

ORDINANCE NO. 2015-08

AN ORDINANCE OF THE CITY OF FRUITA, COLORADO AMENDING CHAPTER 9.08 OF THE FRUITA MUNICIPAL CODE CONCERNING ALCOHOL AND DRUGS

BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO:

Section 1. Chapter 9.08 of the Fruita Municipal Code is hereby retitled “Offenses Relating to Intoxicating Liquors and Drugs”.

Section 2. Section 9.08.001, Definitions, of Chapter 9.08 of the Fruita Municipal Code is hereby amended to read as follows:

DEFINITIONS. Definitions applicable to Chapter 9.08 as used in the sections below, unless the context otherwise requires:

- A. “Alcoholic beverage” shall mean any fermented malt beverage or malt, vinous, or spirituous liquors, including 3.2 percent beer, of any kind and in any quantity.
- B. “Enclosed” means a permanent or semi-permanent area covered and surrounded on all sides. Temporary opening of windows or doors or the temporary removal of wall or ceiling panels does not convert the area into an unenclosed space.
- C. “Establishment” means a business, firm, enterprise, service or fraternal organization, club, institution, entity, group, or residence; any real property, including buildings and improvements, connected therewith; and any members, employees, and occupants associated therewith.
- D. “Ethyl alcohol” means any substance which is or contains ethyl alcohol.
- E. “Fermented malt beverage” shall mean any beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any similar product or any combination thereof in water containing not less than one-half of one percent alcohol by volume and not more than three and two-tenths percent alcohol by weight or four percent alcohol by volume; except that “fermented malt beverage” shall not include confectionery containing alcohol within the limits prescribed by Section 25-5-410 (1)(i)(II), C.R.S.
- F. “Locked Space” means secured at all points of ingress and egress with a locking mechanism designed to limit access such as with a key or combination lock as defined by Section 18-18-102(16.5), C.R.S.

- G. "Malt liquors" includes beer and shall be construed to mean any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof, in water containing more than three and two tenths percent of alcohol by weight or four percent alcohol by volume.
- H. "Marijuana" or "Marihuana" means all parts of the plant of the genus cannabis whether growing or not, seeds thereof, the resin extracted from any part of the plant and every compound, manufacturer, salt, derivative, mixture or preparation of the plant, its seeds or its resin, including marijuana concentrate. "Marijuana" or "Marihuana" does not include industrial hemp, nor does it include fibers produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seeds of the plant which is incapable of germination or the weight or any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.
- I. "Marijuana accessories" means any equipment, products or material of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing or containing marijuana or ingesting, inhaling or otherwise introducing marijuana into the human body. Provided, however, compressed flammable gas used as a solvent in the extraction of THC or other cannabinoids shall not be considered a lawful marijuana accessory and is prohibited.
- J. "Marijuana club" means any place of private assembly for the purpose of inviting members, their guests or members of the general public to use or consume marijuana/and or marijuana products on the premises of any commercial or industrial zoned property except for those spaces which are occupied for residential use in accordance with the City's Land Use Code governing residential use.
- K. "Marijuana cultivation facility" shall the same meaning as defined in Section 16 (2)(h) of Article XVIII of the Colorado Constitution.
- L. "Marijuana enterprise" means any commercial operation, facility, machine or business which sells or dispenses marijuana or marijuana products, including but not limited to, marijuana or marijuana products in vending machines.
- M. "Marijuana paraphernalia" has the same meaning as marijuana accessories in Section 16 (2) (g) of Article XVIII of the Colorado Constitution.
- N. "Marijuana product manufacturing facility" shall have the same meaning as defined in Section 16 (2)(j) of Article XVIII of the Colorado Constitution.

- O. "Marijuana testing facility" shall have the same meaning as defined Section 16 (2)(l) of Article XVIII of the Colorado Constitution.
- P. "Possession of ethyl alcohol" means that a person has or holds any amount of ethyl alcohol anywhere on his or her person or that a person owns or has custody of ethyl alcohol or has ethyl alcohol within his or her immediate presence and control.
- Q. "Possession of marijuana" means that a person has or holds any amount of marijuana anywhere on his or her person or that a person owns or has custody of marijuana or has marijuana within his or her immediate presence and control.
- R. "Private property" means any dwelling and its curtilage which is being used by a natural person or natural persons for habitation and which is not open to the public and privately owned real property which is not open to the public. "Private property" shall not include:
1. Any establishment which has or is required to have a license pursuant to Article 46, 47, or 48 of Title 12, C.R.S.;
 2. Any establishment which sells ethyl alcohol or upon which ethyl alcohol is sold; or
 3. Any establishment which leases, rents, or provides accommodations to members of the public generally.
- S. "Retail marijuana store" shall have the same meaning as defined in Section 16 (2)(n) of Article XVIII of the Colorado Constitution.
- T. "Spirituous liquor" means any alcohol beverage obtained by distillation, mixed with water and other substances in solution, and includes among other things brandy, rum, whiskey, gin, and every liquid or solid, patented or not, containing at least one-half of one percent alcohol by volume and which is fit for use for beverage purposes. Any liquid or solid containing beer or wine in combination with any other liquor, except as provided in subsections (E) and (U) of this Section, shall not be construed to be fermented malt or malt or vinous liquor but shall be construed to be spirituous liquor.
- U. "Transfer" means to deliver or convey in a manner not permissible pursuant to Section 16 of Article XVIII of the Colorado Constitution.
- V. "Vinous liquors" means wine and fortified wines that contain not less than one-half of one percent and not more than twenty-one percent alcohol by volume and shall be construed to mean an alcohol beverage obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar.

Section 3. Section 9.08.050 of the Fruita Municipal Code is hereby repealed. Section 9.08.030, Purchase, possession, consumption, under the influence of alcoholic beverage by persons under the age of 21 prohibited of Chapter 9.08 of the Fruita Municipal Code is hereby repealed and re-enacted to read as follows:

9.08.030 ILLEGAL POSSESSION OR CONSUMPTION OF ETHYL ALCOHOL BY AN UNDERAGE PERSON

A. Except as described by Section 18-1-711, C.R.S. and subsection (L) of this Section, a person under twenty-one (21) years of age who possesses or consumes ethyl alcohol anywhere in the City of Fruita commits illegal possession or consumption of ethyl alcohol by an underage person. Illegal possession or consumption of ethyl alcohol by an underage person is a strict liability offense.

B. A first offense of this Section 9.08.030 shall constitute a non-criminal municipal offense. Upon conviction of a first offense under this Section, the Court may sentence the underage person to a fine of not more than one hundred dollars (\$100.00), or the Court may order that the underage person complete a substance abuse education program approved by the Court, or both.

C. A second or subsequent offense of this Section 9.08.030 shall constitute a Class B municipal offense and upon conviction, the Court may sentence the underage person to a fine of up to one thousand dollars (\$1000.00), or the Court may order the underage person complete a substance abuse education program approved by the Court, or the Court may order the underage person to perform community service, or the Court may impose a jail sentence of up to 6 months, or any combination of the above.

D. Nothing in this section prohibits the City Prosecutor from entering into a deferred judgment agreement with any underage person for any offense under this Section, and the City Prosecutor is encouraged to enter into those agreements when they are consistent with this Section and in the interests of justice.

E. It is an affirmative defense to the offense described in subsection (A) of this Section that the ethyl alcohol was possessed or consumed by a person under twenty-one (21) years of age under the following circumstances:

1. While such person was legally upon private property with the knowledge and consent of the owner or legal possessor of such private property and the ethyl alcohol was possessed or consumed with the consent of his or her parent or legal guardian who was present during such possession or consumption;
2. When the existence of ethyl alcohol in a person's body was due solely to the ingestion of a confectionery which contained ethyl alcohol within the limits prescribed by Section 25-5-410 (1) (i) (ii), C.R.S.; or the ingestion of any

substance which was manufactured, designed, or intended primarily for a purpose other than oral human ingestion; or the ingestion of any substance which was manufactured, designed, or intended solely for medicinal or hygienic purposes; or solely from the ingestion of a beverage which contained less than one-half of one percent (.5%) of ethyl alcohol by weight; or

3. The person is a student who:
 - (a) Tastes but does not imbibe an alcohol beverage only while under the direct supervision of an instructor who is at least twenty-one (21) years of age and employed by a post-secondary school;
 - (b) Is enrolled in a university or a post-secondary school accredited or certified by an agency recognized by The United States Department Of Education, a nationally recognized accrediting agency or association, or the "Private Occupational Education Act of 1981", Article 59 of Title 12, C.R.S.;
 - (c) Is participating in a culinary arts, food service, or restaurant management degree program; and
 - (d) Tastes but does not imbibe the alcohol beverage for instructional purposes as a part of a required course in which the alcohol beverage, except the portion the student tastes, remains under the control of the instructor.

F. The possession or consumption of ethyl alcohol shall not constitute a violation of this Section if such possession or consumption takes place for religious purposes protected by the First Amendment to the United States Constitution.

G. An underage person shall be immune from criminal prosecution under this Section if he or she establishes the following:

- (a) The underage person called 911 and reported in good faith that another underage person was in need of medical assistance due to alcohol consumption;
- (b) The underage person who called 911 provided his or her name to the 911 operator;
- (c) The underage person was the first person to make the 911 report; and
- (d) The underage person who made the 911 call remained on the scene with the underage person in need of medical assistance until assistance arrived and cooperated with medical assistance or law enforcement personnel on the scene.

H. Prima facie evidence of a violation of Subsection (A) of this Section shall consist of:

1. Evidence that the defendant was under twenty-one (21) years of age and possessed or consumed ethyl alcohol anywhere in the City of Fruita ; or
2. Evidence that the defendant was under the age of twenty-one (21) years and manifested any of the characteristics commonly associated with ethyl alcohol intoxication while present anywhere in the City of Fruita.

I. During any trial for a violation of subsection (A) of this Section, any bottle, can, or any other container with labeling indicating the contents of such bottle, can, or container shall be admissible into evidence, and the information contained on any label on such bottle, can, or other container shall be admissible into evidence and shall not constitute hearsay. A jury or a judge, whichever is appropriate, may consider the information upon such label in determining whether the contents of the bottle, can, or other container were composed in whole or in part of ethyl alcohol, a label which identifies the contents of any bottle, can, or other container as "beer", "ale", "malt beverage", "fermented malt beverage", "malt liquor", "wine", "champagne", "whiskey" or "whisky", "gin", "vodka", "tequila", "schnapps", "brandy", "cognac", "liqueur", "cordial", "alcohol", or "liquor" shall constitute prima facie evidence that the contents of the bottle, can, or other container was composed in whole or in part of ethyl alcohol.

J. A parent or legal guardian of a person under twenty-one (21) years of age or any natural person who has the permission of such parent or legal guardian may give or permit the possession and consumption of ethyl alcohol to or by a person under twenty-one (21) years of age under the conditions described in subsection (G)(1) of this Section. This subsection (L) shall not be construed to permit any establishment which is licensed or is required to be licensed pursuant to article 46, 47, or 48 of Title 12, C.R.S., or any members, employees, or occupants of any such establishment to give, provide, make available, or sell ethyl alcohol to a person under twenty-one (21) years of age.

K. Nothing in this Section shall be construed to limit or preclude prosecution for any offense pursuant to Articles 46, 47, or 48 of Title 12, C.R.S., except as provided in such Articles.

L. Sealing of Record. (1) upon dismissal of a case pursuant to this Section after completion of a deferred judgment or any other action resulting in dismissal of the case or upon completion of the court-ordered substance abuse education and payment of any fine for a first conviction of subsection (A) of this Section, the Court shall immediately order the case sealed and provide to the underage person and the City Prosecutor a copy of the order sealing the case for distribution by the appropriate party to all law enforcement agencies in the case.

2. Upon the expiration of one (1) year from the date of a second or subsequent conviction for a violation of subsection (A) of this Section, the underage person convicted of such violation may petition the Municipal Court for an order sealing the record of the conviction. The petitioner shall submit a verified copy of his or her criminal history, current through at least the twentieth (20th) day prior to the date of the filing of the petition, along with the petition at the time of filing, but in no event later than the tenth (10th) day after the petition is filed. The petitioner shall be responsible for obtaining and paying for his or her criminal history record. The Court shall grant the petition if the petitioner has not been arrested for, charged with, or convicted of any felony, misdemeanor, petty offense, or municipal offense during the period of one (1) year following the date of the petitioner's conviction for a violation of subsection (A) of this Section.

M. The qualitative result of an alcohol test or tests shall be admissible at the trial of any person charged with a violation of subsection (A) of this Section upon a showing that the device or devices used to conduct such test or tests have been approved as accurate in detecting alcohol by the Executive Director of the Department of Public Health and Environment.

N. Official records of the Colorado Department of Public Health And Environment relating to the certification of breath test instruments, certification of operators and operator instructors of breath test instruments, certification of standard solutions, and certification of laboratories shall be official records of the State. Copies of such records, attested by the Executive Director of the Department of Public Health and Environment or his or her designee and accompanied by a certificate bearing the official seal for said Department, which state that the Executive Director of the Department has custody of such records, shall be admissible in the Municipal Court and shall constitute prima facie evidence of the information contained in such records. The official seal of the Department described in this subsection (P) may consist of a watermark of the State seal within the document.

O. In any proceeding in the Municipal Court concerning a charge under subsection (A) of this Section, the Court shall take judicial notice of methods of testing a person's blood, breath, saliva, or urine for the presence of alcohol and of the design and operation of devices certified by the Department of Public Health and Environment for testing a person's blood, breath, saliva, or urine for the presence of alcohol. This subsection (Q) shall not prevent the necessity of establishing during a trial that the testing devices were working properly and that such testing devices were properly operated. Nothing in this subsection (Q) shall preclude a defendant from offering evidence concerning the accuracy of testing devices.

P. A law enforcement officer may not enter upon any private property to investigate any violation of this Section without probable cause.

Section 4. Section 9.08.050 of the Fruita Municipal Code, Illegal Possession or Consumption of Marijuana by an Underage Person – Illegal Possession of Marijuana Paraphernalia by an Underage Person is hereby amended to read as follows:

9.08.050 ILLEGAL POSSESSION OR CONSUMPTION OF MARIJUANA BY AN UNDERAGE PERSON – ILLEGAL POSSESSION OF MARIJUANA PARAPHERNALIA BY AN UNDERAGE PERSON.

A. Except as described by Section 14 of Article XVIII of the Colorado Constitution and Section 18-18-406.3, C.R.S., a person under twenty-one (21) years of age who possesses one (1) ounce or less of marijuana or consumes marijuana anywhere in the City of Fruita commits illegal possession or consumption of marijuana by an underage person. Illegal possession or consumption of marijuana by an underage person is a strict liability offense.

B. Except as described by Section 14 of Article XVIII of the Colorado Constitution and Section 18-18-406.3, C.R.S., a person under twenty-one (21) years of age who possesses marijuana paraphernalia anywhere in the City of Fruita and knows or reasonably should know that the drug paraphernalia could be used in circumstances in violation of the laws of this City of Fruita commits illegal possession of marijuana paraphernalia by an underage person. Illegal possession of marijuana paraphernalia by an underage person is a strict liability offense.

C. A first offense of this Section 9.08.050 shall constitute a non-criminal municipal offense. Upon conviction of a first offense under this Section, the Court may sentence the underage person to a fine of not more than one hundred dollars (\$100.00), or the Court may order that the underage person complete a substance abuse education program approved by the Court, or both.

D. A second or subsequent offense of this Section 9.08.050 shall constitute a Class B municipal offense and upon conviction, the Court may sentence the underage person to a fine of up to one thousand dollars (\$1000.00), or the Court may order the underage person complete a substance abuse education program approved by the Court, or the Court may order the underage person to perform community service, or the Court may impose a jail sentence of up to 6 months, or any combination of the above.

E. Nothing in this section prohibits the City Prosecutor from entering into a deferred judgment agreement with any underage person for any offense under this Section, and the City Prosecutor is encouraged to enter into those agreements when they are consistent with this Section and in the interests of justice.

F. An underage person shall be immune from criminal prosecution under this Section if he or she establishes the following:

- (a) The underage person called 911 and reported in good faith that another underage person was in need of medical assistance due to marijuana consumption;
- (b) The underage person who called 911 provided his or her name to the 911 operator;

- (c) The underage person was the first person to make the 911 report; and
- (d) The underage person who made the 911 call remained on the scene with the underage person in need of medical assistance until assistance arrived and cooperated with medical assistance or law enforcement personnel on the scene.

G. Prima facie evidence of a violation of subsections (A) or (B) of this Section shall consist of:

- 1. Evidence that the defendant was under twenty-one (21) years of age and possessed or consumed marijuana or possessed marijuana paraphernalia anywhere in the City of Fruita ; or
- 2. Evidence that the defendant was under the age of twenty-one (21) years and manifested any of the characteristics commonly associated with marijuana impairment while present anywhere in the City of Fruita.

H. Sealing of Record. (1) upon dismissal of a case pursuant to this Section after completion of a deferred judgment or any other action resulting in dismissal of the case or upon completion of the court-ordered substance abuse education and payment of any fine for a first conviction of subsections (A) or (B) of this Section, the Court shall immediately order the case sealed and provide to the underage person and the City Prosecutor a copy of the order sealing the case for distribution by the appropriate party to all law enforcement agencies in the case.

2. Upon the expiration of one (1) year from the date of a second or subsequent conviction for a violation of subsection (A) or (B) of this Section, the underage person convicted of such violation may petition the Municipal Court for an order sealing the record of the conviction. The petitioner shall submit a verified copy of his or her criminal history, current through at least the twentieth (20th) day prior to the date of the filing of the petition, along with the petition at the time of filing, but in no event later than the tenth (10th) day after the petition is filed. The petitioner shall be responsible for obtaining and paying for his or her criminal history record. The Court shall grant the petition if the petitioner has not been arrested for, charged with, or convicted of any felony, misdemeanor, petty offense, or municipal offense during the period of one (1) year following the date of the petitioner's conviction for a violation of subsection (A) or (B) of this Section.

I. The qualitative result of a marijuana test or tests shall be admissible at the trial of any person charged with a violation of subsection (A) of this Section upon a showing that the device or devices used to conduct such test or tests have been approved as accurate in detecting marijuana by the Executive Director of the Department of Public Health and Environment.

J. Official records of the Colorado Department of Public Health And Environment relating to the certification of standard solutions, and certification of laboratories shall be official records of the State. Copies of such records, attested by the Executive Director of the Department of Public Health and Environment or his or her designee and accompanied by a certificate bearing the official seal for said Department, which state that the Executive Director of the Department has custody of such records, shall be admissible in the Municipal Court and shall constitute prima facie evidence of the information contained in such records. The official seal of the Department described in this subsection (L) may consist of a watermark of the State seal within the document.

K. In any proceeding in the Municipal Court concerning a charge under subsection (A) of this Section, the Court shall take judicial notice of methods of testing a person's blood, saliva, or urine for the presence of marijuana and of the design and operation of devices certified by the Department of Public Health and Environment for testing a person's blood, saliva, or urine for the presence of marijuana. This subsection (M) shall not prevent the necessity of establishing during a trial that the testing devices were working properly and that such testing devices were properly operated. Nothing in this subsection (M) shall preclude a defendant from offering evidence concerning the accuracy of testing devices.

L. A law enforcement officer may not enter upon any private property to investigate any violation of this Section without probable cause.

Section 8. Section 9.08.075(C) of the Fruita Municipal Code concerning cultivation of marijuana plants is amended to read as follows:

C. Any person under the age of twenty-one (21) years who knowingly cultivates, processes, or transports any marijuana plants commits a Class B municipal offense. Any person over the age of twenty-one (21) years who knowingly cultivates marijuana plants in a manner contrary to the requirements of this Section upon his or her first offense commits a non-criminal municipal offense. Any person over the age of twenty-one (21) years who knowingly cultivates marijuana plants in a manner contrary to the requirements of this Section upon his or her second of subsequent offense commits a Class B municipal offense.

Section 9. Section 9.08.080 of the Fruita Municipal Code is hereby amended to read as follows:

9.08.080 TRANSFER OF MARIJUANA PROHIBITED.

Any person over the age of 21 who knowingly transfers or dispenses more than one (1) ounce, but not more than two (2) ounces of marijuana, from one person to another for no consideration commits a non-criminal municipal offense and shall not be deemed dispensing or the sale thereof.

Section 10. Section 9.08.085 of the Fruita Municipal Code is hereby amended to include the following additional Section:

9.08.085 EXTRACTION OF MARIJUANA CONCENTRATE OR HASH OIL PROHIBITED.

A. It shall be unlawful for any person to process or manufacture marijuana concentrate or hash oil using butane, propane, or any other solvents containing compressed flammable gases anywhere in the City.

B. It shall be unlawful for any person who owns, manages, operates or controls the use of any premises anywhere within the City to allow marijuana concentrate or hash oil to be processed or manufactured on the premises using butane, propane, or any other solvents containing compressed flammable gases.

C. Any person who violates the provisions of this Section commits a Class A municipal offense.

Section 11. Section 9.08.090 of the Fruita Municipal Code, is hereby amended to read as follows:

9.08.090 CONSUMPTION OF MARIJUANA AND OPEN MARIJUANA CONTAINERS IN MOTOR VEHICLES PROHIBITED.

A. As used in this Section, unless the context otherwise requires:

1. "Open marijuana container" means a receptacle or marijuana accessory that contains any amount of marijuana and:

- a. That is open or has a broken seal;
- b. The contents of which are partially removed; AND
- c. There is evidence that marijuana has been consumed within the motor vehicle.

2. "Passenger area" means the area designed to seat the driver and passengers including seating behind the driver, while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in his or her seating position, including but not limited to the glove compartment.

B. 1. Except as otherwise permitted in subsection (2) of this subsection (B), a person while in the passenger area of a motor vehicle that is on a public street, highway or the right-of-way of a public street or highway within the City of Fruita shall not knowingly:

- a. Use or consume marijuana; or
 - b. Have in his or her possession an open marijuana container.
2. The provisions of this subsection (B) shall not apply to:
- a. Passengers, other than the driver or a front seat passenger, located in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation;
 - b. The possession by a passenger, other than the driver or a front seat passenger, of an open marijuana container in the living quarters of a house coach, house trailer, camper, motor home, as defined in Section 42-1-102(57), C.R.S., or trailer coach, as defined in Section 42-1-102(106)(a), C.R.S.;
 - c. Possession of an open marijuana container in the area behind the last upright seat of a motor vehicle that is not equipped with a trunk; or
 - d. The possession of an open marijuana container in an area not normally occupied by the driver or a passenger in a motor vehicle that is not equipped with a trunk.
3. Any person who violates the provisions of this subsection (B) commits a Class B municipal offense.

Section 12. Section 9.08.100 (B) of the Fruita Municipal Code, concerning drug paraphernalia is hereby amended to read as follows:

B. Drug paraphernalia does not include any marijuana accessories as defined in Section 16(2)(g) of Article XVIII of the Colorado Constitution, if possessed or used by a person age twenty-one (21) years or older, except that the production of hash oil or other marijuana concentrates by the use of butane, propane, or any other solvents containing compressed flammable gases is unlawful and prohibited by any person in the City of Fruita.

Section 13. Section 9.08.100(D)(1)(2) of the Fruita Municipals Code, concerning drug paraphernalia is hereby amended to read as follows:

D. 1. Except as described in Section 18-1-711 C.R.S., concerning immunity for persons who suffer or report an emergency drug or alcohol overdose, a person commits the offense of possession of drug paraphernalia if he or she possesses drug paraphernalia and knows or reasonably should know that the drug paraphernalia could be used under circumstances in violation of the laws of this State or the City of Fruita.

2. Any person twenty-one (21) years of age or older who commits possession of drug paraphernalia commits a non-criminal municipal offense.

Section 14. That Section 9.08.140 of the Fruita Municipal Code is hereby enacted to read as follows:

9.08.140 ABUSING TOXIC VAPORS -- PROHIBITED. A. No person shall knowingly smell or inhale the fumes of toxic vapors for the purpose of causing a condition of euphoria, excitement, exhilaration, stupefaction, or dulled senses of the nervous system. No person shall knowingly possess, buy, or use any such substance for the purposes described in this subsection (A), nor shall any person knowingly aid any other person to use any such substance for the purposes described in this subsection (A). This subsection (A) shall not apply to the inhalation of anesthesia or other substances for medical or dental purposes.

B. Any person who knowingly violates the provisions of subsection (A) of this Section commits the Class A municipal offense of abusing toxic vapors.

C. For the purposes of this Section, the term “toxic vapors” means the following substances or products containing such substances:

1. Alcohols, including methyl, isopropyl, propyl, or butyl;
2. Aliphatic acetates, including ethyl, methyl, propyl, or methyl cellosolve acetate;
3. Acetone;
4. Benzene;
5. Carbon tetrachloride;
6. Cyclohexane;
7. Freons, including Freon 11 and Freon 12;
8. Hexane;
9. Methyl ethyl ketone;
10. Methyl isobutyl ketone;
11. Naphtha;
12. Perchlorethylene;
13. Toluene;
14. Trichloroethane; or

15. Xylene.

D. In a prosecution for a violation of this Section, evidence that a container lists one or more of the substances described in subsection (C) of this Section as one of its ingredients shall be prima facie evidence that the substance in such container contains toxic vapors and emits the fumes thereof.

Section 15. Severability. If any part, section, subsection, clause, phrase or other portion of this Ordinance is invalidated for any reason, by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council specifically finds and declares that it would have passed this Ordinance, and each part thereof, regardless of the fact that one or more parts could be declared invalid.

Section 16. Any Ordinance or part thereof expressly in conflict with this Ordinance is hereby repealed.

**INTRODUCED, READ, PASSED, AND ADOPTED THE FRUITA CITY COUNCIL, THIS ____
DAY OF _____, 2015**

CITY OF FRUITA, COLORADO

ATTEST:

Margaret Sell, Town Clerk

By: _____
Lori Buck, Mayor