

RESOLUTION NO. 60-2012

RESOLUTION
Of
The Board of County Commissioners for Montrose County, Colorado
To
Enact A Temporary Moratorium
On The Construction,
Alteration, Or Use Of Any Building, Structure, Or Real or Personal Property
For The Commercial Growing Or Dispensing Of Marijuana
For A Period Of Six (6) Months

WHEREAS, on November 6, 2012, the majority of the voters of the State of Colorado approved Amendment 64 to enact Article XVIII, Section 16 ("Amendment 64"), amending the Constitution of the State of Colorado to legalize the cultivation, possession, sale, and recreational use of marijuana for persons aged 21 and older subject to the limitations contained in said Amendment 64; and

WHEREAS, Amendment 64 requires the State of Colorado, Department of Revenue, to adopt regulations by July 1, 2013 necessary for the implementation of the Amendment, including procedures for the licensing and regulation of the commercial cultivation and retail distribution of marijuana and marijuana products as provided in the Amendment; and

WHEREAS, Amendment 64 requires that by October 1, 2013 each Colorado County, Municipality, and City and County ("locality") must enact an ordinance or regulation specifying the entity within the locality that is responsible for processing applications submitted for a license to operate a marijuana establishment within the boundaries of the locality and for the issuance of such licenses should the issuance by the locality become necessary because of a failure by the Department of Revenue to adopt regulations or to process and issue licenses; and

WHEREAS, Amendment 64 allows a locality to enact ordinances or regulations, not in conflict with Amendment 64 or legislation enacted pursuant to Amendment 64, governing the time, place, manner, and number of marijuana establishment operations, establishing procedures for issuance, revocation and suspension of licenses, and establishing a schedule of annual operating, licensing, and application fees for such marijuana establishments; and

WHEREAS, Amendment 64 further allows a locality to prohibit the commercial operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and/or marijuana retail stores through the enactment of an ordinance or through an initiated or referred measure, provided that any such initiated or referred measure must appear on a general election ballot during an even numbered year; and

WHEREAS, the current County zoning plan as adopted in the Montrose County Zoning Resolution does not address potentially unique impacts of such marijuana facilities; and

WHEREAS, Amendment 64 does not change federal law prohibiting the possession and sale of marijuana; and

WHEREAS, 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 areas of Montrose County; and

WHEREAS, the Board of County Commissioners for Montrose County ("the Board") desires to fully and fairly consider all potential impacts to the community that would be caused by the commercial operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or marijuana retail stores and to consider whether to exercise its authority under Amendment 64 to prohibit some or all such marijuana facilities in the unincorporated areas of Montrose County or to adopt local ordinances for the local licensing and regulation of such facilities and local zoning regulations for such facilities; and

WHEREAS, the Board finds it is prudent to review any legislation or regulations that are adopted by the State of Colorado and to determine what response the federal government will take relative to Amendment 64 prior to determining how to proceed in Montrose County under Amendment 64; and

WHEREAS, the Board finds that it would be detrimental to the public health, safety, and welfare and to the Board's legislative processes and enforcement authority if commercial marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or marijuana retail stores were opened in any of the unincorporated areas of Montrose County prior to the Board's adoption of an appropriate ordinance as authorized under Amendment 64; and

WHEREAS, Section 30-28-121 Colorado Revised Statutes grants to the Board the authority to impose a moratorium for a period not to exceed six months, without public hearing, prohibiting the use, construction, alteration, or reconstruction of any building, structure, or property for land use operations, such as marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and/or marijuana retail stores, pending the adoption of appropriate regulations to address the impacts of such land uses; and

WHEREAS, the Board finds that it is in the best interests of the public health, safety, and welfare to temporarily prohibit for a period of six (6) month the use, construction, alteration, or reconstruction of any building, structure, or real or personal property for the commercial operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and marijuana retail stores, and all other land uses associated with the commercial cultivation, manufacture, and sale of marijuana or marijuana products.

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

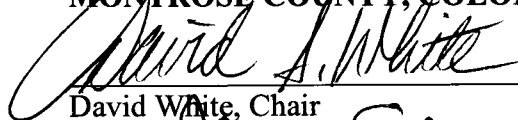
1. That the use, construction, alteration, or reconstruction of any building, structure, or property for the commercial operation of marijuana cultivation facilities, marijuana

product manufacturing facilities, marijuana testing facilities, and marijuana retail stores, and all other land uses associated with the commercial cultivation, manufacture, and sale of marijuana or marijuana products as contemplated by Amendment 64 is hereby prohibited in the unincorporated territory of Montrose County for a period of six (6) months from the effective date of this Resolution.

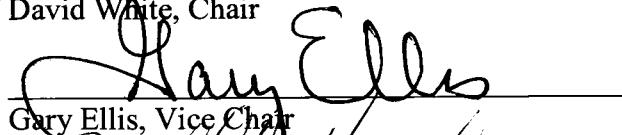
2. That not later than forty-five (45) days prior to the expiration date for this moratorium, Montrose County staff shall report to this Board on the status of any state laws and regulations adopted or proposed for adoption under Amendment 64 and any developments relative to the federal response to Amendment 64, and staff shall conduct research to determine what, if any, amendments to the Montrose County Zoning Resolution would be appropriate relative to Amendment 64.
3. Recognizing that Amendment 64 gives the State until July 1, 2013 to adopt regulations, and gives localities until to October 1, 2013 to adopt local regulations, prior to the expiration of this moratorium, the Board may, in accordance with required legal process, extend this temporary moratorium for up to an additional six (6) months.
4. That this moratorium shall apply only to commercial, nonprofit, collective, or cooperative uses and shall not apply to persons who are certified medical marijuana users for their own individual use and shall not affect existing medical marijuana operations established and in business of record prior to April 5, 2010 within Montrose County.
5. Should any one or more sections or provisions of this Resolution be judicially determined to be invalid or unenforceable, such determination shall not affect, impair or invalidate the remaining sections or provisions of this Resolution, it being the intent of the Board that such invalid or unenforceable provisions are severable.
6. That the moratorium imposed by this Resolution is an emergency measure to preserve the public health, safety, and welfare and shall take effect immediately upon adoption hereof.

Adopted this 3rd day of December, 2012.

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



David White, Chair



Gary Ellis, Vice Chair



Ron Henderson, Commissioner



Marie Simons
Marie Simons, Clerk to the Board