

ORDINANCE NUMBER 1 - 2010

AN ORDINANCE PROHIBITING THE CULTIVATION AND SALE OF MEDICAL MARIJUANA IN THE TOWN OF ECKLEY

WHEREAS, at the general election held in November, 2000, the voters of the State of Colorado (the "State") adopted Article XVIII, § 14 to the Colorado Constitution, which provides patients who have received a medical marijuana registry card the ability to engage in the lawful use of marijuana to address medical issues and an affirmative defense to a state law charge regarding use and possession of marijuana; and

WHEREAS, on December 1, 2009, the Town Board of Trustees ("Town Board") adopted Ordinance No. 3 - 2009, imposed an eight month moratorium on the submission, acceptance, consideration, and approval of all applications for Town licenses, permits and other approvals related to the operation of "medical marijuana dispensaries," as that term is defined in Section 2 of Ordinance No. 3 - 2009, to provide time for the Town to investigate its ability to regulate such businesses and develop and implement appropriate regulations, if necessary (the "Moratorium"); and

WHEREAS, during the Moratorium, the Colorado General Assembly passed House Bill 10-1284, which was signed into law by Governor Ritter and added new Article 43.3 to Title 12 of the Colorado Revised Statutes ("C.R.S."), known as the Colorado Medical Marijuana Code; and

WHEREAS, the Colorado Medical Marijuana Code clarifies Colorado law regarding the scope and extent of Article XVIII, § 14 to the Colorado Constitution and establishes a regulatory scheme for the retail sale, distribution, cultivation and dispensing of medical marijuana and related products; and

WHEREAS, Section 12-43-106, C.R.S. authorizes the members of the governing board for a municipality to vote "to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses," as all such terms are defined in the Colorado Medical Marijuana Code and in Section 2 of this Ordinance; and

WHEREAS, Section 12-43.3-310(1), 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; and

WHEREAS, the Town Board has carefully considered Article XVIII, § 14 to the Colorado Constitution, the Colorado Medical Marijuana Code, and the secondary effects of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturing on the health, safety, and welfare of the Town and its inhabitants, and has determined that such medical marijuana centers, optional premises

cultivation operations, and medical marijuana-infused products manufacturing should be prohibited in the Town; and

WHEREAS, the Town Board recognizes the protections afforded by Article XVIII, § 14 of the Colorado Constitution, and affirms the ability of patients and primary caregivers to otherwise be afforded the protections of Article XVIII, § 14 of the Colorado Constitution.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF ECKLEY:

Section 1: Recitals. The recitals contained in this Ordinance are hereby adopted and incorporated as findings of fact by the Town Board.

Section 2: Definitions. The following terms, as used in this Ordinance, shall have the same meaning provided in the Colorado Medical Marijuana Code and Article XVIII, § 14 of the Colorado Constitution, as either may be amended from time to time, and are defined as follows:

Medical marijuana means marijuana that is grown and sold pursuant to the provisions of the Colorado Medical Marijuana Code and for a purpose authorized by Article XVIII, § 14 of the Colorado Constitution.

Medical marijuana center means a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business as described in Section 12-43.3-402, C.R.S. that sells medical marijuana to registered patients or primary caregivers as defined in Article XVIII, § 14 of the Colorado Constitution, but is not a primary caregiver.

Medical marijuana-infused product means a product infused with medical marijuana that is intended for use of consumption other than by smoking, including but not limited to edible products, ointments, and tinctures.

Medical marijuana-infused product manufacturer means a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business as described in Section 12-43.3-404 that manufactures medical marijuana-infused products.

Optional premises cultivation operation means a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business as described in Section 12-43.3-403, C.R.S. in which the person grows and cultivates medical marijuana at an additional Colorado licensed premises contiguous or not contiguous with the licensed premises of the person's medical marijuana center license or the person's medical marijuana-infused products manufacturing license.

Patient means a person who has a debilitating medical condition.

Primary care-giver means a person, other than the patient and the patient's physician, who is eighteen years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition.

Section 3: Uses Prohibited. It shall be unlawful for any person to operate, cause to be operated, or permit to be operated a medical marijuana center, an optional premises cultivation operation, or a medical marijuana-infused products manufacturing facility in the Town.

Section 4: Patients and Primary Caregivers. Nothing in this Ordinance shall be construed to prohibit, regulate or otherwise impair the protections of the use of medical marijuana by patients as provided in Article XVIII, § 14 of the Colorado Constitution, the Colorado Medical Marijuana Code and the rules promulgated thereunder.

Section 5: Severability. If any section, paragraph, sentence, clause or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of, and shall be severable from, the remaining portions of this Ordinance. The Town Board hereby declares that it would have adopted this Ordinance and each part or parts hereof irrespective of the fact that any one part or parts may be declared unconstitutional or invalid.

Section 6: Health, Safety, and Welfare. This Ordinance is deemed necessary and proper for the preservation of the health, safety, and welfare of the Town of Eckley and its inhabitants.

Section 7: Effective Date. Pursuant to Section 31-16-105, C.R.S., this Ordinance shall become effective immediately upon its adoption by the Town Board. All other ordinances or portions thereof, inconsistent or conflicting with this Ordinance or any portion hereof, including Ordinance No. 3 - 2009, are hereby superseded by this Ordinance and their legal effect held in abeyance but only to the extent of such inconsistency or conflict.

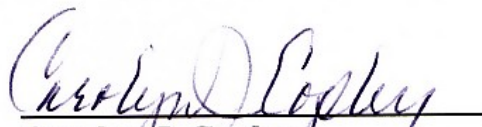
INTRODUCED, READ, PASSED AND ORDERED PUBLISHED this 17 day of September, 2010.

TOWN OF ECKLEY



Michael Leerar, Mayor

ATTEST:



Carolyn J. Copley
Town Clerk-Treasurer