

ORDINANCE 0911, SERIES 2013

AN ORDINANCE AMENDING TITLE 2 AND TITLE 5 OF THE NORWOOD TOWN CODE TO PROHIBIT THE OPERATION OF MARIJUANA ESTABLISHMENTS INCLUDING RETAIL MARIJUANA STORES, MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, AND THE OPERATION OF MARIJUANA CLUBS AND ANY OTHER MARIJUANA FACILITIES PURSUANT TO LAW INCLUDING ARTICLE XVIII, SECTION 16 OF THE COLORADO CONSTITUTION.

WHEREAS, on November 6, 2012 the voters of the State of Colorado approved a ballot initiative known as Amendment 64, which adds a new Section 16 to Article XVIII of the Colorado Constitution; and

WHEREAS, Article XVIII, § 16, Paragraph 5(f) of the Colorado Constitution provides that a "Locality" may prohibit the operation of "Marijuana Establishments" through the enactment of an ordinance; and

WHEREAS, Article XVIII, § 16 defines "Locality" as a county, municipality, or city and county; and

WHEREAS, Article XVIII, § 16 defines "Marijuana Establishments" as Marijuana Cultivation Facilities, Marijuana Product Manufacturing Facilities, Marijuana Testing Facilities, or Retail Marijuana Stores, and further defines such terms; and

WHEREAS, the Town of Norwood Board of Trustees has carefully considered Article XVIII, § 16 of the Colorado Constitution, the secondary effects of Marijuana Establishments and Marijuana Clubs on the health, safety and welfare of the Town, its inhabitants, and its business, and has carefully considered public comments regarding the same during a public comment period held June 12, 2013, a work session held on July 10, 2013, and a regular meeting of the Board of Trustees held on and August 14, 2013; and

WHEREAS, the Board of Trustees finds that the regulation of land use is a matter of local concern, that the cultivation, manufacture, testing and sale of Marijuana is not permitted under the Town of Norwood zoning laws, and that the health, safety and welfare of the Town of Norwood and its inhabitants would be enhanced and promoted by the adoption of this ordinance; and

WHEREAS, the majority of the members of the Board of Trustees have voted to approved this ordinance;

NOW, THEREFORE, BE IT HEREBY ORDAINED by the Town of Norwood Board of Trustees, as follows:

Section 1: Recitals Incorporated. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Board of Trustees of the Town of Norwood.

Section 2: Prohibition of Marijuana Establishments. Title 2 of the Town Code of Norwood, Colorado Dated 1983, as amended in 1998 ("Norwood Town Code") is hereby amended and supplemented with the addition thereto of a new Chapter 5, as follows:

TITLE 2

CHAPTER 5

MARIJUANA ESTABLISHMENTS AND MARIJUANA CLUBS PROHIBITED

SECTION:

- 2-5-1: Findings and Purpose
- 2-5-2: Definitions
- 2-5-3: Marijuana Establishments and Marijuana Clubs Prohibited
- 2-5-4: Violations and Enforcement Remedies

2-5-1: **FINDINGS AND PURPOSE:**

(a) Article XVIII, § 16 of the Colorado Constitution specifically authorizes the Town to "prohibit the operation of Marijuana Cultivation Facilities, Marijuana Product Manufacturing Facilities, Marijuana Testing Facilities, or Retail Marijuana Stores through the enactment of an ordinance";

(b) Based on consideration of Article XVIII, § 16 of the Colorado Constitution, and the potential secondary effects of the cultivation and dispensing of Marijuana for personal use, and the retail sale, distribution, testing and manufacturing of Marijuana for personal use, the Town Board of Trustees finds that such land uses have an adverse effect on the health, safety and welfare of the Town of Norwood and its inhabitants;

(c) The Town Board of Trustees further finds that no suitable location exists within the Town for the operation of Marijuana Establishments and Marijuana Clubs; and

(d) The purpose of this Chapter is to prohibit within the Town of Norwood all Marijuana Establishments as provided for by Article XVII, § 16 of the Colorado Constitution, as well as to prohibit Marijuana Clubs, in the interest of public health, safety and general welfare.

2-5-2 DEFINITIONS:

Unless otherwise specified herein, modified below, or the context otherwise requires, for purposes of this Chapter any terms used herein shall have the same meanings as provided in Article XVIII, § 16 of the Colorado Constitution or C.R.S. § 12-43.3-104. These definitions include, but are not limited to the following:

(a) "Business" means all kinds of trades, vocations, occupations, professions, enterprises, establishments and all other kinds of activities and matters which are conducted within the Town of Norwood for private profit or benefit, either directly or indirectly, on any Premises or Location in the Town of Norwood.

(b) "Industrial Hemp" means the plant of the genus cannabis and any part of such plant, whether growing or not, with a Delta-9 tetrahydrocannabinol concentration that does not exceed three-tenths percent on a dry weight basis.

(c) "Itinerant Business" is any retail or wholesale business conducted in a building, tent, from a truck, van or trailer, on a parking lot or vacant parcel of land, with property owner permission, for a temporary period of time. The type of merchandise being offered for sale will have no bearing on the designation of a business as an itinerant business.

(d) "Location" means a particular parcel of land that may be identified by an address or other descriptive means.

(e) "Marijuana" or "marihuana" 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" or "marihuana" 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.

(f) "Marijuana Club" means any private club or organization that allows members and guests to consume Marijuana or Marijuana Products on the premises of any commercially-zoned parcel within the Town limits as such limits may be modified by

annexation, whether inside an enclosed or open-air facility visible or not visible to the general public, that is operated at or in the Premises or Location of any Business or Itinerant Business that is required to have a business license pursuant to that certain Town of Norwood, Colorado Ordinance 0609 Series 2010.

(g) "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. A Marijuana Cultivation Facility includes without limitation Marijuana warehouses where Marijuana may be cultivated or stored.

(h) "Marijuana Establishment" means a Marijuana Cultivation Facility, a Marijuana Testing Facility, a Marijuana Product Manufacturing Facility, or a Retail Marijuana Store.

(i) "Marijuana Product Manufacturing Facility" means an entity licensed to purchase Marijuana; manufacture, prepare, and package Marijuana Products; and sell Marijuana and Marijuana Products to other Marijuana Product Manufacturing Facilities and to Retail Marijuana Stores, but not to consumers.

(j) "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.

(k) "Marijuana Testing Facility" means an entity licensed to analyze and certify the safety and potency of Marijuana.

(l) "Person" means a natural person, partnership, association, company, corporation, limited liability company, organization, or any other group acting as a unit, or a manager, agent, owner, director, servant officer or employee thereof.

(m) "Premises" means a distinct and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

(n) "Retail Marijuana Store" means an entity licensed to purchase Marijuana from Marijuana Cultivation Facilities and Marijuana and Marijuana Products from Marijuana Products Manufacturing Facilities and to sell Marijuana and Marijuana Products to consumers.

2-5-3: PROHIBITION OF MARIJUANA ESTABLISHMENTS AND MARIJUANA CLUBS:

(a) No Town of Norwood personnel shall accept or process an application for a sales tax license, land use approval, building permit, or any other license or permit in relation to the operation of a Marijuana Establishment or Marijuana Club;

(b) No license to establish, operate, continue to operate or permit to operate any Marijuana Establishment or Marijuana Club shall be valid or lawful within the Town of Norwood, and it shall be unlawful for a Person to establish, operate, cause or permit to be operated, or continue to operate in any Location, Premises, or other real property within the Town of Norwood and within any area annexed to the Town of Norwood after the effective date of this ordinance, a Marijuana Club or Marijuana Establishment, including but not limited to Marijuana Cultivation Facilities, Marijuana Product Manufacturing Facilities, Marijuana Testing Facilities, Retail Marijuana Stores, or to otherwise engage in any transaction involving Marijuana in contravention of this Chapter or Title 5, Chapter 8 of the Norwood Town Code. The overall intent of this section is to fully exercise the Town of Norwood's local option to prohibit Marijuana Establishments as provided by law including without limitation Article XVII, § 16 of the Colorado Constitution and section 5(f) thereof;

(c) Nothing in this Chapter 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/her Patients provided that such patient and/or Primary Caregiver is acting in accordance with all applicable provisions of Article XVIII, § 14(1)(C) of the Colorado Constitution, the applicable provisions of the Medical Marijuana Code C.R.S. § 12-43.3-101 *et seq.* as amended, C.R.S. § 25-1.5-106 as amended, the regulations promulgated by the State Department of Public Health and Environment, the Department of Revenue or any other agency with regulatory authority, and the laws of the Town of Norwood.

(d) Nothing in this Chapter is intended to prohibit personal use of Marijuana that is otherwise consistent with Article XVIII, § 16, paragraphs 3 and 6 of the Colorado Constitution and Title 5, Chapter 8 of the Norwood Town Code.

2-4-4: VIOLATIONS AND ENFORCEMENT REMEDIES:

Any violation of this Chapter by any Person may be prosecuted or referred for prosecution by the Town of Norwood for appropriate criminal prosecution. In addition, any violation of this Chapter shall be, at a minimum, deemed unlawful and of a continuing nature subject to the general penalty provisions of Title 1, Chapter 4 of the Norwood Town Code, and may be deemed subject to the Offenses Code at Title 5 of the Norwood Town Code including without limitation the general penalty provisions at Title

5, Chapter 1, or other punishments, penalties, fines and/or punitive measures as the Board of Trustees may establish by future resolution or ordinance.

Section 3: Personal Use and Possession of Marijuana. Title 5 of the Norwood Town Code is hereby amended and supplemented with the addition thereto of a new Chapter 8, as follows:

TITLE 5

CHAPTER 8

PERSONAL USE AND POSSESSION OF MARIJUANA

SECTION:

5-8-1: Unlawful if Contravention to Article XVIII, § 16 of the Colorado Constitution

5-8-2: Restrictions

5-8-3: Violations and Enforcement Remedies

5-8-1: UNLAWFUL IF IN CONTRAVENTION TO ARTICLE XVIII, § 16 OF THE COLORADO CONSTITUTION

It is unlawful for any person to possess, use, display, purchase, grow, process, transport, transfer, consume or assist another person in such acts in any amount or manner inconsistent with state law including Article XVIII, § 16 of the Colorado Constitution.

5-8-2: RESTRICTIONS

(a) It is unlawful to grow Marijuana for personal use anywhere in the Town other than in an enclosed, locked space which is not open or public. "Enclosed" shall mean having a roof and all sides closed to the weather with walls, windows or doors.

(b) No person other than the person growing for his or her personal use shall have access to the locked space where the Marijuana is grown.

(c) Any person growing Marijuana for personal use shall comply with all land use regulations of the Town, and any building codes enforced by the Town, San Miguel

County, Colorado, or the State of Colorado as well as all applicable provisions of the Norwood Town Code.

(d) It is unlawful for any person who grows Marijuana for his or her own personal use, to make such Marijuana available for sale in any manner.

(e) It is unlawful for any person who lawfully grows Marijuana for his or her own consumption to provide any such Marijuana to any person under the age of 21 years.

(f) Nothing in this Chapter shall permit the consumption of Marijuana that is conducted openly and publicly or in a manner that endangers others, including without limitation the consumption of Marijuana in public parks, buildings or other public areas within the Town of Norwood.

5-8-3: VIOLATIONS AND ENFORCEMENT REMEDIES:

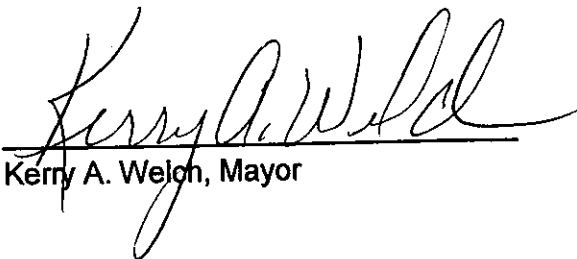
Any violation of this Chapter by any Person may be prosecuted or referred for prosecution by the Town of Norwood for appropriate criminal prosecution. In addition, any violation of this Chapter shall be, at a minimum, deemed unlawful and of a continuing nature subject to the general penalty provisions of Title 1, Chapter 4 of the Norwood Town Code, and may be deemed subject to the Offenses Code at Title 5 of the Norwood Town Code including without limitation the general penalty provisions at Title 5, Chapter 1, or other punishments, penalties, fines and/or punitive measures as the Board of Trustees may establish by future resolution or ordinance.

Section 4: Authority. The Board of Trustees hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to: (i) Article XVIII, § 16 of the Colorado Constitution; (ii) the Local Government Land Use Control Enabling Act, C.R.S. § 29-20-101, *et seq.*; (iii) C.R.S. § 31-23-101, *et seq.* (concerning municipal zoning powers); (iv) C.R.S. § 31-15-103 and § 31-15-401 (concerning municipal police powers); (v) C.R.S. § 31-15-501 (concerning municipal power to regulate businesses); (vi) the authority granted to statutory municipalities by C.R.S. § 31-4-101 *et seq.* and; (vii) the powers contained by the Town of Norwood, and that this ordinance is promulgated and adopted for the public health, safety and welfare, and bears a rational relation to the proper legislative object sought to be obtained.


Section 5: Severability. If any part or parts of this ordinance are for any reason held to be invalid, such invalidity shall not affect the validity of the remaining portions of this ordinance. The Board of Trustees hereby declares that it would have passed this ordinance and each part or parts thereof, irrespective of the fact that any one part or parts de declared invalid.

Section 6: Applicability and Effective Date. This ordinance shall apply to all Persons, Locations, Premises, and real property within the Town of Norwood and within any area annexed to the Town of Norwood after the effective date of this ordinance. The effective date and time of this ordinance and the new Title 2, Chapter 5, and Title 5, Chapter 8 of the Norwood Town Code as set forth herein shall be September 30, 2013 at 11:59 p.m. It is expressly provided that the Town of Norwood's moratorium created by Ordinance No. 1212 Series 2012 shall remain effective until the time this ordinance and said Title 2, Chapter 5 and Title 5, Chapter 8 become effective, at which time said moratorium shall be deemed to simultaneously expire.

INTRODUCED, PASSED AND ADOPTED at a regular meeting of the TOWN OF NORWOOD BOARD OF TRUSTEES held this 11th day of September, 2013:

By: 
Kerry A. Welch, Mayor

ATTEST:

By: 
Gretchen R. Wells, Town Clerk