

TOWN OF PONCHA SPRINGS

ORDINANCE #2013-1

TITLE: AN ORDINANCE ESTABLISHING THE PROHIBITION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES AND RETAIL MARIJUANA STORES IN THE TOWN OF PONCHA SPRINGS, COLORADO.

WHEREAS, Colorado voters approved an amendment to the State Constitution, Article XVIII, Section 16, which allows in part for the retail sale and cultivation of marijuana in the State of Colorado;

WHEREAS, Article XVIII, Section 16, of the Colorado Constitution authorizes local governments, such as the Town of Poncha Springs, to “prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities or retain marijuana stores through the enactment of an ordinance;” and

WHEREAS, the Town Board of Trustees has carefully considered the provisions of Article XVIII, Section 16 of the Colorado Constitution, and the impact of operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores’ 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 marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores shall not be located within the corporate limits of the Town.

NOW, THEREFORE, Be it ordained by the Board of Trustees of the Town of Poncha Springs:

1. Authority.

- a. Article XVIII, Section 16, of the Colorado Constitution;
- b. The Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.;
- c. Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers);
- d. Section 31-15-103, C.R.S. (concerning municipal police powers);
- e. Section 31-15-401, C.R.S. (concerning municipal police powers);
- f. Section 31-15-501, C.R.S. (concerning municipal authority to regulate businesses).

2. Definitions

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

Marijuana means all parts of the plant of the genus *cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. “*Marijuana*” 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.

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.

Marijuana cultivation facility means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

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.

Marijuana testing facility means an entity licensed to analyze and certify the safety and potency of marijuana.

Retail marijuana store means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

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.

3. Marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores' licenses prohibited.

It is unlawful for any person to operate, cause to be operated, or permit to be operated, any marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores 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.

4. Penalty.

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

- (1) By a fine of not more than one thousand dollars (\$1000.00), or imprisonment in the county jail for not more than one (1) year, 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.

5. Safety Clause.

The Town Board hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Poncha Springs, 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 Town Board further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

6. 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.

7. This Ordinance shall become effective thirty (30) days after publication.

PASSED AND APPROVED THIS 28th DAY OF JANUARY 2013, BY THE BOARD OF TRUSTEES OF THE TOWN OF PONCHA SPRINGS, COLORADO.

Richard Furton, Mayor

ATTEST:

Diana K. Heeney, Clerk/Treasurer

APPROVED AS TO FORM:

Brad D. Redmiles, Town Attorney