

**PROCEEDINGS OF THE BOARD OF COUNTY COMMISSIONERS
REGULAR MEETING, AUGUST 30, 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	Present
Kris Lang	Deputy Clerk to the Board	Present

Also present was Nora Drenner, managing editor for the Sangre DeCristo Sentinel.

AGENDA:

Call meeting to order
Pledge of allegiance
Roll Call
Amend agenda
Audience introduction
Approval of minutes
Public Comment
Commissioner Items
Executive Session
Old/New Business
Review vouchers and sign checks
Custer County Care about Cancer
Second reading of Ordinance 13-01
Public Hearing Ordinance 13-01 9:30 AM.
Liquor License Renewal, Letter Drop Inn, Rosita, CO.
CSU Extension Report
Auditor Report 2012
Staff Meeting
Coroner Report – Art Nordyke

Commissioner Attebery asked if there were any public comments.

Julie Olomon addressed the BOCC and requested approval to place a vending machine in the courthouse. She said the proceeds from the candy vending machine would support the Custer County Cancer Fund.

MOTION by Commissioner Butler, seconded by Commissioner Shy:

To approve that a candy vending machine be placed in the entrance area of the courthouse and that the proceeds are allocated to the Custer County Cancer Fund with a caveat that the Custer County Cancer Organization maintain the vending machine. The motion carried unanimously.

Chris Haga said that a Colorado Water Plan could become an executive order or legislative action. He said that much of the Colorado Water Plan will be derived from basin roundtable input and encourage the BOCC to get involved in the roundtable discussions on this important topic. He distributed a correspondence related to the topic to the commissioners for review and reference.

Corb Griffin addressed the BOCC and said that the school is no longer allowing the storage of the rotary vans on the premise. He asked if the rotary vans could be stored in the leveled areas behind the Custer County Resource Center Annex. Following a brief discussion it was determined that the area in question was not owned by the county or a part of the Resource Center property.

County General	\$177,194.28
Road & Bridge	\$ 124,314.53
Emergency Services	\$ 15,527.91
Human Services	\$ 20,466.61
Capital Improvement	\$ 1,378.22
Airport Fund	\$ 1,794.63
Tourism Fund	\$ 789.00
Self Insurance	\$ 336.00
TOTAL	\$341,801.18

MOTION by Commissioner Butler, seconded by Commissioner Shy:

To approve the August 2013 payroll and accounts payable. The motion carried unanimously.

Sheriff Fred Jobe and Deputy Mike Halpin joined the meeting.

Commissioner Attebery closed the regular meeting and opened the Public Hearing at 9:30 AM
PUBLIC HEARING

Commissioner Attebery completed the second reading of proposed Ordinance 13-01 into the record.

MOTION by Commissioner Attebery, seconded by Commissioner Butler:

To accept the second reading in its entirety of Ordinance 13-01 into the record. The motion carried unanimously.

**ORDINANCE OF THE
BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF CUSTER, STATE OF COLORADO
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

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

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 Custer County, Colorado.

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.

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- 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 (BOCC) Meeting. Published in full in the Wet Mountain Tribune on August 15, 2013. Second Reading and Public Hearing is completed on August 30, 2103 at a regular BOCC meeting. The Ordinance will be adopted on September 4, 2013 at a regular BOCC meeting and become effective on September 5, 2013.

THE BOARD OF CUSTER COUNTY COMMISSIONERS
CLERK AND RECORDER, ATTEST

Commissioner Attebery asked if there was anyone wishing to speak at the Public Hearing. No comments were heard.

MOTION by Commissioner Shy, seconded by Commissioner Butler:

To close the Public Hearing following the second reading of Ordinance 13-01 and public comment period. The motion carried unanimously.

The Public Hearing was closed and the regular meeting reconvened at 9:50 AM.

Sheriff Jobe thanked the BOCC for their support regarding Ordinance 13-01.

Debbie Livengood, Clerk and Recorder presented the liquor license renewal for the Letter Drop Inn. She stated that the application was complete and in order. She reported that the sheriff investigation report was without incident.

MOTION by Commissioner Attebery, seconded by Commissioner Butler:

To approve the liquor license renewal as presented. The motion carried unanimously.

The BOCC recessed at 10:00 AM.

The BOCC reconvened at 10:50 AM.

Robin Young, Colorado State University (CSU) Extension Agent met with the BOCC and gave a report. She said that she is working with the teen council to put together the first Custer County 4-H Camp. She reported that the National 4-H week is from October 6 – 12, 2013 and that the 4-H Foundation Awards Ceremony is scheduled on September 15, 2013. Ms. Young said that the leafy spurge has been sprayed and remarked that there is no mowing happening in the county and that she is receiving concerns from the residents and ranchers. She asked if the mowing done by the Road and Bridge Department could be coordinated through the Weed Advisory Board to achieve maximum weed control.

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Following a brief discussion the Board recognized that mowing in the area has been delayed as a result of reduced and limited Road and Bridge personnel. The Board said although they agreed with weed control, that road safety is the Road and Bridge Departments primary and priority concern regarding mowing. Ms. Young said that the High Altitude Gardening Club is requesting financial help on an annual basis for the purchase of mulch to be used in front of the courthouse. The Board agreed that the funding is available and appropriate under the building grounds and maintenance budget line item. Ms. Young reported that the last day of the Farmers Market is September 25, 2013. She asked if there were any updates regarding the Memorandum of Understanding she previously presented between CSU and Custer County.

Sam DeNardo, Garren, Ross and DeNardo, Inc. met with the BOCC and presented a draft narrative, overview and analysis of the financial activities of Custer County for the fiscal year that ended December 31, 2012. Mr. DeNardo reviewed the schedule of findings with the Board.

The department heads, elected officials and staff met with the BOCC for the staff meeting. Present were: Rusty Christensen, Dawna Hobby, Chuck Ippolito, Laura Lockhart, Donna McDonnall and Robin Young. The following topics were discussed:

- the air conditioning being installed in the courthouse will require a walk-thru inspection of the system and department verification before the final payment has been issued to the contractor Moore Heating and Cooling.
- follow-up on the recently installed windows in the courthouse by McCasland Glass.
- installation of an elevator system in the courthouse as part of any future major renovations.
- flu immunizations are tentatively scheduled on September 25, 2013 at 2PM in the courthouse.

Art Nordyke, County Coroner addressed the BOCC and said that he has been asked to vacate his current office space at the Custer County Clinic. He said that Colorado Revised Statute requires that he have and maintain a locked office area. Following a discussion the BOCC agreed that the coroner office would be relocated to the Custer County Resource Center Annex facility.

Commissioner Attebery asked if there was any more business to discuss. Hearing none, he adjourned the Meeting at 1:50 PM.

Approved 9/17/13

Debbie Livengood, Clerk and Recorder
Attest

Lynn Attebery, Chairman