

**TOWN OF FAIRPLAY, COLORADO**

**ORDINANCE NO. 8  
(SERIES 2021)**

**AN ORDINANCE OF THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO AMENDING CHAPTER 16 OF THE FAIRPLAY MUNICIPAL CODE, ADDING ARTICLE XXVIII, REGARDING THE PROHIBITION OF MEDICAL AND RECREATIONAL MARIJUANA**

**WHEREAS**, the Town Board of Trustees previously adopted Ordinance No. 3, Series of 2015, adopting the Town of Fairplay Unified Development Code which repealed and reenacted Chapter 16 of the Fairplay Municipal Code; and

**WHEREAS**, the Town Board of Trustees also previously adopted Ordinance No. 2, Series of 2013, finding that as a matter of the Town's local land use and zoning authority, and consistent with the authorization provided by Article XVIII of the Colorado Constitution and the Colorado Marijuana Code in the Colorado Revised Statutes, no suitable location exists within the corporate limits of the Town for the cultivation, manufacture and sale of marijuana by the operation of medical marijuana centers, optional premises cultivation operations, medical marijuana-infused products manufacturers' licenses, marijuana testing facilities, marijuana product manufacturing facilities or retail marijuana stores; and

**WHEREAS**, in adoption and codification of the Unified Development Code, the previously existing Article XXVI Medical and Recreational Marijuana was overwritten; and

**WHEREAS**, the Town's position on restriction of medical and retail marijuana within the Town of Fairplay municipal boundaries has not changed since the adoption of the original ordinance in 2013 finding no suitable location exists; and

**WHEREAS**, the Board finds it is desirable and appropriate, and in the best interests of the general health, safety and welfare of its citizens to amend Chapter 16 of the Code to re-insert Article XXVIII prohibiting medical and recreational marijuana within town limits.

**NOW, THEREFORE, THE BOARD OF TRUSTEES OF THE TOWN OF FAIRPLAY, COLORADO, ORDAINS:**

**SECTION 1.** Chapter 16 of the Fairplay Municipal Code is hereby amended by the addition of a new Article XXVIII entitled "Medical and Recreational Marijuana," to read as follows:

**ARTICLE XXVIII Medical and Recreational Marijuana**

**Sec. 16-28-10. Findings and intent.**

The Board of Trustees finds and determines as follows:

- (1) Article XVIII, Section 14 of the Colorado Constitution authorizes and limits the sale of medical marijuana for use in the treatment of debilitating medical conditions.
- (2) Article XVIII, Section 16 of the Colorado Constitution authorizes the use of marijuana as well as the sale of marijuana to any person over twenty-one (21) years of age for personal use.
- (3) Pursuant to federal law, marijuana remains designated as a Schedule 1 controlled substance, and, pursuant to 21 U.S.C. § 841, it is illegal to manufacture, distribute or dispense, possess with intent to manufacture, distribute or dispense, a controlled substance.
- (4) The Colorado Marijuana Code specifically authorizes that the governing body of a municipality may vote to prohibit the operation of marijuana centers, optional premises cultivation operations, and marijuana-infused products manufacturers' licenses.
- (5) Article XVIII, Section 16 of the Colorado Constitution specifically authorizes the Board of Trustees 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 or through an initiated or referred measure.
- (6) After careful consideration of Article XVIII, Sections 14 and 16 of the Colorado Constitution, and after evaluating, inter alia, the measures' conflict with federal law and the potential secondary impacts associated with the retail sale, distribution, cultivation and dispensing of medical and recreational marijuana through marijuana cultivation facilities, marijuana testing facilities, marijuana product manufacturing facilities, retail marijuana stores, medical marijuana centers, optional premises cultivation operations and medical marijuana-infused products manufacturers' licenses, the Town finds and determines that such land uses have an adverse effect on the health, safety and welfare of the Town and the inhabitants thereof.
- (7) As a matter of the Town's local land use and zoning authority, and consistent with the authorization provided by Article XVIII, Section of the Colorado Constitution and the Colorado Marijuana Code, Title 44, Article 10, C.R.S., no suitable location exists within the corporate limits of the Town for the cultivation, manufacture and sale of marijuana by the operation of marijuana centers, optional premises cultivation operations, marijuana-infused products manufacturers' licenses, marijuana testing facilities, marijuana product manufacturing facilities or retail marijuana stores.

**Sec. 16-28-20. Authority.**

The Board of Trustees hereby finds, determines and declares that it has the power and authority to adopt this Chapter pursuant to:

- (1) The Colorado Marijuana Code, Section 44-10-101, et seq., C.R.S.;
- (2) Article XVIII, Section 16 of the Colorado Constitution;
- (3) The Local Government Land Use Control Enabling Act, Section 26-20-101, et seq., C.R.S.;
- (4) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers);

- (5) Section 31-15-103, C.R.S. (concerning municipal police powers);
- (6) Section 31-15-401, C.R.S. (concerning municipal police powers); and
- (7) Section 31-15-501, C.R.S. (concerning municipal authority to regulate businesses.)

#### **Sec. 16-28-30. Definitions.**

For purposes of this Article, the following terms shall have the following meanings:

*Consumer* means a person twenty-one (21) years of age or older who purchases marijuana or marijuana products for personal use by persons twenty-one (21) years of age or older, but not for resale to others.

*Industrial hemp* means the plant of the genus *Cannabis* and any part of such plant, whether growing or not, with Delta-9 tetrahydrocannabinol concentration that does not exceed three-tenths percent (0.3%) on a dry weight basis.

*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, but excluding industrial hemp, 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.

*Medical marijuana* means marijuana that is grown and sold for a purpose authorized by Section 14 of Article XVIII of the Colorado Constitution.

*Medical marijuana center* means an entity authorized to be licensed to operate a business as described in the Colorado Marijuana Code that sells medical marijuana to registered patients or primary caregivers as defined in Section 14 of Article XVIII of the Colorado Constitution, but is not a primary caregiver, and which a municipality is authorized to prohibit as a matter of law.

*Medical marijuana-infused products manufacturer* means a person licensed pursuant to the Colorado Marijuana Code to operate a business known as a medical

marijuana-infused products manufacturing license, and which a municipality is authorized to prohibit as a matter of law.

*Optional premises cultivation operation* means a person licensed pursuant to the Colorado Marijuana Code to operate a business known as an optional premises grow facility in order to grow and cultivate marijuana for a purpose authorized by Section 14 of Article XVIII of the Colorado Constitution, and which a municipality is authorized to prohibit as a matter of law.

*Patient* has the same meaning as provided in Section 14(1)(c) of Article XVIII of the Colorado Constitution.

*Primary caregiver* has the same meaning as provided in Section 14(1)(f) of Article XVIII of the Colorado Constitution.

*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.

**Sec. 16-28-40. Prohibited activities.**

- (a) It is unlawful for any person to operate, cause to be operated or permit to be operated in the Town a marijuana center, optional premises cultivation operation or facility for which a marijuana-infused products manufacturers' license could otherwise be obtained, and all such uses are hereby prohibited at any location in the Town.
- (b) It is unlawful for any person to operate, cause to be operated or permit to be operated in the Town a marijuana establishment, and marijuana establishments are hereby prohibited at any location in the Town.

**Sec. 16-28-50. Patients and primary caregivers.**

Nothing in this Article shall be construed to prohibit, regulate or otherwise impair the use of medical marijuana by patients as defined by the Colorado Constitution, or the provision of medical marijuana by a primary caregiver to a patient in accordance with the Colorado Constitution and consistent with Section 25-1.5-106, C.R.S., and rules promulgated thereunder, as the same statute and rules may be amended from time to time.

**Sec. 16-28-60. Personal recreational use.**

Nothing in this Article shall be construed to prohibit, regulate or otherwise impair the personal recreational use of marijuana by persons twenty-one (21) years of age or older, and as defined by Section 16(3) of Article XVIII of the Colorado Constitution, provided that such personal use does not involve the sale of marijuana or operation of a marijuana establishment in the Town.

**Sec. 16-28-70. Penalty.**

Violations of this Article shall be punishable as set forth in Chapter 1, Article IV of this Code.

**SECTION 2.** The Table of Uses is also amended accordingly adding the corresponding Marijuana section as follows:

Table of uses									
P=Permitted Use, S=Special Use, ■=Prohibited Use									
Land Use	Residential		Mixed Use	Commercial			Light Indus.	Public	
	SF-Res	MF-Res	T	TC	CU	MU	LI	GC	POST
Marijuana - Cultivation, manufacture and sale, medical marijuana centers, optional premises cultivation operations, medical marijuana-infused products manufacturers' licenses, marijuana testing facilities, marijuana product manufacturing facilities or retail marijuana stores	■	■	■	■	■	■	■	■	■

**SECTION 3. Safety Clause.** The Town Board hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Fairplay, that it 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. The Town Board further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

**SECTION 4. Severability.** If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

**SECTION 5.** This Ordinance shall become effective thirty (30) days after final publication.

INTRODUCED, READ, ADOPTED, AND ORDERED PUBLISHED this 22<sup>ND</sup> day of November, 2021.



TOWN OF FAIRPLAY, COLORADO

Approved:

Frank Just, Mayor

Attest:

Janell Sciacca, Town Clerk