

OR 011

ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MESA, STATE OF COLORADO

ORDINANCE NO. 11

AN ORDINANCE PROHIBITING THE OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES OR RETAIL MARIJUANA STORES WITHIN THE UNINCORPORATED BOUNDARIES OF MESA COUNTY, STATE OF COLORADO

WHEREAS, pursuant to § 30-15-401, C.R.S., the Board of County Commissioners of Mesa County, Colorado (hereinafter the "Board"), has the general enabling power to adopt ordinances for the control or licensing of those matters of purely local concern, and to do all acts and make all regulations which may be necessary or expedient for the promotion of the health, safety and welfare of the present and future residents of Mesa County; and

WHEREAS, on November 6, 2012, the voters of Colorado approved the adoption of Amendment 64, Personal Use and Regulation of Marijuana; and

WHEREAS, Amendment 64 became effective upon official declaration of the vote thereon by proclamation of the Governor, pursuant to Section 1(4) of Article V, of the Colo. Constitution; and

WHEREAS, Amendment 64 defines a "locality" in part in section 2(e) of Section 16 to include a county;
and

WHEREAS, part 5(f) of Section 16 provides the following:

(f) A locality may enact ordinances or regulations, not in conflict with this section or with regulations or legislation enacted pursuant to this section, governing the time, place, manner and number of marijuana establishment operations; establishing procedures for the issuance, suspension, and revocation of a license issued by the locality in accordance with paragraph (h) or (i), such procedures to be subject to all requirements of Article 4 of Title 24 of the Colorado Administrative Procedure Act or any successor provision; establishing a schedule of annual operating, licensing, and application fees for marijuana establishments, provided, the application fee shall only be due if an application is submitted to a locality in accordance with paragraph (i) and a licensing fee shall only be due if a license is issued by a locality in accordance with paragraph (h) or (i); and establishing civil penalties for violation of an ordinance or regulation governing the time, place, and manner of a marijuana establishment that may operate in such locality. A locality may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance or through an initiated or referred measure; provided, any initiated or referred measure to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores must appear on a general election ballot during an even numbered year. (Emphasis added)

and;

WHEREAS, at the November 2, 2010 election, the citizens of Mesa County voted to ban Medical Marijuana Centers, Optional Premises Cultivation Operations and Medical Marijuana Infused Products Manufacturer's Licenses pursuant to § 12-43.3-106, C.R.S. (2010); and

WHEREAS, at the November 6, 2012 election, a majority of the votes cast on this ballot issue were cast against the adoption of Amendment 64 in Mesa County; and

WHEREAS, Amendment 64 conflicts with federal law, as the possession, cultivation, sale and use of marijuana remains illegal under federal criminal statutes; and

WHEREAS, the Board finds that the licensing and operation of marijuana establishments provided for in Amendment 64, by making marijuana more readily available in the community and facilitating recreational use of marijuana, presents a threat to the health and education of Mesa County's children, to the safety of the workplace and the traveling public and to the public health, safety and welfare as a whole; and

WHEREAS, pursuant to the authority granted to the County in Amendment 64 and consistent with the will of Mesa County voters, the Board desires to adopt this ordinance prohibiting the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores within the unincorporated areas of Mesa County, Colorado.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Mesa County as follows:

Purpose. The purpose of this ordinance is to promote the general public welfare and safety throughout Mesa County, Colorado by prohibiting the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores.

Definitions. Unless otherwise specified or the context otherwise requires, any terms used herein shall have the same meanings as provided in Article XVIII, Section 16 of the Colo. Constitution. These definitions include, but are not limited to the following:

- (1) "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 marihuana 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.
- (2) "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.
- (3) "MARIJUANA CULTIVATION FACILITY" means an entity of any kind which is used, intended to be used, or designed to be used 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.
- (4) "MARIJUANA ESTABLISHMENT" means a marijuana cultivation facility, marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.
- (5) "MARIJUANA PRODUCT MANUFACTURING FACILITY" means an entity of any kind which is used, intended to be used, or designed to be used 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.
- (6) "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.

- (7) "MARIJUANA TESTING FACILITY" means an entity of any kind which is used, intended to be used, or designed to be used to analyze and certify the safety and potency of marijuana.
- (8) "MEDICAL MARIJUANA CENTER" means an entity licensed by a state agency to sell marijuana and marijuana products pursuant to Section 14 of this Article and the Colorado Medical Marijuana Code.
- (9) "RETAIL MARIJUANA STORE" means an entity of any kind which is used, intended to be used, or designed to be used 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.

Section 1. **APPLICABILITY:**

- 1.1 This Ordinance shall apply throughout the unincorporated area of Mesa County, including but not limited to public and state lands.
- 1.2 If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of County Commissioners hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases are declared unconstitutional or invalid.

Section 2. **UNLAWFUL ACTS:**

- 2.1 Any of the following shall be a violation of this Ordinance and shall be subject to the remedies and penalties provided for in this Ordinance:
 - (a) Maintaining or operating an entity of any kind which is used, intended to be used, or designed to be used 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.
 - (b) Maintaining or operating an entity of any kind which is used, intended to be used, or designed to be used 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.
 - (c) Maintaining or operating an entity of any kind which is used intended to be used, or designed to be used to analyze and certify the safety and potency of marijuana.
 - (d) Maintaining or operating an entity of any kind which is used, intended to be used, or designed to be used 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.

Section 3. **ENFORCEMENT:**

- 3.1 This ordinance shall be enforced by the Mesa County Sheriff.
- 3.2 The Board hereby designates the Mesa County Attorney, or his/her designee, as the County's legal representative in the enforcement of the provisions of this Ordinance in a court of applicable jurisdiction. In the event the Mesa County Attorney or his/her designee cannot represent Mesa

County or the Board deems it otherwise appropriate, the Board may appoint the District Attorney of the Twenty first Judicial District to perform such legal enforcement duties in lieu of the County Attorney.

- 3.3 **Scope.** This ordinance shall apply within the unincorporated territory of Mesa County and to all other areas designated herein. This ordinance shall in no way limit application and enforcement of any statutes of the State of Colorado but shall be in addition thereto.
- 3.3 **Penalties:** The County may seek such criminal or civil penalties as are provided by Colorado law and provided for herein.

Section 4. **CIVIL REMEDIES AND ENFORCEMENT POWERS:**

- 4.1 The County shall have the following remedies and enforcement powers for violations of any acts outlined in section 2 above.
- 4.2 **Injunctive Relief:** The County may seek an injunction or other equitable relief in court to stop any violation of this Ordinance of any acts outlined in section 2 above and may recover costs of any such action.
- 4.3 **Surcharges. § 30-15-408. Disposition of fines and forfeitures.** The fine for a first offense and for any subsequent offense shall be 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 prescribed in this ordinance, any person convicted of a violation of this ordinance shall be subject to the statutory surcharges of ten dollars (\$10.00) for the Victims and Witnesses Assistance and Law Enforcement Fund, and (\$15.00) for the Colorado Traumatic Brain Injury Trust Fund. These surcharges 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 C.R.S. § 30-15-402(2).

Section 5. **CRIMINAL PROSECUTION:**

- 5.1 If so directed by the Sheriff of Mesa County, a criminal prosecution may be brought against any person who violates any provision of this ordinance in accordance with §§ 30-15-402 and 410, C.R.S.
- 5.2 Violation of the provisions of this Ordinance shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) for each violation. In addition to this penalty, persons convicted of a violation of this Ordinance are subject, pursuant to § 30-15-402, C.R.S., to a surcharge of \$10.00, to be paid to the Clerk of the Court for credit to the Victims and Witnesses Assistance and Law Enforcement Fund established in the judicial district.
- 5.3 All fines and forfeitures for the violation of this Ordinance shall be paid to the Treasurer of Mesa County within thirty (30) days of receipt and shall be deposited into the General Fund of Mesa County.

Section 6. **ADDITIONAL REMEDIES:**

The remedies provided in this Ordinance shall be cumulative and in addition to any other remedies which may be available to the County and its Board. Nothing contained herein shall be construed to preclude the Board from seeking such other remedies in addition to, or in lieu of, the legal remedies herein granted.

Section 7. **SAFETY CLAUSE:**


The Board hereby finds, determines and declares that this Ordinance is necessary for the health, safety and welfare of the citizens of Mesa County, Colorado.

Section 8. **PUBLICATION AND EFFECTIVE DATE:**

The foregoing text is the authentic text of Mesa County Ordinance No. 11. The first reading of said Ordinance took place on July 15th, 2013 at a regular Board of County Commissioners Meeting. It was published in full in the Grand Junction Daily Sentinel on July 19, 2013. The Ordinance was adopted on second reading at a regular Board of County Commissioners Meeting on Aug 12, 2013, and shall take effect Aug 18 2013.

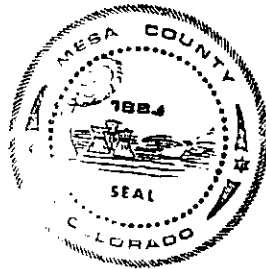
ADOPTED this 12 day of August, 2013.

ATTEST:

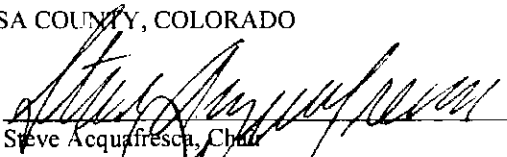


Sheila Reiner
Mesa County Clerk and Recorder

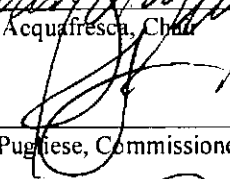
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BOARD OF COUNTY COMMISSIONERS OF
MESA COUNTY, COLORADO

By: 

Steve Acquafresca, Chair



Rose Pugliese, Commissioner



John Justman, Commissioner