

ORDINANCE NO.: 3400
INTRODUCED BY: Nizam

AN ORDINANCE ENACTING SECTIONS 18-213 AND 18-331 OF THE THORNTON CITY CODE PERTAINING TO MARIJUANA STORES AND MARIJUANA TESTING FACILITIES; AMENDING SECTIONS 18-160 AND 18-596 TO ESTABLISH ZONING DISTRICT AND PARKING REQUIREMENTS FOR THOSE USES; AMENDING SECTIONS 18-153 AND 18-154 TO CLARIFY THE PROHIBITION ON OTHER MARIJUANA AND MEDICAL MARIJUANA LAND USES; AND AMENDING SECTION 18-901 TO RELOCATE AND UPDATE DEFINITIONS RELATED TO MARIJUANA USES.

WHEREAS, the City of Thornton ("City") is a home-rule municipality organized and existing under the provisions of Colorado Constitution Article XX; and

WHEREAS, pursuant to the Constitution, and as further authorized by State statutes, including, but not limited to C.R.S. Section 31-15-401, the City has broad authority to exercise its police powers to promote and protect the health, safety, and welfare of the community and its residents; and

WHEREAS, such police powers include the power to regulate the nature and type of businesses allowed within such community; and

WHEREAS, the voters of Colorado approved Amendments 20 and 64, codified in Sections 14 and 16 of Article 18 of the Colorado Constitution, and which authorize the personal and medical use of marijuana; and

WHEREAS, the Colorado Medical Marijuana Code in C.R.S. Sections 12-43.3-101 et seq. and the Colorado Retail Marijuana Code in C.R.S. Sections 12.43.4-101 et seq. provide for the state and local licensing of medical marijuana centers, optional premises cultivation operations, medical marijuana-infused products manufacturing, medical marijuana testing facilities, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, retail marijuana stores, and retail marijuana testing facilities; and

WHEREAS, Sections 18-153 and 18-154 of the City's Development Code currently prohibit all medical marijuana and retail marijuana land uses; and

WHEREAS, the City recognizes the desire of the Colorado voters, by their approval of Amendments 20 and 64, to engage in the purchase and use of marijuana; and

WHEREAS, the City recognizes the need for facilities that can analyze and certify the safety and potency of marijuana; and

WHEREAS, Development Code amendments are necessary to allow marijuana stores and marijuana testing facilities in Thornton; and

WHEREAS, the City finds these Code amendments are necessary to promote the public health, safety and welfare.

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

1. Section 18-153 of the Thornton City Code is hereby amended by the deletion of the words stricken and the addition of the words double-underlined to read as follows:

Sec. 18-153. - Medical marijuana prohibited uses.

- (a) *Purpose and intent.* The purpose of this section is to prohibit certain land uses related to medical marijuana in the city. The city council has carefully considered Article XVIII, Section 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, and the secondary effects of medical marijuana establishments on the health, safety and welfare of the city and its residents in determining the prohibitions included in this section and ~~makes the following findings regarding its intent:~~

- ~~(1) Article XVIII, Section 14 of the Colorado Constitution does not authorize the commercial sale of medical marijuana, commercial cultivation or manufacturing facilities, or use facilities for patients nor address zoning or land uses in any form.~~
- ~~(2) The Colorado Medical Marijuana Code, C.R.S. § 12-43.3-101 et seq., clarifies Colorado law regarding the scope and extent of Article XVIII, Section 14 of the Colorado Constitution.~~
- ~~(3) The Colorado Medical Marijuana Code 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."~~
- ~~(4) The Colorado Medical Marijuana Code specifically authorizes a municipality "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."~~
- ~~(5) As a matter of the city's 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 Colorado Medical Marijuana Code, no suitable location exists within the city for the operation of medical marijuana establishments or any other land use involving the growth, display, purchase, use or processing of medical marijuana.~~

except as authorized by Article XVIII, Section 14 of the Colorado Constitution regarding the medical use of marijuana.

~~(b) — Definitions:~~

- ~~(1) — Medical marijuana optional premises cultivation operation shall mean and include any real property used for or upon which there is any type of structure, or any such operation that includes or is associated with a mobile transportation, distribution or delivery vehicle of any type, where one or more persons cultivate medical marijuana plants for distribution of any form of marijuana at a medical marijuana center or directly to patients or primary caregivers.~~
- ~~(2) — Medical marijuana center shall mean and include any real property used for or upon which there is any type of structure, or any such center that includes or is associated with a mobile transportation, distribution or delivery vehicle of any type, where one or more persons distribute, transmit, give, dispense, sell, or otherwise provide any form of marijuana in any manner to patients or primary caregivers.~~
- ~~(3) — Medical marijuana establishment shall mean and include any medical marijuana optional premises cultivation operation, medical marijuana center, medical marijuana infused products manufacturer, medical marijuana mobile distribution center, medical marijuana testing facility, or medical marijuana use facility.~~
- ~~(4) — Medical marijuana infused products manufacturer shall mean and include any real property used for or upon which there is any type of structure, or any such manufacturer that includes or is associated with a mobile transportation, distribution or delivery vehicle of any type, where one or more persons manufacture, package, label or otherwise prepare medical marijuana for use or consumption other than by smoking, including but not limited to edible products, ointments and tinctures, for distribution at a medical marijuana center to patients and primary caregivers.~~
- ~~(5) — Medical marijuana testing facility shall mean and include any real property used for or upon which there is any type of structure, or any such facility that includes or is associated with analyzing and certifying the safety and potency of medical marijuana.~~
- ~~(6) — Medical marijuana use facilities shall mean and include any real property used for or upon which there is any type of structure, or any part thereof, where medical marijuana patients gather to smoke, ingest, or otherwise use medical marijuana, except for the dwelling unit of one of the patients.~~
- ~~(7) — Patient shall have the same meaning as defined in Section 14 of Article XVIII of the Colorado Constitution.~~

~~(8) Primary caregiver shall have the same meaning as defined in Section 14 of Article XVIII of the Colorado Constitution.~~

~~(9) Medical use shall have the same meaning as defined in Section 14 of Article XVIII of the Colorado Constitution.~~

~~(e)(b)~~ Prohibition.

(1) Medical marijuana ~~establishments optional premises cultivation operations, medical marijuana-infused products manufacturers, medical marijuana use facilities and any other land use involving the growth, use or processing of medical marijuana~~ are prohibited uses in all zoning districts.

(2) No person shall use a property to grow, ~~display, purchase,~~ use or process medical marijuana, with or without remuneration, except as authorized in subsection (c) below and in Division 2 of Article VIII of Chapter 38 of the code.

(3) No main, accessory, or temporary land use shall be permitted that involves the ~~sale,~~ growth, ~~display, purchase,~~ use, ~~delivery~~ or processing of medical marijuana.

~~(4)~~ No accessory or temporary land use shall be permitted that involves the sale, display, purchase or delivery of medical marijuana.

~~(4)(5)~~ It shall be unlawful for any person to operate, cause to be operated, or permit to be operated any kind of land use, medical marijuana establishment whether or not for profit, and regardless of organizational or ownership structure, a primary or significant purpose or characteristic of which is permitting or facilitating on-premises consumption or preparation of medical marijuana or medical marijuana products or on-premises cultivation or processing of medical marijuana.

~~(d)(c)~~ Patients and primary caregivers. Patients and primary caregivers may grow medical marijuana only at their primary residence and in accordance with Section 14 of Article XVIII of the Colorado Constitution, ~~C.R.S. § 25-1.5-106 as amended~~ the Colorado Medical Marijuana Code, and any rules or regulations promulgated thereunder, and by the regulations contained in Division 2 of Article VIII of Chapter 38 of the code.

2. Section 18-154 of the Thornton City Code is hereby amended by the deletion of the words stricken and the addition of the words double-underlined to read as follows:

Sec. 18-154. - Marijuana prohibited uses.

- (a) *Purpose and intent.* The purpose of this section is to prohibit certain land uses related to marijuana in the city. The city council has carefully

considered Article XVIII, Section 16 of the Colorado Constitution, the Colorado Retail Marijuana Code, and the secondary effects of marijuana establishments on the health, safety and welfare of the city and its residents in determining the prohibitions included in this section, makes the following findings regarding its intent:

- ~~(1) Pursuant to the provisions of Article XX, Section 6 of the Colorado Constitution, and as further authorized by state statutes, including, but not limited to C.R.S. Section 31-15-401, the city has broad authority to exercise its police powers to promote and protect the health, safety, and welfare of the community and its residents. These police powers include the power to regulate the nature and type of businesses allowed within such community.~~
- ~~(2) Article XVIII, Section 16 of the Colorado Constitution authorizes the licensing and operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and marijuana retail stores.~~
- ~~(3) The Colorado Retail Marijuana Code, C.R.S. Title 12 Article 43.4, clarifies Colorado law regarding the scope and extent of Article XVIII, Section 16 of the Colorado Constitution.~~
- ~~(4) Article XVIII, Section 16 of the Colorado Constitution specifically authorizes a municipality to "enact ordinances or regulations . . . governing the time, place, manner and number of marijuana establishment operations."~~
- ~~(5) Article XVIII, Section 16 of the Colorado Constitution specifically authorizes a municipality to "prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores."~~
- ~~(6) C.R.S. § 12-43.4-304 of the Colorado Retail Marijuana Code authorizes a local government to "enact ordinances or resolutions concerning matters authorized to local governments."~~
- ~~(7) As a matter of the city's 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 Colorado Retail Marijuana Code, the city council has determined that no suitable location exists within the city for the operation of marijuana establishments or any other land use involving the growth, display, purchase, use or processing of marijuana, except as authorized by Article XVIII, Section 16 of the Colorado Constitution regarding the personal use of marijuana.~~

~~(b) Definitions.~~

- ~~(1) Marijuana shall have the same meaning as defined in Article XVIII, Section 16, subsection (2)(f) of the Colorado Constitution.~~

- (2) ~~Marijuana cultivation facility and retail marijuana cultivation facility shall mean and include any real property used for or upon which there is any type of structure or any such facility that includes or is associated with cultivating, preparing, or packaging marijuana.~~
- (3) ~~Marijuana establishment and retail marijuana establishment shall mean and include any marijuana cultivation facility, retail marijuana cultivation facility, marijuana testing facility, retail marijuana testing facility, marijuana product manufacturing facility, retail marijuana products manufacturer, retail marijuana store, marijuana use facility or mobile distribution center.~~
- (4) ~~Marijuana product manufacturing facility and retail marijuana products manufacturer shall mean and include any real property used for or upon which there is any type of structure, or any such facility that includes or is associated with manufacturing, preparing, or packaging marijuana products.~~
- (5) ~~Marijuana testing facility and retail marijuana testing facility shall mean and include any real property used for or upon which there is any type of structure, or any such facility that includes or is associated with analyzing and certifying the safety and potency of marijuana.~~
- (6) ~~Marijuana use facility shall mean and include any real property used for or upon which there is any type of structure, or any part thereof, where persons gather to smoke, ingest, or otherwise use marijuana, except for the dwelling unit of one of the persons.~~
- (7) ~~Mobile distribution center shall mean any vehicle other than a common passenger light duty vehicle with a short wheel base used to carry a quantity of marijuana greater than one ounce.~~
- (8) ~~Retail marijuana store shall mean and include any real property used for or upon which there is any type of structure, or any such facility that includes or is associated with the sale of marijuana or marijuana products to consumers.~~
- (9) ~~Marijuana products and retail marijuana products shall mean concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.~~

(e)(b) Prohibition.

- (1) Marijuana establishments cultivation facilities, marijuana product manufacturing facilities, marijuana use facilities, and any other land use involving the growth, use or processing of marijuana, are prohibited in all zoning districts.

- (2) No person shall use a property to grow, ~~display, purchase,~~ use or process marijuana, with or without remuneration, except as authorized in subsection ~~(d)~~ below and in Division 2 of Article VIII of Chapter 38 of the code.
 - (3) No main, accessory, or temporary land use shall be permitted that involves the ~~sale,~~ growth, ~~display, purchase,~~ use, ~~delivery~~ or processing of marijuana.
 - (4) ~~No accessory or temporary land use shall be permitted that involves the sale, display, purchase or delivery of marijuana.~~
 - (4)(5) It shall be unlawful for any person to operate, cause to be operated, or permit to be operated any kind of land use, marijuana establishment or retail marijuana establishment whether or not for profit, and regardless of organizational or ownership structure, a primary or significant purpose or characteristic of which is permitting or facilitating on-premises consumption or preparation of marijuana or marijuana products or on-premises cultivation or processing of marijuana.
 - (d)(c) *Personal use of marijuana.* The personal possession and growth of marijuana is regulated by Section 16 of Article XVIII of the Colorado Constitution, the Colorado ~~Medical-Retail~~ Marijuana Code, ~~the Colorado Medical Marijuana Program~~ and any rules or regulations promulgated thereunder, and by the regulations contained in Division 2 of Article VIII of Chapter 38 of the code.
3. Section 18-160 of the Thornton City Code is hereby amended by the addition of the words double-underlined to read as follows:

Sec. 18-160. - Use chart.

This chart identifies the uses allowed in the listed zoning districts. Additional regulations may be referenced in the chart or in the zoning district regulations in Article III. The applicable off-street parking and loading requirements are listed in Division 6 of Article V of this chapter.

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|--|--|--------------------|------------------------|------------------------|-------------|-------------------|----------------------|--------------------------|------------------|---------------------|---------------|-------------|----------------------|-------------------|-----------|------------------------|------------------------------|-------------------|------------------|-----------------|--------------|------------|
| Legend: R = Permitted use by right S = Use permitted by specific use permit L = Limited use permitted by right T = Use permitted by temporary use permit | Agricultural | Residential Estate | Single-Family Detached | Single-Family Attached | Multifamily | Manufactured Home | Eastlake Residential | Neighborhood Service | Community Retail | Regional Commercial | Business Park | City Center | Office/Institutional | Employment Center | Mixed Use | TOD - Core Subdistrict | TOD - Transition Subdistrict | Eastlake Business | Eastlake Service | Eastlake Office | Eastlake TOD | Industrial |
| Use | Residential Districts | | | | | | | Nonresidential Districts | | | | | | | | | | | | | | |
| Part III. Industrial Uses | | | | | | | | | | | | | | | | | | | | | | |
| <u>Marijuana testing facility</u> | | | | | | | | | | | <u>R</u> | | | | <u>R</u> | | | | | | | <u>R</u> |
| | <u>Additional provisions. See Sec. 18-213.</u> | | | | | | | | | | | | | | | | | | | | | |
| Part IX. Retail and Personal Service Uses. REFER TO INDIVIDUAL USE SECTIONS FOR ADDITIONAL REGULATIONS. | | | | | | | | | | | | | | | | | | | | | | |
| <u>Marijuana store</u> | | | | | | | | | | | <u>R</u> | <u>R</u> | | | | | | | | | | |
| | <u>Additional provisions. See Secs. 18-300 and 18-331.</u> | | | | | | | | | | | | | | | | | | | | | |

4. A new section, Section 18-213 of the Thornton City Code is hereby enacted to read as follows:

Sec. 18-213. Marijuana testing facility.

- (a) Outside storage is prohibited.
- (b) Prohibited locations.
 - (1) Marijuana testing facilities shall not be located within:
 - a. 1,000 feet of a public or private school;
 - b. 500 feet of a licensed childcare facility; or
 - c. 500 feet of an alcohol or drug treatment facility.
 - (2) The distance for the purposes of this section shall be measured in a straight line from the nearest property line of the land used for the uses listed above to the nearest portion of the building in which the marijuana testing facility is to be located, without regard to intervening structures or objects. When a marijuana testing facility is to be located on the same lot as a listed land use, the measurement shall be in a straight line from the two closest points

of the buildings in which each use is located, without regard to intervening structures or objects.

- (3) Uses specified in subsection (b)(1) that are located outside the city shall be considered when applying the distance requirements.
- (4) A marijuana testing facility shall not be located in the same building or structure as a use listed in subsection (b)(1) above.
- (5) Marijuana testing facilities are prohibited as a home occupation.

5. A new section, Section 18-331 of the Thornton City Code is hereby enacted to read as follows:

Sec. 18-331. Marijuana store.

(a) Prohibited locations.

- (1) Marijuana stores shall not be located within:
 - a. 1,000 feet of a public or private school;
 - b. 500 feet of a licensed childcare facility; or
 - c. 500 feet of an alcohol or drug treatment facility.
- (2) The distance for the purposes of subsection (a)(1) shall be measured in a straight line from the nearest property line of the land used for the uses listed above to the nearest portion of the building in which the marijuana is to be sold, without regard to intervening structures or objects. Listed uses that are located outside the city shall be considered when applying the distance requirements. When a marijuana store is to be located on the same lot as a listed land use, the measurement shall be in a straight line from the two closest points of the buildings in which each use is located, without regard to intervening structures or objects.
- (3) A marijuana store shall not be located within 1,500 feet of another marijuana store. This distance shall be measured in a straight line from the two closest points of the buildings in which each use is located, without regard to intervening structures or objects. Marijuana stores located outside the city shall not be considered in applying the distance provisions.
- (4) A marijuana store shall not be located in the same building or structure as another marijuana store or a use listed in subsection (a)(1) above.

(b) Locational limitations.

- (1) Only one marijuana store shall be approved to operate in each of the four designated city quadrants.

- (2) For purposes of this section, designated city quadrants shall be as listed below, with boundaries following the approximate centerlines of the specified streets. Where a portion of the specified street does not exist or where the street has an alternative alignment, the boundary shall follow the anticipated centerline of the street as it would exist in the specified hundred block within the Denver Grid System, generally following a straight line running North and South for York Street and Colorado Boulevard, and East and West for 120th Avenue.
- Quadrant 1. South of E. 120th Avenue and west of York Street.
 - Quadrant 2. South of E. 120th Avenue and east of York Street.
 - Quadrant 3. North of E. 120th Avenue and east of Colorado Boulevard.
 - Quadrant 4. North of E. 120th Avenue and west of Colorado Boulevard.
- (c) Additional provisions.
- A marijuana store may not operate as an accessory to or in conjunction with any other land use.
 - Marijuana stores are prohibited as a home occupation.
 - Accessory outside display of merchandise, accessory outside sales, and accessory outside storage are prohibited.
6. Section 18-596 of the Thornton City Code is hereby amended by the addition of the words double-underlined to read as follows:

Sec. 18-596. Off-street parking and loading requirements chart.

| <i>Off-Street Parking and Loading Requirements</i> | | |
|--|--|--|
| <i>Use</i> | <i>Required Off-Street Parking</i> | <i>Required Off-Street Loading</i> |
| Part III. Industrial Uses | | |
| <u>Marijuana testing facility</u> | <u>One space for each 500 square feet of floor area.</u> | <u>/e/</u> |
| Part IX. Retail and Personal Service Uses | | |
| <u>Marijuana store</u> | <u>Stores 3,500 square feet or less: For freestanding use, one space for each 300 square feet of floor area; for two or more uses combined on the same site, one space for each 200 square feet of floor area.</u> | <u>Stores 3,500 square feet or less: /b/</u> <u>Stores larger than 3,500 square feet: /e/</u> |

| <i>Off-Street Parking and Loading Requirements</i> | | |
|--|--|------------------------------------|
| <i>Use</i> | <i>Required Off-Street Parking</i> | <i>Required Off-Street Loading</i> |
| | <u>Stores larger than 3,500 square feet: One space for each 250 square feet of floor area.</u> | |

7. Section 18-901 of the Thornton City Code is hereby amended by the addition of the words double-underlined to read as follows:

Sec. 18-901. – Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Marijuana shall have the same meaning as defined in Article XVIII, Section 16, subsection (2)(f) of the Colorado Constitution.

Marijuana cultivation facility means any real property used for or upon which there is any type of structure or any such facility that includes or is associated with cultivating, preparing, or packaging marijuana.

Marijuana product manufacturing facility means any real property used for or upon which there is any type of structure, or any such facility that includes or is associated with manufacturing, preparing, or packaging marijuana products.

Marijuana products means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

Marijuana store means a facility authorized by the city and licensed in accordance with Chapter 42 of the Code that distributes, transmits, dispenses, sells, or otherwise provides a usable form of marijuana or marijuana products to consumers, patients or caregivers as authorized pursuant to Section 14 or Section 16 of Article XVIII of the Colorado constitution and other applicable state law.

Marijuana testing facility means any real property used for or upon which there is any type of structure, or any such facility that includes or is associated with analyzing and certifying the safety and potency of marijuana or medical marijuana, as authorized by the city and licensed in accordance with Chapter 42 of the Code.

Marijuana use facility means any real property used for, in whole or in part, or upon which there is any type of structure, or any part thereof, where persons gather to smoke, ingest, or otherwise use marijuana, except for the dwelling unit of one of the persons.

Medical marijuana-infused products manufacturer means any real property used for or upon which there is any type of structure, where one or more persons manufacture, package, label or otherwise prepare medical marijuana for use or consumption other than by smoking, including but not limited to edible products, ointments and tinctures, for distribution at a medical marijuana center to patients and primary caregivers.

Medical marijuana optional premises cultivation operation means any real property used for or upon which there is any type of structure, where one or more persons cultivate medical marijuana plants for distribution of any form of marijuana at a medical marijuana center or directly to patients or primary caregivers.

Medical marijuana use facility means any real property used for, in whole or in part, or upon which there is any type of structure, or any part thereof, where medical marijuana patients gather to smoke, ingest, or otherwise use medical marijuana, except for the dwelling unit of one of the patients.

8. If any portion of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the constitutionality or validity of the remaining portions of this ordinance. City Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared unconstitutional or invalid.
9. 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.
10. The repeal or amendment of any provision of the Code 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 and all proper actions, suits, proceedings, and prosecutions for the 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.
11. This ordinance shall take effect upon final passage.

INTRODUCED, READ, PASSED on first reading, ordered posted in full, and title ordered published by the City Council of the City of Thornton, Colorado, on August 9, 2016.

PASSED AND ADOPTED on second and final reading on August 23, 2016.

CITY OF THORNTON, COLORADO


Heidi K. Williams, Mayor

ATTEST:


Nancy A. Vincent, City Clerk

THIS ORDINANCE IS ON FILE IN THE CITY CLERK'S OFFICE FOR PUBLIC INSPECTION.

APPROVED AS TO LEGAL FORM:


Gary G. Jacobson, Interim City Attorney

PUBLICATION:

Posted in six (6) public places after first and second readings.

Published in the Northglenn-Thornton Sentinel after first reading on August 18, 2016, and after second and final reading on September 1, 2016.