

RESOLUTION NO. 42-2010

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

A RESOLUTION TO CERTIFY THE QUESTION OF WHETHER TO PROHIBIT MEDICAL MARIJUANA CENTERS, OPTIONAL PREMISES CULTIVATION OPERATIONS AND MEDICAL MARIJUANA-INFUSED PRODUCTS MANUFACTURING OPERATIONS IN ACCORDANCE WITH HOUSE BILL 1284 AND FURTHER TO EXTEND THE MORATORIUM, ADOPTED APRIL 5, 2010, PROHIBITING IN THE UNINCORPORATED AREA OF MONTROSE COUNTY THE NEW CONSTRUCTION, ALTERATION, OR USE OF ANY BUILDING, STRUCTURE, OR PROPERTY USED FOR THE SALE, DISTRIBUTION, CULTIVATION, AND DISPENSING OF MEDICAL MARIJUANA AND EXTENDING SUCH MORATORIUM TO MEDICAL MARIJUANA CENTERS, OPTIONAL PREMISES CULTIVATION OPERATIONS, AND MEDICAL MARIJUANA-INFUSED PRODUCTS MANUFACTURERS' LICENSES AS SAME ARE DEFINED IN HOUSE BILL 1284 UNTIL SUCH TIME AS AN ELECTION QUESTION IS SUBMITTED TO THE REGISTERED AND ELIGIBLE ELECTORS OF MONTROSE COUNTY ON WHETHER TO PROHIBIT SUCH USES WITHIN THE UNINCORPORATED AREAS OF MONTROSE COUNTY AND IF NOT PROHIBITED TO FURTHER EXTEND THE MORATORIUM TO ALLOW FOR THE ADOPTION OF APPROPRIATE REGULATIONS

WHEREAS, on April 5, 2010, the Board of County Commissioners of the County of Montrose ("Board") adopted Resolution No. 18-2010, entitled "Resolution Concerning Enacting A Temporary Moratorium On The Construction, Alteration, Or Use Of Any Building, Structure, Or Property For The Commercial Growing Or Dispensing Of Medical Marijuana For A Period Of Six (6) Months," pursuant to the statutory authority in C.R.S. 30-28-121 (the "Moratorium Resolution") establishing a six (6) month moratorium on the use, construction, alteration, or reconstruction of any building, structure, or property for medical marijuana dispensaries, medical marijuana growing operations, and all other land uses associated with the dispensing or growing of medical marijuana; and

WHEREAS, subsequent to the adoption of the Moratorium Resolution, the Colorado Legislature considered and adopted legislation in H.B. 1284 which in pertinent part added a new Article 43.3 to Title 12 of the Colorado Revised Statutes, to be known as the Colorado Medical Marijuana Code; and

WHEREAS, the Colorado Medical Marijuana Code clarifies Colorado law regarding the scope and extent of Amendment 20 to the Colorado Constitution (“Article XVIII, Section 14”), and defines a “Medical Marijuana Center,” an “Optional Premises Cultivation Operation” and a “Medical Marijuana-Infused Products Manufacturers’ License” and authorizes these as mechanisms for the regulated sale, distribution, cultivation and dispensing of medical marijuana; and

WHEREAS, C.R.S. 12-43.3-106 of the Colorado Medical Marijuana Code specifically provides that the operation of this article concerning medical marijuana “shall be statewide unless a county [or other specified local government] by either a majority of the registered electors of *** the county *** voting at a regular election or a special election *** or a majority of the members of the governing board for the *** county, *** vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses”; and

WHEREAS, the Board intends to present to registered and eligible electors of Montrose County at the general election on November 2, 2010, the question of whether to prohibit Medical Marijuana Centers, Optional Premises Cultivation Operations, and Medical Marijuana-Infused Products Manufacturers’ Licenses; and

WHEREAS, C.R.S. 12-43.3-1003(2)(a) authorizes a county to adopt prior to July 1, 2011 a resolution licensing, regulating or prohibiting the cultivation or sale of medical marijuana; and

WHEREAS, C.R.S. 12-43.3-310 of the Colorado Medical Marijuana Code further specifically authorizes a county to prohibit operations and enact reasonable regulations or other restrictions applicable medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses based on local government zoning, health, safety, and public welfare laws for the distribution of medical marijuana that are more restrictive than the regulations enacted in H.B 1284; and

WHEREAS, C.R.S. 12-43.3-308(1)(c) of the Colorado Medical Marijuana Code also provides that the state and local licensing authorities shall not receive or act upon a new application pursuant to the Colorado Medical Marijuana Code “for a location in an area where the cultivation, manufacture, and sale of medical marijuana as contemplated is not permitted under the applicable zoning laws of the municipality, city and county, or county”; and

WHEREAS, C.R.S. 29-20-101, *et seq.* the local government land use control enabling act confers broad authority on local governments to plan for and regulate the use of land within their respective jurisdictions, including among other things the power to regulate the use of land on the basis of the impact thereof on the community or surrounding areas; and

WHEREAS, on August 2, 2010, the Board held a public hearing, advertised and noticed in accordance with Colorado law and County regulation, on whether to extend the Moratorium Resolution through the certification of the results of an election on the question

of whether to prohibit in unincorporated Montrose County medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufactures' licenses and, if not prohibited by vote of the people, whether to extend the moratorium until the earlier of the adoption of local licensing and/or zoning regulations or July 1, 2011; and

WHEREAS, the Board has considered the provisions of the Colorado Medical Marijuana Code, Article XVIII, Section 14 of the Colorado Constitution, and the impact of medical marijuana, Medical Marijuana Centers, Optional Premises Cultivation Operations, and Medical Marijuana-Infused Products Manufacturers' Licenses on the health, safety, and welfare of the unincorporated portion of Montrose County and the community and the inhabitants thereof, and has determined as an exercise of its local land use authority that the new construction, alteration, or use of any building, structure, or property used for the sale, distribution, cultivation, and dispensing of medical marijuana and new Medical Marijuana Centers, Optional Premises Cultivation Operations, and Medical Marijuana-Infused Products Manufacturers' Licenses shall be prohibited until such time as an election question is submitted to the registered and eligible electors of Montrose County on whether to prohibit such uses within the unincorporated boundaries of Montrose County, Colorado and, if by vote of the people, is not prohibited, the Board has determined that such moratorium on the establishment of any new Medical Marijuana Centers, Optional Premises Cultivation Operations, and Medical Marijuana-Infused Products Manufacturers' Licenses should be extended to enable the Board to adopt appropriate zoning and/or licensing regulations to address the impacts of such businesses; and

WHEREAS, the Board further recognizes the protections afforded by Article XVIII, Section 14 of the Colorado Constitution, and desires to affirm the ability of patients and primary caregivers to otherwise be afforded the protections of Article XVIII, Section 14 of the Colorado Constitution and C.R.S. 25-1.5-106, as the same may be amended from time to time; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of the County of Montrose, State of Colorado, that:

1. Effective immediately the Moratorium Resolution on the new construction, alteration, or use of any building, structure, or property used for the sale, distribution, cultivation, and dispensing of medical marijuana shall be extended until such time as an election question is submitted to the registered electors of Montrose County at the general election to be held November 2, 2010 on whether to prohibit such uses and through the certification of the results of such election question, in compliance with and pursuant to C.R.S. 30-28-121, C.R.S. 29-20-101, *et seq.*, C.R.S. 12-43.3-103(2)(a), and C.R.S. 12-43.3-310.

2. Effective immediately the Moratorium Resolution shall be extended to prohibit the new construction, alteration, or use of any building, structure, or property used for any new Medical Marijuana Center, Optional Premises Cultivation Operation, and Medical Marijuana-Infused Products Manufacturers' License, as such operations are defined within the

meaning of in H.B. 1284, until such time as an election question is submitted to the registered and eligible electors of Montrose County on whether to prohibit such uses within the unincorporated boundaries of Montrose County, Colorado, in compliance with and pursuant to C.R.S. 30-28-121, C.R.S. 29-20-101, *et seq.*, C.R.S. 12-43.3-103(2)(a), and C.R.S. 12-43.3-310.

3. The Board authorizes and directs the Montrose County Clerk and Recorder to submit the following question to a vote of the registered and eligible electors of Montrose County, Colorado, at the regular election on November 2, 2010:

MEDICAL MARIJUANA BALLOT QUESTION:

PURSUANT TO THE AUTHORITY GRANTED BY C.R.S. SECTION 12-43.3-106, SHALL MEDICAL MARIJUANA CENTERS, OPTIONAL PREMISES CULTIVATION OPERATIONS AND MEDICAL MARIJUANA-INFUSED PRODUCTS MANUFACTURERS' LICENSES, AS THOSE OPERATIONS ARE DEFINED IN C.R.S. SECTION 12-43.3-104, BE PROHIBITED WITHIN THE UNINCORPORATED BOUNDARIES OF MONTROSE COUNTY, COLORADO?

Yes _____

No _____

4. If the majority of the registered and eligible electors of Montrose County does not vote to prohibit Medical Marijuana Centers, Optional Premises Cultivation Operations and Medical Marijuana-Infused Products Manufacturers' Licenses, then County staff is directed to continue to work on and prepare for consideration by the Planning Commission and the Board draft zoning regulations for the siting and location of such facilities and staff is further directed to prepare for the Board's consideration such draft local licensing regulations, in accordance with H.B. 1284, as staff feels necessary in view of the state licensing process set forth in H.B. 1284 for the licensing of all such facilities.

5. If the majority of the registered and eligible electors of Montrose County does not vote to prohibit Medical Marijuana Centers, Optional Premises Cultivation Operations and Medical Marijuana-Infused Products Manufacturers' Licenses, pending the adoption of zoning and/or local licensing regulations, the moratorium on new such facilities as extended in paragraph numbers 1 and 2 above shall be further extended until such zoning and/or local licensing regulations have been established by the Board, but in no event would such moratorium extend beyond July 1, 2011 in compliance with and pursuant to C.R.S. 30-28-121, C.R.S. 29-20-101, *et seq.*, C.R.S. 12-43.3-103(2)(a), and C.R.S. 12-43.3-310.

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

PASSED AND ADOPTED this 2nd day of August 2010, in Montrose, Montrose
County, Colorado.

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

BY: *Ronald D. Henderson*
Ronald D. Henderson, Chair

BY: *David S. White*
David S. White, Commissioner

BY: *assent*
Gary Ellis, Commissioner

ATTEST:

Marie Simons
Marie Simons, Deputy Clerk

