

TOWN OF FLEMING

ORDINANCE #2010-03

AN ORDINANCE EXTENDING THE MORATORIUM ON THE SUBMISSION, ACCEPTANCE, PROCESSING, AND APPROVAL OF ANY APPLICATION FOR A TOWN OF FLEMING PERMIT OR LICENSE RELATED TO THE OPERATION OF A BUSINESS THAT SELLS MEDICAL MARIJUANA AND IMPOSING A PROHIBITION ON THE CULTIVATION AND SALE OF MEDICAL MARIJUANA PURSUANT TO THE AUTHORITY GRANTED BY HOUSE BILL 1284; DIRECTING THE INVESTIGATION OF THE CITY'S REGULATORY AUTHORITY OVER SUCH BUSINESSES IN LIGHT OF THE PASSAGE OF STATE HOUSE BILL 1284; DECLARING THE INTENTION OF THE TOWN COUNCIL TO CONSIDER ITS RIGHTS AND AUTHORITY OVER THE BUSINESSES DESCRIBED IN STATE HOUSE BILL 1284 AND IF NECESSARY, ADOPTION OF APPROPRIATE TOWN REGULATIONS WITH RESPECT TO SUCH BUSINESSES AND DECLARING EMERGENCY IN THE ADOPTION OF THIS MORATORIUM.

WHEREAS, in the November 2000 general election, the voters of the State of Colorado adopted Amendment 20 to the Colorado Constitution ("Article XVIII Section 14") which authorizes and limits the sale of medical marijuana for use in the treatment of debilitating medical conditions; and

WHEREAS, the possession, sale and use of marijuana is prohibited pursuant to federal law; and

WHEREAS, the Town enacted a temporary moratorium for 180 days on submission, acceptance, processing, and approval of all applications for Town permits and licenses relating to the operation of medical marijuana dispensaries on January 19, 2010; and

WHEREAS, House Bill 1284 provides local governments with certain rights and authority related to medical marijuana and medical marijuana businesses, including the right to prohibit the sale and cultivation of medical marijuana until July 1, 2011; and

WHEREAS, the Town desires to investigate the options and powers granted to local governments under House Bill 1284; and

WHEREAS, the Board declares the subject matter of this ordinance to be an emergency due to the increased public interest in such permits and licenses.

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

Section 1. Findings and intent. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Board of Trustees of the Town of Fleming.

Section 2. Moratorium on the submission, acceptance, processing or approval of applications for permits and licenses related to businesses that sells, dispenses or cultivates medical marijuana. Upon the adoption of this Ordinance, a Town-wide moratorium shall be enacted on the issuance of Town of Fleming permits and licenses related to the operation of a business or cooperative (or similar operation) that sells, dispenses or cultivates medical marijuana pursuant to the Authority granted by Article XVIII, Section 14 of the Colorado Constitution. Town staff is directed to refusing to accept for filing, and not to process or review, any new applications for a business or cooperative (or similar operation) that sells, dispenses or cultivates medical marijuana (sometimes known as “medical marijuana dispensaries”) during the moratorium period.

Section 3. Emergency Declared. Pursuant to C.R.S § 31-16-105 hereby finds, determines, and declares that this Ordinance is necessary for the immediate preservation of public peace, health and safety. Specifically, the immediate effectiveness of this Ordinance is necessary to allow the board to study and make appropriate rules and regulations concerning businesses or cooperatives that sell dispense or cultivate medical marijuana.

Section 4. Authority. The Board of Trustees 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) Section 31-15-103, C.R.S. (concerning municipal police powers); and (v) Section 31-15-501, C.R.S. (concerning municipal power to regulate businesses).

Section 5. Severability. Should any one or more sections or provisions of this Ordinance or of Code provisions enacted hereby be judicially determined invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance or of such Code provision, the intention being that the various sections and provisions are severable.

Section 6. Repealer. Any and all Ordinances or Codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided however, that the repeal of any such Ordinance or Code or part thereof shall not revive any other section or part of any Ordinance or Code provision heretofore repealed or superseded.

Section 7. Effective Date. This Ordinance shall take effect immediately and be published by title as provided by C.R.S. § 31-16-105.

INTRODUCED, READ, ADOPTED AS AN EMERGENCY ORDINANCE THIS 16th day of August, 2010.