

ORDINANCE NO. 1
(Series 2011)

**AN ORDINANCE OF THE TOWN OF LAKE CITY, COLORADO ADDING
A NEW SECTION 12.1-24 TO THE LAKE CITY MUNICIPAL CODE WHICH
PROHIBITS THE ESTABLISHMENT AND OPERATION OF CERTAIN
MEDICAL MARIJUANA BUSINESSES WITHIN THE TOWN UNDER
AUTHORITY CONFERRED BY C.R.S. 12-43-3-101 *ET SEQ.***

Recitals

WHEREAS, in November of 2000, Colorado voters approved Amendment 20 (Article XVIII, Section 14) to the Colorado Constitution, which Amendment authorizes the possession and use of limited quantities of marijuana by qualified patients and primary caregivers as part of medical therapies.

WHEREAS, on December 30, 2009, the Board of Trustees of Lake City, Colorado, in an exercise of the Town's police powers, adopted ordinance No. 5 (Series 2009) which declared a six-month moratorium on the licensing, permitting and operation of new businesses within the territorial limits of Lake City that deal in marijuana and products containing marijuana used for medical purposes. On June 16, 2010 the moratorium was effectively extended for an additional twelve month period through June 30, 2011 by Ordinance No. 2 (Series 2010).

WHEREAS, in June of 2010, the Governor of the State of Colorado signed into law House Bill 10-1284 (C.R.S. 12-43.3-101 *et seq.*) which, among other things, authorizes Colorado municipalities to adopt ordinances that license, regulate, and generally permit certain businesses engaged in the cultivation, production and/or sale of marijuana and related products used for medical purposes. The same legislation allows municipalities, either by a majority of the registered electors voting at a regular election or by a majority of the members of their legislative bodies, to exercise local options to prohibit all medical marijuana centers, optional premises cultivation operations, medical marijuana product manufacturing and other similar businesses that engage in cultivation production, sale and distribution of marijuana and related products for medical purposes other than as expressly authorized by the aforementioned Amendment to the Colorado Constitution.

WHEREAS, on November 2, 2010 a majority of Lake City's then voting eligible electors voted in favor of exercising the Town's local municipal option to prohibit operation of the aforementioned business activities involving the cultivation, sale, possession and distribution of marijuana and products containing marijuana, and the Board of Trustees now finds it proper to implement the will of the local electors to the extent it is not in conflict with the aforementioned Amendment to the Colorado Constitution.

WHEREAS, the Board of Trustees of Lake City, Colorado specifically finds, based on the results of the aforementioned local election, that the majority of Lake City's participating voters believe the expansion of medical marijuana business operations beyond that which is contemplated and allowed by the said Amendment to the Colorado Constitution would be adverse to the public health, safety and welfare.

WHEREAS, only one business is presently operating as a medical marijuana center, optional premises cultivation operation and/or medical marijuana manufacturer within the territorial limits of the Town. Such business had been operating before the time of first enactment of the Town's moratorium on such businesses under Ordinance No. 5 (Series 2009) by the Town's Board of Trustees, but is nevertheless subject to legislation which properly invokes the Town's police power.

Ordinance Provisions

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF LAKE CITY, COLORADO AS FOLLOWS:

A new Section 12.1-24, entitled "Prohibition of Certain Medical Marijuana Businesses and Operations", shall be added to the Lake City Municipal Code to provide as follows:

12.1-24: Prohibition of Certain Marijuana Businesses and Operations.

A. General Provisions. From and after the effect date hereinafter stated, no license to establish, operate, continue to operate or permit to be operated any medical marijuana center, optional premises cultivation operation or medical marijuana infused products manufacturing or sale facility shall be lawful in the Town of Lake City. No person shall thereafter maintain any such business or operation or any other enterprise engaged in the possession, use, cultivation, production, sale or distribution of marijuana or marijuana products other than those which are properly conducted by patients and primary caregivers as expressly allowed by, and specifically conforming with, the provisions of Article XVIII, Section 14 of the Colorado Constitution and related State laws and regulations. (The overall intent of this Section is to fully exercise the Town's local option specifically allowed under C.R.S. 12-43.3-106. No intent to deprive or limit the rights of medical marijuana patients and their primary caregivers established under the Colorado Constitution or related State law and regulations shall be inferred from this Section.)

B. Declaration of Nuisance and Enforcement Remedies. Any violation of this Section 12.1-24 is hereby declared to be a public nuisance subject to injunction and abatement in any lawful manner. In this regard, the Town may pursue any one or more of the following specific civil remedies in addition to all sanctions available through the State of Colorado criminal courts:

1. It may maintain a civil action in any Court of competent jurisdiction to enjoin or abate the nuisance.
2. With a prior Court order, it may enter upon private property on which the nuisance

is being maintained for the purpose of performing all work necessary to abate or eliminate the nuisance. The Town's Municipal Court is hereby expressly empowered to issue orders for entry into private property upon showing of probable cause to believe that a nuisance is being maintained thereon in violation of this Section.

3. In all nuisance abatement or elimination actions properly taken under this Section, the Town shall be entitled to recover all costs that it reasonably incurs for such actions, plus interest at the rate then allowed by law. Such costs which may be recovered by the Town shall include, without limitation, its out-of-pocket expenses, costs attributable to Town employee time and equipment use, attorney fees, and a charge for overhead and administration equal to twenty percent (20%) of the base costs for the abatement or elimination of the specific nuisance. Said costs may be recovered by customary enforcement of a civil judgment which may be collected and foreclosed in any manner provided by law. They may also be certified to the Treasurer of Hinsdale County, Colorado for assessment and collection as delinquent charges in the same manner as taxes upon the property on which the subject nuisance had been maintained.

C. Definitions. As used in this subsection 12.1-24, the following definitions shall apply:

1. The term "marijuana" or "useable form of marijuana" (sometimes spelled "marihuana" or referred to by the scientific name of "*cannabis sativa*") and the terms "medical use", "patient" and "primary caregiver" shall have the same meaning as those terms are defined by said Article XVIII, Section 14(1) of the Colorado Constitution.

2. The terms "medical marijuana", "medical marijuana center", "medical marijuana infused product", "medical marijuana infused product manufacturer" and "optional premises cultivation operation" shall have the same meaning as those terms are defined by C.R.S. 12-43-101 *et seq.*, as supplemented by any regulations lawfully adopted by authority of said Colorado statutes.

3. The term "person" shall mean any natural person, partnership, association, company, corporation, limited liability company or other organization or entity, and shall include a manager, agent, owner, officer or an employee of such organization or entity.

4. The term "possess or possession" shall mean having physical control of a pertinent substance or product controlled by this Section, or control of the premises in which such substance or product is located or having the power and intent to control such substance or product, without regard to whether the one in possession has actual ownership of such substance or product. Possession may be held by more than one person at a time. Direct consumption or use of the pertinent substance or product is not required for purposes of determining its possession.

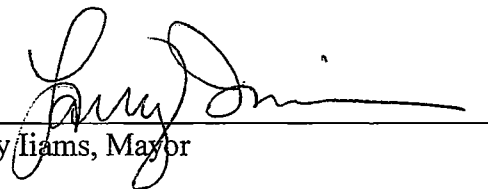
5. The term "produce or production" means (a) all phases of growth of marijuana from seed to harvest, (b) combining marijuana with any other substance for sale or distribution, including storage and packaging for resale, and (c) preparing, compounding, processing, and encapsulating, packaging, or re-packaging, labeling or re-labeling of any marijuana or its derivatives whether alone or mixed with any amount of any other substance or product.

6. All other pertinent definitions provided in C.R.S. 12-43-3-101 *et seq.* are adopted by this Section 12.1-24 unless expressly stated otherwise herein.

D. Applicability and Effective Date. This Section shall apply to all real property and persons within the Town of Lake City, Colorado. The effective date of this Section shall be June 30, 2011, at which time the Town's moratorium created by Ordinance 5 (Series 2009), and extended by Ordinance 2 (series 2010) shall simultaneously expire. Any medical marijuana business or enterprise that was in operation before the initial enactment of said moratorium may continue to operate lawfully through the date of June 29, 2011.

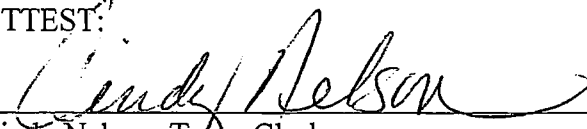
E. Severability. This Section is deemed necessary to preserve the public health, safety and welfare of the residents of Lake City and covers matters of local concern under authority of C.R.S. 12-43.3-101 *et seq.* If any part or provision of this Section is found to be unconstitutional or illegal by any Court of competent jurisdiction, it shall be deemed severed from the remainder of this Section which shall continue in full force and effect.

INTRODUCED, READ AND ADOPTED this 5th day of January, 2011.



Larry Liams, Mayor

ATTEST:



Cindy Nelson, Town Clerk