

ORDINANCE NO. 24

Series 2010

September 8, 2010: Introduced as Council Bill 22, Series 2010 by Councilor Alex Brown, seconded by Mayor Pro Tem Russell Stewart, and considered in full text on first reading. Passed by a vote of 6 yes and 0 no.

September 21, 2010: Considered in full text on second reading. Passed by a vote of 6 yes and 0 no.

**A BILL FOR AN ORDINANCE
OF THE CITY OF CHERRY HILLS VILLAGE
AMENDING CHAPTER 10 OF THE CHERRY HILLS VILLAGE MUNICIPAL CODE
TO PROHIBIT IN THE CITY OF CHERRY HILLS VILLAGE
CERTAIN USES RELATED TO MEDICAL MARIJUANA.**

WHEREAS, the Colorado Medical Marijuana Code, C.R.S. § 12-43.3-101, *et seq.*, clarifies Colorado law regarding the scope and extent of Amendment 20 to the Colorado Constitution, Article XVIII, § 14, by establishing a regulatory framework for the retail sale, distribution, cultivation and dispensing of medical marijuana and related products; and

WHEREAS, C.R.S. § 12-43.3-106 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 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 that are more restrictive than this article;” and

WHEREAS, the City Council of the City of Cherry Hills Village has carefully considered Article XVIII, § 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, and the secondary effects of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturing on the health, safety and welfare of the Village and its inhabitants, and has determined as an exercise of its local land use authority that such medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturing should be prohibited in the Village; and

WHEREAS, the City Council of the City of Cherry Hills Village recognizes the protections afforded by Article XVIII, § 14 of the Colorado Constitution, and affirms the ability of patients and primary caregivers to otherwise be afforded the protections of that section of the Colorado Constitution, pursuant to applicable law.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO:

Section 1. Chapter 10 of the Cherry Hills Village Municipal Code is hereby amended by the addition of the new Article XI:

Article XI. Medical Marijuana.

Sec. 10-11-10. Intent, authority and applicability.

(1) Intent. It is the intent of this Section to prohibit certain land uses related to medical marijuana, and in furtherance of its intent, the City Council makes the following findings:

a. 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, § 14 of the Colorado Constitution.

b. 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.”

c. 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.”

d. Based on careful consideration of the Colorado Medical Marijuana Code, Article XVIII, § 14 of the Colorado Constitution, and the potential secondary effects of the cultivation and dispensing of medical marijuana, and the retail sale, distribution, and manufacturing of medical marijuana-infused products, such land uses have an adverse effect on the health, safety and welfare of the Village and its inhabitants.

e. As a matter of the Village’s local land use and zoning authority, and consistent with the authorization provided by the Colorado Medical Marijuana Code, no suitable location exists within the Village for the operation of medical marijuana centers, medical marijuana cultivation operations or medical marijuana-infused products manufacturing.

f. Patients and primary caregivers should otherwise be afforded the protections of Article XVIII, §14 of the Colorado Constitution, pursuant to applicable law.

(2) Authority. The City’s authority to adopt this Section is found in: the Colorado Medical Marijuana Code, C.R.S. § 12-43.3-101, *et seq.*; the Local Government Land Use Control Enabling Act, C.R.S. § 29-20-101, *et seq.*; C.R.S. § 31-23-101, *et seq.* (municipal zoning powers); C.R.S. §§ 31-15-103, 31-15-401. (municipal police powers); and C.R.S. § 31-15-501 (municipal authority to regulate businesses).

(3) Applicability. This Article shall apply to all property within the City.

Sec. 10-11-20. For purposes of this Article XI of the Cherry Hills Village Municipal Code the following terms shall have the following meaning:

Medical marijuana means marijuana that is grown and sold for a purpose authorized by Article XVIII, § 14 of the Colorado Constitution.

Medical marijuana center means a person licensed to operate a business as described in the Colorado Medical Marijuana Code that sells medical marijuana and medical marijuana-infused products to registered patients or primary caregivers as defined in Article XVIII, § 14 of the Colorado Constitution, but is not a primary caregiver, and which a municipality is authorized to prohibit as a matter of law.

Medical marijuana-infused products manufacturer means a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business manufacturing medical marijuana-infused products, and which a municipality is authorized to prohibit as a matter of law.

Optional premises cultivation operation means a person licensed pursuant to the Colorado Medical Marijuana Code to grow and cultivate marijuana for a purpose authorized by Article XVIII, § 14 of the Colorado Constitution, and which a municipality is authorized to prohibit as a matter of law.

Patient has the meaning set forth in Article XVIII, § 14(1)(c) of the Colorado Constitution.

Primary caregiver has the meaning set forth in Article XVIII, §14 (1)(f) of the Colorado Constitution.

Sec. 10-11-30. Uses prohibited, penalty, patients and primary caregivers.

(1) Uses Prohibited. It is unlawful for any person to operate, cause to be operated or permit to be operated a medical marijuana center, an optional premises cultivation operation, or a medical marijuana-infused products manufacturing facility in the Village.

(2) Penalty. A violation of the provisions of this Ordinance shall be punishable as follows:

a. Each and every day a violation of the provisions of this Ordinance is committed, exists or continues shall be deemed a separate offense;

b. The Village is specifically authorized to seek an injunction, abatement, restitution or any other remedy necessary to prevent, enjoin, abate, or remove the violation;

c. Any remedies provided for herein shall be cumulative and not exclusive, and shall be in addition to any other remedies provided by law or in equity; and

d. In addition to any other penalties that may exist under state, federal, and local laws, violation of this Section shall be punishable by a fine not exceeding \$1,000.00, or by imprisonment not exceeding one year, or by both such fine and imprisonment, as set forth in Cherry Hills Village Municipal Code Section 1-4-20.

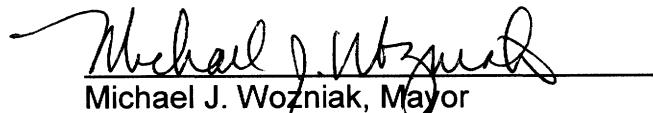
(3) Patients and primary caregivers. Nothing in this Section shall be construed to affect the protections of the use of medical marijuana by patients as provided in the Article XVIII, § 14 of the Colorado Constitution, or the provision of medical marijuana by a primary caregiver to a patient in accordance with Article XVIII, § 14 of the Colorado Constitution, the Colorado Medical Marijuana Code and rules promulgated thereunder.

Section 2. **Severability.** If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this ordinance that can be given effect without the invalid portion, provided that such remaining portions or applications of this ordinance are not determined by the court to be inoperable. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion be declared invalid.

Section 3. **Safety.** This Ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 4. **Effective Date.** This Ordinance shall become effective ten (10) days after publication after second reading in accordance with Section 4.5 of the Charter for the City of Cherry Hills Village.

Adopted as Ordinance No. 24, Series 2010, by the City Council of the City of Cherry Hills Village, Colorado this 21st day of September, 2010.


Michael J. Wozniak, Mayor

ATTEST:



Laura Smith, City Clerk

APPROVED AS TO FORM:



Kenneth S. Fellman, City Attorney

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Published 10/7/10

Legal # 1821

**CITY OF CHERRY HILLS VILLAGE
ADOPTION OF ORDINANCE
ORDINANCE 24, SERIES 2010**

A BILL FOR AN ORDINANCE OF THE
CITY OF CHERRY HILLS VILLAGE
AMENDING CHAPTER 10 OF THE
CHERRY HILLS VILLAGE MUNICIPAL
CODE TO PROHIBIT IN THE CITY OF
CHERRY HILLS VILLAGE CERTAIN
USES RELATED TO MEDICAL MARI-
JUANA

Copies of the Ordinances are on file at the
office of the City Clerk and may be in-
spected during regular business hours.

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Legal #1821
