

ORDINANCE NO. 32-2010
Series of 2010

AN ORDINANCE OF THE TOWN OF ERIE, COLORADO AMENDING TITLE 4, "BUSINESS REGULATIONS," OF THE ERIE MUNICIPAL CODE OF THE TOWN OF ERIE, COLORADO BY ADDING A NEW CHAPTER 9, "MEDICAL MARIJUANA BUSINESS PROHIBITION," PROHIBITING MEDICAL MARIJUANA CENTERS, OPTIONAL PREMISES CULTIVATION OPERATIONS AND MEDICAL MARIJUANA-INFUSED PRODUCTS MANUFACTURING IN THE TOWN; AND, SETTING FORTH DETAILS IN RELATION THERETO

WHEREAS, the Board of Trustees of the Town of Erie, Colorado previously imposed a temporary moratorium on the submission, acceptance, processing and approval of any application for a business and occupation license, a permit, a building permit and a land use application related to the operation of a business that sells and/or grows medical marijuana pursuant to the authority granted by Article 18, Section 14 of the Colorado Constitution in order to allow the Town staff, working with the Town Attorney, the ability to investigate and evaluate the regulatory authority of the Town concerning such businesses within the Town (the "Moratorium"), which Moratorium is currently in effect; and,

WHEREAS, during the Moratorium the Town staff and the Town of Erie Planning Commission were directed to refuse to accept for filing, and not to process or review, any such new applications for such businesses subject to the Moratorium during the Moratorium period; and,

WHEREAS, during the pendency of the Moratorium, the Colorado Legislature adopted legislation adding 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, § 14, establishes a regulatory scheme for the retail sale, distribution, cultivation and dispensing of medical marijuana and related products; and,

WHEREAS, C.R.S. § 12-43.3-106 specifically authorizes the governing body of a municipality to "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 specifically authorizes a municipality "to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses...based on local government zoning, health, safety, and public welfare laws for the distribution of medical marijuana that are more restrictive than this article"; and,

WHEREAS, the Board of Trustees has carefully considered Article XVIII, § 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, and the secondary effects of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturing on the health, safety and welfare of the Town and its inhabitants, and has determined as an exercise of its local land use and regulatory authority that such medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturing should be prohibited in the Town; and

WHEREAS, the Board of Trustees recognizes the protections afforded by Article XVIII, § 14 of the Colorado constitution, and affirms the ability of patients and primary caregivers to otherwise be afforded the protections of Article XVIII, § 14 of the Colorado Constitution and C.R.S. § 25-1.5-106; and;

WHEREAS, the Board of Trustees recognizes that the Colorado Medical Marijuana Code is newly adopted and may be changed and modified by the Colorado Legislature over time, and that in light of those changes and other considerations that may come to the attention of the Board of Trustees over time, the Board of Trustees may, at the discretion of the Board of Trustees, revisit the prohibitions and findings set forth herein at some future date; and,

WHEREAS, the Board of Trustees has determined that it is in the best interest of the citizens of the Town to amend the Erie Municipal Code as set forth herein below.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO, AS FOLLOWS:

Section 1. That Title 4, “Business Regulations,” of the Erie Municipal Code of the Town of Erie, Colorado shall be and hereby is amended to add a new Chapter 9, “Medical Marijuana Business Prohibition,” to read as follows:

**TITLE 4
BUSINESS REGULATIONS**

CHAPTER 9 MEDICAL MARIJUANA BUSINESS PROHIBITION

- 4-9-1: DEFINITIONS**
- 4-9-2: LEGISLATIVE INTENT**
- 4-9-3: FINDINGS AND APPLICABILITY**
- 4-9-4: USES PROHIBITED**
- 4-9-5: PATIENTS AND PRIMARY CAREGIVERS**
- 4-9-6: PENALTY; NUISANCE DECLARED**

4-9-1: DEFINITIONS: The following words, terms and phrases, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise:

Medical marijuana means marijuana that is grown and sold for a purpose authorized by Article XVIII, § 14 of the Colorado Constitution.

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

Medical marijuana-infused products manufacturer means a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business manufacturing medical marijuana-infused products, and which a municipality is authorized to prohibit as a matter of law.

Optional premises cultivation operation means a person licensed pursuant to the Colorado Medical Marijuana Code to grow and cultivate marijuana for a purpose authorized by Article XVIII, § 14 of the Colorado Constitution, and which a municipality is authorized to prohibit as a matter of law.

Patient has the meaning set forth in Article XVIII, § 14(1)(c) of the Colorado Constitution.

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.

Primary caregiver has the meaning set forth in Article XVIII, § 14 (1)(f) of the Colorado Constitution.

4-9-2: LEGISLATIVE INTENT. It is the intent of this Chapter to prohibit certain uses related to medical marijuana, and in furtherance of its intent, the Board of Trustees makes the following findings:

a. The Colorado Medical Marijuana Code, C.R.S. § 12-43.3-101, et seq., clarifies Colorado law regarding the scope and extent of Article XVIII, § 14 of the Colorado Constitution.

b. The Colorado Medical Marijuana Code specifically authorizes the governing body of a municipality to "vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses."

c. The Colorado Medical Marijuana Code specifically authorizes a municipality "to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products

manufacturers' licenses ... based on local government zoning, health, safety, and public welfare laws for the distribution of medical marijuana."

d. Based on careful consideration of the Colorado Medical Marijuana Code, Article XVIII, § 14 of the Colorado Constitution, and the potential secondary effects of the cultivation and dispensing of medical marijuana, and the retail sale, distribution, and manufacturing of medical marijuana-infused products, such uses have an adverse effect on the health, safety and welfare of the Town and its inhabitants.

e. As a matter of the Town's authority, and consistent with the authorization provided by the Colorado Medical Marijuana Code, it is the intent of the Town to prohibit the cultivation and dispensing of medical marijuana, and the retail sale, distribution, and manufacturing of medical marijuana-infused products in accordance with the provisions of the Colorado Medical Marijuana Code.

f. Patients and primary caregivers should otherwise be afforded the protections of Article XVIII, Section 14 of the Colorado Constitution and C.R.S. § 25-1.5-106.

4-9-3: FINDINGS AND APPLICABILITY: The Board of Trustees makes the following findings:

a. The Colorado Medical Marijuana Code, C.R.S. section 12-43-3-101, *et seq.*, clarifies Colorado law regarding the scope and extent of Article XVIII, Section 14 of the Colorado Constitution.

b. This ordinance is necessary to protect and is enacted in furtherance of the public health, safety and welfare of the Town.

c. This Chapter is intended to apply and shall apply to all property, businesses, and business enterprises operating within the Town, whether stationary, mobile, or virtual.

4-9-4: USES PROHIBITED: It is unlawful for any person to operate, cause to be operated or permit to be operated a medical marijuana center, an optional premises cultivation operation, or a medical marijuana-infused products manufacturing facility in the Town.

4-9-5: PATIENTS AND PRIMARY CAREGIVERS: Nothing in this Chapter shall be construed to prohibit, regulate or otherwise impair the protections of the use of medical marijuana by patients as provided in the Article XVIII, § 14 of the Colorado Constitution, or the provision of medical marijuana by a primary caregiver to a patient in accordance with Article XVIII, § 14 of the Colorado Constitution, the Colorado Medical Marijuana Code and rules promulgated thereunder.

4-9-6: PENALTY: NUISANCE DECLARED:

a. It is unlawful for any person to violate any of the provisions of this Chapter. Any such violation is hereby designated a criminal offense, and any person found guilty of violating any of the provisions of this Chapter shall, upon conviction thereof, be punished pursuant to Title 1, Chapter 4 of this Code. Each day that a violation of any of the provisions of this Chapter continues to exist shall be deemed a separate and distinct violation.

b. The conduct of any activity or business in violation of this Chapter is hereby declared to be a public nuisance, which may be abated pursuant to the provisions for the abatement of nuisance provided for in Title 5, Chapter 1 of this Code.

c. In addition to other remedies available to the Town, the Town may commence an action to enjoin the alleged violation of any provision of this Chapter, or to authorize and compel the removal, termination or abatement of such violation.

Section 2. That Title 1, “Administration and Personnel,” Chapter 4, “Municipal Court; General Penalty,” Section 1-4-6, “Violations and Penalties Enumerated,” sub-part B, “Criminal Violations,” of the Erie Municipal Code of the Town of Erie, Colorado shall be and hereby is amended to add Title 4, “Business Regulations,” Chapter 9, “Medical Marijuana Businesses Prohibited,” Sections 4-9-4 and 4-9-6 to the list of Criminal Violations.

Section 3. Severance Clause. If an 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 declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts may be declared invalid or unconstitutional.

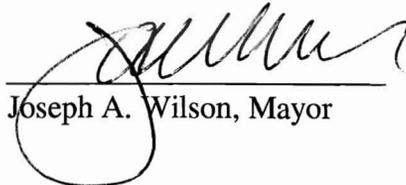
Section 4. Repeal. All other ordinances, or parts of any ordinances or other Code provisions in conflict herewith are hereby repealed.

Section 5. Effective Date. This ordinance shall take effect thirty (30) days after publication following final passage.

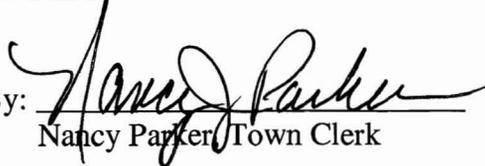
INTRODUCED, PASSED, ADOPTED AND ORDER PUBLISHED IN FULL BY
THE BOARD OF TRUSTEES OF THE TOWN OF ERIE THIS 24th DAY OF
December, 2010.

PUBLISHED IN FULL ON THE 22nd DAY OF December, 2010.

TOWN OF ERIE, COLORADO, a Colorado
municipal corporation

By: 
Joseph A. Wilson, Mayor

ATTEST:

By: 
Nancy Parker, Town Clerk

