ORDINANCE NO. 25, SERIES 2011

INTRODUCED BY: COUNCILOR BUECHNER

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO AMENDING CHAPTER 56 OF THE CODE OF ORDINANCES OF LAFAYETTE REGARDING MEDICAL MARIJUANA REGULATION AND BUSINESS LICENSING

WHEREAS, on November 7, 2000, the voters of the State of Colorado approved Section 14 of Article XVIII of the Colorado Constitution, which authorized the use of medical marijuana for the treatment of debilitating medical conditions under a patient/primary caregiver scenario; which authorized either party to grow medical marijuana under specified conditions; and

WHEREAS, Section 14 of Article XVIII of the Colorado Constitution established a limited exception from criminal liability under state law for persons with debilitating medical conditions who may benefit from the use of medical marijuana and who obtain and use medical marijuana in accordance with the requirements of Section 14 of Article XVIII of the Colorado Constitution; and

WHEREAS, although the use, sale, possession, and transportation of medical marijuana remains unlawful under federal law, the United States Attorney General's Office announced it would not seek prosecution of those whose medical marijuana activities were in compliance with an applicable state law; and

WHEREAS, such action by the United States Attorney General combined with the ambiguities of Section 14 of Article XVIII of the Colorado Constitution resulted in a rapid increase of both medical marijuana businesses and the number of primary caregivers and patients; and

WHEREAS, the absence of uniform rules and regulations resulted in confusion and concern among state and local officials who sought to control and regulate the use, sale, cultivation, production, and transportation of medical marijuana to ensure that such activities remained in compliance with Section 14 of Article XVIII of the Colorado Constitution; and

WHEREAS, to address such concerns the state legislature enacted SB10-109, which regulates the physician-patient relationship, and HB10-1284, which enacts the Colorado Medical Marijuana Code ("Medical Marijuana Code"), Article 43.3, Colorado Revised Statutes, whose purpose is to regulate the sale, manufacture, cultivation, use and transportation of medical marijuana; and

WHEREAS, the Medical Marijuana Code establishes a dual state and local licensing system which creates three classifications of licenses, which include medical marijuana centers, medical marijuana infused product manufacturers and optional premises cultivation operations; and

WHEREAS, to provide clarification of the Medical Marijuana Code and address other areas of concern the state legislature is currently considering HB11-1043; and

WHEREAS, as authorized by the Medical Marijuana Code, the State Licensing Authority of the Colorado Department of Revenue, Medical Marijuana Enforcement Division has promulgated rules and regulations to implement and interpret the Medical Marijuana Code, which have yet to be formally adopted; and

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WHEREAS, the Medical Marijuana Code recognizes the authority of the City to exercise its home-rule powers regarding the regulation of medical marijuana establishments, which includes the power to prohibit such establishments, adopt land use, and/or public health and safety rules and regulations that are more restrictive than those enacted by the state; and

WHEREAS, City Council desires to permit medical marijuana centers, medical marijuana infused-product manufacturers and optional premises cultivation operations, to operate within the City on the condition that such establishments conduct business in compliance with all applicable state and local laws, rules and regulations; and

WHEREAS, City Council finds that medical marijuana centers are retail uses and that optional premises grow operations, infused product manufacturers and associated warehouses are industrial uses, which are appropriately subject to distance restrictions which protect the public's health, safety and welfare while also permitting the City to plan for future growth and development and ensure its economic vitality; and

WHEREAS, City Council enacted Chapter 56 of the Code of Ordinances of Lafayette regarding medical marijuana regulation and business license through the adoption of Ordinance No. 10, Series 2011 on April 5, 2011; and

WHEREAS, City Council finds that the previously adopted regulations need to be amended to protect the health, safety and general welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AS FOLLOWS:

- Section 1. Subsection 56-235(d) of Chapter 56 of the Code of Ordinances is hereby deleted.
- <u>Section 2</u>. Section 56-236 of Chapter 56 of the Code of Ordinances is hereby amended to include subsection 56-236(o) which shall read as follows:
 - (o) Those medical marijuana businesses which submit a complete medical marijuana business license application to the city clerk within 30 days of the city's start of acceptance of applications and which were in operation in Lafayette before imposition of the city's medical marijuana moratorium (Ord. No. 27 Series 2009) and meet the state's July 1, 2010, "lawfully established," August 1, 2010, state application, and September 1, 2010, 70% grow certification deadlines, and as of July 1, 2011, are fully compliant with all state laws, rules and regulations, shall be given first consideration.
- <u>Section 3</u>. Subsection 56-238(b) of Chapter 56 of the Code of Ordinances is hereby amended to read as follows:

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- (b) Each license issued pursuant to this chapter shall be valid for one (1) year from the date of issuance and may be renewed only as provided in this chapter. All renewals of a license shall be for no more than one (1) year. An application for the renewal of an existing license shall be made to the city clerk not less than ninety (90) days prior to the date of expiration of the license. Upon a finding of reasonable cause the local licensing authority may waive the ninety (90) day requirement. No application for renewal shall be accepted by the city clerk after such date except as provided in the Medical Marijuana Code. The timely filing of a renewal application shall extend the current license until a decision made on the renewal.
- Section 4. Subsection 56-239(a)(5) of Chapter 56 of the Code of Ordinances is hereby amended to read as follows:
 - (5) 500 feet of any city residential subdivision, residentially zoned property, property with residential as a principal use; or
- Section 5. Subsections 56-239(b)(3) and 56-239(b)(4) of Chapter 56 of the Code of Ordinances are hereby amended to read as follows and Subsection 56-239(b)(5) is hereby added to read as follows:
 - (3) 1000 feet of any school or hospital; or
 - (4) 500 feet of any city residential subdivision, residentially zoned property, property with residential as a principal use; and
 - (5) there may be no more than five (5) total physical locations containing licensed infused product manufacturers or optional premises cultivation operations within the industrial zoning district; however, the licensed infused product manufacturer or optional premises cultivation operation facility shall not exceed 10,000 square feet.
- <u>Section 6</u>. 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.
- <u>Section 7</u>. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.
- Section 8. The repeal or modification of any provision of the Code of Ordinances of Lafayette, Colorado 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. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any

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judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

<u>Section 9</u>. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

<u>Section 10</u>. Violations of this ordinance shall be punishable in accordance with Section 1.10 of the Municipal Code of the City of Lafayette, Colorado.

<u>Section 11</u>. This ordinance shall become effective upon the latter of the 10th day following enactment, or the day following final publication of the ordinance.

INTRODUCED AND PASSED ON FIRST READING THE 7TH DAY OF JUNE, 2011.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THE 20^{TH} DAY OF JUNE, 2011.

CITY OF LAFAYETTE, COLORADO

ATTEST:

Susan Koster, CMC

City Clerk

APPROVED AS TO FORM:

David S. Williamson, City Attorney