

Re-recorded

RECEPTION#: 848234, 07/15/2013 at
11:06:56 AM, 1 OF 7, ORDIN
FRANCINE TIPTON-LONG, MONTROSE
COUNTY, CO CLERK AND RECORDER

ORDINANCE NO. 01-2013
2013-01

**AN ORDINANCE
PROHIBITING
THE COMMERCIAL
CULTIVATION, MANUFACTURE, SALE, AND TESTING OF RETAIL MARIJUANA
AND RETAIL MARIJUANA PRODUCTS
IN THE UNINCORPORATED TERRITORY
OF MONTROSE COUNTY**

Whereas, on November 6, 2012, the majority of the voters of the State of Colorado approved Amendment 64 to enact Article XVIII, Section 16 ("Amendment 64"), amending the Constitution of the State of Colorado to legalize the cultivation, possession and recreational use of marijuana and marijuana products for persons aged 21 and older and providing for the licensing of cultivation facilities, product manufacturing facilities, testing facilities, and retail stores, all subject to the limitations contained in said Amendment 64; and

Whereas, Amendment 64 requires the State of Colorado, Department of Revenue, to adopt regulations by July 1, 2013 necessary for the implementation of the Amendment, including procedures for the licensing and regulation of the commercial cultivation and retail distribution of marijuana and marijuana products as provided in the Amendment; and

Whereas, Amendment 64 requires that by October 1, 2013 each Colorado County, Municipality, and City and County ("locality") must enact an ordinance or regulation specifying the entity within the locality that is responsible for processing applications submitted for a license to operate a marijuana establishment within the boundaries of the locality and for the issuance of such licenses should the issuance by the locality become necessary because of a failure by the Department of Revenue to adopt regulations or to process and issue licenses; and

Whereas, the Colorado legislature has enacted HB 13-1317 (codified at CRS 12-44.3-101, *et seq.*) to implement the provisions of Amendment 64, which also directs the Department of Revenue to enact further regulations by July 1, 2013 in accordance with Amendment 64; and

Whereas, the Colorado legislature also enacted SB 13-283 (codified in various Titles and Articles of the Colorado Revised Statutes) to implement the provisions of Amendment 64 and to authorize further studies and recommendations for additional legislation as may be necessary towards the implementation of Amendment 64 or as a result of the implementation of Amendment 64; and

Whereas, Amendment 64, at Art. XVIII, Section 16, part 5(f), allows a locality to enact ordinances or regulations, not in conflict with Amendment 64 or legislation enacted pursuant to Amendment 64, governing the time, place, manner, and number of marijuana establishments operations, establishing procedures for issuance, revocation and suspension of licenses, and

establishing a schedule of annual operating, licensing, and application fees for such marijuana establishments; and

Whereas, Amendment 64 further allows a locality to prohibit the commercial operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and/or marijuana retail stores through the enactment of an ordinance or through an initiated or referred measure, provided that any such initiated or referred measure must appear on a general election ballot during an even numbered year; and

Whereas, Amendment 64 does not change federal law prohibiting the possession and sale of marijuana; and

Whereas, on December 3, 2012, the Board of County Commissioners for Montrose County ("the Board") enacted Resolution No. 60-2012, declaring a moratorium on the use, construction, alteration, or reconstruction of any building, structure, or property for marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and marijuana retail stores, and all other land uses associated with the cultivation, manufacture, and sale of marijuana or marijuana products; and

Whereas, in accordance with CRS 12-43.3-106, the Board certified a ballot question of whether to allow commercial medical marijuana operations in Montrose County and, on November 7, 2013, the voters of Montrose County voted to prohibit medical marijuana cultivation, medical marijuana infused product manufacturing, and medical marijuana dispensary operations in the unincorporated territory of Montrose County; and

Whereas, in accordance with CRS 30-14-406, on ⁶⁻²¹⁻¹³~~6-26-13~~ the Board published the full text of this Ordinance in the Montrose Daily Press and the San Miguel Basin Forum in accordance with CRS 30-15-406, and the first reading of this Ordinance was held on ~~6-17-13~~, in accordance with CRS 30-15-406, by this Board at the regular meeting thereof held on that date.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONTROSE COUNTY:

Section I PURPOSE:

The purpose of this Ordinance is to promote the general public, health, safety, and welfare by prohibiting the commercial cultivation, manufacture, sale, and testing of retail marijuana or retail marijuana products throughout the unincorporated territory of Montrose County, Colorado.

Section II 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 Colorado 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 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.
- (3) "MARIJUANA ESTABLISHMENT" means a marijuana cultivation facility, marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.
- (4) "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.
- (5) "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.
- (6) "MARIJUANA TESTING FACILITY" means an entity licensed to analyze and certify the safety and potency of marijuana.
- (7) "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.
- (8) "RETAIL MARIJUANA" means "marijuana" or "marihuana," as defined in Section 16(2)(f) of Article XVIII of the Colorado Constitution and in this Ordinance, that is cultivated, manufactured, distributed, or sold by a licensed retail marijuana establishment.
- (9) "RETAIL MARIJUANA PRODUCTS" means "marijuana products" as defined in Section 16(2)(k) of Article XVIII of the Colorado Constitution and in this Ordinance that are produced at a retail marijuana products manufacturer.

Section III PROHIBITIONS:

1. That the commercial use of any building, structure, or property for the cultivation, manufacture, sale, or testing of retail marijuana and retail marijuana products, and all other land uses or acts associated with the cultivation, manufacture, or sale of retail marijuana or retail marijuana products are hereby prohibited in the unincorporated territory of Montrose County.
2. This Ordinance shall not apply to individual possession or use of marijuana, marijuana products, or marijuana accessories in accordance with the provisions of Amendment 64, and shall not apply to individual cultivation of marijuana in accordance with the provisions of Amendment 64 and shall not affect any of the rights or authorizations provided under Article XVIII, Section 14 of the Colorado Constitution and the Colorado Medical Marijuana Code [CRS 12-43.3-102 (2012)] and relating to medical marijuana. However, except for existing medical marijuana businesses established within Montrose County and in business of record with Montrose County prior to April 5, 2010 and operating in compliance with the law of the State of Colorado, this Ordinance is not intended to and shall not be construed as authorizing any medical marijuana centers, optional premises cultivation operations and medical marijuana-infused products manufacturers' operations, as those businesses are defined in CRS Section 12-43.3-104 (2012) and as those businesses are prohibited by vote of the electorate in Montrose County on November 7, 2010.

Section IV ENFORCEMENT:

1. The Board may seek an injunction or other equitable relief in a court of appropriate jurisdiction to enjoin any violation of this Ordinance by any of the uses or acts prohibited in Section III above and may recover costs of any such action.
2. The Board hereby designates the Montrose 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 Montrose County Attorney or his/her designee cannot represent Montrose County or the Board deems it otherwise appropriate, the Board may appoint the District Attorney of the Seventh Judicial District to perform such legal enforcement duties in lieu of the County Attorney.
3. This Ordinance shall apply within the unincorporated territory of Montrose County. This ordinance shall in no way limit application and enforcement of any statutes of the State of Colorado but shall be in addition thereto.
4. The County may seek such criminal or other civil penalties for the violation of this Ordinance as are authorized by Colorado law and the Montrose County Sheriff shall enforce any criminal penalties as may be authorized under Colorado

law and the District Attorney of the Seventh Judicial District shall prosecute any criminal penalties as may be authorized under Colorado law.

Section V 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 under Colorado law. Nothing contained herein shall be construed to preclude the County from seeking such other remedies in addition to, or in lieu of, the legal remedies herein granted.

Section VI SEVERANCE PROVISION:

Should any one or more Sections or provisions of this Ordinance be judicially determined to be invalid or unenforceable, such determination shall not affect, impair or invalidate the remaining Sections or provisions of this Ordinance, it being the intent of the Board that such invalid or unenforceable Section or provisions are severable.

BE IT FURTHER ORDAINED, that the Board of County Commissioners of Montrose County, Colorado, does hereby adopt the foregoing Ordinance prohibiting the commercial cultivation, manufacture, sale, and testing of retail marijuana and retail marijuana products in the unincorporated territory of Montrose County, Colorado.

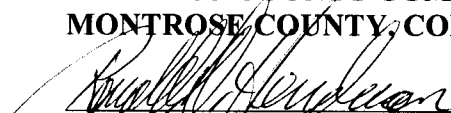
BE IT FURTHER ORDAINED, that the Board hereby finds, determines and declares that this Ordinance is necessary for the immediate preservation of the public health, safety, and welfare of the residents of Montrose County, Colorado.

BE IT FURTHER ORDAINED, that pursuant to C.R.S. § 30-15-405, this Ordinance shall become effective upon adoption and shall remain in effect until repealed.

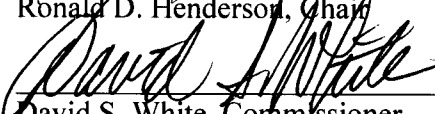
Ordinance was read this 17th day of June, 2013 and again this 15th day of July, 2013.

Adopted this 15th day of July, 2013.

**BOARD OF COUNTY COMMISSIONERS
MONTROSE COUNTY, COLORADO**



Ronald D. Henderson, Chair



David S. White, Commissioner



Gary Ellis, Commissioner

ATTEST as to signatures:

Marie Simons
Marie Simons, Clerk to the Board



ATTEST as to publication and reading:

I, Marie Simons, Montrose County Deputy Clerk, attest that the foregoing ORDINANCE PROHIBITING THE COMMERCIAL CULTIVATION, MANUFACTURE, SALE, AND TESTING OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS IN THE UNINCORPORATED TERRITORY OF MONTROSE COUNTY, ORDINANCE NO.




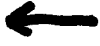
2013-01-~~01-2013~~, was read at a meeting of the Board of County Commissioners and has been published in full in a newspaper of general circulation in compliance with C.R.S. 30-15-406 and published by title in a newspaper of general circulation following adoption in compliance with CRS 30-15-405.

Marie Simons
Marie Simons, Deputy Clerk



ORDINANCE TIME LINE

RECREATIONAL MARIJUANA ORDINANCE

FIRST READING	(CRS 30-15-406)	June 17, 2013	
PUBLISH IN FULL () at least 10 days before adoption ()	(CRS 30-15-406)	June 21, 2013 Montrose Daily Press June 26, 2013 San Miguel Basin Forum	 
SECOND READING & ADOPTION	(CRS 30-15-407)	July 15, 2013	
PUBLISH BY TITLE () (Plus any amendments from 1 st Reading) () (at least 30 days) ()	(CRS 30-15-404) (CRS 30-15-405) (CRS 30-15-405)	August 7, 2013 Montrose Daily Press August 14, 2013 San Miguel Basin Forum	
ORDINANCE GOES INTO EFFECT		September 14, 2013	