

ORDINANCE NO. 844

AN ORDINANCE AMENDING TITLE 5 OF THE FIRESTONE MUNICIPAL CODE TO PROHIBIT THE ESTABLISHMENT OR OPERATION OF MARIJUANA ESTABLISHMENTS AND BUSINESSES THAT INVITE OR PERMIT PRIVATE ASSEMBLY FOR THE PURPOSE OF THE USE OR CONSUMPTION OF MARIJUANA OR MARIJUANA PRODUCTS

WHEREAS, Article XVIII, Section 16 of the Colorado Constitution, referred to as Amendment 64 and which concerns the personal use and regulation of marijuana and allows the retail sale and cultivation of marijuana in the State of Colorado, was approved by Colorado voters in November 2012; and

WHEREAS, Article XVIII, § 16(5)(f) of the Colorado Constitution specifically authorizes municipalities to “prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance;” and

WHEREAS, C.R.S. § 12-43.4-101, et seq., referred to as the Colorado Retail Marijuana Code, set forth regulations concerning retail marijuana establishments; and

WHEREAS, C.R.S. § 12-43.4-104(3) authorizes municipalities to “prohibit the operation of retail marijuana establishments through the enactment of an ordinance”; and

WHEREAS, C.R.S. § 31-15-501 authorizes the Town to regulate and license businesses operating within the Town and to prohibit within the limits of the Town any offensive or unwholesome business or establishment; and

WHEREAS, Title 29, Article 20 of the Colorado Revised Statutes and C.R.S. § 31-23-301, et seq. authorize the Town to establish zoning districts and zone district regulations within the Town to, among other things, promote the general welfare of the inhabitants of the Town; and

WHEREAS, the Board previously adopted Ordinance 822 on April 24, 2013 which created a temporary moratorium on the operation or establishment of marijuana establishments and businesses within the Town; and

WHEREAS, the Board previously adopted Ordinance 850 on October 8, 2014 which extended the temporary moratorium on the operation or establishment of marijuana establishments and businesses within the Town and such Ordinance and moratorium is set to expire on December 31, 2016; and

WHEREAS, the Board of Trustees has carefully considered Amendment 64 and the Colorado Retail Marijuana Code, the community interest, and issues and potential secondary effects relating to the operation and establishment of marijuana establishments and businesses, and has determined, as an exercise of its local land use authority, its authority under Article XVIII, § 16(5)(f) of the Colorado Constitution, and its authority to regulate businesses, that a prohibition on

the operation or establishment of marijuana establishments and businesses that permit or invite private assembly for the purpose of the use or consumption of marijuana or marijuana products, is in the best interest of the public health, safety, and welfare; and

WHEREAS, the Board of Trustees recognizes the protections for personal use of marijuana afforded by Article XVIII, § 16(3) of the Colorado Constitution and affirms the ability of individuals to otherwise be afforded the protections of Article XVIII, § 16(3) of the Colorado Constitution.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO:

Section 1. Title 5 of the Firestone Municipal Code is hereby repealed and reenacted, with amendments, to read as follows:

Chapter 5.11
Retail Marijuana Establishments

Sections:

- 5.11.010 Intent, authority and applicability.**
- 5.11.020 Definitions.**
- 5.11.030 Retail marijuana establishments and clubs prohibited.**
- 5.11.040 Penalty for violation; injunctive relief.**
- 5.11.050 Personal use of marijuana.**

5.11.010. Intent, authority and applicability.

A. Intent. It is the intent of this Article to prohibit marijuana establishments in the Town, and in furtherance of its intent, the Board of Trustees makes the following findings:

1. Article XVIII, § 16(5)(f) of the Colorado Constitution authorizes municipalities “to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance.”
2. Based on careful consideration of Section 16 of Article XVIII of the Colorado Constitution, the community interest, and issues and the potential secondary effects relating to the cultivation and dispensing of marijuana and the retail sale, distribution, manufacturing, and testing of marijuana and marijuana products, such land uses have an adverse effect on the health, safety and welfare of the Town and its inhabitants.

- B. Authority. The Town's authority to adopt this Chapter is found in: Article XVIII, § 16(5)(f) of the Colorado Constitution; the Local Government Land Use Control Enabling Act, C.R.S. § 29-20-101, et seq.; C.R.S. § 31-23-101, et seq. (municipal zoning powers); C.R.S. § 31-15-103 and § 31-15-401 (municipal police powers); and C.R.S. § 31-15-501 (municipal authority to regulate businesses).
- C. Applicability. This Chapter shall apply to all property, businesses, business enterprises and entities located or operating within the Town, whether stationary, mobile, or virtual.

5.11.020 Definitions.

The following words, terms, and phrases, when used in this Chapter, shall have the meaning ascribed to them in this Section, except where the context clearly requires a different meaning:

- A. *Amendment 64* means that certain voter initiated amendment to the Colorado Constitution adopted November 6, 2012, which added Section 16 of Article XVIII to the Colorado Constitution.
- B. *Colorado Retail Marijuana Code* means Article 43.4 of Title 12 of the Colorado Revised Statutes, as amended.
- C. *Marijuana, marijuana establishment, marijuana products, marijuana product manufacturing facility, marijuana testing facility, retail marijuana cultivation facility, retail marijuana establishment and retail marijuana store* shall have the same meanings as set forth in the in Article XVIII, §16(2) of the Colorado Constitution and the Colorado Retail Marijuana Code, Title 12, Article 43.4, C.R.S., as the same may be amended from time to time.
- D. *Retail marijuana* means marijuana that is cultivated, manufactured, distributed, or sold by a licensed retail marijuana establishment authorized by Section 16 of Article XVIII to the Colorado Constitution.

5.11.030 Retail marijuana establishments and clubs prohibited.

- A. It is unlawful for any person to operate, cause to be operated, or permit to be operated in the Town a marijuana cultivation facility, marijuana product manufacturing facility, marijuana testing facility, or retail marijuana store.
- B. It is unlawful for any person to operate, cause to be operated, or permit to be operated in the Town any business that invites or permits private

assembly for the purpose of the use or consumption of marijuana or marijuana products.

5.11.040 Penalty for violation; injunctive relief.

- A. Any person who violates any provision of this Chapter shall be punished by a fine of not more than one thousand dollars or by imprisonment not to exceed one year, or by both such fine and imprisonment. Each act or omission in violation of one or more of the provisions of this Chapter shall be deemed a separate violation for each and every day that such act(s) or omission(s) occur.
- B. The operation of a retail marijuana establishment or business that invites or permits private assembly for the purpose of the use or consumption of marijuana or marijuana products in violation of the terms of this Chapter may be enjoined by the Town in an action brought in a court of competent jurisdiction.

5.11.050 Personal use of marijuana.

Nothing in this Chapter shall be construed to prohibit, regulate or otherwise impair the protections for the personal use of marijuana as provided in Article XVIII, § 16(3) of the Colorado Constitution.

Section 2. If any portion of this ordinance is held to be invalid for any reason, such decisions shall not affect the validity of the remaining portions of this ordinance. The Board of Trustees hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared invalid.

Section 3. The repeal or modification of any portion of the Municipal Code of the Town of Firestone by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 4. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

INTRODUCED, READ, ADOPTED, APPROVED, AND ORDERED PUBLISHED IN
FULL this 29th day of September, 2016.

TOWN OF FIRESTONE, COLORADO

Paul Soren
Paul Sorensen, Mayor

ATTEST:

[Signature]

Carissa Medina, Town Clerk

