ORDINANCE NO. 03, Series 2013
INTRODUCEDY BY: COUNCILOR LUPBERGER

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, PROVIDING FOR A MORATORIUM UNTIL OCTOBER 1, 2013, ON THE SUBMISSION, ACCEPTANCE OR PROCESSING OF APPLICATIONS AND THE LICENSING, PERMITTING, ESTABLISHMENT OR OPERATION OF ANY RECREATIONAL MARIJUANA BUSINESS THAT SELLS, CULTIVATES, MANUFACTURES, PREPARES, PACKAGES, PURCHASES, TESTS, OR OTHERWISE PROVIDES FOR OR ALLOWS THE USE OF MARIJUANA OR MARIJUANA PRODUCTS PURSUANT TO AMENDMENT 64 APPROVED BY THE VOTERS OF THE STATE OF COLORADO AT THE NOVEMBER 6, 2012, GENERAL ELECTION, AND CODIFIED AS ARTICLE XVIII, SECTION 16 OF THE COLORADO CONSTITUTION, INCLUDING THE USE OF LAND FOR SUCH PURPOSE OR PURPOSES.**

WHEREAS, at the November 6, 2012, general election the voters of the State of Colorado adopted Amendment 64 of the Colorado Constitution ("Amendment 64"), which is codified as Article XVIII, Section 16 of the Colorado Constitution; and

WHEREAS, Amendment 64 permits persons twenty-one years of age and older to possess, use, display, purchase or transport one ounce or less of marijuana, or marijuana accessories, to grow limited amounts of marijuana and manufacture and sell marijuana accessories; and

WHEREAS, Amendment 64 also provides for the establishment of marijuana establishments, which include cultivating, testing and product manufacturing facilities, and retail marijuana stores; and

WHEREAS, Amendment 64 requires that by no later than July 1, 2013, the Colorado Department of Revenue shall adopt regulations to implement Amendment 64; and

WHEREAS, Amendment 64 provides that by October 1, 2013, the Colorado Department of Revenue is to begin accepting and processing license applications for marijuana establishments; and

WHEREAS, Amendment 64 further provides that local governmental entities may enact ordinances and regulations governing the time, place, manner and number of marijuana establishments and that by October 1, 2013, each locality adopt marijuana establishment licensing regulations in the event the Colorado Department of Revenue fails to adopt regulations or accept applications; and

WHEREAS, on December 10, 2012, Governor John Hickenlooper established a Task Force regarding the implementation of Amendment 64 whose goal is to assist the legislature and the Department of Revenue to enact efficient and effective laws and regulations that provide for the implementation of Amendment 64;and

WHEREAS, the Task Force has identified areas subject to the state's regulation which include, but are not limited to, blending medical marijuana regulation with recreational marijuana,

consideration of state operated recreational dispensaries, impact of state licensing upon local authority, regulation of personal grows, definition of “openly and publicly”, regulatory framework for all types of consumption, pre-emption of local regulations and grower regulations; and

WHEREAS, in addition to awaiting direction from the state, because marijuana is a controlled substance under federal law both state and local authorities are uncertain as to what action, if any, the federal government may pursue regarding "recreational marijuana businesses", which includes but is not limited to cultivation, product manufacturing and testing facilities along with retail marijuana stores and other uses of property for the commercial consumption of marijuana and marijuana products; and

WHEREAS, absent any definitive direction or guidelines from either the state or federal government regarding the regulation of recreational marijuana businesses the City cannot at this time determine its position regarding what if any regulations or prohibitions, including land use regulations, it may or must impose on recreational marijuana businesses; and

WHEREAS, the imposition of a moratorium until October 1, 2013, on the submission, acceptance or processing of applications and the licensing, permitting, establishment or operation of any recreational marijuana business that sells, cultivates, manufactures, prepares, packages, purchases, tests, or otherwise provides for or allows the use of marijuana or marijuana products pursuant to Amendment 64, including the use of land for such purpose or purposes, is reasonable and necessary for the City to develop, if necessary its own licensing scheme for marijuana establishments and have had an opportunity to investigate, develop, adopt and implement, and if necessary amend regulations it deems appropriate to regulate recreational marijuana businesses, as necessary to protect the public’s health safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AS FOLLOWS:

Section 1. The foregoing recitals are incorporated herein and made a part of this ordinance.

Section 2. Upon adoption of this ordinance a moratorium is imposed until October 1, 2013, on the submission, acceptance or processing of applications and the licensing, permitting, establishment or operation of any recreational marijuana business that sells, cultivates, manufactures, prepares, packages, purchases, tests, or otherwise provides for or allows the use of marijuana or marijuana products pursuant to Amendment 64 approved by the voters of the State of Colorado at the November 6, 2012, general election and codified as Article XVIII, Section 16 of the Colorado Constitution, and upon the use of land for such purpose or purposes.

Section 3. During the pendency of this moratorium, City staff shall review all laws and regulations enacted by the state or actions of the federal government regarding recreational marijuana businesses and advise Council of same and, if so directed by Council, prepare ordinances and or regulations with respect to the time, place, manner, licensing and other regulations regarding recreational marijuana businesses.

Section 4. If any 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 City Council 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 unconstitutional or invalid.

Section 5. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 6. The repeal or modification of any provision of the Code of Ordinances of Lafayette, Colorado by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 7. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 8. Violations of this ordinance shall be punishable in accordance with Section 1-10 of the Municipal Code of the City of Lafayette, Colorado.

Section 9. This ordinance shall become effective upon the latter of the 10th day following enactment, or the day following final publication of the ordinance.

INTRODUCED AND PASSED ON FIRST READING THE 15th DAY OF JANUARY, 2013.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THE 5th DAY OF FEBRUARY, 2013.

CITY OF LAFAYETTE, COLORADO

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Carolyn D. Cutler, Mayor

ATTEST:

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Susan Koster, CMC, City Clerk

APPROVED AS TO FORM:

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David S. Williamson, City Attorney