

ORDINANCE NO. 361

AN ORDINANCE OF THE CITY OF CREEDE, COLORADO, PROHIBITING THE LICENSES AND OPERATION OF MEDICAL MARIJUANA CENTERS, OPTIONAL PREMISES CULTIVATION OPERATIONS AND MEDICAL MARIJUANA INFUSED PRODUCTS MANUFACTURERS WITHIN THE CITY LIMITS OF CREEDE, COLORADO.

WHEREAS, pursuant to CRS §31-15-103, municipalities have the authority to enact, publish and enforce, ordinances, codes and regulations, and

WHEREAS, the City of Creede, Colorado previously adopted Ordinance No. 355 imposing a moratorium on the processing and approval of all applications for permits and licenses by the City related to "Medical Marijuana Dispensaries" in order to allow the City staff, working with the Town Attorney, to evaluate and prepare appropriate regulations concerning such dispensaries within the City (the "Moratorium Ordinance") and which Moratorium Ordinance was extended by the provisions of Ordinance No. 359 to December 31, 2010.

WHEREAS, during the pendency of the Moratorium Ordinance, the Colorado Legislature during the 2010 legislative session considered and adopted legislation which in pertinent part added a new Article 43.3 to Title 12 of the Colorado Revised Statutes, to be known as the Colorado Medical Marijuana Code; and

WHEREAS, the Colorado Medical Marijuana Code clarifies Colorado law regarding the scope and extent of Amendment 20 to the Colorado Constitution ("Article XVIII, Section 14"), and at the same time authorizes a mechanism for the retail sale, distribution, cultivation and dispensing of medical marijuana known as a "Medical Marijuana Center," and further authorizes licensing mechanisms known as an "Optional Premises Cultivation Operation" and a "Medical Marijuana-Infused Products Manufacturers' License"; and

WHEREAS, C.R.S. § 12-43.3-106 of the Colorado Medical Marijuana Code specifically authorizes, in part, that the governing body of a municipality may "vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses"; and

WHEREAS, C.R.S. § 12-43.3-310 of the Colorado Medical Marijuana Code further specifically authorizes a municipality in part "to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturer's licenses ... based on local government zoning, health, safety, and public welfare laws for distribution of medical marijuana that are more restrictive than this article"; and

WHEREAS, C.R.S. § 12-43.3-308(1)(c) of the Colorado Medical Marijuana Code also provides that the state and local licensing authorities shall not receive or act upon a new application pursuant to the Colorado Medical Marijuana Code "for a location in an

area where the cultivation, manufacture, and sale of medical marijuana as contemplated is not permitted under the applicable zoning laws of the municipality, town and county, or county"; and

WHEREAS, the Board of Trustees has carefully considered the provision of the Colorado Medical Marijuana Code, Article XVIII, Section 14 of the Colorado Constitution, and the impact of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses on the health, safety and welfare of the Town and the inhabitants thereof, and has determined as an exercise of its local land use authority that such medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses shall not be located within the corporate limits of the City; and

WHEREAS, the Board of Trustees further recognizes the protections afforded by Article XVIII, Section 14 of the Colorado Constitution, and desires to affirm the ability of patients and primary caregivers to otherwise be afforded the protections of Article XVIII, Section 14 of the Colorado Constitution and C.R.S. § 25-1.5-106, as the same may be amended from time to time.

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

It is unlawful for any person to operate, cause to be operated, or permit to be operated a medical marijuana center, optional premises cultivation operation, or facility for which a medical marijuana-infused products manufacturers' license could otherwise be obtained within the City, and all such uses are hereby prohibited in any location within the City, or within any area hereinafter annexed to the City.

(1) Definitions: as used in this ordinance the following definitions apply:

(a) *Medical marijuana* means marijuana that is grown and sold for a purpose authorized by Section 14 of Article XVIII of the Colorado Constitution.

(b) *Medical marijuana center* means a person authorized to be licensed to operate a business as described in the Colorado Medical Marijuana Code that sells medical marijuana to registered patients or primary caregivers as defined in Section 14 of Article XVIII of the Colorado Constitution, but is not a primary caregiver, and which a municipality is authorized to prohibit as a matter of law.

(c) *Medical marijuana-infused products manufacturer* means a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business known as a Medical Marijuana-Infused Products Manufacturing License, and which a municipality is authorized to prohibit as a matter of law.

(d) *Optional premises cultivation operation* means a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business known as an optional premises grow facility in order to grow and cultivate marijuana for a purpose authorized by Section 14 of Article XVIII of the Colorado Constitution, and which a municipality is authorized to prohibit as a matter of law.

(e) *Person* means a natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer or employee thereof.

(f) *Patient* has the meaning provided in Section 14(1)(c) of Article XVIII of the Colorado Constitution.

(g) *Primary caregiver* has the meaning provided in Section 14(1)(f) of Article XVIII of the Colorado Constitution.

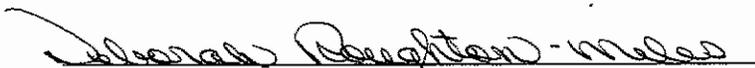
(2) Medical Marijuana Center, Optional Premises Cultivation Operations, and Medical Marijuana-Infused Products Manufacturers' Licenses are prohibited from being issued or recognized by the City of Creede.

(3) Patient and Primary Caregivers: Nothing in this Section shall be construed to prohibit, regulate or otherwise impair the use of medical marijuana by patients as defined by the Colorado Constitution, or the provision of medical marijuana by a primary caregiver to a patient in accordance with the Colorado Constitution, and consistent with C.R.S. § 25-1.5-106, and rules promulgated thereunder, as the same statute and rules may be amended from time to time.

(4) Safety Clause. The Board of Trustees hereby finds, determines, and declares that this ordinance is promulgated under the general police power of the City of Creede that it is promulgated for health, safety, and welfare of the public, due to inquiries for applications for Medical Marijuana Centers in the City, and that this ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Trustees further determines that the ordinance bears a rational relation to the proper legislative object sought to be attained and shall therefore become effective upon passage.

(5) Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstance shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

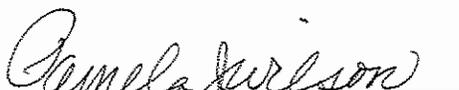
READ AND PASSED BY THE BOARD OF TRUSTEES AND SIGNED THIS 12 DAY OF Oct, 2010.


Deborah Roughton-Miles, Mayor

(SEAL)

CITY OF CREEDE

ATTEST:


Pamela J. Wilson, City Clerk