

Town of Silverthorne
Council Agenda Memorandum

TO: Mayor and Town Council *(KB)*
THRU: Kevin Batchelder, Town Manager
FROM: Mark Leidal, Community Development Director *ML*
DATE: October 22, 2009, for meeting of October 28, 2009
SUBJECT: PUBLIC HEARING: Ordinance 2009-19: An Ordinance amending Silverthorne Town Code Chapter 4, Article IV, Zoning Districts and Standards, by adding a new Section 4-4-35, concerning Medical Marijuana Dispensaries – Second Reading

SUMMARY: Proposed Ordinance 2009-19 would be added as a new section to the zoning portion of the Town Code. This would allow the Town to regulate Medical Marijuana Dispensaries within the Town.

BACKGROUND: The Town has had inquiries about the establishment of medical marijuana dispensaries within the Town. One dispensary has been permitted in Town at 191 Blue River Parkway. The Towns of Frisco and Breckenridge have adopted regulations concerning medical marijuana dispensaries.

PREVIOUS COUNCIL ACTION: Town Council reviewed the possibility of proposed regulations concerning medical marijuana dispensaries on July 21 and August 11. On August 12, Town Council adopted Emergency Ordinance No. 2009-16 imposing a 90 day moratorium on processing medical marijuana dispensary applications. The 90 day moratorium expires on November 10, 2009. Town Council approved the first reading of Ordinance 2009-19 on October 14, 2009.

DISCUSSION: The proposed ordinance most closely models the ordinance that the Town of Frisco has adopted. Staff finds that it is important to have similar regulations between the different jurisdictions within the County.

For clarification, Chris Price, with Murray, Dahl, Keuchenmeister, & Renaud, LLP, has suggested that any reference to cultivation be taken out of the ordinance and instead rely upon the definitions under Amendment 20. These proposed changes are in a redlined version attached as Exhibit A.

STAFF RECOMMENDATION: Staff recommends approval of Ordinance 2009-19 on second reading as presented.

PROPOSED MOTION: *"I move to approve Ordinance 2009-19: An Ordinance Amending Silverthorne Town Code Chapter 4, Article IV, Zoning Districts and Standards, by adding a new Section 4-4-35, concerning Medical Marijuana Dispensaries on Second Reading as presented."*

ATTACHMENTS:

Exhibit A: Ordinance 2009-19

Exhibit B: Article on Federal policy

**TOWN OF SILVERTHORNE, COLORADO
ORDINANCE NO. 2009-19**

AN ORDINANCE AMENDING SILVERTHORNE TOWN CODE CHAPTER 4, ARTICLE IV, ZONING DISTRICTS AND STANDARDS, BY ADDING A NEW SECTION 4-4-35, CONCERNING MEDICAL MARIJUANA DISPENSARIES

WHEREAS, because the cultivation, possession and sale of marijuana is prohibited by the Town Code and federal and state law generally, marijuana sales and cultivation have never been addressed by the Town's zoning ordinances; and

WHEREAS, the voters of the State of Colorado affirmed the medical use of marijuana by adopting Amendment 20 to the Colorado Constitution in November of 2000; and

WHEREAS, the intent of Amendment 20 was to enable persons who are in medical need of marijuana to be able to obtain and use it without fear of criminal prosecution; and

WHEREAS, there appears to be a proliferation of operations wishing to cultivate ~~medical marijuana and/or provide~~ medical marijuana # to those who qualify under state law ("medical marijuana dispensaries"); and

WHEREAS, the existing Town zoning regulations do not provide for the location and regulation of medical marijuana dispensaries and such uses are permissible in any zone that allows drug stores and pharmacies; and

WHEREAS, state law does not address or regulate the operation of medical marijuana dispensaries; and

WHEREAS, due to the nature of the operation, medical marijuana dispensaries have been targets of criminal activity; and

WHEREAS, cultivation of marijuana may create a hazardous operating environment if not properly regulated; and

WHEREAS, if medical marijuana dispensaries were allowed to be established without appropriate regulation as to the location and operation thereof, such operations might be established in areas that would conflict with the Town's comprehensive land use plan, be inconsistent with surrounding uses, or be detrimental to the public health, safety, and welfare; and

WHEREAS, the Town Council of the Town of Silverthorne believes this ordinance is necessary to safeguard the urban environment by permitting medical marijuana dispensaries to be located and operated within the Town in compliance with state law in a manner consistent with aforementioned concerns.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SILVERTHORNE, COLORADO:

Section 1: New Section 4-4-35 of the Silverthorne Town Code is hereby adopted to read as follows:

Sec. 4-4-35. Medical Marijuana Dispensaries

- (a) Definition. The term "medical marijuana dispensary" shall mean and include the use of any property or structure to:
- (1) Distribute, transmit, give, dispense, or otherwise provide marijuana in any manner, in accordance with Section 14, of Article XVIII of the Colorado Constitution: or
 - (2) ~~Cultivate, grow, or otherwise maintain more than six (6) marijuana plants.~~
- (b) Application. Prior to the establishment of any medical marijuana dispensary, a valid business license must be obtained from the Town of Silverthorne and each the following requirements shall be met:
- (1) Written approval from the Town of Silverthorne Police Department, as to the following:
 - a. Criminal background check. No written approval will be issues to an applicant whose criminal history reflects a prior conviction for a felony and/or drug related offense. In the case where an applicant is a business entity, the applicant shall provide the name(s) of each natural person who owns ten percent (10%) or more of all ownership interest in the entity, and no written approval shall be issued if any such person has a criminal history that reflects a prior conviction for a felony and/or drug related offense.
 - (2) Written approval from the Community Development Department that the location requirements set forth in Subsection (c) below have been met.
 - (3) Written approval from the Community Development Department that the requirements of all of the applicable Town Building Codes have been met.
- (c) Location Requirements: No medical marijuana dispensary shall be established except in accordance with the following location requirements:
- (1) No medical marijuana dispensary shall be located within 500 feet of any licensed child care facility at the time of establishment of the dispensary.

- (2) No medical marijuana dispensary shall be located within 500 feet of any educational institution or school, either public or private, at the time of establishment of the dispensary.
 - (3) No medical marijuana dispensary shall be located within 500 feet of any halfway house or correctional facility at the time of establishment of the dispensary.
 - (4) No medical marijuana dispensary shall be located within 500 feet of a residential dwelling, whether located within or outside of the Town, at the time of establishment of the dispensary.
 - (5) No medical marijuana dispensary shall be located within 500 feet of any public park, recreation center, or any publicly owned or maintained building open for use to the general public.
 - (6) No medical marijuana dispensary shall be located in a building containing residential units at the time of establishment of the dispensary.
 - (7) No medical marijuana dispensary shall be located in a movable or mobile structure.
 - (8) No medical marijuana dispensary shall be located with 1,000 feet of another medical marijuana dispensary, whether such business is located within or outside of the Town.
 - (9) No medical marijuana dispensary shall be located in a building containing a pediatrician office at the time of establishment of the dispensary.
 - (10) No medical marijuana dispensary shall be located in a residential zoning district.
 - (11) No medical marijuana dispensary shall be located in a building that contains a hotel, motel, condominium hotel, boarding facility, or rooming facility at the time of establishment of the dispensary.
- (d) Additional limitations. Medical marijuana dispensaries shall be subject to the following additional requirements.
- (1) All medical marijuana dispensing and production/cultivation activities shall be conducted indoors.
 - (2) All product storage shall be indoors. Products, accessories, and associated paraphernalia shall not be visible from a public sidewalk or right of way. All products shall be in a sealed/locked cabinet except when being accessed for distribution.
 - (3) The business may only be open for the sale of medical marijuana during the hours of 9:00 am to 7:00 pm.
 - (4) No on-site consumption of marijuana is allowed on the premises.
 - (5) Cultivation of marijuana is only permitted when the premises are equipped with a ventilation system that filters out the odors of the marijuana so it is not detectable from the exterior of the business or from within any adjoining premises. Approval of such system from the Town of Silverthorne Building Department is required prior to the cultivation process beginning.
 - (6) The sale or consumption of alcohol on the premises is prohibited.

- (7) All dispensaries shall be equipped with a secure safe that is utilized for the purposes of storing marijuana not then being actively cultivated when the business is not open.
- (8) All dispensaries shall provide adequate security on the premises. At a minimum the security shall include:
 - a. security surveillance cameras installed to monitor the main entrance along the interior and exterior of the premises to discourage crime and to facilitate the reporting of criminal acts as well as nuisance activities; security video shall be preserved for at least 72 hours by the business;
 - b. robbery and burglary alarm systems that are professionally monitored and maintained in good working condition; and.
 - c. exterior lighting that illuminates the exterior walls of the business during evening hours and is compliant with the Town Code.

(e) Signage Requirements.

- (1) All signage associated with a medical marijuana dispensary will meet the standards established in the Town Code.
- (2) No signage associated with a medical marijuana dispensary shall use the word "marijuana", "cannabis", or any other word or phrase commonly understood to refer to marijuana unless such word or phrase is immediately preceded by the word "medical".

Section 2. Safety Clause

The adoption of this Ordinance will promote the health, safety, and general welfare of the Silverthorne community.

Section 3. Severability

If any provision of this Ordinance or portion thereof is held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other provision which can be given effect without the invalid portion.

Section 4. Conflicts

All prior Ordinances, Resolutions, or other acts, or parts thereof, by the Town of Silverthorne in conflict with this Ordinance are hereby repealed, except that the repealer shall not be construed to revive any previously repealed or expired act, Ordinance, or Resolution, or part thereof.

Section 5. Effective Date

This ordinance shall be effective upon adoption at second reading, as provided by the Silverthorne Home Rule Charter.

READ, MOVED, SECONDED, AND PASSED ON FIRST READING, THIS 14th DAY OF OCTOBER, 2009.

MOVED, SECONDED, AND PASSED ON SECOND READING, THIS 28th DAY OF OCTOBER, 2009.

TOWN OF SILVERTHORNE, COLORADO

Dave Koop, Mayor

ATTEST:

Michele Karlin, Town Clerk

Approved on the first reading:	_____	_____, 2009
Published by title only:	_____	_____, 2009
Approved on the second reading:	_____	_____, 2009
Published by title only:		
(with amendments, if amended		
on second reading):	_____	_____, 2009