

Trustee Bill No.   5    
Series of 2010  
Town of Foxfield

Introduced by  
Mayor Doug Headley

**A BILL FOR AN ORDINANCE TO PROHIBITING THE RETAIL SALE, DISTRIBUTION, CULTIVATION AND DISPENSING OF MEDICAL MARIJUANA**

WHEREAS, the Board of Trustees of the Town of Foxfield previously adopted an ordinance imposing a moratorium on the processing and approval of all applications for permits and licenses by the Town related to what were referred to as "Medical Marijuana Dispensaries" in order to allow the Town staff, working with the Town Attorney, to evaluate and prepare appropriate regulations concerning such dispensaries within the Town (the "Moratorium Ordinance");

WHEREAS, during the pendency of the Moratorium Ordinance, the Colorado Legislature during the 2010 legislative session considered and adopted legislation which in pertinent part added a new Article 43.3 to Title 12 of the Colorado Revised Statutes, to be known as the Colorado Medical Marijuana Code;

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";

WHEREAS, C.R.S. § 12-43.3-106 of the Colorado Medical Marijuana Code specifically authorizes in part that the governing body of a municipality may "vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses";

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 this Ordinance";

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";

WHEREAS, the Board of Trustees 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 inhabitants thereof, 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 shall not be located within the corporate limits of the Town; and

WHEREAS, the Board of Trustees further recognizes the protections afforded by Article XVIII, Section 14 of the Colorado Constitution and desires to affirm the ability of patients and primary caregivers to otherwise be afforded the protections of Article XVIII, Section 14 of the Colorado Constitution and C.R.S. § 25-1.5-106, as the same may be amended from time to time.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF FOXFIELD, COLORADO:

Section 1. The Town of Foxfield Medical Marijuana Ordinance is hereby adopted as follows:

### **Medical Marijuana**

#### **A. Findings and Legislative Intent.**

The Board of Trustees makes the following legislative findings:

(1) The Board of Trustees finds and determines that the Colorado Medical Marijuana Code, C.R.S. § 12-43.3-101, *et seq.*, clarifies Colorado law regarding the scope and extent of Amendment 20 to the Colorado Constitution.

(2) The Board of Trustees finds and determines that the Colorado Medical Marijuana Code specifically authorizes in part that the governing body of a municipality may "vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses."

(3) The Board of Trustees finds and determines that 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."

(4) The Board of Trustees finds and determines after careful consideration of the provisions of the Colorado Medical Marijuana Code, Article XVIII, Section 14 of the Colorado Constitution, and after evaluating, *inter alia*, the potential secondary impacts associated with the retail sale, distribution, cultivation and dispensing of medical marijuana through medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses, that such land uses have an adverse effect on the health, safety and welfare of the Town and the inhabitants thereof.

(5) The Board of Trustees therefore finds and determines that as a matter of the Town's local land use and zoning authority, and consistent with the authorization provided by the Colorado Medical Marijuana Code, that no suitable location exists within the corporate limits of the Town of Foxfield for the cultivation, manufacture, and sale of medical marijuana by the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses.

(6) The Board of Trustees recognizes and affirms the protections afforded by Article XVIII, Section 14 of the Colorado Constitution, and desires to affirm the ability of patients and primary caregivers to otherwise be afforded the protections of Article XVIII, Section 14 of the Colorado Constitution and C.R.S. § 25-1.5-106, as the same may be amended from time to time.

**B. Authority.**

The Board of Trustees hereby finds, determines and declares that it has the power and authority to adopt this Ordinance pursuant to:

- (1) The Colorado Medical Marijuana Code, C.R.S. § 12-43.3-101, *et seq.*,
- (2) The Local Government Land Use Control Enabling Act, Ordinance 20 of title 29, C.R.S.;
- (3) Part 3 of Ordinance 23 of Title 31, C.R.S. (concerning municipal zoning powers);
- (4) Section 31-15-103, C.R.S. (concerning municipal police powers);
- (5) Section 31-15-401, C.R.S. (concerning municipal police powers);
- (6) Section 31-15-501, C.R.S. (concerning municipal authority to regulate businesses).

**C. Definitions.**

For purposes of this Ordinance, the following terms shall have the following meanings:

(1) *Medical marijuana* means marijuana that is grown and sold for a purpose authorized by Section 14 of Article XVIII of the Colorado Constitution.

(2) *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.

(3) *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.

(4) *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.

(5) *Person* means a natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof.

(6) *Patient* has the meaning provided in Section 14(1)(c) of Article XVIII of the Colorado Constitution.

(7) *Primary caregiver* has the meaning provided in Section 14(1)(f) of Article XVIII of the Colorado Constitution.

**D. 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.

**E. Patients and Primary Caregivers.**

Nothing in this Ordinance shall be construed to prohibit, regulate or otherwise impair the use of medical marijuana by patients as defined by the Colorado Constitution, or the provision of medical marijuana by a primary caregiver to a patient in accordance with the Colorado Constitution, and consistent with C.R.S. § 25-1.5-106, and rules promulgated thereunder, as the same statute and rules may be amended from time to time.

**F. Penalty.**

A violation of the provisions of this Ordinance shall be punishable as follows:

(1) By a fine of not more than three hundred dollars (\$300.00), or imprisonment in the county jail for not more than ninety (90) days, or by both such fine and imprisonment;

(2) Each and every day a violation of the provisions of this Ordinance is committed, exists or continues shall be deemed a separate offense;

(3) 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

(4) Any remedies provided for herein shall be cumulative and not exclusive, and shall be in addition to any other remedies provided by law or in equity.

Section 2. Safety Clause. The Town Board of Trustees hereby finds, determines, and declares that this ordinance is promulgated under the general police power of the Town of Foxfield, that it is promulgated for the health, safety, and welfare of the public, and that this ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Trustees further determines that the ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 3. Severability. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. Effective Date. This ordinance shall become effective thirty (30) days after final publication.

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Douglass W. Headley, Mayor

ATTEST:

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Becky Catterall, Town Clerk

Town Seal

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Corey Y. Hoffmann, Town Attorney  
(Approved as to Form)