

**CHAFFEE COUNTY
ORDINANCE NO. 2015-01**

TITLE: AN ORDINANCE EXTENDING UNTIL DECEMBER 31, 2016 THE BAN 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 APPLICATIONS AND LICENSES WITH RESPECT TO CERTAIN EXISTING MARIJUANA ESTABLISHMENTS), INCLUDING THE USE OF LAND FOR SUCH PURPOSE OR PURPOSES.

Recitals

- A. 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.
- B. Amendment 64 permits persons twenty-one years of age and older to possess, use, display, purchase or transport marijuana accessories or one ounce or less of marijuana, to grow limited amounts of marijuana, and manufacture and sell marijuana accessories.
- C. As authorized by Amendment 64, the State Legislature enacted the Colorado Retail Marijuana Code, C.R.S. §§ 12-43.4-101, *et seq.*
- D. 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.
- E. The following provisions also give the County authority to impose temporary bans on such activities:
 - a. The Local Government Land Use Control Enabling Act, C.R.S. § 29-20-101, *et seq.*; C.R.S. § 30-11-101(2) concerning the authority of counties to adopt and enforce ordinances and resolutions regarding health, safety and welfare issues as otherwise prescribed by law;
 - b. C.R.S. § 30-11-107 concerning powers of the Boards of County Commissioners;
 - c. C.R.S. § 30-28-101, *et seq.* concerning the regulation of the use of structures in various zone districts throughout Chaffee County; and
 - d. C.R.S. § 30-28-115 concerning the promotion of the health, safety, convenience, order and/or welfare of the citizenry through the use of land use regulations.
- F. 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.

- G. Pursuant to Ordinance 2014-02, the BoCC has imposed a ban on recreational marijuana establishments, subject to certain exceptions which allow for licensing of retail cultivation and manufacturing establishments in the Industrial Zone. Prior to such ban, licenses were granted to six establishments (two of the six hold both recreational and medical licenses, two hold just medical licenses, one holds just recreational licenses, and one of the six establishments has since relinquished its licenses).
- H. The County continues to receive numerous inquiries regarding the establishment of additional operations relating to cultivating and processing recreational marijuana within the unincorporated areas of Chaffee County.
- I. 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. Issues are developing surrounding marijuana establishments relating to enforcement of local and state regulations, monitoring and control of odors and the limited number of industrial zones within unincorporated Chaffee County.
- J. Given the uncertainties under federal law, coupled with the number of potential new marijuana establishments in the County and enforcement, monitoring and control issues, the cultivation and processing of marijuana within Chaffee County presents regulatory issues and questions that the County's current rules, regulations and ordinances do not adequately address.
- K. As a result of such concerns and uncertainties, pursuant to Chaffee County Ordinance 2014-01, the Chaffee County Board of County Commissioners (the "BoCC") imposed a temporary moratorium on new retail marijuana cultivation or manufacturing facilities until the above described uncertainties can be adequately addressed in an amendment to the existing regulations.
- L. Given the ever-changing legal landscape regarding marijuana laws and regulations, the County needs additional time to adequately address the issues.
- M. Because the County does not have adequate current regulations with respect to the potential number of marijuana establishments and the current concerns regarding odor and uncertainties regarding the enforcement and effect of federal law, the County will suffer irreparable harm if the temporary moratorium on the establishment of new businesses is not extended.

- N. The duration of the ban imposed by this Ordinance is reasonable in length and is no longer than required for the County to properly investigate issues surrounding the cultivation and processing of marijuana under applicable law and if appropriate, adopt and implement any regulations deemed necessary with respect to businesses that cultivate, process and dispense marijuana.

- O. An amendment to the ban imposed by Ordinance 2014-02 by extending the ban for one year 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. Except as set out in Ordinance 2014-02, a ban is hereby imposed until such date as the BoCC duly adopts regulations by ordinance or December 31, 2016, 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 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, safety and welfare and shall be effective upon adoption.

Section 5. Except with respect to the extension of the ban, all remaining provisions of Ordinance 2014-02 shall remain in full force and effect.

ADOPTED AND APPROVED by the Chaffee County Board of County Commissioners on December 15, 2015.

BOARD OF COUNTY COMMISSIONERS

[Acting] Chairman

424252

424252 12/18/2015 8:10 AM ORD Lori A Mitchell
4 of 4 R\$0 D\$0 N\$0 S\$0 M\$0 E\$0 Chaffee County Clerk

The vote on the above Resolution was as follows:

Commissioner Frank F. Holman yes

Commissioner Dennis Giese yes

Commissioner Dave Potts yes

STATE OF COLORADO, CHAFFEE COUNTY
ATTEST:

The above is a true and correct record of Ordinance 2015-01 duly adopted by the Chaffee County Board of County Commissioners by a 3-0 vote at a regular meeting, properly noticed and held on December 15, 2015, at least ten days following introduction and reading of the proposed ordinance on November 30, 2015, and publication of the proposed ordinance on December 3, 2015 in *The Mountain Mail* and the *Chaffee County Times*.



Chaffee County Clerk

Notice of Adopted Ordinance Published in *The Mountain Mail* and the *Chaffee County Times* on December 24,