

ORDINANCE NO. 2011-12

AN ORDINANCE OF THE CITY OF FRUITA, COLORADO, IMPOSING A TEMPORARY MORATORIUM ON THE SUBMISSION, ACCEPTANCE, PROCESSING, AND APPROVAL OF APPLICATIONS FOR NEW LICENSES OR PERMITS TO OPERATE MEDICAL MARIJUANA BUSINESSES; DECLARING AN EMERGENCY; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE OF THIS ORDINANCE.

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

Section 1. Declaration of Emergency. In accordance with Section 2.14 of Article II of the Fruita City Charter, the City Council hereby finds and declares that a public emergency affecting life, health, property and the public peace exists. This Ordinance is immediately necessary to prohibit submittal of applications and the processing of such applications for new licenses and permits to operate Medical Marijuana Businesses because, in accordance with subsection (2)(d)(III) of Section 12-43.3-103, C.R.S., as amended, effective July 1, 2011, the State of Colorado Medical Marijuana Licensing Authority is authorized to grant change of location licenses to existing licensees who have lost their location because a city or county has voted pursuant to Section 12-43.3-106, C.R.S. to ban their operations. Without the adoption of this Ordinance, medical marijuana businesses could relocate to the City of Fruita, even though it is the desire of the City Council of the City of Fruita to prohibit such businesses within the City until the question of whether or not Medical Marijuana Businesses should be permitted can be referred to the electors of the City of Fruita at the regular municipal election to be held on April 3, 2012.

Section 2. Findings and Intent. The City Council of the City of Fruita, Colorado hereby finds, determines and declares as follows:

A. The voters of Colorado approved Amendment 20 at the 2000 general election, which was subsequently codified as Section 14 of Article XVIII of the Colorado Constitution ("Medical Marijuana Amendment"), and which authorizes the medical use of marijuana by persons in Colorado suffering from debilitating medical conditions.

B. The Medical Marijuana Amendment did not expressly authorize or permit the establishment of Medical Marijuana Businesses.

C. Despite the adoption of the Medical Marijuana Amendment, marijuana is still an illegal controlled substance under federal law.

D. On May 11, 2010, the Colorado General Assembly passed H.B. 10-1284, which was signed into law by the Governor on June 7, 2010, and now is codified as the Colorado Medical Marijuana Code, Sections 12-43.3-101, *et. seq.*, C.R.S.

E. Pursuant to Section 12-43.3-106, C.R.S., the governing body of a city or county or the registered electors of such local jurisdiction may vote to prohibit the establishment of medical marijuana businesses.

F. The Fruita City Council is in the process of adopting regulations and license procedures for Medical Marijuana Businesses as well as zoning regulations concerning the location of Medical Marijuana Businesses. Nevertheless, the Fruita City Council desires to prohibit Medical Marijuana Businesses within the City of Fruita until the question of whether or not Medical Marijuana Businesses should be permitted can be referred to the registered electors of the City of Fruita at the City's regular municipal election to be held on April 3, 2012.

G. The Colorado General Assembly recently adopted H.B. 11-1043, although said legislation has not yet been signed by the Governor. H.B. 11-1043 amends in significant respects the Colorado Medical Marijuana Code, Sections 12-43.3-101, *et. seq.*, C.R.S.

H. Although H.B. 11-1043 extends a State moratorium on the issuance of new State Medical Marijuana Business licenses from June 30, 2011 to June 30, 2012, H.B. 11-1043 amends subsection (2)(d)(III) of Section 12-43.3-103, C.R.S., as contained in the Colorado Medical Marijuana Code, to provide that a person who has lost his or her location for a Medical Marijuana Business because a city or county has voted pursuant to Section 12-43.3-106, C.R.S. to ban his or her operation, said person may apply for a new license with a local licensing authority where Medical Marijuana Businesses are permitted and transfer the location of the Medical Marijuana Business under the State license issued for such business.

I. Section 12-43.3-202(1)(b)(I), C.R.S. contained in the Colorado Marijuana Code, as amended by H.B. 1043, authorizes municipalities to extend their temporary moratoriums on the issuance of licenses for Medical Marijuana Businesses until June 30, 2012.

J. The duration of the moratorium imposed by this Ordinance is reasonable in length, is permitted by Colorado law, and is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the City of Fruita and in the inhabitants thereof.

Section 3. Definition of Medical Marijuana Business. For the purposes of this Ordinance, "Medical Marijuana Business" means a person holding or applying for a Medical Marijuana Center license, as defined in Section 12-43.3-402, C.R.S.; a Medical Marijuana-Infused Products Manufacturer license, as defined in Section 12-43.3-404, C.R.S; and/or an Optional Premises Cultivation Operation license, as defined in Section 12-43.3-403, C.R.S. For the purposes of this Ordinance, a "patient", as defined in Section 14 of Article XVIII of the Colorado Constitution, that cultivates, produces, possess or transports medical marijuana or a "primary caregiver", as defined in Section 14 of Article XVIII of the Colorado Constitution, that cultivates, produces, sells, distributes, possesses, transports, or makes available marijuana in any form to one or more patients shall not be deemed a "Medical Marijuana Business".

Section 4. Imposition of Temporary Moratorium on Applications for New Licenses and Permits. Upon the adoption of this Ordinance, a moratorium is hereby imposed upon the submission, acceptance, processing and approval of all applications of any kind for licenses or permits necessary to operate a Medical Marijuana Business, including but not limited to, Medical Marijuana Business licenses, business licenses issued pursuant to Chapter 5.04 of the Fruita Municipal Code, sales tax licenses issued pursuant to Chapter 3.12 of the Fruita Municipal Code, conditional use permits and other necessary zoning permits issued in accordance with the Fruita Land Use Code. During the moratorium period, the City Manager and the City staff shall not: (i) accept for filing any application for a new license or permit to operate a Medical Marijuana Business, including but not limited to Medical Marijuana Business licenses, business licenses issued pursuant to Chapter 5.04 of the Fruita Municipal Code, sales tax licenses issued pursuant to Chapter 3.12 of the Fruita Municipal Code, conditional use permits and other zoning permits; or (ii) process, review, grant, deny or take any action with respect to any application for a license or permit necessary to operate a Medical Marijuana Business.

Section 5. Effective Dates of Moratorium. In accordance with Section 2.14 of Article II of the Fruita City Charter, this Ordinance shall become effective as of the date and time of the adoption of this Ordinance, and shall expire and stand repealed on the 61st day following the date on which it was adopted. This shall not prevent reenactment of the Ordinance in accordance with the provisions set forth in Section 13 of Article II of the Fruita City Charter which will extend the moratorium until June 30, 2012.

Section 6. Publication. In accordance with subsection 2.14 of Article II of the Fruita City Charter, a summary of this Ordinance shall be published in accordance with law.

PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE at a regular meeting of the City Council of the City of Fruita, Colorado, held on _____, 2011.

CITY OF FRUITA, COLORADO,

By: _____
H. Kenneth Henry, Mayor

ATTEST:

Margaret Steelman, City Clerk