

A BILL FOR AN ORDINANCE

ORDINANCE NO. 01

SERIES OF 2010

INTRODUCED BY: MAYOR PRO TEM RAKOWSKY

AN EMERGENCY ORDINANCE IMPOSING A TEMPORARY MORATORIUM OF ONE HUNDRED EIGHTY (180) DAYS IN DURATION ON THE PROCESSING AND APPROVAL OF ANY APPLICATION FOR A PERMIT OR LICENSE RELATED TO THE OPERATION OF A BUSINESS THAT SELLS MEDICAL MARIJUANA PURSUANT TO THE AUTHORITY GRANTED BY ARTICLE XVIII, § 14 OF THE COLORADO CONSTITUTION AND DIRECTING THE PROMPT INVESTIGATION OF THE CITY'S REGULATORY AUTHORITY OVER SUCH BUSINESSES

WHEREAS, in the November 2000 general election, the voters of the State of Colorado adopted Amendment 20 to the Colorado Constitution (Article XVIII, § 14), which authorizes and limits the sale of medical marijuana for use in the treatment of certain debilitating medical conditions;

WHEREAS, the City Council is aware that staff has received inquiries from persons who are interested in opening and operating businesses and cooperatives that would offer medical marijuana for sale or distribution, including the cultivation of marijuana ("Medical Marijuana Dispensaries");

WHEREAS, the City has no current land use or business regulations permitting the operation Medical Marijuana Dispensaries, and in fact, the City's current regulations prohibit the operation of Medical Marijuana Dispensaries in the City;

WHEREAS, the City Council is aware of potential state legislation that will be considered by the Colorado Legislature during its 2010 legislative session, and any such legislation may impact the City's regulatory authority over Medical Marijuana Dispensaries;

WHEREAS, the City Council is aware of potential federal legislation (H.R. 2835) removing marijuana from the substances banned by the federal Controlled Substances Act in certain circumstances and amending the Federal Food, Drug and Cosmetic Act, and any such legislation may impact the City's regulatory authority over Medical Marijuana Dispensaries;

WHEREAS, the City Council is also aware of the pendency of the case of *Frasher, et al. v. City of Centennial*, Arapahoe County District Court Case No. 09 CV 1456, regarding the local regulation of Medical Marijuana Dispensaries within the City of Centennial, in which the Arapahoe County District Court is considering various legal arguments, including, but not limited to, the interplay between state law, federal law, and local land use ordinances, and the final decision in this case may also have some bearing on the City's regulatory authority over Medical Marijuana Dispensaries;

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WHEREAS, the City Council is also cognizant of the recent decision of the Colorado Court of Appeals in *People v. Clendenin*, __ P.3d __ (Colo. App. 2009), 2009 WL 3464306, *reh'g denied* December 17, 2009, in which Justice Loeb, specially concurring in the decision, stated that Article XVIII, § 14 of the Colorado Constitution does not protect "original suppliers" of medical marijuana from prosecution or conviction on drug related charges, and thus Article XVIII, § 14 does not appear to authorize the cultivation of medical marijuana through what is commonly referred to as a "grow house";

WHEREAS, the imposition of a moratorium on the processing and approval of applications for City permits and licenses relating to the operation of Medical Marijuana Dispensaries will allow City staff, the City Attorney and the City Council to investigate the City's regulatory authority over Medical Marijuana Dispensaries;

WHEREAS, one hundred eighty (180) days is a reasonable length of time for the City to properly investigate the City's regulatory authority over Medical Marijuana Dispensaries; and

WHEREAS, proprietors of Medical Marijuana Dispensaries will not be unduly prejudiced by the imposition of such a temporary moratorium.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GREENWOOD VILLAGE, COLORADO, ORDAINS:

Section 1. Findings and Intent. The foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the City Council.

Section 2. Temporary Moratorium. Upon the adoption of this Ordinance, a moratorium is imposed upon the processing and approval by the City of applications for permits and licenses related to Medical Marijuana Dispensaries. City staff is directed to refuse to process, review or approve any such applications for Medical Marijuana Dispensaries during the moratorium.

Section 3. Investigation and Evaluation. During the moratorium, City staff, working with the City Attorney, shall investigate and evaluate the regulatory authority of the City over Medical Marijuana Dispensaries, including the impact of applicable court rulings and the proposed state and federal legislation, and determine whether the City must allow Medical Marijuana Dispensaries within its boundaries, and if so, what regulations should govern such Medical Marijuana Dispensaries.

Section 4. Police Power Finding. The City Council hereby finds, determines and declares that this Ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the City and the inhabitants thereof.

Section 5. Authority. 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) C.R.S. § 31-15-103, C.R.S. (concerning municipal police powers); (iv) C.R.S. § 31-15-401 (concerning municipal police powers); (v) C.R.S. § 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 Greenwood Village Home Rule Charter (the "Charter").

Section 6. Emergency Declared; Effective Date; Expiration. Pursuant to § 6.05 of the Charter, the City Council finds, determines and declares that passage of this Ordinance is necessary for the immediate preservation of public property, health, peace and safety to prevent the processing and approval of any application for a City permit or license relating to the operation of a Medical Marijuana Dispensary until the City has had a reasonable opportunity to: determine the extent of the City's regulatory authority over Medical Marijuana Dispensaries; and investigate and evaluate the impact, if any, that the United States Supreme Court case of *Gonzales, et. al. v. Raich, et al.*, 545 U.S. 1, 125 S.Ct. 2195, 162 L.Ed. 2d 1 (2005), as well as potential state and federal legislation and court rulings have on the City. The City Council further determines that the adoption of this Ordinance as an emergency ordinance is in the best interest of the citizens of the City. The moratorium imposed by this Ordinance shall commence immediately upon adoption of this Ordinance and shall expire one hundred eighty (180) days thereafter, unless repealed prior to that date or extended, if necessary, as determined by the City Council.

INTRODUCED AND APPROVED ON THE ____ DAY OF _____, 2010,
AND ORDERED PUBLISHED IN THE VILLAGER.

Nancy N. Sharpe, Mayor

ATTEST:

Susan M. Phillips, MMC, City Clerk

EFFECTIVE: _____