AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Introduction, Reading, Adoption, Order to Publish and Setting of Second Reading of Ordinance Prohibitingthe Operation of Marijuana Cultivation Facilities, Marijuana Product Manufacturing Facilities, Marijuana Testing Facilities or Retail Marijuana Stores within the Unincorporated Boundaries of Gunnison County, State of Colorado

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:
Ordinance; Prohibiting the Operation of Marijuana Cultivation Facilities, Marijuana Product Manufacturing Facilities, Marijuana Testing Facilities or Retail Marijuana Stores within the Unincorporated Boundaries of Gunnison County, State of Colorado

Fiscal Impact: $0.00

Submitted by: Katherine Haase for Matthew Birnie **Submitter's Email Address:** khaase@gunnisoncounty.org

Finance Review: ○ Required ● Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ● Required ○ Not Required

Comments:

This draft is consistent with the BOCC's instructions. Ready for "first reading" on BOCC agenda.

Reviewed by: DBaumgarten Discharge Date: 6/10/2013 Certificate of Insurance Required

Yes ○ No ●

County Manager Review:

Comments:

Reviewed by: MBirnie Discharge Date: 6/10/2013

○ Consent Agenda ● Regular Agenda ○ Worksession Time Allotted: 30 minutes

Agenda Date: 6/18/2013 Follow Up Agenda Date: 7/2 or 7/16.

Revised April 2013

ORDINANCE NO. 17

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO**

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

WHEREAS, the Board of County Commissioners of the County of Gunnison ("Board") has the authority to exercise all County powers for the unincorporated areas of Gunnison County pursuant to Section 30-11-103, C.R.S.; and

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

WHEREAS, said 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 added a new Section 16 to Article XVIII 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. <u>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</u>

MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, OR RETAIL MARIJUANA STORES MUST APPEAR ON A GENERAL ELECTION BALLOT DURING AN EVEN NUMBERED YEAR (underline added), and;

WHEREAS, consistent with the authority granted to the Board in Amendment 64, the Board desires to adopt this ordinance prohibiting the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores within the unincorporated areas of Gunnison County, Colorado; now therefore,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON as follows:

Purpose. The purpose of this ordinance is to promote the general public welfare and safety throughout Gunnison County, Colorado by prohibiting the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores.

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 LICENSED 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, A MARIJUANA TESTING FACILITY, A MARIJUANA PRODUCT MANUFACTURING FACILITY, OR A RETAIL MARIJUANA STORE.

(5) "MARIJUANA PRODUCT MANUFACTURING FACILITY" MEANS AN ENTITY LICENSED 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 LICENSED 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 LICENSED 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.

Enforcement. This ordinance shall be enforced by the Gunnison County Sheriff.

Violation. It shall be unlawful for any person to violate any provision of this ordinance.

Disposition of Fines and Forfeitures. Unless otherwise provided by law, all fines and penalties, and the surcharge thereon, for the violation of this ordinance shall be paid into the treasury of Gunnison County. The fine for a first offense and for any subsequent offense shall be one thousand dollars ($1000) per violation and each day shall be deemed a separate violation. The penalty assessment procedure provided in C.R.S. 16-2-201 may be followed by any arresting law enforcement officer for any such violation.

Surcharges. In addition to the fines and penalties prescribed in this ordinance, any person convicted of a violation of this ordinance shall be subject to the statutory surcharges of ten dollars ($10.00) for the Victims and Witnesses Assistance and Law Enforcement Fund. These 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).

Scope. This ordinance shall apply within the unincorporated territory of Gunnison 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.

Severability. If any part or parts of this ordinance are for any reason held to be invalid, such provision 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 part or parts hereof, irrespective of the fact that any one part or parts be declared invalid.

Repeal. All ordinances and/or resolutions or parts or ordinances and/or resolutions inconsistent with provisions of this ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this ordinance.

EFFECTIVE DATE.

In order to preserve the immediate health and safety of Gunnison County and its residents, this ordinance shall take effect immediately upon its publication as provided in § 30-15-405, C.R.S.

INTRODUCED, READ AND ADOPTED ON FIRST READING on _____, 2013, and ordered published in the Gunnison Country Times and the Crested Butte News.

THE BOARD OF COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By:_____
Paula Swenson, Chair

ATTEST:

_____
Katherine Haase, Deputy County Clerk

ADOPTED ON SECOND AND FINAL READING ON _____, 2013, and ordered published by reference to title only in the Gunnison Country Times and the Crested Butte News.

THE BOARD OF COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By:_____
Paula Swenson, Chair

ATTEST:

_____
Katherine Haase, Deputy County Clerk

CERTIFICATE

I hereby certify that the foregoing Ordinance No. 17 was introduced, read and adopted on first reading at the regular meeting of the Board of County Commissions of the County of Gunnison on _____, 2013, and the same was published in full in the Gunnison Country Times and the Crested Butte News, newspapers of general circulation published in Gunnison County, on _____, 2013, and thereafter was adopted on second and final reading at a regular public hearing of the Board of County Commissioners of the County of Gunnison on _____, 2013. Said ordinance was published by reference to title only on _____, 2013. Said ordinance shall become effective as of _____, 2013.

_____
Deputy County Clerk

State of Colorado)
)ss.
County of Gunnison)

Subscribed and sworn to before me this _____ day of _____, 2013, by _____, Deputy Clerk.

_____
Notary Public
Address:

My commission expires:_____

CERTIFICATION

I, _____, Gunnison County Deputy Clerk, do hereby certify that the foregoing Ordinance No. 17. entitled, **AN ORDINANCE PROHIBITING THE OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, OR RETAIL MARIJUANA STORES WITHIN THE INCORPORATED BOUNDARIES OF GUNNISON COUNTY, STATE OF COLORADO**, is a true, correct and complete copy from the records in my office, that said ordinance was duly adopted by the Board of County Commissioners of Gunnison County and is in full force and effect.

_____
Deputy County Clerk