

**TOWN OF NEW CASTLE, COLORADO
ORDINANCE 2011-1**

**AN ORDINANCE OF THE NEW CASTLE TOWN COUNCIL
PROHIBITING THE OPERATION OF MEDICAL MARIJUANA
BUSINESSES WITHIN TOWN LIMITS.**

WHEREAS, in November 2000 Colorado voters approved Amendment 20 which adopted Article XVIII, Section 14 of the Colorado Constitution concerning the possession and use of certain quantities of marijuana for the treatment of certain debilitating medical conditions; and

WHEREAS, in 2010 the Colorado Legislature enacted H.B. 1284 (codified at §§ 12-43.3-101 to -1001, C.R.S.) which established the Colorado Medical Marijuana Code; and

WHEREAS, subsection (2)(a) of § 12-43.3-103, C.R.S. provides that prior to July 1, 2011 a municipality may adopt and enforce an ordinance prohibiting the cultivation or sale of medical marijuana, and in any municipality that has adopted such an ordinance a person who is not registered as a patient or primary caregiver pursuant to § 25-1.5-106, C.R.S., and who is cultivating or selling medical marijuana shall not be entitled to an affirmative defense to a criminal prosecution as provided for in Section 14 of Article XVIII of the Colorado Constitution unless the person is in compliance with applicable municipal law; and

WHEREAS, § 12-43.3-310, C.R.S. specifically authorizes a municipality “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 Article;” and

WHEREAS, marijuana remains an illegal drug under federal law and Colorado state law, and the Town code prohibits the possession, use, display, consumption, or distribution of marijuana under Chapter 9.60; and

WHEREAS, the New Castle Town Council finds, determines and concludes that it has a legitimate public purpose in exercising its rights under the Colorado Medical Marijuana Code and under the rights granted by the Town’s Home Rule powers to prohibit medical marijuana businesses within the Town limits in order to protect the health, safety, welfare and quality of life for the citizens of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF NEW CASTLE, COLORADO:

Section 1. Recitals. The foregoing recitals are incorporated herein as findings and determinations of the New Castle Town Council.

Section 2. Intent, Authority and Applicability.

A. Intent. It is the intent of this Ordinance to prohibit certain land uses related to medical marijuana businesses in the Town, and in furtherance of this intent, the Town Council makes the following findings:

1. The Colorado Medical Marijuana Code, §§ 12-43.3-101 to -1001, C.R.S. clarifies Colorado law regarding the scope and extent of Article XVIII, Section 14 of the Colorado Constitution.

2. The Colorado Medical Marijuana Code specifically authorizes the governing body of a municipality to vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses.

3. The Colorado Medical Marijuana Code also specifically authorizes a municipality to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and the manufacturing of medical marijuana-infused products based on local government zoning, health, safety and public welfare laws concerning the distribution of medical marijuana.

4. Based on careful consideration of the Colorado Medical Marijuana Code, Article XVIII, Section 14 of the Colorado Constitution, the potential secondary effects of the cultivation and dispensing of medical marijuana, and the retail sale, distribution, and manufacturing of medical marijuana-infused products, such land uses have an adverse effect on the health, safety and welfare of the Town and its inhabitants.

B. Authority. The Town's authority to adopt this Ordinance is found in: the Colorado Medical Marijuana Code, §§ 12-43.3-101 to -1001, C.R.S.; the Local Government Land Use Control Enabling Act, §§ 29-20-101 to -108, C.R.S.; §§ 31-23-101 to -314 C.R.S. C.R.S. (municipal zoning powers); §§ 31-15-101, 31-15-401, C.R.S. (municipal police powers); § 31-15-501, C.R.S. (municipal authority to regulate businesses), and the Town's Home Rule Charter and home rule powers.

C. Applicability. This Ordinance shall apply to all property within the Town of New Castle, Colorado.

Section 3. Medical Marijuana Businesses Prohibited.

The Town Council hereby amends the following sections of the Town of New Castle Municipal Code:

9.60.020 Penalties.

A. Any person who possesses not more than one ounce of marijuana and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars (\$100.00).

- B. Any person who openly and publicly displays, consumes or uses not more than one ounce of marijuana and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars (\$100.00) or jail sentence of not more than fifteen (15) days or both.
- C. Transferring or dispensing not more than one ounce of marijuana from one person to another for no consideration shall be deemed possession and not dispensing or sale of marijuana.
- D. Anyone found to be operating a medical marijuana business in violation of section 9.60.030 shall, upon conviction thereof, be punished by a fine of not more than one thousand dollars (\$1,000) or a jail sentence of not more than one (1) year, or both. A person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of section 9.60.030 is committed, continued, or permitted by any such person, and such person shall be punishable accordingly

9.60.030 Prohibition on medical marijuana businesses.

A. For purposes of this section, the following terms shall have the following meaning:

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

2. *Medical Marijuana Business* means the use of a property or portion thereof for the production, cultivation, manufacture, storage, distribution, acquisition or sale of marijuana, including the use of the property for Medical Marijuana Centers, Medical Marijuana-Infused Products Manufacturers and Optional Premises Cultivation Operations, whether any such use is for profit or not for profit.

3. *Medical Marijuana Center* means a person licensed to operate a business as described in the Colorado Medical Marijuana Code that sells medical marijuana and medical marijuana-infused products to registered patients or primary caregivers as defined in Article XVIII, Section 14 of the Colorado Constitution, but is not a primary caregiver, and which a municipality is authorized to prohibit as a matter of law.

4. *Medical Marijuana-Infused Products Manufacturer* means a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business manufacturing medical marijuana-infused products, and which a municipality is authorized to prohibit as a matter of law.

5. *Optional Premises Cultivation Operation* means a person licensed pursuant to the Colorado Medical Marijuana Code to grow and cultivate marijuana for a purpose authorized by Article XVIII, Section 14 of the Colorado Constitution, and which a municipality is authorized to prohibit as a matter of law.

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

7. Primary Caregiver has the meaning set forth in Article XVIII, Section 14(1)(f) of the Colorado Constitution.

8. Production means all phases of growth of marijuana from seed to harvest, the combining of marijuana with any other substance for distribution, including storage and packaging for resale, or preparing, compounding, processing, and encapsulating, packing or repackaging, labeling or relabeling of marijuana or its derivatives whether alone or mixed with any amount of any other substance.

B. Uses Prohibited. It shall be unlawful for any person to operate, cause to be operated or permit to be operated a Medical Marijuana Business, Medical Marijuana Center, an Optional Premises Cultivation Operation, or a Medical Marijuana-Infused Products Manufacturer facility within the Town of New Castle. It shall further be unlawful for any person to produce medical marijuana within the town; provided, however, nothing in this Section shall prohibit, regulate, or otherwise impair or be construed to prohibit, regulate or impair the cultivation, use or possession of medical marijuana by a Patient and/or by a Primary Caregiver for his or her Patients provided that such Patient or Primary Caregiver is acting in accordance with all applicable provisions of Article XVIII, Section 14(1)(c) of the Colorado Constitution, §§ 12-43.3-101 to -1001, C.R.S., § 25-1.5-106, C.R.S., the regulations promulgated by the Colorado Department of Public Health and Environment, the Colorado Department of Revenue or any other agency with regulatory authority.

Section 4. Savings Clause. This Ordinance is necessary to protect the public health, safety and welfare of the residents of the Town and covers matters of local concern or matters of mixed State and local concern as provided by § 12-43.3-101, C.R.S.

Section 5. Severability. If any provision of this Ordinance is found to be unconstitutional or unlawful, such finding shall only invalidate that part of portion found to violate the law. All other provisions shall be deemed severable and shall continue in full force and effect.

Section 6. Effective Date. This Ordinance shall be effective fourteen days after final publication pursuant to section 4.3 of the Town Charter.

INTRODUCED on March 15, 2011, at which time copies were available to the Council and to those persons in attendance at the meeting, read by title, passed on first reading, and ordered published in full and posted in at least two public places within the Town as required by the Charter.

INTRODUCED a second time at a regular meeting of the Council of the Town of New Castle, Colorado on April 5th, 2011, read by title and number, passed without amendment, approved, and ordered published as required by the Charter.

TOWN OF NEW CASTLE, COLORADO

By: Frank Breslin
Frank Breslin, Mayor

ATTEST:

Melody Harrison
Melody Harrison, Town Clerk



