

**ORDINANCE  
OF THE  
BOARD OF COUNTY COMMISSIONERS  
OF THE  
COUNTY OF WASHINGTON, STATE OF COLORADO**

**ORDINANCE NO.13- 1**

**AN ORDINANCE PROHIBITING THE OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, MARIJUANA SOCIAL CLUBS OR RETAIL MARIJUANA STORES WITHIN THE UNINCORPORATED BOUNDARIES OF WASHINGTON COUNTY, STATE OF COLORADO**

**WHEREAS**, pursuant to S 30-15-401, C.R.S., the Board of County Commissioners of Washington County, Colorado (hereinafter the "Board"), has the general enabling power to adopt ordinances for the control or licensing of those matters of purely local concern, and to do all acts and make all regulations which may be necessary or expedient for the promotion of the health, safety and welfare of the present and future residents of Washington County; and

**WHEREAS**, on November 6, 2012, the voters of Colorado approved the adoption of Amendment 64, Personal Use and Regulation of Marijuana; and

**WHEREAS**, Amendment 64 became effective upon official declaration of the vote thereon by proclamation of the Governor, pursuant to Section 1(4) of Article V, of the Colo. Constitution; and

**WHEREAS**, Amendment 64 defines a "locality" in part in section 2(e) of Section 16 to include a county; and

**WHEREAS**, part 5(f) of Section 16 provides the following:

(f) A locality may enact ordinances or regulations, not in conflict with this section or with regulations or legislation enacted pursuant to this section, governing the time, place, manner and number of marijuana establishment operations; establishing procedures for the issuance, suspension, and revocation of a license issued by the locality in accordance with paragraph (h) or (i), such procedures to be subject to all requirements of Article 4 of Title 24 of the Colorado Administrative Procedure Act or any successor provision; establishing a schedule of annual operating, licensing, and application fees for marijuana establishments, provided, the application fee shall only be due if an application is submitted to a locality in accordance with paragraph (i) and a licensing fee shall only be due if a license is issued by a locality in accordance with paragraph (h) or (i); and establishing civil penalties for violation of an ordinance or regulation governing the time, place, and manner of a marijuana establishment that may operate in such locality. A locality may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing

facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance or through an initiated or referred measure; provided, any initiated or referred measure to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores must appear on a general election ballot during an even numbered year. (Emphasis added)

and;

**WHEREAS**, as a result of the November 6, 2012 election, approximately 61 % of the votes cast on this ballot issue were cast against the adoption of Amendment 64 in Washington County; and

**WHEREAS**, the Board of County Commissioners finds that the State of Colorado currently has no regulations for the implementation of Amendment 64 and thus, this Board cannot regulate any activity allowed by the Amendment and without approved and implemented rules, regulations or laws from the State of Colorado, it is impossible for this Board to consider any activity allowed under Amendment 64 to be in the interest of the citizens of Washington County based upon the aforementioned votes; and

**WHEREAS**, Amendment 64 conflicts with federal law, and the possession, cultivation, sale and use of marijuana remains illegal under federal criminal statutes; further enabling the Board of County Commissioners to adopt the State Amendment is making them act in an unconstitutional manner, and

**WHEREAS**, the Board of County Commissioners of Washington County ("Board") finds that the licensing and operation of marijuana establishments provided for in Amendment 64, by making marijuana more readily available in the community and facilitating the recreational use of marijuana, present a threat to the health and education of Washington County's children, the safety of the workplace and the traveling public and to the public health, safety and welfare as a whole; and

**WHEREAS**, the licensing and operation of medical marijuana as set forth in the Colorado Medical Marijuana Code as licensed by the State of Colorado shall be unaffected by this Ordinance; and

**WHEREAS**, pursuant to the authority granted to the County in Amendment 64 and consistent with the will of Washington County voters, the Board desires to adopt this ordinance prohibiting the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, marijuana social clubs or retail marijuana stores within the unincorporated areas of Washington County, Colorado.

**NOW, THEREFORE, BE IT ORDAINED** by the Board of County Commissioners of Washington County as follows:

**Purpose.** The purpose of this Ordinance is to promote the general public welfare and safety throughout Washington County, Colorado by prohibiting the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, marijuana social clubs or retail marijuana stores as contemplated by Amendment 64, by finding that Amendment 64 conflicts with federal law. Specifically, pending federal legislation or Executive direction to the contrary notwithstanding, this Board bases its findings on Article 6, Clause 2 of the United States Constitution and the legal principle that where federal law and state law conflict, federal law

prevails as articulated by the Supreme Court in *Gonzales v. Raich*.

**Definitions.** Unless otherwise specified or the context otherwise requires, any terms used herein shall have the same meanings as provided in Article XVIII, Section 16 of the Colo. Constitution. These definitions include, but are not limited to the following:

- (1) "MARIJUANA" OR "MARIHUANA" means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marihuana concentrate. "Marijuana" or "marihuana" does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.
- (2) "MARIJUANA ACCESSORIES" means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.
- (3) "MARIJUANA CULTIVATION FACILITY" means an entity of any kind which is used, intended to be used, or designed to be used to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.
- (4) "MARIJUANA ESTABLISHMENT" means a marijuana cultivation facility, marijuana testing facility, a marijuana product manufacturing facility, a marijuana social club where patrons gather to imbibe in marijuana usage or a retail marijuana store.
- (5) "MARIJUANA PRODUCT MANUFACTURING FACILITY" means an entity of any kind which is used, intended to be used, or designed to be used to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.
- (6) "MARIJUANA PRODUCTS" means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.
- (7) "MARIJUANA TESTING FACILITY" means an entity of any kind which is used, intended to be used, or designed to be used to analyze and certify the safety and potency of marijuana.
- (8) "MEDICAL MARIJUANA CENTER" means an entity licensed by a state agency to sell marijuana and marijuana products pursuant to Section 14 of this Article and the Colorado Medical Marijuana Code.
- (9) "RETAIL MARIJUANA STORE" means an entity of any kind which is used, intended to be used, or designed to be used to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

**Section 1. APPLICABILITY:**

- 1.1 This Ordinance shall apply throughout the unincorporated area of Washington County.
- 1.2 If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of County Commissioners hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases are declared unconstitutional or invalid.

**Section 2. UNLAWFUL ACTS:**

- 2.1 Any of the following shall be a violation of this Ordinance and shall be subject to the remedies and penalties provided for in this Ordinance:
- (a) Maintaining, operating, allowing, constructing or otherwise establishing an entity, facility, structure or utilizing a land area of any kind which is used, intended to be used, or designed to be used to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, as contemplated by Amendment 64.
  - (b) Maintaining, operating, allowing, constructing or otherwise establishing an entity, facility, structure, or utilizing a land area of any kind which is used, intended to be used, or designed to be used to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, as contemplated by Amendment 64.
  - (c) Maintaining, operating, allowing, constructing or otherwise establishing an entity, facility, structure or utilizing a land area of any kind which is used, intended to be used, or designed to be used to analyze and certify the safety and potency of marijuana, except for law enforcement agencies as contemplated by Amendment 64.
  - (d) Maintaining, operating, allowing, constructing or otherwise establishing an entity, facility, structure or utilizing a land area of any kind which is used, intended to be used, or designed to be used to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers, and / or to provide a facility as a social club where patrons gather to imbibe marijuana as contemplated by Amendment 64.

**Section 3. ENFORCEMENT:**

- 3.1 This ordinance shall be enforced by the Washington County Sheriff.
- 3.2 The Board hereby designates the Washington County Attorney, or his/her designee, as the County's legal representative in the enforcement of the provisions of this Ordinance in a court of applicable jurisdiction. In the event the Washington County Attorney or his/her designee cannot represent Washington County or the Board deems it otherwise appropriate, the Board may appoint the District

Attorney of the Thirteenth Judicial District to perform such legal enforcement duties in lieu of the County Attorney.

**3.3 Scope.** This ordinance shall apply within the unincorporated land areas of Washington County and to all other areas designated herein. This ordinance shall in no way limit application and enforcement of any statutes of the State of Colorado but shall be in addition thereto.

**3.4 Penalties:** The County may seek such criminal or civil penalties as are provided by Colorado law and provided for herein.

**Section 4. CIVIL REMEDIES AND CRIMINAL ENFORCEMENT POWERS:**

**4.1** The County shall have the following remedies and enforcement powers for violations of any acts outlined in section 2 above.

**4.2 Injunctive Relief:** The County may seek an injunction or other equitable relief in court to stop any violation of this Ordinance for any acts outlined in section 2 above and shall seek to recover costs of any such action.

**4.3 Class 2 Petty Offense:** Notwithstanding the aforementioned, pursuant to C.R.S. 30-15-402, any violation of this Ordinance shall be a Class 2 Petty Offense, and each day a violation occurs shall be considered a separate violation.

**4.4 Surcharges. S 30-15-408. Disposition of fines and forfeitures.** The fine for a first offense and for any subsequent offense shall be not more than one thousand dollars (\$1,000.00) per violation and each day shall be deemed a separate violation. In addition to the fine, court costs of \$21.00; a drug surcharge of \$200.00, useful public service charges of \$60.00, and a Court Security Cash Fund fee of \$5.00 may be applied by the Court. Any and all surcharges shall be paid to the clerk of the court by each person convicted of violating this ordinance. The clerk shall transmit the moneys to the respective funds in accordance with C.R.S. 30-15-402(2).

**Section 5. CRIMINAL PROSECUTION:**

**5.1** If so directed by the Sheriff of Washington County, a criminal prosecution may be brought against any person who violates any provision of this ordinance in accordance with C.R.S. 30-15-402 and 410.

**5.2** When applicable as allowed by law, all fines and forfeitures for the violation of this Ordinance shall be paid to the Treasurer of Washington County within thirty (30) days of receipt and shall be deposited into the General Fund of Washington County.

**Section 6. ADDITIONAL REMEDIES:**

The remedies provided in this Ordinance shall be cumulative and in addition to any other remedies which may be available to the County and its Board. Nothing contained herein shall be construed to preclude the Board from seeking such other remedies in addition to, or in lieu of, the legal remedies herein granted.

**Section 7. SAFETY CLAUSE:**

The Board hereby finds, determines and declares that this Ordinance is necessary for the health, safety and welfare of the citizens of Washington County, Colorado.

**Section 8. PUBLICATION AND EFFECTIVE DATE:**

The foregoing text is the authentic text of Washington County Ordinance No. 2013-01. The first reading of said Ordinance took place on April 16, 2013 at a regular meeting of the Board of County Commissioners. It was ordered published in full in the Akron News Reporter and the Otis Telegraph on April 24, 2013. The Ordinance was adopted on second reading at a regular Board of County Commissioner's meeting on May 7, 2013, and shall take effect on May 7, 2013.

ADOPTED this 7<sup>th</sup> day of May, 2013, at Akron, Colorado.

BOARD OF COUNTY COMMISSIONERS OF  
WASHINGTON COUNTY, COLORADO

*Garland Wahl*

ATTEST:  
Garland Wahl  
Washington County Clerk and Recorder

[SEAL]



*Lea Ann Laybourn*  
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Lea Ann Laybourn, Chairman

*David Foy*  
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David Foy, Commissioner

*Terry Hart*  
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Terry Hart, Commissioner