

**TOWN OF TIMNATH, COLORADO**

**ORDINANCE NO. 112, SERIES 2011**

**AN ORDINANCE OF THE TOWN OF TIMNATH PROHIBITING THE LICENSING AND OPERATION WITHIN THE TOWN OF MEDICAL MARIJUANA CENTERS, OPTIONAL PREMISES CULTIVATION OPERATIONS, MEDICAL MARIJUANA-INFUSED PRODUCTS, AND THE CULTIVATION AND SALE OF MEDICAL MARIJUANA WITHIN THE TOWN EXCEPT BY REGISTERED PATIENTS AND PRIMARY CAREGIVERS AND PLACING LIMITATIONS ON PRIMARY CAREGIVERS CONDUCTING A HOME OCCUPATION UNDER TOWN CODE CHAPTER 16.**

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

**WHEREAS**, House Bill 10-1284 authorizes a municipality, by either a majority vote of the municipality's registered electors or by a majority vote of the municipality's governing board, to prohibit within the municipality's boundaries the licensing and operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers, as such facilities are authorized to be licensed under the Colorado Medical Marijuana Code adopted in House Bill 10-1284 ("MMC"); and

**WHEREAS**, in addition, 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 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**, C.R.S. § 12-43.3-310(1) of the MMC specifically authorizes a municipality "to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses...based on local government zoning, health, safety and public welfare laws for the distribution of medical marijuana that are more restrictive than [the MMC]"; and

**WHEREAS**, while C.R.S. § 12-43.3-103(2)(a) of the MMC also authorizes the Town Council to adopt prior to July 1, 2011, an ordinance "prohibiting the cultivation or sale of medical marijuana" within the Town by all persons except those patients and primary caregivers registered under C.R.S. § 25-1.5-106; and

**WHEREAS**, while C.R.S. § 12-43.3-106 of the MMC specifically authorizes the Town Council by a majority vote to prohibit within the Town the operation of medical marijuana

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Town of Timnath  
4800 Goodman Street  
Timnath, CO 80547

centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses, the Council has decided to prohibit the described activities.

**WHEREAS**, the Town Council has carefully considered the provisions of House Bill 10-1284, Article XVIII, Section 14 of the Colorado Constitution, and the adverse impacts of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses, as well as that of the continued cultivation and sale of medical marijuana by others within the Town, on the health, safety and welfare of the Town's inhabitants, and has determined, as an exercise of its local land use authority and in accordance with its other general police powers for the protection of the public's health, safety and welfare, that such medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers authorized under the MMC should not be located within the Town's corporate limits.

**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**, in doing so, however, the Town Council also wishes to place limitations on such primary caregivers providing medical marijuana to its patients as part of a minor home occupation under Chapter 10, Article VIII, to prevent negative impacts on other surrounding residential properties.

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

**Section 1.** That the Town Council hereby finds and determines that its authority to enact this Ordinance is granted to it and the Town in: the Colorado Medical Marijuana Code § 12-43.3-101 *et seq.*; Article XVIII, Section 14 of the Colorado Constitution, the Town's Home Rule Charter; the Local Government Land Use Control and Enabling Act of 1974 in Article 20 of Title 29 of the Colorado Revised Statutes; Part 3 of Article 23 of Title 31 of the Colorado Revised Statutes; C.R.S. § 31-15-103; C.R.S. § 31-15-401; and C.R.S. § 31-15-501.

**Section 2.** That new Sections 10-148 through Section 10-152 are hereby added to Chapter 10, Article VIII, of the Timnath Municipal Code to read in full as follows:

**Chapter 10, Article VIII, Section 10-148**

**Medical Marijuana**

**Section 10-148      Definitions**

As used in this Chapter, the following words, terms and phrases shall have the following meanings:

- 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* 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.
- D. *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.
- E. *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.
- F. *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.
- G. *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.
- H. *Patient* shall have the meaning set forth in Section 14(1)(c) of Amendment 20.
- I. *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.
- J. *Primary Caregiver* shall have the same meaning as the term “primary caregiver” is given in Section 14(1)(f) of Amendment 20.

**Article VIII, 10-149 Medical Marijuana Centers, Optional Premises Cultivation Operations, and Medical Marijuana-infused Products Manufacturers’ Licenses Prohibited**

- A. The operation of medical marijuana centers, optional premises cultivation operations and medical marijuana-infused products manufacturers’ licenses within the Town’s boundaries, which might otherwise be authorized under the Colorado Medical Marijuana Code, are hereby prohibited as authorized and provided in C.R.S. § 12-43.3-106.
- B. It shall be unlawful and a violation under this Chapter for any person to establish, operate, continue to operate, cause to be operated, or permit to be operated within the Town’s current boundaries, and within any area annexed into the Town after July 20, 2010, a facility, business or any other operation requiring a license under the Colorado Medical Marijuana Code to operate as a medical marijuana center, optional premises cultivation operation, or as a medical marijuana-infused products manufacturer.

## **Article VIII, 10-150 Cultivation and Sale of Medical Marijuana Prohibited**

As authorized in C.R.S. § 12-43.3-103(2)(a), no person shall cultivate or sell medical marijuana within the Town's boundaries unless such person does so as a patient or primary caregiver registered in accordance with C.R.S. § 25-1.5-106.

## **Article VIII, 10-151 Patients and Primary Caregivers**

Nothing in this Chapter shall be construed to prohibit, regulate or otherwise impair the use, cultivation or possession of medical marijuana by a patient or the cultivation, possession or providing of medical marijuana by a primary caregiver for his or her patients, provided that any such patient or primary caregiver is doing so in accordance with all applicable provisions of Amendment 20; the Colorado Medical Marijuana Code, as amended; C.R.S. § 25-1.5-106, as amended; and the Town's ordinances, and in accordance with any applicable rules and regulations promulgated under State law.

## **Article VIII, 10-152 Penalties**

A violation of any provision of this Chapter 10 shall constitute a misdemeanor offense punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for a term not exceeding one (1) 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.

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

**Section 1. 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 part or any parts be declared unconstitutional or invalid.

**Section 2. 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 3. Effective Date.** This Ordinance shall take effect upon adoption at second reading, as provided by Section 3.5.5 of the Charter.

**INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH ON FIRST READING, SET FOR PUBLIC HEARING AND SECOND READING AT 7:00 P.M. JUNE 7, 2011 AT THE TIMNATH TOWN HALL, 4800 GOODMAN STREET, TIMNATH, COLORADO AND ORDERED PUBLISHED BY TITLE THIS 17<sup>th</sup> 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

  
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Jill Grossman-Belisle, Mayor

ATTEST:

  
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Milissa Peters, Town Clerk



APPROVED AS TO FORM:

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Thomas M. Rogers III, Town Attorney