

**TOWN OF FREDERICK, COLORADO
ORDINANCE NO. 1203**

AN ORDINANCE OF THE TOWN OF FREDERICK, COLORADO, ENACTING CHAPTER 10, "GENERAL OFFENSES," ARTICLE VI, "OFFENSES RELATED TO DRUGS," SECTION 10-117, "RECREATIONAL MARIJUANA," OF THE MUNICIPAL CODE OF THE TOWN OF FREDERICK; AND, SETTING FORTH DETAILS IN RELATION THERETO.

WHEREAS, at the November 6, 2012 general election the voters of the State of Colorado adopted Amendment 64 to the Colorado Constitution, which is codified as Article XVIII, Section 16 of the Colorado Constitution ("Amendment 64"); and

WHEREAS, Amendment 64 permits persons twenty-one years of age and older to possess, use, display, purchase or transport one ounce or less of marijuana, or marijuana accessories, to grow and process limited amounts of marijuana; and

WHEREAS, in 2013, this governing body, the Frederick Board of Trustees, adopted by emergency measure Ordinance 1123 imposing a moratorium on the operation of any marijuana cultivation facility, marijuana product manufacturing facility, marijuana testing facility or retail marijuana store within the Town of Frederick pursuant to Amendment 64; and

WHEREAS, the Board of Trustees previously enacted local provisions related to the lawful possession of marijuana, marijuana accessories and the lawful cultivation of marijuana consistent with the provisions of Amendment 64; and

WHEREAS, the Board of Trustees finds and determines that enactment of this ordinance is in the best interest of the health, safety and welfare of the citizens of the Town.

WHEREAS, the Town of Frederick is a statutory municipality created and organized pursuant to Title 31, Colorado Revised Statutes; and

WHEREAS, by virtue of Title 31, Colorado Revised Statutes, including but not limited to §31-15-401 and §31-23-301, the Town of Frederick has broad authority to exercise its police powers to promote and protect the health, safety and welfare of the community and its inhabitants; and

WHEREAS, planning, land use and business regulation are well established as purely matters of local concern; and

WHEREAS, the Board of Trustees finds that cultivation, production, and processing of marijuana plants in residential buildings may produce a variety of deleterious effects upon the integrity of residences and the welfare of residential communities, including, but not limited to, potentially unsafe structural alterations or additions to residences; extraordinary demands on and potentially unsafe alterations to residential electrical systems; additions of conduits for water and humidity that can facilitate the growth of dangerous or damaging molds and fungi; increased risk

of fire and electrocution due to the proximity of electrical uses and water supplies, potential toxicity of residential air supply due to the use of heating devices, generators, and the addition of carbon monoxide to growing environments; and increased risk of fire due to the presence of hazardous materials such flammable materials_or volatile substances used in the cultivation, production, and processing of marijuana plants or derivatives thereof; and

WHEREAS, permitting any person to cultivate, acquire, possess, store, produce, prepare, use, transport marijuana in any form pursuant to Amendment 64 without appropriate local regulation could create conflicts with the goals and objectives of the Town’s comprehensive land use plan, be inconsistent with residential land uses and other uses, or otherwise be detrimental to the public health, safety and welfare; and

WHEREAS, the Board of Trustees of the Town of Frederick believes it is in the best interest of the Town of Frederick to amend the Frederick Municipal Code as set forth herein, and that such action is necessary for the immediate preservation of the public property, peace, health, safety, and welfare of the Town and for the financial well-being of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF FREDERICK, COLORADO, AS FOLLOWS:

Section 1. Chapter 10, “General Offenses,” Article VI, “Offenses Relating to Drugs,” Section 10-117, “Recreational Marijuana,” of the Municipal Code of the Town of Frederick is hereby enacted to read as follows:

10-117 Recreational Marijuana.

(a) Intent. The Board of Trustees intends to regulate the use, possession, cultivation, production and distribution of marijuana in a manner consistent with Article XVIII, Section 16 of the Colorado Constitution Amendment (also known as Amendment 64) and finds that the provisions of this Section are directly and demonstrably related to the use, possession, cultivation, production and distribution of marijuana in a manner to minimize negative impacts on the community.

(1) Marijuana use, distribution, cultivation and production can have an impact on the health, safety, and community resources, and this Section is intended to permit marijuana cultivation and production so that it will have a minimal impact on the community.

(2) Use, distribution, cultivation, production, possession and transportation of marijuana remains illegal under federal law.

(3) The state law related to recreational marijuana is not intended to, and does not, address the local impacts of marijuana cultivation, production and processing, making it appropriate for local regulation of such activity.

(4) Nothing in this Section is intended to promote or condone the production, distribution or possession of marijuana in violation of any applicable law.

(b) Purpose. The purpose of this Section is to protect the public health, safety and welfare of the residents of the Town by prescribing the manner in which recreational marijuana cultivation, production and processing may be conducted in the Town. Further, the purpose of this Section is to:

(1) Provide a means of cultivation, production and possession of marijuana to persons permitted to obtain, possess and use marijuana for recreational purposes.

(2) Protect public health and safety through reasonable limitations on the cultivation, production and possession of marijuana.

(3) Protect public safety and residential areas by limiting the number of marijuana plants that may be grown in specific zoned districts.

(c) Relationship to State Law. The provisions of this Section that are different from the applicable state law are consistent with the Town's responsibility to protect the public health, safety and welfare as authorized by applicable law. Where this Section conflicts with the state law, this Section shall apply.

(d) The following words, terms and phrases, when used in this Section, shall have the following meanings unless the context clearly indicates otherwise:

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 seeds 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.

Contiguous, in terms of determining the area devoted to the growing or processing of no more than six marijuana plants, means an uninterrupted expanse of space on the same floor or the level of the primary residence that can be measured by framing the area with four or more continuous and connected straight lines. The space within a single room which is defined by permanent perimeter walls is contiguous; the space within adjoining rooms divided by a permanent wall or permanent structure but accessible via a common doorway or connected by a common hallway is contiguous; however, nonadjacent spaces separated by two (2) or more permanent walls or separated by floors or levels of the building are not contiguous.

Lot means that real property around the primary residence and the buildings thereon that are commonly used for domestic and residential purposes.

Primary residence means the place that a person, by custom and practice, makes his or her principle domicile and address and to which the person intends to return, following any temporary absence, such as 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 and consumption of meals, regular mail delivery, vehicle and voter registration, or credit, water, and utility billing. A person shall have only one primary residence. A primary residence shall not include accessory buildings.

(e) General requirements.

(1) It shall be unlawful for any person to possess, grow, process or transport more than six marijuana plants.

(2) Any lawful possession, growing, processing or transporting of marijuana plants, with three or fewer being mature, flowering plants, shall occur within the primary residence of the person so possessing, growing, processing or transporting the marijuana plants.

(3) The lawful possession, growing, processing or transporting of marijuana plants shall fully comply with all applicable provisions of Article XVIII, Section 16 of the Colorado Constitution, this Section, and all applicable requirements of the Town of Frederick ordinances, resolutions, and regulations including, but not limited to, building and safety codes, and the Frederick Land Use Code, as may be amended.

(4) The lawful cultivation and processing of no more than six marijuana plants shall not occur within a garage, whether attached or detached, or other structure designed or intended for the keeping or storage of vehicles, equipment, or goods.

(5) The lawful cultivation and processing of marijuana plants shall not occur within any common area(s) of a multi-family or single family attached residential property.

(6) The lawful cultivation and processing of marijuana plants shall not occur in the yard, lot, or other area or structure located outside of the primary residence, including but not limited to outdoor gardens, ancillary or accessory buildings, greenhouses, sheds, or storage units.

(7) The lawful cultivation and processing of marijuana plants shall not involve the use of chemical(s) for the purpose of enhancing, concentrating or extracting tetrahydrocannabinol (THC) from marijuana plants.

(8) The area of a primary residence devoted to the lawful cultivation or processing of plants, including the keeping, storage and maintenance of all materials, supplies, tools, equipment and marijuana accessories associated with the possession, growing or processing of no more than six marijuana plants, shall not exceed the following:

- (a) Within a single family detached dwelling unit, a maximum contiguous one hundred fifty (150) square foot area; or
- (b) Within any residential structure other than a single family dwelling unit, a maximum contiguous one hundred (100) square foot area.

(9) It shall be unlawful for any person to use any compressed, flammable gasses as a solvent in the extraction of THC and other cannabinoids. Compressed, flammable gasses shall include, but is not limited to, butane, propane and hexane.

(f) Maximum Number of Plants:

(1) It shall be unlawful for any person to cultivate, possess, process or transport more than six (6) marijuana plants, of which no more than three (3) plants may be mature, flowering plants in any dwelling unit on property in the following zoned districts: Agricultural; Residential; Downtown A; Downtown B. Where more than one person resides in or has access to a single dwelling unit, such persons may cultivate, possess, process a maximum of six (6) marijuana plants, of which no more than three (3) may be mature.

(2) It shall be unlawful for any persons to cultivate, possess, process or transport more than six (6) marijuana plants, of which no more than three (3) plants may be mature, flowering plants, on any property in any other zoned district.

(g) Exterior impacts unlawful.

(a) It shall be unlawful for the cultivation, production, possession or processing of medical marijuana plants within a primary residence to be perceptible from the exterior of the primary residence by means including, but not limited to:

(1) Common visual observation, including any form of signage;

(2) Odors, smells, fragrances, or other olfactory stimulus generated by the cultivation, production, possession or processing of medical marijuana plants; or

(3) Light pollution, glare, or brightness of artificial illumination associated with the cultivation, production, possession, or processing of medical marijuana plants.

(h) Penalty, nuisance declared.

(1) It is unlawful for any person to violate any of the provisions of this Section. Any such violation is hereby designated a criminal violation, and any person found guilty (including a plea of guilt or *nolo contendere*) of violating any of the provisions of this Section shall, upon conviction, be punished pursuant to Sec. 1-72(b) of this Code.

(2) Each day that a violation of any of the provisions of this Section continues to exist shall be deemed a separate and distinct violation.

(3) The conduct of any activity in violation of this Section is hereby declared to be a public nuisance, which may be abated pursuant to the applicable provisions of this Code.

(4) In addition to other remedies available to the Town, the Town may commence an action to enjoin the alleged violation of any provision of this Section, or to authorize and compel the removal, termination or abatement of such violation.

(i) Search warrant authorized.

(1) The Town declares that a violation of this Section involves a serious threat to public safety or order within the meaning of Rule 241(a)(I) of the Colorado Municipal Court Rules of Procedure.

(2) If the owner or occupant of the premises denies officials of the Town, including any law enforcement officer, permission to enter and inspect the residential structure, or any accessory building, including but not limited to any shed or detached garage, authorized law enforcement personnel may request the Frederick Municipal Court to issue a search warrant for the inspection of the premises pursuant to the procedures and standards set forth in Rule 241(a)(I) of the Colorado Municipal Court Rules of Procedure.

(3) The Frederick Municipal Court may issue a search warrant authorizing officials of the Town, including but not limited to any law enforcement officer, to inspect a residential structure for the cultivation, production, possession or processing of recreational marijuana plants in accordance with Rule 241(a)(I) of the Colorado Municipal Court Rules of Procedure. Any search warrant issued pursuant to this Chapter shall fully comply with the applicable provisions of Rule 241(a)(I) of the Colorado Municipal Court Rules of Procedure.

(4) The Frederick Municipal Court may impose such conditions on a search warrant as may be necessary to protect the private property rights of the owner of the premises to be inspected or to otherwise ensure that the warrant complies with applicable law.

(5) It shall be unlawful and a violation of this Article for any owner or occupant to deny any official of the Town access to the property owner or occupied by such owner or occupant if the authorized person presents a warrant issued pursuant to this Article.

(j) Most stringent law applies.

Nothing in this Section is intended to supersede or modify applicable provisions of state law concerning the same subject. To the extent this Section is interpreted to authorize an action or activity otherwise prohibited by state law, such authorization shall mean such action or activity is not prohibited by local law. To the extent that a provision of state law is or becomes more stringent than a provision of this Section, the most stringent requirement or construction shall govern or apply.

Section 2. Chapter 6, "Businesses Licenses and Regulations," Article VI, "Marijuana; Personal Use," Sections 6-107(b), (c), (d), (e) (f), "Uses Prohibited," of the Municipal Code of the Town of Frederick are hereby repealed.

Section 3. Effective Date. This ordinance shall be published and become effective as provided by law.

Section 4. Severability. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the ordinance. The Town Board hereby declares that it would have passed the ordinance including each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases are declared 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.

25th INTRODUCED, READ, PASSED, ADOPTED AND ORDERED PUBLISHED THIS
day of August, 2014.

TOWN OF FREDERICK

By: 
Tony Carey, Mayor

ATTEST:

By: 
Megan Martinez, Town Clerk

