

**ORDINANCE NO. 21-2009**

**AN ORDINANCE OF THE TOWN OF ERIE, COLORADO IMPOSING A TEMPORARY MORATORIUM ON THE SUBMISSION, ACCEPTANCE, PROCESSING, AND APPROVAL OF ANY APPLICATION FOR A BUSINESS AND OCCUPATION LICENSE, PERMIT, BUILDING PERMIT, AND LAND USE APPLICATION OF THE TOWN OF ERIE, RELATED TO THE OPERATION OF A BUSINESS THAT SELLS MEDICAL MARIJUANA PURSUANT TO THE AUTHORITY GRANTED BY ARTICLE 18, SECTION 14 OF THE COLORADO CONSTITUTION; DIRECTING THE PROMPT INVESTIGATION OF THE TOWN'S REGULATORY AUTHORITY OVER SUCH BUSINESSES; DECLARING THE INTENTION OF THE TOWN BOARD OF TRUSTEES TO CONSIDER THE ADOPTION OF APPROPRIATE TOWN REGULATIONS WITH RESPECT TO SUCH BUSINESSES IF PERMITTED BY LAW; AND, DECLARING AN EMERGENCY THEREFORE.**

**WHEREAS**, the Board of Trustees of the Town of Erie, Colorado, wishes to impose a moratorium on the submission, acceptance, processing and approval of any application for a business and occupation license, a permit, a building permit and a land use application related to the operation of a business that sells medical marijuana pursuant to the authority granted by Article 18, Section 14 of the Colorado Constitution in order to allow for the Town's prompt investigation of the Town's regulatory authority over such businesses; and,

**WHEREAS**, the imposition of such a moratorium is required for the immediate preservation of public property, health, welfare, peace, safety, and the financial well being of the Town; and,

**WHEREAS**, the Board of Trustees has determined that it is in the best interest of the citizens of the Town to impose such a moratorium as set forth herein below.

**NOW, THEREFORE, BE IT ORDAINED, BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO, AS FOLLOWS:**

Section 1.     Findings and Intent. The Board of Trustees of the Town of Erie, Colorado hereby finds, determines, and declares as follows:

1. The Board of Trustees has been made aware that staff has received inquiries from persons who may be interested in opening and operating a business within the Town which would offer medical marijuana for sale.

2. The sale of medical marijuana was authorized and limited by Article 18, Section 14 of the Colorado Constitution, adopted by the voters of the State of Colorado on November 7, 2000.
3. The Town has no current land use or business regulation governing the operation of a business selling medical marijuana within the Town of Erie.
4. The imposition of a one hundred eighty (180) day moratorium on the submission, acceptance, processing, and approval of all applications for Town business and occupation licenses, permits, building permits and land use applications relating to the operation of a business that sells medical marijuana will allow the Town staff and the Board of Trustees to investigate the Town's ability to regulate such businesses, and to develop and implement any appropriate regulations deemed necessary by the Board of Trustees .
5. Because the Town does not have any current regulations pertaining to businesses that sell medical marijuana, the Town will suffer irreparable harm if a short, temporary moratorium on the submission, acceptance, processing, and approval of Town permits and licenses related to the operation of such businesses is not imposed.
7. The duration of the moratorium imposed by this ordinance is reasonable in length, and is no longer than is required for the Town to properly investigate, develop, and, if appropriate, adopt and implement any regulations deemed necessary with respect to businesses that sell medical marijuana.
8. Proprietors desiring to open a business that sells medical marijuana will not be unfairly prejudiced by the imposition of the short, temporary moratorium imposed by this ordinance.

Section 2. Imposition of Temporary Moratorium on Applications For Permits, Business and Occupation Licenses, Building Permits and Land Use Applications Related to Businesses That Sell Medical Marijuana. Upon the adoption of this ordinance a moratorium is imposed upon the submission, acceptance, processing, and approval of all applications for business and occupation licenses, permits, building permits and land use applications by the Town of Erie related to a business that sells, or proposes to sell, medical marijuana pursuant to the authority granted by Article 18, Section 14 of the Colorado Constitution. The Town staff and the Town of Erie Planning Commission are directed to refuse to accept for filing, and not to process or review, any such new applications during the moratorium period.

Section 3. Effective Dates of Moratorium. The moratorium imposed by this ordinance shall commence as of the date of the adoption of this ordinance, and shall expire one hundred eighty (180) days thereafter, unless sooner repealed and the period of effectiveness of this Ordinance is referred to herein as the "Effective Period".

Section 4. Staff To Investigate and Prepare Proposed Regulations. Before the expiration of the moratorium imposed by this ordinance the Town staff, working with the Town Attorney, shall carefully review the legal authority of the Town to regulate businesses selling medical marijuana pursuant to Article 18, Section 14 of the Colorado Constitution. Such investigations shall be completed promptly and with due diligence. If directed to do so by the Board of Trustees, the Town Attorney shall prepare appropriate new regulations with respect to such businesses for consideration by the Board of Trustees.

Section 5. Police Power Finding. The Board of Trustees hereby finds, determines, and declares that this ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Erie and the inhabitants thereof.

Section 6. 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); (iv) Section 31-15-401, C.R.S.(concerning municipal police powers); and, (v) Section 31-15-501 (concerning municipal power to regulate businesses).

Section 7. Reason for Emergency. The Board of Trustees of the Town of Erie hereby finds, determines, and declares that an emergency exists and that this ordinance is necessary for the immediate preservation of public property, health, welfare, peace or safety. The adoption of this ordinance on an emergency basis is necessary in order to prevent a person from filing an application for a Town business and occupation license, permit, building permit or land use application relating to the operation of a business that sells medical marijuana until the Town has had a reasonable opportunity to determine: (i) the extent of the Town's regulatory authority over businesses that sell medical marijuana; and (ii) what regulations, if any, should be imposed by the Town upon such businesses. Failure to immediately impose the moratorium provided for in this ordinance will potentially allow a person to submit an application for a business and occupation license, a permit, a building permit or a land use application from the Town (including, but not limited to an application for a development permit; an application for a sales tax license; or payment of the Town's licenses and fees), and to possibly acquire certain rights with respect to the processing of such applications before the Town has the reasonable opportunity to evaluate the possible community impacts that might be associated with the operation of a businesses selling medical marijuana and to implement appropriate regulations with respect to such businesses. This could lead to the Town being forced to allow the operation of a business that sells medical marijuana in a location or in such a manner that would be out of character with the community and which would negatively affect the cultural, environmental, and neighborhood areas of the Town, and potentially present issues related to crime or the potential of crime. The Board of Trustees further determines that the adoption of this ordinance as an emergency ordinance is in the best interest of the citizens of the Town of Erie.

Section 8. Emergency declared. For the reason stated herein, the Board of Trustees for the Town of Erie, Colorado hereby declares an emergency to exist concerning the subject matter of this Ordinance and its immediate effect is necessary in order to preserve public property, health, welfare, peace, safety, and the financial well being of the Town.

Section 9. Severance Clause. If an article, section, paragraph, sentence, clause or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of Trustees hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts may be declared invalid or unconstitutional.

Section 10. The Board of Trustees of the Town of Erie finds and concludes that this Ordinance is necessary for the immediate preservation of the health, safety, and welfare of the citizens of the Town of Erie to protect the citizens of the Town of Erie and, therefore, this Ordinance shall be effective immediately upon its approval by the Board of Trustees.

Section 11. Repeal. All other ordinances or parts of any ordinances or other Code provisions in conflict herewith are hereby repealed.

Section 12. Effective Date. This Emergency Ordinance shall take effect immediately upon adoption.

**INTRODUCED, READ, APPROVED AS AN EMERGENCY ORDINANCE, ADOPTED, AND ORDER PUBLISHED IN FULL BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE THIS 13<sup>TH</sup> DAY OF OCTOBER, 2009.**

**PUBLISHED IN FULL** on the 21<sup>st</sup> day of October, 2009.

**TOWN OF ERIE, COLORADO**  
**A Colorado Municipal Corporation**

s/s: Andrew J. Moore, Mayor

s/s: Nancy J. Parker, Town Clerk