

Memo

To: Tom Baker, Town Administrator, and Town Council

From: Melody Harrison, Town Clerk

Date: May 30, 2014

Re: Marijuana Businesses; Direction to Staff

Town Staff requests Council direction regarding marijuana businesses.

In 2011 Town Council passed Ordinance TC-2011-1 which enacted a comprehensive ban on the operation of medical marijuana businesses within the town limits of New Castle.

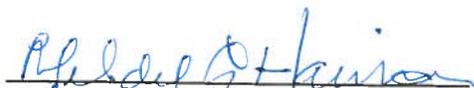
In 2013, Town Council passed Ordinance TC-2013-5 prohibiting retail marijuana businesses within the town limits of New Castle. This ordinance included a requirement that the town council review the provisions of the ordinance in 2014 to determine if any amendment or other action is appropriate.

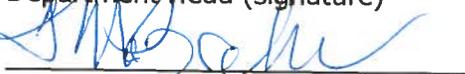
In 2013, Town Council passed Ordinance TC-2013-6, enacting a temporary moratorium on the establishment of any retail marijuana business within the town limits of New Castle. This Ordinance also amended the municipal code regarding the underage use or possession of marijuana. The moratorium expires on August 1, 2014.

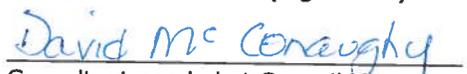
Subsequent to the passing of these ordinances, the State of Colorado Department of Revenue established code and rules regarding retail marijuana businesses. Also, several municipalities in Garfield County have approved the operation of retail marijuana businesses within their city limits.

It was council's intention to observe how retail marijuana businesses affected the various municipalities before making a permanent decision about allowing or prohibiting them in New Castle. It is staffs' opinion that there has not been enough time to determine the effect of retail marijuana on the business climates of those municipalities. Nor has there been enough time to determine the effect on the communities in regard to legal issues surrounding marijuana.

Town Attorney David McConaughy will lead this discussion.


Department Head (signature)


Town Administrator (signature)


Consultant needed at Council Meeting? Yes

**TOWN OF NEW CASTLE, COLORADO
ORDINANCE 2011-1**

**AN ORDINANCE OF THE NEW CASTLE TOWN COUNCIL
PROHIBITING THE OPERATION OF MEDICAL MARIJUANA
BUSINESSES WITHIN TOWN LIMITS.**

WHEREAS, in November 2000 Colorado voters approved Amendment 20 which adopted Article XVIII, Section 14 of the Colorado Constitution concerning the possession and use of certain quantities of marijuana for the treatment of certain debilitating medical conditions; and

WHEREAS, in 2010 the Colorado Legislature enacted H.B. 1284 (codified at §§ 12-43.3-101 to -1001, C.R.S.) which established the Colorado Medical Marijuana Code; and

WHEREAS, subsection (2)(a) of § 12-43.3-103, C.R.S. provides that prior to July 1, 2011 a municipality may adopt and enforce an ordinance prohibiting the cultivation or sale of medical marijuana, and in any municipality that has adopted such an ordinance a person who is not registered as a patient or primary caregiver pursuant to § 25-1.5-106, C.R.S., and who is cultivating or selling medical marijuana shall not be entitled to an affirmative defense to a criminal prosecution as provided for in Section 14 of Article XVIII of the Colorado Constitution unless the person is in compliance with applicable municipal law; and

WHEREAS, § 12-43.3-310, C.R.S. 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, marijuana remains an illegal drug under federal law and Colorado state law, and the Town code prohibits the possession, use, display, consumption, or distribution of marijuana under Chapter 9.60; and

WHEREAS, the New Castle Town Council finds, determines and concludes that it has a legitimate public purpose in exercising its rights under the Colorado Medical Marijuana Code and under the rights granted by the Town’s Home Rule powers to prohibit medical marijuana businesses within the Town limits in order to protect the health, safety, welfare and quality of life for the citizens of the Town.

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

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

Section 2. Intent, Authority and Applicability.

A. Intent. It is the intent of this Ordinance to prohibit certain land uses related to medical marijuana businesses in the Town, and in furtherance of this intent, the Town Council makes the following findings:

1. The Colorado Medical Marijuana Code, §§ 12-43.3-101 to -1001, C.R.S. clarifies Colorado law regarding the scope and extent of Article XVIII, Section 14 of the Colorado Constitution.

2. 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.

3. The Colorado Medical Marijuana Code also specifically authorizes a municipality to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and the manufacturing of medical marijuana-infused products based on local government zoning, health, safety and public welfare laws concerning the distribution of medical marijuana.

4. Based on careful consideration of the Colorado Medical Marijuana Code, Article XVIII, Section 14 of the Colorado Constitution, 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 land uses have an adverse effect on the health, safety and welfare of the Town and its inhabitants.

B. Authority. The Town's authority to adopt this Ordinance is found in: the Colorado Medical Marijuana Code, §§ 12-43.3-101 to -1001, C.R.S.; the Local Government Land Use Control Enabling Act, §§ 29-20-101 to -108, C.R.S.; §§ 31-23-101 to -314 C.R.S. C.R.S. (municipal zoning powers); §§ 31-15-101, 31-15-401, C.R.S. (municipal police powers); § 31-15-501, C.R.S. (municipal authority to regulate businesses), and the Town's Home Rule Charter and home rule powers.

C. Applicability. This Ordinance shall apply to all property within the Town of New Castle, Colorado.

Section 3. Medical Marijuana Businesses Prohibited.

The Town Council hereby amends the following sections of the Town of New Castle Municipal Code:

9.60.020 Penalties.

A. Any person who possesses not more than one ounce of marijuana and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars (\$100.00).

- B. Any person who openly and publicly displays, consumes or uses not more than one ounce of marijuana 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.
- C. Transferring or dispensing not more than one ounce of marijuana from one person to another for no consideration shall be deemed possession and not dispensing or sale of marijuana.
- D. Anyone found to be operating a medical marijuana business in violation of section 9.60.030 shall, upon conviction thereof, be punished by a fine of not more than one thousand dollars (\$1,000) or a jail sentence of not more than one (1) year, or both. A person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of section 9.60.030 is committed, continued, or permitted by any such person, and such person shall be punishable accordingly

9.60.030 Prohibition on medical marijuana businesses.

A. For purposes of this section, the following terms shall have the following meaning:

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

2. *Medical Marijuana Business* means the use of a property or portion thereof for the production, cultivation, manufacture, storage, distribution, acquisition or sale of marijuana, including the use of the property for Medical Marijuana Centers, Medical Marijuana-Infused Products Manufacturers and Optional Premises Cultivation Operations, whether any such use is for profit or not for profit.

3. *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, Section 14 of the Colorado Constitution, but is not a primary caregiver, and which a municipality is authorized to prohibit as a matter of law.

4. *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.

5. *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, Section 14 of the Colorado Constitution, and which a municipality is authorized to prohibit as a matter of law.

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

7. Primary Caregiver has the meaning set forth in Article XVIII, Section 14(1)(f) of the Colorado Constitution.

8. Production means all phases of growth of marijuana from seed to harvest, the combining of marijuana with any other substance for distribution, including storage and packaging for resale, or preparing, compounding, processing, and encapsulating, packing or repackaging, labeling or relabeling of marijuana or its derivatives whether alone or mixed with any amount of any other substance.

B. Uses Prohibited. It shall be unlawful for any person to operate, cause to be operated or permit to be operated a Medical Marijuana Business, Medical Marijuana Center, an Optional Premises Cultivation Operation, or a Medical Marijuana-Infused Products Manufacturer facility within the Town of New Castle. It shall further be unlawful for any person to produce medical marijuana within the town; provided, however, nothing in this Section shall prohibit, regulate, or otherwise impair or be construed to prohibit, regulate or impair the cultivation, use or possession of medical marijuana by a Patient and/or by a Primary Caregiver for his or her Patients provided that such Patient or Primary Caregiver is acting in accordance with all applicable provisions of Article XVIII, Section 14(1)(c) of the Colorado Constitution, §§ 12-43.3-101 to -1001, C.R.S., § 25-1.5-106, C.R.S., the regulations promulgated by the Colorado Department of Public Health and Environment, the Colorado Department of Revenue or any other agency with regulatory authority.

Section 4. Savings Clause. This Ordinance is necessary to protect the public health, safety and welfare of the residents of the Town and covers matters of local concern or matters of mixed State and local concern as provided by § 12-43.3-101, C.R.S.

Section 5. Severability. If any provision of this Ordinance is found to be unconstitutional or unlawful, such finding shall only invalidate that part of portion found to violate the law. All other provisions shall be deemed severable and shall continue in full force and effect.

Section 6. Effective Date. This Ordinance shall be effective fourteen days after final publication pursuant to section 4.3 of the Town Charter.

INTRODUCED on March 15, 2011, 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 April 5th, 2011, 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*
Frank Breslin, Mayor

ATTEST:

Melody Harrison
Melody Harrison, Town Clerk



**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

WHEREAS, 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
Frank Breslin, Mayor

ATTEST:

Melody Harrison
Melody Harrison, Town Clerk

