

ORDINANCE NO. 2013-11

AN ORDINANCE OF THE CITY OF FRUITA, COLORADO AMENDING CHAPTER 9.08 OF THE FRUITA MUNICIPAL CODE CONCERNING THE USE, POSSESSION, CULTIVATION, SALE, TESTING AND TRANSFER OF MARIJUANA

WHEREAS, Amendment No. 64, codified as Section 16 of Article XVIII of the Colorado Constitution, was approved by the voting electorate in Colorado on November 6, 2012; and

WHEREAS, Amendment No. 64 permits adults over the age of twenty-one (21) years to use, possess, and cultivate limited amounts of marijuana pursuant to the restrictions contained therein; and

WHEREAS, the Colorado General Assembly recently amended the Colorado Criminal Code contained in Title 18, C.R.S. in order to conform with the provisions of Amendment No. 64; and

WHEREAS, the City Council of the City of Fruita also finds and determines that it is necessary to amend Chapter 9.08 of the Fruita Municipal Code in order to conform the City's Criminal Code with the requirements of Amendment No. 64; and

WHEREAS, Article XVIII, Section 16 of the Colorado Constitution authorizes local governments, such as the City of Fruita, to "prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores through the enactment of an ordinance"; and

WHEREAS, the City Council has carefully considered the provisions of Article XVIII, Section 16 of the Colorado Constitution, and the impact of the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores ("marijuana businesses") on the health, safety and welfare of the City and its inhabitants, as well as the possible financial impacts on the City, and the City Council has determined that such marijuana businesses should not be located within the corporate limits of the City; and

WHEREAS, the City Council therefore finds and determines that as a matter of the City's local land use and zoning authority, as a home rule municipality pursuant to the provisions of Article XX, Section 6 of the Colorado Constitution, and consistent with the authorization provided by Article XVII, Section 16 of the Colorado Constitution, that no suitable location exists within the corporate limits of the City of Fruita for the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores

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

Section 1. That Section 9.08.001 of the Fruita Municipal Code, concerning definitions relating to alcohol and drugs, is hereby amended to read as follows:

9.08.001 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. "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.
- C. "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.
- D. "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.
- E. "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.

- F. “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.
- G. “Marijuana cultivation facility” shall the same meaning as defined in Section 16 (2)(h) of Article XVIII of the Colorado Constitution.
- H. “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.
- I. “Marijuana product manufacturing facility” shall have the same meaning as defined in Section 16 (2)(j) of Article XVIII of the Colorado Constitution.
- J. “Marijuana testing facility” shall have the same meaning as defined Section 16 (2)(l) of Article XVIII of the Colorado Constitution.
- K. “Retail marijuana store” shall have the same meaning as defined in Section 16 (2)(n) of Article XVIII of the Colorado Constitution.
- L. “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 (C) and (M) of this Section, shall not be construed to be fermented malt or malt or vinous liquor but shall be construed to be spirituuous liquor.
- M. “Transfer” means to deliver or convey in a manner not permissible pursuant to Section 16 of Article XVIII of the Colorado Constitution.
- N. “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 2. That Section 9.08.050 of the Fruita Municipal Code concerning possession of marijuana prohibited, and Section 9.08.060 of the Fruita Municipal Code concerning possession of drug paraphernalia prohibited, are hereby repealed.

Section 3. That Chapter 9.08 of the Fruita Municipal Code, concerning offenses relating to alcohol and drugs is hereby amended to include the following new Sections:

9.08.050 POSSESSION OR USE OF MARIJUANA BY AN UNDERAGE PERSON - PROHIBITED.

- A. As used in this Section:
1. “First Offense” means that the subject person has not had a previous conviction, adjudication, deferred prosecution, or deferred judgment for a violation of this Section or comparable law in another jurisdiction.
 2. “Second offense” means the next offense after the person is convicted of a first offense.
- B. 1. Except as described by Section 18-1-711, C.R.S., concerning immunity for person who suffers or reports an emergency drug or alcohol overdose, a person under twenty-one (21) years of age who possesses, uses, or displays marijuana anywhere within the City of Fruita shall be punishable by a fine, a jail sentence (if the person is eighteen (18) years of age or over), useful public service, drug education classes, drug evaluation and treatment, or any combination of these in the discretion of the Court subject to the following:
- a. Useful public service of no less than twenty-four (24) hours for any single offense shall be imposed.
 - b. Fine of up to two hundred fifty dollars (\$250.00) for a first offense, up to five hundred dollars (\$500.00) for a second offense and up to one thousand dollars (\$1000.00) for a third or subsequent offense may be imposed. Fines may be suspended on the condition of timely completion of useful public service and drug education classes or treatment. This subsection shall not limit the discretion of the Court to suspend fines for other reasons it deems appropriate. It is the intention of the City Council in adopting this subsection to establish a preference for useful public service, drug education and/or treatment over fines for first time offenders.
 - c. Each violation of subsection (B) of this Section by a person who is eighteen (18) years of age or older may be punishable by up to thirty (30) days in jail, in combination with or in lieu of any other penalties set forth in this subsection (B) in the discretion of the Court.
 - d. If the defendant fails to comply with any Court ordered treatment plan or Court ordered conditions the Municipal Court may commence contempt of court proceedings against the defendant.
- C. The possession or use of marijuana shall not constitute a violation of this Section if such possession or use:
1. Takes place for religious purposes protected by the 1st Amendment to the United

States Constitution; or

2. Is lawful under the Colorado Medical Marijuana Code, Article 43.3 of Title 12, C.R.S.
- D. An underage person shall be immune from criminal prosecution under this Section if he or she establishes the following:
1. The underage person, or another underage person with the underage person, called 911 and reported in good faith that another underage person was in need of medical assistance due to marijuana consumption;
 2. The underage person who called 911 provided his or her name to the 911 operator;
 3. The underage person was the first person to make the 911 report; and
 4. The underage person remained on the scene with the underage person in need of medical assistance until assistance arrived and cooperated with medical technicians or law enforcement personnel on the scene.
- E. Prima facie evidence of a violation of subsection (B) of this Section shall consist of:
1. Evidence that the defendant was under twenty-one (21) years of age and possessed or used marijuana anywhere within the City of Fruita; or
 2. Evidence that the defendant was under twenty-one (21) years of age and manifested any of the characteristics commonly associated with marijuana intoxication or impairment when present anywhere within the City of Fruita.
- F. During any trial for a violation of subsection (B) of this Section, any container with labeling indicating the contents of the container is admissible into evidence, and the information contained on the label on the container is admissible into evidence and is not hearsay. A jury or a judge, whichever is appropriate, may consider the information upon the label in determining whether the contents of the container were composed in whole or in part of marijuana.
- G. Nothing in this Section shall be construed to limit or preclude prosecution for any offense pursuant to Article 43.3 or 43.4 of Title 12, C.R.S., except as provided in such Article.
- H. Upon the expiration of one (1) year from the date of a conviction, dismissal, completion of a deferred judgment, or conclusion of a deferred prosecution for a violation of subsection (B) of this Section, the defendant may petition the Municipal Court for an

order sealing the record of such court action. The Court shall grant such 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 described above.

- I. The qualitative result of a drug test or tests performed by or on behalf of a law enforcement agency with relevant jurisdiction shall be admissible at the trial of any person charged with a violation of subsection (B) 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 drugs by the Executive Director of the Colorado Department of Public Health and Environment.
- J. In any judicial proceeding concerning a charge under subsection (B) of this Section, the Court shall take judicial notice of methods of testing a person's blood or urine for the presence of marijuana and of the design and operation of devices certified by the Colorado Department of Health and Environment for testing a person's blood or urine for the presence of marijuana. This subsection does 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 precludes a defendant from offering evidence concerning the accuracy of testing devices.

9.08.060 POSSESSION OF MORE THAN ONE (1) OUNCE OF MARIJUANA BY A PERSON TWENTY-ONE (21) YEARS OF AGE AND OVER – PROHIBITED.

- A. It is unlawful for any person twenty-one (21) years of age and over to knowingly possess more than one (1) ounce of marijuana. A person who possesses not more than two (2) ounces of marijuana commits a non-criminal municipal offense and shall be punished by a fine of not more than \$100.00. A person who possesses more than two (2) ounces of marijuana but not more than six (6) ounces of marijuana commits a Class B municipal offense.
- B. During any trial for a violation of subsection (A) of this Section, any container with labeling indicating the contents of the container is admissible into evidence, and the information contained on the label on the container is admissible into evidence and is not hearsay. A jury or a judge, whichever is appropriate, may consider the information upon the label in determining whether the contents of the container were composed in whole or in part of marijuana.
- C. Nothing in this Section shall be construed to limit or preclude prosecution for any offense pursuant to the Colorado Medical Marijuana Code, Article 43.3 of Title 12, C.R.S., or the Colorado Retail Marijuana Code, Article 43.4 of Title 12, C.R.S., except as provided in such Articles.
- D. The qualitative result of a drug test or tests performed by or on behalf of a law

enforcement agency with relevant jurisdiction 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 drugs by the Executive Director of the Colorado Department of Public Health and Environment.

9.08.070 OPEN AND PUBLIC USE OF MARIJUANA – PROHIBITED.

- A. Except as described in Section 18-1-711, C.R.S., a person twenty-one (21) years of age or older who openly and publicly displays, consumes, or uses two (2) ounces or less of marijuana, commits a non-criminal municipal offense. The open and public display, consumption, or use of more than two (2) ounces of marijuana or any amount of marijuana concentrate shall be deemed possession thereof and a violation shall be punished as provided for in this Chapter or in the Colorado Revised Statutes.
- B. As used in this Section, “open and public” means a place open to the general public which includes a place to which the public or a substantial number of the public has access without restriction including but not limited to streets, highways, public sidewalks, transportation facilities including rest areas, places of amusement, parks, playgrounds, City owned open space, bicycle and pedestrian trails, common open space owned by owners’ associations, common areas of public buildings and facilities that are generally open or accessible to members of the public without restriction, parking lots and areas, and shopping centers or shopping areas. A person who displays, consumes, or uses marijuana in a residential dwelling unit or anywhere on the real property upon which such dwelling unit is located shall not be considered to be displaying, consuming or using marijuana in an “open and public” manner, unless such person disturbs or annoys or endangers another person outside of the perimeter of the subject property because of the second hand smoke generated from the smoking of marijuana.
- C. As used in this Section, “openly” means the consumption or use of marijuana in such a manner that a person located outside the perimeter of the private property where the consumption or use is taking place is disturbed or annoyed or endangered because of the second hand smoke generated from the smoking of marijuana on said private property.
- D. As used in this Section, “publicly” means an area that is open to general access by the public with or without some restrictions and includes marijuana social clubs.

9.08.075 CULTIVATION OF MARIJUANA – RESTRICTIONS

- A. In accordance with Section 16(3)(b) of Article XVIII of the Colorado Constitution, any person who is twenty-one (21) years of age or older may cultivate marijuana plants for his or her own use and may possess, grow, process or transport up to six (6) marijuana plants with three (3) or fewer being mature flowering plants subject to the following requirements:
1. Cultivation of marijuana plants may only occur in a fully enclosed structure.
 2. Cultivation of marijuana plants may only occur in a person’s primary residence or on the real property associated with the primary residence. Cultivation may occur in accessory buildings or structures located on such property.
 3. Cultivation of marijuana plants shall not be observable from the exterior of the property on which the primary residence is located.
 4. Cultivation of marijuana plants shall not cause light pollution, glare or brightness that disturbs others.
 5. Cultivation of marijuana plants and the processing of marijuana plants shall not occur in the common areas of a planned community or of a multi-family or attached residential development.
 6. Areas within structures used for the cultivation of marijuana plants shall comply with the requirements of all adopted City building and fire codes.
 7. In accordance with Section 16(3)(b) of Article XVIII of the Colorado Constitution, cultivation may only occur in an enclosed, locked space. If a person under the age of twenty-one (21) years of age lives at the primary residence where marijuana plants are being cultivated, the cultivation area itself must be enclosed and locked. If no person under the age of twenty-one (21) years lives at the residence, the external locks of the residence constitute the enclosed and locked space. Provided, however, if a person under twenty-one (21) years of age enters the residence where marijuana plants are being cultivated, the person cultivating the marijuana must insure that access to the cultivation site is reasonably restricted for the duration of the presence in the residence of the person under twenty-one (21) years of age.
- B. For the purposes of this Section, “primary residence” means the place that a person, by custom or 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 meals, regular mail delivery, vehicle and voter registration, or credit and utility billings. A person shall have only one (1) primary residence.

- C. Any person under the age of twenty-one (21) years who knowingly cultivates, processes, or transports any marijuana plants 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 commits a Class B municipal offense.

9.08.080 TRANSFER OF MARIJUANA PROHIBITED.

Any person 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 Class B municipal offense and shall not be deemed dispensing or the sale thereof.

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; or
 - 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.

9.08.100 POSSESSION OF DRUG PARAPHERNALIA PROHIBITED

- A. "Drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagation, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injection, ingestion, inhaling, or otherwise introducing into the human body a controlled substance in violation of the laws of this State. "Drug paraphernalia" includes, but is not limited to:
 1. Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances under circumstances in violation of the laws of this State;
 2. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
 3. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;
 4. Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;

5. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
 6. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances; or
 7. Compressed flammable gas used as a solvent in the extraction of THC or other cannabinoids from marijuana.
 8. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:
 - a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screen, permanent screens, hashish heads, or punctured metal bowls;
 - b. Water pipes;
 - c. Carburetor tubes and devices;
 - d. Smoking and carburetor masks;
 - e. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;
 - f. Miniature cocaine spoons and cocaine vials;
 - g. Chamber pipes;
 - h. Carburetor pipes;
 - i. Electric pipes;
 - j. Air-driven pipes;
 - k. Chillums
 - l. Bongs; or
 - m. Ice pipes or chillers.
- 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.

- C. In determining whether an object is drug paraphernalia, the Municipal Court, in its discretion, may consider in addition to all other relevant factors, the following:
1. Statements by an owner or by anyone in control of the object concerning its use;
 2. The proximity of the object to controlled substances;
 3. The existence of any residue of controlled substances;
 4. Direct or circumstantial evidence of the knowledge of an owner, or of anyone in control of the object, or evidence that such person reasonably should know, that it will be delivered to persons who he knows or reasonably should know, could use the object to facilitate a violation of this Section or other applicable law;
 5. Instructions, oral or written, provided with the object concerning its use;
 6. Descriptive materials accompanying the object which explain or depict its use;
 7. National or local advertising concerning its use;
 8. The manner in which the object is displayed for sale;
 9. Whether the owner, or anyone in control of the object, is a supplier of like or related items to the community for legal purposes, such as an authorized distributor or dealer of tobacco products;
 10. The existence and scope of legal uses for the object in the community; and
 11. Expert testimony concerning its use.
- D. 1. Except as described in Section 18-1-711 C.R.S., 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 who commits possession of drug paraphernalia commits a non-criminal municipal offense

9.08.110 MARIJUANA CLUBS – PROHIBITED.

It shall be unlawful for any person to knowingly own, operate or maintain a marijuana club within the City of Fruita. Any person who violates this Section commits a Class A municipal

offense. Each and every day a violation of the provisions of this Section is committed, exists or continues shall be deemed a separate and distinct offense.

9.08.120 MARIJUANA ENTERPRISES – PROHIBITED.

It shall be unlawful for any person to own, operate or maintain a marijuana enterprise within the City of Fruita. Any person who violates this Section commits a Class A municipal offense. Each and every day a violation of the provisions of this Section is committed, exists or continues shall be deemed a separate and distinct offense.

9.08.130 MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, AND RETAIL MARIJUANA STORES – PROHIBITED.

It shall be unlawful for any person to knowingly operate, cause to be operated, or permit to be operated, any marijuana cultivation facility, marijuana product manufacturing facility, marijuana testing facility, and retail marijuana store within the City of Fruita, and all such uses are hereby prohibited in any location within the City, or within any area hereinafter annexed to the City. A violation of this Section shall constitute a Class A municipal offense. Each and every day a violation of the provisions of this Section is committed, exists or continues shall be deemed as a separate and distinct offense. The City Attorney is hereby authorized to seek an injunction, abatement, restitution, or any other remedy necessary to prevent, enjoin, abate or remove an establishment operated in violation of this Section.

Section 4. 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 5. Repeal. Any ordinance, of part thereof which conflicts with the terms and provisions of this Ordinance is hereby repealed.

AMENDED AS SET OUT HEREIN, PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL, THIS _____ DAY OF _____, 2013.

ATTEST:

CITY OF FRUITA, COLORADO

Margaret Sell, City Clerk

BY: _____
Lori Buck, Mayor