

**ORDINANCE NO. 1 SERIES OF 2016**

**AN ORDINANCE REGULATING THE CULTIVATION OF MARIJUANA ON RESIDENTIAL PROPERTIES, IN RESIDENTIAL STRUCTURES, ON UNOCCUPIED PROPERTY AND IN STRUCTURES ON UNOCCUPIED PROPERTY AND REQUIRING REGISTRATION OF PRIMARY CAREGIVERS**

**IN THE UNINCORPORATED AREA OF FREMONT COUNTY, COLORADO**

WHEREAS, Fremont County, Colorado possesses the authority pursuant to C.R.S. §30-11-101(2) to adopt and enforce ordinances and resolutions regarding health, safety and welfare issues; and

WHEREAS, the Colorado Constitution Article XVIII, Section 14 and the Colorado Medical Marijuana Code, C.R.S. §§12-43.3-101, *et seq.*, recognize that local governments such as Fremont County retain authority to regulate the cultivation of medical marijuana; and

WHEREAS, the Colorado Constitution, Article XVIII, Section 16 and the Colorado Retail Marijuana Code, C.R.S. §§12-43.4-101, *et seq.*, recognize that local governments such as Fremont County may regulate the personal use of marijuana to serve the purpose and intent of the constitutional and statutory provisions regarding such use; and

WHEREAS, no person is allowed to possess, cultivate, grow, use or distribute marijuana in any manner or for any purpose other than that allowed by the Colorado Constitution and Colorado State Statutes; and

WHEREAS, the Board of County Commissioners for the County of Fremont has determined that the adoption of regulations governing the cultivation of medical and personal-use marijuana is necessary and desirable for the health, safety and welfare of the citizens of Fremont County.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREMONT COUNTY, COLORADO:**

**Section 1. Purpose.** This Ordinance is intended to apply to the growing of medical and personal-use marijuana on residential properties, in residential structures, on unoccupied property and in structures located on unoccupied property.

**Section 2. No Non-conforming Use Status.** No person, business, activity or use that cultivated or involved the cultivation of marijuana in the unincorporated areas of County prior to the enactment of this Ordinance shall be deemed to have been legally established under this Ordinance, and no such person, business, activity or use shall be entitled to claim legal nonconforming status under any provision of this Ordinance or applicable law.

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Katie E. Barr, Clerk and Recorder, Fremont County, CO



**Section 3. Definitions.**

- A. "Cultivation" means the planting, growing and/or harvesting of marijuana, including but not limited to hydroponic cultivation and cloning.
- B. "Enclosed Space" means a permanent or semi-permanent area, surrounded on all sides, including the roof. The temporary opening of windows or doors does not convert the area into an unenclosed space.
- C. "Immature Plant" means a nonflowering marijuana plant that is no taller than eight inches and no wider than eight inches produced from a cutting, clipping, or seedling and that is in a growing container that is no larger than two inches wide and two inches tall that is enclosed on the sides and bottom.
- D. "Marijuana Home Cultivation" or "Home Cultivation" means the use of a residential property, on which a person resides in their primary residence, for the cultivation and growing of medical and/or personal use marijuana. The use of Marijuana Home Cultivation shall require compliance with all provisions of this Ordinance.
- E. "Marijuana Plant" means all parts of the plant of the genus cannabis, 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 includes both Medical Marijuana and Personal Use Marijuana. Marijuana does not include "immature plant" as defined herein; industrial hemp; fiber produced from the stalks; oil, or cake made from the seeds of the plant; sterilized seeds of the plant incapable of germination; or any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.
- F. "Medical Marijuana Facility" means a medical marijuana center, optional cultivation premises or medical marijuana infused product manufacturing, which are licensed by the State of Colorado and the County of Fremont.
- G. "Multi-family Residence" means a duplex, triplex and fourplex units, attached condominium units and attached residential developments.
- H. "Parcel or Property" means a plot of land usually considered a unit for the purposes of development and conveyed lawfully by deed to one or more owners.
- I. "Primary Caregiver" under Colorado Constitution, Article XVIII, Section 14(1)(f) of the Colorado Constitution means a natural person, other than the patient and the patient's physician, who is eighteen (18) years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition.
- J. "Primary Residence" means the place where a person or family member, by custom and practice, makes his or her principal domicile and address and to which the person or family member intends to return following any temporary absence, such as a vacation. Residence is

evidenced by actual daily physical presence, use and occupancy of the primary residence and the use of the residential address for domestic purposes, such as, but not limited to, slumber, preparation of and eating of meals, regular mail delivery, vehicle and voter registration, and credit, water and utility billing. A person or family member shall have only one primary residence. A primary residence includes both single family and multi-family residences.

K. Residential Structure means a detached, one-family residence, attached accessory structure to a detached one-family residence, or a detached accessory structure.

L. "Secure Area" means an area within a residential structure accessible only to the person possessing, cultivating or processing Marijuana for personal or medical use. Secure areas shall be partitioned space constructed and locked in a manner to prevent access by visitors, casual passersby, vandals, minors, or anyone not legally authorized to possess Marijuana.

**Section 4. Medical Marijuana Facilities.** All medical marijuana facilities shall be subject to the requirements of the Fremont County Medical Marijuana Business Licensing Regulations (Ordinance No. 22, Series of 2014), and shall not be governed by the provisions of this Ordinance.

**Section 5. Caregiver Cultivation Registration.**

A. In accordance with C.R.S. §25-1.5-106, C.R.S., a primary caregiver who cultivates medical marijuana for his or her patients is required to register the location of his or her cultivation operation with the state medical marijuana licensing authority. Additionally, a cultivating or transporting primary caregiver may serve no more than five patients on the medical marijuana program registry at any given time, unless the state health agency allows a primary caregiver to service more than five patients due to exceptional circumstances.

B. A primary caregiver who cultivates medical marijuana for his or her patients in the unincorporated area of Fremont County shall register the location and plant count of his or her cultivation operation with the Fremont County Department of Planning and Zoning. Such information shall be confidential and shall not be released to the general public, but may be used by code and law enforcement in the enforcement of this Ordinance.

**Section 6. Home or Residential Cultivation of Medical and Personal Use Marijuana.**

Cultivation of marijuana, whether medical or personal use, by a person in any Primary Residence or in a detached residential accessory structure shall be permitted, subject to the following restrictions:

A. Such cultivation, production, or possession of marijuana plants must be in full compliance with all applicable constitutional, statutory, and regulatory requirements of the State of Colorado and ordinances and resolutions of the County of Fremont.

B. Any structure used for home cultivation shall comply with all applicable building and zoning codes, including but not limited to the health, building, electrical, plumbing, mechanical, sign, fire, and other codes, statutes, ordinances and resolutions.

C. Any space used for grow operations pursuant to this Ordinance must not be available to the public or accessible to any person under the age of twenty-one (21) years unless such person possesses a medical marijuana registration card, or is a registered caregiver eighteen (18) years of age or older.

D. Home cultivation of marijuana is only permitted by adults twenty-one (21) years of age or older, unless such person possesses a valid medical marijuana registration card, who reside at, and use the property on which the home cultivation is located as their primary residence; except that medical marijuana caregivers, eighteen (18) years of age or older, may cultivate for up to five (5) persons who do not reside at the property on which the home cultivation is located, so long as the property on which the home cultivation is located is the caregiver's primary residence and the caregiver has been designated by the person(s) that possess the valid medical marijuana registration card(s) to be their caregiver. In no event, shall a caregiver be allowed to cultivate for more than a total of five (5) patients without obtaining a valid medical marijuana business license from the County.

E. Home cultivation of marijuana in a multi-family residence must comply with all provisions of this Ordinance and shall not be perceptible (as fully described in paragraph F below) from any other unit or residence in the multi-family structure, development or complex. Such marijuana plants shall not be grown or processed in the common areas of the multi-family or attached residential development.

F. Neither the growing nor processing of medical or personal use marijuana plants as part of a home cultivation shall be perceptible from the exterior of the structure in which any such activities occur, by or through any of the following means, or as a result of any of the following impacts or effects:

(1) Common visual observation (e.g., through a window) by a person of normal vision without visual enhancements (e.g. binoculars);

(2) Light pollution, glare, or brightness that reasonably could be expected to unreasonably disturb the repose of another person of normal visual sensitivities;

(3) The smell or odor of marijuana, or unusual smells or odors generated by or in connection with such growing or processing and not generally found in a residential environment, as detectable by a person with a normal sense of smell;

(4) Undue or unusually high volumes of vehicular or pedestrian traffic, including unusually heavy or frequent parking in front of or in the immediate vicinity of the Primary Residence; or

(5) Noise from exhaust fans, other equipment, or other sources associated with or connected to such growing or processing that can be heard on surrounding properties on a steady, continuous basis lasting longer than two hours in a 24-hour period or occurring for any length of time between the hours of 9:00 p.m. and 6:00 a.m.

G. Any residential structure, parcel or property, or portion thereof, used for home cultivation, and/or processing shall be a secure area and not visible to persons under the age of twenty-one (21), visitors, casual passers-by, vandals, or anyone not authorized to possess or access medical or personal use marijuana.

H. Indoor Cultivation Plant limit.

(1) No more than twelve (12) Marijuana plants may be grown on any single-family residential property at any one time, except as provided in Section 7, herein.

(2) No more than six (6) Marijuana plants may be grown on the property of any unit of a multi-family residence, including the unit itself and any accessory building, at any one time.

(3) No more than thirty-six (36) Marijuana plants may be grown by a primary caregiver on any single-family residential property at any one time, except as provided in Section 8 herein. The primary caregiver shall be in full compliance with all state and local laws and regulations applicable to such caregiver grow.

I. Home cultivation of marijuana conducted by a non-owner of a residential property such as a tenant, lessee, guest, occupant or other similar occupancies, shall be prohibited unless such non-owner has specific written permission from the owner of the residential property allowing cultivation of marijuana on the property.

J. In order to engage in Marijuana cultivation in a single-family residence or unit of a multi-family residence, the person(s) engaged in Marijuana cultivation must reside in the same residence or residential unit. In order to engage in Marijuana cultivation in a greenhouse and/or accessory building, a single-family residence or unit of a multi-family residence shall be on the same property as the greenhouse and/or accessory building and such residences shall be occupied by the person(s) engaged in Marijuana cultivation. Cultivation of marijuana plants on behalf of other marijuana plant owners is permissible, subject to the limitations set forth in this Ordinance, including the total plant limit.

K. Waste product from the Marijuana cultivation and processing shall be disposed of properly so as not to be at risk for consumption by others and so as not to attract rodents, pests, and public curiosity.

L. Marijuana cultivation under this Ordinance shall not be for the use of any licensed Marijuana Establishment, as that term is defined in the Colorado Medical and Retail Marijuana Codes.

M. It shall be unlawful for any person who is not licensed under Article 43.3 or Article 43.4 of Title 12, C.R.S. to sell Marijuana. A caregiver may be reimbursed for the costs involved in Marijuana Production pursuant to C.R.S. 25-1.5-106.

N. Extraction shall be permitted only as follows:

(1) Extraction shall comply with the C.R.S. 18-18-406.6 and any other applicable State law or regulation.

(2) Extraction using alcohol or ethanol outside of a licensed medical Marijuana infused products manufacturing facility or a licensed personal use Marijuana products manufacturing facility in compliance with all applicable State and local laws, and all rules and regulations promulgated thereunder, is permitted only if:

(a) such production is approved by the appropriate Fire Official, if such approval is required by the Official; and

(b) the production of Marijuana concentrate is done without the application of any heat from a fuel fired or electrified source and uses no more than sixteen (16) ounces of alcohol or ethanol during each extraction process and there are no hazardous chemicals, gases, explosives, flammable materials or similarly dangerous substances have been used in any pipes, tanks or other equipment on the property.

(3) Water Based Extraction, Food Based Extraction, and Alcohol Based Extraction are the only forms of Extraction permitted for home marijuana processing. These forms of Extraction shall comply with the Fire Code from the appropriate Fire Official.

O. A Medical Marijuana patient holding a valid Colorado Medical Marijuana card may exceed the plant count and cultivate the number of plants authorized by the patient's Medical Marijuana card and/or valid and current written authorization from the patient's licensed Colorado physician, provided that the cultivation complies with all other requirements of this Ordinance. If the number of authorized and cultivated plants for a patient exceeds the maximum plant counts set forth in this Ordinance, then such patient shall be prohibited from cultivating marijuana plants on behalf of other marijuana plant owners or patients.

**Section 7. Outdoor Home or Residential Cultivation of Medical and Personal Use Marijuana.** Outdoor Home or Residential cultivation may occur on residential properties. No more than eighteen (18) Marijuana plants may be grown on any parcel, combining both indoor and outdoor cultivation. Outdoor Marijuana cultivation is subject to the following conditions:

A. Any Marijuana grown outdoors shall be contained entirely in an area that is completely screened and not visible from any right-of-way, any other residence, or the public. Screening may include fencing, vegetative visual barrier, natural topographic features or conditions, buildings, structures, or similar measures which effectively block the view (excluding aerial views) from any right-of-way, any other residence, or the general public.

B. The person(s) engaged in Marijuana cultivation must reside in the single-family residence or the unit of a multi-family residence located on the parcel.

C. The Marijuana cultivation must comply with all other applicable provisions of this Ordinance, including those set forth in Section 6 (F).

D. A Medical Marijuana patient holding a valid Colorado Medical Marijuana card may exceed the plant count and cultivate the number of plants authorized by the patient's Medical Marijuana card, and/or valid and current written authorization from the patient's licensed Colorado physician, provided that the cultivation complies with all other requirements of this Ordinance. If the number of authorized and cultivated plants for a patient exceeds the maximum plant counts set forth in this Ordinance, then such patient shall be prohibited from cultivating marijuana plants on behalf of other marijuana plant owners or patients.

**Section 8. Outdoor Medical Marijuana Cultivation by a Primary Caregiver.**

Outdoor cultivation by a state-registered primary caregiver may occur on residential or vacant property. No more than thirty-six (36) Marijuana plants may be grown on any parcel less than 10 acres in size. On parcels that are 10 acres or more in size, the plant limit shall be ninety-nine (99). Under no circumstances shall the plant limit exceed ninety-nine (99) plants on any parcel. Outdoor Medical Marijuana cultivation by a primary caregiver is subject to the following conditions:

A. Any Marijuana grown outdoors shall be contained entirely in an area that is completely screened and not visible from any right-of-way, any other residence, or the public. Screening may include fencing, vegetative visual barrier, natural topographic features or conditions, buildings, structures, or similar measures which effectively block the view (excluding aerial views) from any right-of-way, any other residence, or the general public.

B. If there is a residence on the property, the person(s) engaged in Marijuana cultivation must reside in the single-family residence located on the parcel.

C. The Marijuana cultivation must comply with all other applicable provisions of this Ordinance, including those set forth in Section 6 (F).

D. The use of temporary dwelling accommodations, including travel trailers, recreational vehicles, tents and similar accommodations, shall strictly comply with zoning, building code, health, sanitation, and other regulatory requirements for such use.

E. Cooperative, joint, collective, or other combined grows on a single parcel by more than one primary caregiver are allowed, subject to the plant limit and other requirements provided herein. However, the marijuana plants of each caregiver in any cooperative, joint, collective or combined cultivation operation shall be physically separated and separately identified from the plants of other caregivers.

F. No parcel, 10 acres or more in size, may be used for cultivation of more than 36 marijuana plants by a primary caregiver unless the parcel is owned by the caregiver engaged in the cultivation operation.

**Section 9. Cultivation on Vacant or Unoccupied Property.** Cultivation of medical or personal use Marijuana on any vacant or unoccupied property (not containing an occupied, primary residence) shall be prohibited, except caregiver cultivation, as specifically allowed herein.

**Section 10. Administration.**

A. In the event of a written complaint or at the request of an agent or employee of Fremont County, the Code Enforcement or Law Enforcement Officer(s) may request verbal permission from the property owner or tenant to access the property and any structure(s) on the property during reasonable hours for the purpose of conducting a physical inspection of the property to determine compliance with the requirements of this Ordinance. However, the Officers shall not enter upon any property to conduct such an inspection without either the permission of the property owner or tenant.

B. If permission is denied to the Code Enforcement Officer(s) to inspect the property and the Officer(s) has reasonable belief there is imminent danger to public health, safety, or welfare or non-compliance with this Ordinance, the Officer(s) shall have the authority to request the Fremont County Sheriff's Office, and/or Fremont County Building Department, and/or Fremont Health Department to conduct an inspection of the property within their authoritative powers.

**Section 11. Enforcement. This Ordinance shall be enforced by the Fremont County Sheriff.**

A. Violation. It shall be unlawful for any person to violate any provision of this Ordinance. Any person who violates this Ordinance commits a class 2 petty offense.

The fine for a first offense and for any subsequent offense shall be no less than two-hundred fifty and not more than one thousand dollars (\$1,000.00) per violation and each day shall be deemed a separate violation. In addition to the fines and penalties, any person convicted of a violation of this Ordinance shall be subject to the statutory surcharge of ten dollars (\$10.00) for the Victims and Witnesses Assistance and Law Enforcement Fund. This surcharge shall be paid to the clerk of the court by each person convicted of violating this Ordinance. The clerk shall transmit the moneys to the respective funds in accordance with Colorado law.

B. Penalty Assessment. In accordance with §30-15-402, and §16-2-201 C.R.S., a penalty assessment procedure is hereby authorized for use by any law or code enforcement officer who is vested with authority to issue a Summons and Complaint for violations of this Ordinance.

(1) The penalty assessment notice shall be a summons and complaint containing identification of the alleged offender, specification of the offense and applicable fine, a requirement that the alleged offender pay the fine or appear to answer the charge at a specified time and place, and any other matter reasonably adapted to effectuating the purposes of this section. A duplicate copy shall be sent to the clerk of the county court in the county in which the alleged offense occurred. The provisions herein shall not

apply to penalties assessed pursuant to authority of law outside this Ordinance unless this Ordinance is specifically referred to in such other law.

(2) If the person given a penalty assessment notice chooses to acknowledge his guilt, he may pay the specified fine in person or by mail at the place and within the time specified in the notice. If he chooses not to acknowledge his guilt, he shall appear as required in the notice. Upon trial, if the alleged offender is found guilty, the fine imposed shall be that specified in the notice for the offense of which he was found guilty, but customary court costs and surcharges may be assessed against him in addition to the fine.

C. Graduated Fine Schedule and Procedure for Payment

(1) Any person who violates Section 5(B), Section 6 (A – G), or Section 7 of this Ordinance, shall be punished, upon conviction, in accordance with the following schedule:

- a. For the first offense, the sum of two hundred-fifty dollars;
- b. For the second offense within 12 months from the date of the first offense, the sum of five hundred dollars;
- c. For the third and each subsequent offense within twelve months of the date of a prior offense, regardless of whether the prior offense was a first or subsequent offense, the sum of one thousand dollars.

(2) Any person who violates Section 6 (H – N), Section 8, or Section 9 of this Ordinance, shall be punished, upon conviction, in accordance with the following schedule:

- a. For the first offense, the sum of five hundred dollars;
- b. For the second and each subsequent offense within twelve months of the date of a prior offense, regardless of whether the prior offense was a first or subsequent offense, the sum of one thousand dollars.

D. Whenever a penalty assessment notice is issued pursuant to this Ordinance, the penalty assessment notice which shall be served upon the defendant by the peace officer shall contain the name and address of the defendant; a citation of the Ordinance section alleged to have been violated; a brief description of the offense; the date and approximate location of the commission of the offense; the amount of the penalty prescribed for such offense, including any surcharge and collection costs; and the date the penalty assessment notice is served on the defendant. The penalty assessment shall inform the defendant of the opportunity to pay the fine and a \$5.00 collection fee, within 20 days to the office of the Fremont County Treasurer, Fremont County Administration Building, 615 Macon Ave., Cañon City, Colorado, 81212, thereby avoiding imposition of court costs and surcharges at a later date.

E. The penalty assessment notice shall direct the defendant to appear in a specified county court at a specified time and place in the event such penalty is not paid; shall be signed by the peace officer; and shall contain a place for such defendant to elect to execute a signed acknowledgment of guilt and an agreement to pay the penalty prescribed within twenty days, as well as such other information as may be required by law, to enable such penalty assessment notice to become a summons and complaint, should the prescribed penalty not be paid within the time allowed in this Ordinance.

- (1) One copy of said penalty assessment notice shall be served upon the defendant by the peace officer and one copy sent to the Fremont County Treasurer. In the event that the penalty assessment is not paid to the Fremont County Treasurer within the required 20 day period, the Fremont County Treasurer shall forward all unpaid penalty assessments to the Fremont County Court for docketing on the date of first appearance indicated on the summons and complaint/penalty assessment notice.
- (2) The time specified in the summons portion of said summons and complaint must be at least twenty days after the date such summons and complaint is served, unless the defendant shall demand an earlier court appearance date.
- (3) The time specified in the summons portion of said penalty assessment notice shall be at least thirty days but not more than ninety days after the date such penalty assessment notice is served, unless the defendant shall demand an earlier court appearance date.
- (4) The place specified in the summons portion of said summons and complaint or of the penalty assessment notice must be a county court within the county in which the offense is alleged to have been committed.
- (5) If the defendant is otherwise eligible to be issued a summons and complaint or a penalty assessment notice for a violation of this Ordinance and if the defendant is not a resident of Fremont County, in order to secure release, as provided in this section, must either consent to be taken by the officer to the nearest mailbox and to mail the amount of the penalty and surcharge thereon to the Fremont County Treasurer or must execute a promise to appear in court on the penalty assessment notice or on the summons and complaint.
- (6) Unless a person who has been cited for an Ordinance violation pays in a timely manner with adequate and sufficient funds, the penalty assessment as provided in this Ordinance, the person shall appear at a hearing on the date and time specified in the summons portion of the penalty assessment and answer the complaint against him.
- (7) If judgment is entered against a violator, he shall be assessed an appropriate penalty, a surcharge, a docket fee, and other applicable costs.

F. Disposition of Fines and Surcharges. Unless otherwise provided by law, all fines and penalties, and the surcharge thereon, for the violation of this Ordinance shall be paid into the treasury of Fremont County.

**Section 12. Severability Clause.** If any section, subsection, clause, or phrase of this Ordinance is for any reason held to be invalid, such holding shall not affect the validity of the remaining portions of this Ordinance.

**Section 13. Publication and Effective Date.**

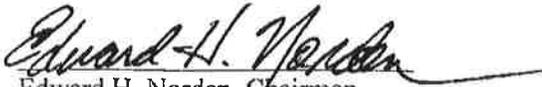
The foregoing text is the authentic text of Fremont County Ordinance No. 2016-1. The first reading of the Ordinance took place on March 8, 2016. It was published in full in the Cañon City Daily Record on March 9, 2016

Second Reading of the Ordinance took place on March 22, 2016.

Third Reading of the Ordinance is scheduled for April 12, 2016, at 9:30 a.m. at the Fremont County Administration Building, Room LL-3, 615 Macon Ave., Cañon City, CO 81212.

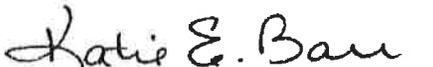
It was adopted with amendments on April 12, 2016. It is to be republished by title with amendments in the *Cañon City Daily Record* on April 14, 2016 and shall take effect April 17, 2016.

Done and signed this 12 day of April, 2016, at Cañon City, Colorado.



Edward H. Norden, Chairman  
Board of County Commissioners of  
Fremont County, Colorado

I hereby testify and attest that the provisions of Ordinance 2016-1 as set forth hereinabove are true and correct to the best of my knowledge, information and belief.

  
Fremont County Clerk and Recorder