

1 **BY AUTHORITY**

2 ORDINANCE NO. _____
3 SERIES OF 2015

COUNCIL BILL NO. _____
COMMITTEE OF REFERENCE:
4 Business Development

5 **A BILL**

6 **For an ordinance amending Article V of Chapter 6 (Denver Retail Marijuana Code)**
7 **to extend the transition phase for additional two years so that only medical**
8 **marijuana establishments that were operating in good standing as of October 1,**
9 **2013, may add or completely convert to a retail marijuana establishment prior to**
10 **January 1, 2018; and for an ordinance amending Article XII of Chapter 24 (Denver**
11 **Medical Marijuana Code) placing a moratorium on the issuance of new medical**
12 **marijuana licenses for medical marijuana centers, medical marijuana optional**
13 **premises cultivation operations, and medical marijuana-infused products**
14 **manufacturing operations, and adding provisions to require public hearings for**
15 **medical marijuana center licenses.**

16 **WHEREAS**, the City has developed robust rules, regulations and policies to ensure that the marijuana
17 industry is held to the highest standards;

18 **WHEREAS**, the transition phase adopted in the 2013 Denver Retail Marijuana Code was intended to
19 facilitate the orderly and controlled implementation of a wholly new regulatory structure launching and
20 managing commercial retail marijuana businesses by limiting licenses to previously existing medical
21 businesses;

22 **WHEREAS**, the transition phase was also intended to provide time for the City to assess the
23 community impacts of retail marijuana;

24 **WHEREAS**, the initial application and licensing process for retail marijuana was accomplished in a
25 smooth and orderly manner, and now the City has had an opportunity to review and assess the impacts
26 of two years of growth in both retail marijuana and medical marijuana licenses;

27 **WHEREAS**, although the transition phase placed constraints on new retail marijuana licenses, no such
28 constraints were placed on new medical marijuana licenses;

29 **WHEREAS**, throughout the transition phase, new market participants continued to apply for new
30 medical marijuana licenses at an unexpectedly high rate and under less stringent rules than those
31 applicable to retail marijuana;

32 **WHEREAS**, despite the steady influx of applications for medical marijuana licenses, there has been
33 no appreciable increase in the number of medical marijuana patients actually registered with the state

1 of Colorado over the past few years and, since medical marijuana cannot be sold to persons other
2 than registered medical marijuana patients or to out-of-state visitors, this stabilization in the number of
3 registered medical marijuana patients cannot be reconciled with the steady increase in medical
4 marijuana license applications;

5 **WHEREAS**, as the end of the original transition phase approaches, the City now has more than 1,000
6 marijuana licenses operating out of more than 400 unique physical locations, so that marijuana is
7 readily accessible in the City and County of Denver;

8 **WHEREAS**, the City infrastructure is still adjusting and responding to this new and evolving industry
9 and regulatory environment, communities are still assessing the impact on their neighborhoods,
10 including the impact of this burgeoning industry on available industrial warehouse space, and
11 researchers are only starting to study the long-term social and public health impacts of marijuana
12 legalization;

13 **WHEREAS**, the State is in the process of implementing new production management rules to control
14 for overproduction and the inherent risks of overproduction as it relates to the black market;

15 **WHEREAS**, the extension of the transition phase on retail marijuana licenses, coupled with a
16 moratorium on new medical marijuana licenses, will allow the city additional time to assess the impact
17 of commercial marijuana cultivation, production and sales in our communities; to further research,
18 understand, and develop measured and thoughtful responses to unanticipated consequences of
19 legalized marijuana; to manage the more than 1,000 licenses already issued by the City; and to
20 integrate the production information gathered by the state over the next two years into data-driven
21 policy decisions.

22 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

23 **Section 1.** Section 6-203 of the Denver Revised Municipal Code shall be amended by
24 adding the language underlined and deleting the language stricken to read as follows:

25 **Sec. 6-203. Transition Provision.**

26 (a) Prior to January 1, ~~2018~~2016, no retail marijuana store, retail marijuana cultivation facility, or retail
27 marijuana products manufacturer shall be licensed or otherwise permitted in the city unless:

28 (1) The applicant for licensing of a retail marijuana establishment was, as of October 1, 2013,
29 operating in good standing a medical marijuana center, a medical marijuana optional
30 premises cultivation operation, or a medical marijuana-infused products manufacturing
31 operation; the applicant is, as of the time of application for a local license under this article

1 V, currently licensed under both the Colorado Medical Marijuana Code and the Denver
2 Medical Marijuana Code; and the applicant proposes to surrender the existing medical
3 marijuana licenses upon receipt of a retail marijuana license, thereby entirely converting an
4 existing medical marijuana establishment into a retail marijuana establishment; or

5 (2) The applicant for licensing of a retail marijuana establishment was, as of October 1, 2013,
6 operating in good standing a medical marijuana center, a medical marijuana optional
7 premises cultivation operation, or a medical marijuana-infused products manufacturing
8 operation; the applicant is, as of the time of application for a local license under this article
9 V, currently licensed under both the Colorado Medical Marijuana Code and the Denver
10 Medical Marijuana Code; and the applicant proposes to retain the existing medical
11 marijuana license while locating a retail marijuana establishment under common ownership
12 at the same location to the extent allowed by the Colorado Retail Marijuana Code and
13 applicable state rules and regulations.

14 (b) Prior to January 1, 2018~~6~~, any person who obtains a transfer of ownership of the state and local
15 licenses for a medical marijuana business that was operating in good standing as of October 1,
16 2013 and is duly licensed under both the Colorado Medical Marijuana Code and the Denver
17 Medical Marijuana Code may qualify for licensing as a retail marijuana establishment in the city
18 as allowed by subsection (a) of this section.

19 (c) Prior to January 1, 2018~~6~~, any person who obtains a change of location of the state and local
20 licenses for a medical marijuana business that was operating in good standing as of October 1,
21 2013 and is duly licensed under both the Colorado Medical Marijuana Code and the Denver
22 Medical Marijuana Code may qualify for licensing as a retail marijuana establishment in the new
23 location as allowed by subsection (a) of this section; provided, however, no change of location
24 of a medical marijuana center license with the intent to apply for licensing as a retail marijuana
25 store in the new location shall be approved unless and until a public hearing is conducted in
26 accordance with section 6-212 and the director has determined that the applicant qualifies for
27 licensing of a retail marijuana store in the new location. For any application involving transfer of
28 location of an existing medical marijuana center and conversion to or co-location of a retail
29 marijuana store at the new location, good cause for denial of the retail marijuana store license
30 shall include, in addition to the factors set forth in section 6-212, evidence that the medical
31 marijuana center was operated in a manner that adversely affected the public health, welfare,
32 or safety of the immediate neighborhood in which the center was previously located.

1 (d) On and after January 1, 2018~~6~~, any person who otherwise qualifies for licensing under
2 applicable state and city laws may apply for licensing of a retail marijuana establishment in the
3 city, regardless of whether or not the applicant is the owner of an existing medical marijuana
4 business in the city.

5

6 **Section 2.** Section 6-209 of the Denver Revised Municipal Code shall be amended by
7 adding the language underlined and deleting the language stricken to read as follows:

8 **Sec. 6-209. Screening and response to state license applications.**

9 (1) For all applications received prior to January 1, 2018~~6~~, determine whether the applicant
10 qualifies for licensing as an existing medical marijuana business in the city, to the extent
11 allowed by section 6-203. If the director makes an initial determination that the applicant
12 does not qualify for licensing prior to January 1, 2018~~6~~, the director shall, no later than forty-
13 five (45) days from the date the application was originally received by the state licensing
14 authority, notify the state licensing authority and the applicant for state licensing in writing
15 that the application is disapproved by the city. The failure of the director to make such a
16 determination upon the initial review of a state license application shall not preclude the
17 director from later determining that the applicant does not qualify for licensing prior to
18 January, 2018~~2016~~ as provided in section 6-203, and disapprove the issuance of a state or
19 city license on this basis.

20 (2) Determine, in consultation with the manager of the department of community planning and
21 development, whether or not the location proposed for licensing complies with any and all
22 zoning and land use laws of the city, and any and all restrictions on location of retail
23 marijuana establishments set forth in this article V. If the director makes an initial
24 determination that the proposed license would be in violation of any zoning law or other
25 restriction on location set forth in city laws, the director shall, no later than forty-five (45)
26 days from the date the application was originally received by the state licensing authority,
27 notify the state licensing authority and the applicant for state licensing in writing that the
28 application is disapproved by the city. The failure of the director to make such a
29 determination upon the initial review of a state license application shall not preclude the
30 director from later determining that the proposed license is in violation of city zoning laws
31 or any other restriction on location set forth in city laws, and disapprove the issuance of a
32 state or city license on this basis.

33 **Section 3.** Section 6-212 of the Denver Revised Municipal Code shall be amended by

1 adding the language underlined and deleting the language stricken to read as follows:

2 **Sec. 6-212. Licensing requirements—Retail marijuana stores—Public hearing**
3 **requirement.**

4 (a) Public notice; posting and publication.

5 (1) Upon receipt of an application for a local retail marijuana store license, the
6 director shall schedule a public hearing upon the application ~~not less than 30 days from the~~
7 ~~date of the application~~ and shall post and publish the public notice thereof not less than ten
8 (10) days prior to such hearing. Public notice shall be given by the posting of a sign in a
9 conspicuous place on the premises for which application has been made and by publication
10 in a newspaper of general circulation.

11 (c) *Results of investigation; decision of director.*

12 (1) ~~Not less than five (5) days prior to the date of hearing,~~ The director shall make known the
13 director's findings based on the director's initial investigation of the application documents
14 in writing to the applicant and other interested parties.

15 (2) The director has authority to refuse to issue any retail marijuana store license for good
16 cause, subject to judicial review. For purposes of this subsection (c), the term "good cause"
17 means:

18 a. The applicant has violated, does not meet, or has failed to comply with any of the
19 terms, conditions, or provisions of the Colorado Retail Marijuana Code or any rule
20 and regulations promulgated pursuant thereto, or this article V or any rules and
21 regulations promulgated pursuant to this article;

22 b. With respect to a second or additional retail marijuana store license proposed by
23 the same applicant, the director shall consider the effect on competition of the
24 granting or disapproving of additional licenses to such licensee, and no application
25 for a second or additional license that would have the effect of restraining
26 competition shall be approved.

27 c. For applications to license any retail marijuana store in the same location where
28 any medical marijuana center is or has previously been licensed, evidence that the
29 licensed premises have been previously operated in a manner that adversely
30 affects the public health, welfare, or safety of the immediate neighborhood in which
31 the establishment is located.

32 d. Evidence that the issuance of the license will adversely impact the health, welfare
33 or public safety of the neighborhood in which the retail marijuana store is proposed

1 to be located

2 (23) Before entering any decision approving or denying the application, the director shall
3 consider, except where this article specifically provides otherwise, the facts and evidence
4 adduced as a result of its investigation and the public hearing required by this section, and
5 any other pertinent matters affecting the qualifications of the applicant for the conduct of
6 business as a retail marijuana store.

7 (34) For new retail marijuana store licenses issued on and after January 1, 2016, in addition to
8 the standards set forth in subsection (c) of this section, the applicant shall establish the
9 need for the license by a preponderance of the evidence and the director shall also
10 consider:

11 a. The reasonable requirements of the neighborhood and the desires of the adult
12 inhabitants as evidenced by petitions, remonstrances, or otherwise;

13 b. The number and availability of other retail marijuana stores in or near the
14 neighborhood under consideration; and

15 c. Whether the issuance of such license would result in or add to an undue
16 concentration of retail marijuana store licenses and, as a result, require the use of additional
17 law enforcement resources; and

18 (45) Unless additional time is necessary to fully investigate an application, a any decision of the
19 director approving or denying an application shall be in writing stating the reasons therefor,
20 within thirty (30) days after the date of the public hearing, and a copy of such decision shall
21 be sent by certified mail to the applicant at the address shown in the application and to the
22 state licensing authority. The failure of the director to issue a final decision within thirty (30)
23 days after the date of the public hearing shall not preclude the director from later
24 determining that the application should be approved or denied.

25 **Section 4.** Section 24-507 of the Denver Revised Municipal Code shall be amended by
26 adding the language underlined and deleting the language stricken to read as follows:

27 **Sec. 24-507. Licensing requirements – Provisions applicable to all licenses.**

28 (a) *Criteria for licensing; ~~waiver of public hearings.~~* The director shall consider and act upon all
29 local license applications in accordance with the standards and procedures set forth in the Colorado
30 Medical Marijuana CodeMMG and this article XII; ~~provided, however, no public hearing shall be~~
31 ~~required for any class of licensing pursuant to § 12-43.3-302, C.R.S., as amended, and the director's~~
32 ~~decision to grant or deny a license shall be made solely upon the results of the director's~~
33 ~~investigation and findings pursuant to section 12-43.3-305, C.R.S., as amended.~~ The director shall

1 deny any application for a license that is not in full compliance with the Colorado Medical Marijuana
2 CodeMMG, this article XII, and any other applicable state or city law or regulation. The director shall
3 also deny any application that contains any false or incomplete information.

4 **Section 5.** Section 24-508.5 of the Denver Revised Municipal Code shall be amended by
5 adding the language underlined and deleting the language stricken to read as follows:

6 Sec. 24-508.5. Licensing requirements—Medical marijuana centers—Public hearing
7 requirement.

8 (a) Public notice; posting and publication.

9 (1) For new medical marijuana center licenses issued on and after January 1, 2016, the director
10 shall schedule a public hearing upon the application and shall post and publish the public
11 notice thereof not less than ten (10) days prior to such hearing. Public notice shall be given
12 by the posting of a sign in a conspicuous place on the premises for which application has
13 been made and by publication in a newspaper of general circulation.

14 (2) Notice given by posting shall include a sign of suitable material, not less than twenty-two
15 (22) inches wide and twenty-six (26) inches high, composed of letters not less than one (1)
16 inch in height and stating the type of license applied for, the date of the application, the date
17 of the hearing, and the name and address of the applicant, and such other information as
18 may be required to fully apprise the public of the nature of the application. If the applicant
19 is a partnership, the sign shall contain the names and addresses of all partners, and if the
20 applicant is a corporation, association, or other organization, the sign shall contain the
21 names and addresses of the president, vice-president, secretary, and manager or other
22 managing officers.

23 (3) Notice given by publication shall contain the same information as that required for signs.

24 (4) If the building in which medical marijuana is to be sold is in existence at the time of the
25 application, any sign posted as required in subsections (1) and (2) of this section shall be
26 placed so as to be conspicuous and plainly visible to the general public. If the building is
27 not constructed at the time of the application, the applicant shall post the premises upon
28 which the building is to be constructed in such a manner that the notice shall be conspicuous
29 and plainly visible to the general public.

30 (b) Conduct of public hearings.

31 (1) At the public hearing held pursuant to this section, any party in interest shall be allowed to
32 present evidence and to cross-examine witnesses. As used in this section, "party in interest"
33 means any of the following:

- 1 a. The applicant;
- 2 b. An adult resident of the neighborhood under consideration;
- 3 c. The owner or manager of a business located in the neighborhood under
- 4 consideration;
- 5 d. An authorized representative of a registered neighborhood organization that
- 6 encompasses all or part of the neighborhood under consideration; or
- 7 e. Any member of city council elected from a district that encompasses all or any
- 8 part of the neighborhood under consideration.

9 (2) As used in this section, the term "neighborhood" shall have the same meaning as the

10 director utilizes for purposes of issuance of liquor licenses.

11 (3) Any party in interest may request that the director schedule a public hearing on or after 5:00

12 p.m. on any regular business day of the city.

13 (4) The director, in the director's discretion, may limit the presentation of evidence and cross-

14 examination so as to prevent repetitive and cumulative evidence or examination.

15 (c) Results of investigation; decision of director.

16 (1) The director shall make known the director's findings based on the director's initial

17 investigation of the application documents in writing to the applicant and other interested

18 parties.

19 (2) The director has authority to refuse to issue any medical marijuana center license for good

20 cause, in addition to the standards set forth in paragraph (3) of this subsection (c) of this

21 section, subject to judicial review. For purposes of this subsection (c), the term "good

22 cause" means:

23 a. The applicant has violated, does not meet, or has failed to comply with any of the

24 terms, conditions, or provisions of the Colorado Medical Marijuana Code or any

25 rule and regulations promulgated pursuant thereto, or this article XII or any rules

26 and regulations promulgated pursuant to this article.;

27 b. With respect to a second or additional medical marijuana center license proposed

28 by the same applicant, the director shall consider the effect on competition of the

29 granting or disapproving of additional licenses to such licensee, and no application

30 for a second or additional license that would have the effect of restraining

31 competition shall be approved.

32 c. For applications to license any medical marijuana center in the same location

33 where any medical marijuana center has previously been licensed, evidence that

1 the licensed premises have been previously operated in a manner that adversely
2 affects the public health, welfare, or safety of the immediate neighborhood in which
3 the establishment is located.

4 d. Evidence that the issuance of the license will adversely impact the health, welfare
5 or public safety of the neighborhood in which the medical marijuana center is
6 proposed to be located

7 (3) In addition to the standards set forth in paragraph (2) of subsection (c) of this section, the
8 applicant shall establish the need for the license by a preponderance of the evidence and
9 the director shall also consider:

10 a. The reasonable requirements of the neighborhood and the desires of the adult
11 inhabitants as evidenced by petitions, remonstrances, or otherwise;

12 b. The number and availability of other medical marijuana centers in or near the
13 neighborhood under consideration; and

14 c. Whether the issuance of such license would result in or add to an undue
15 concentration of medical marijuana center licenses and, as a result, require the use of
16 additional law enforcement resources

17 (4) Before entering any decision approving or denying the application, the director shall
18 consider, except where this article specifically provides otherwise, the facts and evidence
19 adduced as a result of its investigation and the public hearing required by this section, and
20 any other pertinent matters affecting the qualifications of the applicant for the conduct of
21 business as a retail marijuana store.

22 (5) Unless additional time is necessary to fully investigate an application, any decision of the
23 director approving or denying an application shall be in writing stating the reasons therefor,
24 within thirty (30) days after the date of the public hearing, and a copy of such decision shall
25 be sent by certified mail to the applicant at the address shown in the application and to the
26 state licensing authority. The failure of the director to issue a final decision within thirty (30)
27 days after the date of the public hearing shall not preclude the director from later
28 determining that the application should be approved or denied.

29
30 **Section 6.** Section 24-503.5 of the Denver Revised Municipal Code shall be amended by
31 adding the language underlined and deleting the language stricken to read as follows:

32 **Sec. 24-503.5. Temporary moratorium.**

1 (a) The issuance of new medical marijuana business licenses for medical marijuana centers,
2 medical marijuana optional premises cultivation operations, and medical marijuana-
3 infused products manufacturing operations shall be and hereby is limited by the following
4 moratorium:

5 (1) The moratorium shall be in effect beginning January 1, 2016;

6 (2) The moratorium shall end on December 31, 2017;

7 (3) During the period of the moratorium, except as provided in subsection (b) of this
8 section, under no circumstances shall the director receive any new application for a
9 medical marijuana establishment described in this subsection (a).

10 (b) This moratorium shall not apply to any new license applications for a medical marijuana
11 establishment described in this subsection (a) which have been submitted to the city in
12 complete form, with any required fees paid, prior to January 1, 2016.

16 COMMITTEE APPROVAL DATE:

17 MAYOR-COUNCIL DATE:

18 PASSED BY THE COUNCIL: _____, 2015

19 _____ - PRESIDENT

20 APPROVED: _____ - MAYOR _____, 2015

21 ATTEST: _____ - CLERK AND RECORDER,
22 EX-OFFICIO CLERK OF THE
23 CITY AND COUNTY OF DENVER

24 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2015; _____, 2015

25 PREPARED BY: Marley Bordovsky, Assistant City Attorney DATE: _____, 2015

26 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
27 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
28 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to §
29 3.2.6 of the Charter.

30 D. Scott Martinez, Denver City Attorney

31 BY: _____, Assistant City Attorney DATE: _____, 2015

32