

TOWN OF RICO ORDINANCE NO. 2009-7

AN EMERGENCY ORDINANCE OF THE TOWN OF RICO, COLORADO DECLARING A TEMPORARY MORATORIUM ON MEDICAL MARIJUANA DISPENSARIES FOR A PERIOD OF ONE YEAR AND FURTHER DECLARING AN EMERGENCY

WHEREAS, the Town of Rico is a home-rule municipal corporation created and organized pursuant to the Colorado Constitution, Article XX, and the Town of Rico Home Rule Charter; and

WHEREAS, by virtue of such authority, and as further authorized by State statutes, including, but not limited to, C.R.S. sec. 31-15-401, the Town has broad authority to exercise its police powers to promote and protect the health, safety and welfare of the community and its inhabitants; and

WHEREAS, such police powers include the power to regulate the nature and type of businesses allowed within the community; and

WHEREAS, the Rico Home Rule Charter, Section 3.6, gives the Rico Board of Trustees the authority to pass an emergency ordinance upon one reading in order to protect the public health, safety and welfare of its citizens; and

WHEREAS, in the year 2000, the voters of the State of Colorado approved Amendment 20 to the Colorado Constitution, which was subsequently codified as Colorado Constitution, Article XVIII, Section 14, which authorizes the medical use of marijuana by persons suffering from debilitating medical conditions; and

WHEREAS, subsequent to the adoption of Amendment 20, the use of marijuana for any purpose, including the treatment of debilitating medical conditions, remained unlawful under Federal law; and

WHEREAS, the Federal government has recently modified its policies concerning the prosecution of Federal marijuana violations in states, like Colorado, which have legalized its use for medical purposes; however, marijuana remains a controlled substance, the possession or use of which is illegal under both State and Federal law, with the limited exception of the medical use of

marijuana authorized by Section 14 of Article XVIII of the Colorado Constitution; and

WHEREAS, as a result of the passage of Amendment 20, and the change in Federal policy regarding the prosecution of marijuana use for medical purposes, there has been a proliferation of medical marijuana dispensaries in Colorado and in other states which have also adopted laws authorizing the medical use of marijuana; and

WHEREAS, in recognition of the continuing illegality of marijuana sale or use, for purposes other than the treatment of debilitating medical conditions, the regulation of medical marijuana dispensaries is a necessary exercise of the municipal police power to assure that such dispensaries are appropriately located within the community, that the hours of operation of such facilities are consistent with the requirements of applicable law, as well as the health, safety and welfare of the community, that such dispensaries are not located adjacent to schools, or other areas frequented by minors, and that such dispensaries are operating in a manner which is compliant with the intent of Amendment 20; and

WHEREAS, the Rico Board of Trustees finds that existing regulations within the Town's Ordinances and Land Use Code do not adequately address the potential impacts of medical marijuana dispensaries within the community, and that adequate time is required to allow Town staff to develop such regulations for subsequent review and potential approval by the Rico Board of Trustees; and

WHEREAS, the Rico Board of Trustees finds that the recent proliferation of medical marijuana dispensaries within the State constitutes an emergency affecting the health, safety, property and public peace of the citizens of Rico; and

WHEREAS, the Rico Board of Trustees declares an emergency which warrants a temporary moratorium on medical marijuana dispensaries within the Town of Rico.

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

SECTION 1:

The foregoing recitals are hereby affirmed and incorporated by this reference.

SECTION 2:

This moratorium shall apply to any person or entity to function, do business as, or hold himself out as a primary care-giver for the purpose of acquisition, possession, production or transportation of marijuana or paraphernalia related to the administration of such marijuana as the same is defined by Colorado Constitution, Article XVIII, Section 14 (Amendment 20).

SECTION 3:

The Town Board of Trustees hereby declares a moratorium on medical marijuana dispensaries and on any business purporting to sell or actually selling marijuana for medical use within the Town of Rico. No medical marijuana dispensary, or any business purporting to sell or actually selling marijuana for medical use, shall be owned, operated or located within the Town of Rico. Further, no medical marijuana dispensary, or any business purporting to sell or actually selling marijuana for medical use, shall be considered a "use by right", an "accessory use", a "conditional use", subject to a "special use permit" or a "lawful nonconforming use" in any zone district of the Town of Rico during the period of this moratorium.

Upon the effective date of this Ordinance and for twelve months thereafter, no application for a business license or for a sales tax license for a medical marijuana dispensary, or for any business purporting to sell or actually selling marijuana for medical use, shall be accepted, processed, approved or issued by the Town of Rico.

SECTION 4:

It shall be illegal during the period of this moratorium for any person or entity to function, do business as, or hold himself out as a primary care-giver for the purpose of acquisition, possession, production or transportation of marijuana or paraphernalia related to the administration of such marijuana as the same is defined by Colorado Constitution, Article XVIII, Section 14 (Amendment 20).

This Ordinance shall be considered a moratorium on the operation and location of any medical marijuana dispensaries within the Town of Rico. This ordinance is temporary and shall be in effect for a period of twelve months and may be extended until such time as the interplay between Federal and State law, Amendment 20 and the application of local Town ordinances has been clarified sufficiently to allow the adoption of appropriate regulations. The Town Staff and Town Attorney are directed to provide periodic reports and recommendations to the Town Board of Trustees accordingly.

SECTION 5:

Emergency Declared.

The Board of Trustees finds that the passage of this Ordinance is necessary for the immediate preservation of the public peace, health and safety in order to prevent the establishment of medical marijuana dispensaries before the Town of Rico has a reasonable opportunity to determine the extent of the Town's regulatory authority over such businesses, the regulations which should be imposed, and the interplay of State and Federal law, including Amendment 20. The Board of Trustees declares that this matter constitutes an emergency as that term is defined by the Rico Home Rule Charter.

SECTION 6:

All other Town ordinances, or portions thereof, which are inconsistent or conflicting with this Ordinance, or any portion hereof, are hereby repealed to the extent of such inconsistency or conflict.

SECTION 7:

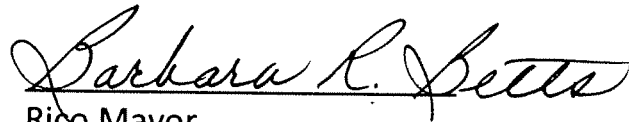
If any portion of this Ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 8:


This Ordinance shall be effective upon adoption, and the moratorium imposed shall commence as of the date of the adoption of this Ordinance, and shall be in effect until further action by the Board of Trustees or for a period of one year, whichever occurs first.

INTRODUCED, READ, AND ADOPTED BY A MAJORITY VOTE OF THE RICO BOARD OF TRUSTEES ON THIS 16TH DAY OF DECEMBER, 2009, AND PUBLISHED THEREAFTER IN ACCORDANCE WITH THE RICO HOME RULE CHARTER.

TOWN OF RICO, COLORADO


Barbara R. Betts
Rico Mayor

ATTEST:


Rico Town Clerk