

**ORDINANCE 2012-02**

**AN ORDINANCE SUBMITTING AN ORDINANCE TO THE VOTERS FOR CONSIDERATION AT THE APRIL 3, 2012 REGULAR MUNICIPAL ELECTION TO PROHIBIT THE OPERATION OF MEDICAL MARIJUANA CENTERS, OPTIONAL PREMISES CULTIVATION OPERATIONS AND MEDICAL MARIJUANA-INFUSED PRODUCT MANUFACTURING WITHIN THE CITY LIMITS OF FRUITA**

**WHEREAS**, under Article 10, Section 12 of the Fruita City Charter, the Fruita City Council has the power to propose an ordinance for the vote of the people, and

**WHEREAS**, Section 12-43.3-106, C.R.S., provides that the registered electors of the City of Fruita may vote to prohibit the operation of Medical Marijuana Centers, Optional Premises Cultivation Operations, and Medical Marijuana-Infused Products Manufacturers Licenses, and

**WHEREAS**, the City Council has proposed an ordinance for consideration by the voters of the City of Fruita to prohibit the operation of medical marijuana centers, optional premises cultivation operation, and medical marijuana-infused product manufacturing within the City of Fruita.

**BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO:**

**Section 1:** Chapter 5.15 of the Fruita Municipal Code and Ordinance 2011-09 are hereby amended by repealing and reenacting the title of said Chapter to read as follows:

**Chapter 5.15**  
**MEDICAL MARIJUANA BUSINESSES PROHIBITED**

**Section 2:** Section 5.15.010, entitled Legislative Intent and Purposes, is hereby repealed and reenacted to read as follows:

**5.15.010 LEGISLATIVE INTENT AND PURPOSE.**

A. **Legislative Intent:** Pursuant to Article 43.3 of Title 12 of the Colorado Revised Statutes, the voters of the City of Fruita voted at the April 3, 2012 regular municipal election to approve a ban on the cultivation, manufacture and sale of medical marijuana, including the operations of medical marijuana centers, optional premises cultivation operations, and the manufacture of medical marijuana-infused products, unless such person does so as a patient or primary caregiver as authorized by Art. XVIII, Sec. 14 of the Colorado Constitution and pursuant to regulations enacted by the city; further authorizing the city to codify this ban in the municipal code.

B. **Purpose:** The purpose of this Chapter is to implement the voter approved ban on medical marijuana businesses and to provide for regulations in the event said ban is overturned in the future by voter approval, legislative act or applicable court rulings.

**Section 3:** Section 5.15.025 is hereby added to the Fruita Municipal Code to read as follows:

**5.15.025 CULTIVATION, MANUFACTURE AND SALE OF MEDICAL MARIJUANA PROHIBITED.** The cultivation, manufacture and sale of medical marijuana, including the operations of medical marijuana centers, optional premises cultivation operations, and the manufacture of medical marijuana-infused products is prohibited unless such person does so as a patient or primary caregiver as authorized by Art. XVIII, Sec. 14 of the Colorado Constitution and pursuant to regulations enacted by the city.

**Section 4:** Section 5.15.026 is hereby added to the Fruita Municipal Code to read as follows:

**5.15.026 LICENSING AND REGULATIONS OF MEDICAL MARIJUANA IN EVENT PROHIBITION/BAN IS OVERTURNED.** In the event that the voter approved ban on medical marijuana businesses as set forth in Section 5.15.025 of this Code is overturned or declared unconstitutional by legislative action, future voter approval or by applicable court rulings, the City desires to keep in place legislation regarding the regulation and licensing of said medical marijuana businesses. To that end, the following provisions are applicable in the event said ban is overturned.

**Section 5:** Sections 5.15.030 thru Section 5.15.210 of the Fruita Municipal Code and Ordinance 2011-09 are hereby renumbered as subsections of Section 5.15.026.

**Section 6.** That subsection (X) (3) of Section 17.07.070 of the City of Fruita Land Use Code, contained in Title 17 of the Fruita Municipal Code, concerning supplemental zoning regulations and standards, is hereby amended to read as follows with subsections a thru j of 17.07.070 X 3 to remain in effect without amendment:

3. Medical Marijuana Businesses. The cultivation, production or possession of marijuana plants by a medical marijuana center and a medical marijuana optional premises cultivation operation **IS PROHIBITED. IN THE EVENT THAT THE VOTER APPROVED BAN ON MEDICAL MARIJUANA BUSINESSES AS SET FORTH IN SECTION 5.15.025 OF THIS CODE IS OVERTURNED OR DECLARED UNCONSTITUTIONAL BY LEGISLATIVE ACTION, FUTURE VOTER APPROVAL OR BY APPLICABLE COURT RULINGS, THE CITY DESIRES TO KEEP IN PLACE LEGISLATION REGARDING THE REGULATION AND LICENSING OF SAID MEDICAL MARIJUANA BUSINESSES. TO THAT END, THE FOLLOWING PROVISIONS ARE APPLICABLE IN THE EVENT SAID BAN IS OVERTURNED.**

**THE CULTIVATION, PRODUCTION OR POSSESSION OF MARIJUANA PLANTS BY A MEDICAL MARIJUANA CENTER AND A MEDICAL MARIJUANA OPTIONAL PREMISES CULTIVATION OPERATION** may be allowed as a conditional use in non-residential buildings in the Tourist Commercial (TC), General Commercial (GC), and the Limited

Industrial Research and Development (LIRD) zones only subject to the requirements contained in Chapter 5.15 of the Fruita Municipal Code and the following provisions;

**Section 7.** That the Land Use/Zoning Table contained in subsection (F) of Section 17.07.060 of the Fruita Land Use Code, contained in Title 17 of the Fruita Municipal Code, shall be amended under the heading “Retail Sales and Service”; and under the categories “Medical Marijuana Centers” and “Medical Marijuana Optional Premises Cultivation Operations” from a “C” (conditional use) to a “\*” (not allowed use) in the Tourist Commercial (TC), General Commercial (GC), and the Limited Industrial Research & Development (LIRD) zones with a note added to the category description to read as follows: “See section 17.07.070 (X) (3)”.

**Section 8.** If any provision of this Ordinance is found to be unconstitutional, invalid or unlawful by a court of competent jurisdiction, such finding shall only invalidate that part or portion found to violate the law. All other provisions shall be deemed severable and shall continue in full force and effect.

**Section 9.** That the foregoing City Council referred ordinance is hereby submitted to the electors of the City at the April 3, 2012 regular municipal election in the following form:

Shall the city of Fruita, Colorado, ban the cultivation, manufacture and sale of medical marijuana, including the operations of medical marijuana centers, optional premises cultivation operations, and the manufacture of medical marijuana-infused products, unless such person does so as a patient or primary caregiver as authorized by Art. XVIII, Sec. 14 of the Colorado Constitution and pursuant to regulations enacted by the city; further authorizing the city to codify this ban in the municipal code?

Yes

No

**Section 10:** Upon approval of the above question by the majority of the registered electors voting thereon, this initiated ordinance proposed by the Fruita City Council shall take effect immediately upon certification by the City Clerk that a majority of registered electors voted in favor of this Ordinance at the April 3, 2012 election.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL  
THIS 3RD DAY OF JANUARY, 2012**

ATTEST:

City of Fruita

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City Clerk

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Mayor H. Kenneth Henry