

ORDINANCE NO. 185.

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE TOWN OF FLAGLER, KIT CARSON COUNTY, COLORADO, TO ADD TITLE 8, CHAPTER 5A, PROHIBITING CERTAIN USES RELATING TO MEDICAL MARIJUANA INCLUDING THE COMMERCIAL RETAIL SALE, DISTRIBUTION, CULTIVATION, AND DISPENSING OF MEDICAL MARIJUANA AND MEDICAL MARIJUANA INFUSED PRODUCTS WITHIN THE TOWN BOUNDARIES.

Whereas, the Board of Trustees of the Town of Flagler, hereinafter referred to as the "Board" and the "Town", respectively, previously adopted an ordinance imposing a moratorium on the commercial uses of marijuana within the Town, including the processing and approval of all applications for permits and licenses by the Town relating to medical marijuana uses in order to allow the Town staff, working with the Town Attorney, to evaluate and prepare appropriate regulations concerning such uses within the Town; and

Whereas, during the pendency of the moratorium ordinances, the Colorado Legislature considered and adopted legislation which in part added Article 43.3-101, et. seq., to Title 12 of the Colorado Revised Statutes, known as the Colorado Medical Marijuana Code; and

Whereas, the Colorado Medical Marijuana Code clarifies Colorado law regarding the scope and extent of Amendment 20 to the Colorado Constitution (Article XVIII, Section 14), and at the same time authorizes a mechanism for the retail sale, distribution, cultivation, and dispensing of medical marijuana known as a "Medical Marijuana Center," and further authorizes licensing mechanisms known as an "Optional Premises Cultivation Operation" and a "Medical Marijuana-Infused Products Manufacturers' License"; and

Whereas, C.R.S. 12-43.3-310 of the Colorado Medical Marijuana Code further specifically authorizes a municipality in part to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses, based on local government zoning, health, safety, and public welfare laws for the distribution of medical marijuana that are more restrictive than the state law; and

Whereas, C.R.S. 12-43.3-308(1)(c) of the Colorado Medical Marijuana Code also provides that the state and local licensing authorities shall not receive or act upon a new application pursuant to the Colorado Medical Marijuana Code for a location in an area where the cultivation, manufacture, and sale of medical marijuana as contemplated is not permitted under the applicable zoning laws of the municipality, city and county, or county; and

Whereas, the Board has carefully considered the provisions of the Colorado Medical Marijuana Code, Article XVIII, Section 14 of the Colorado Constitution, and the impact of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses on the health, safety, and welfare of the Town and the town inhabitants, and has determined as an exercise of its local land use authority that such medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses should be prohibited and not be located within the corporate limits of the Town;

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

Section 1. The Zoning Ordinance for the Town of Flagler, Colorado, shall be amended to add Title 8, Chapter 5A, entitled "Medical Marijuana", as follows:

1. Findings under C.R.S. 12-43.3-101, et. seq.

a. The Colorado Medical Marijuana Code clarifies Colorado law regarding the scope and extent of Amendment 20 to the Colorado Constitution (Article XVIII, Section 14)

b. C.R.S. 12-43.3-310 of the Colorado Medical Marijuana Code specifically authorizes a municipality in part to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses, based on local government zoning, health, safety, and public welfare laws.

c. The Board of Trustees of the Town of Flagler has carefully considered the provisions of the Colorado Medical Marijuana Code, Article XVIII, Section 14 of the Colorado Constitution, and the impact of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses on the health, safety, and welfare of the Town and the town inhabitants, and has determined as an exercise of its local land use authority that such medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses should be prohibited and not be located within the corporate limits of the Town.

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

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

b. "Medical Marijuana Center" means a person authorized to be licensed to operate a business as described in the Colorado Medical 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.

c. "Medical Marijuana-infused products manufacturer" means a person licensed pursuant to the Colorado Medical 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.

d. "Optional premises cultivation operation" means a person licensed pursuant to the Colorado medical 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.

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

3. Medical Marijuana Centers, Optional Premises Cultivation Operations, and Medical Marijuana-Infused Products Manufacturers' Licenses Prohibited.

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

4. Penalties and Remedies for Violations. In addition to those remedies set forth in Town Code, or ordinances, 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 may seek a fine of Five Hundred Dollars (\$500.00) for each day that the subject property is in violation.

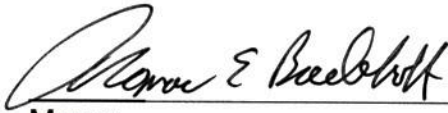
Section 2. Statutory Authority. The Board hereby finds, determines and declares that it has the power and authority to adopt this Ordinance pursuant to the Colorado Medical Marijuana Code; the Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.; Section 31-15-103, C.R.S.; Section 31-15-401, C.R.S.; and Section 31-15-501, C.R.S.

Section 3. Severability. If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

Section 4. Repealer. All acts, orders, resolutions, ordinances, or parts thereof, of the Town that are inconsistent or in conflict with this Ordinance are hereby repealed to the extent only of such inconsistency or conflict.

Section 5. Recording and Authentication. Immediately upon its passage, this Ordinance shall be recorded in the Town of Flagler Book of Ordinances kept for that purpose, authenticated by the signatures of the Mayor and Clerk, shall be published as required by law, and shall be incorporated into the Zoning Ordinance of the Town of Flagler.

Adopted and Approved this 08 day of November, 2010.



Mayor



Town Clerk