

CHAFFEE COUNTY ORDINANCE NO. 2013-02

TITLE: AN ORDINANCE PROVIDING FOR A BAN UNTIL DECEMBER 31, 2014, ON THE SUBMISSION, ACCEPTANCE OR PROCESSING OF APPLICATIONS AND THE LICENSING, PERMITTING OR OPERATION OF ANY RETAIL MARIJUANA ESTABLISHMENT AS DEFINED BY THE COLORADO CONSTITUTION, ARTICLE XVIII, SECTION 16 IN UNINCORPORATED PORTIONS OF CHAFFEE COUNTY (EXCEPT CERTAIN EXISTING ESTABLISHMENTS), INCLUDING THE USE OF LAND FOR SUCH PURPOSE OR PURPOSES.

Recitals

- A. The Board of County Commissioners (“BoCC”) has authority to exercise all County powers for the unincorporated areas of Chaffee County pursuant to C.R.S. § 30-11-103. Pursuant to C.R.S. § 30-15-401, the BoCC 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 Chaffee County.
- B. On November 6, 2012, the voters of the State of Colorado adopted Amendment 64 of the Colorado Constitution (“Amendment 64”), which is codified as Article XVIII, § 16 of the Colorado Constitution.
- C. Amendment 64 permits persons twenty-one years of age and older to possess, use, display, purchase or transport one ounce or less of marijuana, or marijuana accessories, to grow limited amounts of marijuana and manufacture and sell marijuana accessories.
- D. As authorized by Amendment 64, the State Legislature enacted the Colorado Retail Marijuana Code, C.R.S. §§ 12-43.4-101, *et seq.*
- E. Amendment 64 and C.R.S. § 12-43.4-104(3) provide that counties may choose to prohibit or license recreational marijuana establishments that sell, cultivate, manufacture, prepare, package, purchase, test or otherwise provide for or allow the use of marijuana or marijuana products.
- F. Amendment 64 further provides that if a county intends to license retail marijuana establishments, it must designate a local licensing authority and have licensing regulation in place by October 1, 2013.
- G. Amendment 64 required the Colorado Department of Revenue (“DOR”) to adopt regulations to address marijuana establishments by July 1, 2013. Final rules were adopted only a few weeks ago and the County has not had an opportunity to review such rules, analyze how they will be enforced or determine what resources may be required of local governments to implement and enforce.
- H. Neither the BoCC nor County staff have had an opportunity to thoroughly review the DOR’s emergency rules.

- I. Although the current administration of the federal government has indicated that it will not interfere with Colorado's implementation of Amendment 64, Marijuana remains an illegal substance under federal law, specifically as a Schedule I drug under the Controlled Substances Act, found in Title II of the Comprehensive Drug Abuse and Control Act of 1970 (P.L. 91-513, 84 Stat. 1236) which creates uncertainties regarding certain aspects of allowing marijuana establishments.
- J. Existing Colorado medical marijuana Optional Premises Cultivation Facilities and Infused Products Manufacturing Facilities have a proven track record and it would be in the best interests of Chaffee County to allow such facilities to convert to recreational marijuana establishments.
- K. County staff has recommended that the BoCC adopt a temporary ban until December 31, 2014, on the submission, acceptance, or processing of applications and the licensing, permitting or operation of retail marijuana establishments described under Amendment 64 to provide a reasonable length of time to properly investigate, draft, and implement licensing and land use regulations in a manner that would be in the best interests of the public health, safety, and welfare of the citizens of Chaffee County.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CHAFFEE COUNTY COLORADO:

Section 1. The foregoing recitals are incorporated herein and made a part of this ordinance.

Section 2. A ban is hereby imposed until such date as the BoCC duly adopts regulations by resolution or December 31, 2014, whichever is earlier, on the submission, acceptance, or processing of applications and the licensing, permitting or operation of any retail marijuana establishment that sells, cultivates, manufactures, prepares, packages, purchases, tests, or otherwise provides for or allows the use of marijuana or marijuana products pursuant to Amendment 64 approved by the voters of the State of Colorado at the November 6, 2012, general election and codified as Article XVIII, § 16 of the Colorado Constitution, and upon the use of land for such purpose or purposes.

Section 3. During the pendency of this ban, Chaffee County staff shall review all laws and regulations enacted by the state or actions of the federal government regarding retail marijuana establishments and advise the BoCC of the same, and, if so directed by the BoCC, prepare regulations including but not limited to regulations governing the time, place, manner, or number of retail marijuana establishments.

Section 4. This ordinance shall apply within the unincorporated territory of Chaffee County but does not apply to retail marijuana cultivation facilities or retail marijuana products manufacturing facilities which currently have an Medical Marijuana Optional Premises Cultivation Facility license or a Medical Marijuana Infused Products Manufacturing Facility license in good standing and issued by the State of Colorado at the time this ordinance is adopted. For such existing facilities, the "Local Licensing Authority" as that term is defined by C.R.S. § 12-43.4-103(7), shall be the same as the Local Licensing Authority under the Chaffee County Medical Marijuana Business Licensing Regulations adopted pursuant to Resolution 2012-28 (as amended from time to time). An excepted facility seeking to become a retail cultivation or manufacturing establishment must obtain a retail license from the County under the standards set forth in the MMJ Regulations. This ordinance shall in no way limit application and enforcement of any statutes of the State of Colorado but shall be in addition thereto.

Section 5. It shall be unlawful for any person to violate any provision of this ordinance.

Section 6. This ordinance may be enforced by any law enforcement officer or any other persons or positions designated by the BoCC as enforcement officers under this Ordinance.

Section 7. Pursuant to C.R.S. § 30-15-402, any arresting law enforcement officer enforcing this ordinance is authorized to utilize the penalty assessment procedure provided in C.R.S. § 16-2-201.

Section 8. Any person or entity that violates this ordinance shall be guilty of a class 2 petty offense. The fines, penalties and surcharges set forth in C.R.S. § 30-15-402 (as amended from time to time) shall apply to each separate violation. Unless otherwise provided by law, all fines and penalties, and the surcharge thereon, for the violation of this ordinance shall be paid to the treasury of the County.

Section 9. This ordinance shall be liberally construed so as to further its purposes.

Section 10. If any portion of this ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance. The BoCC hereby declares this ordinance to be severable and further declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared invalid.

Section 11. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portions hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 12. This ordinance relates to the regulation of a controlled substance under federal law and the adoption of this ordinance is necessary for the immediate preservation of public health and safety and welfare and shall be effective upon adoption.

ADOPTED AND APPROVED by the Chaffee County Board of County Commissioners on September 26, 2013.

BOARD OF COUNTY COMMISSIONERS


[Acting] Chairman

The vote on the above Resolution was as follows:

Commissioner Frank F. Holman NO

Commissioner Dennis Giese YES

Commissioner Dave Potts YES

STATE OF COLORADO, CHAFFEE COUNTY
ATTEST:

The above is a true and correct record of Ordinance 2013-02 duly adopted by the Chaffee County Board of County Commissioners by a 2-1 vote at a regular meeting, properly noticed and held on September 26, 2013, at least ten days following introduction and reading of the proposed ordinance on September 17, 2013, and publication of the proposed ordinance on September 12, 2013 in *The Mountain Mail* and the *Chaffee County Times*.



Handwritten signature of Joyce M. Reno in blue ink.

Chaffee County Clerk

Notice of Adopted Ordinance Published in *The Mountain Mail* and the *Chaffee County Times* on October 3, 2013

