

ORDINANCE NO. 496

AN ORDINANCE OF THE TOWN OF HOLLY, COLORADO, PROHIBITING THE OPERATION OF MARIJUANA CULTIVATING FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, RETAIL MARIJUANA STORES, AND/OR MARIJUANA ESTABLISHMENTS, PURSUANT TO ARTICLE XVIII, SECTION 16 OF THE COLORADO STATE CONSTITUTION

WHEREAS, on November 6, 2012 the voting electors of the State of Colorado approved by majority vote Amendment 64, amending the Constitution of the State of Colorado by adding to Article XVIII, Section 16, Personal Use and Regulation of Marijuana, and;

WHEREAS, said Amendment 64 also provides in part, Paragraph (5) (f), that a locality may, by ordinance, prohibit the operation of marijuana establishments, marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and wholesale or retail marijuana stores, and;

WHEREAS, the Town of Holly, Prowers County, State of Colorado, a Locality under said Constitutional Amendment, is a Statutory Town, duly organized and existing under the Constitution and Laws of the State of Colorado, and;

WHEREAS, pursuant to the exercise of said Town of Holly police powers, the Town may *inter alia* act to preclude the operation of marijuana establishments, marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and wholesale or retail marijuana stores in a Locality, and;

WHEREAS, the Board of Trustees of said Town of Holly deems it in the best interests and necessary for the protection of the public safety and welfare of the residents of the Town of Holly, to enact an Ordinance to prohibit the operation of marijuana establishments, marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and wholesale or retail marijuana stores enumerated herein and in said Article XVIII, Section 16, Paragraph (5) (f), of the State of Colorado's Constitution:

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF HOLLY, COLORADO AS FOLLOWS:

Part 1. Personal Use and Regulation of Marijuana, Definitions.

The words and phrases herein shall have the following meanings pertaining to this Article XIII.

(a) "Colorado Medical Marijuana Code" means Article 43.3 of Title 12, Colorado Revised Statutes.

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

(c) "Department" means the Colorado Department of Revenue or its successor agency.

(d) "Industrial Hemp" means the plant of the Genus Cannabis and any part of such plant, whether growing or not, with a Delta 9 Tetrahydrocannabinol concentration that does not exceed three-tenths per cent on a dry weight basis.

(e) "Locality" means a County, Municipality, or City and County.

(f) "Marijuana or Marihuana" means all parts of the plant of the Genus Cannabis whether growing or not, the seeds thereof, the resin, including Marihuana 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, 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. It shall also include any artificially concocted substance containing Delta 9 Tetrahydrocannabinol.

(g) "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.

(h) "Marijuana Cultivation Facility" means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retain marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

(i) "Marijuana Establishment" means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a wholesale or retail marijuana store.

(j) "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.

(k) "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.

(l) "Marijuana Testing Facility" means an entity licensed to analyze and certify the safety and potency of marijuana.

(m) "Medical Marijuana Center" means an entity licensed by a state agency to sell marijuana and marijuana products pursuant to Section 14 of this Article and the Colorado Medical Marijuana Code.

(n) "Retail Marijuana Store and Wholesale Marijuana Store" means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers or other marijuana stores.

(o) "Unreasonable Impracticable" means that the measures necessary to comply with the regulations require such a high investment of risk, money, time, or any other resource or asset that the operation of a marijuana establishment is not worthy of being carried out in practice by a reasonably prudent businessperson.

(p) "To Publicly Use, Consume, Ingest, Display, Possess, Transfer, Distribute or Sell Marijuana" means doing any of those acts in a public place without a license to allow the same. A public place is any place on or in any street, alley, road, parking lot, sidewalk, park, stadium, ball park, gymnasium, business establishment, school facility or building, licensed liquor or alcoholic beverage store, licensed 3.2% alcohol beer store or 3.2% alcohol bar, licensed alcoholic beverage bar or specially licensed liquor and alcohol event, dormitory, arena, fairgrounds, public swimming pool, playground, cemetery, parking, any building, jail or detention facility, hospital or nursing home or part thereof open to the public for business, or governmental purposes. None of the prohibited acts may be done in a motor vehicle, motor home, camper or trailer or any other vehicles parked in or on the above public places.

Part 2. Prohibited Acts.

(a) It shall be unlawful for any person, persons, corporation, partnership, limited liability company, company, association of persons, for profit or not for profit, to operate any marijuana establishment, marijuana cultivation facility, marijuana product manufacturing facility, marijuana testing facility, or wholesale or retail marijuana store within said Town of Holly.

(b) No business license shall be issued by the Town of Holly for the operation of any marijuana establishment, marijuana cultivation facility, marijuana product manufacturing facility, marijuana testing facility or retail or wholesale marijuana store within said Town of Holly, and it shall be a violation of this ordinance to operate such business in the Town of Holly.

(c) It shall be unlawful for any person, persons, corporation, partnership, limited liability company, company, association of persons, for profit or not for profit, knowingly, to possess, use, display, purchase, transport, transfer, store, warehouse, cultivate, sell or distribute to another or to a consumer or any other person or entity, more than one ounce of marijuana for personal use.

(d) It shall be unlawful for any person or persons under the age of twenty-one years knowingly, to possess, use, display, purchase, transport, transfer, store, warehouse, cultivate, sell or distribute to another or to a consumer, or to any other person or entity, any amount of marijuana or any marijuana accessories.

(e) It shall be unlawful for any person or persons, corporation, partnership, limited liability company, company, association of persons, for profit or not for profit, knowingly, and openly, in a public place, to publicly use for any purpose, consume, ingest, display, possess, transfer, distribute or sell marijuana to a consumer or to any other person or entity.

Part 3. Penalties.

(a) The following penalties shall be enforced against any person or other entity, set forth herein, upon a conviction, a plea of guilty or nolo contendere pursuant to Part 2, Paragraphs (1), (2), (3), (4) and (5) of this Ordinance No. 496, a fine not to exceed three hundred dollars, (\$300), and/or a term of imprisonment not to exceed ninety, (90), days. The conduct of any acts violating Part 2, Paragraphs (1), (2), (3), (4) and (5) of this Ordinance No. 496 shall constitute a separate violation for each separate transaction and/or for each day the acts are carried on.

(b) Any person over the age of ten (10) years and under the age of eighteen (18) years, upon conviction, a plea of guilty or nolo contendere pursuant to Part 2, Paragraphs (1), (2), (3), (4) and (5) of this Ordinance No. 496, shall be fined not more than three hundred dollars, (\$300), and/or any other sentence imposed by the Town of Holly Municipal Court.

Part 4. Severability.

(a) The provisions of this Ordinance No. 496 are declared to be severable and if any section, provision or part hereof be held unconstitutional or invalid, the remainder of the ordinance shall remain in full force and effect.

This Ordinance, has been passed, adopted and placed in effect before October 1, 2013 the date upon which the Colorado Department of Revenue will begin accepting and processing applications for licenses for all marijuana facilities. Therefore, no marijuana facility of any type may lawfully be operated before said date in the State of Colorado. No marijuana facility may therefore claim that it was lawfully in operation in the Town of Holly before the effective date of this Ordinance No. 496.

This Ordinance is necessary to protect the public health, safety and welfare of the residents of said Town of Holly and to carry out the intent of Article XVIII, Section 16 of the State of Colorado Constitution.

INTRODUCED, approved, and ordered published this 4th day of September, 2013.

/s/ Bradley J. Simon, Mayor

ATTEST:

/s/ Mary Rushton, Clerk/Treasurer