

RESOLUTION NO. 32, SERIES 2016

**ADOPTION OF AMENDED FREMONT COUNTY
MEDICAL MARIJUANA BUSINESS LICENSING REGULATIONS
WITHIN UNINCORPORATED FREMONT COUNTY
AND TERMINATION OF 24-MONTH MORATORIUM ON FREMONT COUNTY
MEDICAL MARIJUANA BUSINESS LICENSES**

WHEREAS, Fremont County, Colorado (the "County") is a political subdivision of the State of Colorado (the "State"), duly organized and existing pursuant to the laws of the Constitution of the State; and

WHEREAS, the State Local Government Land Use Control Enabling Act, §29-20-101 et seq. C.R.S. ("Land Use Act") and the County Planning Code, §30-28-101 et seq., C.R.S. ("Planning Code") expressly delegate paramount authority to counties to implement land use regulations on unincorporated territory within their boundaries; and

WHEREAS, in November of 2000, the voters of the State of Colorado approved the medical use of marijuana for persons suffering from debilitating medical conditions, which is codified at Article XVIII, Section 14 of the Colorado Constitution; and

WHEREAS, in 2010, the Colorado Legislature adopted §12-43.3-101, et seq., C.R.S., known and cited as the Colorado Medical Marijuana Code, which became effective July 1, 2010; and

WHEREAS, the Colorado Medical Marijuana Code grants licensing authority for medical marijuana businesses to local governments; and

WHEREAS, on July 8, 2014, the Fremont County Board of County Commissioners adopted Resolution No. 22, Series of 2014, which adopted the Fremont County Medical Marijuana Business Licensing Regulations ("MMJ Licensing") within the unincorporated areas of Fremont County, Colorado; and

WHEREAS, on April 14, 2015, the Board of Commissioners approved and adopted Resolution No. 15, Series of 2015, which placed a 24-month moratorium on the use, construction, alteration or reconstruction of any building, structure or property for medical marijuana business facilities, and also on the submission, acceptance, processing, and approval of all applications for permits and licenses by Fremont County related to a Medical Marijuana Business; and

WHEREAS, the Board of Commissioners has had adequate time to determine the utility and function of existing laws and regulations and address needs and issues that arise in connection therewith would compound any such issues or problems in the county; and

WHEREAS, the Board of Commissioners has revised the Fremont County Medical Marijuana Business Licensing Regulations ("MMJ Licensing") based on observation and assessment of unaddressed issues arising from such regulations; and

WHEREAS, on October 25, 2016, at 9:30 a.m., after providing public notice, the Board of Commissioners conducted a public hearing on the proposed licensing regulations and received public input concerning the same; and

WHEREAS, the Board of Commissioners has determined that adoption of the proposed Amended Fremont County Medical Marijuana Business Licensing Regulations would be in the best interests of the citizens of Fremont County and would allow the Board of Commissioners more effective governance over the health, safety and welfare of the citizens with respect to medical marijuana businesses; and

WHEREAS, upon adoption and implementation of the Amended MMJ Licensing regulations, the continuation of the 24-month moratorium is unnecessary and may be terminated.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF FREMONT, STATE OF COLORADO:

1. The Amended Fremont County Medical Marijuana Business Licensing Regulations, attached hereto and incorporated herein by reference are hereby adopted, approved and enacted, effective as of the date indicated below.

2. As of the effective date for the Amended Regulations, the 24-month temporary moratorium imposed pursuant to Resolution 15, Series of 2015 is hereby terminated and shall no longer be in effect. The use, construction, alteration or reconstruction of any building, structure or property for medical marijuana business facilities, and the submission, acceptance, processing, and approval of all applications for permits and licenses by Fremont County related to a Medical Marijuana Business, may resume as provided in the Amended Fremont County Medical Marijuana Business Licensing Regulations.

3. Beginning with the effective date of the Amended Fremont County Medical Marijuana Business Licensing Regulations, a medical marijuana center, optional premises cultivation operation or marijuana-infused products manufacturing, as those terms are defined in §12-43.3-104, C.R.S., shall be prohibited from beginning operations in the unincorporated area of Fremont County until a Fremont County License is issued for the operation.

4. The adoption of these Amended Licensing Regulations shall have no effect upon Fremont County Ordinance No. 2013-1, Prohibiting the Operation of Retail/Recreational Marijuana Cultivation Facilities, Retail/Recreational Marijuana Product Manufacturing Facilities, Marijuana Testing Facilities and Retail Marijuana Stores Pursuant to Article XVIII, §16 of the Colorado Constitution.

5. Any prior Fremont County regulations, resolutions, or enactments regarding medical marijuana, specifically including those regulations adopted pursuant to Resolution No. 22, Series of 2014, that are inconsistent with the Fremont County Medical Marijuana Business Licensing Regulations are hereby deemed to be superseded by the Amended Licensing Regulations.

Commissioner Payne moved the adoption of the foregoing Resolution with a second by Commissioner Bell.

Debbie Bell	<u>AYE</u>	NAY	ABSTAIN	ABSENT
Edward H. Norden	<u>AYE</u>	NAY	ABSTAIN	ABSENT
Timothy R. Payne	<u>AYE</u>	NAY	ABSTAIN	ABSENT

The Resolution was declared to be duly adopted.

Date: 10/25/16

Edward H. Norden
Chairman

Attest: Katie E. Bauer
Clerk

**AMENDED
FREMONT COUNTY MEDICAL MARIJUANA
BUSINESS LICENSING REGULATIONS**

Article 1: Establishment and Purpose.

Limited medical marijuana use is allowed in Colorado pursuant to the provisions of Section 14 of article XVII of the Colorado Constitution and the Colorado Medical Marijuana Code, article 43.3 of title 12, C.R.S., and corresponding regulations. The purpose of these regulations is to further define the manner in which medical marijuana businesses can be conducted in the county and to authorize licensing in unincorporated Fremont County.

Article 2. Applicability and Jurisdiction.

These regulations shall govern the cultivation, manufacture, distribution, and sale of medical marijuana, and the manufacture and sale of medical marijuana-infused products in the unincorporated areas of Fremont County and shall further govern all persons who attempt to establish and/or who in fact, establish a medical marijuana business in unincorporated Fremont County. All terms in these Local Medical Marijuana Regulations shall have the same meaning and definition as in the Fremont County Zoning Resolution, the Colorado Medical Marijuana Code (C.R.S. §12-43.3-101, et seq.) the State of Colorado Permanent Rules Related to the Colorado Medical Marijuana Code (1 CCR 212-1), and all other statutes, rules and regulations duly adopted by the State Licensing Authority unless specifically stated otherwise.

Article 3. Effective date and applicability.

a. **Effective Date.** These regulations shall become effective upon adoption by the Board of County Commissioners for the County of Fremont. Except as provided in section (c) below, on and after such adoption, it shall be unlawful to operate any medical marijuana business in unincorporated Fremont County without first having obtained a local license under these regulations and a State license under the applicable State Regulations.

b. **Applications for local licenses.** On and after August 1, 2014, Fremont County shall begin receiving and processing applications for licensing under these regulations.

c. **Pre-existing businesses.** Any person who is lawfully engaged in the business of selling, cultivating, or manufacturing medical marijuana as permitted by State law may continue in business if, on or before September 30, 2014, the person submits an application for local licensing under these regulations. If an application is submitted according to this subsection, the business may continue until such time the State or local renewal licensing application is denied, or the State or local license is revoked.

d. **Entitlements.** Except as provided herein, no person shall have any entitlement or vested right to licensing under these Local Regulations. These Local Regulations, the State Regulations, the Fremont County Zoning Resolution and Building Codes, may be changed or amended from

time to time. Such changes may preclude the continuance or further issuance of a local license at any given location.

To lawfully engage in the business of selling, cultivating or manufacturing medical marijuana in unincorporated Fremont County, all persons must obtain a license under these regulations. As of the date of the enactment of these Local Regulations, the use, possession, distribution, and sale of marijuana is illegal under Federal law and those who engage in such activities do so at their own risk of criminal prosecution. Any license given hereunder does not provide any exception, defense, or immunity to any person in regard to any potential criminal liability the person may have for the production, distribution, or possession of marijuana.

Article 4. Local Licensing Authority.

The Fremont County Board of County Commissioners ("Board") shall be the Local Licensing Authority ("Authority") for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and/or sale of medical marijuana businesses and is hereby designated to act as the local licensing authority for the County.

Article 5: Licenses.

(a) *License Types.* The Authority is authorized to issue the following local licenses should the applicant fulfill the requirements: medical marijuana center; optional premises cultivation; medical marijuana-infused products manufacturing. The licensing requirements in these regulations shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other law or regulations applicable to the operation of a medical marijuana business. A separate license shall be required from the State as provided by the State Regulations.

(b) *State License Requirement.* Should the Authority approve an application of a local license, no such license shall be issued or become effective until and unless the State Licensing Authority has approved the issuance of a State License for the proposed licensed premises.

(c) *Inspection.* No such license shall be issued or effective until the building in which the licensed business operations are to be conducted is ready for occupancy with such furniture, fixtures, and equipment in place as are necessary to comply with applicable provisions of any State Regulations and Local Regulations, and only after the Authority, or its designated representative, has inspected the proposed licensed premises to determine that the applicant(s) has complied with the drawings and requirements provided by the Applicant.

Article 6: Licensing Procedure.

(a) *General Procedure.* The Authority shall consider and act upon all complete local license applications as authorized by these regulations unless otherwise stated herein. The Authority may defer to the State to enforce compliance with the requirements in the State Regulations. The Authority shall grant or deny a license based solely upon the Authority's

investigation and findings, following a public hearing with notice provided as required in these regulations. The Authority shall deny any application that is not in full compliance with these regulations.

No public hearing shall be required on the initial application for pre-existing businesses (See Article 3(c)) that are operating in compliance with state and local law and regulations.

(b) *Application Forms.* All applications for local licensing shall be made upon forms provided by the Authority or the State and shall include any supplemental materials as required by the State, these Regulations, the Authority, and the County Zoning Resolution and Building Codes.

(c) *Submission of Application.* Completed Applications, together with all required supporting documents and fees shall be submitted to the Fremont County Department of Planning and Zoning.

(d) *Contact Person.* For purposes of coordination and communication with the Colorado Department of Revenue and the Colorado Department of Public Health and Environment, the point of contact for the Authority shall be the Director of the Department of Planning and Zoning.

(e) *Review and Recommendation.*

1. The Director of the Department of Planning and Zoning, or his/her designee, shall review the Application for completeness, compliance with state and local licensing requirements, local zoning, building and other applicable requirements. The Applicant shall be provided with notice of any deficiencies in the Application and shall correct or cure such deficiencies by the deadline stated by the Director in the notice, which shall be no less than 14 days from the date of the notice. The review shall include legal review by the county attorney.

2. All new Applications shall be scheduled for public hearing before the Authority for a date and time no less than 30 days after the date of submittal and within 60 days from the date all deficiencies are corrected and the Application is deemed complete.

3. Application for premises modification shall be scheduled for public hearing before the Authority if the Department of Planning and Zoning or the Licensing Authority determines that the proposed modification will result in additional traffic, lighting, odor, or other impacts to the neighborhood or community. If the proposed modification is expected to increase consumption of water from a public water supplier, or impact the availability or supply of water, the Director shall notify the water supplier of the proposed modification and accept comments from such water supplier.

4. Applications for renewal shall be reviewed and approved or denied by the Authority without a public hearing.

5. When a public hearing is scheduled, notice of the public hearing shall be posted on the proposed licensed premises with a sign in a conspicuous place for no less than ten (10) days prior to the hearing. A Notice of Public Hearing shall also be published in the primary official newspaper for Fremont County. The sign, posting and publication shall comply with the requirements of §12-43.3-302, C.R.S., including any subsequent amendments thereto.

(f) *Concurrent Application.* As provided for under the State Regulations, upon receipt of a local licensing application under these regulations, the Authority may request that the State Licensing Authority conduct a concurrent review of a new license application and that the State advise the Authority of any items it finds that could result in the denial of the license. The applicant shall be responsible for submitting any required fees and materials directly to the State Licensing Authority under the State Regulations when a request is made. If the Authority receives such a notice from the State, the Authority shall suspend its review of the local license until it receives a notice from the State Licensing Authority that the noted discrepancies have been corrected.

Article 7: Licensing Requirements.

Before issuing a local license for a medical marijuana business, the Authority shall require that the applicant provide the requisite information necessary to determine that all of the following requirements have been met by the applicant:

- (a) Identification of the owner of the property on which the premises is located;
- (b) Payment of the appropriate application, licensing, renewal and other applicable fees;

(c) Fremont County Planning Department confirmation that the use is permitted in the zone district proposed and the owner or operator has obtained all required approvals under the Fremont County Zoning Resolution as determined by the Planning Director. For Medical Marijuana licenses of any type, the applicant shall provide a detailed legal description of the precise location and a map showing the following uses that are located within 1000 feet of the proposed licensed premises: residence, medical marijuana centers, optional premises cultivation (OPC) sites, drug or alcohol treatment or rehabilitation facilities, public community centers or publically owned or maintained buildings open for use to the general public, any public school or private school, any principal campus of a college, university, or seminary, public park or public playground, and licensed residential child care facility. If the proposed licensed premises is a medical marijuana center, the map must show the distance of these uses from the proposed location, measured computed by direct measurement from the nearest portion of the building used for the marijuana business to the nearest property line of the land used for a drug or alcohol treatment facility, public community center, public building, school or campus, or residential child care facility, using a route of direct pedestrian access. The Licensing Authority has determined that the most desirable site for licensing of a new OPC will be in rural areas of Fremont County, on acreages of 10 acres or larger, and no closer than 1000' to any residences

located in the general vicinity of the site. Other sites, however, may receive favorable consideration, depending on all attendant circumstances.

(d) Fremont County Building Official confirmation that the proposed structure and use comply with all applicable building code provisions and all necessary building permits have been obtained. To obtain such letter, the applicant shall provide a detailed floor plan layout drawn to scale which clearly reflects the uses, functions, and operations within the building. The plan shall show mechanical functions such as cooling and ventilation systems, filters and discharge systems and locations, heating systems, grow light configurations, wall construction and separation from other occupants, and any other information necessary as determined by the Building Official;

(e) Submission of a detailed report on the effective mitigation of any odors of the proposed operation or the mitigation and rectification of any past odors reported from the activity. Such report shall include proof that the design for the purification of air and odor shall have been either prepared or approved by a professional licensed mechanical engineer, or other acceptable professional, to the standards contained in the International Mechanical Code, or other acceptable industry standard, requiring proper ventilation systems so that odors are filtered and do not materially interfere with adjoining properties. Outdoor cultivation facilities shall be exempt from odor mitigation requirements, but any activities conducted inside a structure in conjunction with an outdoor cultivation facility shall have an Authority-approved odor mitigation plan in place. Any off-site odor from a cultivation site, indoor or outdoor shall not exceed a ratio of 7-1 ratio, where one volume of odor is detectable with seven volumes of nonodorous air, when measured from any location along the property lines for the site, as measured by any instrument, device or method designated by the Colorado Air Pollution Division to be used in the determination of the intensity of an odor.

(f) Submission of a lighting plan that prevents the beams or the rays from any light source, including indoor greenhouse lighting, from being directed toward or onto adjacent residential properties. Shielding of lighting, or other requirements, may be required to mitigate impacts on surrounding properties. All light sources used for operations, advertising, security or safety purposes shall be arranged or shielded in such a manner so that by its degree of intensity or duration of operation, it does not unnecessarily or unreasonably disturb the comfort and repose of the adjoining or neighboring landowners;

(g) Submission of a letter or Tax Certificate from the Fremont County Treasurer showing that all property taxes have been paid and no tax liens exist on the property;

(h) Submission of proof of the right to possess the proposed licensed premises for the duration of the license;

(i) Submission of proof of notification to the appropriate fire and law enforcement personnel describing the location and nature of the proposed business;

(j) Disclosure of violations of any state or local marijuana regulations (regardless of jurisdiction). If the Applicant has violated any State Regulations or Local Regulations during any previous licensed terms, submission of a detailed description on how the applicant has satisfactorily corrected and mitigated any such past violation;

(k) Submission of proof that all State Regulations; including, but not limited to: disclosures related to ownership of the proposed business, fingerprints of the applicants, background investigation, building plans, and security plans have been satisfied;

(l) Submission of any additional materials that, in the discretion of the Authority, is necessary to make a determination under these regulations;

(m) For cultivation and medical marijuana infused product manufacturing facilities, submission of detailed information regarding the source(s) of an adequate water supply for the proposed business. Businesses that rely on hauling water, in part or in total, may be assessed a fee for impact to county roads used as a route for hauling water;

(n) Submission of proof of a valid occupational license for all individuals who possess, cultivate, manufacture, test, dispense, sell, serve, transport, or deliver Medical Marijuana and for any person who has the authority to access or input data into the Marijuana Inventory Tracking Solution (MITS) or another officially-approved Medical Marijuana Business point of sale system;

(o) For optional premises cultivation and medical marijuana-infused products manufacturing license application, information about which medical marijuana center is associated with the business.

(p) For medical marijuana businesses, there shall be no advertising signs other than one (1) flush wall sign, door placard or window sign on the front of the medical marijuana business structure. No sign associated with a medical marijuana center shall use the word "marijuana," "Cannabis," or any other word or phrase commonly understood to refer to marijuana unless such word or phrase is immediately preceded by the word "medical" or the message of such sign includes the words "for medical purposes" in letters no smaller than the largest letter on the sign. Off-site signage is prohibited.

(q) Submission of a detailed site plan, showing at a minimum the location of all buildings, structures, fencing, grow areas, processing areas, storage areas, parking areas, septic fields, driveways, access points to public rights-of-way and any other items that may be used for the purpose of the medical marijuana cultivation or business.

(r) A drainage report and drainage facilities may be required. The department will review the proposed facility plan and forward all requests to the applicant for additional information. Any and all run-off must be detained to the historic rate and proper BMP's must be implemented. No discharge from the facility may contain any chemicals or contaminants.

Article 8: Licensing Authority Review.

The Licensing Authority shall review and consider all Applications and may impose reasonable conditions to the extent it concludes such conditions are necessary to minimize any adverse aesthetic, odor, noise, health, safety and other negative impacts on adjoining and neighboring properties. The Licensing Authority's review and consideration will include all aspects of the application and other additional factors including, but not limited to:

- (a) All land use types within 500 feet of the medical marijuana facility that may be incompatible with the medical marijuana facility;
- (b) Number of other medical marijuana facilities of similar type and impact in the general vicinity and within ¼ mile from the proposed facility;
- (c) Ability of the medical marijuana facility to comply with the applicable performance standards and requirements of these Licensing Regulations;
- (d) Ability of the medical marijuana facility to provide reasonable accommodations for employees, off-street parking, and loading zones;
- (e) Ability of the medical marijuana facility to provide reasonable landscaping improvements, with specific reference to buffers, setbacks, parking lot screening and facility screening;
- (f) Proposed size of a proposed OPC, including plant count.

Article 9: Changes in License.

(a) *Transfer of Ownership.* Any license issued under these regulations may be transferred or assigned. Any change of ownership shall require approval by the Authority, before the change is effective.

(b) *Change of Location.* Any license granted under these regulations is limited to the location(s) specified on the license application. Operation of a medical marijuana center, optional premises cultivation, and/or medical marijuana-infused products manufacturing at a new location requires a new license.

(c) *Modification of premises.* Modification that materially or substantially alters the Licensed Premises where a medical marijuana center, optional premises cultivation, or medical marijuana-infused products manufacturing is located is subject to all applicable provisions of the Fremont County Zoning Resolution, Building Codes and other local regulations. Approval from the Authority must be obtained prior to making any modifications to the premises. Failure to obtain prior approval may be deemed a violation of the terms and conditions of the license.

Article 10: Term of license; renewal.

Any local license issued under these regulations shall be valid for a period of one (1) year from the date of issuance. Applications for renewals shall be processed in the same manner as new licenses under these regulations. A licensee shall submit a renewal application at least forty-five (45) days before the expiration of the license. Upon denial or revocation of a State license, any license issued under these regulations shall be null and void. If a court of competent jurisdiction determines that the issuance of local licenses violates any State or federal law, all licenses issued under these regulations shall be deemed immediately revoked by operation of law, with no ground for appeal or other redress on behalf of the licensee.

Article 11: Violations and Complaints.

Procedures for suspension or revocation of licenses issued under these regulations, and other fines, sanctions and penalties shall be as provided in §12-43.3-601 – 602, C.R.S., and regulations enacted pursuant thereto. The Authority may adopt local hearing procedures for the disciplinary process as it deems appropriate.

The Department will investigate any Complaint from a party residing or working within ¼ mile (1320 feet) of the facility. The investigation shall include a review of the facts and circumstances to determine impacts to the complaining party and the neighborhood. Complaints from persons not residing or working within ¼ mile of the facility will be reviewed on a case by case basis, and the Department shall, within its sole discretion, determine whether an investigation will be conducted.

It shall be an affirmative defense to a violation of the odorous air standards that the violation was caused by an upset condition or breakdown of a device, facility, or process that: could not have been reasonably anticipated or prevented; the facility owner or operator took immediate action to eliminate the upset condition and, if necessary, repair all equipment and devices that caused or contributed to the upset condition or breakdown; the facility owner or operator notified the Department about the upset condition or breakdown within twelve (12) hours of its occurrence; and the facility owner or operator provided written detailed information describing the upset condition or breakdown and identifying the measures taken to correct it within three (3) working days of the occurrence.

Article 12: Application and License Fees.

- A. The application fee for local licenses shall be:
1. Medical Marijuana Center: \$5,000.00
 2. Optional Premises Cultivation: \$5,000.00
 3. Medical marijuana-infused products manufacturing: \$5,000.00
 4. Public Hearing additional fee: \$250.00
 5. Fee for Renewal Application shall be \$2,500.00.

All Application fees are nonrefundable.

B. The annual business license fee for local licenses shall be:

1. Medical Marijuana Center: \$5,000.00
2. Optional Premises Cultivation: \$5,000.00
3. Medical marijuana-infused products manufacturing: \$5,000.00

All license fees are due at the time an application is submitted. Each county medical marijuana license shall be associated with a particular site or location, regardless of the number of state licenses affiliated with such site or location. If an application is denied, an Applicant may request that the Authority refund the license fee after the denial appeal period has expired or after the completion of the denial appeal process, whichever is later.

C. Administrative Fees for medical marijuana businesses shall be:

1. Change of corporation or LLC structure: \$50.00 per person
2. Change of trade name: \$50.00
3. Modification of License Premises: \$500.00 (includes public hearing)
4. Re-inspection fee for 3rd and each subsequent inspection during Application and Licensing process: \$250.00
5. Transfer of Ownership: \$500.00

All administrative fees shall be due at the time each applicable request is made. If a public hearing is not required for a proposed modification of licensed premises, the fee shall be reduced to \$250.

Article 13: Decision and Appeal.

Once the Authority has completed its review of an application, it shall either issue an approval or a denial letter that specifies the reasons for the decision. Within ten (10) days of a denial letter, the applicant may request that the Authority reconsider its decision by submitting a letter to the Authority clearly stating the grounds for the request. In response, the Authority may deny the request, issue a revised denial letter, or issue an approval.

The decision of the Fremont County Planning Director under these Local Regulations that the use is not permitted or that the applicant has not obtained the required approvals for the business operation under these Local Regulations, State Regulations, or the Fremont County Zoning Resolution and Building Codes shall constitute a final administrative officer or agency decision appealable to the Fremont County Board of Zoning Adjustment pursuant to the applicable provisions of the Fremont County Zoning Resolution.

Any decision of the Authority regarding approval or denial of an Application, imposition of disciplinary sanctions up to and including revocation of a license shall constitute final agency action for purposes of appeal after the time period for requesting reconsideration has expired. Request for reconsideration is not a mandatory administrative process for Applicants or Licensees.