



ORDINANCE NO. 2013-03

**AN EMERGENCY ORDINANCE ESTABLISHING A MORATORIUM ON THE PROCESSING AND APPROVAL OF ANY APPLICATION FOR A PERMIT OR LICENSE RELATED TO THE OPERATION OF A BUSINESS THAT SELLS OR PRODUCES RECREATIONAL MARIJUANA PURSUANT TO THE AUTHORITY GRANTED BY AMENDMENT 64 TO THE COLORADO CONSTITUTION.**

**WHEREAS**, the Town of Silverton, in the County of San Juan and State of Colorado (the "Town"), is a statutory authority duly existing under the Constitution and laws of the State of Colorado and its Municipal Code; and

**WHEREAS**, the members of the Town Board of Trustees (the "Board") have been duly elected and qualified; and

**WHEREAS**, on November 6, 2012, the voters of Colorado approved Amendment 64, which added Section 16 of Article XVIII of the Colorado Constitution, and created a limited exception from criminal liability under Colorado law for the cultivating, manufacturing, and testing of marijuana or marijuana products and retail stores selling marijuana products (collectively referred to as "Retail Marijuana Establishments") and authorizes and contemplates that Retail Marijuana Establishments will operate within a system licensed and regulated by the State and local governments; and

**WHEREAS**, Amendment 64 provides that local governmental entities may enact ordinances and regulations governing the time, place, manner and number of Retail Marijuana Establishments; establish procedures for the issuance, suspension and revocation of licenses issued by local governmental entities; establish a schedule of annual operating, licensing and application fees for Retail Marijuana Establishments; and establish civil penalties for violation of such regulations or ordinances; and

**WHEREAS**, Amendment 64 also makes lawful the possession and use of up to one (1) ounce of marijuana by Colorado residents over the age of 21; and

**WHEREAS**, despite the adoption of Amendment 64, marijuana is still a controlled substance under the Controlled Substances Act and unlawful under Federal Law; and

**WHEREAS**, in the Spring of 2013, the Colorado General Assembly passed three bills regarding the implementation of Amendment 64, one of which requires local jurisdictions to decide whether they want to allow, prohibit, or place a moratorium on Retail Marijuana Establishments by October 1, 2013; and

**WHEREAS**, on August 29, 2013, the federal government issued a memorandum on the subject of Guidance Regarding Marijuana Enforcement in which it reiterated its continued commitment to enforce the Controlled Substances Act and outlined eight areas where the federal government will use its limited investigative and procedural resources to address the most significant threats in regard to marijuana enforcement; and

**WHEREAS**, the federal government has notified the governors of the states of Colorado and Washington that it is deferring its right to challenge their marijuana legalization laws at this time; and

**WHEREAS**, the federal government expects and relies upon state and local laws to adequately implement strong and effective regulatory schemes and enforcement systems to control the distribution, sale and possession of marijuana which will protect the eight federal interests identified in the guidance memorandum; and



WHEREAS, on July 1, 2013, the Colorado Department of Revenue, acting through the Marijuana Enforcement Division, adopted emergency rules for the regulation of the State's retail marijuana industry, with the intent of holding extensive hearings and having permanent rules in place by the beginning of next year; and

WHEREAS, the Board is aware that staff has received inquiries from persons who are interested in opening and operating businesses and cooperatives that would offer marijuana for sale or distribution, including the cultivation of marijuana; and

WHEREAS, the Town has no current land use or business regulations explicitly permitting the operation of such business, which are distinguishable from medical marijuana businesses permitted and regulated pursuant to Chapter 10, Article 5 and Chapter 7, Articles 5 and 2 of the Silverton Municipal Code; and

WHEREAS, on March 25, 2013, the Board adopted Ordinance 2013-01 which imposed a temporary moratorium up to and including September 25, 2013, on the processing and approval of applications for Town permits and licenses relating to Retail Marijuana Establishments; and

WHEREAS, on August 5, 2013, the Town Board held a study session to discuss the current temporary moratorium and the potential impact of Retail Marijuana Establishments within the Town should the current temporary moratorium expire;

WHEREAS, the Town Board desires to provide Town Staff sufficient time to study and review the permanent rules adopted by the Colorado Department of Revenue, Marijuana Enforcement Division, the federal government's recent guidance statements on marijuana enforcement, and assemble information about the potential effects of such Retail Marijuana Establishments, giving due consideration to the Town's existing land use regulations, and the appropriateness of Retail Marijuana Establishments within the Town; and

WHEREAS, the Board has determined that an additional moratorium up to and including December 31, 2013 is an additional reasonable length of time for the Town to properly investigate the Town's regulatory authority over Retail Marijuana Establishments; and

WHEREAS, the Board hereby determines that would-be proprietors of Retail Marijuana Establishments will not be unduly prejudiced by the imposition of such a temporary moratorium.

**NOW, THEREFORE, BE IT ORDAINED, BY THE BOARD OF TRUSTEES OF THE TOWN OF SILVERTON, COLORADO that:**

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

**Section 2. Temporary Moratorium.** Upon the adoption of this Ordinance, a moratorium is immediately imposed upon the processing and approval by the Town of applications for permits and licenses related to Retail Marijuana Establishments. Town staff is directed to decline to process, review or approve any such applications during the moratorium period.

**Section 3. Investigation and Evaluation.** During the moratorium, Town staff, working with the Town Attorney, shall investigate and evaluate the regulatory authority of the Town over Retail Marijuana Establishments, including the impact of applicable court rulings and the proposed state and federal legislation, and determine whether the Town should allow such operations within its boundaries, and if so, what regulations should govern the same.

**Section 4. Police Power Finding.** The 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.



Town of  
**Silverton**

**Section 5. Authority.** The 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) C.R.S. § 31-15-103, C.R.S. (concerning municipal police powers); (iv) C.R.S. §31-15-401 (concerning municipal police powers); (iv) C.R.S. § 31-15-501 (concerning municipal power to regulate businesses); and (v) the powers contained in the Town of Silverton Municipal Code.

**Section 6. Effective Date; Expiration.** As per Town of Silverton Municipal Code Section 2-16-5, the moratorium imposed by this Ordinance shall take effect immediately upon its passage by an affirmative vote of three-fourths (3/4) of the members of the Town Board because the Town Board hereby finds this Ordinance to be a case of special emergency and the immediate effectiveness of this Ordinance is necessary for the preservation of the public peace, health, and safety of the Town and the inhabitants thereof. This ordinance shall expire on December 31, 2013 unless repealed prior to that date or extended, if necessary, as determined by the Town Board.

**Section 7. Severance Clause.** If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Town Board hereby declares it would have passed this ordinance, and each part, section, subsection, sentence, clause or phrase thereof, regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

INTRODUCED ADOPTED AND ORDERED PUBLISHED ONCE IN FULL on this 23<sup>rd</sup> day of September, 2013.

Brian Carlson, Acting Clerk-Treasurer

Christine M. Toohey, Mayor