

September 13, 2016

SEVENTEENTH MEETING

The Board of Commissioners of the County of Fremont, State of Colorado, met in Regular Session on September 13, 2016, 615 Macon Avenue, Room LL3, Fremont County Administration Building, Cañon City, Colorado. Commissioner Chairman Edward Norden called the meeting to order at 9:30 a.m.

Edward H. Norden	Commissioner	Present
Debbie Bell	Commissioner	Present
Tim Payne	Commissioner	Present
Katie Barr	Clerk and Recorder	Present
Brenda Jackson	County Attorney	Present

Also present: Planning and Zoning Director Matt Koch

Ethan McClaugherty of Evangelical Free Church gave the invocation.

Those present recited the Pledge of Allegiance to the Flag of the United States of America.

APPROVAL OF AGENDA

Commissioner Bell moved to approve the Agenda removing the Manager's Report due to her absence and removing the resolution number on New Business item #1 to be assigned when addressing the item. Commissioner Payne seconded the motion. Upon Vote: Commissioner Bell, aye; Commissioner Payne, aye; Commissioner Norden, aye. The motion carried.

CONSENT AGENDA

1. Approval of Minutes / August 23, 2016
2. Approval of Bills for \$ 1,367,400.97
3. Ratification of Chairman's signature on an agreement with CTL Thompson for construction observation and materials testing services for the Fremont County Justice Center Kitchen and Laundry Remodel
4. Adoption of the Revised Policy Guidelines for the Fremont County Fair Board Sales Committee
5. Schedule Public Hearings: None.

Commissioner Payne moved to approve the Consent Agenda. Commissioner Bell seconded the motion. Upon Vote: Commissioner Payne, aye; Commissioner Bell, aye; Commissioner Norden, aye. The motion carried.

ADMINISTRATIVE/INFORMATIONAL

1. Staff/Elected Officials Reports:
 - a. County Clerk's Monthly Report, Katie Barr, County Clerk and Recorder

Clerk Barr reported the total Motor Vehicle Fees, Sales Taxes, and Recording Fees collected for August 2016 were \$1,247,308.23. Fremont County's portion for disbursement is \$668,444.04.

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Commissioner Payne moved to accept the County Clerk's Monthly Report. Commissioner Bell seconded the motion. Upon Vote: Commissioner Payne, aye; Commissioner Bell, aye; Commissioner Norden, aye. The motion carried.

Commissioner Bell invited all to Pioneer Day weekend in Florence with the highlight being the parade on Saturday, September 17.

Commissioner Norden commented on communications with Clint Evans of the Natural Resources Conservation Services of the USDA regarding the restoration of watersheds damaged in the Hayden Pass Fire. In addition, UAACOG will be hosting a recycling event in Canon City on Saturday, September 17 from 10 a.m. to 2 p.m. at Bank of the San Juans' parking lot on 9th and Royal Gorge Boulevard.

2. Citizens who wish to address the Commissioners on a matter not scheduled on the agenda

Karen Hunter had a complaint about an inconsiderate neighbor and the handling of the complaint.

Fred Denn is protesting the tax classification of his home. Commissioner Norden encouraged him to go through the appeals process with the Assessor and the Board of Equalization.

OLD BUSINESS

1. Resolution No. 28, Series of 2016 Resolution stating findings for the denial of OPC 14-001 Today's Health Care/Today's Health Care II, LLC (Modification of Premises) – Requesting a Modification of Premises to allow five (5) greenhouses located at 934 C St, Penrose, Colorado

Commissioner Bell read the eleven findings from the resolution.

Commissioner Bell moved to approve Resolution #28, a resolution stating the findings for the denial of OPC 14-001 Today's Health Care/Today's Health Care II, LLC. Commissioner Payne seconded the motion. Upon Vote: Commissioner Bell, aye; Commissioner Payne, aye; Commissioner Norden, aye. The motion carried.

NEW BUSINESS

1. Ratification of signatures on Resolution 29, a Resolution in Recognition and Appreciation of the Vital Emergency Services Provided by First Responders in Fremont County, Colorado

Commissioner Bell explained the resolution was drafted and signed in preparation of the Memorial for 9/11 held at Pueblo Community College. She expressed appreciation for First Responders throughout the country and especially in Fremont County.

Commissioner Bell moved to approve and ratify the signatures on Resolution #29 in Recognition and Appreciation of the Vital Emergency Services Provided by First Responders in Fremont County, Colorado. Commissioner Payne seconded the motion. Upon Vote: Commissioner Bell, aye; Commissioner Payne, aye; Commissioner Norden, aye. The motion carried.

2. Consideration to re-appoint Marvin Dornhecker as an alternate for the Board of Appeals for an additional three-year term ending August 1, 2019

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Commissioner Payne moved to re-appoint Marvin Dornhecker as an alternate for the Board of Appeals. Commissioner Bell seconded the motion. Upon Vote: Commissioner Payne, aye; Commissioner Bell, aye; Commissioner Norden, aye. The motion carried.

3. Special Event Liquor License Permit Request:
Equine Lameness Prevention Organization Inc.
401 4th Ave Penrose, CO
Representatives: Tina Heffner – Rep. for Event Manager Susan Luck (Apple Day) and Carri Miller – ELPO

Tina Heffner explained the event will be a one-day beer garden at the October 1st Apple Day Festivities held in Penrose Park.

Carri Miller expounded that the serving area will include the entire park; security will be monitoring the event; and servers will be trained appropriately.

Commissioner Bell expressed the Board's concern with having alcohol around children in the park. She requested a smaller serving area that does not include the entire park and a map defining the new area.

Carri Miller agreed to a smaller serving area, and she agreed to provide a new map.

Commissioner Bell moved to approve Special Event Liquor License Permit Request for Equine Lameness Prevention Organization, Inc in conjunction with Apple Day providing a new map of the 52' x 48' concrete area for serving is provided for review by the next BOCC meeting of September 27th. Commissioner Payne seconded the motion. Upon Vote: Commissioner Bell, aye; Commissioner Payne, aye; Commissioner Norden, aye. The motion carried.

PUBLIC HEARINGS SCHEDULED FOR 10 A.M.

1. Review of Ambulance Licensing for Deer Mountain Fire Protection District
EMS License Number ALS 16-4 and Ark River EMS License Number ALS
16-3

Chairman Norden opened the public hearing at 10:08 a.m.

Marshall Nichols, Chairman of the Board for Arkansas Valley EMS, read a prepared statement that explained the progress the ambulance service has made since April, business plans, and complaints against Deer Mountain and Dr. Numsen.

Darin Anderson gave a statement regarding the business plan of Deer Mountain Fire Protection District EMS and provided a map of the coverage area not including the dual call-out areas.

Deputy Webb reported on an incident between the two EMS services that he witnessed while responding to a dual tone-out call. The animosity between the two agencies was tangible and witnessed by civilians.

Deputy Wilson witnessed multiple occurrences where the EMT for AVA arrived in a personal vehicle prior to the ambulance arriving and called off the other responding EMS service.

Dr. Paul Numsen, Fremont County Medical Director, issued a directive on August 16th. Conflicts have persisted since the April licensing meeting. His concern is that the animosity is affecting patient care. The directive is an attempt to address the problems that have stemmed from the dual tone-out orders such as establishing a chain-of-command on scene to reduce conflicts and improve patient care.

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Chief Joe Watts clarified the staffing of levels for each station for Deer Mountain Fire Protection District.

Mark Rowland, operations manager for Arkansas Valley Ambulance (AVA), addressed complaints that bills have not been paid. Payment for portion of the past-due bills from FRECOM and Dr. Numsen were voted to be paid at the previous night's meeting of the agency. Legal counsel is being sought for the remaining portions. He also said AVA has obtained Dr. James Wigington as an alternative medical director.

Mark Gully related a story where AVA was quick to respond to an emergency. He is in favor of AVA.

Janice Yalch is in favor of boundaries for each EMS service and limiting Deer Mountain to their tax district boundaries.

Dave DelVecchio, Fire Chief for Canon City Fire Protection District, reported as Chairman of FRECOM recommended removing the dual dispatch area. FRECOM would like defined areas for each agency. He will be following up with AVA regarding paying the bill to use the dispatch service.

Janet Lastovica testified to the effort being put forth by AVA to pay their bills. She would like to see the dual call-outs eliminated with tax district boundaries being used as boundaries for both agencies.

Yvonne Stromberg related a personal tragedy where the response time by AVA saved her daughter-in-law's life. She would like to see the two agencies work together.

Anthony Wish would like to see boundaries set.

John Walker, Fire Chief of the Western Fremont Fire Protection District, said response time is just as important as ALS and BLS status. He would like to see boundaries defined.

Darlene Moreau, board member for AVA, she feels eliminating the dual dispatch would help to eliminate the animosity between the two organizations.

Kay Parker does not trust Deer Mountain and feels AVA provides excellent medical service.

Michael Thornsley feels that AVA has been correct in all their practices.

Skip Moreau commented on the common practice of EMT's responding in a personal vehicle before an ambulance arrives.

Eileen Owens is against the dual dispatch and would rather have Chaffee County respond in an emergency than Deer Mountain with Jay DeMay.

Tom Anderson, Chairman of the Fremont County EMS council, said the council supports each agency. They would like to see one medical director in Fremont County and one set of protocols to follow.

Marshall Nichols said Arkansas Valley Ambulance follows the same protocols as other agencies. He clarified a new medical director for the agency is not a definite, and AVA would be willing to have a discussion with Dr. Numsen to work through any issues.

Darin Anderson reiterated the focus of Deer Mountain is patient care.

Chairman Norden closed the public hearing at 12:43 a.m.

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Commissioner Norden moved that both agencies continue to be licensed as they have been; that AVA continue to be licensed as BLS; that the boundary map that was proposed by the Deer Mountain Fire Protection District be the designated response area boundaries and that if there are any changes to be made to those boundaries the changes can be addressed at annual licensing in April; that Deer Mountain respond to the Highway 50 corridor to the east; that Deer Mountain is expected to continue to operate during the indicated hours of 8 a.m. to 8 p.m.; that if either agency is out of service dispatch will be notified; that if AVA is able to upgrade to ALS service that they notify dispatch when they are in BLS status; that Deer Mountain must also advise dispatch when they are only in service as BLS; that it is the expectation if AVA decides to change medical director the Board and Dr Numsen must be notified; that expectations are that AVA come current with Medical Director, Ambulance License, and Dispatch Fees within 60 days; and that dual tone-outs be ended. Commissioner Payne seconded the motion. Upon Vote: Commissioner Norden, aye; Commissioner Payne, aye; Commissioner Bell, aye. The motion carried.

Attorney Jackson further advised AVA that if they intend to change medical director notification from the agency alone is not sufficient. She said the County must also have written verification from the new medical director that they are willing to serve the agency. She said the County must have that documentation before any change is made.

NEW BUSINESS cont.

4. Liquor License Renewal
Late Submittal Waiver Request
TZ Liquor LLC

Clerk Barr received a letter from the manager of TZ Liquor explaining there were events in her life that caused her to overlook the renewal. All other items are in order.

Commissioner Bell moved to approve the Liquor License Renewal for TZ Liquor LLC waiving the late submittal fee. Commissioner Payne seconded the motion. Upon Vote: Commissioner Bell, aye; Commissioner Payne, aye; Commissioner Norden, aye. The motion carried.

5. Liquor License Renewal
Late Submittal Waiver Request
Penrose Family Enterprises LLC dba Broadway's Bar and Grill

Clerk Barr said the State continues to send the renewal to the incorrect mailing address despite several attempts to change the address by the Clerks' Office. All other items are in order.

Commissioner Payne moved to approve the Liquor License Renewal for Penrose Family Enterprises LLC dba Broadway's Bar and Grill waiving the late submittal fee. Commissioner Bell seconded the motion. Upon Vote: Commissioner Payne, aye; Commissioner Bell, aye; Commissioner Norden, aye. The motion carried.

6. ZC 15-002 Mountindale Campground Zone Change - Request approval of a six (6) month extension of the deadline for submittal of contingency items in conjunction with ZC 15-002 Mountindale Campground Zone Change. The campground has been in existence since 1943 and was in existence prior to the Moutaindale Equestrian Estates Subdivision, by Brian D. Emry. Property which is located .25 miles east of the intersection of Barrett Road and August Road, on the North side of Barrett Road. The site is 45.364 acres
Representative: Brian D. Emry, Applicant / Owner

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Clay Kennelly explained the two items left of the original contingency items that need to be completed and the progress made on each.

Director Koch said they are coming into compliance with items and recommended the extension.

Commissioner Bell moved to grant a twelve-month extension for ZC 15-002 Mountindale Campground Zone Change contingency items. Commissioner Payne seconded the motion. Upon Vote: Commissioner Bell, aye; Commissioner Payne, aye; Commissioner Norden, aye. The motion carried.

7. Proposed Amendment to the Combined Regional Communications Authority Intergovernmental Agreement

Attorney Jackson explained the revisions were to paragraph 9.26 regarding reimbursement by coordinating agencies.

Commissioner Payne moved to approve the proposed amendment to the Combined Regional Communications Authority Intergovernmental Agreement. Commissioner Bell seconded the motion. Upon Vote: Commissioner Payne, aye; Commissioner Bell, aye; Commissioner Norden, aye. The motion carried.

Chairman Norden adjourned the meeting at 1:08 p.m.

Clerk and Recorder

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09/14/2016 08:15 AM R Fee:\$0.00
Katie E. Barr, Clerk and Recorder, Fremont County, CO

RESOLUTION NO. 28, SERIES OF 2016

**RESOLUTION DENYING MODIFICATION OF MEDICAL MARIJUANA
OPTIONAL PREMISES CULTIVATION LICENSE**

OPC 14-001 TODAY'S HEALTH CARE, LLC/TODAY'S HEALTH CARE II, LLC

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

WHEREAS, on June 22, 2016, Today's Health Care, LLC/Today's Health Care II, LLC ("THC") submitted an application for modification of a Medical Marijuana Business License, requesting addition of five greenhouse facilities to the licensed premises, which presently contains two greenhouses; and

WHEREAS, the Board of County Commissioners, as the Local Licensing Authority for Medical Marijuana Business Licensing, held a public hearing on August 23, 2016, for consideration of the Modification Application; and

WHEREAS, Kyle Wendland, onsite manager and representative for THC, appeared at the hearing, together with his attorney/representative Vince Linden, Esq.; and

WHEREAS, the Licensing Authority conducted a question and answer session with Mr. Wendland and Applicant's attorney on the Application; and

WHEREAS, the Licensing Authority considered all written comments from the public on the Application, public comments made during the public hearing, recommendations from county staff and comments and responses from the Applicant; and

WHEREAS, following the August 23, 2016 hearing, the Licensing Authority voted to deny the Application until September 13, 2016 at 9:30 a.m. for formal adoption of written findings.

Findings of the Local Licensing Authority

1. The Applicant now operates a licensed Optional Premises Cultivation (OPC) facility with an address of 934 "C" Street, Penrose, CO. The OPC consists of two greenhouses and two accessory structures. The square footage of the existing greenhouses is approximately 13,000. Of the 13,000 square feet, approximately 9400 square feet, or 71% is used for flowering marijuana plants

2. The proposal for modification property at 934 "C" Street consists of adding five additional greenhouses, adding approximately 25,200 square feet of new greenhouse space that would grow and house flowering marijuana plants.

3. It is undisputed that the odor of a marijuana plant is strongest when the plant is in the flowering stage and not when the plant is in an immature non-flowering stage.

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4. Applicant indicates that there are no plans to increase the number of plants being grown at the site. The Licensing Authority does not find this statement to be credible.

5. Additional flowering plants would contribute marijuana odor to the existing operation. The Modification Application indicates that the same odor control system that is being used for the existing greenhouses will be used for the new greenhouses. The Licensing Authority finds that the claim of improved odor control technology for the five new greenhouses is not credible since the Applicant will be relying on the same odor control system.

6. The immediate neighborhood surrounding Applicant's OPC is comprised of residences and agricultural property, all of which pre-date the OPC operation.

7. County Code Enforcement receives frequent complaints about marijuana odor from neighbors and concerned citizens about marijuana odor in the area. The Authority specifically finds that Code Enforcement has investigated odor complaints concerning Applicant's OPC, but none have been confirmed.

8. The Authority has heard from residents in the area, who state that the present operation does have an odor management issue and that they can smell the operation on surrounding properties.

9. The Authority finds that greenhouses have limited means of controlling odors. The Licensing Regulations do not require complete odor control, but it is reasonable to conclude that additional greenhouse OPC facilities in the area will intensify the odor and other issues that occur with marijuana cultivation.

10. There are nine OPC facilities in the Penrose area that began operations prior to the adoption of the Fremont County Medical Marijuana Business Licensing Regulations, which were allowed to continue, provided the owners/operators brought the facilities into compliance with the Regulations. The regulations clearly state that no person shall have any entitlement or vested right in such operation.

11. The local licensing authority may refuse issuance of a license, or modification of licensed premises, based on the number and type of optional premises cultivation operations located near the premises under consideration. §12-43.3-303, C.R.S. The Licensing Authority finds that there is an undue concentration of OPC premises existing in the Penrose area, near OPC 14-001, and that additional greenhouses at this location is incompatible with the existing neighborhood.

Based upon the findings set forth above, the Board of County Commissioners, in its capacity as the Local Licensing Authority for medical marijuana businesses in Fremont County concludes as follows:

A. On July 8, 2014, the Fremont County Medical Marijuana Business Licensing Regulations were duly adopted pursuant to Resolution #22, Series of 2014.

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B. Article 3, Section c, of the Regulations provides that 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.

C. Article 3, Section d, of the Regulations provides no person shall have any entitlement or vested right to licensing under these Local Regulations.

D. Section 12-43.3-303(1), C.R.S., provides that the local licensing authority may refuse to issue a license provided for in this section for good cause, subject to judicial review.

E. Section 12-43.3-303(1), C.R.S., provides that the local licensing authority may consider the facts and evidence adduced as a result of its investigation, as well as any other facts pertinent to the type of license for which application has been made, including any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed.

F. Final Agency action, for purposes of appeal, shall be the date of adoption of this Resolution by the Local Licensing Authority/Board of County Commissioners.

Based on the findings of the Local Licensing Authority set forth above, good cause exists for denial of the Application for Modification of OPC 14-001, Today's Health Care, LLC/Today's Health Care II, LLC, Optional Premises Cultivation License. The Application for Modification of OPC 14-001 is denied.

Commissioner Bell moved adoption of the foregoing Resolution, seconded by Commissioner Payne and approved by roll call vote as follows:

Debbie Bell	<u>Aye</u>	Nay	Absent	Abstain
Edward H. Norden	<u>Aye</u>	Nay	Absent	Abstain
Timothy R. Payne	<u>Aye</u>	Nay	Absent	Abstain

Date: 13 September 2016

BOARD OF COUNTY COMMISSIONERS
OF FREMONT COUNTY

ATTEST:

By: *E.H. Norden*
Chairman

by: *Katie E. Bauer*
Clerk to the Board

September 13, 2016

RESOLUTION NO. 29, SERIES OF 2016

A RESOLUTION IN RECOGNITION AND APPRECIATION OF THE VITAL EMERGENCY SERVICES PROVIDED BY FIRST RESPONDERS IN FREMONT COUNTY, COLORADO

WHEREAS, Police, fire, medical, and other emergency services are a fundamental cornerstone of civil society; and

WHEREAS, First Responders, professional and volunteer alike, are the first line of defense for the public against threats that may put our communities and citizens at risk; and

WHEREAS, First Responders accept the challenges and responsibilities that go along with their chosen field; performing their duties without second thought or personal regard, to serve and protect others in their time of need; and

WHEREAS, First Responders across Fremont County stand ready, twenty-four hours a day, to come to the aid of all citizens; and

WHEREAS, First Responders have committed themselves to a life of serving and helping others with professionalism and calm assurance in times of greatest need; and

WHEREAS, First responders not only deal with emergencies but also volunteer many hours of service to schools, governmental and community organizations; and

WHEREAS, all citizens should take some time to reflect on the job that is done by emergency services first responders - the emergency medical services providers, the police and the firefighters that seldom take the awards and accolades home with them, but instead take the memories with them that members of the public rarely see because of those men and women who dedicate their lives to help others.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS FOR THE COUNTY OF FREMONT, that we join with the citizens of Fremont County on Friday, September 9, 2016, in saluting the work and efforts of the First Responders who answer the calls for emergency services and express our heartfelt gratitude for their dedicated service.

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

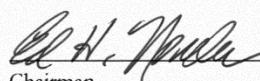
Debbie Bell AYE NAY ABSTAIN ABSENT

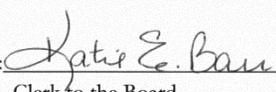
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Edward H. Norden	<u>AYE</u>	NAY	ABSTAIN	ABSENT
Timothy R. Payne	<u>AYE</u>	NAY	ABSTAIN	ABSENT

The Resolution was declared to be duly adopted.

Date: 13 September, 2016


Chairman

Attest: 
Clerk to the Board