

ORDINANCE NO. 758

AN EMERGENCY ORDINANCE EXTENDING A TEMPORARY MORATORIUM ON THE ISSUANCE OF A SPECIAL USE PERMIT OR BUSINESS LICENSE TO ANY BUSINESS THE PURPOSE OF WHICH INCLUDES CULTIVATION, MANUFACTURE OR SALE OF MEDICAL MARIJUANA OR MEDICAL MARIJUANA-INFUSED PRODUCTS.

WHEREAS, by Ordinance No. 733 adopted on second and final reading on September 28, 2009, the City Council established regulations for medical marijuana dispensaries; and

WHEREAS, during the 2010 legislative session the Colorado General Assembly enacted House Bill 10-1284 (“HB 1284”), which established the Colorado Medical Marijuana Code to regulate medical marijuana on a state-wide basis; established a dual local and state licensing scheme for medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers; authorized local regulation and licensing requirements that are more stringent than those set forth in HB 1284; and authorized a “local option” by which the City Council or the registered electors of the City may vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers licenses; and

WHEREAS, although the terminology used in Ordinance No. 733 and HB 1284 differs, the City Council finds that both the City’s ordinance and the state law address the commercial enterprise of providing medical marijuana, and therefore conflicts should be identified and addressed; and

WHEREAS, concerns have also arisen regarding whether the City’s current regulation and licensing of medical marijuana dispensaries adopted by Ordinance No. 733 sufficiently addresses and reflects the desires and concerns of the community, whether such regulations and licensing scheme may need to be amended so as to facilitate HB 1284, or whether the health, safety and welfare of the City and its residents would more appropriately be safeguarded by exercise of the local option provided by HB 1284 to prohibit dispensaries; and

WHEREAS, by Ordinance No. 740 adopted on May 24, 2010, the City Council imposed a temporary moratorium until November 30, 2010 on the issuance of special use permits or business licenses for medical marijuana businesses, to enable the City Council to review the important policy considerations presented by HB 1284 so that any decisions with regard to changes to or impacts on the City’s local regulations would be applied to all future applications that may be filed to operate any kind of medical marijuana business under the state Medical Marijuana Code; and

WHEREAS, on September 28, 2010 the City Council and Planning Commission held a joint work session at which public comment was received regarding the City’s regulation of medical marijuana businesses, and City staff has continued to monitor rulemaking activities by the state licensing authority; and

WHEREAS, by Ordinance No. 747 adopted on October 25, 2010, the City Council extended such moratorium until May 31, 2011; and

WHEREAS, the City Council had planned to further review the issues in public meetings to be held in early 2011, but at the beginning of the 2011 legislative session House Bill 11-1043 (HB 1043) was introduced to amend the Colorado Medical Marijuana Code, so the Council deferred further consideration pending action by the state legislature; and

WHEREAS, the Colorado legislature adopted HB 1043, which revises the Colorado Medical Marijuana Code and extends the current state-wide moratorium on new licenses to July 1, 2012 and specifically authorizes any municipality that has adopted a temporary moratorium to extend such moratorium until June 30, 2012; and

WHEREAS, there are presently two medical marijuana dispensaries operating within the City of Dacono that began operations prior to adoption of Ordinance No. 733, and one medical marijuana dispensary for which a special use permit has been approved pursuant to Ordinance No. 733; and

WHEREAS, the City Council finds that pursuant to the state Medical Marijuana Code, no new licenses for medical marijuana centers, optional premises cultivation operations or medical marijuana-infused products manufacturers will be issued by the state licensing authority until on or after July 1, 2012, and therefore no prospective applicant for any such City license will be impaired by the extension of the Moratorium Ordinance as set forth herein because both a state and local license are required before any such business operations may commence; and

WHEREAS, in order to protect the public health, safety and general welfare of the inhabitants of the City of Dacono, and in order to eliminate any ambiguities as to the existing licensing and regulation of medical marijuana businesses within the City, the City Council hereby finds and determines that it is necessary and appropriate to extend the temporary moratorium as set forth herein on the issuance of special use permits and business licenses pursuant to Chapter 16, Article 15 and Chapter 6, Article 1 of the Dacono Municipal Code for any kind of business the purpose of which is the cultivation, manufacture or sale of medical marijuana or medical marijuana-infused products, whether such business is referred to as a dispensary, center, grow-house, optional premises cultivation premises, or any other term, during which time the City shall consider amendments to the Dacono Municipal Code concerning the cultivation, manufacture and sale medical marijuana and medical marijuana-infused products; and

WHEREAS, an emergency exists because the City Council finds and determines it is of critical importance to the City and its residents that such amendments to the City's ordinances, resolutions, rules and regulations be applied to all future applications to operate such medical marijuana-related businesses within the City.

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

Section 1. The foregoing recitals are hereby affirmed and incorporated herein by this reference as findings of the City Council.

Section 2. Upon the effective date of this ordinance, and until June 30, 2012, no application for approval of a special use permit or business license for a business whose purpose includes the cultivation, manufacture or sale of medical marijuana or medical marijuana-infused products shall be received, reviewed, approved or otherwise acted upon, unless otherwise provided in this ordinance

Section 3. The restrictions contained in this ordinance shall not be construed to affect (1) any applications for a special use permit and business license for which complete applications were filed prior to the effective date of the moratorium; (2) applications for changes to an existing license, other than the location of the business; or (3) applications for a new business license when the applicant is purchasing the business that holds the business license.

Section 4. Any person who submitted complete applications for a business license and a special use permit to operate a business the purpose of which includes the cultivation, manufacture or sale of medical marijuana or medical marijuana-infused products prior to the effective date of the moratorium, and who believes that application of the temporary moratorium to such application would be legally invalid, may file with the City Council a request for an exemption from the moratorium. The request shall be in writing and fully set forth the reasons why the exemption should be granted. The City Council may grant the exemption if it finds that application of the moratorium would be legally invalid under the facts presented.

Section 5. The provisions of this ordinance are temporary in nature and may be repealed by subsequent legislative enactment. The temporary moratorium established by this ordinance shall terminate as of June 30, 2012 unless sooner repealed.

Section 6. If any article, section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 7. The repeal or modification of any provision of any prior ordinance 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 judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 8. 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.

Section 9. The City Council herewith finds, determines, and declares that this ordinance is necessary to the immediate preservation of public property, health, welfare, peace, or safety. Pursuant to Charter § 3-10, this ordinance shall be effective upon adoption.

INTRODUCED, READ, ADOPTED BY AT LEAST FIVE AFFIRMATIVE VOTES, AND ORDERED PUBLISHED BY TITLE AND POSTED IN FULL THIS 23rd DAY OF MAY, 2011.

CITY OF DACONO, COLORADO

Charles Sigman, Mayor

ATTEST:

Valerie Elliott, City Clerk

Summary of Ordinance No. 758, **“AN EMERGENCY ORDINANCE EXTENDING A TEMPORARY MORATORIUM ON THE ISSUANCE OF SPECIAL USE PERMITS AND BUSINESS LICENSES FOR ANY BUSINESS THE PURPOSE OF WHICH INCLUDES CULTIVATION, MANUFACTURE OR SALE OF MEDICAL MARIJUANA”**: Extends the temporary moratorium on the issuance of a business license or special use permit to any kind of medical marijuana business until June 30, 2012.