

## ORDINANCE 2009-23

### AN ORDINANCE OF THE CITY OF FRUITA , COLORADO, AMENDING CHAPTER 3 AND CHAPTER 7 OF TITLE 17, LAND USE CODE, AND TITLE 5, BUSINESS LICENSES AND REGULATIONS, OF THE FRUITA MUNICIPAL CODE REGARDING MEDICAL MARIJUANA DISPENSARIES

**WHEREAS**, medical marijuana dispensaries are a business and land use that is not specifically addressed in the Municipal Code of the City of Fruita, and

**WHEREAS**, specific regulations are necessary for this type of business and land use to protect the general public's health, safety and welfare, and

**WHEREAS**, the city has initiated an application by the city to amend the city's land use and business licensing and regulations in the particulars hereinafter set forth concerning the location and operation of medical marijuana dispensaries, and

**WHEREAS**, the Fruita Planning Commission has reviewed the Land Use Code text amendment, held a public hearing thereon, and has recommended that the amendment be approved with conditions, and

**WHEREAS**, a public hearing before the Fruita City Council was held on November 17, 2009.

### **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO:**

Section 1. That Chapter 3 of the Fruita Land Use Code concerning Definitions is hereby amended to include in alphabetical order the following definitions:

**MEDICAL MARIJUANA DISPENSARY.** The commercial use of any property, structure, unit, facility or location to distribute, deliver, transmit, store, grow, provide, dispense, or otherwise provide marijuana for compensation in any manner, in accordance with the State of Colorado Constitution, laws and regulations.

**PATIENT.** A person who has a debilitating medical condition and holds a Registry Identification Card or functional equivalent which is a copy of the application and proof of mailing for a Registry Identification Card.

**PRIMARY CARE-GIVER.** A person 18 years of age or older who has been designated by a patient 18 years of age or older as their primary provider of medical marijuana and has significant responsibility for managing the well-being of a Patient who has a debilitating medical condition. The Care-Giver is permitted to have no more than six (6) marijuana plants with three or fewer being mature, flowering plants that are producing a usable form of marijuana and two (2) ounces of usable finished marijuana product per Patient. The Primary Care-Giver shall maintain a copy of their

patients' Medical Marijuana Registry Card(s), or functional equivalent listing them as a Primary Care-giver.

**USABLE FORM OF MARIJUANA.** The seeds, leaves, buds, and flowers of the plant (genus) cannabis, and any mixture or preparation thereof, which are appropriate for medical use, but excludes the plant's stalks, stems, and roots.

Section 2. That Section 17.07.060.F, Land Use/Zoning Table, is amended to include "Medical Marijuana Dispensary" as a Conditional Use in the General Commercial (GC), Tourist Commercial (TC), and the Limited Industrial & Research & Development (LIRD) zones only.

Section 3. That Section 17.07.070, Supplemental Zoning Regulations and Standards, is amended to include the following additional Subsection (X):

X. Medical Marijuana Dispensary.

1. All Medical Marijuana Dispensary facilities shall meet the following location requirements:
  - a. Medical Marijuana Dispensaries shall be located at least 1,000 feet from
    1. schools, and
    2. state licensed child daycare facilities.
  - b. Medical Marijuana Dispensaries shall be located at least 250 feet from:
    1. residential land uses, and
    2. public parks and any other publicly owned or maintained buildings open for use by the general public, and
  - c. The Medical Marijuana Dispensary at the location proposed meets the needs of the neighborhood and desires of the inhabitants and will not cause an undue concentration of medical marijuana dispensaries in a specific neighborhood as determined by the City Council.
2. Medical Marijuana Dispensaries shall not be permitted to be within temporary structures, however; mobile deliveries are permitted.
3. Medical Marijuana Dispensaries shall not be permitted as any part of a home occupation.
4. Additional requirements:
  - a. an up-to-date sales tax number shall be required,
  - b. no consumption of any marijuana product shall be allowed or permitted on the premises of a medical marijuana dispensary,
  - c. products and accessories shall be stored indoors and on-site,
  - d. medical marijuana plants shall be within an enclosed, alarmed and secure area (preferably within a building) and not within the public view,
  - e. medical marijuana products (except growing plants) shall be stored within a separate safe (no other items in this safe) approved by the Fruita Police Department, provided however, that small samples of marijuana products offered for sale may be displayed on shelves, counters and display cases out of public view,
  - f. all currency over \$1,000.00 shall be stored in a separate safe (no marijuana

- in this safe) approved by the Fruita Police Department,
- g. all transactions shall occur indoors and out of view of the public,
  - h. all signs for the business shall be restricted to a total of 16 square feet including all temporary signs,
  - i. all buildings used as part of the operation shall have: an active security system including alarm systems with burglary panic and hold-up capacity; surveillance cameras monitoring all entrances with the video to be preserved for at least 72 hours; the active security system must be professionally monitored and maintained by a reputable commercial alarm company; such systems must be inspected and approved by the Fruita Police Department,
  - j. measures and means of preventing marijuana odors, debris, dust, fluids or other substances from exiting the site shall be provided at all times; in the event any marijuana odors, debris, dust, fluids or other substances exit the site, the business owner shall be responsible for full cleanup immediately; the facility shall properly dispose of all material and other substances in a safe and sanitary manner; disposal of unwanted marijuana by-products shall be done in accordance with procedures approved by the Fruita Police Department,
  - k. if any medical marijuana plants are grown on-site, evidence of proper electrical and venting systems in compliance with the adopted building codes shall be provided to the city before operation,
  - l. no food products shall be permitted to be manufactured, stored, packaged, displayed, or sold in a Medical Marijuana Dispensary unless approved by the Mesa County Health Department,
  - m. all transactions as part of mobile deliveries of medical marijuana shall be conducted in an enclosed building and out of sight of people outside of the building,
  - n. the owner and Primary Care-giver(s) of the business shall provide personal information and shall consent to a criminal background check on the same; no business owner or Primary Care-giver of the business should have a felony conviction within the past ten (10) years, be out on bond on a felony or misdemeanor drug charge, or be in the process of being prosecuted for a felony or misdemeanor drug charge. Provided however, the City shall be governed by the provisions of Section 24-5-101, C.R.S. In addition to consideration of the criminal history of the owner and Primary Care-giver(s), the City shall also consider any information provided by an owner or Care-giver regarding such criminal history records, including but not limited to evidence of rehabilitation, character references and educational achievements, especially those items pertaining to the period of time between the last criminal charge or conviction and the time of consideration of the application,
  - o. the business shall be permitted to operate between the hours of 8 am and 6 pm only,
  - p. no gun sales or pawn shop activities shall be permitted on-site,
  - q. sale or consumption of alcohol shall be prohibited with the exception of

- marijuana tinctures,
- r. no one under the age of 18 years shall be permitted on the premises unless accompanied by a legal guardian, and
  - s. for the limited purpose of ascertaining that a Primary Care-Giver does not have more than six (6) medical marijuana plants and two (2) ounces of usable finished marijuana product per Patient, upon request from a police officer, the Primary Care-Giver shall provide:
    - 1. A copy of each Patient's medical marijuana registration card listing the Primary Care-Giver as a care-giver with the Patient's name and all personal information redacted; or
    - 2. A copy of each application form or change of Primary Care-Giver form with the Patient's name and all personal information redacted; and
    - 3. A copy of proof of mailing such forms to the State health agency registry.
5. Existing dispensaries will be subject to State law if more restrictive than this subsection.

Section 4. That Title 5 of the Fruita Municipal Code is amended to include the following Chapter 5.15, Medical Marijuana Dispensary:

Chapter 5.15

MEDICAL MARIJUANA DISPENSARIES

Sections

5.15.010 Medical Marijuana Dispensary Application and Inspection Fee.

**5.15.010 MEDICAL MARIJUANA DISPENSARY APPLICATION AND INSPECTION FEE.** Medical Marijuana Dispensaries shall require a \$500.00 application and inspection fee due at time of business license application, levied and assessed for each year.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL, THIS  
 \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_.**

City of Fruita

ATTEST:

\_\_\_\_\_  
 H. Kenneth Henry, Mayor

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 City Clerk