

GARFIELD COUNTY ORDINANCE NO. 2013-2

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

WHEREAS, the Board of County Commissioners (“Board”) has the authority to exercise all County powers for the unincorporated areas of Garfield County pursuant to Colorado Revised Statute (C.R.S.) §§ 30-11-103 and 30-15-401; and

WHEREAS, on November 6, 2012, the voters of Colorado approved the adoption of Amendment 64, Personal Use and Regulation of Marijuana, which has been added as Article XVIII, Section 16 of the Colorado Constitution; and

WHEREAS, Amendment 64 provides for the state licensing and regulation of recreational marijuana establishments, including marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores; and

WHEREAS, Amendment 64, paragraph 5(f) allows a locality, which includes a county, to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores through the enactment of an ordinance; and

WHEREAS, Amendment 64 conflicts with federal law, as the possession, cultivation, sale and use of marijuana remain illegal under the federal Controlled Substances Act and its implementing regulations; and

WHEREAS, the Board finds the operation of marijuana establishments provided for in Amendment 64 presents an immediate threat to the public health, safety and welfare by making marijuana more readily available in the community and facilitating its recreational use; and

WHEREAS, the licensing and operation of medical marijuana centers, medical marijuana infused products manufacturing and optional premises cultivation operations pursuant to the Colorado Medical Marijuana Code and the Garfield County Regulations shall be unaffected by this Ordinance.

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

Section 1: Purpose.

The purpose of this Ordinance is to promote the public health, safety and welfare throughout Garfield County, Colorado by prohibiting the operation of recreational or non-medical marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores.

Section 2: Authority.

This Ordinance is authorized pursuant to Amendment 64 (Article XVIII, Section 16, paragraph 5(f) of the Colorado Constitution).

Section 3: Applicability.

This Ordinance shall apply throughout the unincorporated area of Garfield County, including, but not limited to public and state lands. This Ordinance shall not limit application and enforcement of any statutes of the State of Colorado, but shall be in addition thereto.

Section 4: 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 marijuana or 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, cultivation, 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 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.

- (4) "Marijuana establishment" means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.
- (5) "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.
- (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 licensed by a state agency 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 Article XVIII of the Colorado Constitution and the Colorado Medical Marijuana Code, codified at C.R.S. § 12-43.3-101 *et. seq.*
- (9) "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 products to consumers.

Section 5: Marijuana Establishments Prohibited.

The operation of marijuana or marijuana facilities that are or may be licensed or established pursuant to Amendment 64 (Colorado Constitution, Article XVIII, Section 16), including marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores, is hereby prohibited.

Section 6: 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 7: Enforcement.

Pursuant to C.R.S. § 30-15-402.5(2), as amended, peace officers, whether or not certified under part 3 of Article 31 of Title 24, C.R.S., as amended, are hereby designated to enforce this Ordinance. Pursuant to § 30-15-402(1), C.R.S., as amended, any arresting peace officer may give the person arrested for violating this Ordinance a penalty

assessment notice pursuant to § 16-2-201, C. R. S., as amended. 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 8: Violation.

It shall be unlawful for any person to violate any provision of this Ordinance. Pursuant to C.R.S. § 30-15-402(1) any person who violates this Ordinance commits a class 2 petty offense. The County may seek an injunction or other equitable relief in court to stop or prevent any violation of this Ordinance and may recover the costs of such action.

Section 9: Disposition of Fines and Forfeitures.

The fine for a violation of this Ordinance shall be one thousand dollars (\$1000) for the first day of violation and one thousand dollars (\$1000) per day for each day thereafter that the violation continues (those days are each declared to be a separate violation). In addition, any violation of this Ordinance shall be subject to all applicable surcharges set forth in § 30-15-402, C.R.S., as amended. Unless otherwise provided by law, all fines and penalties for the violation of this Ordinance shall be paid into the treasury of Garfield County.

Section 10: Safety Clause.

The Board hereby finds, determines and declares that this Ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the order, comfort, welfare and convenience of the citizens of Garfield County, Colorado.

Section 11: Publication and Effective Date.

The foregoing text is the authentic text of Garfield County Ordinance No. 13-02. The first reading of the Ordinance took place on July 15, 2013. The initial publication of this Ordinance was done on August 1, 2013 in the Citizen Telegram, Rifle, Colorado.

This Ordinance shall take effect on October 1, 2013.

ADOPTED this _____ day of _____, 2013.

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF
GARFIELD COUNTY, STATE OF COLORADO

Clerk to the Board

By: _____
Chairperson

Upon motion duly made and seconded the foregoing Ordinance was adopted/not adopted by the following vote:

<u>Tom Jankovsky</u>	Aye/Nay
<u>Mike Samson</u>	Aye/Nay
<u>John Martin</u>	Aye/Nay
Commissioners	