

**TOWN OF TIMNATH, COLORADO
ORDINANCE NO. 5, SERIES 2013**

AN ORDINANCE PROHIBITING MARIJUANA ESTABLISHMENTS WITHIN THE TOWN OF TIMNATH'S BOUNDARIES; AND PROHIBITING THE ESTABLISHMENT OR OPERATION OF MARIJUANA CLUBS OR OTHER PROPERTY USED FOR CONGREGATING FOR THE PURPOSE OF CONSUMPTION OF MARIJUANA OR MARIJUANA PRODUCTS ON NON-RESIDENTIAL PROPERTY IN NON-RESIDENTIAL ZONING DISTRICTS OF THE TOWN OF TIMNATH

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

ARTICLE 1 – AUTHORITY

The Town of Timnath (the "Town") is a home rule municipality operating under the Timnath Home Rule Charter (the "Charter") adopted on November 7, 2006 and the Timnath Municipal Code (the "Code"), codified and amended from time to time by the Town. Pursuant to the Charter, the Code, and the authority given home rule municipalities, the Town may adopt and amend ordinances.

ARTICLE 2 – FINDINGS OF FACT

- A. The Town has broad authority to exercise its police powers to promote and protect the health, safety and welfare of the community and its inhabitants.
- B. The voters of Colorado approved Amendment 64 at the 2012 general election, creating a new Section 16, Article XVIII of the Colorado Constitution, which authorizes the limited cultivation, possession and use of one ounce or less of marijuana by persons twenty-one years of age and older. However, the voters in the Town primarily cast their ballots against the approval of Amendment 64.
- C. Despite the adoption of Amendment 64, marijuana, including medical marijuana, remains a controlled substance, and its cultivation, possession, sale and use remains unlawful under federal law.
- D. Amendment 64 creates complex and potentially confusing regulatory requirements in a system that is regulated by both the state and local governments.
- E. The Colorado Clean Indoor Air Act, 25-14-201 *et seq.* C.R.S., prohibits the smoking of tobacco products or medical marijuana within most commercial buildings, but this prohibition may not apply to the recreational use or consumption of marijuana. Possible amendments to the Colorado Clean Indoor Air Act will be considered by the Amendment 64 Implementation Task Force.

- F. The use and consumption of marijuana and marijuana products in commercial buildings conflicts with federal law, and may conflict with state law.
- H. The Town Council finds and determines that Article XVIII, Section 16 of the Colorado Constitution specifically authorizes the governing body of a municipality to enact ordinances to temporarily or permanently prohibit the operation of marijuana establishments, including marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores.
- I. The Town Council, as an exercise of its local land use authority, finds and determines that prohibition of the cultivation, sale, use and consumption of marijuana and marijuana products on non-residential property within the Town, and prohibition of the establishment of marijuana establishments are appropriate and are in the best interest of the long-term health and safety of the residents of the Town.

ARTICLE 3 – SAFETY CLAUSE

The Town Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the Town, the Town's land use and zoning authority, and pursuant to the authorization provided for in Article XVIII, Section 16 of the Colorado Constitution, and that this Ordinance 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.

ARTICLE 4 – ADOPTION

Section 1. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council of the Town of Timnath.

Section 2. Section 10.148, Chapter 10 of the Code shall be amended to include the following additional definitions:

"marijuana" means all parts of the plant of the genus *cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. "Marijuana" does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

"Marijuana Cultivation Facility" means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

"Marijuana Establishment" means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

"Marijuana Product Manufacturing Facility" means an entity licensed to purchase marijuana, manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

"Marijuana Products" means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

"Marijuana Testing Facility" means an entity licensed to analyze and certify the safety and potency of marijuana.

"Retail Marijuana Store" means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

"Marijuana Club" means any place of private assembly for the purpose of inviting members to use or consume marijuana or marijuana products on site.

Section 3. Section 10.146 of Chapter 10 of the Code shall be amended and restated in its entirety with the following language:

- A. It is unlawful for any person under the age of twenty-one to possess or use marijuana, and upon a plea of guilty or no contest thereto for conviction thereof, punishment shall be by a fine of not more than one hundred dollars (\$100).
- B. It is unlawful for any person to openly and publicly display, consume, or use marijuana and upon a plea of guilty or no contest thereto for conviction thereof, punishment shall be by a fine of not more than one hundred dollars (\$100).

Section 4. Section 10.152 of Chapter 10 of the Code shall be amended and restated in its entirety with the following language:

Except as otherwise provided herein, a violation of any provision of this Chapter 10 shall constitute a misdemeanor offense punishable by a fine not to exceed one

thousand dollars (\$1,000) or imprisonment for a term not to exceed one year, or both such fine and imprisonment. A person committing any such offense shall be guilty of a separate offense for each and every day, or any portion thereof, during which the offense is committed or continued to be permitted by such person, and shall be punished accordingly.

Section 5. Section 10.153 shall be added to Chapter 10 of the Code and shall include the following language:

It shall be unlawful for a person to possess more than one ounce of marijuana or six (6) marijuana plants, including both flowering and non-flowering plants. It shall be unlawful for a person to possess more than three (3) flowering marijuana plants.

Section 6. Section 10.154 shall be added to Chapter 10 of the Code, and shall include the following language:

It is unlawful for a person twenty-one years of age or older to transfer marijuana, marijuana products, or marijuana paraphernalia, with or without remuneration, to a person under twenty-one years of age.

Section 7. Section 10.155 shall be added to Chapter 10 of the Code, and shall include the following language:

It is unlawful for any person to operate, cause to be operated, or permit to be operated, any marijuana establishment, including a marijuana cultivation facility, a marijuana product manufacturing facility, a marijuana testing facility, and a retail marijuana store within the Town, and all such uses are hereby prohibited in any location within the Town, or within any area hereinafter annexed to the Town

Section 8. Section 10.156 shall be added to Chapter 10 of the Code, and shall include the following language:

It is unlawful to establish or operate a marijuana club or any facility or property used for congregating for the purpose of the consumption of marijuana or marijuana products, including smoking of marijuana, consumption of marijuana by use of a vaporizer, or consumption of marijuana products on non-residential property in non-residential zoning districts within the Town's corporate boundaries.

ARTICLE 5 – SEVERABILITY

If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance that can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

ARTICLE 6 – EFFECTIVE DATE

This Ordinance shall take effect upon adoption on second reading and shall be published in full immediately after adoption.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH ON FIRST READING, ON APRIL 23, 2013, AND SET FOR PUBLIC HEARING AND SECOND READING AT 6:00 P.M. ON MAY 14, 2013 AT THE TIMNATH ADMINISTRATION BUILDING, 4800 GOODMAN STREET, TIMNATH COLORADO AND ORDERED PUBLISHED BY TITLE THIS 23RD DAY OF APRIL, 2013.


MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON MAY 14, 2013.

TOWN OF TIMNATH



Jill Grossman-Belisle, Mayor

ATTEST:



Milissa Peters, Town Clerk

