

**CROWLEY COUNTY BOARD OF COUNTY COMMISSIONERS  
RECORD OF PROCEEDINGS**

**SEPTEMBER 19, 2022**

**CALL TO ORDER**

Board of County Commissioners met in regular session on September 19, 2022. The meeting was called to order by Chairman Blaine Arbuthnot at 9:00 a.m. The following were present:

Blaine Arbuthnot-----Chairman  
Roy Elliott-----Vice Chairman  
Terry McMillian-----Member  
LaShelle Benbow-----Deputy Clerk to the Board

**RESOLUTION NO. 2022-8422**

**ACCEPT RESIGNATION FROM COUNTY FIRE CHIEF**

Greg Karle submitted his resignation as County Fire Chief, effective October 1, 2022. Motion by McMillian, seconded by Elliott to accept the resignation. A County Fire Chief will not be appointed until January 1, 2023.

Upon motion duly made and seconded the foregoing resolution was adopted by the following vote:

Arbuthnot-----Aye  
Elliott-----Aye  
McMillian-----Aye

**PUBLIC HEARING - PROPOSED ORDINANCES RELATED TO MARIJUANA CULTIVATION**

At 10:00 a.m. the Board opened the public hearing to discuss two ordinances related to marijuana cultivation. Ordinance #2022-03 establishes collection of excise taxes through a property lien, and Ordinance #2022-04 establishes watering restrictions and requirements for new marijuana grow facilities. Audience included: Sue Ann Lowrey, Pete Aragon, Wayne Rusher, Jean Reeves, G. Reeves, Heath Rusher, Debbie Oliver, Linda Sullivan, Nancy Wright, Kristy Jo Sullivan, Amanda Terrones, Ty Stogsdill, Luke Esch, Pat Esch, Pam Baker, Mary Beth Tucker, Dianne Buford, Jerry Bob Buford, Shirley Ager, Adam Wingard, Eric Owens, Graham Basecke, Krista Torfonce, and Carter Livingston.

Arbuthnot asked the public if they had any questions regarding Ordinance #2022-03 - An Ordinance Establishing Collection of Excise Taxes Through a Property Lien. Pete Aragon asked about the estimated amount of dollars that the County is looking at collecting through a property lien. Arbuthnot said that it is currently around \$70,000.

Arbuthnot asked the public if they had any questions regarding Ordinance #2022-04 - An Ordinance Establishing Watering Restrictions and Requirements for New Marijuana Grow Facilities. He clarified that this ordinance would require a grower to locate a water provider, and would thus eliminate the requirement for the grower to haul in water. It also protects the County from denying personal property rights. Sue Ann Lowrey stated that she appreciates the Boards efforts to develop this ordinance, listening to the citizen committee's comments regarding the issue, and fully supports it. Amanda Terrones stated that she is part of the citizen committee. She and the committee appreciates the development of this ordinance, and she supports it. Shirley Ager thanked the Board for developing the ordinance. Not other verbal or written comments were received from the public.

**RESOLUTION NO. 2022-8423**

**INTRODUCTION, FIRST READING, AND ADOPTION OF ORDINANCE #2022-03 - AN ORDINANCE ESTABLISHING COLLECTION OF EXCISE TAXES THROUGH A PROPERTY LIEN**

Motion by Elliott, seconded by McMillian to approve and adopt the first reading of proposed Ordinance #2022-03, and ordered published in the Ordway New Era. The second and final reading of the Ordinance will be held on September 30, 2022, at 10:00 a.m. Ordinance #2022-03 follows:

STATE OF COLORADO

SS.

County of Crowley

At a Regular Meeting of the Board of County Commissioners for Crowley County, Colorado, held in Ordway, Colorado, to be held on the 19th day of September, A.D., 2022, the following Ordinance will require action:

ORDINANCE #2022-03

AN ORDINANCE ESTABLISHING COLLECTION OF EXCISE TAXES THROUGH A PROPERTY LIEN

WHEREAS, the Board of County Commissioners (hereinafter the "Board") has the authority to exercise all County powers for the unincorporated areas of Crowley County, Colorado, pursuant to Section 30-11-103, C.R.S.; and

WHEREAS, in November of 2016, the voters of Crowley County approved the adoption of a five percent (5%) excise tax upon all commercial sales of marijuana in Crowley County"; and

WHEREAS, Section 5 of the Crowley County Commercial Marijuana Regulations requires "The facility operator shall pay the excise tax to persons in the County Administration by the 20th of each and every month"; and

WHEREAS, the Board of County Commissioners of Crowley County, Colorado have received complaints and issues relating to facility operators failing to timely pay the excise taxes; and

WHEREAS, pursuant to §30-11-101(c), C.R.S., the Board of County Commissioners of Crowley County, Colorado has the power to make such order respecting real or personal property owned by Crowley County as may be deemed conducive to the interests of the inhabitants of the County; and

WHEREAS, §18-9-117, C.R.S. specifically authorizes the Board to adopt rules and regulations as are reasonably necessary for the administration, protection, and maintenance of public property; and

WHEREAS, it is the opinion of the Board that in order to preserve the public health, safety, and welfare of the citizens of Crowley County, the Board should adopt the following regulations; and

WHEREAS, consistent with the authority granted to the Board and the will of the Crowley County voters, the Board desires to adopt this Ordinance to foster the collection of unpaid excise taxes imposed on the sale of marijuana in Crowley County through the establishment of a property lien through the County Treasurer's Office.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the County of Crowley Colorado, as follows:

1. The County shall direct the County Administrator to submit unpaid excise taxes to the County Treasurer.
2. On November 1 of each year that excise taxes are unpaid, the County Administrator shall issue a letter to each facility operator notifying the facility operator of the unpaid excise taxes and that payment must be received in full prior to November 20, or the County will begin certification proceedings with the County Treasurer.
3. The letter to the facility operator will notify the facility operator that certification results in any unpaid excise taxes being added to the real estate property taxes.
4. A thirty percent (30%) certification fee shall be added to the lien.
5. The County shall assess supplementary costs for publication and the for the County's administrative expenses.

Effective Date.

In order to preserve the immediate health and safety of Crowley County and its residents, this Ordinance shall take effect immediately upon its publication as provided in Section 30-15-405, C.R.S.

Adopted this 19th day of September 2022.

Upon motion duly made and seconded the foregoing resolution was adopted by the following vote:

Arbutnot-----Aye  
Elliott-----Aye  
McMillian-----Aye

**RESOLUTION NO. 2022-8424**

**INTRODUCTION, FIRST READING, AND ADOPTION OF ORDINANCE #2022-04 - AN ORDINANCE ESTABLISHING WATERING RESTRICTIONS AND REQUIREMENTS FOR NEW MARIJUANA GROW FACILITIES**  
Motion by McMillian, seconded by Elliott to approve and adopt the first reading of proposed Ordinance #2022-04, and ordered published in the Ordway New Era. The second and final reading of the Ordinance will be held on September 30, 2022, at 10:00 a.m. Ordinance #2022-04 follows:

STATE OF COLORADO  
SS.  
County of Crowley

At a Regular Meeting of the Board of County Commissioners for Crowley County, Colorado, held in Ordway, Colorado, to be held on the 19th day of September, A.D., 2020, the following Ordinance will require action:

**ORDINANCE #2022-04**  
**AN ORDINANCE ESTABLISHING WATERING RESTRICTIONS AND REQUIREMENTS FOR NEW MARIJUANA GROW FACILITIES**

WHEREAS, the Board of County Commissioners (hereinafter the "Board") has the authority to exercise all County powers for the unincorporated areas of Crowley County, Colorado, pursuant to Section 30-11-103, C.R.S.; 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 defines a "Locality" in part in Section 2(3) of Section 16 to include a county; and

WHEREAS, part 5(f) provides the following:

(f) A LOCALITY MAY ENACT ORDINANCES OR REGULATIONS, NOT IN CONFLICT WITH THIS SECTION OR WITH REGULATIONS OR LEGISLATION ENACTED PURSUANT TO THIS SECTION, GOVERNING THE TIME, PLACE, MANNER AND NUMBER OF MARIJUANA ESTABLISHMENT OPERATIONS; ESTABLISHING PROCEDURES FOR THE ISSUANCE, SUSPENSION, AND REVOCATION OF A LICENSE ISSUED BY THE LOCALITY IN ACCORDANCE WITH PARAGRAPH (h) OR (i), SUCH PROCEDURES TO BE SUBJECT TO ALL REQUIREMENTS OF ARTICLE 4 OF TITLE 24 OF THE COLORADO ADMINISTRATIVE PROCEDURE ACT OR ANY SUCCESSOR PROVISION. A LOCALITY MAY PROHIBIT THE OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, OR RETAIL MARIJUANA STORES THROUGH THE ENACTMENT OF AN ORDINANCE OR THROUGH AN INITIATED OR REFERRED MEASURE.

WHEREAS, the Board of County Commissioners of Crowley County, Colorado have received complaints and issues relating to water accessibility for marijuana grow facilities;

WHEREAS, pursuant to §30-11-101(c), C.R.S., the Board of County Commissioners of Crowley County, Colorado has the power to make such order respecting real or personal property owned by Crowley County as may be deemed conducive to the interests of the inhabitants of the County; and

WHEREAS, §18-9-117, C.R.S. specifically authorizes the Board to adopt rules and regulations as are reasonably necessary for the administration, protection, and maintenance of public property; and

WHEREAS, it is the opinion of the Board that in order to preserve the public health, safety, and welfare of the citizens of Crowley County, the Board should adopt the following regulations; and

WHEREAS, consistent with the authority granted to the Board in Amendment 64 and the will of the Crowley County voters, the Board desires to adopt this Ordinance prohibiting and limiting the operation of marijuana cultivation facilities with the unincorporated areas of Otero County, Colorado.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the County of Crowley Colorado, as follows:

**Section 1. Purpose**

The purpose of this Ordinance is to promote the general public welfare and safety through Crowley County, Colorado, by limiting and prohibiting the operation of marijuana cultivation facilities without adequate water resources.

The limitation and prohibition shall be in full force and effect as follows:

1. The County shall enact and enforce a one-mile buffer zone around each incorporated town that strictly prohibits any new marijuana-grow facility within the one-mile buffer zone.
2. Each new marijuana-grow facility must have water provided directly to its facility either by the City of Ordway or the 96 Pipeline Association.
3. New marijuana-grow facilities shall not be permitted to haul water for use at the marijuana-grow facility.
4. Marijuana-grow facilities that were licensed and in good-standing prior to July 1, 2022, shall continue to operate under the previous rules and shall not be subject to these new rules.

## Section 2. Definitions

“Marijuana Grow Facility” means an entity licensed 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.

## Section 3. Enforcement

This Ordinance shall be enforced by the Crowley County Sheriff.

## Section 4. Violation

It shall be unlawful for any person to violate any provision of this Ordinance.

## Section 5. Disposition of Fines and Forfeitures

Unless otherwise provided by law, all fines and penalties, and the surcharges thereon, for the violation of this Ordinance shall be paid into the treasury of Crowley County. The fine for a first offense and for any subsequent offense shall be One Thousand Dollars (\$1,000.00) per violation and each day shall be deemed a separate violation.

## Section 6. Surcharges

In addition to the fines and penalties prescribed in this Ordinance, any person convicted of a violation of this Ordinance shall be subject to the statutory surcharges of Ten Dollars (\$10.00) for the Victims and Witnesses Assistance and Law Enforcement Fund, and Fifteen Dollars (\$15.00) for the Colorado Traumatic Brain Injury Trust Fund. These surcharges shall be paid to the Clerk of the Court by each person convicted of violating this Ordinance. The Clerk shall transmit the moneys to the respective funds in accordance with Section 30-15-402(2), C.R.S.

## Section 7. Scope

This Ordinance shall apply within the unincorporated territory of Crowley County, Colorado, 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.

## Section 8. Severability

If any part or parts of this Ordinance are for any reason held to be invalid, such provision 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 part or parts hereof, irrespective of the fact that any one part or parts be declared invalid.

## Section 9. Repeal.

All ordinances and/or resolutions or parts of ordinances and/or resolutions inconsistent with provisions of this Ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this Ordinance.

Section 10. Effective Date.

In order to preserve the immediate health and safety of Crowley County and its residents, this Ordinance shall take effect immediately upon its publication as provided in Section 30-15-405, C.R.S.

Adopted this 19th day of September 2022.

Upon motion duly made and seconded the foregoing resolution was adopted by the following vote:

Arbuthnot-----Aye  
Elliott-----Aye  
McMillian-----Aye

**SPECIAL PLANNING AND ZONING HEARING**

The board conducted a planning and zoning hearing. Those present were:

Commissioners: Arbuthnot, Elliott and McMillian  
Deputy Clerk to the Board: LaShelle Benbow  
Planning & Zoning Administrator: Matt Carter  
Audience: Sue Ann Lowrey, Pete Aragon, Wayne Rusher, Jean Reeves, G. Reeves, Debbie Oliver, Linda Sullivan, Nancy Wright, Kristy Jo Sullivan, Amanda Terrones, Ty Stogsdill, Luke Esch, Pat Esch, Pam Baker, Mary Beth Tucker, Dianne Buford, Jerry Bob Buford, Shirley Ager, Adam Wingard, Eric Owens, Graham Basecke, Krista Torfonce, and Carter Livingston.

Matt Carter briefly introduced the Use by Review request and explained that the Crowley County Planning and Zoning Commission originally heard the request on August 21, 2022, and recommended approval by the Board. The request is made by Patrick Esch and family of Springfield, Colorado, and is for a 4,020 acre solar farm to be built on the north edge of Crowley County. The property is generally located within the following parameters of Lanes 8 and 11, and between County Roads AA and EE.

Arbuthnot called upon AES to begin their presentation. Adam wingard, Lead Developer for AES, provided a video presentation regarding the proposed project. AES is an independent power producer and will own and operate the system, to include the development, construction, and maintenance of the solar farm to be located on the northern edge of Crowley County. If the request is approved, construction would begin in 2025 and take approximately 2.5 years to complete. During the construction process approximately 10-15 deliveries by semi-truck and trailer would occur each day, and the proposed route is via Highway 96 and Lane 8. There are many permits and studies that must be completed prior to the start of construction. The energy contract that would be entered into with Xcel Energy will last for 20-30 years. Upon expiration of the contract, the solar farm will be decommissioned and all materials will be removed. 95% of all materials used can be recycled. The decommissioning process will return the land to its original state.

Arbuthnot asked what are the negative effects to the surrounding land owners. Adam wingard explained that many people express a perceived effect of decreased land values. He indicated that research does not support that. The primary negative impact is that the construction takes about 2.5 years to complete. He also mentioned that if you are 3-4 feet away from a transformer you will hear it make a humming noise.

Linda Sullivan commented that she has seen a lot of changes over the years, and when looking back the changes had an unintended or negative impact on the County. She feels that this request is being made because of money, and there is no concern about the impact that it will have on the community. She is greatly concerned about the blowing dirt that this project will cause. She is against this project, and against the use by review request.

Pete Aragon inquired about an area perimeter fence. Adam wingard explained that it will be a chain link fence, and AES will develop a dust mitigation plan.

Pat Esch stated that his water lawyer, Chris Cummins, has applied for a water permit for use of water from a pond on the ranch for dust mitigation. Adam wingard stated that if the permit is not approved/issued, then water would be trucked in from the nearest commercial well.

Linda Sullivan and Arbuthnot both expressed concern that Crowley County has received very little rain over the past years. How can they revegetate the land after the project completion to ensure that dirt does not blow? In the past, revegetation was only attempted one time and it did not work. So, what are their plans if it doesn't work the

first time? Adam Wingard explained that they plan to use the existing plants/grass that is already there, and it should not be destroyed during the construction process.

Wayne Rusher is concerned about the damage that will be caused by the project. Not only blowing dirt, but there is great fire hazard. A bond should be in place before the project begins that will provide enough liability coverage in the event of damage to surrounding properties.

Mary Beth Tucker stated that there is a lot of lightning that occurs in that area, and it creates fires very easily. The most recent fire occurred a few years ago. Response times from volunteer fire fighters is very slow due to the distance involved.

Nancy Wright explained that years ago the land out there was plowed up. The blowing dirt covered fences, and destroyed wells. The natural vegetation was damaged, and did not regrow. Such vegetation loss can be catastrophic to ranchers. She does not support this project.

Pete Aragon indicated that he had contacted the Lincoln and Crowley County volunteer fire departments, and they indicated that no one has spoke to them about the solar project. He has also reached out the local Colorado Parks and Wildlife and CSU Extension Agent, and they were also not informed of the project. He expressed concern that AES has not reached out to the correct people to evaluate erosion and fire hazards. Both of these are of great concern to him. He feels that the County should consider a moratorium on similar projects of such size.

Sue Ann Lowrey would like to see measures put in place to protect land and public health during the decommissioning process. A bond should be of sufficient amount to cover hazardous materials and ensure that everything is removed. Adam Wingard stated that everything will be removed upon decommissioning.

LaShelle Benbow asked if Xcel Energy is the only company that benefits from the energy creation, or if other companies would benefit. Adam Wingard stated that the energy will be sold directly to Xcel Energy. Arbuthnot stated that Xcel Energy can sell energy sources to other providers.

Amanda Terrones asked the AES employees if they have lived most of their lives in cities? She asked if they have visited the surrounding ranches? The peaceable habitation and livelihood is going to be disrupted. She asked if they could live with the disruption? Adam Wingard stated that the environmental and economic benefits mitigate the disruption.

Carter Livingston said that he appreciates the people expressing their concerns as they are very important to AES. It is up to AES to prove to the community that the project will not cause their concerns to become reality.

Shirley Ager stated that she feels that any requirement or stipulation implemented by the Board would be welcomed. She also wants assurance that if the Use by Review request is approved and the project moves forward that AES involves our youth to be educated about the project and its importance in the future workforce.

Heath Rusher asked who will make the stipulations? Arbuthnot stated that input from the public and various agencies will be considered when developing the list of stipulations.

Arbuthnot said that the Board will make a decision of the Use by Review request at the September 26, 2022 board meeting. The hearing was adjourned.

No further business appearing the meeting was recessed.  
Minutes taken by LaShelle Benbow.

ATTEST:

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Melinda Carter, County Clerk

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Blaine Arbuthnot, Chairman