

O-2011-5

AN ORDINANCE

REPEALING AND REENACTING CHAPTER 5.51 OF THE LAKEWOOD MUNICIPAL CODE CONCERNING MEDICAL MARIJUANA BUSINESSES AND AMENDING TITLE 17, ARTICLES 2, 5, 9, 13, 19, AND 22 OF THE LAKEWOOD ZONING ORDINANCE RELATING TO THE LOCATION OF MEDICAL MARIJUANA BUSINESSES

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 and limits the sale of medical marijuana for use in the treatment of debilitating medical conditions. Amendment 20 added Section 14 to Article 18 of the Colorado Constitution, and created a limited exception from criminal liability under Colorado law (as opposed to federal law) for seriously ill persons who are in need of the use or consumption of marijuana for specified medical purposes and who obtain and use medical marijuana under the limited, specified circumstances described in Amendment 20; and

WHEREAS, notwithstanding the adoption of Amendment 20, marijuana is still a controlled substance under Colorado and federal law. Therefore, while Amendment 20 makes it legal for a person to obtain, possess, cultivate, grow, use, or distribute marijuana, even for medical use as contemplated by Amendment 20, there is still the potential for abuse that should be closely monitored and regulated by local authorities to the extent possible; and

WHEREAS, in February 2010, the City Council of the City of Lakewood adopted Ordinance 0-2010-1, which enacted Chapter 5.51 of the Lakewood Municipal Code providing regulatory provisions pertaining to medical marijuana dispensaries within the City of Lakewood, and amended the Lakewood Zoning Ordinance to permit the operation of such facilities in specified zone districts; and

WHEREAS, in June 2010, after the adoption of Lakewood's medical marijuana ordinance, the state legislature passed House Bill 10-1284 concerning medical marijuana businesses, which was subsequently signed into law by the Governor; and

WHEREAS, House Bill 10-1284 added a new Article 43.3 to Title 12 of the Colorado Revised Statutes, to be known as the Colorado Medical Marijuana Code, which establishes a dual licensing framework for medical marijuana facilities, introduces new terminology with respect to such facilities, significantly restricts the types of licenses that may be issued within the State of Colorado, and provides for subsequent rule-making authority by the Colorado Department of Revenue to implement the legislation; and

WHEREAS, a complete revision of Chapter 5.51 of the Lakewood Municipal Code is both necessary and appropriate to coordinate and eliminate conflicts between Lakewood's medical marijuana regulations and the State regulatory provisions set forth in the Colorado Medical Marijuana Code;

WHEREAS, Section 12-43.3-106 of the Colorado Medical Marijuana Code specifically authorizes, in part that 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 manufacturers' licenses;" and

WHEREAS, Section 12-43.3-310(1) of the Colorado Medical Marijuana Code further specifically authorizes a municipality, in part, "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, the City Council of the City of Lakewood has carefully considered the provisions of the Colorado Medical Marijuana Code, Amendment 20, and the impact of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses on the health, safety, and welfare of the City and the inhabitants thereof, and has determined as an exercise of its local land use authority that while the City is required to recognize the property rights of currently licensed premises, the City will exercise its authority by banning the location and licensing of any new medical marijuana businesses;

WHEREAS, medical marijuana-infused products manufacturing was not a permitted use under Chapter 5.51 of the Lakewood Municipal Code; the City will exercise its local authority by banning the location and licensing of any medical marijuana-infused products manufacturers.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. Chapter 5.51 of the Lakewood Municipal Code is hereby repealed in its entirety and reenacted to read in full as follows:

Chapter 5.51 Medical Marijuana

5.51.010 Purpose.

A. It is the purpose of this Chapter to adopt reasonable regulations governing the operation of medical marijuana dispensaries, referred to herein as "Medical Marijuana Centers" and medical marijuana cultivation facilities, referred to herein as "Optional Premises Cultivation Operations" consistent with the provisions of Amendment 20,

Article 43.3 of Title 12 of the Colorado Revised Statutes (the “Colorado Medical Marijuana Code”), and the implementing regulations issued by the Colorado Department of Public Health and Environment (5 CCR 1006-2) and the Colorado Department of Revenue (1 CCR 212), as amended from time to time. The objectives of this Chapter include, but are not limited to:

1. Requiring that any Medical Marijuana Business be operated in a safe manner that does not endanger the public welfare;
2. Mitigating potential negative impacts that Medical Marijuana Businesses might cause on surrounding properties and persons; and
3. Establishing a non-discriminatory mechanism by which the City can control, through appropriate regulation, the location and operation of Medical Marijuana Businesses within the City.

B. Nothing in this Chapter allows a person to:

1. Engage in conduct that endangers others or causes a public nuisance;
2. Possess, cultivate, grow, use, or distribute marijuana that is otherwise illegal under applicable law; or
3. Engage in any activity related to the possession, cultivation, growing, use, or distribution of marijuana that is not otherwise permitted under the laws of the City or the State of Colorado.

C. The provisions in this Chapter that are different from state law are consistent with the City’s responsibility to protect the public health, safety, and welfare as authorized by Section 12-43.3-305(3), C.R.S., and by the home rule authority granted to the City by Article XX of the Colorado Constitution and the Charter of the City. The City intends that both state law and this Chapter apply within the City. Where this Chapter conflicts with state law, this Chapter shall govern on all matters authorized in the Colorado Medical Marijuana Code and on all matters of local concern.

D. Adoption of this Chapter is not intended to waive or otherwise impair or limit any portion of the local option available to the City under Section 12-43.3-106, C.R.S.

5.51.020 Definitions.

A. Except as set forth below, terms used in this Chapter shall have the definitions found in C.R.S. 12-43.3-101, *et seq.*

“**Amendment 20**” means the voter-initiated amendment to the Colorado Constitution adopted November 7, 2000, codified as Section 14 of Article 18 to the Colorado Constitution.

“Applicant” means a person who is making an application for a Medical Marijuana Center license or an Optional Premises Cultivation Operation license under this Chapter.

“City” means the City of Lakewood, Colorado.

“City Manager” means the City Manager of the City of Lakewood or his/her designee.

“Colorado Medical Marijuana Code” means Article 43.3 of Title 12, C.R.S.

“License” means a license to operate a Medical Marijuana Center or an Optional Premises Cultivation Operation issued by the City pursuant to this Chapter.

“Licensee” means the person to whom a license has been issued pursuant to this Chapter.

“Medical Marijuana Business” means an Optional Premises Cultivation Operation or Medical Marijuana Center.

“Medical Marijuana Care-Giver Facility” means a business licensed by the City pursuant to Ordinance O-2010-1 to sell and dispense medical marijuana subject to the requirements of Amendment 20 and which license expires on June 30, 2011 and cannot be renewed.

“Medical Marijuana Center” means a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business that distributes medical marijuana to patients or primary caregivers, but who is not a primary caregiver.

“Optional Premises Cultivation Operation” means a licensed medical marijuana business that:

1. Is under the identical ownership as the Licensed Medical Marijuana Center;
2. Produces and harvests medical marijuana plants for a medical use for distribution by such Medical Marijuana Center; and
3. Is located in the same facility as the licensed premises of the owner’s Medical Marijuana Center.

5.51.030 License Required.

A. A Medical Marijuana Business may only be operated if:

1. A Medical Marijuana Care-giver Facility license was issued by the City at the same location on or before the effective date of this Chapter or an application for a

Medical Marijuana Care-giver Facility license was submitted to the City on or before July 1, 2010 and the decision of the City Clerk was still pending as of the effective date of this Chapter; and

2. A Medical Marijuana Business license is issued by the City pursuant to and after the effective date of this Chapter; and

3. A Medical Marijuana Center license or a Medical Marijuana Center license and an Optional Premises Cultivation license is issued by the State of Colorado pursuant to the Colorado Medical Marijuana Code.

B. A separate license shall be required for each Medical Marijuana Center and each Optional Premises Cultivation Operation. The requirement to obtain a Medical Marijuana Business license is in addition to the requirement to obtain a sales tax license and any other license required by the City. No sales tax license may be issued for a Medical Marijuana Center until a license has been issued pursuant to this Chapter.

C. The requirement to obtain a Medical Marijuana Center license shall apply regardless of whether or not the applicant had previously applied for or obtained a Medical Marijuana Care-giver Facility License, and regardless of whether or not the Medical Marijuana Care-giver Facility has commenced operation prior to the effective date of this Chapter. Any previously licensed Medical Marijuana Care-giver Facility and any Medical Marijuana Center that commenced doing business before the effective date of this Chapter that does not or cannot meet the licensing requirements set forth in this Chapter shall not be issued a Medical Marijuana Center license and must cease operation immediately upon denial of a Medical Marijuana Center license regardless of whether an appeal of the denial is filed.

D. Medical Marijuana-Infused Products Manufacturing facilities, as defined in Section 12-43.3-404, C.R.S. are hereby prohibited within the City in accordance with Section 12-43.3-106, C.R.S. and no such license shall be available in the City.

5.51.035 Restrictions on Medical Marijuana Business.

Any Medical Marijuana Business for which a license is issued under this Chapter shall be subject to the following restrictions:

A. A building or structure containing a Medical Marijuana Business may be repaired, but it may not be structurally altered unless the building, structure, or a portion thereof, is declared unsafe by the City building inspector, in which case the building, structure, or portion thereof declared unsafe may be strengthened, altered, or restored to a safe condition.

B. No Medical Marijuana Business may be enlarged, extended or expanded. An extension or expansion shall include any increase in the floor area of the building or structure of the licensed premises of the Medical Marijuana Care-giver Facility.

C. If a Medical Marijuana Business discontinues operation for a period of one hundred twenty (120) days or more, regardless of any intent to resume operations, any future use of the building or structure shall not be for a Medical Marijuana Business. The City Manager may, in his or her sole discretion, extend the one hundred twenty (120) day period if he or she finds that extenuating circumstances exist.

5.51.040 Location of Medical Marijuana Business.

A. It shall be unlawful to operate or to cause or permit the operation of a Medical Marijuana Business:

1. In any location that does not comply with the Lakewood Zoning Ordinance, except that any business for which the City had issued a sales tax license for a Medical Marijuana Care-giver Facility prior to the effective date of this Ordinance 0-2010-1 for a location that is not in a zone district in which a Medical Marijuana Center is a permitted use may continue to operate as a legal non-conforming use subject to the provisions of Article 16 of Title 17 of the Lakewood Municipal Code;

2. Within three-quarters (3/4) of a mile of any other licensed Medical Marijuana Center;

3. Within one thousand (1,000) feet of any elementary, middle or high school, or any athletic facilities associated with such schools, regardless of the jurisdiction in which the school is located;

4. From a moveable, mobile or transitory location. A Medical Marijuana Business shall be permitted to operate only from a fixed location.

B. For the purposes of this Section, the minimum distance shall be measured in a straight line, without regard to intervening structures, from the nearest property line of one Medical Marijuana Business to the nearest property line of the parcel on which the structure of another Medical Marijuana Business is located, or to the nearest property line of the parcel on which the school or athletic facility is located, whichever is applicable.

5.51.045 Relocation.

A. After a license for a Medical Marijuana Center and/or Optional Premises Cultivation Operation has been issued by the City and the State of Colorado pursuant to the Colorado Medical Marijuana Code, the licensee may be allowed to apply for a relocation of the Medical Marijuana Business. The licensee may only relocate from a location for which a Medical Marijuana Care-giver Facility license was issued by the City on or before the effective date of this Chapter or an application for a Medical Marijuana Care-giver Facility license was submitted to the City on or before July 1, 2010 and the decision of the City Clerk was still pending as of the effective date of this Chapter.

- B. If the licensee has been issued a license for both a Medical Marijuana Center and an Optional Premises Cultivation Operation, both licensed businesses must be relocated to the same facility.
- C. No Medical Marijuana Business may be relocated to a new location that results in any increase in the floor area of the building or structure of the licensed premises of the Medical Marijuana Care-giver Facility.
- D. If the application to relocate a Medical Marijuana Business is to a building that is not in existence, the applicant shall file a plot plan and a detailed sketch for the interior and submit an architect's drawing of the building to be constructed.
- E. The application to relocate a Medical Marijuana Business shall include written verification from the City that the location requirements imposed by this Chapter and the Lakewood Zoning Ordinance have been met.
- F. At the time of submitting any application for relocation to the City Clerk, each applicant shall pay an application processing fee of two thousand dollars (\$2,000.00). In the future, all fees will be set by City Council resolution. Such application fee shall be nonrefundable.
- G. The Lakewood Police Department will conduct a Crime Prevention through Environmental Design (CPTED) evaluation to address any security concerns regarding the exterior of the facility. A police agent trained in conducting CPTED evaluations shall conduct the review. The purpose of the CPTED review is to create an environment that impedes criminal activity by improving lighting, mitigating obstructions caused by such things as trees, bushes, fences, and dumpsters that create blind spots or hiding spots, and using security cameras to monitor the property. The Police Department shall promptly forward the results and recommendations of the CPTED evaluation to the City Clerk for administrative review.
- H. An application for relocation shall be administratively approved or denied by the City Clerk pursuant to the criteria set forth in Section 5.51.070 within thirty (30) days after submittal of the application.

5.51.050 Application and Application Fee.

- A. All applicants for a Medical Marijuana Business license shall file a completed application for such license with the City Clerk on forms to be provided by the City and/or the Colorado Department of Revenue. Such applications must be submitted to the City on or before June 1, 2011. Said applications must fulfill and meet all the requirements of Amendment 20, the Colorado Medical Marijuana Code and any implementing regulations, and this Chapter, as amended from time to time. The City shall have the authority to investigate the background of the applicant and all individuals

required by the Colorado Medical Marijuana Code to undergo a background investigation.

B. All applicants shall file at the time of application the floor plans and specifications for the interior of the premises of the Medical Marijuana Business that were submitted to the Colorado Department of Revenue.

C. Any application for an Optional Premises Cultivation license must be filed at the same time the application for the associated Medical Marijuana Center license is filed.

D. The City Clerk shall not accept any application that is not complete in every detail including the submission of fingerprints. If the City Clerk discovers an omission or error, the application shall be rejected and returned to the applicant for completion or correction without further action by the City Clerk. All fees shall be returned with the application. For the purposes of this Chapter, the date the City Clerk accepts an application that is complete in every detail shall be considered the filing date. A separate application shall be submitted for each Medical Marijuana Center and each Optional Premises Cultivation License.

E. Each individual applicant for a Medical Marijuana Center license shall pay an application processing fee of three thousand dollars (\$3,000) at the time of submitting such application to the City Clerk. Each individual applicant for a Optional Premises Cultivation Operation license shall pay an application processing fee of five hundred dollars (\$500) at the time of submitting such application to the City Clerk. In the future, all fees required by this Chapter will be set by City Council resolution. Such application fee shall be nonrefundable, unless the application is returned for being incomplete. The City Clerk shall be authorized to reduce the application fee if any part of the Investigation of Application has been conducted on the same applicant in accordance with Section 5.51.060 within one year prior to the application date.

F. Applications for a Medical Marijuana Business License shall only be accepted for locations that were currently licensed by the City as a Medical Marijuana Care-giver Facility on or before the effective date of this Chapter or for any location for which a Medical Marijuana Care-giver Facility license application was submitted to the City by July 1, 2010 and is still pending.

5.51.060 Investigation of Application.

A. When a complete application for a license has been accepted for filing, the required individuals have been fingerprinted and photographed, and the license fee has been paid, the City Clerk shall transmit the application to the Lakewood Police Department. In addition to any investigations required under state law, the Lakewood Police Department will do the following:

1. Investigate the background of each individual applicant and each of the other individuals required to be listed in the license application, and investigate the accuracy of all the information submitted as a part of the application. The investigation required by this section should be completed within ninety (90) days from the date the application is submitted to the Police Department. Failure to complete the investigation within ninety (90) days shall not constitute approval of the application. The Police Department shall promptly forward the application and its completed investigation to the City Clerk for administrative review; and

2. Conduct a Crime Prevention through Environmental Design (CPTED) evaluation to address any security concerns regarding the exterior of the facility. A police agent trained in conducting CPTED evaluations shall conduct the review. The purpose of the CPTED review is to create an environment that impedes criminal activity by improving lighting, mitigating obstructions caused by such things as trees, bushes, fences, and dumpsters that create blind spots or hiding spots, and using security cameras to monitor the property. The Police Department shall promptly forward the results and recommendations of the CPTED evaluation to the City Clerk for administrative review.

B. Concurrent Review. The City Clerk may request that the state licensing authority conduct a concurrent review of a license application pursuant to Section 12-43.3-302(5)(a), C.R.S. of the Colorado Medical Marijuana Code, and may withhold final review and action on the locally-filed application until the state licensing authority's concurrent review is concluded and the results thereof are communicated to the City Clerk.

5.51.070 Approval or Denial of Application.

A. An application with completed background investigation shall be administratively approved or denied by the City Clerk. This license shall not be effective until the license has been issued to the applicant by the City Clerk. An application shall be approved and a license shall be issued unless the City Clerk or his/her designee finds that the applicant or any of the individuals required by Section 5.51.050 to undergo a background investigation:

1. Knowingly made a false statement or knowingly gave false information in connection with the application;

2. Is prohibited by Section 12-43.3-307, C.R.S. to be a licensee;

3. Will operate the Medical Marijuana Business as a business prohibited by local or state law, statute, rule or regulation;

4. Has had a Medical Marijuana Business license, care-giver certificate, or similar local or state license or approval revoked or suspended within five (5) years of the date of the current application; or

5. Has failed to comply with the results of the CPTED evaluation unless the City Clerk finds good cause to grant the applicant up to an additional ninety (90) days time to implement CPTED requirements; or

6. Has otherwise failed to comply with the provisions of this Chapter, the Colorado Medical Marijuana Code, Amendment 20, or any implementing statutes and administrative regulations, as amended from time to time.

B. The applicant and any other individuals listed on the application may present written documentation to the City Clerk regarding his/her criminal history, including but not limited to evidence of mitigating factors, rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license.

5.51.080 Appeal of Application Denial.

A. **Written Findings.** In the event that the City Clerk denies a license application, the City Clerk shall prepare written findings of fact stating the reasons or basis for the denial. A copy of the City Clerk's findings shall be sent by certified mail, return receipt requested, to the address of the applicant as shown in the application. If no appeal is filed with the City Manager within fourteen (14) days of the mailing, the denial of the license application shall become a final administrative decision of the City.

B. **Appeal Hearing.** In the event that the City Clerk denies a license application, an applicant shall have the right to a quasi-judicial hearing before the City Manager for the purpose of appealing the City Clerk's administrative decision. Any request for a hearing must be made in writing to the City Manager within fourteen (14) days of the date of the mailing of the City Clerk's written findings and denial of the license application. The written request for a hearing must set forth all grounds relied upon for the appeal. The hearing shall be conducted within thirty (30) days of the City Manager's receipt of the written request for a hearing unless the City Clerk grants an extension for good cause not to exceed an additional thirty (30) days. Any further extension may only be granted by the City Manager.

C. **Closure of Business Pending Appeal.** Upon denial of the license application by the City Clerk, the business shall be deemed unlicensed and must cease operation during the pendency of the appeal.

D. **Scheduling.** Upon receipt of a timely request for a hearing, the City Manager shall schedule a hearing and notify the applicant of the date, time, and place of the hearing. The City may make such notification by telephone provided that a written notice shall also be mailed or delivered to the applicant at the applicant's address shown in the application. An attorney or other representative may represent an

applicant at the hearing. An applicant or the City may request a continuation or postponement of the hearing date from the City Manager.

E. Subpoenas. The City Manager shall have the power to administer oaths, issue subpoenas to require the presence of persons, and when necessary, grant continuances. Subpoenas may be issued to require the presence of persons and production of papers, books, and records necessary to the determination of any hearing which the City Manager conducts. It is unlawful for any person to fail to comply with any subpoena issued by the City Manager. A subpoena shall be served in the same manner as a subpoena issued by the District Court of the State. Upon failure of any witness to comply with such subpoena, the City Attorney or the applicant may:

1. Petition any judge of the Municipal Court of the City, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, requesting that the court, after hearing evidence in support of or contrary to the petition, enter its order compelling the witness to attend and testify or produce books, records or other evidence, under penalty of punishment for contempt in case of willful failure to comply with such order of court; or

2. Petition the District Court in and for Jefferson County, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, requesting that the court, after hearing evidence in support of or contrary to the petition, enter its order as in other civil actions, compelling the witness to attend and testify or produce books, records or other evidence, under penalty of punishment for contempt in case of willful failure to comply with such order of court.

F. Conduct of Hearing. At the hearing, the City Manager shall hear and consider such evidence and testimony presented by the City, the applicant, or any other witnesses called by the City or the applicant which evidence is relevant to the stated reason and basis for the City Clerk's denial of the license application. The City Manager shall conduct the hearing in accordance with quasi-judicial proceedings and shall permit the relevant testimony of witnesses, cross-examination, and presentation of relevant documents and other evidence. The formal rules of evidence shall not apply. The hearing shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall pay the reasonable cost of preparing the record.

G. Written Order. Within fourteen (14) days following the conclusion of the hearing, the City Manager shall send a written order by delivery confirmation, to the applicant at the address as shown on the application. The order shall include findings of fact and a final decision concerning the approval or denial of the application. In the event that the City Manager concludes that the application is approved, such approval shall constitute approval by the City Clerk, and the applicant may seek issuance of a license in accordance with this Chapter.

H. Appeal of Order. The order of the City Manager made pursuant to this section shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). For purposes of any appeal, the City Manager's decision shall be final upon the date on which the applicant receives the order or four (4) days after the date of mailing, whichever is earlier.

5.51.090 License Fee.

The license fee for any license issued pursuant to this Chapter shall be payable to the City Clerk at the time an initial license application is filed or at the time a renewal application is filed. The license fee is in addition to any application fee required by this Chapter. The license fee shall be nonrefundable unless an application is denied. The fee for a Medical Marijuana Center license shall be two thousand five hundred dollars (\$2,500.00). The fee for an Optional Premises Cultivation Operation license shall be five hundred dollars (\$500.00). In the future, all fees required by this Chapter will be set by City Council resolution.

5.51.100 Term of the License.

A Medical Marijuana Business license shall be valid for a period of two (2) years from date of issuance, unless revoked or suspended.

5.51.110 Renewal.

A. As a prerequisite to renewal of an existing license issued pursuant to this Chapter, the applicant must pay the biennial license fee and file a completed renewal application with the City Clerk at least forty-five (45) days prior to the date of the license expiration. The City Clerk may waive the timely filing requirement where the licensee demonstrates, in writing, that the failure to timely file is not solely the result of the licensee's negligence; provided that no renewal application shall be accepted by the City Clerk from any licensee after the license for which renewal is requested has expired.

B. A license that is under suspension may be renewed in accordance with this Section provided that such renewal shall not modify, alter, terminate, or shorten the period or term of the suspension. The suspension of a license shall not extend the term of the license or otherwise relieve the licensee from timely seeking renewal of the license in accordance with this Section. The City Clerk may administratively renew a license.

5.51.120 Denial of Renewal, Suspension or Revocation of License.

A. Denial of Renewal, Suspension or Revocation. The City Manager may deny renewal of, suspend, revoke, modify, or place conditions on the continuation of a Medical Marijuana Business license upon a finding that the licensee:

1. Has violated any of the provisions of this Chapter;
2. Has violated the Colorado Medical Marijuana Code, the administrative regulations issued by the Colorado Department of Public Health and Environment found at 5 CCR 1006-2, the administrative regulations issued by the Colorado Department of Revenue found at 1 CCR 212, or the statutes and administrative regulations implementing Amendment 20, as are amended from time to time;
3. Has operated the Medical Marijuana Business in a manner that adversely affects the public health, welfare, or safety of the immediate neighborhood in which the Medical Marijuana Center is located. Evidence to support such a finding includes but is not limited to the occurrence of disturbances upon the licensed premises or upon any parking areas, sidewalks, access ways or grounds within the immediate neighborhood of the licensed premises involving a patient or customer, manager, employee, or the licensee;
4. Has violated City, state, or federal law or regulation regarding the possession, distribution, or cultivation of controlled substances, other than a federal law or regulation concerning the possession, sale or distribution of marijuana that conflicts with Amendment 20;
5. Has failed to comply with the results of the CPTED evaluation regarding the exterior of the facility; or
6. Has allowed or permitted any other person to violate any of the provisions of this Chapter or engage in criminal conduct on the premises.

B. Other Enforcement Authorized. A licensee shall be entitled to a quasi-judicial hearing before the City Manager if the City seeks to deny renewal, suspend, revoke, modify, or place conditions on a license based on a violation of this Chapter.

1. When there is probable cause to believe that a licensee has violated or permitted a violation of this Chapter or other law, the City Attorney may file a written complaint with the City Manager setting forth the circumstances of the violation.

2. The City Manager shall send a copy of the complaint by delivery confirmation to the licensee at the address as shown on the license application, together with a notice to appear before the City Manager for the purpose of a hearing to be conducted at a specified date and time and at a place designated in the notice to show cause why the licensee's license should not be suspended. Such hearing shall be held on a date within thirty (30) days following the date of mailing of the complaint and notice to the licensee unless the City Clerk grants an extension for good cause not to exceed an additional thirty (30) days. Any further extension may only be granted by the City Manager. A licensee may be represented at the hearing by an attorney or other representative.

C. Conduct of Hearing. At the hearing, the City Manager shall hear and consider such evidence and testimony presented by the Police Department or other enforcement officers, the City, the licensee, or any other witnesses called by the City or the licensee, which evidence is relevant to the violations alleged in the complaint. The City Manager shall conduct the hearing in conformity with quasi-judicial proceedings and shall permit the relevant testimony of witnesses, cross-examination, and presentation of relevant documents and other evidence. The formal rules of evidence shall not apply. The hearing shall be recorded either stenographically or by electronic recording device. Any person requesting a transcript of such record shall pay the reasonable cost of preparing the record. Subpoenas may be issued in accordance with the provisions of Section 5.51.080.

D. Written Findings. The City Manager shall make written findings of fact from the statements and evidence offered and shall reach a conclusion as to whether the alleged violations occurred. Such written findings and conclusion shall be prepared and issued within fourteen (14) days following the conclusion of the hearing. If the City Manager determines that a violation which warrants denial of renewal, suspension, revocation, modification, or conditioning of the license pursuant to this section did occur, he or she shall also issue an order suspending, revoking, modifying, or placing conditions on the license. A copy of the findings, conclusion, and order shall be hand delivered or mailed to the licensee by delivery confirmation, at the address as shown on the license application.

E. Appeal. The order of the City Manager shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). For purposes of any appeal to the District Court, the City Manager's decision shall be final either on the date the applicant receives the findings, conclusion, and order or four (4) days following the date of mailing of the City Manager's decision, whichever is earlier.

F. No Refund and Costs of Enforcement. In the event of suspension, revocation, modification, conditioning, or cessation of business, no portion of the license fee shall be refunded. Any person whose license is suspended, revoked, modified, or conditioned under this Section shall be required to pay the costs incurred by the City to enforce this Chapter, including but not limited to attorneys' fees, expert witness and/or consultant fees.

5.51.130 Transferability.

A. A license issued under this Chapter shall not be transferable except as provided in this Section and under the Colorado Medical Marijuana Code. For a transfer of ownership, a license holder shall apply to the City on a form to be provided by the Colorado Department of Revenue and/or by the City.

B. Said applicant or any of the individuals required by the Colorado Medical Marijuana Code to undergo a background investigation shall submit a completed

application for a Medical Marijuana Business license. A report shall be required for the transfers of capital stock of any corporation regardless of size.

C. At the time of submitting any application for transfer of ownership to the City Clerk, each applicant shall pay an application processing fee of one thousand dollars (\$1,000.00). In the future, all fees will be set by City Council resolution. Said application fee shall be nonrefundable.

D. An application with completed background investigation shall be administratively approved or denied by the City Clerk pursuant to the criteria set forth in Section 5.51.070.

5.51.140 Managers.

A. Each licensee shall manage the licensed premises himself or herself or employ a separate and distinct manager on the premises and shall report the name of the manager to the City. The licensee shall include the name of the manager on the license application.

B. The licensee shall report any change in manager to the City within thirty (30) days of the change.

C. An application with completed background investigation shall be administratively approved or denied by the City Clerk pursuant to the criteria set forth in Section 5.51.070 within thirty (30) days after submittal of the application.

D. At the time of submitting any application for a change in manager to the City Clerk, each applicant shall pay an application processing fee of seventy five dollars (\$75.00) plus an application investigation fee in the amount then charged by the Colorado Department of Public Safety. In the future, all fees will be set by City Council resolution. Such application fee shall be nonrefundable.

5.51.150 Unlawful acts.

A. It shall be unlawful for a person to:

1. Consume or allow any other person to consume, inhale, or ingest any marijuana or product containing marijuana or alcoholic beverages or a controlled substance on, or within, the premises of a Medical Marijuana Business; or

2. With knowledge, to permit or fail to prevent the use of his or her registry identification by any other person for the unlawful purchasing of medical marijuana;

B. It is unlawful for a person licensed pursuant to this article to:

1. Dispense more than the amount of medical marijuana permitted under the provisions of Amendment 20 and/or the Colorado Medical Marijuana Code or the enabling administrative regulations;
2. Distribute, sell, or transfer any marijuana or any product containing marijuana to anyone other than a registry patient, a primary caregiver, or a person licensed pursuant to the Colorado Medical Marijuana Code;
3. Store or display any marijuana or product containing marijuana outdoors, or in a manner in which it is visible from a public sidewalk or right of way;
4. Sell, serve, or distribute medical marijuana at any time other than between the hours of 8:00 a.m. and 7:00 p.m. Monday through Sunday;
5. Sell or allow any person to consume alcohol on the premises of a Medical Marijuana Business;
6. Violate any of the provisions of Amendment 20, or the statutes or administrative regulations implementing Amendment 20 or the Colorado Medical Marijuana Code, or the enabling administrative regulations, as are amended from time to time;
7. Employ any person under the age of twenty-one (21) years old;
8. Offer for sale or solicit an order for medical marijuana in person except within the licensed premises;
9. Buy medical marijuana from a person not licensed to sell as provided in the Colorado Medical Marijuana Code;
10. Sell medical marijuana except in the permanent location specifically designated in the license for sale;
11. Have on the licensed premises medical marijuana or marijuana paraphernalia that show evidence of the medical marijuana having been consumed or partially consumed;
12. Offer anything of value to a physician for making patient referrals to the licensed Medical Marijuana Center;
13. Fail to report a transfer as required by Section 5.51.130; or
14. Fail to report the name of or a change in managers as required by Section 5.51.140.

5.51.160 Ventilation.

A Medical Marijuana Business shall be equipped with a proper ventilation system that filters out the odor of marijuana so that the odor is not capable of being detected by a person with a normal sense of smell at the exterior of the Medical Marijuana Center or any adjoining business, parcel, or tract of real property.

5.51.170 Security Requirements for Licensed Premise.

All Medical Marijuana Businesses shall comply with the security requirements for the licensed premises as set forth in the Colorado Medical Marijuana Code and enabling regulations.

5.51.180 Right of Entry.

The application for a Medical Marijuana Business license shall constitute consent of the licensee and his agents or employees to permit the Lakewood Police Department or any other authorized agent of the City to conduct routine inspections, from time to time, of any licensed Medical Marijuana Center to ensure compliance with the requirements of this Chapter, the Colorado Medical Marijuana Code, or any other applicable law, rule or regulation.

5.51.190 Required Warnings to be Posted.

There shall be posted in a conspicuous location in each Medical Marijuana Business a legible sign containing the following warnings:

- A. A warning that the use of medical marijuana may impair a person's ability to drive a motor vehicle or operate machinery, and that it is illegal under state law to drive a motor vehicle or to operate machinery when under the influence of, or impaired by, marijuana;
- B. A warning that possession and distribution of marijuana is a violation of federal law; and
- C. A warning that it is unlawful for a person to consume or allow any other person to consume, inhale, or ingest any marijuana or product containing marijuana or alcoholic beverages or a controlled substance on, or within, the premises of a Medical Marijuana Business.

5.51.200 Duties of Licensee.

Each licensee shall:

- A. Post the license in a conspicuous location on the premises of the Medical Marijuana Business that may be readily seen by persons entering the premises;
- B. Comply with all of the terms and conditions of the license;
- C. Comply with all of the requirements of this Chapter;
- D. Comply with all other applicable City ordinances;
- E. Comply with all state laws and administrative regulations pertaining to the medical use of marijuana, including, but not limited to, Amendment 20; the Colorado Medical Marijuana Code; Section 18-18-406.3, C.R.S.; and the enabling administrative regulations; and
- F. Comply with all applicable federal laws, rules, or regulations, other than a federal law, rule or regulation concerning the possession, sale or distribution of marijuana that conflicts with Amendment 20.

5.51.210 Signage.

No licensee shall display a sign for the Medical Marijuana Business establishment that contains the word "marijuana," "cannabis," or any other word or phrase commonly understood to refer to marijuana, unless such word or phrase is immediately preceded or followed by the word "medical" in substantially similar size print or font.

5.51.220 Penalty.

- A. Any person violating any provision of this Chapter shall be punished pursuant to Chapter 1.16 of the Lakewood Municipal Code. Each violation or act of non-compliance shall be considered a separate and distinct offense. Further, each day of continued violation or non-compliance shall be considered as a separate and distinct offense.
- B. All remedies and penalties provided for in this Chapter shall be cumulative and independently available to the City, and the City shall be authorized to pursue any and all remedies to the full extent allowed by law.
- C. Nothing herein contained shall prevent or restrict the City from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or act of non-compliance. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.

5.51.230 Reasonable Procedures.

The City Clerk is hereby authorized to adopt such reasonable policies and procedures as are deemed necessary to implement the provisions of this Chapter.

SECTION 2. Subsection 17-2-2 Lakewood Zoning Ordinance hereby amends subsections 51, 275, 285 to read as follows:

(51) **Medical Marijuana Business.** Medical Marijuana Business means a Optional Premises Cultivation Operation or Medical Marijuana Center. Optional Premises Cultivation Operation means a licensed medical marijuana business that is owned by the same owner of a licensed Medical Marijuana Center; produces and harvests medical marijuana plants for a medical use for distribution by such Medical Marijuana Center; and located in the same facility as the licensed premises of the owner's Medical Marijuana Center. A Medical Marijuana Center means a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business that distributes marijuana to patients or primary caregivers but is not a primary caregiver. A Medical Marijuana Business shall not include a business licensed as a medical marijuana-infused products license referenced in Section 12-43.3-404, C.R.S.

(275) **Patient.** Patient has the meaning provided in Section 14 of Article 18 to the Colorado Constitution (Amendment 20) and the implementing state statutes and administrative regulations.

(285) **Medical Marijuana Center.** Medical Marijuana Center means a person licensed pursuant to the Colorado Medical Marijuana Code at Article 43.3 of Title 12, C.R.S. to operate a business that distributes medical marijuana to patients or primary caregivers but is not a primary caregiver.

SECTION 3. Subsection 17-5-16(2))(a)(4), 1-C: Convenience Commercial District, of the Lakewood Zoning Ordinance is hereby amended to read as follows:

17-5-16(2)(a)(4). Medical Marijuana Business, subject to the spacing and licensing requirements established in the Lakewood Municipal Code.

SECTION 4. Subsection 17-5-17(2)(a)(4), 2-C: Neighborhood Commercial District, of the Lakewood Zoning Ordinance is hereby amended to read as follows:

17-5-17(2)(a)(4). Medical Marijuana Business, subject to the spacing and licensing requirements established in the Lakewood Municipal Code.

SECTION 5. Subsection 17-5-18(2)(a)(8), 3-C: Community Commercial District, of the Lakewood Zoning Ordinance is hereby amended to read as follows:

17-5-18(2)(a)(8). Medical Marijuana Business, subject to the spacing and licensing requirements established in the Lakewood Municipal Code.

SECTION 6. Subsection 17-5-19(2)(a)(9), 4-C: Regional Commercial District, of the Lakewood Zoning Ordinance is hereby amended to read as follows:

17-5-19(2)(a)(9). Medical Marijuana Business, subject to the spacing and licensing requirements established in the Lakewood Municipal Code.

SECTION 7. Subsection 17-5-20(2)(a)(11), 5-C: Large Lot Commercial District, of the Lakewood Zoning Ordinance is hereby amended to read as follows:

17-5-20(2)(a)(11). Medical Marijuana Business, subject to the spacing and licensing requirements established in the Lakewood Municipal Code.

SECTION 8. Subsection 17-5-22(2)(c), PD: Planned Development Zone District, of the Lakewood Zoning Ordinance is hereby amended to read as follows:

17-5-22(2)(c). A Medical Marijuana Business shall not be permitted in a Planned Development Zone District.

SECTION 9. Subsection 17-19-6(1)(a)(4), Colfax Mixed Use Zone District-Neighborhood Sub-District (CMU-N) Permitted Uses – Colfax Frontage Parcels, of the Lakewood Zoning Ordinance is hereby amended to read as follows:

17-19-6(1)(a)(4). Medical Marijuana Business, subject to the spacing and licensing requirements established in the Lakewood Municipal Code.

SECTION 10. Subsection 17-19-6(2)(a)(7), Colfax Mixed Use Zone District – Community Sub-District (CMU-C) Permitted Uses - Colfax Frontage Parcels, of the Lakewood Zoning Ordinance is hereby amended to read as follows:

17-19-6(2)(a)(7). Medical Marijuana Business, subject to the spacing and licensing requirements established in the Lakewood Municipal Code.

SECTION 11. Subsection 17-19-6(2)(b), Colfax Mixed Use Zone District – Community Sub-District (CMU-C) Permitted Uses – Non-Colfax Frontage Parcels, of the Lakewood Zoning Ordinance is hereby amended to read as follows:

17-19-6(2)(b)(2). Medical Marijuana Business, subject to the spacing and licensing requirements established in the Lakewood Municipal Code.

SECTION 12. Subsection 17-19-6(3)(a)(11), Colfax Mixed Use Zone District – Roadside Sub-District (CMU-R) Permitted Uses – Colfax Frontage Parcels, of the Lakewood Zoning Ordinance is hereby amended to read as follows:

17-19-6(3)(a)(11). Medical Marijuana Business, subject to the spacing and licensing requirements established in the Lakewood Municipal Code.

SECTION 13. Subsection 17-19-6(3)(b)(2), Colfax Mixed Use Zone District – Roadside Sub-District (CMU-R) Permitted Uses – Non-Colfax Frontage Parcels, of the Lakewood Zoning Ordinance is hereby amended to read as follows:

17-19-6(3)(b)(2). Medical Marijuana Business, subject to the spacing and licensing requirements established in the Lakewood Municipal Code.

SECTION 14. Subsection 17-22-6(2)(a)(4), Transit Mixed Use Zone District – Commercial (TMU-C) Permitted Uses, of the Lakewood Zoning Ordinance is hereby amended to read as follows:

17-22-6(2)(a)(4) Medical Marijuana Business, subject to the spacing and licensing requirements established in the Lakewood Municipal Code.

SECTION 15. Subsection 17-9, TABLE 9-4 Required Parking Ratios, of the Lakewood Zoning Ordinance is hereby amended to read as follows:

USE	DESCRIPTION	RATIO
Medical Marijuana Business	Medical marijuana facilities	4.0 spaces/1,000 s.f. of gross floor area

SECTION 16. Subsection 17-13-10(5), Home Occupations – Specific Exclusions, of the Lakewood Zoning Ordinance is hereby amended to read as follows:

(5) Medical Marijuana Business.

SECTION 17. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 18. This Ordinance shall take effect thirty (30) days after final publication.

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a regular meeting of the Lakewood City Council on the 11th day of April, 2011; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the 14th day of April, 2011; set for public hearing on the 25th day of April, 2011, read, finally passed and adopted by the City Council on the 25th day of April, 2011 and, signed and approved by the Mayor on the 26th day of April, 2011.

Bob Murphy, Mayor

ATTEST:

Margy Greer, City Clerk

APPROVED AS TO FORM:

Tim Cox, City Attorney