

**PROCEEDINGS OF THE BOARD OF COUNTY COMMISSIONERS  
REGULAR MEETING, AUGUST 5, 2013**

THE BOARD OF COUNTY COMMISSIONERS OF CUSTER COUNTY MET IN REGULAR SESSION IN THE COMMISSIONER’S BOARDROOM.

Commissioner Lynn Attebery called the meeting to order at 9:00 AM and the Pledge of Allegiance was recited.

Roll Call was taken:

Lynn Attebery	Chairman	Present
Allen Butler	Vice-Chairman	Present
Kit Shy	Commissioner	Absent
Kris Lang	Deputy Clerk to the Board	Present

Also present was: John Rusher, Nora Drenner, manager and editor for the Sangre De Cristo Sentinel and Jillian Ward reporter for the Wet Mountain Tribune.

AGENDA:

Call meeting to order

Pledge of allegiance

Roll Call

Amend agenda

Approval of minutes:

Audience introduction

Public Comment

Commissioner Items

Executive Session

New/Old Business

Ordinance Opposing Amendment 64

Review of the remaining county auction items

Staff Reports: CSU Extension, Public Health, Airport Advisory, Human Resource/Finance, Human Services, Road and Bridge

Commissioner Attebery asked if there were any public comments. John Rusher encouraged the county to continue spraying the weeds in the county right-of-ways and to include the stumps of the ground willows to detour future regrowth. He also suggested that the county provide and complete the services in a timely manner to obtain the full benefit of the spraying.

Commissioner Attebery said that the BOCC is proposing the adoption of Ordinance 13-01 an Ordinance Prohibiting the Operation of Marijuana Cultivation activities, Marijuana Product Manufacturing Facilities, Marijuana Testing Facilities or Retail Marijuana Stores within the unincorporated boundaries of Custer County, State of Colorado. Commissioner Attebery and Commissioner Butler completed the first reading of the Ordinance in its entirety.

ORDINANCE NO. 13- 01  
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 CUSTER COUNTY, STATE OF COLORADO

**WHEREAS**, pursuant to § 30-15-401, C.R.S., the Board of County Commissioners of Custer County, Colorado (hereinafter the "Board"), has the general enabling power to adopt ordinances for the control or licensing of those matters of purely local concern, and to do all acts and make all regulations which may be necessary/ or expedient for the promotion of the health, safety and welfare of the present and future residents of Custer County; and

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

**WHEREAS**, Amendment 64 is now effective and located in Article XVIII, Section 16 of the Colorado Constitution; and

**WHEREAS**, Article XVIII, Section 16 defines a "locality" in part in section 2(e) of Section 16 to include a county; and

**WHEREAS**, Article XVIII, Section 16, Part 5(f) allows a county to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance.

**WHEREAS**, even though the provisions of Amendment 64 are self-executing, § 12-43.4-104(3) C.R.S. reiterates the power and authority of a county to prohibit the operation of retail marijuana establishments through adopting an ordinance.

**WHEREAS**, as a result of the November 6, 2012 election, a majority of the votes cast on this ballot issue were cast against the adoption of amendment 64 in Custer County; and

**WHEREAS**, pursuant to the authority granted to the County in Article XVIII, Section 16 and § 12-43.4-104(3) C.R.S. consistent with the will of Custer County voters, 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  
**NOW, THEREFORE, BE IT ORDAINED** by the Board of County Commissioners of Custer County as follows:

**Purpose.** The purpose of this ordinance is to promote the general public welfare and safety throughout Custer 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"** has the same meaning as defined in Article 6 XVIII, Section 16(2)(f) of the Colorado Constitution.
- (2) **"MARIJUANA ACCESSORIES"** has the same meaning as defined in Article XVIII, Section 16(2)(g) of the Colorado Constitution.
- (3) **"MARIJUANA CULTIVATION FACILITY"** has the same meaning as defined in Article XVIII, Section 16(2)(h) of the Colorado Constitution.
- (4) **"MARIJUANA ESTABLISHMENT"** has the same meaning as defined in Article XVIII, Section 16(2)(i) of the Colorado Constitution.

- (5) "MARIJUANA PRODUCT MANUFACTURING FACILITY" has the same meaning as defined in Article XVIII, Section 16(2)(j) of the Colorado Constitution.
- (6) "MARIJUANA PRODUCTS" has the same meaning as defined in Article XVIII, Section 16(2)(k) of the Colorado Constitution.
- (7) "MARIJUANA TESTING FACILITY" has the same meaning as defined in Article XVIII, Section 16(2)(l) of the Colorado Constitution.
- (8) "MEDICAL MARIJUANA CENTER" has the same meaning as defined in Article XVIII, Section 16(2)(m) of the Colorado Constitution.
- (9) "RETAIL MARIJUANA STORE" has the same meaning as defined in Article XVIII, Section 16(2)(n) of the Colorado Constitution.

**Section 1. APPLICABILITY:**

- 1.1 This Ordinance shall apply throughout the unincorporated area of Custer County, including but not limited to public and state lands.
- 1.2 If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or otherwise invalid, such decision 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 section, subsection, clause or phrase thereof, irrespective of the fact that anyone or more sections, subsections, sentences, clauses and phrases are declared unconstitutional or invalid.

**Section 2. UNLAWFUL ACTS:**

- 2.1 Any of the following shall be a violation of this Ordinance and shall be subject to the remedies and penalties provided for in this Ordinance:
  - (a) Maintaining an entity or operation of any kind which is used, intended to be used, or designed to be used 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.
  - (b) Maintaining an entity or operation of any kind which is used, intended to be used, or designed to be used to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to marijuana establishments.
  - (c) Maintaining an entity or operation of any kind which is used intended to be used, or designed to be used to analyze and certify the safety and potency of marijuana.
  - (d) Maintaining an entity or operation of any kind which is used, intended to be used, or designed to be used 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.
  - (e) Maintaining, establishing, or operating a marijuana establishment.

**Section 3. ENFORCEMENT:**

- 3.1 This ordinance shall be enforced by the Custer County Sheriff.
- 3.2 The Board hereby designates the Custer County Attorney, or, his/her designee, as the County's legal representative in the enforcement of the provisions of this Ordinance in a court of applicable jurisdiction. In the event the Custer County Attorney or his/her designee cannot

represent Custer County or the Board deems it otherwise appropriate; the Board may appoint the District Attorney of the Eleventh Judicial District to perform such legal enforcement duties in lieu of the County Attorney.

3.3 **Scope.** This ordinance shall apply within the unincorporated territory of Custer 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.

3.4 **Penalties.** The County may seek such criminal or civil penalties as are provided by Colorado law and provided for herein.

**Section 4. CIVIL REMEDIES AND ENFORCEMENT POWERS:**

4.1 The County shall have the following remedies and enforcement powers for violations of any acts outlined in section 2 above.

4.2 **Injunctive Relief.** The County may seek an injunction or other equitable relief in court to stop any violation of this Ordinance of any acts outlined in section 2 above and may recover costs and reasonable attorney fees of any such action.

**Section 5. CRIMINAL PROSECUTION:**

5.1 If so directed by the Sheriff of Custer County, a criminal prosecution may be brought against any person who violates any provision of this ordinance in accordance with §§ 30-15-402 and 410, C.R.S. in Custer County Court. The penalty assessment procedure set forth in § 16-2-201 C.R.S. may be followed by any arresting law enforcement officer for a violation of this Ordinance.

5.2 Violation of the provisions of this Ordinance shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) for each separate violation.  
In addition to this penalty, persons convicted of a violation of this Ordinance are subject, pursuant to § 30-15-402, C.R.S., to a surcharge of \$10.00, to be paid to the Clerk of the Court for credit to the Victims

and Witnesses Assistance and Law Enforcement Fund established in the judicial district.  
5.3 All fines and forfeitures for the violation of this Ordinance shall be paid to the Treasurer of Custer County within thirty (30) days of receipt and shall be deposited into the General Fund of Custer County.

**Section 6. ADDITIONAL REMEDIES:**

The remedies provided in this Ordinance shall be cumulative and in addition to any other remedies which may be available to the County and its Board. Nothing contained herein shall be construed to preclude the Board from seeking such other remedies in addition to, or in lieu of, the legal remedies herein granted.

**Section 7. SAFETY CLAUSE:**

The Board hereby finds, determines and declares that this Ordinance is necessary for the health, safety and welfare of the citizens of Custer County, Colorado.

**Section 8. PUBLICATION AND EFFECTIVE DATE:**

The foregoing text is the authentic text of Custer County Ordinance No. 2013-01. The first reading of said Ordinance took place on August 5, 2013 at a regular Board of County Commissioners Meeting. It will be published in full in the August 15, 2013 publication of the Wet Mountain Tribune.

The second reading and Public Hearing are scheduled on August 30, 2013. The Ordinance is scheduled for adoption on September 4, 2013 at the 6PM Board of County Commissioners Meeting, and shall take effect on September 5, 2013.

Robin Young, Colorado State University Extension Agent and Bill Nobles, Colorado State University Regional Director met with the BOCC. Ms. Young gave a Custer County CSU Extension Report and said that the 66<sup>th</sup> Custer County Fair was a success. The 4-H Teen council is working to arrange the 1<sup>st</sup> Custer County 4-H Camp. She said that the Custer County 4-H Foundation Awards Ceremony is scheduled on September 15, 2013 and the public was encouraged to attend. Ms. Young said that the Fremont County Weed Control has been spraying various county roads and is focusing on the bigger and larger outbreaks. She said that the leafy spurge will be sprayed on the participating landowner properties and the adjacent county right-of-ways. Mr. Rusher expressed concern regarding the non-participating land owners and the affect it would have on those adjacent properties. He shared the concerns he expressed during the public comment period with the CSU Extension Agent. Ms. Young reported that the spraying of the dimilin was helpful in reducing a portion of the grasshopper population. She said that there is a need to educate the general public regarding the process of spraying pesticides and that a community forum will be scheduled in October 2013 to address the public's concerns. Bill Nobles said he was in attendance to review and explain the proposed additions requested by the BOCC specifically Section 2 (g) (h) of the Memorandum of Understanding between Colorado State University and Custer County. Mr. Noble addressed Section 2 (h) to provide background checks on all new Extension employees. He said that it is a State requirement that background checks for any potential employee be completed. He addressed Section 2 (h) (1) a general outline of the Extension Agent duties and expectations of CSU for the coming year. He said that CSU does not micro-manage extension agents and the direction of the programming is derived by the advisory boards and county input. He addressed Section 2 (h) (2) an estimation of the state require tasks that will require travel and use of county funds to implement. He said that the County Extension Agent is responsible to the BOCC and that the Board can request an itemization of the travel expenses from the agent. Mr. Nobles addressed Section 2 (h) (3) a job description for the County Agent or update as appropriate. He said that the job description is available on line and would require the regional director's approval for any changes or revisions. The BOCC thanked Mr. Nobles for attending the BOCC meeting and clarifying these concerns.

Donna McDonnall, RN and Gail Stoltzfus RN met with the BOCC and gave the Public Health Report for July 2013. Fourteen (14) adult immunizations, 60 childhood immunizations and 28 blood pressure screenings were administered. Ms. McDonnall reported on the two free sports physical clinics for the Custer County Athletes; Infant and Children Red Cross CPR/First Aid class; and the Colorado Public Health Director meeting in Denver. She said that Custer County ranked higher than any of the surrounding counties on the Robert Wood Foundation 2013 County Health Ratings. Ms. Stoltzfus said that she attended the new student registration at the school last week and was able to provide some the vaccinations needed. Ms. McDonnall said the Medical Reserve Corp (MRC) hosted a Volunteer Appreciation/Recruitment Dinner for the volunteers. She explained that the Public health Agency's responsibilities during an emergency fall under the Emergency Service Function-8 Category and that they have submitted emergency plans to Christe Feldmann, Office of Emergency Management Director.

Dallas Anderson, Airport Advisory Board Chairman met with the BOCC and gave a report. He presented the Board with the fuel report from July 1, to July 31, 2013. He said that sales have been very good and that the Airport will need another load of fuel by the end of the month. Mr. Anderson reported that the airport courtesy van was reserved twice in July, a treatment for ratification of the prairie dogs was completed and mowing and cleaning up around the airport was completed by the volunteers. He said he was still communicating with the Fremont County Airport in an effort to cost share a load of the crack seal material.

The BOCC recessed at 11:05 AM.

The BOCC reconvened at 11:15 AM.

Dawna Hobby, Human Resource/Finance Manager met with the BOCC and gave a report. She said that she has notified the county department that their 2014 budget figures need to be submitted to the County Finance Officer no later than September 13, 2013. She commented that the 2014 County Budget Hearings were scheduled for October 7, 8 and 9 of 2013. Following a brief discussion the BOCC agreed that the elected officials and county department heads may calculate a 3% pay increase into the budget for their employees. The final decision will be reviewed and determined during the Budget Hearings.

Dani Walden, Road and Bridge (R&B) Administrative Assistant met with the BOCC and gave a report. The work completed in July included: the grading of numerous roads, the hauling of gravel, water and asphalt, the repair of the damaged roads washed out during the heavy rains and the cleaning, repairing and replacement of the culverts. The work planned will include but not be limited to: the grading of roads, the hauling of water and gravel, the cleaning of cattle guards and culverts. Ms. Walden commented that the mowing schedule will resume after the hauling of asphalt and patching is completed. She said that the department is still down one employee and suggested that work for the airport be scheduled on a Friday when the R & B Department is routinely closed during the summer months utilizing volunteer R&B staff on an overtime basis. She proposed raising the fuel surcharge for entities utilizing the new fuel system at the Road and Bridge Department. Following a brief discussion the BOCC agreed the implementation of the increase would be review during the Budget Hearings. The issue of the cattle guard on CR 254 was not discussed. The concerned parties were not in attendance.

Laura Lockhart, Human Services Director met with the BOCC and gave a report. She presented the Expenditures & Unexpended Balances; the State Allocations; the Energy Outreach Colorado Expenditures and TEFAP County Allocations for June 2013.

Commissioner Attebery asked if there was any more business to discuss. Hearing none, he adjourned the meeting at 12:25 PM.

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Debbie Livengood, Clerk and Recorder  
Attest

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Lynn Attebery,  
Chairman