

ORDINANCE 2011-08

AN ORDINANCE OF THE CITY OF FRUITA, COLORADO AMENDING THE FRUITA LAND USE CODE, CONTAINED IN TITLE 17 OF THE FRUITA MUNICIPAL CODE, CONCERNING THE CITY'S ZONING REGULATIONS GOVERNING THE CULTIVATION OF MEDICAL MARIJUANA BY PATIENTS AND CAREGIVERS IN RESIDENTIAL AND NON-RESIDENTIAL ZONE DISTRICTS.

WHEREAS, Article XVIII, Section 14 of the Colorado Constitution allows for the use and possession of medical marijuana by patients suffering from a chronic or debilitating disease or medical condition and the possession of medical marijuana by primary caregivers who have significant responsibility for managing the well being of such patients; and

WHEREAS, the Colorado General Assembly approved House Bill 10-1284 ("H.B. 1284") and the Governor has signed that Bill, amending the Colorado Revised Statutes to include Sections 12-43.3-101, *et. seq.*, C.R.S., the Colorado Medical Marijuana Code, and amending Sections 25-1.5-106, C.R.S.; and

WHEREAS, the Colorado Constitution and H.B. 10-1284 failed to address the local regulation of the cultivation of medical marijuana in residential dwelling units, which the City Council of the City of Fruita finds and declares to be a substantial and important issue implicating health, safety and welfare concerns within the City of Fruita; and

WHEREAS, the density and close proximity of housing units in which medical marijuana is cultivated can affect the health, safety and welfare concerns of neighboring units including problems with odors, ventilation, mold, mildew, and fire safety, and the City Council finds that limiting the number of marijuana plants and limiting space requirements for the growing of medical marijuana in residential units is necessary; and

WHEREAS, governmental regulation of conduct which is essential to the public health, safety and welfare and the preservation of constitutional rights must be carried out in a manner that appropriately balances the needs of the public with the rights and legitimate expectations of the individual; and

WHEREAS, by enacting the Fruita Land Use Code, contained in Title 17 of the Fruita Municipal Code, the City of Fruita has enacted a comprehensive zoning ordinance for the City; and

WHEREAS, the Fruita Land Use Code does not expressly address the matter of cultivation of medical marijuana in residential dwelling units; and

WHEREAS, the City of Fruita City Council has initiated an application by the City to amend the City's zoning regulations in the particulars hereinafter set forth concerning the cultivation of medical marijuana by patients and primary caregivers in residential and other zone districts; and

WHEREAS, the City of Fruita Planning Commission has reviewed the zoning text amendment application and made recommendations to the City Council; and

WHEREAS, the City Council finds and determines that in order to protect the public health, safety and welfare and control the adverse effects resulting from the unlimited cultivation of medical marijuana in single family and multi-family dwellings, including odors, mold, mildew, ventilation and fire safety, the cultivation of medical marijuana by patients and primary caregivers in residential and other zone districts should be reasonably regulated while preserving individuals' rights under Article XVIII, Section 14 of the Colorado Constitution; and

WHEREAS, the City Council finds and determines that the amendments to the Fruita Land Use Code as contained herein are compatible and consistent with the City's goals, policies and plans including the City of Fruita's Community Plan (2008).

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

Section 1. That the definitions contained in Chapter 17.03 of the Fruita Municipal Code for the terms "Medical Marijuana Dispensary", "Patient", "Primary Caregiver", and "Useable Form of Marijuana" are hereby repealed.

Section 2. That the Land Use/Zoning Table contained in subsection (F) of Section 17.07.060 of the Fruita Land Use Code, contained in Title 17 of the Fruita Municipal Code, shall be amended to include as a use under "Retail Sales and Service", "Medical Marijuana Cultivation by Patients and Primary Caregivers in Non-Residential Units" with the notation "See Section 17.07.080(X)" as a "C" (conditional use) in the Tourist Commercial (TC), General Commercial (GC), and the Limited Industrial Research & Development (LIRD) zones.

Section 3. That the Land Use/Zoning Table contained in subsection (F) of Section 17.07.060 of the Fruita Land Use Code, contained in Title 17 of the Fruita Municipal Code, shall be amended to include as a use under "Residential Uses", under the designation "home occupation", "Cultivation of Medical Marijuana by Patients and Caregivers in Residential Dwelling Units", with a notation applicable to all zones to read as follows: "Medical Marijuana cultivation is permitted as accessory to any

permitted residential use, subject to the supplemental standards of Section 17.07.080(X)".

Section 4. That subsection (X) of Section 17.07.070 of the City of Fruita Land Use Code, contained in Title 17 of the Fruita Municipal Code, concerning supplemental zoning regulations and standards, is hereby repealed and reenacted to read as follows:

"X. Medical Marijuana. Definitions of terms specifically related to Medical Marijuana are contained in Chapter 5.15 of the Fruita Municipal Code.

1. Cultivation of Medical Marijuana by Patients and Primary Caregivers in Residential Dwelling Units. The cultivation, production, or possession of marijuana plants for medical use by a patient or primary caregiver, as such terms are defined by Article XVIII, Section 14 of the Colorado Constitution, shall be allowed in residential dwelling units subject to the following conditions:

- a. The cultivation, production or possession of marijuana plants shall be in full compliance with all applicable provisions of Article XVIII, Section 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, Sections 12-43.3-101, *et. seq.*, C.R.S., and the Medical Marijuana Program, Section 25-1.5-106, C.R.S.
- b. Marijuana plants that are cultivated, produced or possessed shall not exceed the presumptive limits of no more than four (4) ounces of a useable form of marijuana unless otherwise permitted under Article XVIII, Section 14 of the Colorado Constitution and no more than twelve (12) marijuana plants, with six (6) or fewer being mature, flowering plants that are producing a useable form of marijuana shall be cultivated or permitted within a primary residence by a patient or a primary caregiver.
- c. Cultivation of medical marijuana in a residential unit that is not a primary residence is not permitted.
- d. For the purposes of this subsection, the term "primary residence" means the place that a person, by custom and practice, makes his or her principal domicile and address to which the person intends to return, following any temporary absence, such as a vacation. Residence is evidenced by actual daily physical presence, use and occupancy of the primary residence and the use of the residential address for domestic purposes, such as, but not limited to, slumber, preparation of and partaking in meals, vehicle and voter

registration, or credit, water and utility billing. A person may only have one (1) primary residence. A primary residence shall not include accessory buildings.

- e. Such cultivation, production or possession of marijuana plants shall be limited to the following space limitations within a residential unit:
 - i. Within a single family dwelling unit (Group R-3 as defined by the International Building Code, as adopted in Chapter 15.04 of the Fruita Municipal Code) a secure defined, contiguous area not exceeding 150 square feet within the residence of the patient or primary caregiver.
 - ii. Within a multi-family dwelling unit (Group R-2 as defined by the International Building Code, as adopted in Chapter 15.04 of the Fruita Municipal Code) a secure, defined, contiguous area not exceeding 100 square feet within the residence of the patient or primary caregiver.
- f. For the purpose of this subsection, a “secure” area means an area within the primary residence accessible only to the patient or primary caregiver. Secure premises shall be locked or partitioned off to prevent access by children, visitors, or anyone not licensed and authorized to possess medical marijuana.
- g. Marijuana plants shall not be grown in the common area of a multi-family residential structure.
- h. If a patient or primary caregiver elects to cultivate quantities of marijuana in excess of the amounts permitted under subsection (b.) above, as permitted in Article XVIII, Section 14(4)(b) of the Colorado Constitution, such patient must be in full compliance with the Colorado Medical Marijuana Program as provided in Section 25-1.5-106(10), C.R.S. and may grow medical marijuana for personal use as a patient or as a primary caregiver for patients as a conditional use within non-residential units or structures in the Tourist Commercial (TC), General Commercial (GC), and the Limited Industrial Research and Development (LIRD) zones only. See subsection (2) below.
- i. The cultivation of medical marijuana plants in a primary residence shall meet the requirements of all adopted City building, electrical,

mechanical and safety codes. Any patient or primary caregiver cultivating medical marijuana in a primary residence shall have an initial building and safety inspection conducted by the City, shall comply with any conditions of said inspection, and shall submit to an annual building and safety code inspection thereafter.

- j. The cultivation of medical marijuana plants shall not be permitted on the exterior portions of a residential dwelling unit. The cultivation, production or possession of marijuana plants in a residential unit must not be perceptible from the exterior of the residential dwelling unit and shall comply with the following:
 - i. Any form of signage shall be prohibited; unusual odors, smells, fragrances or other olfactory stimulants shall be prohibited; light pollution, glare, or brightness resulting from grow lamps that disturbs adjacent residents shall be prohibited; and excessive noise from ventilation fans shall be prohibited.
 - ii. Marijuana plants shall be used or consumed exclusively by a patient for the patient's personal use and solely to address a debilitating medical condition.
- k. Any primary caregiver cultivating medical marijuana for patients and providing said marijuana to patients for consideration such as a monetary sum shall obtain a business license from the City pursuant to Chapter 5.04 of the Fruita Municipal Code. Any primary caregiver transferring medical marijuana to a patient for consideration shall also obtain a sales tax license and shall comply with the requirements of Chapter 3.12 of the Fruita Municipal Code concerning collection and payment of municipal sales tax. Any patient obtaining medical marijuana from a primary caregiver for consideration shall pay a medical marijuana excise tax in accordance with Chapter 3.19 of the Fruita Municipal Code which shall be collected by the primary caregiver and remitted to the City.

"2. Cultivation of Medical Marijuana by Patients and Primary Caregivers in Non-Residential Zones. The cultivation, production, or possession of marijuana plants for medical use by a patient or primary caregiver, as such terms are defined by Article XVIII, Section 14 of the Colorado Constitution, may be allowed as a conditional use in non-residential buildings in the Tourist Commercial (TC), General Commercial (GC), and the Limited Industrial Research and Development (LIRD) zones only subject to the following conditions:

- a. The cultivation, production or possession of marijuana plants shall be in full compliance with all applicable provisions of Article XVIII, Section 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, Sections 12-43.3-101, *et. seq.*, C.R.S., and the Medical Marijuana Program, Section 25-1.5-106, C.R.S.
- b. Marijuana plants that are cultivated, produced or possessed shall not exceed the presumptive limits of no more than two (2) ounces of a useable form of marijuana per patient and no more than six (6) marijuana plants, with three (3) or fewer being mature, flowering plants that are producing a useable form of marijuana per patient, unless otherwise permitted under Article XVIII, Section 14 of the Colorado Constitution, shall be cultivated. A caregiver may cultivate medical marijuana for no more than five (5) licensed patients. Two (2) or more primary caregivers shall not join together for the purpose of cultivating medical marijuana within any non-residential unit located in the Tourist Commercial (TC), General Commercial (GC) and the Limited Industrial Research and Development (LIRD) zones.
- c. Marijuana plants shall not be grown in the common area of any commercial or industrial building.
- d. The cultivation of medical marijuana plants in any building shall meet the requirements of all adopted City building, electrical, mechanical and safety codes. Any patient or primary caregiver cultivating medical marijuana shall have an initial building and safety inspection conducted by the City, shall comply with any conditions of said inspection, and shall submit to an annual building and safety code inspection thereafter.
- e. The cultivation of medical marijuana plants shall not be permitted on exterior portions of a building. The cultivation, production or possession of marijuana plants within a building or unit must not be perceptible from the exterior of the building or unit.
- f. Any form of signage, except for address signs and courtesy signs, shall be prohibited; unusual odors, smells, fragrances or other olfactory stimulants shall be prohibited; light pollution, glare or brightness resulting from grow lamps that disturbs adjacent property shall be prohibited; and excessive noise from ventilation fans shall be prohibited.
- g. Any primary caregiver cultivating medical marijuana for patients and providing said marijuana to patients for consideration such as a monetary

sum shall obtain a business license from the City pursuant to Chapter 5.04 of the Fruita Municipal Code. Any primary caregiver transferring medical marijuana to a patient for consideration shall also obtain a sales tax license and shall comply with the requirements of Chapter 3.12 of the Fruita Municipal Code concerning the collection and payment of municipal sales taxes. Any patient obtaining medical marijuana from a primary caregiver for consideration shall pay a medical marijuana excise tax in accordance with Chapter 3.19 of the Fruita Municipal Code which shall be collected by the primary caregiver and remitted to the City.

Section 5. Any provisions of the Fruita Municipal Code in conflict herewith is hereby repealed.

Section 6. If any provision of this Ordinance is found to be unconstitutional, invalid or unlawful by a court of competent jurisdiction, such finding shall only invalidate that part or portion found to violate the law. All other provisions shall be deemed severable and shall continue in full force and effect.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Fruita, Colorado held on May 17, 2011.

CITY OF FRUITA, COLORADO

By: _____
H. Kenneth Henry, Mayor

ATTEST:

Margaret Steelman, City Clerk