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Dallas Schroeder Recorder, Elbert County, Co

STATE OF COLORADO)
) ss.
COUNTY OF ELBERT)

At a regular meeting of the Board of County Commissioners for Elbert County, State of Colorado, held at the Courthouse in Kiowa on Wednesday, the **19th** day of **December** A.D. 2018, there were present:

Chris Richardson	County Commissioner
Danny Willcox	County Commissioner
Grant Thayer	County Commissioner
Dallas Schroeder	County Clerk and Clerk to the Board

When the following proceedings, among other, were had and done, to wit:

ORDINANCE NO. 18-2

AN ELBERT COUNTY ORDINANCE TO REGULATE THE CULTIVATION OF MARIJUANA ON RESIDENTIAL PROPERTIES, IN RESIDENTIAL STRUCTURES, IN ACCESSORY STRUCTURES, ON RESIDENTIAL PROPERTY ON VACANT OR UNOCCUPIED LAND; AND ON NON-RESIDENTIAL, PROHIBITING THE OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, OR RETAIL MARIJUANA STORES OR BUSINESSES, AND PROPERTYAND REQUIRING REGISTRATION OF CAREGIVERS WITHIN UNINCORPORATED ELBERT COUNTY, STATE OF COLORADO REPEALING AND REPLACING ORDINANCE NUMBER(S) 13-01 and 11-14.

WHEREAS, pursuant to C.R.S. § 30-11-103, the Board of County Commissioners of Elbert County, Colorado (hereinafter the "Board"), has the authority to exercise all County powers for the Unincorporated Areas of Elbert 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, on September 11, 2013, Elbert County Board of County Commissioners adopted an Ordinance Prohibiting the Operation of Marijuana Cultivation Facilities, Marijuana Product Manufacturing Facilities, Marijuana Testing Facilities OR Retail Marijuana Stores Within Unincorporated Elbert County; and

WHEREAS, Elbert County, Colorado has the authority pursuant to C.R.S. §30-11-101(2), to adopt and enforce ordinances and resolutions regarding health, safety and welfare issues; and

WHEREAS, the Colorado Constitution Article XVIII, Section 14 and the Colorado Medical Marijuana Code, C.R.S. §12-43.3-101, et seq., recognize that local governments retain authority to regulate the cultivation of medical marijuana; and

WHEREAS, the Colorado Constitution, Article XVIII, Section 16 and the Colorado Retail Marijuana Code, C.R.S. §12-43.4-101,et seq., recognize that local governments may regulate the personal use of marijuana to serve the purpose and intent of the constitutional and statutory provisions regarding such use; and

WHEREAS, no person is allowed to possess, cultivate, grow, use or distribute marijuana in any manner or for any purpose other than that allowed by the Colorado Constitution and Colorado State Statutes, and local laws and regulations; and

WHEREAS, the Board of County Commissioners of Elbert County have determined that the adoption of regulations governing the residential cultivation of medical and personal-use marijuana is necessary and desirable for the health, safety and welfare of the citizens of Elbert County; and

WHEREAS, Amendment 64 defines "Locality" in part in section 2(e) of Section 16 to include a county; and

WHEREAS, part 5(f) of Section 16 states 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; ESTABLISHING A SCHEDULE OF ANNUAL OPERATING, LICENSING, AND APPLICATION FEES FOR MARIJUANA ESTABLISHMENTS, PROVIDED, THE APPLICATION FEE SHALL ONLY BE DUE IF AN APPLICATION IS SUBMITTED TO A LOCALITY IN ACCORDANCE WITH PARAGRAPH (i) AND A LICENSING FEE SHALL ONLY BE DUE IF A LICENSE IS ISSUED BY A LOCALITY IN ACCORDANCE WITH PARAGRAPH (h) OR (i); AND ESTABLISHING CIVIL PENALTIES FOR VIOLATION OF AN ORDINANCE OR REGULATION GOVERNING THE TIME, PLACE, AND MANNER OF A MARIJUANA ESTABLISHMENT THAT MAY OPERATE IN SUCH LOCALITY. 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; PROVIDED, ANY INITIATED OR REFERRED MEASURE TO PROHIBIT THE OPERATION OF MARIJUANA CULTIVATION FACILITIES,

MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, OR RETAIL MARIJUANA STORES MUST APPEAR ON A GENERAL ELECTION BALLOT DURING AN EVEN NUMBERED YEAR.

WHEREAS, at the November 6, 2012 election approximately fifty four percent (54%) of Elbert County voters rejected the proposed adoption of Amendment 64; and

WHEREAS, consistent with the authority granted to the Board in Amendment 64 and the will of the Elbert 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 Elbert County, Colorado.

WHEREAS, Elbert County currently has in effect Ordinance 11-14 and 13-01 to govern and regulate residential cultivation of medical and personal use marijuana in the unincorporated areas of Elbert County; and

WHEREAS, Colorado House Bill 17-1220, effective January 1, 2018, necessitates the amendment of Elbert County Ordinances 11-14 and 13-01; and

WHEREAS, the Board of County Commissioners has determined that a single ordinance regulating the residential cultivation of marijuana, whether for medical or personal use, is necessary to avoid confusion in the interpretation of three separate ordinances; and

WHEREAS, pursuant to the provisions of this Ordinance, 11-14 and 13-01, this Ordinance shall repeal in their entirety and replace Ordinances 11-14 and 13-01.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ELBERT COUNTY, COLORADO, as follows:

Section 1. Purpose.

1.1 The purpose of this Ordinance is to protect and promote the public health, safety and general welfare of the citizens and residents of Elbert County, Colorado, by prohibiting the operation of marijuana cultivation facilities, prohibit marijuana product manufacturing facilities, marijuana testing facilities, retail marijuana stores, cultivation of marijuana on residential properties, prohibit cultivation of marijuana in residential structures, in accessory structures, on residential property or non-residential properties either occupied or on vacant or unoccupied land; and requiring registration of caregivers within Elbert County.

Section 2. No Non-conforming Use Status.

2.1 No person, business, activity or use involving the cultivation of marijuana in the unincorporated areas of the County prior to the enactment of this Chapter shall be deemed to have been legally established under this Ordinance, and no such person, business, activity or

use shall be entitled to claim legal nonconforming status under any provision of this Ordinance or applicable law.

Section 3. 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 and Article XVIII, Section 14 of the Colorado Constitution, and the Colorado Medical Marijuana Code or article 43.3 or 43.4 of title 12 of Colorado Revised Statutes. These definitions include, but are not limited to the following:

3.1 "Marijuana" or "marihuana" means all parts of the plant of the genus cannabis (with a Tetrahydrocannabinol (THC) content 0.3% or higher) whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marihuana concentrate.

3.2 "Marijuana" or "marihuana" does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product. Marijuana includes both Medical Marijuana and Personal Use Marijuana. Marijuana does not include "immature plant" as defined herein; industrial hemp; fiber produced from the stalks, oil, or cake made from the seeds of the plant; sterilized seed of the plant incapable of germination; or any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

3.3 "Marijuana accessories" means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

3.4 "Marijuana cultivation 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.

3.5 "Marijuana establishment" means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store whether for medical or recreational use.

3.6 "Marijuana product manufacturing facility" means an entity licensed to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

3.7 "Marijuana products" means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or

consumption, such as, but not limited to, edible products, ointments, and tinctures.

3.8 "Marijuana testing facility" means an entity licensed to analyze and certify the safety and potency of marijuana.

3.9 "Medical marijuana center" means an entity licensed by a state agency to sell marijuana and marijuana products pursuant to section 14 of this article and the Colorado Medical Marijuana Code.

3.10 "Retail marijuana store" means an entity licensed 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.

3.11 "Cultivation" means the planting, growing and/or harvesting of marijuana, including but not limited to hydroponic cultivation and cloning.

3.12 "Enclosed Space "means a permanent or semi-permanent area, surrounded on all sides, including the roof. The temporary opening of windows or doors does not convert the area into an unenclosed space.

3.13 "Immature Plant "means a nonflowering marijuana plant that is no taller than eight (8) inches and no wider than eight (8) inches produced from a cutting, clipping, or seedling and that is in a growing container that is no larger than two (2) inches wide and two (2) inches tall that is sealed on the sides and bottom.

3.14 "Multi-family Dwelling" means a duplex, triplex, fourplex units, apartments, attached condominium units and attached residential developments.

3.15 "Parcel or Property" means a plot or parcel of land typically considered a unit for the purpose of development and conveyed lawfully be deed to one (1) or more owners.

3.16 "Patient" means a person who possesses a valid and current Colorado registry identification card for medical marijuana.

3.17 "Primary Caregiver" under the Colorado Constitution, Article XVIII, Section 14(1)(f) means a natural person, other than the patient and the patient's physician, who is eighteen (18) years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition.

3.18 "Primary Residence" means the place where a person or family member, by custom and practice makes his or her principal domicile and address, and to which the person or family member intends to return following any temporary absence, such as but not limited to a vacation. Residence is evidenced by actual daily physical presence, use and occupancy of the primary residence and the use of the residential address for domestic purposes, such as, but not limited to, slumber, preparation of and eating of meals, regular mail delivery, vehicle and voter registration, and credit and water and utility billing. A person or family member

shall have only one primary residence. A primary residence includes both single and multi-family residences.

3.19 "Residential Marijuana Cultivation" means the use of a residential property, on which a person resides as their primary residence and engages in the cultivation and growing of medical and/or personal use marijuana for that person's personal use only. All residential marijuana cultivation shall comply with all provisions of this Ordinance.

3.20 "Residential Property" means a single unit or structure providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation. It also includes the real property surrounding a structure owned in common with the structure and may include one or more single units providing complete independent facilities.

3.21 "Residential Structure" means a detached, one-family residence; attached accessory structure to a detached, one-family residence; or a detached accessory structure.

3.22 "Secure Area" means an area within a residential structure accessible only to the person possessing, cultivating or processing marijuana for personal or medical use.

Section 4. Caregiver Cultivation Registration

4.1 In accordance with C.R.S.§ 25-1.5-106, a primary caregiver who cultivates medical marijuana for one (1) or more patients is required to register the location of his or her cultivation operation with the State Medical Marijuana Licensing Authority. Proof of registration is required to be present and presented to county code enforcement or law enforcement personnel upon request. A cultivating or transporting primary caregiver may serve no more than five (5) patients at any given time, unless the state health agency allows a primary caregiver to serve more than five (5) patients due to exceptional circumstances.

Section 5. Provisions for Indoor or Outdoor Cultivation of Medical, Recreational, or Personal Use Marijuana, and Extraction of such in Unincorporated Elbert County

5.1 Such cultivation, production, or possession of marijuana plants must be in full compliance with all applicable constitutional, statutory, and regulatory requirements of the State of Colorado and ordinances and regulations of Elbert County.

5.2 Any space used for growing marijuana must not be accessible to the public or any person under the age of twenty-one (21) years unless such person possesses a medical marijuana registration card, or is a registered (with the State of Colorado) caregiver eighteen (18) years of age or older.

5.3 Cultivation of marijuana is only permitted by adults over twenty-one (21) years of age, unless the individual possesses a valid medical marijuana registration card.

5.4 Cultivation of medical marijuana on residential property by a person under twenty-one (21) years of age is allowed if such person possesses a valid medical marijuana registration card, resides at, and uses the property as their primary residence.

5.5 Medical marijuana caregivers may cultivate on residential property for up to five (5) persons who do not reside at the property, if the property is the caregiver's primary residence and the caregiver has been designated as caregiver by the medical marijuana patient, and all state rules and regulations regarding caregiver designation and caregiver status have been complied with. In no event, shall a caregiver be allowed to cultivate for more than five (5) patients, all five (5) of whom must possess a valid medical marijuana card from the state of Colorado.

5.6 The cultivation of medical or personal use marijuana plants shall not be perceptible from the exterior of the structure or property on which any such activities occur, by any of the following means, or as a result of any of the following impacts or effects:

(1) Common visual observation or plain view (e.g. through a window) by a person of normal vision without visual enhancements (e.g. binoculars);
(2) Light pollution, glare, or brightness that reasonably could be expected to unreasonably disturb the repose of another person of normal visual abilities or sensitivities;
(3) Smell or odor of marijuana, or unusual smells or odors generated by or in connection with such growing or processing and not generally found in the surrounding area or environment, as detectable by a person with a normal sense of smell;
(4) Undue or unusually high volumes of vehicular or pedestrian traffic, including unusually heavy or frequent parking in front of or in the immediate vicinity of the property; or
(5) Noise from exhaust fans, other equipment, or other sources associated with or connected to such cultivation or processing that can be heard on surrounding properties on a steady, continuous basis lasting longer than two hours in a 24-hour period, or occurring for any length of time between the hours of 9:00 p.m. and 6:00 a.m.

5.7 Medical or personal use marijuana cultivation is prohibited within a travel trailer park, campground, hotel or motel, or on any property allowing or containing temporary residential uses by non-owners.

5.8 Plant Count Limit:

(1) No more than twelve (12) marijuana plants may be grown on any single-family dwelling residential property at any given time.
(2) No more than six (6) marijuana plants may be grown on the property of any unit of a multi-family dwelling, including the unit itself and any accessory building, at any given time.
(3) No more than twenty-four (24) medical marijuana plants may be grown by a patient, primary caregiver, or combination of patients and/or caregivers at/on any single-family dwelling residential property at any given time, except under the authority of a valid Extended Plant Count Permit.

(4) No more than twenty-four (24) medical marijuana plants may be grown by a patient, primary caregiver, or combination of patients and/or caregivers on any vacant, unoccupied, or non-residential property at any given time, except under the authority of a valid, Extended Plant Count Permit.

5.9 Residential cultivation of marijuana conducted by a non-owner of a residential property such as a tenant, lessee, guest, or other similar occupancies, shall be prohibited unless such non-owner has notarized, written permission from the owner of the residential property specifically allowing cultivation of marijuana on the property.

5.10 Waste product from the marijuana cultivation shall be disposed of properly so as not to be at risk for consumption by others and so as not to attract rodents, pests, or public curiosity.

5.11 Marijuana cultivation under this Ordinance shall not be for the use of any licensed Marijuana Establishment, as that term is defined in the Colorado Medical and Retail Marijuana Codes.

5.12 It shall be unlawful for any person who is not licensed under Article 43.3 or Article 43.4 of Title 12, C.R.S. to sell marijuana. A caregiver may be reimbursed for the costs involved in marijuana production pursuant to C.R.S. 25-105-106, and only up to the production limits produced pursuant to this ordinance.

5.13 Regardless of methods that may be authorized under C.R.S. 18-18-406.6, and regulations regarding marijuana or THC extraction within article 43.3 and 43.4 of Title 12, C.R.S., Marijuana Extraction or the extraction of THC from any part of the marijuana plant shall not be permitted in unincorporated Elbert County. Extraction, or production of marijuana concentrate or THC from any part or derivative of a marijuana plant shall not be permitted. This includes a prohibition on extraction through any methods, to include:

(1) Extraction using alcohol, ethanol, or any solvent.
(2) The production of marijuana concentrate utilizing any source of heat from a fuel fired or electrified source.
(3) Utilization of any process using hazardous chemicals, gases, explosives, butane, or other flammable materials.
(4) Extraction using carbon dioxide, or water, as part of the process.

5.14 No property may be used for cultivation of marijuana plants unless the parcel is created in accordance with county subdivision, and other regulations and legal requirements, including being in full compliance with the Elbert County Zoning rules and regulations.

5.15 Documentation verifying plant counts, patient information, and caregiver registration for each cultivation operation shall be readily available on site and provided to code enforcement and law enforcement officials upon request.

5.16 Cultivation of personal use or recreational marijuana on non-residential, unoccupied or vacant property is specifically prohibited.

Section 6. Provisions for Indoor Cultivation of Medical and Personal Use Marijuana on Residential Property.

6.1 Cultivation of marijuana, whether medical or personal use, by a person in any residential structure or in a detached residential accessory structure shall be permitted, subject to the following restrictions:

(1) Any structure used for cultivation shall comply with all applicable building and zoning codes, including but not limited to the health, building, electrical, plumbing, mechanical, sign, fire, and other codes, statutes, and ordinances.
(2) Cultivation of marijuana in a multi-family dwelling must comply with all provisions of this Ordinance and shall not be perceptible from any other unit or dwelling in the multi-family structure, development or complex. Marijuana plants shall not be grown or processed in the common areas of the multi-family or attached residential development.
(3) The person(s) cultivating marijuana must reside in the same dwelling or dwelling unit where the cultivation occurs. For cultivation of marijuana in a greenhouse and/or accessory building, a single-family dwelling or unit of a multi-family dwelling shall be on the same property as the greenhouse and/or accessory building and such dwelling shall be occupied by the person(s) cultivating marijuana.
(4) Any residential property or structure, or portion thereof, used for cultivation, processing, or possession shall be a secure area, inaccessible and not visible to persons under the age of twenty-one (21), visitors, casual passers-by, vandals, or anyone not authorized to possess or access medical or personal use marijuana. Secure areas shall be portioned space-constructed and locked.

Section 7. Provisions for Outdoor Cultivation of Medical and Personal Use Marijuana on Residential Property.

7.1 Outdoor Home or Residential Cultivation may occur on residential properties subject to the following restrictions:

(1) Outdoor marijuana shall be contained entirely in an area that is completely fenced and screened with a locked gate and not perceptible from any right-of-way, any other residence, or other public area.
(2) The person(s) cultivating marijuana must reside in the single-family dwelling or the unit of a multi-family dwelling located on the parcel.
(3) The use of temporary dwelling accommodations, including travel trailers, recreational vehicles, tents and similar accommodations, shall strictly comply with zoning, health, sanitation, and other regulatory requirements for such use.
(4) Cooperative, joint, collective, or other combined grows on a single parcel by more than one primary caregiver or patient are allowed, subject to the plant count restrictions in this Ordinance, and provided at least one (1) of the caregivers and/or patients engaged in the cultivation operation has a 50% or more fee-simple ownership interest in and resides on the parcel used for cultivation.

Section 8. Cultivation of Medical Marijuana on Vacant, Unoccupied Property or Non-Residential Property.

8.1 Cultivation of medical marijuana by one (1) or more primary caregivers or patients on vacant, unoccupied, or non-residential property is allowed, subject to the provisions of this Ordinance and the following requirements and restrictions:

(1) Outdoor marijuana shall be contained entirely in an area that is completely fenced and screened with a locked gate and not perceptible from any right-of-way, any other residence, occupied structure, or other public area.
(2) Any structure used for cultivation shall comply with all applicable laws, regulations, and codes, including but not limited to health, building, electrical, plumbing, mechanical, sign, fire, and other codes, statutes, and ordinances.
(3) Any property or structure, or portion thereof, used for cultivation, processing, or possession shall be a secure area, inaccessible and not visible to persons under the age of twenty-one (21), visitors, casual passers-by, vandals, or anyone not authorized to possess or access medical marijuana.
(4) Indoor cultivation areas shall be secure and locked.
(5) A patient may not exceed the plant count and cultivate the number of plants authorized by the patient's Medical Marijuana Card, and/or current, valid, written authorization from the patient's licensed Colorado physician.
(6) Cooperative, joint, collective, or other combined grows, on a single parcel by more than one (1) primary caregiver or patient are allowed if at least one (1) of the caregivers and/or patients engaged in the cultivation operation has a fifty percent (50%) or more fee-simple ownership interest in the parcel used for cultivation.

Section 9. Enforcement.

9.1 This Ordinance shall be enforced by the Elbert County Sheriff and county code enforcement personnel.

9.2 *Violation*: It shall be unlawful for any person to violate any provision of this Ordinance.

9.2.1 Any person who violates this Ordinance commits a class 2 petty offense.

9.2.2 The fine for a first offense and for any subsequent offense shall be no less than two-hundred fifty dollars ($250) and not more than one thousand dollars ($1,000.00) per violation and each day shall be deemed a separate violation.

9.2.3 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 current statutory surcharges. Presently, on the date this Ordinance was enacted, the fines include: 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, or such amount as such fees have been adjusted to at the time of enforcement. These surcharges shall be paid to the Elbert County 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 C.R.S. § 30-15-402(2).

9.2.4 The remedies provided in this Ordinance shall be cumulative and in addition to any other federal, state or local remedy, criminal or civil, which may be available. Nothing contained herein shall be construed to preclude prosecution under any other applicable statute, ordinance, rule, order or regulation.

9.3 *Penalty Assessment*: In accordance with C.R.S. §30-15-402, and §16-2-201, a penalty assessment procedure is hereby authorized for use by any law or code enforcement officer who is vested with authority to issue a Summons and Complaint for violations of this Ordinance.

9.3.1 The penalty assessment notice (citation) shall be a Summons and Complaint containing identification of the alleged offender, specification of the offense and applicable fine, a requirement that the alleged offender pay the fine or appear to answer the charge at a specified time and place, and any other matter reasonably adapted to effectuating the purposes of this section.

9.3.2 A duplicate copy shall be sent to the Elbert County Clerk of the Court or otherwise in the county in which the alleged offense occurred.

9.3.3 The provisions herein shall not apply to penalties assessed pursuant to authority of law outside this Ordinance unless this Ordinance is specifically referred to in such other law.

9.3.4 If the person given a penalty assessment notice (citation) chooses to acknowledge their guilt, he or she may pay the specified fine in person or by mail at the place and within the time specified in the notice. If the individual chooses not to acknowledge their guilt, he or she shall appear as required in the notice. Upon trial, if the alleged offender is found guilty, the fine imposed shall be that specified in the notice for the offense of which the individual was found guilty, but customary court costs and surcharges shall be assessed against the individual in addition to the fine.

9.4 *Graduated Fine Schedule and Procedure for Payment*: Any person who violates any part of Section 4, Section 5, Section 6, or Section 7 of this Ordinance, shall be punished, upon conviction, in accordance with the following schedule:

(1) For the first offense, the sum of five-hundred dollars;
(2) For the second or subsequent offense, the sum of one thousand dollars.

9.4.1 Whenever a penalty assessment notice (citation) is issued pursuant to this Ordinance, the penalty assessment notice (citation) which shall be served upon the defendant by a code or law enforcement officer, and shall contain the name and address of the defendant; a citation of the Ordinance section alleged to have been violated; a brief description of the offense; the date and approximate location of the commission of the offense; the amount of the penalty

prescribed for such offense, including any surcharge and collection costs; and the date the penalty assessment notice (citation) is served on the defendant.

9.4.2 The penalty assessment shall inform the defendant of the opportunity to pay the fine and a five dollar ($5.00) collection fee, within twenty (20) days unless otherwise provided by law, all fines paid for the violation of this ordinance shall be made payable to Elbert County and submitted to the Elbert County Treasurer's Office and deposited into the general fund of Elbert County, thereby avoiding imposition of court costs and surcharges at a later date.

9.4.3 The penalty assessment notice (citation) shall direct the defendant to appear in a specified county court at a specified time and place in the event such penalty is not paid; shall be signed by the code or law enforcement officer; and shall contain a place for the party issued a Penalty Assessment Notice (citation) to elect to execute a signed acknowledgment of guilt and an agreement to pay the penalty prescribed within twenty days (20), as well as such other information as may be required by law, to enable such Penalty Assessment Notice to become a Summons and Complaint, should the prescribed penalty not be paid within the time allowed in this Ordinance.

9.4.4 One (1) copy of said Penalty Assessment Notice shall be served upon the defendant by the code or law enforcement officer and one (1) copy sent to the Elbert County Treasurer. In the event the penalty assessment is not paid to the Elbert County Treasurer within the required twenty (20) day period, the Elbert County Treasurer shall forward all unpaid penalty assessments to the Elbert County Court for docketing on the date of first appearance indicated on the Summons and complaint/Penalty Assessment Notice.

9.4.5 The time specified in the summons portion of said Summons and Complaint must be at least twenty days (20) after the date such Summons and Complaint is served, unless the defendant shall demand an earlier court appearance date.

9.4.6 The time specified in the summons portion of said Penalty Assessment Notice shall be at least thirty days (30) but not more than ninety days (90) after the date such Penalty Assessment Notice is served, unless the defendant shall demand an earlier court appearance date.

9.4.7 The place specified in the summons portion of said Summons and Complaint or of the Penalty Assessment Notice must be a county court within the county in which the offense is alleged to have been committed.

9.4.8 If the defendant is otherwise eligible to be issued a Summons and Complaint or a Penalty Assessment Notice for a violation of this Ordinance and if the defendant is not a resident of Elbert County, in order to secure release, must execute a promise to appear in court on the Penalty Assessment Notice or on the Summons and Complaint.

9.4.9 Unless a person who has been cited for an Ordinance violation pays in a timely manner with adequate and sufficient funds, the penalty assessment as provided in this Ordinance, the

person shall appear at a hearing on the date and time specified in the summons portion of the Penalty Assessment Notice and answer the complaint against him or her.

9.4.10 If judgment is entered against a violator, he or she shall be assessed an appropriate penalty, a surcharge, a docket fee, and other applicable costs.

9.5 *Disposition of Fines and Surcharges*: Unless otherwise provided by law, all fines and penalties, and the surcharge thereon, for the violation of this Ordinance shall be paid into the treasury of Elbert County.

Section 10. Applicability.

10.1 This Ordinance shall apply throughout the unincorporated area of Elbert County, including public, state, and federal lands. This Ordinance shall in no way limit application and enforcement of any statutes of the State of Colorado but shall be in addition thereto.

10.2 Nothing in this Ordinance shall prohibit the continuation of previous enforcement actions undertaken by the County pursuant to previous regulations, provided that the violation is also a violation this Ordinance.

Section 11. Severability.

11.1 If any section, subsection, clause, sentence, phrase or part of this Ordinance is declared invalid by a court of competent jurisdiction, such invalidity shall not affect, impair or invalidate any remaining provisions of this Ordinance.

Section 12. Conflicting Provisions.

12.1 Where any provision of this Ordinance conflicts with any other provision of this Ordinance, or any other law or Ordinance, the more stringent shall apply.

Section 13. Interpretation.

13.1 This Ordinance shall be so interpreted and construed as to effectuate its general purpose to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores within the unincorporated areas of Elbert County, Colorado.

Section 14. Effective date.

14.1 This Ordinance shall take effect immediately upon adoption on the second and final reading and shall remain in effect until such time as this Ordinance is amended or repealed.

INTRODUCED, READ AND DESIGNATED AN ORDINANCE NECESSARY FOR THE IMMEDIATE PRESERVATION OF PUBLIC HEALTH, SAFETY, AND WELFARE ON FIRST READING, on the **14th** day of **November**, 2018, and ordered published in full in the Elbert County News.

THE BOARD OF COMMISSIONERS OF ELBERT COUNTY, COLORADO

By: _____
Danny Willcox, Chairman

ATTEST:

By: _____
Dallas Schroeder, Clerk to the Board

ADOPTED ON SECOND AND FINAL READING, AS AMENDED AND AFTER BEING DESIGNATED AN ORDINANCE NECESSARY FOR THE IMMEDIATE PRESERVATION OF PUBLIC HEALTH, SAFETY, AND WELFARE, on the **19th** day of **DECEMBER**, 2018, and ordered published in full in the Elbert County News.

THE BOARD OF COMMISSIONERS OF ELBERT COUNTY, COLORADO

By: _____
Danny Willcox, Chairman

ATTEST:

By: _____
Dallas Schroeder, Clerk to the Board

CERTIFICATE

I hereby certify that the foregoing **Ordinance No. 18-2** was introduced, read and adopted upon second reading at a regular meeting of the Board of County Commissioners on December 19, 2018, and upon being so designated as an ordinance necessary for the immediate preservation of public health, safety, and welfare, went into immediate effect thereafter.

This same ordinance was introduce and first reading occurred at the regular meeting of the Board of County Commissioners of Elbert County on 14th day of November, 2018, and the same was published in its entirety the Elbert County News, a newspaper of general circulation published in its entirety in Elbert County, on 29th day of November, 2018. Said Ordinance became effective the 19th day of December, 2018.

ATTEST:

By: _____
Dallas Schroeder, Clerk to the Board

ELBERT COUNTY SEAL ORG. FEB 13 1874 COLORADO

State of Colorado)
) ss.
County of Elbert)

Subscribed and sworn to before me this 7 day of February, 2019 by Dallas Schroeder, as Clerk to the Board.

June 9 2021
My Commission Expires

Notary Public

LISA MACKIEWICZ
Notary Public – State of Colorado
Notary ID 20094019061
My Commission Expires Jun 9, 2021

CERTIFICATION

I, Dallas Schroeder, Elbert County Clerk to the Board, do hereby certify that the foregoing Ordinance **No. 18-2**, entitled, **AN ELBERT COUNTY ORDINANCE TO REGULATE THE CULTIVATION OF MARIJUANA ON RESIDENTIAL PROPERTIES, IN RESIDENTIAL STRUCTURES, IN ACCESSORY STRUCTURES, ON RESIDENTIAL PROPERTY ON VACANT OR UNOCCUPIED LAND; AND ON NON-RESIDENTIAL, PROHIBITING THE OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, OR RETAIL MARIJUANA STORES OR BUSINESSES, AND PROPERTYAND REQUIRING REGISTRATION OF CAREGIVERS WITHIN UNINCORPORATED ELBERT COUNTY, STATE OF COLORADO REPEALING AND REPLACING ORDINANCE NUMBER(S) 13-01 and 11-14**, is a true, correct and complete copy from the records in my office, that said Ordinance was duly adopted by the Board of County Commissioners of Elbert County and is in full force and effect.

ATTEST:

By: _____
Dallas Schroeder, Clerk to the Board

ELBERT COUNTY SEAL ORG. FEB 13 1874 COLORADO