



Meeting Date: January 25, 2011

AGENDA MEMORANDUM

To: Honorable Mayor and Members of Town Council

From: Robert J. Slentz, Town Attorney

Title: Ordinance No. 2011-01: An Ordinance Submitting Ordinance No. 2010-25, Which Prohibits Medical Marijuana Centers, Optional Premises Cultivation Operations and Medical Marijuana-Infused Product Manufacturing within the Town of Castle Rock to the April 5, 2011 Municipal Election as a Referred Measure and Establishing the Ballot Title for such Measure -- Second Reading

Executive Summary

This ordinance was approved as presented on first reading on January 11, 2011 by a vote of 7 for and 0 against. The only change to the ordinance was the addition of the ballot title.

This ordinance refers the referendum on Ordinance No. 2010-25 (Ordinance) to the April 5th regular election and approves the wording for the ballot question.

Discussion

Having declined to repeal Ordinance No. 2010-25, the Town Council is obligated under the Town Charter and applicable state statutes to submit to the voters the question of whether the Ordinance should be approved or nullified. The prescribed statutory timeframe within which the referendum election must be held mandates that the referred measure be placed on the April 5th election ballot. The Town's election code prescribes that ballot measures must be set by ordinance.

The ballot title (question) is structured such that an affirmative vote upholds the Ordinance and prohibition, and a negative vote repeals the Ordinance and prohibition. In effect, the electorate is voting on the Ordinance in the same manner as Town Council. This construct was driven by a preferred interpretation of the statutory provisions on ballot titles and logically mirrors the local control option in the Colorado Medical Marijuana Code (CMMC), which authorized local governments to prohibit the three types of licensed medical marijuana activities. Moreover, the form of the ballot title closely follows the structure of the medical marijuana prohibition question submitted under the CMMC by other local governments in the November election.

We believe the form of the question best serves the statutory mandate that the ballot title be fixed to minimize "public confusion that might be caused by misleading titles."

Staff Recommendation

Staff recommends approval of the Ordinance.

Proposed Motion

I move to approve Ordinance No. 2011-01 as introduced by title on second reading.

Attachments

Attachment A: Ordinance No. 2011-01

Attachment B Ordinance No. 2010-25

Attachment A

(Ordinance No. 2011-01: An Ordinance Submitting Ordinance No. 2010-25,
Which Prohibits Medical Marijuana Centers, Optional Premises
Cultivation Operations and Medical Marijuana-Infused Product
Manufacturing within the Town of Castle Rock to the April 5, 2011
Municipal Election as a Referred Measure and Establishing the
Ballot Title for such Measure)

ORDINANCE NO. 2011-01

AN ORDINANCE SUBMITTING ORDINANCE NO. 2010-25, WHICH PROHIBITS MEDICAL MARIJUANA CENTERS, OPTIONAL PREMISES CULTIVATION OPERATIONS AND MEDICAL MARIJUANA-INFUSED PRODUCT MANUFACTURING WITHIN THE TOWN OF CASTLE ROCK, TO THE APRIL 5, 2011 MUNICIPAL ELECTION AS A REFERRED MEASURE AND ESTABLISHING THE BALLOT TITLE FOR SUCH MEASURE

WHEREAS, the Town Council adopted Ordinance No. 2010-25 (Ordinance) on September 14, 2010 which prohibited commercial medical marijuana operations and activities within the Town of Castle Rock as authorized under the Colorado Medical Marijuana Code, and

WHEREAS, on October 14, 2010 a petition protesting the effect of the Ordinance (Petition) was filed with the Town Clerk in accordance with Title 31, Article 11, Colorado Revised Statutes and Section 15-2 of the Town of Castle Rock Home Rule Charter,

WHEREAS, on November 24, 2010 the Town Clerk made a final determination that the Petition was legally valid and sufficient and pursuant to statutory requirements referred the Ordinance to the Town Council for reconsideration,

WHEREAS, pursuant to such statutory mandate, on December 7, 2010 the Town Council reconsidered the Ordinance and ratified its previous adoption of the Ordinance, thereby declining to repeal the Ordinance,

WHEREAS, §31-11-105(4) C.R.S. requires that the Ordinance be submitted to the voters as a referred measure at a regular or special election held not less than 60 days nor more than 150 days after the date of the Town Clerk's determination of the petition sufficiency,

WHEREAS, the regular municipal election on April 5, 2011 is a qualified election date for the referred measure, and

WHEREAS, §2.01.130 of the Castle Rock Municipal Code prescribes that the Town Council refer mail ballot measures by ordinance.

NOW, THEREFORE, IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK, COLORADO AS FOLLOWS:

Section 1. Referred Measure and Ballot Title. Before Ordinance No. 2010-25 shall become effective, the Ordinance shall be submitted to and receive the approval of a majority of the registered electors of the Town voting thereon at the regular municipal election to be held on Tuesday, April 5, 2011. The ballot title and question shall read as follows:

A. REFERENDUM ON ORDINANCE NO. 2010-25

SHALL MEDICAL MARIJUANA CENTERS, OPTIONAL PREMISES CULTIVATION OPERATIONS AND MEDICAL MARIJUANA-INFUSED PRODUCT MANUFACTURING BE PROHIBITED IN THE TOWN OF CASTLE ROCK AS PROVIDED IN ORDINANCE NO. 2010-25?

YES ___

NO ___

Section 2. Actions by Town Officers and Employees. The Town Clerk is directed to publish notice of the election upon this referred measure in accordance with law, and officers and employees of the Town are authorized to take all actions necessary to effectuate the provisions of this ordinance.

Section 3. Severability. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect the remaining provisions of this ordinance.

Section 4. Safety Clause. The Town Council finds and declares that this ordinance is promulgated and adopted for the public health, safety and welfare and this ordinance bears a rational relation to the legislative object sought to be obtained.

APPROVED ON FIRST READING this 11th day of January, 2011 by a vote of 7 for and 0 against, after publication in compliance with Section 2.02.100.C of the Castle Rock Municipal Code; and

PASSED, APPROVED AND ADOPTED this ___ day of _____, 2011, by the Town Council of the Town of Castle Rock by a vote of _____ for and _____ against.

ATTEST:

TOWN OF CASTLE ROCK

Sally A. Misare, Town Clerk

Ryan Reilly, Mayor

Approved as to form:

Robert J. Slentz, Town Attorney

Attachment B

(Ordinance No. 2010-25)

ORDINANCE NO. 2010-25

AN ORDINANCE AMENDING TITLE 5 OF THE CASTLE ROCK MUNICIPAL CODE BY THE ADDITION OF A NEW CHAPTER 5.07 CONCERNING MEDICAL MARIJUANA AND PROVIDING FOR THE PROHIBITION OF ALL COMMERCIAL MEDICAL MARIJUANA OPERATIONS, INCLUDING MEDICAL MARIJUANA CENTERS, OPTIONAL PREMISES CULTIVATION OPERATIONS AND MEDICAL MARIJUANA-INFUSED PRODUCT MANUFACTURING AND PROVIDING CRIMINAL PENALTIES FOR VIOLATION OF SUCH CHAPTER

WHEREAS, the Colorado Legislature has adopted, and the Governor has signed into law, legislation that, in pertinent part, added a new Article 43.3 to Title 12 of the Colorado Revised Statutes, known as the Colorado Medical Marijuana Code (“CMMC”),

WHEREAS, C.R.S. §12-43.3-106 of the CMMC specifically authorizes the governing body of a municipality to “vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers licenses”,

WHEREAS, C.R.S. §12-43.3-310 of the CMMC further specifically authorizes a municipality “to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers licenses ... based on local government zoning, health, safety, and public welfare laws...”,

WHEREAS, C.R.S. §12-43.3-103 of the CMMC provides that “a locally approved business operating on July 1, 2010 for the purpose of cultivation, manufacturer or sale of medical marijuana or medical marijuana-infused products...may continue to operate that business in accordance with any applicable state or local laws”,

WHEREAS, the Town Council has reviewed the 2009 California Police Chiefs Association’s Task Force on Medical Marijuana Dispensaries’ “White Paper on Marijuana Dispensaries” detailing the adverse impacts of dispensaries such as increased violent crime, increased traffic problems, increased organized gang activity and a decrease in the quality of life for those communities in which dispensaries are located,

WHEREAS, medical marijuana patients in the Town of Castle Rock will retain reasonable access to medical marijuana through primary caregivers who are not affected by the prohibition on commercial medical marijuana imposed by this ordinance,

WHEREAS, the Town Council finds and declares it is necessary to the preservation and furtherance of the health, safety and welfare of the citizens of the Town of Castle Rock to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused manufacturers within the Town of Castle Rock,

WHEREAS, the Town of Castle Rock is a home rule municipal corporation and the Town Council is empowered to adopt such ordinances as are necessary and convenient to protect the health, safety and welfare of the community.

NOW, THEREFORE, IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK, COLORADO AS FOLLOWS:

Section 1. Legislative Findings. The recitals to this ordinance are adopted as findings of the Town Council in support of the enactment of this ordinance.

Section 2. Amendment. Title 5 of the Castle Rock Municipal Code is amended to add a new Chapter 5.07 Medical Marijuana, to read as follows:

**Chapter 5.07
Medical Marijuana**

- 5.07.010 Definitions**
- 5.07.020 Medical Marijuana prohibition**
- 5.07.030 Existing medical marijuana businesses**
- 5.07.040 Patients and primary caregivers**
- 5.07.050 Violation, penalties**

5.07.010 Definitions.

For the purpose of this Chapter, the following terms shall have the meaning ascribed to them below:

Chapter means this Chapter 5.07 of the Code.

Code means the Castle Rock Municipal Code.

CMMC means the Colorado Medical Marijuana Code C.R.S. §12-43.3-101, *et seq.*

Marijuana shall have the same meaning as the term “useable form of marijuana” as set forth in Article XVIII, Section 14(1)(i) of the Colorado Constitution, or as may be more fully defined in any applicable state law or regulation.

Medical marijuana means marijuana that is grown and sold for a purpose authorized by Section 14 of Article XVIII of the Colorado Constitution.

Medical marijuana center means a person authorized to be licensed to operate a business as described in §12-43.3-402 of the CMMC that sells medical marijuana to registered patients or primary caregivers as defined in Section 14, or Article XVIII of the Colorado Constitution, but is not a primary caregiver.

Medical marijuana-infused products manufacturer means a person licensed pursuant to the CMMC to operate a business as described in §12-43.3-404 of the CMMC.

Optional premises cultivation operation means a person licensed pursuant to the CMMC to operate a business as described in §12-43.3-403 of the CMMC.

Patient shall have the same meaning as set forth in Article XVIII, Section 14(1)(d) of the Colorado Constitution, or as may be more fully defined in any applicable state law or regulation.

Primary caregiver shall have the same meaning as set forth in Article XVIII, Section 14(1)(f) of the Colorado Constitution and subject to any statutory requirements or conditions, or as addressed in any applicable Colorado Department of Revenue regulations.

In addition, terms used in this Chapter which are defined or described under the CMMC shall have the meaning and effect ascribed to them under and in the context of the CMMC.

5.07.020 Medical marijuana prohibition.

Medical marijuana businesses, including medical marijuana centers, optional premises cultivation and medical marijuana-infused manufacturer operations are prohibited within the municipal limits of the Town of Castle Rock. It is unlawful for any person to operate a medical marijuana business, including a medical marijuana center, an optional premises cultivation operation, or a medical marijuana-infused manufacturer operation in the Town. No Town license or permit for such medical marijuana business shall be issued by any Town official nor shall Town approval of a state application under the CMMC be given for such business by any Town official. This prohibition applies irrespective of the form of ownership or structure of the business activity and includes cooperatives and non-profits.

5.07.030 Existing medical marijuana businesses.

Any medical marijuana business operating on July 1, 2010 under a valid license expressly authorizing the commercial cultivation or distribution of medical marijuana issued by the Town pursuant to Chapter 5.05 of the Code (“pre-existing medical marijuana licensee”) may continue to cultivate, manufacture and sell medical marijuana or medical marijuana-infused products through December 31, 2010, provided that such business maintains such license in good standing and is in compliance with and in good standing under the provisions of the CMMC and any regulations promulgated thereunder. All pre-existing medical marijuana licensees shall cease those activities and operations prohibited by Section 5.07.020 of this Chapter at the close of business on December 31, 2010.

5.07.040. Patients and primary caregivers.

Nothing in this Chapter shall be construed to prohibit, regulate or otherwise impair the use of

medical marijuana by patients as defined by the Colorado Constitution, or the provision of medical marijuana by a primary caregiver to a patient in accordance with the Colorado Constitution, and applicable statutes and regulations.

5.07.050 Violation; penalty.

In addition to any other penalties that may exist under state, federal and local laws, any person charged with a violation of this Chapter, upon conviction thereof, shall be punished by a fine of not more than one-thousand dollars (\$1000) or by imprisonment not to exceed one (1) year, or by both such fine and penalty. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation is committed, continues or permitted by any such person.

Section 3. Severability. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect the remaining provisions of this ordinance.

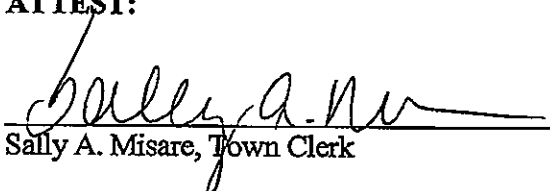
Section 4. Safety Clause. The Town Council finds and declares that this ordinance is promulgated and adopted for the public health, safety and welfare and this ordinance bears a rational relation to the legislative object sought to be obtained.

APPROVED ON FIRST READING this 24th day of August, 2010 by a vote of 4 for and 3 against, after publication in compliance with Section 2.02.100.C of the Castle Rock Municipal Code; and

PASSED, APPROVED AND ADOPTED ON SECOND AND FINAL READING this 14th day of September, 2010, by the Town Council of the Town of Castle Rock by a vote of 4 for and 3 against.

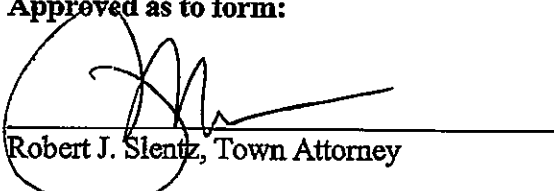
ATTEST:

TOWN OF CASTLE ROCK


Sally A. Misare, Town Clerk


Ryan Reilly, Mayor

Approved as to form:


Robert J. Slentz, Town Attorney

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