

ORDINANCE NO. 806

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. 765 adopted on June 11, 2012, the City Council prohibited commercial medical marijuana operations within the City; and

WHEREAS, thereafter, an initiative petition was filed proposing an ordinance that authorized a limited number of medical marijuana establishments to operate within the City’s Industrial zone districts, subject to certain requirements and restrictions; and

WHEREAS, the City and the petition representatives collaborated on an alternate ordinance, Ordinance No. 773, which was adopted by the City Council on March 4, 2013 and submitted to the City’s voters the question of whether medical marijuana establishments should be permitted to operate within the City’s industrial zone districts, subject to the requirements and other restrictions set forth in Ordinance No. 733; and

WHEREAS, following adoption of Ordinance No. 773 by the City Council, the petition representatives withdrew the initiative petition; and

WHEREAS, at a special election held on May 7, 2013, the City’s voters approved Ordinance No. 733; and

WHEREAS, no medical marijuana establishments have operated within the City since January 1, 2015; 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 legal uncertainty surrounding the medical marijuana industry has prompted lawsuits challenging the state's laws governing medical marijuana, and in some instances local government officials have been named as defendants; and

WHEREAS, the City Council finds the risk of adverse impacts as outlined in the CPCA White Paper of developing within the City presents an unacceptable potential burden to the City, as the City's budget for law enforcement cannot be expanded to address the impacts; 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, 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 Council further finds that although the City's voters approved passage of Ordinance No. 773, no medical marijuana businesses have chosen to locate within the City; and

WHEREAS, the City Council finds that although this matter was brought before it by an initiative petition signed by registered electors of the City, such initiative petition was withdrawn by the petition representatives and therefore Ordinance No. 773 is subject to amendment or repeal by the City Council as the City Council may determine to be in the best interest of the City and its residents; 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 Article 11 of the Dacono Municipal Code is hereby repealed and re-enacted 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. 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. 6-303. Cultivation of medical marijuana prohibited.

Except as provided in Section 6-302, 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.

6-304. 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. 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 4. 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 5. 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 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.

INTRODUCED, READ, ADOPTED ON FIRST READING, AND ORDERED PUBLISHED BY TITLE AND POSTED IN FULL THIS 11th DAY OF JANUARY, 2016.

PUBLIC HEARING AND SECOND READING WILL BE THE 25th DAY OF JANUARY, 2016, 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 25th DAY OF JANUARY, 2016.

CITY OF DACONO, COLORADO



Joe Baker, Mayor

ATTEST:



Valerie Taylor, City Clerk

Summary of Ordinance No. 806, **“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.