TOWN OF NEW CASTLE, COLORADO
ORDINANCE 2013-6

AN ORDINANCE OF THE TOWN OF NEW CASTLE ENACTING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF ANY RETAIL MARIJUANA BUSINESS AND AMENDING THE MUNICIPAL CODE CONCERNING UNDERAGE POSSESSION OR USE OF MARIJUANA.

WHEREAS, The Town is authorized and empowered to enact this Ordinance under its general police powers and the powers of the Town's Home Rule Charter; and

WHEREAS, on November 6, 2012 the voters of Colorado approved Amendment 64 which amended the Colorado Constitution to authorize the personal use of marijuana by adults in certain circumstances; and

WHEREAS, on December 10, 2012 the Governor signed Executive Order D 2012-052 declaring the vote on Amendment 64, which rendered the change to Section 16 of Article XVIII of the Constitution valid; and

WHEREAS, by Ordinance No. 2013-2, the Town Council amended Chapter 9.60 of the municipal code to conform to Amendment 64 by repealing the provisions previously making it a municipal offense to possess marijuana; and

WHEREAS, the Town Council finds and determines that it is in the best interests of the health, safety and welfare of the citizens of New Castle to create a new municipal offense for underage possession or use of marijuana which is consistent with Amendment 64; and

WHEREAS, the Town via Ordinance 2011-1, as codified as Section 9.60.030 of the Town Code, has previously enacted a permanent comprehensive ban on the operation of medical marijuana businesses within the Town, which remains in full force and effect; and

WHERAS, the Town via Ordinance 2013-5, as codified in Chapter 5.28 of the Town Code, has previously enacted a permanent comprehensive ban on the operation of retail marijuana stores, which remains in full force and effect; and

WHEREAS, Article XVIII § 16(5) empowers a local government to regulate certain aspects of the production, sale, and consumption of marijuana and also permits a local government to enact a total ban on the cultivation, manufacture, and sale of marijuana within its boundaries; and

WHEREAS, on July 1, 2013, the Colorado Department of Revenue enacted Emergency Rules relating to the regulation of retail marijuana establishments including stores, cultivation operations, products manufacturing facilities, and testing facilities, which regulations are subject to amendment following administrative hearings to be held at a future time; and

WHEREAS, the Planning and Zoning Commission held a public hearing on July 24, 2013 and then passed Resolution No. PZ 2013-4 making recommendations to the Town Council concerning zone districts in which certain types of retail marijuana establishments, not including stores, could be allowed as conditional uses; and

WHEREAS, the New Castle Town Council finds, determines and concludes that it has a legitimate public purpose in regulating marijuana in order to protect the health, safety, welfare and quality of life for the citizens of the Town; and

WHEREAS, Amendment 64 would permit applications for retail marijuana establishments to be submitted to the state and/or locality as of October 1, 2013, unless such locality has enacted a ban or moratorium on such establishments as of said deadline; and

WHEREAS, given the uncertainties in final regulations to be issued by the Department of Revenue, potential challenges and interpretations of state law regarding retail marijuana establishments, and uncertainties regarding future potential enforcement of federal law conflicting with Colorado law on the subject of marijuana, the Town Council finds and determines that this Ordinance is necessary for the preservation of the public peace or welfare and to properly permit the Town to research the issues connected with either a potential ban or the regulation of businesses and uses of marijuana within the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF NEW CASTLE, COLORADO:

1. Recitals. The foregoing recitals are incorporated herein as findings and determinations of the New Castle Town Council.

2. Moratorium. A moratorium is hereby imposed on the establishment of any retail marijuana business or establishment including without limitation the submission, acceptance, processing, and approval of any and all applications for any permits, licenses or land use entitlements issued by the Town related to any type of retail marijuana business as such term is defined in Section 5.28.010 of the Town Code, including without limitation any business or facility engaged in the cultivation, manufacturing, or testing of marijuana or products containing marijuana or its derivatives. Such moratorium includes without limitation applications for the issuance of business licenses, conditional use permits, park use permits, and zoning, rezoning, or other land use applications.

3. Duration. The moratorium shall commence on the effective date of this ordinance and shall run until August 1, 2014, unless sooner repealed.

4. Direction to Staff. During this moratorium Town Staff shall monitor the State regulatory efforts and research the applicable legal and planning issues connected to the regulation of businesses that cultivate, test, or manufacture marijuana products and propose a regulatory scheme or other options to the Town Council for review.

5. Planning Commission Resolution. As the Town itself is the applicant for any potential zoning action concerning retail marijuana establishments, the Town Council hereby

acknowledges the Planning Commission's recommendation, declines to take any action on such recommendation at the present time, and hereby extends the deadline to take formal action on the recommendation until the expiration or repeal of the moratorium enacted hereby and waives the 60-day deadline pursuant to Section 17.92.030(D) of the New Castle municipal code. Resolution PZ 2013-4 shall remain valid pending further action by Council on the recommendations therein.

6. Reiteration of Existing Code and Law. As noted, Chapter 9.60 of the Town still imposes criminal penalties for some activities related to marijuana, and the Town has banned medical marijuana businesses and retail marijuana stores. Further, the Town has enacted a smoking ban in Chapter 8.12 of the Town Code and is subject to the restrictions imposed by the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 *et seq.* While changes to these code provisions may be necessary as the laws and regulations concerning the use of marijuana take effect, nothing in this moratorium alters the provisions of these laws and regulations as currently written. The open public consumption of marijuana remains prohibited even under Article XVIII § 16 of the Constitution.

6. Municipal Offense for Underage Use or Possession. Chapter 9.60 of the New Castle Municipal Code is hereby amended by the enactment of the following provision:

9.60.020 – Prohibition and Penalties

A. Any person under twenty-one (21) years of age who possesses or uses marijuana shall be guilty of a municipal offense and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars ($100.00) or jail sentence of not more than fifteen (15) days or both.

7. Severability. If any part, section, subsection, clause, phrase, or other portion of this Ordinance is invalidated for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council specifically finds and declares that it would have passed this Ordinance, and each part thereof, regardless of the fact that any one or more parts could be declared invalid.

8. Effective Date. This Ordinance shall be effective fourteen days after final publication pursuant to section 4.3 of the Town Charter.

INTRODUCED on August 20, 2013, at which time copies were available to the Council and to those persons in attendance at the meeting, read by title, passed on first reading, and ordered published in full and posted in at least two public places within the Town as required by the Charter.

INTRODUCED a second time at a regular meeting of the Council of the Town of New Castle, Colorado on September 3, 2013, read by title and number, passed without amendment, approved, and ordered published as required by the Charter.

TOWN OF NEW CASTLE, COLORADO

By: _____
Frank Breslin, Mayor

ATTEST:

_____
Melody Harrison, Town Clerk