

**OFFICE OF THE DIRECTOR OF EXCISE AND LICENSES  
DENVER, COLORADO**

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**FINAL DECISION**

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**IN THE MATTER OF THE APPLICATION OF PAIN MANAGEMENT OF  
GOVERNORS PARK, LLC, DOING BUSINESS AS THE CLINIC CAPITOL HILL, FOR  
A RETAIL MARIJUANA STORE LICENSE FOR THE PREMISES KNOWN AND  
DESIGNATED AS 745 EAST 6TH AVENUE, DENVER, COLORADO**

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Procedural History

This matter came to public hearing on Wednesday, April 9, 2014, concerning the application of Pain Management of Governors Park, LLC ("Applicant"), doing business as The Clinic Capitol Hill, for a retail marijuana store license for the premises known and designated as 745 East 6th Avenue, Denver, Colorado.

The Applicant currently has a medical marijuana center license, and seeks to operate a retail marijuana store in a co-terminus relationship with its existing medical license at the same location.

Following the hearing, the presiding Hearing Officer issued a written Recommended Decision on April 15, 2014 ("Recommended Decision"), recommending approval of the application based on the evidence and testimony presented.

All parties in interest were given the opportunity to file objections or responses to the Recommended Decision within a specified time period.

The Department received five (5) objections to the Recommended Decision from parties in interest, including an objection from Scott O'Sullivan (an attorney representing a business owner in the designated neighborhood), and the Alamo Placita Neighbors Association (objecting to certain points of the Recommended Decision, but not to the recommendation to approve the application).

The Department also received a response to the objections from the Applicant, through its legal counsel, and a reply to the Applicant's response from Mr. O'Sullivan.

Findings and Conclusions

At the hearing, three (3) residents or business owners/managers in the designated neighborhood area and one (1) registered neighborhood organization appeared in support of the application. Six (6) residents or business owners/managers in the designated area appeared in opposition to the application.

The record indicates that parties in opposition expressed concerns about the Applicant's expansion into retail marijuana sales and past issues with its medical marijuana operations including trash, loitering, and patrons smoking marijuana outside the facility.

Parties in support of the application, including those from the neighborhood and the Applicant's owner and manager, testified regarding the Applicant's control of its premises, security measures, and procedures for addressing patron issues when they arise. Alamo Placita Neighborhood Organization entered into a "Good Neighbor Agreement" with the Applicant and supported the application, provided that the Department attaches four (4) specific conditions to the license.

Based on the evidence and testimony discussed in the Recommended Decision and post-hearing submissions, there is not "good cause" to deny the application based on an adverse impact on the health, welfare or public safety of the neighborhood. See D.R.M.C Sec. 6-212(c). The Hearing Officer's findings regarding the health, welfare or public safety of the neighborhood are supported by the record and the law.

The remaining issue, raised by the parties at the hearing and in post-hearing submissions, is whether the application should be denied based on the "continuous operation" requirement for retail marijuana store applicants in Denver ordinance.

Denver Revised Municipal Code Sec. 6-211(c) provides:

No retail marijuana store license shall be issued for the following locations:

(1) In any residential zone district as defined by the zoning code of the city, in any MS-2, MS-2x, MX-2, MX-2A or MX-2x zone district as defined by the zoning code of the city, or in any location where retail sales are prohibited by the zoning code or by any ordinance governing a planned unit development. The restriction against licensing a retail marijuana store in any MS-2, MS-2x, MX-2, MX-2A or MX-2x zone district shall not apply to any location where the director previously issued a medical marijuana center license under article XII of chapter 24 and a licensed medical marijuana center has existed in continuous operations at the subject location since the time of original licensing.

The Applicant (the same entity operating under different ownership) applied for a City of Denver medical marijuana dispensary license at the subject location in 2010. The Department previously issued a medical marijuana dispensary license to the Applicant in 2011 and a medical marijuana center license in 2013. The Applicant has never had a gap in licensure at the subject location since it began operating in 2010.

The Applicant is located in a MS-2 zone district. Therefore, it must satisfy the continuous operation requirement of the above ordinance in order to qualify for a retail marijuana store license.

The record indicates that Max Cohen, the current sole owner of the Applicant, purchased the business in September 2011 and obtained a transfer of ownership of the medical marijuana license, in accordance with Department procedures. From approximately September 2011 to early December 2011, the Applicant was not making sales of medical marijuana, the center appeared closed for business to passersby, and the Applicant did not maintain a City sales tax account at the location. The licensed center, however, remained at the location and the property was never vacant.

Based on these facts, parties in opposition argue that the Applicant is not eligible for a retail marijuana store license because it was not in continuous operation during this period in 2011. The Applicant contends that it was in continuous operation, even though it was not actively selling marijuana, because it was completing a sale of the business and was still conducting business activities relating to product storage, inventory maintenance, marijuana plant growing and tracking, security, and employee training.

Upon review, the Department has determined that the Applicant was in continuous operation within the meaning of the above City ordinance. A temporary time period without actual product sales does not equate to a lack of continuous operation of a licensed medical marijuana center. Denver ordinance allows for transfers of ownership and physical modifications of premises for medical marijuana centers, and the Department has application procedures for such changes. These transactions may naturally require a business to temporarily close to the public and interrupt regular sales. Otherwise, a business could not close for remodeling of its premises, or because its owners or employees are out of town. With the Department's liquor licensing process, for example, a liquor license transfer of ownership may take several months to complete while the establishment remains closed to the public until it reopens for business.

Here, the Applicant's temporary period without sales, due to the pending sale of the business and transfer of the medical marijuana license at the same location, did not cause it to lose its grandfathering rights or disqualify it from obtaining a retail marijuana store license.

Therefore, the application of Pain Management of Governors Park, LLC, doing business as The Clinic Capitol Hill, for a retail marijuana store license for the premises known and designated as 745 East 6th Avenue, Denver, Colorado, is hereby approved, subject to completion of all required inspections.

The following conditions, agreed to by the Applicant and Alamo Placita Neighbors Association ("APNA"), shall be attached to the license:

- 1. The Clinic shall post two signs inside the premises and three signs outside the premises. The signs shall be no smaller than 12 inches by 16 inches in size. The signs shall state that customers of The Clinic shall not loiter either inside or outside the premises and shall promptly conduct all**

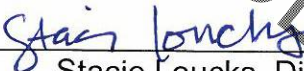
business inside the premises and leave the premises once such business has been concluded. The signs shall be posted and displayed at the premises as provided in the April 2014 Good Neighbor Agreement.

2. In addition to stating that customers shall not loiter either inside or outside the premises, the signs shall also state that it is illegal to consume marijuana in any form within the premises or in public areas outside the premises and that violators will be criminally prosecuted.

3. The Clinic shall provide to APNA written notice of any application to transfer, sell, assign, amend or renew the license at least thirty (30) days prior to the filing of any such application. In the case of a proposed transfer, sale or assignment of the license, the notice shall include all information as provided in the April 2014 Good Neighbor Agreement.

4. The Clinic shall not transfer, sell or assign any interest in or to the license without giving at least thirty (30) days' notice to APNA, thereby providing APNA with the opportunity to present the April 2014 Good Neighbor Agreement to the proposed transferee, purchaser, assignee or interest holder. The Clinic and APNA agree to conduct negotiations as provided in the April 2014 Good Neighbor Agreement.

SO ORDERED this 16<sup>th</sup> day of May, 2014.

  
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Stacie Loucks, Director  
Department of Excise and Licenses

**CERTIFICATE OF MAILING**

The undersigned hereby states and certifies that one true copy of the foregoing Final Decision was deposited in the mails of the U.S. Postal Service, certified mail postage prepaid, and/or emailed on the 16<sup>th</sup> day of May, 2014 to the following:

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**CERTIFICATE OF INTER-OFFICE MAILING**

The undersigned hereby states and certifies that one true copy of the foregoing Final Decision was deposited in the City and County of Denver inter-office mails system on the 16th day of May, 2014 to the following:

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Licensing Technician

INC ACADEMY