

ORDINANCE NO. 10-03

INTRODUCED BY:

Councilperson Ewing

Councilperson Hoffman

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF CASTLE PINES NORTH
EXTENDING AND AMENDING THE TEMPORARY MORATORIUM PROVIDED BY
ORDINANCE NO. 09-25 AND IMPOSING TEMPORARY MORATORIA ON MEDICAL
MARIJUANA CENTERS, MEDICAL MARIJUANA-INFUSED PRODUCTS
MANUFACTURERS, AND OPTIONAL PREMISES CULTIVATION OPERATIONS
LICENSES**

WHEREAS, the legislative findings and preamble clauses contained in City of Castle Pines North Ordinance No. 09-25 are hereby restated and readopted in this Ordinance as if set out in full; and

WHEREAS, Ordinance No. 09-25 imposed a temporary suspension on the acceptance, processing, and approval of any application for a permit, approval, or license related to any business that grows, sells, dispenses, or otherwise provides medical marijuana pursuant to the authority granted by Article XXVIII, Section 14 of the Colorado Constitution; and

WHEREAS, subsequent to the enactment of Ordinance No. 09-25, the legislature for the State of Colorado approved House Bill 10-1284 (“H.B. 1284”) and the Governor signed such Bill on June 7, 2010; and

WHEREAS, H.B. 1284 creates a new state “Medical Marijuana Licensing Authority” and authorizes the creation of new “local licensing authorities” for the establishment and operation of certain new land uses involving the cultivation, sale, distribution, or use of medical marijuana pursuant to Article XXVIII, Section 14 of the Colorado Constitution; and

WHEREAS, H.B. 1284 obligates the Department of Revenue for the State of Colorado to promulgate final rules and regulations to govern the cultivation, sale, distribution, and use of medical marijuana; and

WHEREAS, until such time that the Department of Revenue promulgates final rules to govern the state-local regulatory scheme for medical marijuana, the City of Castle Pines North is unable to enact local regulations to implement H.B. 1284; and

WHEREAS, H.B. 1284 expressly authorizes municipalities to extend existing moratoria concerning medical marijuana businesses to allow municipalities greater time to implement the state legislation and the Department of Revenue regulations, when such regulations are promulgated and approved; and

WHEREAS, H.B. 1284 provides that no new "Medical Marijuana Centers," "Medical Marijuana Infused Products Manufacturers," and "Optional Premises Cultivation Operations" (as these phrases are defined in H.B. 1284) may be permitted or licensed for operation by a local government until July 1, 2011, if such businesses were not in operation, or had not properly applied for a license which is later issued, as of July 1, 2010; and

WHEREAS, the City, as a statutory municipality, has broad authority to exercise its police powers to promote and protect the health, safety, and welfare of the community and its inhabitants as authorized by Colo. Rev. Stat., Section 31-15-401; and

WHEREAS, pursuant to Section 31-23-301 of the Colorado Revised Statutes, such police powers include the power to regulate the location and use of land within the community for trade, industry, or other purposes; and

WHEREAS, Section 29-20-104 of the Colorado Revised Statutes grants cities the authority to plan for and regulate the planned and orderly use of land on the basis of the impact thereof on the community; and

WHEREAS, the Castle Pines North Zoning Ordinance does not mention, authorize, permit, or regulate any land use in which marijuana is cultivated, produced, or distributed for sale or consumption; and

WHEREAS, the City of Castle Pines North City Council (the "City Council") has been informed that the City has received inquiries from individuals seeking to establish and license business operations for the purpose of cultivation, sale, distribution, or to otherwise engage in commerce pertaining to the use of medical marijuana in the City of Castle Pines North; and

WHEREAS, the City Council finds that neither the City's existing land use and development regulations nor its existing process for issuing business licenses adequately address and regulate the potential impacts created by businesses involving medical marijuana and that approving or permitting such a use or issuing a business license to such businesses could potentially result in undesired impacts that could impact, impair, or degrade the health, safety, and welfare of the public; and

WHEREAS, H.B. 1284 expressly authorizes municipalities to prohibit the operation of Medical Marijuana Centers, Optional Premises Cultivation Operations, and Medical Marijuana-Infused Products Manufacturers by either a majority of the registered electors of the municipality voting at a regular election or special election called in accordance with the Colorado Municipal Election Code of 1965, Colo. Rev. Stat., Section 31-10-101 *et seq.* or the Uniform Election Code of 1992, Colo. Rev. Stat., Section 1-1-101 *et seq.*, or a majority of the members of the governing board for the municipality; and

WHEREAS, the City Council intends to present the question of whether to prohibit the operation of Medical Marijuana Centers, Optional Premises Cultivation Operations, and Medical

Marijuana-Infused Products Manufacturers to the registered electors of the City for a vote, in either a regular or a special election; and

WHEREAS, the City will need adequate time to hold the election on this issue and to implement its outcome; and

WHEREAS, should the voters decide not to prohibit the operation of Medical Marijuana Centers, Optional Premises Cultivation Operations, and Medical Marijuana-Infused Products Manufacturers, the City Council will instruct the City Staff to study potential impacts that could be presented by such businesses within the City of Castle Pines North and, working with the City Attorney, to prepare new regulations as provided in this Ordinance and in compliance with H.B. 1284 without undue delay; and

WHEREAS, the City Council finds that acceptance, processing, or approving any such applications or permitting such uses under the existing inadequate land use, development, or business license regulations prior to adoption of state Department of Revenue regulations for medical marijuana or the completion of new local regulations concerning medical marijuana may undermine and defeat the City's ability to promote coordinated land uses in furtherance of providing for the health, safety, and welfare of its citizens and may significantly impair the City's character.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH, COLORADO:

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

Section 2. Existing Temporary Moratorium Amended and Extended. The City of Castle Pines North hereby extends the temporary moratorium imposed by Ordinance No. 09-25 and, further, amends such temporary moratorium as follows:

The City of Castle Pines North hereby extends the temporary moratorium imposed by Ordinance No. 09-25, which temporary moratorium shall apply to the acceptance, review, consideration, processing, and approval of any form of application for any City of Castle Pines North permit, license, or approval pertaining to the operation of a business operated as a commercial, for-profit, non-commercial, or non-profit enterprise and which is engaged in the manufacture, production, sale, distribution, dispensing, transportation, or cultivation of medical marijuana in any form pursuant to Article XVIII, Section 14 of the Colorado Constitution. This temporary moratorium shall be repealed automatically as of **11:59 p.m. July 1, 2011 or as of 11:59 p.m. on the effective date of the rules promulgated by the Department of Revenue, whichever is sooner**, unless terminated earlier by the City Council or extended in its duration by the enactment of another ordinance. The City Staff is directed to refuse to accept for

filing, and not to process, review, or approve any such applications during the effective period of the temporary moratorium.

The following shall be exempt from the application of this Section 2:

1. The cultivation, production, or possession of marijuana for “medical use” by a “patient” as such phrases are defined by Article XVIII, Section 14 of the Colorado Constitution, provided that:
 - a. such cultivation, production, or possession of marijuana is in full compliance with all applicable provisions of Article XVIII, Section 14 of the Colorado Constitution and the Colorado Medical Marijuana Code, C.R.S., §§ 12-43.3-101 et seq.; and
 - b. such marijuana is cultivated, produced, or possessed solely by such patient; and
 - c. such marijuana is used exclusively by such patient for such patient’s personal use; and
 - d. such marijuana is cultivated, produced, or possessed in amounts or quantities not to exceed that permitted for such patient by Article XVIII, Section 14 of the Colorado Constitution and the Colorado Medical Marijuana Code, C.R.S., §§ 12-43.3-01 et seq.; and
 - e. the patient has not designated another person as the patient’s primary caregiver.

2. The cultivation, production, or possession of marijuana for “medical use” by a “primary caregiver” as such phrases are defined by Article XVIII, Section 14 of the Colorado Constitution, provided that:
 - a. such cultivation, production, or possession of marijuana is in full compliance with all applicable provisions of Article XVIII, Section 14 of the Colorado Constitution and the Colorado Medical Marijuana Code, C.R.S., §§ 12-43.3-101 et seq.; and
 - b. such marijuana is cultivated, produced, or possessed by the primary caregiver; and
 - c. such marijuana is cultivated, produced, or possessed by the primary caregiver exclusively for one or more patients that designated the primary caregiver as the patient’s primary caregiver in accordance with Article XVIII, Section 14 of the Colorado Constitution; and
 - d. such marijuana is cultivated, produced, or possessed in amounts or quantities not exceeding that permitted by Article XVIII, Section 14 of the Colorado Constitution and the Colorado Medical Marijuana Code, C.R.S., §§ 12-43.3-01 et seq.

Section 3. Temporary Moratorium Imposed – Medical Marijuana Center. The City of Castle Pines North hereby imposes a temporary moratorium on the acceptance, processing, and approval of any form of application for any City of Castle Pines North permit or

license pertaining to the establishment or operation of a “Medical Marijuana Center” as this phrase is described and defined by Colorado House Bill 1284 (2010). The temporary moratorium imposed by this Section 3 shall be repealed automatically as of **11:59 p.m. July 1, 2011 or as of 11:59 p.m. on the effective date of the rules promulgated by the Department of Revenue, whichever is sooner**, unless terminated earlier by the City Council or extended in its duration by the enactment of another ordinance.

Section 4. Temporary Moratorium Imposed – Medical Marijuana-Infused Product Manufacturer. The City of Castle Pines North hereby imposes a temporary moratorium on the acceptance, processing, and approval of any form of application for any City of Castle Pines North permit or license pertaining to the establishment or operation of a “Medical Marijuana-Infused Product Manufacturer” as this phrase is described and defined by Colorado House Bill 1284 (2010). The temporary moratorium imposed by this Section 4 shall be repealed automatically as of **11:59 p.m. July 1, 2011 or as of 11:59 p.m. on the effective date of the rules promulgated by the Department of Revenue, whichever is sooner**, unless terminated earlier by the City Council or extended in its duration by the enactment of another ordinance.

Section 5. Temporary Moratorium Imposed – Optional Premises Cultivation Operation. The City of Castle Pines North hereby imposes a temporary moratorium on the acceptance, processing, and approval of any form of application for any City of Castle Pines North permit or license pertaining to the establishment or operation of an “Optional Premises Cultivation Operation” as this phrase is described and defined by Colorado House Bill 1284 (2010). The temporary moratorium imposed by this Section 5 shall be repealed automatically as of **11:59 p.m. July 1, 2011 or as of 11:59 p.m. on the effective date of the rules promulgated by the Department of Revenue, whichever is sooner**, unless terminated earlier by the City Council or extended in its duration by the enactment of another ordinance.

Section 6. Violations and Penalty. The following provisions shall be applied to violations of this Ordinance:

1. It shall be unlawful and a violation of this Ordinance for any person to engage in an activity, conduct, or operation prohibited by this Ordinance during such time that a moratorium is imposed on such activity, conduct, or operation.
2. It shall be unlawful and a violation of this Ordinance for any person to cultivate, produce, or possess marijuana in amounts or quantities exceeding that permitted to be cultivated, produced, or possessed by such person by applicable law.
3. Any person who pleads guilty or no contest to or who, after trial, is found guilty of violating any provision of this Ordinance shall be fined as follows:
 - (i) For an offense involving the cultivation, production, or possession of marijuana in excess of the maximum amount permitted by law, such fine shall be not less than Five Hundred Dollars (\$500.00) and not more than One Thousand Dollars (\$1,000.00) for each plant cultivated, or amount produced or possessed in excess of such maximum; or

- (ii) For any other violation not set forth in subparagraph (i) above, such fine shall be not less than Five Hundred Dollars (\$500.00) and not more than One Thousand Dollars (\$1,000.00) for each offense.

Each person violating any provision of this Ordinance shall be guilty of a separate offense for each and every day during any portion of which any violation of this Ordinance is committed, continued, or permitted by such person, and shall be punished accordingly.

Section 7. Ordinance Self-Executing and Temporary in Nature. This Ordinance and the moratoria imposed hereby shall be self-executing without further action by the City or its City Council. The provisions of this Ordinance are temporary in nature and intended to be replaced or repealed by a subsequent legislative enactment. The temporary moratoria as specified in this Ordinance shall automatically terminate and the provisions of this Ordinance shall be automatically repealed as of the expiration of each moratoria, unless terminated earlier by the City Council or extended in its duration by the enactment of other ordinance(s). Nothing contained in this Ordinance shall be construed to limit or preclude the City Council from termination, repeal, amendment, or modification of all or any part of this Ordinance prior to the date and time of expiration and repeal.

Section 8. Prompt Completion of New Regulations. Before the expiration of the moratoria imposed by this Ordinance, the City Staff, working with the City Attorney, shall conduct a timely and diligent review and evaluation of potential impacts as well as the development and processing of new regulations as contemplated by this Ordinance.

Section 9. Repeal of Previous Ordinances. Any and all ordinances or codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such ordinance or code or part thereof shall not revive any other section or part of any ordinance or code heretofore repealed or superseded and this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this Ordinance.

Section 10. Severability. If any portion of this Ordinance is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect.


INTRODUCED, READ, AND PASSED ON FIRST READING AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH, COLORADO on the 13th day of July, 2010.

READ, PASSED, AND ADOPTED ON SECOND READING AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH, COLORADO on the 10th day of August, 2010.

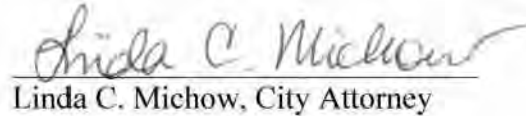
CITY OF CASTLE PINES NORTH:


Jeffrey T. Huff, Mayor

ATTEST:


Sharon DeRouen, City Clerk

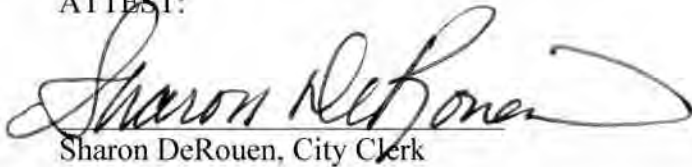
Approved as to Form:


Linda C. Michow, City Attorney

CERTIFICATION OF 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 Castle Pines North City Council on July 12, 2010; published in full in the *Douglas County News-Press*; and finally passed and adopted by the City Council on August 10th, 2010 with the emergency clauses removed for lack of requisite Council members' approval following a duly noticed public meeting and ordered published by title only, with amendments if any, one time in the *Douglas County News-Press* on August 26, 2010.

ATTEST:


Sharon DeRouen, City Clerk