STATE OF COLORADO

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 22nd day of June A.D. 2011, there were present:

Del Schwab Commissioner Chairman
John Shipper Commissioner
Kurt Schlegel Commissioner
Deidre Delaney Deputy, Clerk to the Board

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

RESOLUTION NO. 11-14

A RESOLUTION PROHIBITING THE OPERATION OF MEDICAL MARIJUANA CENTERS, OPTIONAL PREMISES CULTIVATION OPERATIONS, AND MEDICAL MARIJUANA-INFUSED PRODUCTS MANUFACTURERS' LICENSES WITHIN THE UNINCORPORATED BOUNDARIES OF ELBERT COUNTY, COLORADO.

WHEREAS, on or about June 23, 2010, the Board of County Commissioners (hereinafter the "Board") adopted Resolution No. 10-38, A Resolution Extending the Temporary Prohibition on the Construction, Alteration, or Use of Any Building, Structure, or Property for Medical Marijuana Dispensaries and/or Growing Operations Until July 27, 2011, in Elbert County, pursuant to statutory authority set forth in C.R.S. § 30-28-121 (hereinafter the "Moratorium Resolution"); and

WHEREAS, the Moratorium Resolution established a moratorium until July 27, 2011 to enable Elbert County to determine the extent of its regulatory authority over medical marijuana facilities and develop zoning regulations; and

WHEREAS, to date the Board has not adopted zoning regulations that provide zoning for medical marijuana cultivation or dispensing facilities as an allowable land use; and

WHEREAS, after the Moratorium Resolution was approved, the Colorado General Assembly during the 2010 legislative session adopted House Bill 10-1284, which added a new Article 43.3 to Title 12 of the Colorado Revised Statutes, known as the Colorado Medical Marijuana Code; and

WHEREAS, the Colorado Medical Marijuana Code clarifies Colorado law regarding the scope and extent of Amendment 20 to the Colorado Constitution (Article XVIII, Section 14), and at the same time 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;" and

WHEREAS, C.R.S. § 12-43.3-103(2)(a) provides that a county may adopt and enforce a resolution prohibiting the cultivation or sale of medical marijuana; and
WHEREAS, C.R.S. § 12-43.3-106 specifically authorizes the governing body of a county to vote, by a majority of the members of such governing body, to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses; and

WHEREAS, C.R.S. § 12-43.3-310 further authorizes a local government to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses, and to otherwise restrict the distribution of medical marijuana under the authority of other zoning, health, safety, and public welfare laws; and

WHEREAS, C.R.S. § 12-43.3-308(1)(c) provides that the state and local licensing authorities shall not receive or act upon a new application pursuant to the Colorado Medical Marijuana Code for a location in an area where the cultivation, manufacture, and sale of medical marijuana as contemplated is not permitted under the applicable zoning laws of the municipality, city and county, or county; and

WHEREAS, the Board has carefully considered the provisions of the Colorado Medical Marijuana Code, Article XVIII, Section 14 of the Colorado Constitution and the impacts of the commercial production and distribution of medical marijuana and the establishment of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses, on the public health, safety and welfare of the citizens of the unincorporated boundaries of Elbert County, and has determined as an exercise of its local land use authority that the new construction, alteration, or use of any building, structure, or property for the sale, distribution, or dispensing of medical marijuana, or the operation of the new medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses, should be prohibited.

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

1. The moratorium established by Resolution No. 10-38 shall remain in effect until July 1, 2011, the effective date of the applicable sections of the Colorado Medical Marijuana Code, and shall be lifted on and after said date.

2. Pursuant to the authority granted in C.R.S. § 12-43.3-103(2)(a), C.R.S. § 12-43.3-106, and C.R.S. § 12-43.3-310, the Board of County Commissioners of the County of Elbert expressly prohibits the operation of medical marijuana centers, optional premises cultivation operations, medical marijuana-infused products manufacturers, and facilities for which a medical marijuana-infused products manufacturers’ license could otherwise be obtained, within the unincorporated boundaries of Elbert County, Colorado, and all such uses are hereby prohibited in any location within the unincorporated boundaries of Elbert County, Colorado.

3. This Resolution shall take effect immediately upon its passage and is adopted for the immediate preservation and protection of the public health, safety and welfare of the citizens of Elbert County.
Upon a motion duly made and seconded, the foregoing resolution was adopted by the following vote:

[Signatures]

DEL SCHWAB, CHAIRMAN

JOHN SHIPPER, COMMISSIONER

KURT SCHLEGEL, COMMISSIONER

ATTEST: DIANA HARTSOUGH
COUNTY CLERK

BY: DEPUTY, CLERK TO THE BOARD

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