

TOWN OF BUENA VISTA, COLORADO
ORDINANCE NO. 12
(SERIES OF 2010)

AN EMERGENCY ORDINANCE EXTENDING THE
TOWN'S TEMPORARY MORATORIUM ON THE
PROCESSING AND APPROVAL OF ANY APPLICATION
FOR A TOWN OF BUENA VISTA PERMIT OR LICENSE
RELATED TO THE OPERATION OF A BUSINESS THAT
DISTRIBUTES MEDICAL MARIJUANA

WHEREAS, on February 9, 2010, the Town adopted Ordinance No. 2 imposing a temporary moratorium relating to Medical Marijuana Dispensaries;

WHEREAS, the moratorium established by Ordinance No. 2 expires on May 9, 2010, and the Town Board is still investigating the Town's regulatory authority over medical marijuana businesses;

WHEREAS, the Town Board is considering adopting an ordinance regulating Medical Marijuana Dispensaries on April 27, 2010, the same date the Town Board is considering this Ordinance;

WHEREAS, if the proposed ordinance regulating Medical Marijuana Dispensaries is approved by the Town Board, it will be published on May 6, 2010, and effective on June 5, 2010;

WHEREAS, the Town Board desires to avoid any gap between the effective date of the proposed ordinance and the expiration of the current moratorium;

WHEREAS, because approval of the proposed ordinance is uncertain, if the proposed ordinance is not approved, the Town Board desires to extend the current moratorium for an additional ninety (90) days, so the Town Board may further review the Town's regulatory authority and more particularly, consider the impact of pending State legislation (House Bill 10-1284) on the Town's regulatory authority over Medical Marijuana Dispensaries;

WHEREAS, House Bill 10-1284 was approved by the House and is now moving to the Senate for consideration; and if passed is highly likely to impact the Town's regulatory authority over medical marijuana businesses;

WHEREAS, the Town Board is also aware of the pendency of the case of *Frasher, et al. v. City of Centennial*, Arapahoe County District Court Case No. 09 CV 1456, regarding the local regulation of Medical Marijuana Dispensaries within the City of Centennial, in which the Arapahoe County District Court is considering various legal arguments, including, but not limited to, the interplay between state law, federal law, and local land use ordinances, and the final decision in this case may also have some bearing on the Town's regulatory authority over Medical Marijuana Dispensaries;

WHEREAS, the Town Board is also cognizant of the recent decision of the Colorado

Court of Appeals in *People v. Clendenin*, __ P.3d __ (Colo. App. 2009), 2009 WL 3464306, *reh'g denied* December 17, 2009, in which Justice Loeb, specially concurring in the decision, stated that Article XVIII, § 14 of the Colorado Constitution does not protect "original suppliers" of medical marijuana from prosecution or conviction on drug related charges, and thus Article XVIII, § 14 does not appear to authorize the cultivation of medical marijuana through what is commonly referred to as a "grow house";

WHEREAS, extension of the moratorium until August 9, 2010, will allow Town staff, the Town Attorney and the Town Board to complete its consideration of the draft ordinance, pending State legislation, and the Town's regulatory options;

WHEREAS, an extension until August 9, 2010, is a reasonable length of time for the Town to properly conclude its review of this matter;

WHEREAS, proprietors of Medical Marijuana Dispensaries will not be unduly prejudiced by such an extension of the Town's temporary moratorium; and

WHEREAS, if the Town Board passes the proposed ordinance regulating Medical Marijuana Dispensaries, the Town Board desires that this moratorium automatically expire on the effective date of the proposed ordinance.

WHEREAS, NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES FOR THE TOWN OF BUENA VISTA, COLORADO AS FOLLOWS:

Section 1. Findings and Intent. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Board of the Town of Buena Vista.

Section 2. Imposition of Temporary Moratorium on Applications for Permits and Licenses Related to Businesses that Sell Medical Marijuana. Upon the adoption of this Ordinance, a moratorium is imposed upon the processing and approval of all applications for permits and licenses by the Town related to a Medical Marijuana Dispensary until the earlier of: (1) August 9, 2010; or (2) the effective date of an ordinance regulating Medical Marijuana Dispensaries in the Town of Buena Vista. Town staff is directed to refuse to accept for filing, and not to process or review, any such applications for such businesses during the moratorium period.

Section 3. Staff to Investigate and Prepare Proposed Regulations. Before the expiration of the moratorium imposed by this Ordinance, the Town staff, working with the Town Attorney, shall continue its preparation of appropriate regulations for Medical Marijuana Dispensaries as directed by the Town Board.

Section 4. Police Power Finding. The Town Board hereby finds, determines and declares that this Ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town and the inhabitants thereof.

Section 5. Authority. The Town Board hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to: (i) the Local Government Land Use Control

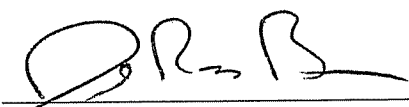
Enabling Act, Article 20 of Title 29 C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv) Section 31-15-401, C.R.S. (concerning municipal police powers); and (v) Section 31-15-501, C.R.S. (concerning municipal power to regulate businesses).

Section 6. Emergency Declared; Effective Date; Expiration. The Town Board finds, determines and declares that passage of this Ordinance is necessary for the immediate preservation of the public peace, health and safety in order to prevent the processing and approval of any application for a Town permit or license relating to the operation of a Medical Marijuana Dispensary, until the Town has had a reasonable opportunity to determine: (i) the extent of the Town's regulatory authority over such businesses, including, but not limited to, the authority to license, zone and prohibit; (ii) what regulations, if any, should be imposed by the Town upon such businesses; and (iii) evaluate the impact, if any, that the United States Supreme Court case of *Gonzales, et. al. v. Raich, et al.*, 545 U.S. 1, 125 S.Ct. 2195, 162 L.Ed. 2d 1 (2005), has on any regulations that the Town may consider in regulating these dispensaries. Failure to immediately impose the moratorium provided for in this Ordinance will potentially allow acquisition of certain rights with respect to Medical Marijuana Dispensaries before the Town has had a reasonable opportunity to consider appropriate regulations thereof. The Town Board further determines that the adoption of this Ordinance as an emergency ordinance is in the best interest of the citizens of the Town. The moratorium imposed by the Ordinance shall commence as of the date of the adoption of this Ordinance and shall expire on August 9, 2010, unless repealed prior to that date, or unless an ordinance regulating Medical Marijuana Dispensaries in the Town of Buena Vista becomes effective prior to that date.

INTRODUCED, READ, ADOPTED, AND ORDERED PUBLISHED this 27th day of April, 2010.

TOWN OF BUENA VISTA, COLORADO

By:



Mayor, Joel Benson

ATTEST:



Diane Spomer, Town Clerk

(SEAL)

Published in full following adoption by the Board of Trustees in the Chaffee County Time, a newspaper of general circulation within the Town of Buena Vista, on the 6th day May, of 2010.