

EMERGENCY ORDINANCE 2013-01

AN ORDINANCE OF THE CITY OF FRUITA, COLORADO IMPOSING A TEMPORARY MORATORIUM ON THE USE OR CONSUMPTION OF MARIJUANA OR MARIJUANA PRODUCTS ON COMMERCIAL AND INDUSTRIAL ZONED PROPERTY THAT OPERATES AS PLACE OF PRIVATE ASSEMBLY FOR THE PURPOSE OF INVITING PERSONS TO USE OR CONSUME MARIJUANA OR MARIJUANA PRODUCTS ON SITE; AND DECLARING AN EMERGENCY.

WHEREAS, on November 6, 2012 the voters of the State of Colorado approved Amendment 64. Amendment 64 added Section 16 of Article XVIII to the Colorado Constitution, and created a limited exception from criminal liability under Colorado law (as opposed to Federal law) for the cultivating, manufacturing, testing of marijuana or marijuana products and retail stores selling marijuana or marijuana products, unless prohibited by a local government, and to operate in a system of licensed establishments regulated by State and local governments; and

WHEREAS, Amendment 64 directs the Colorado Department of Revenue to issue regulations for marijuana establishments, meaning marijuana cultivation facilities, marijuana testing facilities, marijuana product manufacturing facilities and marijuana retail stores, by July 1, 2013; and

WHEREAS, the State of Colorado has formed the Amendment 64 Implementation Task Force and anticipates enacting extensive legislative and regulatory changes in the upcoming months that will clarify and address licensing and land use issues connected to the implementation of Amendment 64; and

WHEREAS, although Amendment 64 permits the personal use of marijuana and marijuana products by persons twenty-one (21) years of age or older, Amendment 64 provides that nothing contained in said amendment shall permit consumption that is “conducted openly and publicly or in a manner that endangers others”, but said terms are not well defined; and

WHEREAS, the Amendment 64 Implementation Task Force has formed a Local Authority and Control Working Group to further clarify these matters; and

WHEREAS, the Colorado Clean Indoor Air Act, Sections 25-14-201 *et. seq.* C.R.S. prohibits the smoking of tobacco products or medical marijuana within most commercial buildings, but said prohibition does not appear to apply to the recreational use or consumption of marijuana and possible amendments to the Colorado Clean Indoor Air Act will be considered by the Amendment 64 Implementation Task Force; and

WHEREAS, until some of these fundamental interpretations of State law are resolved or clarified, attempts by the City to regulate where marijuana can be used or consumed is fraught with possible inherent conflicts that could raise doubts as to any regulatory scheme adopted by the City; and

WHEREAS, despite the adoption of Amendment 64, marijuana is still classified as a controlled substance under federal and State law, and has the potential for abuse that should be closely monitored to the extent possible; and

WHEREAS, the Fruita City Council, as an exercise of its local land use authority, finds and determines that use of commercial and industrial property within the City as a business operating as a “marijuana club” for the use and consumption of marijuana and marijuana products should not be permitted unless and until the Amendment 64 Implementation Task Force issues its report and the Colorado General Assembly and Colorado Department of Revenue enact appropriate regulations concerning places where marijuana and marijuana products can be used or consumed; and

WHEREAS, the Fruita City Council hereby finds and determines that a moratorium on the use and consumption of marijuana and marijuana products in a business operating as a “marijuana club” on commercial and industrial properties within commercial and industrial zone districts will allow the City’s staff and the City Council to investigate the City’s desire and ability to permanently regulate the use and consumption of marijuana and marijuana products in “marijuana clubs”, and to develop and implement any appropriate regulations or to prohibit such businesses; and

WHEREAS, a moratorium to and through October 1, 2013 is a moratorium for a reasonable length of time and no longer than necessary for the City to properly investigate, develop, and, if appropriate, adopt and implement regulations with respect to commercial properties as a place of private assembly for the purpose of inviting persons to use or consume marijuana on such premises; and

WHEREAS, the Fruita City Councils finds and determines that this Ordinance is necessary for the preservation of the public peace or welfare.

NOW, THEREFORE, 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 the Fruita City Charter, the Fruita City Council hereby declares that an emergency exists for the reasons stated herein and that a public emergency affecting life, health, property or the public peace exists. This ordinance shall become effective upon adoption and shall automatically stand repealed on the sixty-first (61st) day following the date on which it is adopted. Provided, however, nothing shall prevent reenactment of this Ordinance in accordance with the provisions set forth in Section 13 of Article II of the Fruita City Charter.

Section 2. Recitals. The foregoing recitals are incorporated herein as findings and determinations of the Fruita City Council.

Section 3. Moratorium. A temporary moratorium is hereby imposed by amending Section 17.07.070 of the Fruita Municipal Code, Supplemental Zoning Regulations and Standards, by the inclusion of the following additional subsection:

- Y. "Marijuana clubs" which constitute a business operating as a place of private assembly for the purpose of inviting members or non-members to use or consume marijuana on site shall be prohibited on non-residential property within non-residential zones.

For the purposes of this subsection, the terms "marijuana" and "marijuana products" shall have the same meaning as defined in subsection (2) of Section 16 of Article XVIII of the Colorado Constitution.

Section 4. Direction to Staff. During the period this Ordinance remains in effect, City staff shall monitor the State's regulatory efforts and research the applicable legal and land use issues connected to the regulation of businesses operating for the purposes of consumption or use of marijuana or marijuana products on their premises, and propose a regulatory scheme to the City Council for its review. Such research may include referral of draft regulations to the Planning Commission for review of any proposed zoning changes, consistent with the Fruita Municipal Code.

Section 5. 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 Fruita 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 6. Effective Date. This Ordinance shall become effective upon adoption and shall automatically stand repealed on the sixty-first (61st) day following the date of adoption, in accordance with Section 2.14 of the Fruita City Charter.

PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL, THIS 15th DAY OF JANUARY, 2013.

ATTEST:

Margaret Steelman, City Clerk

City of Fruita, Colorado

BY: _____
Lori Buck, Mayor