

ORDINANCE NO. 2013-01

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO PROHIBITING THE OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, OR RETAIL MARIJUANA STORES

WHEREAS, in November, 2012, the voters of Colorado approved an amendment to the Colorado Constitution, amending Article XVIII by adding a new section 16, providing for the regulation of marijuana, permitting individuals over the age of twenty-one to consume and possess limited amounts of marijuana, and providing for the licensing of cultivation facilities, product manufacturing facilities, testing facilities, and retail stores, and permitting local governments to regulate or prohibit such facilities; and

WHEREAS, the General Assembly of Colorado has enacted some legislation during the 2013 legislative session implementing Article XVIII, Section 16 of the Colorado constitution, but state regulations contemplated by Section 16 and directed by legislation have not yet been adopted, thus providing guidance for local governments as to how state regulations will be implemented and enforced, or what resources may be required of local governments to implement and enforce; and

WHEREAS, 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); and

WHEREAS, there may be disputes resulting in lengthy litigation involving the potential conflicts, and ramifications of such conflicts, between the state constitution and federal law, which disputes and litigation can be expected to consume significant time and financial resources of the parties involved; and

WHEREAS, uncertainty regarding conflicts with federal law have ramifications for Ouray County, including the potential for loss of federal grants and funds, and other unknown consequences; and

WHEREAS, the Board finds it to be in the best interests of the County to not permit activities or land uses which may result in disputes or litigation regarding federal law that could result in diversion of limited resources; and

WHEREAS, the Board desires to adopt this ordinance prohibiting the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores.

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

Section 1. Title.

This Ordinance shall be known and referred to as the "Ouray County Marijuana Facilities Prohibition Ordinance" and may be cited and referenced as such.

Section 2. Authority.

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

Section 3. Purpose.

The Board of County Commissioners of Ouray County, Colorado, finds and declares that the prohibition of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana

testing facilities, and retail marijuana stores is permitted by the Colorado Constitution, Article XVIII, Section 16, and is in the best interests of the county to prevent unknown and unintended consequences, including the diversion of limited resources for litigation.

Section 4. Scope of Ordinance.

This Ordinance shall apply within the unincorporated territory of Ouray County, Colorado, but does not apply to medical marijuana facilities in existence on or before May 11, 2011, as provided by Resolution 2011-021, or as such facilities may be licensed during the pendency of this Ordinance, but does not authorize any expansion of these existing non-conforming facilities or uses beyond the duration of this Ordinance. For those medical marijuana facilities in existence on or before May 11, 2011, as provided by Resolution 2011-021, or as such facilities may be licensed during the pendency of this Ordinance, the "Local Licensing Authority" as that term is defined under Colorado Constitution, Article XVIII, Section 16 shall be the person or entity in Ouray County charged with planning approvals, zoning approvals, business approvals, or any other party or entity designated by the Board.

Section 5. 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.

Section 6. Prohibition of Marijuana Facilities.

Except as otherwise provided herein, pursuant to Article XVIII, Section 16, 5.(f) of the Colorado constitution, the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and marijuana retail stores are prohibited.

Section 7. Violation.

It shall be unlawful for any person to violate any provision of this Ordinance.

Section 8. Enforcement and Penalties

The Board may seek an injunction or other equitable relief in court to enjoin any violation of this Ordinance and may recover the costs of such actions. The County may seek such criminal or civil penalties as are authorized by Colorado law, including as provided in C.R.S. 30-15-402. Each day of violation may be considered a separate violation. Each violation may result in a fine up to \$1,000.

The Ouray County Sheriff shall enforce any criminal penalties as may be authorized under Colorado law. Except as may otherwise be provided by Colorado law, all prosecutions for violations of this Ordinance shall be by the Seventh Judicial District, District Attorney.

The remedies available under Colorado law for violation of this Ordinance shall be cumulative and in addition to any other remedy which may be available to the Board or the County. Nothing contained herein shall be construed to preclude the Board from seeking such other remedies in addition to, or in lieu of, the legal remedies granted herein.

Section 9. Severability.

If a Court of competent jurisdiction shall hold any part of this Ordinance void or unconstitutional, such part shall be deemed severable, and the invalidity thereof shall not affect the remaining provisions of the Ordinance.

Section 10. Disposition of Fines, Fees and Forfeitures.

Unless otherwise provided by law all fines and penalties, and the surcharges thereon, for the violation of this Ordinance shall be paid into the treasury of Ouray County.

Section 11. Repeal Upon Review.

This Ordinance will expire on October 15, 2014, unless repealed or amended prior to that date.

Section 12. Effective Date.

This Ordinance shall be effective on SEPTEMBER 28, 2013 and shall remain in effect until such time as this Ordinance is amended, temporarily suspended or repealed, as provided in Section 11.

Section 13. Interpretation.

This Ordinance shall be so interpreted and construed as to effectuate its general purpose. Section headings of the Ordinance shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or extent of the provisions of any article or section thereof.

Section 14. Certification.

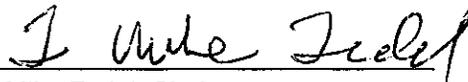
The Ouray County Clerk and Recorder shall certify to the passage of this Ordinance and make not less than three copies of the adopted Ordinance available for inspection by the public during regular business hours.

Section 15. Nothing herein shall be interpreted or construed as infringing upon the rights of individuals as provided in the Colorado Constitution Article XVIII, Section 16,(3).

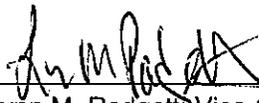
Section 16. Nothing herein shall be interpreted or construed as creating any new rights or entitlements for non-conforming uses or facilities beyond the term of this Ordinance.

INTRODUCED AND FIRST READING on August 14, 2013 and first reading continued until August 27, 2013 and on such date ordered published in the *OURAY COUNTY PLAINDEALER*.
Published on August 15, 2013.

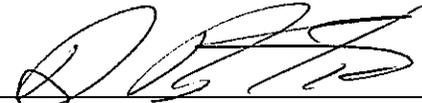
**Board of County Commissioners
Ouray County, Colorado**



F. Mike Fedel, Chair



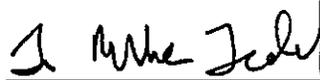
Lynn M. Padgett, Vice-Chair



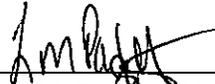
Don Batchelder, Commissioner Member

ADOPTED ON SECOND AND FINAL READING on AUGUST 27, 2013.

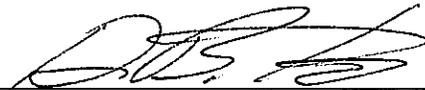
Board of County Commissioners
Ouray County, Colorado



F. Mike Fedel, Chair



Lynn M. Padgett, Vice-Chair



Don Batchelder, Commissioner Member

CERTIFICATION BY OURAY COUNTY CLERK AND RECORDER:

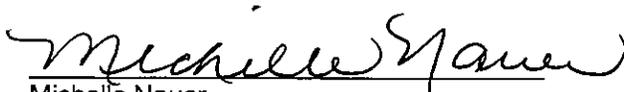
I, Michelle Nauer, Clerk and Recorder of Ouray County and Clerk to the Board of County Commissioners, do hereby attest and certify that this Ordinance was

INTRODUCED AND READ ON AUGUST 14, 2013 AND CONTINUED TO AUGUST 27, 2013, AND READ AND ORDERED PUBLISHED AT SUCH REGULAR MEETING OF THE BOARD OF COUNTY COMMISSIONERS.

THE ORDINANCE WAS PUBLISHED IN FULL IN THE *OURAY COUNTY PLAINDEALER* ON AUGUST 15, 2013.

ADOPTED AND APPROVED BY THE BOARD OF COUNTY COMMISSIONERS ON AUGUST 27, 2013, AFTER THE SECOND AND FINAL READING OF THE ORDINANCE.

PUBLISHED AFTER ADOPTION IN THE *OURAY COUNTY PLAINDEALER* ON THE 29th DAY OF AUGUST, 2013.



Michelle Nauer
Clerk and County Recorder