

ORDINANCE 2017 – 12

AN ORDINANCE REGULATING THE POSSESSION OF MARIJUANA IN THE TOWN OF PAONIA, COLORADO

RECITALS:

WHEREAS, the Town of Paonia, in the County of Delta and State of Colorado, is a statutory Town, duly organized and existing under the laws of the State of Colorado and the Town Charter (the “Town”); and

WHEREAS, on November 6, 2012, the voters of the State of Colorado approved Amendment 64 that added Section 16 of Article XVIII to the Colorado Constitution and created a limited exception from criminal liability under Colorado law for personal consumption of marijuana for adults 21 and over, as well as for the commercial cultivation, manufacture, and sale thereof; and

WHEREAS, the Colorado legislature has adopted legislation that enacted Article 43.4 to Title 12 of the Colorado Revised Statutes, known as the Colorado Retail Marijuana Code; and

WHEREAS, pursuant to Article XVIII, §16(5)(f) of the Colorado Constitution, the Town of Paonia may “prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance or through an initiated or referred measure”; and

WHEREAS, Article 43.4 of Title 12 of the Colorado Revised Statutes recognizes the right of local jurisdictions to prohibit the operation of marijuana establishments; and

WHEREAS, the Town of Paonia Board of Trustees, at a special election on November 4, 2014, referred to the registered electors of the Town “Ballot Question 2B” on the issue of whether Retail Marijuana Establishments would be permitted within the Town of Paonia pursuant to Ordinance 2014-06; and

WHEREAS, a majority of all votes cast at the special election were against the measure, and the Town Clerk certified such election results and informed the Colorado Department of Revenue, Marijuana Enforcement Division, that the registered electors of the Town of Paonia rejected a measure referred to them by the Town Board of Trustees that would have permitted the operation of retail marijuana establishments within the Town, and that, consistent with that decision, the Town of Paonia will not accept, act upon or approve applications to operate retail marijuana establishments within the Town; and

WHEREAS, the Town of Paonia Board of Trustees, pursuant to the special election results and the provisions of Article XVIII, Section 16, of the Colorado Constitution, found that, as an exercise of its local authority, such retail marijuana establishments shall not be located within the corporate limits of the Town; and

WHEREAS, pursuant to Article 3, §1-3-70 of the Paonia Municipal Code, the Town is authorized to adopt amendments to the Code by ordinance.

WHEREAS, via Ordinance No. 2017-04, the Town, through its Board of Trustees, amended the Paonia Municipal Code to prohibit the operation of retail marijuana establishments in the Town and provided criminal penalties for violation of such prohibitions; and

WHEREAS, despite the Town's prohibition against the operation and licensing of certain marijuana related businesses, with the passage of Amendment 64, certain provisions of the Town's Municipal Code shall be updated.

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

**ARTICLE I
PURPOSE**

1. To protect the public health, safety and welfare of the citizens and residents of the Town regarding the growing and possession of marijuana.

**ARTICLE II
AUTHORITY**

1. The authority to implement this Ordinance is contained in the following statutes, legislation, regulations and acts:
 - A. Article 15-103 of Title 31 of the Colorado Revised Statutes (CRS).
 - B. Article 15-401 of Title 31 of the Colorado Revised Statutes (CRS).
2. Any law enforcement official of the Town shall have the authority to enforce the provisions of this Ordinance.
3. Except as otherwise provided herein, the Town shall administer, implement and enforce the provisions of this Ordinance.

**ARTICLE III
APPLICABILITY**

1. This Ordinance shall apply throughout the jurisdiction of the Town.

**ARTICLE IV
DEFINITIONS**

1. For purposes of this Chapter, the following terms shall have the following meanings:

Enclosed shall have the definition as set forth under C.R.S. 18-18-102(14.5).

Locked Space shall have the definition as set forth under C.R.S. 18-18-102(16.5).

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 stocks or oil, or cake made from the seeds of the plant, sterilized seeds of the plant, which are 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 accessories means any equipment, products or materials of any kind that are used, intended to be used or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, analyzing, packaging, repackaging, storing, vaporizing or containing marijuana, or for ingesting, inhaling or otherwise introducing marijuana into the human body.

Marijuana club means an entity that allows members and their guests to consume marijuana or marijuana products on the premises in a commercially zoned area.

Marijuana cultivation facility means an entity licensed to cultivate, prepare and package marijuana, or to 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 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 by the State of Colorado 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.

Person means a natural person, partnership, association, company, corporation, limited liability company or organization, or a manager, agent, owner, director, servant, officer or employee thereof.

ARTICLE V
PROHIBITION ON GROWTH AND USE OF MARIJUANA AND THE POSSESSION OF MARIJUANA AND MARIJUANA PARAPHERNALIA

1. Notwithstanding any other provision of law, the following acts are not unlawful and shall not be an offense under the Town of Paonia Municipal Code:
 - A. For persons over 21 years of age, possessing, using, displaying, purchasing, or transporting marijuana accessories of one ounce or less of marijuana.
 - B. For persons over 21 years of age, possessing, growing, processing, or transporting no more than six marijuana plants, with three or fewer being mature, flowering plants, and possession of the marijuana produced by the plants on the premises where the plants were grown, provided that the growing takes place in an enclosed, locked space, is not conducted openly or publicly, and is not made available for sale.
 - C. For persons over 21 years of age, to transfer of one ounce or less of marijuana without remuneration to a person who is twenty-one years of age or older.
 - D. For persons over 21 years of age, to consume marijuana, provided that nothing in this section shall permit consumption that is conducted openly and publicly or in a manner that endangers others.
 - E. For persons over 21 years of age, to assist another person who is twenty-one years of age or older in any of the acts described in paragraphs (a) through (d) above.
2. It is unlawful for any person to operate, cause to be operated or permit to be operated a medical marijuana center, an optional premises cultivation operation or a medical marijuana-infused products manufacturing facility in the Town of Paonia.
3. It is unlawful for any person to operate a marijuana cultivation facility, marijuana product manufacturing facility, marijuana testing facility, retail marijuana store or marijuana club within the Town of Paonia.
4. It is unlawful to grow marijuana for medical use anywhere in the Town of Paonia other than in an enclosed, locked space. It is unlawful for three (3) or more persons to cultivate, possess, process or transport more than twelve (12) marijuana plants on any property within the Town of Paonia. Not more than twelve (12) marijuana plants may be grown, cultivated or processed on a property within the Town of Paonia. Persons lawfully cultivating marijuana in an enclosed and locked space pursuant to the authority granted herein, and in accordance with Section 16 of Article XVIII of the State Constitution must also comply

with the provisions of C.R.S. 18-18-406(c) protecting persons under twenty-one (21) years of age, which holds in part, if the cultivation area is located in a residence and:

5. It is unlawful to grow marijuana for personal use anywhere in the Town of Paonia other than in an enclosed, locked space. It is unlawful for three (3) or more persons to cultivate, possess, process or transport more than six (6) marijuana plants on any property within the Town of Paonia. Not more than six (6) marijuana plants may be grown, cultivated or processed on a property within the Town of Paonia. Persons lawfully cultivating marijuana in an enclosed and locked space pursuant to the authority granted herein, and in accordance with Section 16 of Article XVIII of the State Constitution must also comply with the provisions of C.R.S. 18-18-406(c) protecting persons under twenty-one (21) years of age, which holds in part, if the cultivation area is located in a residence and:
 - A. A person under twenty-one (21) years of age lives at the residence, the cultivation area itself must be enclosed and locked; and
 - B. If no person under twenty-one (21) years of age lives at the residence, the external locks of the residence constitutes an enclosed and locked space. If a person under twenty-one (21) years of age enters the residence, the person must ensure that access to the cultivation site is reasonably restricted for the duration of that person's presence in the residence.
6. It is unlawful to cultivate marijuana in any structure without complying with applicable building and fire codes, including plumbing and electrical, and all applicable zoning codes, including but not limited to lot coverage, setback and height requirements. Any accessory structure used for the growing of marijuana must be setback at least ten (10) feet from all lot lines. Any accessory structures and the fencing thereof must not prevent Town employees or electrical meter readers from accessing appropriate water and/or electrical meters for the purpose of reading such devices.
7. It is unlawful to use gas products (e.g.: CO2, butane) for indoor marijuana cultivation or processing.
8. It is unlawful to engage in any activity that adversely affects the health or safety of nearby residents by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration or other impacts or that may be hazardous due to the use or storage of materials, processes, products or wastes, or from other actions related to the cultivation of marijuana.

ARTICLE VI PENALTIES

1. A violation of any of the provisions of this Chapter shall be punishable as follows:
2. By a fine of Two Hundred Fifty Dollars (\$250.00) for a first offense and by a summons into court for each additional offense, where a fine not more than Nine Hundred Ninety-

Nine Dollars (\$999.00), or imprisonment in the County Jail for not more than one (1) year, or both such fine and imprisonment can be assessed;

3. Each and every day a violation of the provisions of this Chapter is committed, exists or continues shall be deemed a separate offense;
4. The Town is specifically authorized to seek an injunction, abatement, restitution or any other remedy necessary to prevent, enjoin, abate or remove the violation; and
5. Any remedies provided for herein shall be cumulative and not exclusive, and shall be in addition to any other remedies provided by law or in equity.

ARTICLE VII APPLICABILITY

1. This Ordinance shall apply to all property within the Town of Paonia or within any area hereinafter annexed to the Town. To the extent that the Town of Paonia is required to allow the cultivation of medical marijuana or marijuana for personal use under State law, the rules set forth herein shall apply. Nothing in this Ordinance shall be interpreted to permit marijuana dispensaries of any kind otherwise prohibited by this or any other ordinance. If the Colorado Medical Marijuana Code, Article XVIII, § 14 of the Colorado Constitution, Article XVIII or § 16 of the Colorado Constitution are declared unlawful and in violation of federal law, nothing in this Ordinance shall be deemed to permit the cultivation, possession or use of marijuana for medical or any other purpose. Nothing in this Ordinance shall be deemed to provide a defense to the prosecution of offenses under the Federal Controlled Substances Act occurring in the Town of Paonia.

ARTICLE VI CONFLICT AND SEVERABILITY

1. The provisions of this Ordinance are severable, and the invalidity of any section, phrase, clause or portion of this Ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of this Ordinance.

ARTICLE VII ENFORCEMENT

1. This Ordinance shall be enforced and administered by the Town pursuant to applicable provisions of the Town Code, including prosecution in Town Municipal Court.

ARTICLE VIII EFFECTIVE DATE

1. This Ordinance shall become effective January 1, 2018.

INTRODUCED, READ AND PASSED BY THE BOARD OF TRUSTEES OF THE TOWN OF PAONIA, COLORADO, ON THE 26th DAY OF SEPTEMBER, 2017.

TOWN OF Paonia

Attest:

J. CORINNE FERGUSON, Town Clerk

CHARLES STEWART, Mayor

HEARD AND FINALLY ADOPTED BY THE BOARD OF TRUSTEES OF THE TOWN OF PAONIA, COLORADO, THIS 10th DAY OF SEPTEMBER, 2017.

TOWN OF PAONIA

Attest:

J. CORINNE FERGUSON, Town Clerk

By: _____
CHARLES STEWART, Mayor