

ORDINANCE

AN EMERGENCY ORDINANCE IMPOSING A TEMPORARY MORATORIUM PROHIBITING THE CULTIVATION OF MARIJUANA ON NON-RESIDENTIAL PROPERTY IN THE CITY FOR A PERIOD OF SIX (6) MONTHS

WHEREAS, the City's authority to adopt this Ordinance is found in: Article XVIII, Section 16 of the Colorado Constitution; the Colorado Retail Marijuana Code, C.R.S. § 12-43.4-104(3); the Local Government Land Use Control Enabling Act, C.R.S. 29-20-101, *et seq.*; C.R.S. § 31-23-101, *et seq.* (municipal zoning powers); C.R.S. §§ 31-15-103, 31-15-401. (municipal police powers); and C.R.S. § 31-15-501 (municipal authority to regulate businesses);

WHEREAS, under Article XVIII, Section 16 of the Colorado Constitution, cultivation of both medical and recreational marijuana is generally limited to six (6) plants, with three (3) or fewer being mature for patients or by recreational users;

WHEREAS, House Bill 17-1220 imposes limits on the growing of plants in residential properties, including a maximum of 12 plants in a residence unless certain requirements are met, which would then allow up to a maximum of 24 plants in a residence;

WHEREAS, House Bill 17-1220 provides that if more plants are to be grown than the residential limitations, they must be grown in non-residential property in compliance with all local regulations and rules;

WHEREAS, the City prohibits medical marijuana optional premises cultivation operations and retail marijuana cultivation facilities throughout the City;

WHEREAS, the City Council desires to review and consider limitations, if any, on the growing of marijuana on non-residential property throughout the City;

WHEREAS, the City Council finds and determines that the absence of Manitou Springs Zoning Code provisions regarding marijuana cultivation unrelated to licensed retail or medical operations is no longer adequate to provide for planned and orderly use of land within the City; and

WHEREAS, the City Council desires to impose a moratorium prohibiting the cultivation of marijuana on non-residential properties in the City to give City Staff and City Council sufficient time to gather information and study the impacts of marijuana cultivation on non-residential property and to determine regulatory options and potential regulations for such activity.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANITOU SPRINGS, COLORADO, THAT:

Section 1: The cultivation of marijuana on non-residential property for a period of six (6) months from the effective date of this Ordinance is hereby prohibited. The term “non-residential property” shall mean all real property, buildings, structures, or

units not lawfully used for human habitation or dwelling. Any portion of a mixed used building lawfully used as a dwelling unit for human habitation shall be excluded from the definition of non-residential property.

Section 2: The moratorium imposed by the Ordinance shall commence as of the date of the adoption of this Ordinance and shall expire six (6) months thereafter, unless repealed prior to that date or extended, if necessary, as determined by City ordinance.

Section 3: During the term of this moratorium, City Staff shall investigate, evaluate and propose updates to the City's Zoning Code and Zoning Map as necessary to regulate marijuana cultivation in certain zone districts within the City.

Section 4: If any article, section, paragraph, sentence, clause or phrase of the ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portion of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 5: The repeal or modification of any provision of Manitou Springs Municipal Code by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 6: This Ordinance is necessary for the immediate preservation of the public health and safety, because the current lack of regulations addressing the cultivation of marijuana in non-residential property throughout City creates a substantial risk that such activity could occur in locations detrimental to the City's youth, businesses, and visitors and harmful to the orderly planning of the City. The six (6) month moratorium imposed by this Ordinance will provide the City Council with a reasonable opportunity to consider new legislation that will help reduce the potential detrimental impacts of such activity in the City.

Section 7: This ordinance shall take effect immediately upon approval.

Passed on first reading, adopted, and ordered published this 6th day of February, 2018.

/s/ Ken Jaray
Mayor, Ken Jaray

Attest: /s/ Donna Kast
City Clerk, Donna Kast

Ordinance Published: February 8, 2018 (in full)
City's Official Website and City Hall