

**ORDINANCE NO. 2
SERIES 2013**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUNNISON AMENDING CHAPTER 5.10 OF THE GUNNISON MUNICIPAL CODE RELATING TO GENERAL OFFENSES.

WHEREAS, the City of Gunnison, Colorado, (the “City”) is a home rule municipality and has broad Constitutional and statutory powers to regulate the conduct of persons within the City limits for the health, safety, and welfare of its Citizens; and

WHEREAS, pursuant to said authority and the provisions of Article I, Section 1.2, Article V, Section 5.9, and Article VI, Section 6.2, of the City of Gunnison Municipal Home Rule Charter, the City has adopted certain policies, plans, ordinances, and resolutions within the City limits and established penalties for violations of ordinances; and

WHEREAS, the voters of the State of Colorado on November 6, 2012 approved a ballot initiative known as “Amendment 64”, which amends the Colorado State Constitution by the addition to Article XVIII of Section 16 to make it lawful for persons twenty one (21) years of age or older “possessing, using, displaying, purchasing, or transporting marijuana accessories or one ounce or less of marijuana and cultivating up to six plants, three of which may be mature”; and

WHEREAS, the City currently has ordinances and regulations addressing the use, possession, cultivation or sale of marijuana that would not be defined as in Article XVIII, Section 14 and Section 16 of the Colorado Constitution; and

WHEREAS, Federal law defines marijuana as a controlled substance; and therefore regulating the cultivation, and personal consumption of this controlled substance provides a benefit to the health, safety and welfare of the City's residents, visitors and employees and, is in the City's best interest.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GUNNISON COLORADO, ORDAINS THAT:

Section 1. The Council of the City of Gunnison hereby makes the following findings of fact:

- (a) The use, possession, cultivation or sale of marijuana, by persons 21 years of age and older, is authorized and limited by Article XVIII, Section 16 of the Colorado Constitution, adopted by the voters of the State of Colorado on November 6, 2012 and ratified by the Governor on December 10, 2012.
- (b) The use, possession, cultivation or sale of marijuana, for medical purposes, is authorized and limited by Article XVIII, Section 14 of the Colorado Constitution, current Colorado State Statute and Gunnison Municipal Ordinance.
- (c) No businesses are currently operating within the City limits of Gunnison providing marijuana as defined in Article XVIII, Section 14 or Section 16 of the Colorado Constitution.
- (d) The City of Gunnison, at present, does not have any ordinances that allow for the cultivation, sale, use, or possession of marijuana, by persons 21 years of age and older, pursuant to Article XVIII, Section 16 of the Colorado Constitution.
- (e) The City of Gunnison, at present, does not have any ordinances that address cultivation, use, or possession by individuals of medical marijuana, pursuant to Article XVIII, Section 14 of the Colorado Constitution.
- (f) The State Legislature as of this time has not adopted Statutes regulating the cultivation, sale, possession and use of marijuana, by persons 21 years of age and older, pursuant to Article XVIII, Section 16 of the Colorado Constitution.
- (g) The City of Gunnison and its residents would be served by maintaining local jurisdiction over the cultivation, sale, possession and use of marijuana.

- (h) The unregulated cultivation, sale, possession and use of marijuana poses a risk to the citizens, visitors and employees of the City of Gunnison.

Section 2. Gunnison Municipal Code. Title 5 Chapter 10 Section 010, Definitions, B. Drug Paraphernalia is hereby repealed.

Section 3. Gunnison Municipal Code. Title 5 Chapter 10 Section 010, Definitions, F. Marijuana is amended to read as follows:

- F. "Marijuana" or "marihuana" means all parts 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" or "Marihuana" does not include industrial hemp, nor does it include fiber produced from the stalks, oil or cake made from the seeds of the plant, or 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.

Section 4. Gunnison Municipal Code. Title 5 Chapter 10 Section 010, Definitions, is amended by the addition of the following definitions:

"Marijuana accessories" means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

"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 establishments" means a marijuana cultivation facility, 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 center" and other medical marijuana related terms defined in Section 15.40.010, definitions, of the City of Gunnison Municipal Code.

"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.

Section 5. Gunnison Municipal Code. Title 5 Chapter 10 Section 160, Possession of drug paraphernalia, is amended to read as follows:

5.10.160 Marijuana Accessories.

- A. No person under 21 years of age, who does not hold a valid medical marijuana card in compliance with Colorado Revised Statute, shall possess marijuana accessories if he/she knows or reasonably should know that the marijuana accessory could be used under circumstances in violation of the law.

- B. It shall be a violation of this section for a person under the age of 21 to possess marijuana accessories, and such violation shall be a petty offense.

Section 6. Gunnison Municipal Code, Title 5 Chapter 10 Section 170, Drug paraphernalia, determination, considerations is hereby repealed.

Section 7. Gunnison Municipal Code, Title 5 Chapter 10 Section 180, Possession of marijuana, is amended to read as follows:

5.10.180 Possession of marijuana.

- A. No person, under the age of 21, who does not possess a medical marijuana card in compliance with Colorado Revised Statute, shall possess marijuana.
- B. No person 21 years of age or older, who does not possess a medical marijuana card in compliance with Colorado Revised Statute, shall possess more than one ounce of marijuana.
- C. Possession of not more than two ounces of marijuana, by a person under the age of 21 is a petty offense.
- D. Possession of more than one ounce but less than two ounces of marijuana by a person 21 years or older is a petty offense.

Section 8. Gunnison Municipal Code, Title 5 Chapter 10, General Offenses, is amended by the addition of 5.10.161, 5.10.181, 5.10.182, 5.10.183, 5.10.184 as follows:

5.10.161 Sale of marijuana accessories.

- A. No person shall offer for sale or sell marijuana accessories unless licensed by the City of Gunnison.
- B. Unlicensed sale of marijuana accessories is a petty offense.

5.10.181 Public use of marijuana.

- A. No person shall openly or publically consume or use marijuana.
- B. No person shall use marijuana in a way that endangers others.
- C. Public consumption or usage of marijuana is a petty offense.

5.10.182 Transfer, sale and purchase of marijuana.

- A. No person shall commercially cultivate marijuana, manufacture marijuana products, sell marijuana or accessories or operate a marijuana test facility until such time as the City of Gunnison adopts rules, regulations and standards addressing the commercial cultivation of marijuana, the manufacturing of marijuana products, the operation of marijuana test facilities, or the retail sales of marijuana and marijuana products and accessories, whether for recreational or medical purposes.
- B. No person shall transfer, sell, trade, exchange, or give, with or without remuneration, any amount of marijuana to a person under the age of 21.
- C. No person under the age of 21 may obtain marijuana by any means, with or without remuneration.
- D. No person shall transfer, sell, trade, or exchange, with remuneration, any amount of marijuana to a person 21 years of age and older without a license.
- E. No person shall give, without remuneration, more than one ounce of marijuana to a person 21 years of age and older.

- F. No person 21 years of age or older may obtain more than one ounce of marijuana, with or without remuneration.
- G. Restriction placed on transferring, exchanging or giving of marijuana does not apply to individuals who are in compliance with the Colorado Revised Statutes pertaining to Medical Marijuana.
- H. The transfer, sale, trade, or exchange of marijuana in violation of this section is a misdemeanor. Obtaining marijuana in violation of this section is a petty offense.

5.10.183 Personal cultivation of marijuana.

- A. No individual, 21 years of age or older, shall possess more than six marijuana plants, three of which are mature flowering plants. The marijuana produced by such cultivation, in excess of one ounce, shall be maintained on the premises where grown. Marijuana cultivated by an individual shall not be sold.
- B. Cultivation shall be conducted in an enclosed space which shall be locked. Cultivation shall be conducted in compliance with City building and life/safety codes as the same may be amended from time to time.
- C. No person shall openly or publically cultivate marijuana. Openly or publically cultivated means the plants, lights, sounds and odors associated with cultivation are clearly visible and identifiable from a public place or cause a public nuisance.
- D. Cultivation shall only occur on real property over which the plants' owner has control.
- E.. Violation of any part of this section is a misdemeanor.

5.10.184 Knowingly allowing underage persons to possess or consume marijuana on private property.

- A. No person who is in possession and control of private property shall knowingly allow any persons less than 21 years of age to possess or consume marijuana anywhere on private property in their possession and control.
- B. No person in possession and control of private property shall knowingly host, permit, or allow persons under 21 years of age to gather at said property, where marijuana is available, without making reasonable efforts to ensure that persons under 21 years of age do not consume marijuana.
 - 1. Reasonable efforts include, but are not limited to, limiting the amount of marijuana available, limiting the size of the gathering, restricting access to marijuana by persons under 21 years of age, and obtaining valid state identification documents confirming a person's age.
- C. The provisions of this Section shall not apply if the person in possession or using marijuana possesses a valid medical marijuana card and is in compliance with Colorado Revised Statutes.
- D. Knowingly allowing underage persons to possess or consume marijuana on private property is a misdemeanor.

Section 9. If any section of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or the constitutionality of the remaining portions of the ordinance. The City Council of the City of Gunnison hereby declares that it would have passed this ordinance, and each section thereof, irrespective of the fact that any one or more sections be declared unconstitutional.

INTRODUCED, READ, PASSED AND ORDERED PUBLISHED this 8th day of January, 2013, on first reading, and introduced, read, and adopted on second and final reading this 22nd day of January, 2013.

Ellen R. Harrison

Mayor

(SEAL)

ATTEST:

Gail A. Davidson

City Clerk

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