

ORDINANCE NO. 2010-58

A BILL

FOR AN ORDINANCE AMENDING CHAPTER 22 OF THE CITY CODE THE CITY OF AURORA, COLORADO, BY ADDING A SECTION 22-573 REGULATING THE GROWING OF MEDICAL MARIJUANA

WHEREAS, the Article XVIII, Section 14 of the Colorado Constitution allows for the use and possession of medical marijuana by patients suffering from a chronic or debilitating disease or medical condition and the possession of medical marijuana by a primary caregiver who has significant responsibility for managing the well-being of a patient; and

WHEREAS, the legislature for the State of Colorado approved House Bill 10-1284 (“H.B. 1284”) and the Governor has signed that bill, amending Colorado Revised Statutes, to add Section 12-43.3-101 et. seq., and amending Section 25-1.5-106; and

WHEREAS, the Colorado Constitution and H.B. 1284 fail to address local regulation of the growing of medical marijuana in residential areas, which the City Council has found to be a substantial and important issue implicating health, welfare and safety concerns within the City of Aurora; and

WHEREAS, the density and close proximity of housing units can affect the health, safety and welfare concerns of neighboring units, the City Council finds that differentiating space requirements for the growing of medical marijuana is necessary; and

WHEREAS, the City of Aurora is a home-rule Municipal corporation created and organized pursuant to Article 20 of the Colorado Constitution and the Charter of the City of Aurora; and

WHEREAS, Section 29-20-201 et. seq. of the Colorado Revised Statutes grants home rule municipalities 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

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. That the City Code of the City of Aurora, Colorado, is hereby amended by adding a section, to be numbered 22-573, which section reads as follows:

SECTION 22-573. GROWING MEDICAL MARIJUANA.

I. THE CULTIVATION, PRODUCTION, OR POSSESSION OF MARIJUANA PLANTS FOR MEDICAL USE BY A PATIENT OR PRIMARY CAREGIVER AS SUCH TERMS ARE DEFINED BY ARTICLE XVIII, SECTION 14 OF THE COLORADO CONSTITUTION, SHALL BE ALLOWED IN RESIDENTIAL STRUCTURES SUBJECT TO THE FOLLOWING CONDITIONS:

(A) SUCH CULTIVATION, PRODUCTION, OR POSSESSION OF MARIJUANA PLANTS MUST BE IN FULL COMPLIANCE WITH ALL APPLICABLE PROVISIONS OF ARTICLE XVIII, SECTION 14 OF THE COLORADO CONSTITUTION, THE COLORADO MEDICAL MARIJUANA CODE, C.R.S. §§12-43.3-101 ET SEQ., AND THE MEDICAL MARIJUANA PROGRAM, C.R.S. §25-1.5-106; AND

(B) SUCH MARIJUANA PLANTS ARE CULTIVATED, PRODUCED, OR POSSESSED WITHIN A LICENSED PATIENT'S OR REGISTERED CAREGIVER'S PRIMARY RESIDENCE, AS DEFINED BY PARAGRAPH (H) BELOW; AND

(C) THE CULTIVATION, PRODUCTION, OR POSSESSION OF SUCH MARIJUANA PLANTS MUST NOT BE PERCEPTIBLE FROM THE EXTERIOR OF THE PRIMARY RESIDENCE, INCLUDING BUT NOT LIMITED TO:

(1) COMMON VISUAL OBSERVATION, WHICH WOULD PROHIBIT ANY FORM OF SIGNAGE;

(2) UNUSUAL ODORS, SMELLS, FRAGRANCES, OR OTHER OLFACTORY STIMULUS;

(3) LIGHT POLLUTION, GLARE, OR BRIGHTNESS THAT DISTURBS THE REPOSE OF ANOTHER;

(4) UNDUE VEHICULAR OR FOOT TRAFFIC, INCLUDING EXCESS PARKING WITHIN THE RESIDENTIAL ZONE; AND

(5) NOISE FROM FANS IN EXCESS OF AURORA CITY CODE, SECTION 146-1802.

(D) SUCH MARIJUANA PLANTS SHALL NOT BE GROWN OR PROCESSED IN THE COMMON AREAS OF A MULTI-FAMILY OR ATTACHED RESIDENTIAL DEVELOPMENT; AND

(E) SUCH MARIJUANA PLANTS ARE USED EXCLUSIVELY BY A LICENSED PATIENT FOR THE PATIENT'S PERSONAL USE AND SOLELY TO ADDRESS A DEBILITATING MEDICAL CONDITION; AND

(F) SUCH CULTIVATION, PRODUCTION, OR POSSESSION OF MARIJUANA PLANTS SHALL BE LIMITED TO THE FOLLOWING SPACE LIMITATIONS WITHIN A PRIMARY RESIDENCE:

1) WITHIN A SINGLE-FAMILY DWELLING UNIT (GROUP R-3 AS DEFINED BY THE INTERNATIONAL BUILDING CODE, AS ADOPTED IN CHAPTER 22, SECTION 131): A SECURE, DEFINED, CONTIGUOUS 150 SQUARE FOOT AREA WITHIN THE PRIMARY RESIDENCE OF THE LICENSED PATIENT OR REGISTERED CAREGIVER.

2) WITHIN A MULTI-FAMILY DWELLING UNIT (GROUP R-2 AS DEFINED BY THE INTERNATIONAL BUILDING CODE, AS ADOPTED IN CHAPTER 22, SECTION 131): A SECURE, DEFINED, CONTIGUOUS 100 SQUARE FOOT AREA WITHIN THE PRIMARY RESIDENCE OF THE PATIENT OR REGISTERED CAREGIVER.

(G) SUCH CULTIVATION, PRODUCTION, OR POSSESSION OF MARIJUANA PLANTS SHALL MEET THE REQUIREMENTS OF ALL ADOPTED CITY OF AURORA BUILDING AND LIFE/SAFETY CODES.

(H) FOR PURPOSES OF THIS ORDINANCE, "PRIMARY RESIDENCE" MEANS THE PLACE THAT A PERSON, BY CUSTOM AND PRACTICE, MAKES HIS OR HER PRINCIPLE DOMICILE AND ADDRESS AND TO WHICH THE PERSON INTENDS TO RETURN, FOLLOWING ANY TEMPORARY ABSENCE, SUCH AS VACATION. RESIDENCE IS EVIDENCED BY ACTUAL DAILY PHYSICAL PRESENCE, USE, AND OCCUPANCY OF THE PRIMARY RESIDENCE AND THE USE OF THE RESIDENTIAL ADDRESS FOR DOMESTIC PURPOSES, SUCH AS, BUT NOT LIMITED TO, SLUMBER, PREPARATION OF AND PARTAKING OF MEALS, REGULAR MAIL DELIVERY, VEHICLE AND VOTER REGISTRATION, OR CREDIT, WATER, AND UTILITY BILLING. A PERSON SHALL HAVE ONLY ONE PRIMARY RESIDENCE. A PRIMARY RESIDENCE SHALL NOT INCLUDE ACCESSORY BUILDINGS.

(I) FOR PURPOSES OF THIS ORDINANCE, "A SECURE" AREA MEANS AN AREA WITHIN THE PRIMARY RESIDENCE ACCESSIBLE ONLY TO THE PATIENT OR PRIMARY CAREGIVER. SECURE PREMISES SHALL BE LOCKED OR PARTITIONED OFF TO PREVENT ACCESS BY CHILDREN, VISITORS, CASUAL PASSERSBY, VANDALS, OR ANYONE NOT LICENSED AND AUTHORIZED TO POSSESS MEDICAL MARIJUANA.

(J) IF A LICENSED PATIENT OR REGISTERED CAREGIVER RAISES QUANTITIES OF MARIJUANA REQUIRING MORE THAN THE SQUARE FOOTAGE LIMITATIONS OF PARAGRAPH (F) ABOVE, SUCH PATIENT OR CAREGIVER MUST BE IN FULL COMPLIANCE WITH THE COLORADO MEDICAL MARIJUANA PROGRAM AS PROVIDED IN C.R.S.§25-1.5-106 (14); AND

- (1) SUCH PATIENT OR CAREGIVER MAY GROW MEDICAL MARIJUANA FOR PERSONAL USE AND SOLELY TO ADDRESS A DEBILITATING MEDICAL CONDITION WITHIN THE "M-1", "M-2", OR "M-3" INDUSTRIAL ZONED DISTRICTS OF THE CITY; AND
- (2) SUCH PATIENT OR CAREGIVER MUST SUBMIT PLANS, OBTAIN A BUILDING PERMIT, AND PASS INSPECTIONS TO ENSURE THAT THE M-1, M-2, OR M3 PREMISES ARE IN COMPLIANCE WITH THE CITY OF AURORA'S BUILDING CODE, ELECTRICAL CODE, FIRE CODE, AND ALL OTHER RELEVANT LIFE/SAFETY CODES IN ORDER TO OBTAIN A CERTIFICATE OF OCCUPANCY FROM THE CITY OF AURORA'S BUILDING DIVISION.
- (3) SUCH PATIENT OR CAREGIVER MUST ENSURE THAT THE M-1, M-2, OR M-3 PREMISES ARE SECURE, AS DEFINED IN PARAGRAPH (I) ABOVE; HOWEVER, WITHIN THE INDUSTRIAL SETTING, SO THAT NO CHILDREN, VISITORS, PASSERSBY, VANDALS, OR ANYONE ELSE NOT LICENSED TO POSSESS MEDICAL MARIJUANA MAY ACCESS THE PREMISES.

Section 2. That pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this ordinance shall be by reference, utilizing the ordinance title.

INTRODUCED, READ AND ORDERED PUBLISHED this 6th day of December, 2010.

PASSED AND ORDERED PUBLISHED this _____ day of _____, 2010.

EDWARD J. TAUER, Mayor

ATTEST:

DEBRA JOHNSON, City Clerk

APPROVED AS TO FORM: _____
Dana Spade, Asst. City Attorney