

COUNCIL COMMUNICATION

Meeting Date: June 29, 2010	1 st Reading <u> X </u> 2 nd Reading <u> </u>	Legal Review:	Work Plan # 193.0 & 194.0	Agenda Location: Public Hearing	Agenda Item: 9A
Subject: AN ORDINANCE AMENDING SECTION 18-231 OF THE THORNTON CITY CODE TO REVISE THE DEFINITIONS AND REQUIREMENTS RELATED TO PROHIBITIONS ON MEDICAL MARIJUANA USES IN THE CITY OF THORNTON AND SECTION 26-391 TO PROVIDE CRITERIA FOR DENIAL OF A SALES AND USE TAX BUSINESS LICENSE IF THE CITY CODE PROHIBITS A USE.					
Prepared by: Robin Brown		Approved by: Jack Ethredge		Ordinance previously introduced by: _____	
Reviewed by: Jeff Coder		Presented by: Jeff Coder Deputy City Mgr – City Dev.			

KEY CONSIDERATIONS:

- This ordinance reconciles the provisions of the City’s current ordinance prohibiting medical marijuana businesses with the State law provisions created as part of House Bill 10-1284, known as the Colorado Medical Marijuana Code.
- The City Council discussed the local regulatory options specified in House Bill 10-1284 at a Planning Session on June 1, 2010.
 - The Council carefully considered Article XVIII, Section 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, and the secondary effects of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturing on the health, safety and welfare of the City of Thornton and its residents.
 - The Council directed that staff prepare amendments to Section 18-231, Medical Marijuana Prohibited Uses, to align the requirements and terminology with those included in the Colorado Medical Marijuana Code and continue to reflect Council’s past decision to prohibit medical marijuana businesses as land uses in Thornton.
- Section 26-391, Licenses, proof of exemption; responsibilities of taxpayers, is proposed to be amended to require that the approval of a tax business license is conditioned upon the proposed business and location meeting all applicable provisions of the City Code, and would allow for an appeal of a denial to the City Treasurer.

BUDGET/STAFF IMPLICATIONS:

- None.

RECOMMENDATION:

- Staff recommends that Council approve amendments to Section 18-231 of the Code to continue to prohibit medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers, as provided for in the recently signed legislation, House Bill 10-1284, which enacted a new Article 43.3 in Title 12 C.R.S. The rights of patients to use and grow marijuana within their homes would continue under Amendment 20 of the State Constitution. The amendments to Section 18-231 are necessary to align the City’s prohibition language with the requirements and terminology used in Title 12 Article 43.3 C.R.S. Staff also recommends approval of amendments to Section 26-391 to provide criteria for the denial of a sales and use tax business license if the City Code prohibits a land use.

PUBLIC NOTICE AND RESPONSE: (includes previous City Council action)

- A public notice of the hearing was advertised in the Northglenn-Thornton Sentinel on June 17, 2010.

HISTORY: (includes previous City Council action)

- The City of Thornton is a home rule municipality organized and existing under the provisions of Colorado Constitutional Article XX.
- Pursuant to the Constitution, and as further authorized by State statutes, including, but not limited to C.R.S. Section 31-15-401, the City has broad authority to exercise its police powers to promote and protect the health, safety and welfare of the community and its residents. Such powers include the power to regulate the nature and type of businesses allowed within such community.
- Planning, land use, and business regulation are matters of local concern, and Chapter 18 of the Code regulates land development in the City and allows for the classification of uses.
- The possession, growth, sale and distribution of marijuana remains a violation of federal law, and the City makes no assurances that a medical marijuana business, patient, or caregiver will not be prosecuted by the federal government.
- 1970: The federal Controlled Substances Act was enacted, which prohibits the possession, growth and sale of marijuana generally, and is thereby in conflict with Amendment 20.
- November 2000: In the general election, the voters of the State of Colorado adopted Amendment 20 to the Colorado Constitution which authorizes the medical use of marijuana in the treatment of debilitating medical conditions. Amendment 20:
 - Protects physicians from being denied any right or privilege for approving a patient's use of medical marijuana.
 - Protects patients and primary caregivers from criminal liability for possession and cultivation of marijuana in amounts authorized by Amendment 20 for the patient's medical use if approved by a physician and after submitting a registration to the State.
 - Does not authorize the commercial sale of medical marijuana, commercial cultivation or manufacturing facilities, or use facilities for patients.
 - Does not address zoning or business licenses in any form.
- March 2009: The U.S. Attorney General announced that the Justice Department would not enforce against medical marijuana use or sales as long as state laws were satisfied, creating increased interest in the operation of businesses providing medical marijuana.
- October 27, 2009: Council approved an ordinance enacting Section 18-231 of the City Code, which defined and prohibited medical marijuana dispensaries, growing facilities and use facilities as land uses in Thornton. The ordinance also:
 - Provided an exception for:
 - Patients who are utilizing or growing marijuana at the patient's primary residence only for personal use in accordance with Section 14 of Article XVIII of the Colorado Constitution.
 - Primary caregivers who grow and provide marijuana for up to five patients at the primary caregiver's primary residence in accordance with Section 14 of Article XVIII of the Colorado Constitution.
 - Required medical marijuana grown by patients or primary caregivers to be grown indoors.

- Limited the maximum number of plants grown in a residence to 36 regardless of the number of primary caregivers living in the residence.
- January 12, 2010: The City imposed a moratorium until July 14, 2010 on the submission, acceptance, processing, and approval of all applications for City licenses relating to the operation of medical marijuana businesses to allow the State Legislature the opportunity to adopt legislation regarding medical marijuana.
- During the moratorium, the Colorado Legislature adopted House Bill 10-1284 which added a new Article 43.3 to Title 12 of the Colorado Revised Statutes, to be known as the Colorado Medical Marijuana Code, and the legislation has been signed into law by the Governor and is effective July 1, 2010.
 - The Colorado Medical Marijuana Code clarifies Colorado law regarding the scope and extent of Amendment 20 to the Colorado Constitution, Article XVIII, Section 14, and at the same time authorizes a regulatory scheme for the retail sale, distribution, cultivation and dispensing of medical marijuana known as a "Medical Marijuana Center," and further authorizes licensing mechanisms known as an "Optional Premises Cultivation Operation" and a "Medical Marijuana- Infused Products Manufacturers' License."
 - C.R.S. Section 12-43.3-106 of the Colorado Medical Marijuana Code provides that a majority of the members of the governing body of a municipality may vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturer's licenses from being permitted in their municipality.
 - C.R.S. Section 12-43.3-310 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 this article."
 - C.R.S. Section 12-43.3-308(1)(c) 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, city and county, or county."
- June 1, 2010: Council discussed the local regulatory options specified in House Bill 10-1284 at a Planning Session.
- June 7, 2010: Governor Ritter signed House Bill 10-1284 into law, which added a new Article 43.3 to Title 12 of the Colorado Revised Statutes, to be known as the Colorado Medical Marijuana Code, and is effective July 1, 2010.

INTRODUCED BY: _____

AN ORDINANCE AMENDING SECTION 18-231 OF THE THORNTON CITY CODE TO REVISE THE DEFINITIONS AND REQUIREMENTS RELATED TO PROHIBITIONS ON MEDICAL MARIJUANA USES IN THE CITY OF THORNTON AND SECTION 26-391 TO PROVIDE CRITERIA FOR DENIAL OF A SALES AND USE TAX BUSINESS LICENSE IF THE CITY CODE PROHIBITS A USE.

WHEREAS, in the November 2000 general election, the voters of the State of Colorado adopted Amendment 20 to the Colorado Constitution ("Amendment 20") which authorizes the use of marijuana in the treatment of debilitating medical conditions; and

WHEREAS, Amendment 20 protects physicians from being denied any right or privilege for approving a patient's use of medical marijuana; and

WHEREAS, Amendment 20 protects patients and primary caregivers from criminal liability for possession and cultivation of marijuana in amounts authorized by Amendment 20 for the patient's medical use if approved by a physician and after submitting a registration to the State; and

WHEREAS, Amendment 20 does not authorize the commercial sale of medical marijuana, commercial cultivation or manufacturing facilities, or use facilities for patients; and

WHEREAS, Amendment 20 does not address zoning or business licenses in any form; and

WHEREAS, the federal Controlled Substances Act prohibits the possession, growth and sale of marijuana generally, and is thereby in conflict with Amendment 20; and

WHEREAS, the City has received numerous inquiries from individuals seeking to establish and license business operations for the purpose of cultivation, sale, distribution, or to otherwise engage in commerce pertaining to the use of medical marijuana in the City; and

WHEREAS, the City enacted Section 18-231 of the City Code on October 27, 2009, which prohibited medical marijuana dispensaries, growing facilities and use facilities in Thornton; and

WHEREAS, the City imposed a moratorium on the submission, acceptance, processing, and approval of all applications for City licenses relating to the operation of medical marijuana businesses in January 2010 to allow the State Legislature the opportunity to adopt legislation regarding medical marijuana; and

WHEREAS, during the pendency of the Moratorium Ordinance, the Colorado Legislature adopted House Bill 10-1284 which in pertinent part added a new Article 43.3 to Title 12 of the Colorado Revised Statutes, to be known as the Colorado Medical

Marijuana Code, and the legislation has been signed into law by the Governor and is effective July 1, 2010; and

WHEREAS, the Colorado Medical Marijuana Code clarifies Colorado law regarding the scope and extent of Amendment 20 to the Colorado Constitution, Article XVIII, Section 14, and at the same time authorizes a regulatory scheme for the retail sale, distribution, cultivation and dispensing of medical marijuana known as a "Medical Marijuana Center," and further authorizes licensing mechanisms known as an "Optional Premises Cultivation Operation" and a "Medical Marijuana-Infused Products Manufacturers' License"; and

WHEREAS, C.R.S. Section 12-43.3-106 of the Colorado Medical Marijuana Code provides that a majority of the members of the governing body of a municipality may vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturer's licenses from being permitted in their municipality; and

WHEREAS, C.R.S. Section 12-43.3-310 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 this article"; and

WHEREAS, C.R.S. Section 12-43.3-308(1)(c) 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, city and county, or county"; and

WHEREAS, the City Council has carefully considered Article XVIII, Section 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, and the secondary effects of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturing on the health, safety and welfare of the City of Thornton and its residents; and

WHEREAS, the amendments to Section 18-231, Medical Marijuana Prohibited Uses, change the definitions and requirements in the City Code to conform with the definitions created in the Colorado Medical Marijuana Code; and

WHEREAS, the amendments to Section 26-391, Licenses, proof of exemption; responsibilities of taxpayers, provide criteria for the denial of a sales and use tax business license if the City Code prohibits a use; and

WHEREAS, the City of Thornton is a home rule municipality organized and existing under the provisions of Colorado Constitutional Article XX; and

WHEREAS, pursuant to the Constitution, and as further authorized by State statutes, including, but not limited to C.R.S. Section 31-15-401, the City has broad

authority to exercise its police powers to promote and protect the health, safety and welfare of the community and its residents; and

WHEREAS, such powers include the power to regulate the nature and type of businesses allowed within such community; and

WHEREAS, planning, land use, and business regulation are matters of local concern; and

WHEREAS, Chapter 18 of the Code regulates land development in the City and allows for the classification of uses; and

WHEREAS, the possession, growth, sale and distribution of marijuana remains a violation of federal law, and the City makes no assurances that a medical marijuana business, patient, or caregiver will not be prosecuted by the federal government; and

WHEREAS, the City finds these Code amendments are necessary to promote the public health, safety and welfare.

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

1. Section 18-231 of the Code is hereby amended by the addition of the words double-underlined and the deletion of the words stricken, to read as follows:

Sec. 18-231. Medical marijuana prohibited uses.

(a) Purpose and intent. The purpose of this section is to prohibit certain land uses related to medical marijuana in the City. The City Council has carefully considered Article XVIII, Section 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, and the secondary effects of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturing on the health, safety and welfare of the City of Thornton and its residents and makes the following findings regarding its intent:

(1) Article XVIII, Section 14 of the Colorado Constitution does not authorize the commercial sale of medical marijuana, commercial cultivation or manufacturing facilities, or use facilities for patients nor address zoning or land uses in any form.

(2) The Colorado Medical Marijuana Code, C.R.S. Section 12-43.3-101, et seq., clarifies Colorado law regarding the scope and extent of Article XVIII, Section 14 of the Colorado Constitution.

(3) The Colorado Medical Marijuana Code specifically authorizes the governing body of a municipality to “vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses.”

- (4) 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.”
- (5) As a matter of the City’s local land use and zoning authority as a home rule municipality pursuant to the provisions of Article XX, Section 6 of the Colorado Constitution, and consistent with the authorization provided by the Colorado Medical Marijuana Code, no suitable location exists within the City for the operation of medical marijuana centers, medical marijuana cultivation operations, medical marijuana-infused products manufacturers or medical marijuana use facilities.

(a)(b) Definitions.

- (1) Medical marijuana ~~growing facility optional premises cultivation operation~~ shall mean and include any real property ~~or used for or upon which there is any type of structure, or any such operation that includes or is associated with a mobile transportation, distribution or delivery vehicle of any type,~~ where one or more ~~primary care-givers persons~~ cultivate medical marijuana plants for distribution of any form of marijuana at a medical marijuana ~~dispensary center~~ or directly to patients or ~~parents primary caregivers.~~
- (2) Medical marijuana ~~dispensary center~~ shall mean and include any real property ~~or used for or upon which there is any type of structure, or any such center that includes or is associated with a mobile transportation, distribution or delivery vehicle of any type,~~ where one or more ~~primary care-givers persons~~ distribute, transmit, give, dispense, sell, or otherwise provide any form of marijuana in any manner to patients or ~~parents primary caregivers.~~
- (3) Medical marijuana-infused products manufacturer shall mean and include any real property used for or upon which there is any type of structure, or any such manufacturer that includes or is associated with a mobile transportation, distribution or delivery vehicle of any type, where one or more persons manufacture, package, label or otherwise prepare medical marijuana for use or consumption other than by smoking, including but not limited to edible products, ointments and tinctures, for distribution at a medical marijuana center to patients and primary caregivers.
- (3)(4) Medical marijuana use facilities shall mean and include any real property used for or upon which there is any type of ~~or~~ structure, or any part thereof, where medical marijuana patients gather to smoke, ingest, or otherwise use medical marijuana ~~and that is not open to the general public,~~ except for the dwelling unit of one of the patients.

- ~~(4) Parent shall have the same meaning as defined in Section 14 of Article XVIII of the Colorado Constitution.~~
- (5) Patient shall ~~mean a person with a valid registry identification card issued by the State of Colorado~~ have the same meaning as defined in Section 14 of Article XVIII of the Colorado Constitution.
- (6) Primary ~~care-giver~~ caregiver shall have the same meaning as defined in Section 14 of Article XVIII of the Colorado Constitution.
- (7) Medical use shall have the same meaning as defined in Section 14 of Article XVIII of the Colorado Constitution.

(b)(c) Prohibition.

~~(1) Medical marijuana—growing—facilities, optional premises cultivation operations, medical marijuana—dispensaries centers, medical marijuana-infused products manufacturers, and medical marijuana use facilities are prohibited uses in all zoning districts.~~

(d) Patients and primary caregivers.

~~(2)(1)~~ Theis prohibition in (c) above does not apply to:

- a. Patients who are utilizing or growing marijuana at the patient's primary residence only for personal use in accordance with Section 14 of Article XVIII of the Colorado Constitution; and
- b. Primary ~~care-givers~~ caregivers who grow and provide marijuana for up to five patients, who may or may not live with the primary ~~care-giver~~ caregiver, at the primary ~~care-giver's~~ caregiver's primary residence and in accordance with Section 14 of Article XVIII of the Colorado Constitution and C.R.S. 25-1.5-106 as amended.

~~e.(2)~~ Marijuana grown in compliance with Subsection a. or b.(d)(1) above shall be grown inside a structure. No outside growing of marijuana is permitted.

(3) No patient or primary caregiver shall engage in the medical use of marijuana in plain view of, or in a place open to, the general public.

~~d. No more than 36 marijuana plants may be grown at a primary residence regardless of the number of primary caregivers living in the residence.~~

2. Section 26-391(r)(1) of the Code is hereby amended by the addition of the words double-underlined, to read as follows:

Sec. 26-391. Licenses, proof of exemption; responsibilities of taxpayers.

(r) *Sales and use tax business license.*

(1) *Application.* City sales and use tax business licenses shall be granted only upon approval of an application. The application must contain the name and address of the person desiring such license, the name of such business and the nature thereof, the location, including the street number

of such business and such other facts as may be required by the City Treasurer. Approval of a tax business license shall be conditioned upon the applicant's proposed business and location meeting all applicable provisions of the Thornton City Code. The applicant may appeal a denial by submitting a written request to the City Treasurer within twenty days of the notice of denial. The City Treasurer will consider the appeal and provide the applicant with a written final decision.

3. The City Council hereby finds, determines, and declares that this Ordinance is necessary and proper to provide for the safety, preserve the health, and improve the order of the City and the residents thereof.
4. The City Council hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv) Section 31-15-401, C.R.S. (concerning municipal police powers); (v) Section 31-15-501 (concerning municipal power to regulate businesses); (vi) the authority granted to home rule municipalities by Article XX of the Colorado Constitution; and (vii) the powers contained in the Thornton City Charter; and (viii) The Colorado Medical Marijuana Code, C.R.S. Section 12-43.3-101, *et seq.*
5. If any portion of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the constitutionality or validity of the remaining portions of this ordinance. City Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared unconstitutional or invalid.
6. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.
7. The repeal or amendment of any provision of the Code by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.
8. This ordinance shall take effect upon final passage.

INTRODUCED, READ, PASSED on first reading, ordered posted in full, and title ordered published by the City Council of the City of Thornton, Colorado, on _____, 2010.

PASSED AND ADOPTED on second and final reading on _____, 2010.

CITY OF THORNTON, COLORADO

Erik Hansen, Mayor

ATTEST:

Nancy A. Vincent, City Clerk

THIS ORDINANCE IS ON FILE IN THE CITY CLERK'S OFFICE FOR PUBLIC INSPECTION.

APPROVED AS TO LEGAL FORM:

Margaret Emerich, City Attorney

PUBLICATION:

Posted in six (6) public places after first and second readings.

Published in the Northglenn-Thornton Sentinel after first reading on _____, and after second and final reading on _____, 2010.