

ORDINANCE NO. 23, Series 2013
INTRODUCED BY: COUNCILOR ALEXANDRA LYNCH

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, EXTENDING UNTIL APRIL 1, 2014 THE EXISTING MORATORIUM ON THE SUBMISSION, ACCEPTANCE OR PROCESSING OF APPLICATIONS AND THE LICENSING, PERMITTING, ESTABLISHMENT OR OPERATION OF ANY RECREATIONAL MARIJUANA BUSINESS THAT SELLS, CULTIVATES, MANUFACTURES, PREPARES, PACKAGES, PURCHASES, TESTS, OR OTHERWISE PROVIDES FOR OR ALLOWS THE USE OF MARIJUANA OR MARIJUANA PRODUCTS PURSUANT TO AMENDMENT 64 APPROVED BY THE VOTERS OF THE STATE OF COLORADO AT THE NOVEMBER 6, 2012, GENERAL ELECTION, AND CODIFIED AS SECTION 16 OF ARTICLE XVIII, OF THE COLORADO CONSTITUTION, AND UPON THE USE OF LAND FOR SUCH PURPOSE(S)

WHEREAS, at the November 6, 2012, general election the voters of the State of Colorado adopted Amendment 64 of the Colorado Constitution (“Amendment 64”), which is codified as Section 16 of Article XVIII of the Colorado Constitution; and

WHEREAS, Amendment 64 permits persons twenty-one years of age and older to possess, use, display, purchase or transport one ounce or less of marijuana, or marijuana accessories, to grow limited amounts of marijuana and manufacture and sell marijuana accessories; and

WHEREAS, Amendment 64 also provides for the establishment of marijuana establishments, which include cultivating, testing and product manufacturing facilities, and retail marijuana stores; and

WHEREAS, Amendment 64 requires that, by no later than July 1, 2013, the Colorado Department of Revenue was to adopt regulations to implement Amendment 64; and

WHEREAS, Amendment 64 provides that by October 1, 2013, the Colorado Department of Revenue is to begin accepting and processing license applications for marijuana establishments; and

WHEREAS, Amendment 64 further provides that local governmental entities may enact ordinances and regulations governing the time, place, manner and number of marijuana establishments and that by October 1, 2013, each locality identify by ordinance or regulation a local recreational marijuana licensing entity; and

WHEREAS, on December 10, 2012, Governor John Hickenlooper established a Task Force regarding the implementation of Amendment 64 whose goal was to assist the legislature and the

Department of Revenue to enact efficient and effective laws and regulations that provide for the implementation of Amendment 64; and

WHEREAS, the Task Force identified areas subject to the state's regulation which include, but are not limited to, blending medical marijuana regulation with recreational marijuana, consideration of state operated recreational dispensaries, impact of state licensing upon local authority, regulation of personal cultivation, definition of "openly and publicly," regulatory framework for all types of consumption, pre-emption of local regulations and grower regulations; and

WHEREAS, in addition to awaiting direction from the state, because marijuana is a controlled substance under federal law, both state and local authorities were and remain uncertain as to what action, if any, the federal government may pursue regarding "recreational marijuana businesses," which includes, but is not limited to, cultivation, product manufacturing and testing facilities along with retail marijuana stores, and other uses of property for the commercial consumption of marijuana and marijuana products; and

WHEREAS, absent any definitive direction or guidelines from either the state or federal government regarding the regulation of recreational marijuana businesses the City could not determine its position regarding what if any regulations or prohibitions, including land use regulations it may or should impose on recreational marijuana businesses; and

WHEREAS, therefore on February 5, 2013, the City enacted Ordinance No. 03-2013 which imposed a moratorium until October 1, 2013, on the submission, acceptance or processing of applications and the licensing, permitting, establishment or operation of any recreational marijuana business that sells, cultivates, manufactures, prepares, packages, purchases, tests, or otherwise provides for or allows the use of marijuana or marijuana products pursuant to Amendment 64, including the use of land for such purpose(s) as reasonable and necessary for the City to develop, if it so chose, its own licensing scheme for recreational marijuana businesses and have an opportunity to investigate, develop, adopt, implement, and amend such regulations as necessary to protect the public's health safety, and welfare; and

WHEREAS, though the state in accordance with Amendment 64 was to have adopted regulations governing retail marijuana establishments by July 1, 2013, it had by such date merely promulgated "Emergency Rules" regarding the regulation of recreational marijuana, and does not plan to have "Final Rules" until October 1, 2013; and

WHEREAS, in accordance with HB-1317, enacted at the last legislative session, the state will begin accepting recreational marijuana licenses from current lawful medical marijuana establishments on October 1, 2013, and issuing licenses commencing January 1, 2014; however, it will not start accepting recreational marijuana license applications from other applicants until July 1, 2014, and not start issuing such licenses until October 1, 2014; and

WHEREAS, though SB-283, enacted at the last legislative session, addresses some issues concerning the regulation of recreational marijuana, its scope was not as extensive as many expected for it failed to address issues such as the regulation of other recreational marijuana businesses such as membership clubs, or provide regulatory guidance by defining certain terms set forth in Amendment 64; and

WHEREAS, SB-283 also directs the governor to establish and designate state agencies to work with private groups to address unresolved issues concerning the cultivation and laboratory processes for recreational marijuana and to implement an oversight committee concerning education on marijuana use, cultivation, and its impact upon youth; and

WHEREAS, the state's funding for its licensing and other administrative duties concerning recreational marijuana is uncertain as it is dependent upon the passage and collection of revenues obtained from a ballot question at this November's election calling for a 15% excise tax and 10% sales tax on recreational marijuana; and

WHEREAS, as a result of the uncertainty caused by the state's failure to address many of the issues brought forth by the task force, the lack of comprehensive licensing rules and regulations that have been fully implemented, assessed and amended as necessary, skepticism about the states' ability to regulate recreational marijuana in light of the fact that the duties will be performed by the Department of Revenue, whose shortcomings regarding medical marijuana are well documented, the still unresolved matter of federal intervention and concerns regarding the state's funding of its recreational marijuana licensing duties many municipalities and counties, have either opted out of permitting recreational marijuana businesses, or enacted or extended moratoriums on such businesses; and

WHEREAS, given all the uncertainties described herein, the City still cannot determine its position regarding what, if any, regulations or prohibitions, including land use regulations, it may or may not impose upon recreational marijuana businesses; and

WHEREAS, the extension of the current moratorium until April 1, 2014, on the submission, acceptance or processing of applications and the licensing, permitting, establishment or operation of any recreational marijuana business that sells, cultivates, manufactures, prepares, packages, purchases, tests, or otherwise provides for or allows the use of marijuana or marijuana products pursuant to Amendment 64, including the use of land for such purpose(s) is reasonable and necessary for the City to monitor and assess the Department of Revenues regulatory scheme, the initial operation and regulation of recreational marijuana businesses in other jurisdictions, the outcome and impact of the state and local tax ballot questions and for the City if it so chooses to develop, investigate, analyze and amend such regulations as necessary to protect the public's health safety, and welfare.

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

Section 1. The foregoing recitals are incorporated herein and made a part of this ordinance.

Section 2. Upon adoption of this ordinance the moratorium imposed by Ordinance No. 03-2013 which is set to expire October 1, 2013, shall be extended until April 1, 2014, and a moratorium shall thus remain on the submission, acceptance or processing of applications and the licensing, permitting, establishment or operation of any recreational marijuana business that sells, cultivates, manufactures, prepares, packages, purchases, tests, or otherwise provides for or allows the use of marijuana or marijuana products pursuant to Amendment 64 approved by the voters of the State of Colorado at the November 6, 2012, general election and codified as Article XVIII, Section 16 of the Colorado Constitution, and upon the use of land for such purpose or purposes.

Section 3. City Council expressly finds that the moratorium and its extension is within the powers and authority granted the City by Section 6 of Article XX of the Colorado Constitution, the City of Lafayette's Home Rule Charter, City of Lafayette Code of Ordinances, and Colorado Revised Statutes, Article 20 of Title 29 (Local Government Regulation of Land Use), Article 15 (Exercise of Municipal Powers), and Part 3 of Article 23 (Zoning) of Title 31, and further declares that the moratorium shall be broadly interpreted to prevent and prohibit the establishment and operation of any recreational marijuana businesses.

Section 4. During the pendency of this moratorium, City staff shall review all laws and regulations enacted by the state or actions of the federal government regarding recreational marijuana businesses and advise Council of same and, if so directed by Council, prepare ordinances and or regulations with respect to the time, place, manner, licensing and other regulations regarding recreational marijuana businesses.

Section 5. 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 6. 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 7. 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 judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 8. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 9. Violations of this ordinance shall be punishable in accordance with Section 1-10 of the Municipal Code of the City of Lafayette, Colorado.

Section 10. 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 20TH DAY OF AUGUST, 2013.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THE 3RD DAY OF SEPTEMBER 2013.

CITY OF LAFAYETTE, COLORADO

Carolyn D. Cutler, Mayor

ATTEST:

APPROVED AS TO FORM:

Susan Koster, CMC, City Clerk

David S. Williamson, City Attorney