiver: A patient who is in possession of a Colorado state issued registry identification card may grow a maximum of six (6) plants and possess medical marijuana for their medical use only in accord with Colo. Const. art. XVIII, § 14. A person designated as the primary caregiver for no more than five (5) patients may grow and possess a maximum of six (6) medical marijuana plants per patient for their patients' medical use in accord with Colo. Const. art. XVIII, § 14. These activities are allowed as accessory uses in all residential zone districts or residential units so long as:

- 1. No medical marijuana is dispensed, except to registered patients;**
- 2. No medical marijuana-infused products are manufactured or sold;**
- 3. No medical marijuana is cultivated outdoors;**
- 4. No signs regarding medical marijuana are displayed; and**
- 5. No more than one (1) caregiver per dwelling unit is permitted.¹**

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Section 4. That Section 103 (Permitted, Conditional and Accessory Uses) of Part 2 (Residential Districts) of Article 3 (Land Use Zoning Districts) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

¹ See Colo. Const. art. XVIII, § 1 for definitions of "medical use", "patient", "primary caregiver" and "registry identification card."

7.3.103: PERMITTED, CONDITIONAL AND ACCESSORY USES:

Use Types	A	R	R-1 9000	R-1 6000	R-2	R-4	R-5	SU	TND
Residential Use Types:									
Human Service Establishments									
Human Service Facility	C	C	C	C	C	P	P		P
Residential Child Care Facility	C	C	C	C	C	P	P		P
Human Service Shelter	C	C	C	C	C	C	C	C	C
Drug or Alcohol Treatment Facility	C	C	C	C	C	C	C	C	C

Section 5. That Section 203 (Permitted, Conditional and Accessory Uses) of Part 2 (Commercial Districts) of Article 3 (Land Use Zoning Districts) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

7.3.203: PERMITTED, CONDITIONAL AND ACCESSORY USES:

Use Types	OR	OC	PBC	C-5	C-6	PIP-1	PIP-2	M-1	M-2	PF	PK	PCR	APD	TND
Residential Use Types														
Human Service Establishments														
Human Service Facility	P	P	C	P	C			C						C
Residential Child Care Facility	P	P	C	P	C			C						C
Human Service Facility	C	P	C	P	C	C	C	C						C
Drug or Alcohol Treatment Facility	C	P	C	P	C	C	C	C						C
Commercial Use Types:														
Medical Marijuana Facility:														
Medical Marijuana Center	(6)	(6)	P	P	P	A(5)	A(5)	A(5)	A(5)					
Optional Premises Cultivation Operation	(6)	(6)	P	P	P	P	P	P	P					
Medical Marijuana Infused Product Manufacturer	(6)	(6)	P	P	P	P	P	P	P					

P = Permitted

C = Conditional

A = Accessory

Notes:

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5. In accord with City Code § 7.3.205(C), Accessory Retail Sales and Services.
6. Refer to City Code § 7. 3.205(N)(6) for additional standards for MMJ facilities located within the OR and OC zone districts.

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Section 6. That Section 205 (Additional Standards for Specific Land Uses) of Part 2 (Commercial Districts) of Article 3 (Land Use Zoning Districts) of Chapter 7 (Planning, Development and Building) of the Code of the City of the Colorado Springs 2001, as amended, is amended by adding the following amendment numerically and re-ordering the existing subsection designations accordingly:

7.3.205: ADDITIONAL STANDARDS FOR SPECIFIC LAND USES:

N. Medical Marijuana Facility (MMJ Facility): A medical marijuana facility shall be subject to the following additional standards:

1. The MMJ facility is prohibited within a residential zone district or dwelling unit, to the extent the facility is not subject to an exception pursuant to section 7.3.105(R).
2. The MMJ facility must hold valid local and state medical marijuana business licenses and local and state sales tax licenses, as applicable.
3. On-premise use, consumption, ingestion, or inhalation within an MMJ facility is prohibited.
4. If necessary, the facility shall install, maintain and operate an air filtration system so that odor is not detectable beyond the facility.
5. A Medical Marijuana Center (MMC) shall be located no less than four hundred feet (400') from any public or private elementary, middle, junior high or high school, or a residential child care facility or a drug or alcohol treatment facility. This minimum distance shall be measured from the nearest portion of the building used for the medical marijuana center to the nearest property line of the

school, residential child care facility or drug or alcohol treatment facility using a route of direct pedestrian access.

6. City Council specifically finds and determines that it is in the best interests of the public health, safety and welfare to forego zoning enforcement action against those MMJ facilities located within the Office Residential (OR) or Office Complex (OC) zone districts that (1) otherwise complied with the City's pre-application procedure found in Part 10 of Article 2 of Chapter 3 of this Code, (2) are found to be in compliance with Section 7.3.205(N) of this Code, and (3) are subsequently granted state and local medical marijuana business licenses. So long as these qualified MMJ facilities obtain and maintain state and local medical marijuana business licenses at the locations identified in the pre-application, the City will forego any adverse zoning enforcement action related to that MMJ facility use in the OR or OC zone.

This zoning enforcement forbearance only applies to the identified and qualified MMJ facilities owned or operated by the person or entity identified in the pre-application and shall not run with the land. Should these identified MMJ facilities cease operations for any period of time in the facilities' current OR or OC zone, the City shall enforce zoning restrictions against the reestablishment of, or any expansion of any existing MMJ facility, or any proposed new MMJ facility seeking to locate in any OR or OC zone. No MMJ facility located in an OR or OC zone district shall be declared a legal non-conforming use or be granted any "grandfathered" land use rights.

* * *

Section 7. That Section 203 (Parking Space Requirements by Use) of Part 2 (Off Street Parking Standards) of Article 4 (Site Development Standards) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

7.4.203: PARKING SPACE REQUIREMENTS BY USE:

A. Minimum Number of Off Street Parking Spaces:

* * *

Commercial Use Types:

* * *	* * *
Liquor sales	1 space per 300 square feet ¹
Medical Marijuana Facility	
Medical Marijuana Center	1 space per 300 square feet - retail
	1 space per 400 square feet - office
Optional Premises Cultivation Operation	1 space per 5000 square feet – grow & process
	1 space per 400 square feet - office
Medical Marijuana Infused Product Manufacturer	1 space per 750 square feet
Miniwarehouses	None, but spaces are required for accessory uses
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Section 8. That Section 1503 (Home Occupation Permit Standards and Criteria) of Part 15 (Home Occupations) of Article 5 (Administration and Procedures) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

7.5.1503: HOME OCCUPATION PERMIT STANDARDS AND CRITERIA:

* * *

N. Prohibited Uses: The following uses by the nature of the investment or occupation have a pronounced tendency once started to rapidly increase beyond the limits permitted for home occupations and thereby substantially impair the use and value of a residentially zoned area for residential purposes. The uses specified below are prohibited as home occupations provided that such prohibition shall not include a telephone answering service for such uses:

* * *

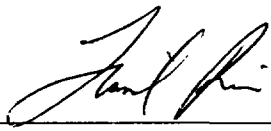
6. Medical marijuana facility, to the extent the facility is not subject to the medical marijuana exception pursuant to section 7.3.105(R) of this Code.

* * *

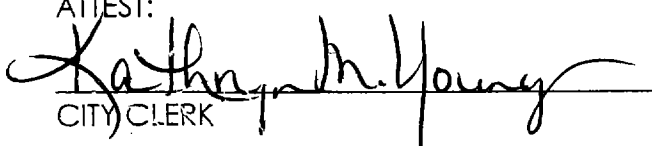
Section 9. After its passage and publication as provided by Charter, this ordinance shall not be in effect unless and until medical marijuana licensing ordinance is passed by City Council.

Section 10. 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 14th day of December, 2010.



MAYOR

ATTEST:


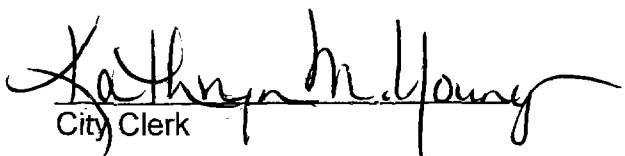
CITY CLERK

Finally passed, adopted and approved this 11th day of January, 2011.

ATTEST:



Mayor

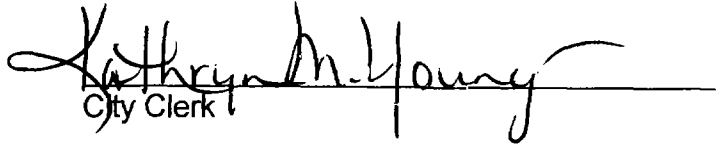


City Clerk

I HEREBY CERTIFY, that the foregoing ordinance entitled “AN ORDINANCE AMENDING SECTION 109 (CONFLICTING PROVISIONS) OF PART 1 (BASIC PROVISIONS) OF ARTICLE 2 (BASIC PROVISIONS, DEFINITIONS AND LAND USE TYPES AND CLASSIFICATIONS), SECTION 302 (DEFINITIONS OF USE TYPES) OF PART 3 (LAND USE TYPES AND CLASSIFICATIONS) OF ARTICLE 2 (BASIC PROVISIONS, DEFINITIONS AND LAND USE TYPES AND CLASSIFICATIONS), SECTION 105 (ADDITIONAL STANDARDS FOR SPECIFIC USES ALLOWED IN RESIDENTIAL ZONES) OF PART 1 (RESIDENTIAL DISTRICTS), SECTIONS 103 AND 203 (PERMITTED, CONDITIONAL AND ACCESSORY USES) AND 205 (ADDITIONAL STANDARDS FOR SPECIFIC LAND USES) OF ARTICLE 3 (LAND USE ZONING DISTRICTS), SECTIONS 203 (PARKING SPACE REQUIREMENTS BY USE) OF PART 2 (OFF-STREET PARKING STANDARDS) OF ARTICLE 4 (SIDE DEVELOPMENT STANDARDS), AND SECTION 1503 (HOME OCCUPATION PERMIT STANDARDS AND CRITERIA) OF PART 15 (HOME OCCUPATIONS) OF ARTICLE 5 (ADMINISTRATION AND PROCEDURES), ALL OF CHAPTER 7 (PLANNING, DEVELOPMENT AND BUILDING) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO MEDICAL MARIJUANA LAND USE REGULATIONS” was introduced and read at a regular meeting of the City Council of the City of Colorado Springs, held on 14th December, 2010; that said ordinance was passed at a regular meeting of the City Council of said City, held on the 11th day of January, 2011, 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 11th day of January, 2011.


City Clerk