

ORDINANCE NO. 2017-01

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

AN ORDINANCE:

- (1) CONTINUING THE PROHIBITION ON THE OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, RETAIL MARIJUANA STORES AND MEDICAL MARIJUANA CENTERS, WITHIN UNINCORPORATED MONTROSE COUNTY; and**
- (2) LIMITING THE CULTIVATION, GROWTH, OR PRODUCTION OF MARIJUANA PLANTS ON RESIDENTIAL PROPERTY WITHIN UNINCORPORATED MONTROSE COUNTY TO A MAXIMUM OF TWELVE MARIJUANA PLANTS PER RESIDENTIAL PROPERTY REGARDLESS OF THE NUMBER OF MEDICAL PATIENTS, MEDICAL CAREGIVERS, OR RECREATIONAL PERSONAL USE GROWERS OCCUPYING THE RESIDENTIAL PROPERTY; and**
- (3) REPEALING AND REPLACING ORDINANCE NO. 2013-01 AND RESOLUTION NO. 60-2012.**

WHEREAS, the Board of County Commissioners is empowered under the Colorado Constitution Article 18, Section 16(5)(f), to regulate and prohibit or allow, in whole or part or on condition, marijuana establishments, as defined therein, within the unincorporated areas of Montrose County; and

WHEREAS, the Board of County Commissioners is empowered under the Colorado Constitution Article 18, Section 14, C.R.S. §12-43.4-101 *et seq.*, and C.R.S. §12-43.3-101 *et seq.*, to regulate and prohibit or allow, in whole or part or on condition, the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturer licenses, as defined therein, (collectively referred to herein as “medical marijuana operations”) within the unincorporated areas of Montrose County; and

WHEREAS, the Board of County Commissioners is vested with authority under C.R.S. §§30-11-101(2) and 30-15-401(1) to adopt and enforce ordinances required to preserve and promote the public health, safety and welfare; and

WHEREAS, the possession and sale of marijuana remains illegal under federal law; and

WHEREAS, in accordance with C.R.S. §12-43.3-106, the Board certified a ballot question of whether to allow commercial medical marijuana operations in Montrose County, and, on

November 7, 2010, the voters of Montrose County voted to prohibit medical marijuana cultivation, medical marijuana infused product manufacturing, and medical marijuana dispensary operations in the unincorporated territory of Montrose County; and

WHEREAS, on December 3, 2012, the Board of County Commissioners for Montrose County ("the Board") enacted Resolution No. 60-2012, declaring a moratorium on the use, construction, alteration, or reconstruction of any building, structure, or property for marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and marijuana retail stores, and all other land uses associated with the cultivation, manufacture, and sale of marijuana or marijuana products; and

WHEREAS, on July 15, 2013, the Board of County Commissioners adopted on second reading Ordinance No. 2013-01 Prohibiting the Commercial Cultivation, Manufacture, Sale, and Testing of Retail Marijuana and Retail Marijuana Products in the Unincorporated Territory of Montrose County; and,

WHEREAS, it is the finding of this Board that continuing the prohibition on all types of retail marijuana establishments as that term is defined in Colorado Constitution Article 18, Section 16(2) and medical marijuana centers as defined herein, with the exception of a facility established prior to April 5, 2010, within the unincorporated areas of Montrose County, is in the interest of the public health, safety, and welfare of the residents of Montrose County, and is consistent with the will of Montrose County voters; and

WHEREAS, Colorado H.B. 17-1220, which was signed into law June 8, 2017, and will take effect on January 1, 2018, limits the number of marijuana plants that can be cultivated, grown, or produced on residential property to a maximum of twelve (12) plants, regardless of whether the plants are for medical or recreational use, and regardless of the number of persons residing temporarily or permanently at the residential property, subject to the discretionary power of counties and municipalities to allow up to twenty-four (24) plants if certain requirements enumerated in H.B. 17-1220 are met; and

WHEREAS, the Board finds that large-scale marijuana cultivation sites in residential properties pose significant public safety risks and nuisance issues, including but not limited to fire hazards, water damage, mold, noxious odors, lowered property values and the risk of becoming a target for criminal activity; and

WHEREAS, pursuant to the recited authority herein, the Board desires to implement the H.B. 17-1220 limitations on residential marijuana grows in order to protect and promote the public health, safety and welfare of all Montrose County residents; and

WHEREAS, in accordance with C.R.S. §30-15-406, on _____, the Board published the full text of this Ordinance in the Montrose Daily Press and the San Miguel Basin Forum, and the first reading of this Ordinance was held on _____, at a duly noticed, regular public meeting of this Board.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
COMMISSIONERS OF MONTROSE COUNTY:**

**SECTION I
PURPOSE**

The purpose of this Ordinance is to promote the general public, health, safety, and welfare throughout Montrose County by (1) prohibiting all retail marijuana establishments, including the commercial cultivation, manufacture, sale, and testing of marijuana or marijuana products, and (2) limiting the number of marijuana plants that may be grown on residential property throughout the unincorporated territory of Montrose County, Colorado.

**SECTION II
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, C.R.S. §12-43.3-101, et seq., C.R.S. 12-43.4-101, et seq., and in the pertinent regulations governing medical and retail marijuana adopted by the Colorado Department of Revenue, as may be revised from time to time. 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 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 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.
- (3) *"MARIJUANA ESTABLISHMENT"* means a marijuana cultivation facility, marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.
- (4) *"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.

- (5) *"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.
- (6) *"MARIJUANA TESTING FACILITY"* means an entity licensed to analyze and certify the safety and potency of marijuana.
- (7) *"MEDICAL MARIJUANA CENTER"* means an entity licensed by a state agency to sell marijuana and marijuana products pursuant to Section 14 of this Article [Colo. Const. Art. XVIII] and the Colorado Medical Marijuana Code [C.R.S. §12-43.3-101, *et seq.*]
- (8) *"RESIDENTIAL PROPERTY"* means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation. "Residential Property" also includes the real property surrounding a structure, owned in common with the structure, that includes one or more single units providing complete independent living facilities.
- (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 and marijuana products to consumers.

SECTION III SCOPE AND APPLICABILITY

3.1 This Ordinance shall apply throughout the unincorporated areas of Montrose County, including but not limited to public and state lands. This ordinance shall in no way limit application and enforcement of any statutes of the State of Colorado but shall be in addition thereto.

3.2 If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of County Commissioners hereby declares that it would have passed this Ordinance and each part or parts hereof, irrespective of the fact that any one part or parts be declared invalid.

3.3 The plant count limitations for residential property marijuana growers contained in Section 4.1.4 herein, will become effective on January 1, 2018.

3.4 This Ordinance repeals and replaces prior Ordinance No. 2013-01 and Resolution No. 60-2012. All other ordinances and/or resolutions, or parts of ordinances and/or resolutions, inconsistent with provisions of this ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done

or committed in violation of any ordinance hereby repealed prior to the effective date of this ordinance.

SECTION IV PROHIBITIONS

4.1 The following acts are prohibited throughout the unincorporated areas of Montrose County, shall constitute a violation of this Ordinance, and shall be subject to the remedies and penalties provided for in this Ordinance.

4.1.1 Maintaining or operating a “marijuana establishment” as that term is defined above in Section II.

4.1.2 Maintaining or operating a “medical marijuana center” as that term is defined above in Section II.

4.1.3 The commercial use of any building, structure, or property for the cultivation, manufacture, sale, or testing of marijuana and marijuana products.

4.1.4 The use of any “residential property” as that term is defined above in Section II, for the cultivation of more than twelve (12) marijuana plants regardless of whether the plants are for medical or recreational use, and regardless of the number of medical patients, medical caregivers, and/or recreational personal use growers occupying the specific residential property.

4.2 This Ordinance shall not apply to individual possession or use of marijuana, or marijuana products, and shall not apply to residential cultivation of twelve (12) or fewer marijuana plants by patients, caregivers or recreational users, so long as the possession, use and/or cultivation is otherwise in accordance with the provisions of the Colorado Constitution and applicable State laws and regulations.

4.3 This Ordinance shall not apply to any existing medical marijuana business established within Montrose County prior to April 5, 2010 and operating in compliance with the law of the State of Colorado.

SECTION V ENFORCEMENT

5.1 This Ordinance shall be enforced by the Montrose County Sheriff.

5.2 The Board of County Commissioners may seek an injunction or other equitable relief in a court of appropriate jurisdiction to enjoin any violation of this Ordinance and may recover costs of any such action.

5.2 The Board hereby designates the Montrose County Attorney or his/her designee as the County's legal representative in the enforcement of the provisions of this Ordinance in a court of applicable jurisdiction. In the event the Montrose County Attorney or his/her designee cannot represent Montrose County or the Board deems it otherwise appropriate, the Board may appoint the District Attorney of the Seventh Judicial District to perform such legal enforcement duties in lieu of the County Attorney.

5.3 This Ordinance shall apply within the unincorporated territory of Montrose County. This ordinance shall in no way limit application and enforcement of any statutes of the State of Colorado but shall be in addition thereto.

5.4 The County may seek such criminal or civil penalties for the violation of this Ordinance as are authorized by Colorado law, including but not limited to those provided at C.R.S. §30-15-402. Unless otherwise provided by law, all penalties and surcharges therein for the violation of this ordinance shall be paid into the treasury of Montrose County. The fine for a first offense, and for any subsequent offense, shall be one thousand dollars (\$1,000.00) per violation, and each day shall be deemed a separate violation.

SECTION VI ADDITIONAL REMEDIES

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

BE IT FURTHER ORDAINED, that the Board of County Commissioners of Montrose County, Colorado, does hereby adopt the foregoing Ordinance continuing the prohibition of retail marijuana establishments and medical marijuana centers and limiting the number of plants that patients, caregivers and recreational users may grow on any residential property in the unincorporated areas of Montrose County, Colorado.

BE IT FURTHER ORDAINED, that the Board hereby finds, determines and declares that this Ordinance is necessary for the immediate preservation of the public health, safety, and welfare of the residents of Montrose County, Colorado.


BE IT FURTHER ORDAINED, that pursuant to C.R.S. § 30-15-405, this Ordinance shall become effective upon adoption and shall remain in effect until repealed.

Ordinance was read this 4th day of October, 2017, and again this ___ day of _____, 2017.

Adopted this _____ day of _____, 2017.

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

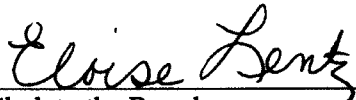

Keith Caddy, Chairman

~~at 10:15~~ 
Roger Rash, Commissioner




Glen Davis, Commissioner

ATTEST as to signatures:


Clerk to the Board



ATTEST as to publication and reading:

I, Eloise Lentz, Montrose County Deputy Clerk, attest that the foregoing ORDINANCE NO. 2017-81 was read at a meeting of the Board of County Commissioners and has been published in full in a newspaper of general circulation in compliance with C.R.S. §30-15-406 and published by title in a newspaper of general circulation following adoption in compliance with C.R.S. §30-15-405.

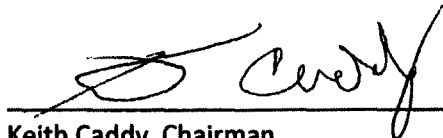
(SEAL)




Montrose County Deputy Clerk

APPROVED AND ADOPTED Second and final reading, this the 8th day of November, 2017.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF MONTROSE, COLORADO



Keith Caddy, Chairman



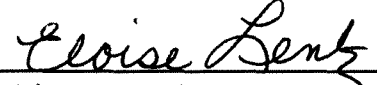
Roger Rash, Vice-Chairman



Glen Davis, Commissioner



ATTEST:



Clerk/Deputy Clerk to the Board

