

**CHAFFEE COUNTY COLORADO
RESOLUTION 2016-16**

**A RESOLUTION AMENDING AND RESTATING
RESOLUTIONS 2011-19, 2014-44, AND 2015-62
REGARDING THE TEMPORARY MORATORIUM FOR NEW PERMITS OR
LICENSES RELATED TO MEDICAL MARIJUANA CULTIVATION PREMISES AND
INFUSED PRODUCTS MANUFACTURING IN UNINCORPORATED CHAFFEE
COUNTY (APPLICATIONS AND LICENSES WITH RESPECT TO CERTAIN
EXISTING MARIJUANA ESTABLISHMENTS ARE EXCEPTED)**

FINDINGS AND CONCLUSIONS:

- A. Possession and use of medical marijuana for medical purposes under specific conditions and limitations were authorized and limited by Article XVIII, Section 14 of the Colorado Constitution, adopted by the voters of the State of Colorado on November 7, 2000 (Amendment 20).
- B. The Colorado Medical Marijuana Code clarifies Colorado law regarding the scope and extent of Amendment 20 and authorizes a mechanism for the sale, distribution, cultivation and dispensing of medical marijuana known as a “Medical Marijuana Center,” and further authorizes licensing mechanisms known as an “Optional Premises Cultivation Operation” and a “Medical Marijuana-Infused Products Manufacturers’ License.”
- C. C.R.S. § 12-43.3-106 of the Colorado Medical Marijuana Code establishes a local option allowing a county, by a majority of the members of its governing board, to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses.
- D. The following provisions also give the County authority to impose temporary bans on such activities:
 - a. The Local Government Land Use Control Enabling Act, C.R.S. § 29-20-101, *et seq.*; C.R.S. § 30-11-101(2) concerning the authority of counties to adopt and enforce ordinances and resolutions regarding health, safety and welfare issues as otherwise prescribed by law;
 - b. C.R.S. § 30-11-107 concerning powers of the Boards of County Commissioners;
 - c. C.R.S. § 30-28-101, *et seq.* concerning the regulation of the use of structures in various zone districts throughout Chaffee County; and
 - d. C.R.S. § 30-28-115 concerning the promotion of the health, safety, convenience, order and/or welfare of the citizenry through the use of land use regulations.
- E. Pursuant to Chaffee County Resolution 2011-19 (as amended by Chaffee County Resolution 2011-32), the Board of County Commissioners (“BoCC”) has prohibited all Medical Marijuana Centers in any zone in unincorporated Chaffee County and, except for certain grandfathered operations, prohibited medical marijuana Optional Premises Cultivation Operations and Medical Marijuana-Infused Products Manufacturers in any zone in

unincorporated Chaffee County except for the Industrial Zone. (See Resolution 2011-19 which initially amended the Chaffee County Zoning Resolution and Ordinance No. 2014-01 which incorporated the provisions into the new Chaffee County Land Use Code.) Currently, Operational Premises Cultivation licenses have been granted to three medical marijuana establishments pursuant to such exceptions. In addition, three recreational establishments have been granted cultivation licenses.

- F. Given the uncertainties under federal law, coupled with the number of potential new medical marijuana establishments in the County and enforcement, monitoring and control issues, the cultivation and processing of marijuana within Chaffee County presents regulatory issues and questions that the County's current rules, regulations and ordinances do not adequately address.
- G. Because the County does not have adequate current regulations with respect to the potential number of medical marijuana establishments and there are current concerns regarding odor and uncertainties regarding the enforcement and effect of federal law, the County will suffer irreparable harm if a limited, temporary moratorium on the establishment of new businesses is not imposed.
- H. The County needs additional time to determine the best approach for further regulating Medical Marijuana land uses within Chaffee County in a manner that is consistent with applicable law and, if necessary, to amend current County resolutions and standards.
- I. As a result of such concerns and uncertainties, pursuant to Chaffee County Resolution 2014-35, as amended by Resolution 2014-44 and Resolution 2015-62, the Chaffee County Board of County Commissioners (the "BoCC") imposed a temporary moratorium on new Optional Premises Cultivation Operations' and Medical Marijuana-Infused Products Manufacturers' land uses for a period of time, until the above described uncertainties can be adequately addressed in an amendment to the existing regulations.
- J. Pursuant to such resolutions, a moratorium is in place until December 31, 2016 on the submission, acceptance or processing of applications and the licensing, permitting or operation of any medical marijuana facility that sells, cultivates, manufactures, prepares, packages, purchases, tests or otherwise provides for or allows the use of medical marijuana or medical marijuana products in unincorporated Chaffee County, and upon the use of land for such purpose or purposes. The moratorium is subject to certain exceptions and the above resolutions make provisions for certain grandfathered operations.
- K. The owner of a grandfathered operation in the County has requested clarification regarding transfers of grandfathered operations.
- L. Adoption of a resolution amending the rules regarding grandfathered operations and consolidating and restating the existing resolutions would be in the best interests of the public health, safety, and welfare of the citizens of Chaffee County.

RESOLUTION:

The BoCC resolves as follows:

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

Section 2. Except as set out in Section 4, a moratorium previously imposed shall continue until December 31, 2016, unless sooner repealed or extended by further action of the BoCC, on the submission, acceptance or processing of applications and the licensing, permitting or operation of any medical marijuana facility that sells, cultivates, manufactures, prepares, packages, purchases, tests or otherwise provides for or allows the use of medical marijuana or medical marijuana products in unincorporated Chaffee County, and upon the use of land for such purpose or purposes.

Section 3. During the pendency of this ban, Chaffee County staff shall review all laws and regulations enacted by the state or actions of the federal government regarding medical marijuana establishments and advise the BoCC of the same, and, if so directed by the BoCC, prepare regulations, including but not limited to, regulations governing the time, place, manner, or number of medical marijuana establishments.

Section 4. This Resolution shall apply within the unincorporated territory of Chaffee County, but the moratorium imposed in Section 2 shall not apply to the following activities conducted by Operational Premises Cultivation facilities that already have licenses that are in good standing with the County and the State of Colorado at the time of the activity and that have not lapsed:

- a. Application for a renewal license for a medical Operational Premises Cultivation operation or a Medical Marijuana-Infused Products Manufacturers' License, including grandfathered operations.
- b. An expansion in the number of plants allowed within an existing footprint on the same parcel.
- c. An expansion of the operation's footprint on the same parcel (such as adding a new building to an existing location). Such an expansion would require a new license with the County. This exception is not available to grandfathered establishments (consisting of operations operating on parcels other than industrial zoned parcels); accordingly, the geographic expansion of such grandfathered establishments is included in the ban set forth in Section 2.
- d. A geographic expansion (such as expanding operations onto additional parcels) of an Operational Premises Cultivation operation or a Medical Marijuana-Infused Products Manufacturers' License. Such an expansion would require a new license with the County. This exception is not available to grandfathered establishments (consisting of operations operating on parcels other than industrial zoned parcels); accordingly,

the geographic expansion of such grandfathered establishments is banned under Section 2.

- e. Conversion of a license from recreational to medical or the addition of a different type of license other than sales via a Medical Marijuana Center (for example, adding a Medical Marijuana-Infused Products Manufacturers' License to an operation that currently has an Operational Premises Cultivation license.) To the extent such a conversion or addition results in an expansion of the operation's footprint or a geographic expansion, a new license with the County may be required.
- f. Transfer of an entire operation to a new owner (a transfer of part of the operations is banned under Section 2). Transfer of an entire grandfathered operation to a new owner is also excepted from the moratorium, provided there is no more than a six-month break in operations, and provided that at the time of transfer, the property is still majority owned by the owner of the property or his/her offspring on March 1, 2011. If grandfathered operations cease operations for more than six months or are no longer majority owned by the owner of the property or his/her offspring on March 1, 2011, such operations shall no longer be grandfathered. Grandfathered operations may not transfer to a different location unless the new location is entirely within an Industrial Zone. Although the transfers described in this paragraph are excepted from the moratorium, all such transfers would require a new license, pursuant to the Marijuana Business Licensing Regulations adopted via Resolution 2012-28.

Section 5. This resolution relates to the regulation of a controlled substance under federal law and the adoption of this resolution is necessary for the immediate preservation of public health, safety and welfare and shall be effective upon adoption.

Section 6. This resolution shall in no way limit application and enforcement of any statutes of the State of Colorado but shall be in addition thereto.

Section 7. If any portion of this resolution is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this resolution. The BoCC hereby declares this resolution to be severable and further declares that it would have passed this resolution and each part hereof irrespective of the fact that any one part be declared invalid.

Section 8. Resolutions 2011-19, 2014-44, 2015-62 and all other resolutions, or parts thereof, in conflict with this Resolution, are hereby repealed to the extent of such inconsistency or conflict. The licensing regulations adopted by Resolution 2012-28 shall remain in place.

425576

425576 3/9/2016 10:40 AM RESL Lori A Mitchell
5 of 5 R\$0 D\$0 N\$0 S\$0 M\$0 E\$0 Chaffee County Clerk

ADOPTED AND APPROVED by the Chaffee County Board of County Commissioners on
March 1, 2016.

BOARD OF COUNTY COMMISSIONERS


[Acting] Chairman

The vote on the above Resolution was as follows:

Commissioner Frank F. Holman	<u> yes </u>
Commissioner Dennis Giese	<u> yes </u>
Commissioner Dave Potts	<u> yes </u>

STATE OF COLORADO, CHAFFEE COUNTY
ATTEST:

The above is a true and correct record of Resolution 2016-16 duly adopted by the Chaffee
County Board of County Commissioners by a 3-0 vote at a regular meeting, properly noticed and
held on March 1, 2016.

