TOWN OF MINTURN, COLORADO

ORDINANCE NO. 2 – SERIES 2013

AN ORDINANCE OF THE TOWN OF MINTURN, COLORADO IMPOSING A TEMPORARY MORATORIUM ON THE USE OR CONSUMPTION OF MARIJUANA OR MARIJUANA PRODUCTS ON COMMERCIAL AND INDUSTRIAL ZONED PROPERTY THAT OPERATES AS PLACE OF PRIVATE ASSEMBLY FOR THE PURPOSE OF INVITING PERSONS TO USE OR CONSUME MARIJUANA OR MARIJUANA PRODUCTS ON SITE; AND DECLARING AN EMERGENCY

WHEREAS, on November 6, 2012 the voters of the State of Colorado approved Amendment 64. Amendment 64 added Section 16 of Article XVIII to the Colorado Constitution, and created a limited exception from criminal liability under Colorado law (as opposed to Federal law) for the cultivating, manufacturing, testing of marijuana or marijuana products and retail stores selling marijuana or marijuana products, unless prohibited by a local government, and to operate in a system of licensed establishments regulated by State and local governments; and

WHEREAS, Amendment 64 directs the Colorado Department of Revenue to issue regulations for marijuana establishments, meaning marijuana cultivation facilities, marijuana testing facilities, marijuana product manufacturing facilities and retail marijuana stores, by July 1, 2013; and

WHEREAS, the State of Colorado has formed the Amendment 64 Implementation Task Force and anticipates enacting extensive legislative and regulatory changes in the upcoming months that will clarify and address licensing and land use issues connected to the implementation of Amendment 64; and

WHEREAS, although Amendment 64 permits the personal use of marijuana and marijuana products by persons twenty-one (21) years of age or older, Amendment 64 provides that nothing contained in said amendment shall permit consumption that Is "conducted openly and publicly or in a manner that endangers others", but said terms are not well defined; and

WHEREAS, the Amendment 64 Implementation Task Force has formed a Local Authority and Control Working Group to further clarify these matters; and

WHEREAS, the Colorado Clean Indoor Air Act, Sections 25-14-201 *et. seq.* CR.S. prohibits the smoking of tobacco products or medical marijuana within most commercial buildings, but said prohibition does not appear to apply to the recreational use or consumption of marijuana and possible amendments to the Colorado Clean Indoor Air Act will be considered by the Amendment 64 Implementation Task Force; and

WHEREAS, until some of these fundamental interpretations of State law are resolved or clarified, attempts by the Town to regulate where marijuana can be used or consumed is fraught with possible inherent conflicts that could raise doubts as to any regulatory scheme adopted by the Town; and

WHEREAS, despite the adoption of Amendment 64, marijuana is still classified as a controlled substance under Federal and State law, and has the potential for abuse that should be closely monitored to the extent possible; and

WHEREAS, the use and consumption of marijuana and marijuana products in commercial or Industrial buildings may conflict with the Town's Mater Plan as being inconsistent with surrounding uses, or may otherwise be detrimental to the public health, safety and welfare; and

WHEREAS, the Town of Minturn Town Council, as an exercise of its local land use authority, finds and determines that use of commercial and industrial property within the Town for the use and consumption of marijuana and marijuana products should not be permitted unless and until the Amendment 64 Implementation Task Force issues Its report and the Colorado General Assembly and Colorado Department of Revenue enact appropriate regulations concerning places where marijuana and marijuana products can be used or consumed; and

WHEREAS, the Town Council hereby finds and determines that a moratorium on the use and consumption of marijuana and marijuana products on commercial and industrial properties within nonresidential zone districts will allow the Town's staff and the Town Council to investigate the Town's desire and ability to permanently regulate the use and consumption of marijuana and marijuana products In "marijuana clubs", and to develop and implement any appropriate regulations or prohibit such businesses; and

WHEREAS, a moratorium to and through October 1, 2013 is a moratorium of a reasonable duration and no longer than necessary for the Town to properly investigate, develop, and, if appropriate, adopt and implement regulations with respect to non-residential properties used as a place of private assembly for the purpose of inviting persons to use or consume marijuana on such premises; and

WHEREAS, the Town Council finds and determines that this Ordinance is necessary for the preservation of the public peace, safety or welfare.

NOW, THEREFORE, THE TOWN OF MINTURN, COLORADO, ORDAINS:

Section 1. Recitals. The foregoing recitals are incorporated herein as findings and determinations of the Town of Minturn Town Council.

Section 2. Declaration of Emergency. In accordance with Section 11.7 of the Minturn Home Rule Charter, the Town of Minturn Town Council hereby finds and declares that an emergency exists and this Ordinance is necessary for the immediate preservation of the public health and safety and property of the Town of Minturn and inhabitants thereof.

Section 3. Moratorium. A temporary moratorium is hereby imposed on the use or consumption of marijuana or marijuana products, including the smoking of marijuana, consumption of marijuana by use of a vaporizer, or the consumption of edible marijuana products on all nonresidential property in all non-residential zones. Specifically, "marijuana clubs", which constitute a business operating as place of private assembly for the purpose of inviting members to use or consume marijuana on site, shall be prohibited on all non-residential property within all non-residential zone districts. Violation of such restrictions shall constitute a municipal offense.

For the purposes of this Ordinance, the terms "marijuana" and "marijuana products" shall have the same meaning as defined in subsection (2) of Section 16 of Article XVIII of the Colorado Constitution.

Section 4. Direction to Staff. During the period this Ordinance remains in effect, Town staff shall monitor the State's regulatory efforts and research the applicable legal and land use issues connected to the regulation of businesses operating for the purposes of consumption or use of marijuana or marijuana products on their premises, and propose a regulatory scheme to the Town Council for its review. Such research may include referral of draft regulations to the Planning Commission for review of any proposed zoning changes, consistent with the Minturn Municipal Code.

Section 5. Severability. if any part, section, subsection, clause, phrase or other portion of this ordinance is invalidated for any reason, by a court of competent Jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council specifically finds and declares that it would have passed this Ordinance, and each part thereof, regardless of the fact that one or more parts could be declared invalid.

INTRODUCED, READ BY TITLE AND UNANIMOUSLY PASSED this 20th day of February, 2013, and the Town of Minturn ordains this ordinance enacted as an emergency ordinance and ordered published in full within ten days of passage thereof.

MAYOR

ATTEST:

TOWN CLERK

TOWN OF MINTURN, COLORADO
SEAL
1904