

TOWN OF TIMNATH, COLORADO

ORDINANCE NO. 113, SERIES 2011

**AN ORDINANCE OF THE TOWN OF TIMNATH TOWN COUNCIL
AMENDING CHAPTER 16, LAND USE CODE, ARTICLE 1, GENERAL
PROVISIONS, SECTION 16.1.16 DEFINITIONS AND ARTICLE 3,
ZONING, SECTION 16.3.12, HOME OCCUPATIONS AND SECTION
16.3.13, ACCESSORY USES AND STRUCTURES, OF THE TIMNATH
MUNICIPAL CODE RELATED TO MEDICAL MARIJUANA**

WHEREAS, the Town Council of the Town of Timnath ("Town") pursuant to C.R.S. § 31-15-103 has the power to make and publish Ordinances; and

WHEREAS, pursuant to that power, the Town Council has previously enacted Chapter 16, Article 3 of the Timnath Municipal Code ("Code"); and

WHEREAS, on August 4, 2010, the Town adopted Ordinance No. 105, Series 2010, an emergency ordinance which extended the moratorium on medical marijuana businesses imposed by Ordinance No. 78, Series 2009 beginning August 4, 2010 and extending to at least June 30, 2011; and

WHEREAS, House Bill 10-1284 clarifies Colorado law regarding the scope and extent of Amendment 20 to the Colorado Constitution, which added Article XVIII, Section 14 to the Colorado Constitution, and at the same time establishes in the Medical Marijuana Code (MMC), a licensing and regulatory scheme for the retail sale, distribution, cultivation and dispensing of medical marijuana to be licensed as medical marijuana centers, and further authorizes licenses for optional premises cultivation operations and medical marijuana-infused manufacturers; and

WHEREAS, the Town Council has further considered the protections afforded to patients and primary caregivers by Article XVIII, Section 14 of the Colorado Constitution, and by C.R.S. § 25-1.5-106, that are not required to obtain a license under the MMC, and desires to affirm those protections in this Ordinance; and

WHEREAS, the Town Council also wishes to place limitations on such primary caregivers providing medical marijuana to his or her patients as a home occupation under Chapter 16, Article 3 of the Timnath Municipal Code, to prevent negative impacts on other surrounding residential properties;

Please Return to:
Town of Timnath
4800 Goodman Street
Timnath, CO 80547

WHEREAS, the Town Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare; and

WHEREAS, in order to ensure Chapter 16, Article 3 reflects the desires of the Town and includes provisions which are fair to all in enforcement and applicability, the Town Council desires to amend certain provisions of that Article.

NOW, THEREFORE, THE COUNCIL OF THE TOWN OF TIMNATH, COLORADO, ORDAINS:

Section 1. Definitions

Chapter 16, Land Use Code, Article 1, General Provisions, Section 16.1.16, Definitions, Subsection 16.1.16.A.188 is hereby added to read in full as follows and all numbering is amended to reflect the insertion of this new definition:

16.1.16.A Definitions

A. The words and phrases used...

...

188. Medical marijuana shall mean marijuana that is grown and sold pursuant to the provisions of the Colorado Medical Marijuana Code and for a purpose authorized by Amendment 20.

- a. *Amendment 20* shall mean Article XVIII, Section 14 of the Colorado Constitution added to the Colorado Constitution by a statewide voter initiative adopted on November 7, 2000.
- b. *Colorado Medical Marijuana Code* shall mean Part 1 of Article 43.3 of Title 12 of the Colorado Revised Statutes, C.R.S. § 12-43.3-101, *et seq.*, as amended.
- c. *Medical marijuana center* shall mean a person licensed to operate a business as described in the Colorado Medical Code that sells medical marijuana and medical marijuana-infused products to registered patients or primary caregivers as defined in Amendment 20, but is not a primary caregiver, and which a municipality is authorized to prohibit as a matter of law.
- d. *Medical marijuana-infused product* shall mean a product infused with medical marijuana that is intended for use or consumption other than by smoking, including, without limitation, to edible products, ointments, and tinctures.
- e. *Medical marijuana-infused products manufacturer* shall mean a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business manufacturing medical marijuana-infused

products, and which a municipality is authorized to prohibit as a matter of law.

- f. *Optional premises cultivation operation* shall mean a person licensed pursuant to the Colorado Medical Marijuana Code to grow and cultivate medical marijuana for a purpose authorized by Amendment 20, and which a municipality is authorized to prohibit as a matter of law.
- g. *Patient* shall have the same meaning as the term “patient” set forth in Section 14(1)(d) of Amendment 20.
- h. *Person* shall mean a natural person, partnership, association, company, corporation, limited liability company, or other organization or entity, or a manager, agent, owner, director, servant, officer, or employee thereof.
- i. *Primary caregiver* shall have the same meaning as the term “primary caregiver” set forth given in Section 14(1)(f) of Amendment 20.

Section 2. Home Occupations

Chapter 16, Land Use Code, Article 3, Zoning, Section 16.3.12, Home Occupations, Subsection 16.3.12.A.13 is hereby added to read in full as follows (in Section 16.3.12.B.10, the words added are **bold** and underlined):

Section 16.3.12 – Home Occupations

A. Intent. It is the intent...

...

B. Home Occupations must meet the following standards:

...

10. The following uses, because of their tendency to go beyond the limits permitted for home occupations and thereby impair the use and value of the residential area, shall not be permitted as home occupations: motor vehicle repair or motorized implement repair; dance, music or other types of instruction (if more than four [4] students being instructed at one [1] time); dental offices; medical offices; **medical marijuana centers, medical marijuana optional premises cultivation operations, or medical marijuana-infused products manufacturers**; the painting of vehicles, trailers or boats; private schools with organized classes; radio and television repair; barber and/or beauty shop; machine or welding shops; nursing homes; sexually oriented businesses; and, irrespective of whether the use may be categorized as a sexually oriented business, any retail or wholesale sales to consumers upon the premises of any types of materials 16-3-57 specified in this Chapter which describe or depict specified sexual activities or specified anatomical areas.

13. A primary caregiver cultivating, storing, manufacturing and/or providing medical marijuana in any form for his or her patients or a patient cultivating, storing, manufacturing and/or providing medical marijuana in any form for himself or herself in accordance with Article XVIII, Section 14 of the Colorado Constitution and C.R.S. § 25-1.5-106, as amended, whether at cost or for profit, may be allowed as a home occupation provided the primary caregiver or patient is not required to have a license under the Colorado Medical Marijuana Code, and shall meet the following:
- a. There shall not be more than one (1) primary caregiver per dwelling unit cultivating, storing, manufacturing or providing medical marijuana in any form to his or her patients in accordance with Article XVIII, Section 14 of the Colorado Constitution and C.R.S. § 25-1.5-106, as amended.
 - b. All such cultivation shall be conducted entirely within a building or other fully enclosed structure which is classified as a dwelling, as defined in Section 16.1.16 of the Timnath Land Use Code.
 - c. At any given time, not more than twelve (12) marijuana plants may be cultivated or stored at any dwelling unit, of which no more than six (6) plants may be mature. In addition to the penalties and remedies set forth in Section 16.6.1 of the Timnath Municipal Code, failure to comply with the terms of this Section 16.3.12.B.13.c shall constitute a criminal violation and is subject to penalty under Chapter 10 of the Timnath Municipal Code.
 - d. Notwithstanding any other provisions of this Section 16.3.12 to the contrary, a primary caregiver providing medical marijuana in any form to his or her patients in accordance with Article XVIII, Section 14 of the Colorado Constitution and C.R.S. § 25-1.5-106, as amended, shall not provide such medical marijuana to his or her patients in or on the premises of the primary caregiver's home, except for those patients whose residence is also the primary caregiver's home, but a primary caregiver shall only deliver medical marijuana to his or her patients off of the premises from which the primary caregiver conducts his or her home occupation.
 - e. Any primary caregiver providing medical marijuana in any form to his or her patients in accordance with Article XVIII, Section 14 of the Colorado Constitution and C.R.S. § 25-1.5-106, as amended, as a home occupation must obtain a Business and Sales Tax license from the Town prior to commencing such business.

- f. In no event shall a primary caregiver or patient cultivate, store, manufacture and/or provide medical marijuana in any form in excess of the amount a person is entitled to under Amendment 20.

Section 3. Accessory Uses

Chapter 16, Land Use Code, Article 3, Zoning, Section 16.3.13, Accessory Uses and Structures, Subsection 16.3.13.A.10 is hereby added to read in full as follows:

Section 16.3.13 – Accessory Uses and Structures

...

- A. Accessory Uses. Accessory uses are naturally and normally incidental to a principal use and comply with all the following conditions:

...

- 10. May not include medical marijuana centers, medical marijuana optional premises cultivation operations, or medical marijuana-infused products manufacturers.

Section 4. Severability

If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one or parts be declared unconstitutional or invalid.

Section 5. Repealer

All ordinances or resolutions, or parts thereof, in conflict with this Ordinance are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such ordinance nor revive any ordinance thereby.

Section 6. Effective Date

This Ordinance shall take effect upon adoption at second reading, as provided by Section 3.5.5 of the Charter. The Town Clerk shall certify to the passage of this ordinance and make not less than one copy of the adopted Code available for inspection by the public during regular business hours.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH ON FIRST READING, ON MAY 17, 2011, AND SET FOR PUBLIC HEARING AND SECOND READING AT 7:00 P.M. ON JUNE 7, 2011 AT THE TIMNATH ADMINISTRATION BUILDING, 4800 GOODMAN STREET, TIMNATH COLORADO AND ORDERED PUBLISHED BY TITLE THIS 17TH DAY OF MAY, 2011.

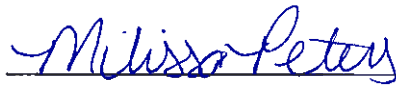
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MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING
FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON MAY 17,
2011.

TOWN OF TIMNATH



Jill Grossman-Belisle, Mayor

ATTEST:



Milissa Peters, Town Clerk



APPROVED AS TO FORM:

Thomas M. Rogers III, Town Attorney