

**Town of Fleming  
Logan County, Colorado**

**Ordinance #1-2010**

AN EMERGENCY ORDINANCE ENACTING A MORATORIUM ON THE SUBMISSION, ACCEPTANCE, PROCESSING, AND APPROVAL OF ANY APPLICATION FOR A TOWN OF FLEMING PERMIT OR LICENSE RELATED TO THE OPERATION OF A BUSINESS OR COOPERATIVE THAT SELLS, DISPENSES, OR CULTIVATES MEDICAL MARIJUANA PURSUANT TO THE AUTHORITY GRANTED BY ARTICLE XVIII, SECTION 14 OF THE COLORADO CONSTITUTION

WHEREAS, the voters of the state of Colorado have previously adopted Amendment 20 of the Colorado Constitution, now codified in Article XVIII, Section 14 of the Colorado Constitution, which creates a limited defense to the criminal prosecution of the possession, sale and use of medical marijuana; and

WHEREAS, the possession, sale and use of marijuana is prohibited pursuant to federal law; and

WHEREAS, the current federal administration recently announced its policy decision not to prosecute possession, sale and use of marijuana when such marijuana is being used to treat a medical condition in states, such as Colorado, which have adopted medical marijuana laws; and

WHEREAS, the text of Article XVIII of the Colorado Constitution and the new policy direction of the federal administration create much room for interpretation as to how the sale of medical marijuana can be safely and effectively regulated; and

WHEREAS, to address the ambiguity created, the Colorado legislature is currently drafting law, anticipated to be adopted by the end of the 2010 legislative session, which is anticipated to create state standards for the sale, dispensing and/or cultivating of medical marijuana; and

WHEREAS, the Board of Trustees ("Board") of the Town of Fleming ("Town") believes it is the most prudent course of action to enact a moratorium on the permitting or licensing of any business or cooperative, or any similar organization, that sells or cultivates medical marijuana until the state has adopted any laws on the same subject that it deems necessary and proper; and

WHEREAS, the following the close of the 2010 legislative session, the Board will review the issue of imposing Town regulations on the sale of medical marijuana in light of any newly adopted legislation; and

WHEREAS, the Board desires to enact this moratorium which shall be in place until July 19, 2010 unless such date is further amended by subsequent ordinance; and

WHEREAS, the Board declares the subject matter of this ordinance to be an emergency due to the increased public interest in such permits and licenses.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF FLEMING, LOGAN COUNTY, COLORADO, AS FOLLOWS:**

**Section 1. Findings and intent.** The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Board of Trustees of the Town of Fleming.

**Section 2. Moratorium on the submission, acceptance, processing or approval of applications for permits and licenses related to businesses that sells, dispenses or cultivates medical marijuana.** Upon the adoption of this Ordinance, a Town-wide moratorium shall be enacted on the issuance of Town of Fleming permits and licenses related to the operation of a business or cooperative ( or similar operation) that sells, dispenses or cultivates medical marijuana pursuant to the Authority granted by Article XVIII, Section 14 of the Colorado Constitution. Town staff is directed to refusing to accept for filing, and not to process or review, any new applications for a business or cooperative ( or similar operation) that sells, dispenses or cultivates medical marijuana ( sometimes known as "medical marijuana dispensaries") during the moratorium period.

**Section 3. Emergency Declared.** Pursuant to C.R.S. § 31-16-105 hereby finds, determines, and declares that this Ordinance is necessary for the immediate preservation of public peace, health and safety. Specifically, the immediate effectiveness of this Ordinance is necessary to allow the Board to study and make appropriate rules and regulations concerning businesses or cooperatives that sell, dispense or cultivate medical marijuana.


**Section 4. Authority.** The Board of Trustees hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv) Section 31-15-401, C.R.S. (concerning municipal police powers); and (v) Section 31-15-501, C.R.S. (concerning municipal power to regulate businesses).

**Section 5. Severability.** Should any one or more sections or provisions of this Ordinance or of Code provisions enacted hereby be judicially determined invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance or of such Code provision, the intention being that the various sections and provisions are severable.

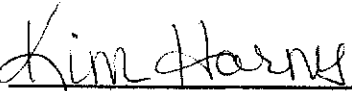
**Section 6. Repealer.** Any and all Ordinances or Codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided however, that the repeal of any such Ordinance or Code or part thereof shall not revive any other section or part of any Ordinance or Code provision heretofore repealed or superseded.

**Section 7. Effective Date.** This Ordinance shall take effect immediately and be published by title as provided by C.R.S. § 31-16-105.

INTRODUCED, READ, ADOPTED AS AN EMERGENCY ORDINANCE this 8<sup>th</sup> day of February, 2010.

By:   
Robert Stone, Mayor

ATTEST:

By:   
Kim Harms, Town Clerk