

ORDINANCE NO. 765

AN ORDINANCE AMENDING THE DAcono MUNICIPAL CODE TO PROHIBIT ALL COMMERCIAL MEDICAL MARIJUANA OPERATIONS, INCLUDING MEDICAL MARIJUANA CENTERS, OPTIONAL PREMISES CULTIVATION OPERATIONS AND MEDICAL MARIJUANA-INFUSED PRODUCT MANUFACTURING AND TO PROHIBIT THE CULTIVATION OF MEDICAL MARIJUANA BY THOSE OTHER THAN PATIENTS AND PRIMARY CAREGIVERS.

WHEREAS, at the November 2000 election, Colorado voters approved the medical use of marijuana by enacting Article XVIII, Section 14 of the Colorado Constitution (“Amendment 20”); and

WHEREAS, Amendment 20 enables persons who are in medical need of marijuana to address symptoms or effects of a debilitating medical condition to be able to obtain and use it without fear of criminal prosecution; and

WHEREAS, the City Council finds that despite Amendment 20, the manufacture, distribution or possession with intent to distribute any controlled substance, including marijuana, is prohibited under federal law; and

WHEREAS, by Ordinance No. 733 adopted on October 12, 2009, the City Council added a new Article 26 to Chapter 16 of the Dacono Municipal Code regulating medical marijuana dispensaries; and

WHEREAS, Section 6-1 of the Dacono Municipal Code provides that no person shall establish, engage or be engaged in the operation, conduct or carrying on of any trade, profession, business, privilege, occupation or calling of any kind within the City without having first obtained a general business license; and

WHEREAS, three business licenses have been issued by the City pursuant to Article 1 of Chapter 6 of the Dacono Municipal Code, all of which expire on December 31, 2012; and

WHEREAS, on May 11, 2010 the Colorado General Assembly adopted, and the Governor thereafter signed into law, legislation known as House Bill 10-1284 (“HB 1284”) that, in pertinent part, added a new Article 43.3 to Title 12 of the Colorado Revised Statutes, known as the Colorado Medical Marijuana Code (the ‘CMMC”); and

WHEREAS, C.R.S. § 12-43.3-106 of the CMMC 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”; and

WHEREAS, C.R.S. § 12-43.3-310 of the CMMC further specifically authorizes a municipality “to prohibit the operation of medical marijuana centers, optional premises cultivation operation, and medical marijuana-infused products manufacturers’ licenses . . . based on local government zoning, health, safety, and public welfare laws. . . .”; and

WHEREAS, C.R.S. § 12-43.3-103 of the CMMC provides that “a locally approved business operating on July 1, 2010 for the purpose of cultivation, manufacture or sale of medical marijuana or medical marijuana-infused products . . . may continue to operate that business in accordance with any applicable state or local laws”; and

WHEREAS, C.R.S. § 12-43.3-308(1)(c) of the CMMC also provides that the state and local licensing authorities shall not receive or act upon a new application pursuant to the CMMC “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 recognizes that marijuana is a Schedule I substance under the federal Controlled Substances Act, which generally forbids the manufacture and distribution of such controlled substances; and

WHEREAS, the City Council further finds the U.S. Supreme Court has held, and the U.S. Department of Justice has reaffirmed, that a state cannot authorize violations of federal law such as the Controlled Substance Act, and the U.S. Department of Justice has determined that the large scale manufacture and sale of medical marijuana in Colorado and other states under state-enacted or proposed medical marijuana licensing legislation authorizes conduct contrary to federal law and threatens the federal government’s efforts to regulate the possession, manufacturing and trafficking of controlled substances; and

WHEREAS, the City Council has reviewed the 2009 California Police Chiefs Association’s Task Force on Medical Marijuana Dispensaries’ “White Paper on Marijuana Dispensaries” (the “CPCA White Paper”) detailing the adverse impacts of dispensaries such as increased violent crime, increased traffic problems, increased organized gang activity and a decrease in the quality of life for those communities in which dispensaries are located; and

WHEREAS, the City Council finds the City of Dacono is becoming an increasingly urban area and that its economic development goals depend on the City becoming more populous, but as the City grows so do the risks of adverse impacts as outlined in the CPCA White Paper; and

WHEREAS, the state Medical Marijuana Enforcement Division (“MMED”) was created pursuant to House Bill 1284 within the Department of Revenue for the purpose of regulating, licensing and controlling the cultivation, manufacture, distribution, and sale of medical marijuana; and

WHEREAS, the state MMED is funded solely by fees paid to the state in connection with medical marijuana licenses, as appropriations from the state general fund for operation of the MMED are prohibited by C.R.S. § 12-43.3-201 of the CMMC; and

WHEREAS, the state MMED has reportedly cut its staff by nearly half, from 37 staff members down to 20, because revenues are not available to fund the positions; and

WHEREAS, the City Council finds this decrease in regulation and enforcement staff by the state further intensifies the risk of adverse impacts as outlined in the CPCA White Paper of developing within the City, as the City's budget for law enforcement cannot be expanded to backfill enforcement gaps created by this state funding shortfall; and

WHEREAS, the City Council has reviewed a letter dated April 26, 2011 from Colorado Attorney General John Suthers to Governor John Hickenlooper, in which Attorney General Suthers expresses his office's "great concern" with the fact that some U.S. Attorneys, including the United States Attorney for the District of Colorado, "do not consider state employees who conduct activities under state medical marijuana laws to be immune from liability under federal law"; and

WHEREAS, the City Council is concerned that it should not place at risk of prosecution under federal law City employees who under the City's current ordinances are charged with the obligation to process land use applications and issue business licenses authorizing the sale of medical marijuana in the City; and

WHEREAS, by Ordinance No. 740 adopted on May 24, 2010, the City Council found that concerns had arisen regarding whether the City's current regulation and licensing of medical marijuana dispensaries adopted by Ordinance No. 733 sufficiently addressed and reflected 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, and enacted a temporary moratorium on the issuance of special use permits and business licenses for businesses whose purpose includes the cultivation, manufacture or sale of medical marijuana or medical marijuana-infused products; and

WHEREAS, by Ordinance Nos. 747 and 758, such temporary moratorium was extended and is currently set to expire on June 30, 2012; and

WHEREAS, during the period of this temporary moratorium, the City Council has held several work sessions to discuss various approaches to regulation and licensing of medical marijuana businesses, and the possibility of exercising the local option provided in C.R.S. § 12-43.3-106 of the CMMC to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses; and

WHEREAS, the City Council finds after careful consideration and lengthy deliberation that no level of local regulation of medical marijuana businesses sufficiently addresses the City's concerns regarding the impact of such businesses on the health, safety and welfare of the City and its residents; and

WHEREAS, Colorado courts have found, and the City Council likewise finds, there is no right to sell medical marijuana under the Colorado Constitution; and

WHEREAS, the City of Dacono is a home rule corporation and the City Council is

empowered to adopt such ordinances as are necessary and convenient to protect the health, safety and welfare of the community; and

WHEREAS, the City Council therefore finds that as a matter of the City’s police power and licensing, 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 CMMC, that no suitable location exists within the corporate limits of the City for the cultivation, manufacture, and sale of medical marijuana by the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses; and

WHEREAS, the City Council finds and declares it necessary to the preservation and furtherance of the health, safety and welfare of the citizens of the City of Dacono to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused manufacturers within the City as set forth herein; and

WHEREAS, in enacting the prohibition set forth herein, the City Council recognizes the protections afforded by Amendment 20, and hereby affirms the ability of patients and primary caregivers to otherwise be afforded the protections of Amendment 20 and the CMMC; and

WHEREAS, the City Council finds, determines and declares that it has the power and authority to adopt this ordinance pursuant to: the CMMC; Article XVIII, Section 14 of the Colorado Constitution; Article XX of the Colorado Constitution; the City of Dacono Home Rule Charter; the Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.; Part 3 of Article 23 of Title 31, C.R.S.; C.R.S. § 31-15-103; C.R.S. § 31-15-401; and C.R.S. § 31-15-501.

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

Section 1. The recitals to this ordinance are adopted as findings of the City Council in support of enactment of this ordinance.

Section 2. Chapter 6 of the Dacono Municipal Code is hereby amended by the addition of a new Article 11 to read as follows:

ARTICLE 11

Medical Marijuana

Sec. 6-300. Definitions.

For the purposes of this Article, the following terms, unless the context indicates otherwise, shall have the following meanings:

Article means this Article 11 of Chapter 6 of the Dacono Municipal Code.

Code means the Dacono Municipal Code.

CMMC means the Colorado Medical Marijuana Code, C.R.S. § 12-43.3-101, *et seq.*

Marijuana shall have the same meaning as the term “usable form of marijuana” as set forth in Article XVII, Section 14(1)(i) of the Colorado Constitution, or as may be more fully defined in any applicable state law or regulation.

Medical marijuana means marijuana that is grown and sold for a purpose authorized by Section 14 of Article XVIII of the Colorado Constitution.

Medical marijuana center means a person authorized to be licensed to operate a business as described in C.R.S. § 12-43.3-402 that sells medical marijuana to registered patients or primary caregivers as defined in Section 14 of Article XVIII of the Colorado Constitution, but is not a primary caregiver.

Medical marijuana-infused products manufacturer means a person licensed pursuant to the CMMC to operate a business as described in C.R.S. § 12-43.3-404.

Optional premises cultivation operation means a person licensed pursuant to the CMMC to operate a business as described in C.R.S. § 12-43.3-403.

Patient shall have the same meaning as set forth in Article XVIII, Section 14(1)(d) of the Colorado Constitution, or as may be more fully defined in any applicable state law or regulation.

Primary caregiver shall have the same meaning as set forth in Article XVIII, Section 14(1)(f) of the Colorado Constitution and subject to any statutory requirements or conditions, or as addressed in any applicable Colorado Department of Revenue regulations.

Sec. 6-301. Medical marijuana prohibition.

Medical marijuana businesses, including medical marijuana centers, optional premises cultivation and medical marijuana-infused manufacturer operations, are prohibited within the municipal limits of the City of Dacono. It is unlawful for any person to operate a medical marijuana business, including a medical marijuana center, an optional premises cultivation operation, or a medical marijuana-infused manufacturer operation within the City. No City license or permit for such medical marijuana business shall be issued by any City official nor shall City approval of a state application under the CMMC be given for such business by any City official. This prohibition applies irrespective of the form of

ownership or structure of the business activity and includes cooperatives and non-profits.

Sec. 6-302. Existing medical marijuana businesses.

Any medical marijuana business, including medical marijuana centers, optional premises cultivation and medical marijuana-infused manufacturer operations, operating as of the effective date of this ordinance under a valid business license expressly authorizing the commercial cultivation or distribution of medical marijuana issued by the City pursuant to Article 1 of Chapter 6 of this Code (“pre-existing medical marijuana business license”) may continue to cultivate, manufacture and sell medical marijuana or medical marijuana-infused products through December 31, 2012, provided that such business maintains such license in good standing and is in compliance with and in good standing under the provisions of the CMMC and any regulations promulgated thereunder. All pre-existing medical marijuana business licensees shall cease those activities and operations prohibited by Section 6-301 of this Code at the close of business on December 31, 2012.

Sec. 6-303. Patients and primary caregivers.

(a) Nothing in this Article shall be construed to prohibit, regulate or otherwise impair the use of medical marijuana by patients as defined by the Colorado Constitution, or the provision of medical marijuana by a primary caregiver to a patient in accordance with the Colorado Constitution, and applicable statutes and regulations.

(b) Patients and primary caregivers within the City of Dacono are authorized to engage in only those activities regarding medical marijuana that are set forth in Article XVIII, Section 14 of the Colorado Constitution as defined and limited by C.R.S. § 25-1.5-106. Patients and primary caregivers within the City of Dacono are subject to any and all restrictions, limitations, and prohibitions regarding the possession, consumption, transfer, and cultivation of medical marijuana set forth in C.R.S. § 25-1.5-106 and all administrative rules and regulations promulgated by state agencies.

Sec. 6-304. Cultivation of medical marijuana prohibited.

Except as provided in Section 6-303, the cultivation of medical marijuana is expressly prohibited in any zone district or location within the City, or within any area hereinafter annexed to the City.

6-305. Sales tax; license required.

(a) Any deliveries of medical marijuana within the City by any person who is properly licensed as a medical marijuana center under state law by another

local jurisdiction shall be subject to the City's sales tax.

(b) It shall be unlawful for any person who is properly licensed under state law by another local jurisdiction to deliver medical marijuana within the City in any form to any person who is lawfully entitled to possess or use medical marijuana under the provisions of Article XVIII, Section 14 of the Colorado Constitution without first having obtained a sales tax license from the City pursuant to Section 4-27 of this Code.

Section 3. Chapter 16, Article 2 of the Dacono Municipal Code, entitled "Definitions" is hereby amended to delete the definition of "medical marijuana dispensary."

Section 4. Chapter 16 of the Dacono Municipal Code is hereby amended by the deletion of Article 26, entitled "Medical Marijuana Dispensaries."

Section 5. Section 16-500(f) of the Dacono Municipal Code, concerning prohibited home occupations, is hereby amended by the deletion of subsection (15) listing medical marijuana dispensaries.

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. In addition to any other penalties that may exist under state, federal and local laws, any person charged with a violation of this ordinance, upon conviction thereof, shall be subject to the General Penalty in Section 1-70 of the Dacono Municipal Code, which provides for incarceration for a period not to exceed one (1) year, a fine not to exceed one thousand dollars (\$1,000.00), or both such fine and imprisonment. As provided in Section 1-70(b), each and every day during any portion of which any violation is committed, continued or permitted shall be a separate violation, and the violator shall be punished accordingly.

Section 8. 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 9. 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.

INTRODUCED, READ, ADOPTED ON FIRST READING, AND ORDERED PUBLISHED BY TITLE AND POSTED IN FULL this 14th day of May, 2012.

PUBLIC HEARING AND SECOND HEARING WILL BE THE 11th DAY OF June, 2012, AT 6:00 P.M. AT DACONO CITY HALL, 512 CHERRY STREET, DACONO, CO.

READ, ADOPTED ON SECOND READING, APPROVED, SIGNED, AND ORDERED PUBLISHED BY TITLE this ____ day of _____, 2012.

CITY OF DACONO, COLORADO

Charles Sigman, Mayor

ATTEST:

Valerie Taylor, City Clerk

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Summary of Ordinance No. 765, **“AN ORDINANCE AMENDING THE DACONO MUNICIPAL CODE TO PROHIBIT ALL COMMERCIAL MEDICAL MARIJUANA OPERATIONS, INCLUDING MEDICAL MARIJUANA CENTERS, OPTIONAL PREMISES CULTIVATION OPERATIONS AND MEDICAL MARIJUANA-INFUSED PRODUCT MANUFACTURING AND TO PROHIBIT THE CULTIVATION OF MEDICAL MARIJUANA BY THOSE OTHER THAN PATIENTS AND PRIMARY CAREGIVERS”**: Prohibits medical marijuana businesses from operating within the municipal limits of the City of Dacono.