



ORDINANCE NO. 355

AN EMERGENCY ORDINANCE IMPOSING A TEMPORARY MORATORIUM ON THE PROCESSING AND APPROVAL OF ANY APPLICATION FOR A CITY OF CREEDE PERMIT OR LICENSE RELATED TO THE OPERATION OF A BUSINESS THAT SELLS MEDICAL MARIJUANA; DIRECTING THE PROMPT INVESTIGATION OF THE CITY'S REGULATORY AUTHORITY OVER SUCH BUSINESSES; DECLARING THE INTENTION OF THE BOARD OF TRUSTEES TO CONSIDER THE ADOPTION OF APPROPRIATE CITY REGULATIONS WITH RESPECT TO SUCH BUSINESSES IF PERMITTED BY LAW

WHEREAS, in the November 2000 general election, the voters of the State of Colorado adopted Amendment 20 to the Colorado Constitution ("Article XVIII, Section 14"), which authorizes and limits the sale of medical marijuana for use in the treatment of debilitating medical conditions;

WHEREAS, the City has no current land use or business regulation governing the operation of businesses or cooperatives that offer medical marijuana for sale and/or distribution ("Medical Marijuana Dispensaries");

WHEREAS, the imposition of a one hundred-eighty (180) day moratorium on the processing and approval of all applications for City permits and licenses relating to the operation of Medical Marijuana Dispensaries will allow the City staff and the Board of Trustees to investigate the City's ability to regulate such businesses and to develop and implement any appropriate regulations;

WHEREAS, a one hundred-eighty (180) day moratorium is a reasonable length of time and no longer than necessary for the City to properly investigate, develop and, if appropriate, adopt and implement any regulations with respect to Medical Marijuana Dispensaries; and

WHEREAS, proprietors of Medical Marijuana Dispensaries will not be unduly prejudiced by the imposition of such moratorium.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE CITY OF CREEDE, THAT:

Section 1: Findings and Intent. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Board of Trustees of the City of Creede.



- 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, the City related to a Medical Marijuana Dispensary imposes a moratorium upon the processing and approval of all applications for permits and licenses. City 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 City staff, working with the City Attorney, shall prepare appropriate regulations for Medical Marijuana Dispensaries for consideration by the Board of Trustees.
- Section 4:** Authority. The Board of Trustees 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); (v) Section 31-15-501 C.R.S. (concerning municipal power to regulate businesses).
- Section 5:** Emergency Declared; Effective Date; Expiration. The Board of Trustees 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 City permit or license relating to the operation of a Medical Marijuana Dispensary, until the City has had a reasonable opportunity to determine: (i) the extent of the City'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 City 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 City 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 City has had a reasonable opportunity to consider appropriate regulations thereof. The City Council further determines that the adoption of this Ordinance as an emergency ordinance is in the best interest of the citizens of the City of Creede. The moratorium imposed by the Ordinance shall commence as of the date of the adoption of this Ordinance and shall expire one hundred-eighty (180) days thereafter, unless repealed prior to that date.
- Section 6:** If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The Board of Trustees hereby declare 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 unconstitutional or invalid.



Section 7: The repeal or modification of any provision of the Creede Municipal Code by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 8: This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 9: This ordinance shall take effect upon final approval and adoption.

A Public Hearing on this ordinance was held at the January 12th, 2010, Board of Trustees meeting.

Approved, Passed and Adopted on this first reading and ordered published this 12th day of January 2010.

CITY OF CREEDE:

ATTEST:

Rex M. Shepperd Jan 14, 10
Mayor, Rex M. Shepperd Date

Pamela J. Wilson 1/14/10
City Clerk, Pamela J. Wilson Date

