



# City of Arvada

## City Council Agenda

### AUGUST 31, 2009

#### Third Floor Conference Room

**Councilmembers:**

Bob Frie, Mayor  
Lorraine Anderson, Mayor Pro-Tem  
Don Allard, District 1  
Aaron Azari, At large  
Bob Dyer, District 4  
Mark McGoff, District 2  
Marc Williams, At large

**Staff Members Usually Present: Info: 720-898-7500**

Craig Kocian, City Manager  
Bill Ray, Deputy City Manager  
Chris Daly, City Attorney  
Jim Root, Director of Public Works & Utilities  
Mike Elms, Director of Community Development  
Maria VanderKolk, Assistant to the City Manager  
Clark Johnson, Assistant to the City Manager  
Christine Koch, City Clerk

1. Call to Order – 5:30 p.m.
2. Moment of Reflection and Pledge of Allegiance – Councilmember Williams
3. Roll Call of Councilmembers
4. Public Comment on Issues not Scheduled on Agenda – Three Minute Limit
5. Executive Sessions
  - A. Legal Advice, Pursuant to 24-6-402(4)(b)
  - B. Instructions to Negotiators, Pursuant to CRS 24-6-402(4)(e)
6. New Business
  - A. Ordinance
    1. CB09-026  
An Ordinance Imposing a Temporary Moratorium on the Submission, Acceptance, Processing, or Approval of any Application to the City of Arvada for any Permit, License, Plan Approval, or Other Type of Approval Related to the Operation of a Business that Acquires, Possesses, Cultivates, Manufactures, Produces, Uses, Sells, Distributes, Dispenses, or Transports Medical Marijuana Pursuant To The Authority Granted By Article 18, Section 14 of the Colorado Constitution; Declaring the Intention of the City Council to Consider the Adoption of Appropriate City Regulations with Respect to Such Businesses; Declaring an Emergency; and Providing for an Immediate Effective Date of this Ordinance (Ordinance No. 4178)
7. Reports from City Council
8. Reports from City Manager
9. Reports from City Attorney
10. Public Comment – Five Minute Limit
11. Adjournment

**CITY OF ARVADA  
COUNCIL AGENDA INFORMATION SHEET  
ORDINANCE**

**Agenda No.** 6.A.1.

**City Council Meeting Date:** August 31, 2009

**Title:** CB09-026, An Ordinance Imposing a Temporary Moratorium on the Submission, Acceptance, Processing, or Approval of any Application to the City of Arvada for any Permit, License, Plan Approval, or Other Type of Approval Related to the Operation of a Business that Acquires, Possesses, Cultivates, Manufactures, Produces, Uses, Sells, Distributes, Dispenses, or Transports Medical Marijuana Pursuant To The Authority Granted By Article 18, Section 14 of the Colorado Constitution; Declaring the Intention of the City Council to Consider the Adoption of Appropriate City Regulations with Respect to Such Businesses; Declaring an Emergency; and Providing for an Immediate Effective Date of this Ordinance

**Initiated by (Department):** City Attorney's Office   **(Division):**

**Action Proposed:** Approval of Ordinance

**Financial Impact:** None      **This project/request is:** One-time  On-going  Multi-year

*Explain financial impact of this request.*

**Funding Source:** N/A   **Type**      **Fund**

**Future associated costs requiring Council actions:** None  Additional funds required

*In the text, explain any future financial obligations, including operations and maintenance, that may be associated with this request.*

**Information about the Project or Request:** Based on developments at the federal and state level, a significant increase in inquiries and applications pertaining to medical marijuana facilities is being experienced in Colorado, particularly in the metropolitan area of Denver, including Arvada. Arvada's code, like most municipal codes, does not specifically address this activity from either a licensing or land-use perspective. It is a confusing and fast-changing environment in which federal law maintains its criminalization of almost all activities associated with marijuana, while state law, through Amendment 20 to the Colorado Constitution, carves out a narrow affirmative defense to criminal prosecution for activities associated with medical marijuana. Medical marijuana growing facilities and "dispensaries" are not specifically provided for in the constitutional provisions relating to medical marijuana, but are cropping up in numerous municipalities under Amendment 20 provisions that allow for (and exempt from prosecution) "caregivers" to authorized medical marijuana patients. Concerns are being raised about the appropriate siting of such facilities, their public safety implications, the appropriate level of security that should be required of such land uses, and similar issues. A moratorium will allow staff to fully research and analyze issues surrounding these unique land uses, and recommend appropriate regulations to protect the public interest, while avoiding questions as to the status of applications received prior to adoption of any new regulations.

Staff recommends approval of this ordinance.

**Suggested Motion:** Moved by \_\_\_\_\_

I move that CB09-026, An Ordinance Imposing a Temporary Moratorium on the Submission, Acceptance, Processing, or Approval of any Application to the City of Arvada for any Permit, License, Plan Approval, or Other Type of Approval Related to the Operation of a Business that Acquires, Possesses, Cultivates, Manufactures, Produces, Uses, Sells, Distributes, Dispenses, or Transports Medical Marijuana Pursuant To The Authority Granted By Article 18, Section 14 of the Colorado Constitution; Declaring the Intention of the City Council to Consider the Adoption of Appropriate City Regulations with Respect to Such Businesses; Declaring an Emergency; and Providing for an Immediate Effective Date of this Ordinance, be (approved, numbered 4178, and ordered published in full within 10 days) (rejected).

YES

NO

ABSENT

COUNCIL BILL NO. 09-026  
ORDINANCE NO. 4178

AN ORDINANCE IMPOSING A TEMPORARY MORATORIUM ON THE SUBMISSION, ACCEPTANCE, PROCESSING, OR APPROVAL OF ANY APPLICATION TO THE CITY OF ARVADA FOR ANY PERMIT, LICENSE, PLAN APPROVAL, OR OTHER TYPE OF APPROVAL RELATED TO THE OPERATION OF A BUSINESS THAT ACQUIRES, POSSESSES, CULTIVATES, MANUFACTURES, PRODUCES, USES, SELLS, DISTRIBUTES, DISPENSES, OR TRANSPORTS MEDICAL MARIJUANA PURSUANT TO THE AUTHORITY GRANTED BY ARTICLE 18, SECTION 14 OF THE COLORADO CONSTITUTION; DECLARING THE INTENTION OF THE CITY COUNCIL TO CONSIDER THE ADOPTION OF APPROPRIATE CITY REGULATIONS WITH RESPECT TO SUCH BUSINESSES; DECLARING AN EMERGENCY; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE OF THIS ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO:

Section I. The City Council of Arvada, Colorado hereby finds, determines, and declares as follows:

The City Council has been made aware that various departments of the City have received inquiries and/or applications from individuals or entities who may be interested in opening and operating a business within the City which would acquire, possess, cultivate, manufacture, produce, use, sell, distribute, dispense, or transport medical marijuana.

Particular actions or activities involving medical marijuana were authorized and limited by Article 18, Section 14 of the Colorado Constitution, adopted by the voters of the State of Colorado on November 7, 2000.

The City currently has no specific land use or business regulation governing the operation of a business growing, selling, or otherwise engaged in actions or activities involving medical marijuana within the City of Arvada.

Based upon information provided to the City Council, it appears that such businesses may present unique regulatory issues that the City's current laws, ordinances, rules and regulations do not adequately address.

The City Council directs the City staff to forthwith investigate the land-use, legal, and other issues related to the regulation of such businesses within the City. Such investigations shall be completed promptly and with due diligence.

The imposition of a one hundred and eighty (180) day moratorium on the submission, acceptance, processing, or approval of any and all applications for City permits, licenses, plan approvals, or other types of approval relating to the operation of such a business will allow the City staff and the City Council to investigate more fully the policy and legal issues related to the regulation of such businesses, and to develop and implement any appropriate regulations deemed necessary by the City Council.

Because the City does not currently have any specific regulations pertaining to such businesses, the City will suffer irreparable harm if a short, temporary moratorium on the submission, acceptance, processing, or approval of City permits, licenses, plan approvals, or other types of approval related to the operation of such businesses is not imposed.

The duration of the moratorium imposed by this ordinance is reasonable in length, and is no longer than is required for the City to properly investigate, develop, and, if appropriate, adopt and implement any regulations deemed necessary with respect to businesses that acquire, possess, cultivate, manufacture, produce, use, sell, distribute, dispense, or transport medical marijuana.

Proprietors desiring to open such a business will not be unfairly prejudiced by the imposition of the short, temporary moratorium imposed by this ordinance.

Section 2. Upon the adoption of this ordinance, a moratorium is imposed upon the submission, acceptance, processing, or approval of any and all applications for permits, licenses, plan approvals, or other types of approval by the City of Arvada related to a business that acquires, possesses, cultivates, manufactures, produces, uses, sells, distributes, dispenses, or transports medical marijuana pursuant to the authority granted by Article 18, Section 14 of the Colorado Constitution. The City staff and all applicable commissions, boards, departments, divisions, and representatives are directed to refuse to accept for filing, and not to process or review, any such new applications during the moratorium period.

Section 3. The moratorium imposed by this ordinance shall commence as of the date of the adoption of this ordinance, and shall expire one hundred and eighty (180) days thereafter, unless sooner repealed.

Section 4. Before the expiration of the moratorium imposed by this ordinance the City staff, working with the City Attorney as applicable, shall fully investigate all issues related to the regulation of the businesses herein-referenced and, if directed to do so by the City Council or City Manager, shall prepare appropriate new regulations with respect to such businesses for consideration by the City Council.

Section 5. The City Council hereby finds, determines, and declares that this ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the City of Arvada and the inhabitants thereof.

Section 6. The City Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act, Article 20 of title 29, C.R.S.; (ii) Part 3 of Article 23 of title 31, C.R.S. (concerning municipal zoning powers); (iii) Section 31-15-103, CR.S. (concerning municipal police powers); (iv) Section 31-15-40, CR.S.(concerning municipal police powers); (v) Section 31-15-50 (concerning municipal power to regulate businesses); (vi) the authority granted to home rule municipalities by Article XX of the Colorado Constitution; and (vii) the powers contained in Section 5.9 of the Arvada Charter and in the Arvada City Code.

Section 7. The City Council of the City of Arvada hereby finds, determines, and declares that an emergency exists and that this ordinance is necessary for the immediate preservation of public property, health, peace or safety. The adoption of this ordinance on an emergency basis is necessary in order to prevent further persons or entities from filing an application for a City permit, license, plan approval, or other type of approval relating to the operation of a business of the afore-referenced nature until the City has had a reasonable opportunity to determine what regulations, if any, should be imposed by the City upon such businesses. Failure to immediately impose the moratorium provided for in this ordinance will potentially allow further persons to submit an application for one or more of the afore-referenced types of approval from the City, and to possibly acquire certain rights with respect to the processing of such applications before the City has the reasonable opportunity to evaluate the possible community impacts that might be associated with the operation of a such businesses and to implement appropriate regulations with respect to such businesses. This could lead to the City being forced to allow the operation of such a business in a location or in such a manner that would be out of character with the community and which would negatively affect the cultural, environmental, and neighborhood areas of the City, and potentially present issues related to crime or the potential of crime. The City Council further determines that the adoption of this ordinance as an emergency ordinance is in the best interest of the citizens of the City of Arvada.

Section 8. Pursuant to Section 5.9 of the Arvada Charter, this ordinance shall take effect and be in full force upon adoption of this ordinance by the unanimous affirmative votes of the Council members present.

Section 9. This ordinance shall be published in full within ten (10) days after adoption or as soon thereafter as possible, as required by Section 5.9 of the Arvada Charter.

INTRODUCED, READ AND ORDERED PUBLISHED THIS 31st DAY OF August, 2009.

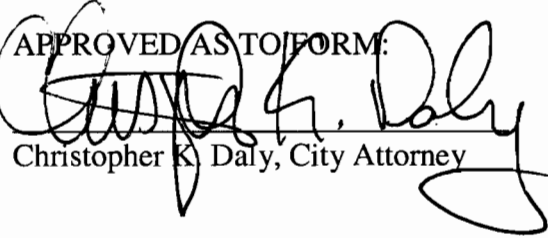
PASSED, ADOPTED AND APPROVED this 31st day of August, 2009.

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Robert G. Frie, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:  
  
Christopher K. Daly, City Attorney

Publication date: September 3, 2009