

ORDINANCE NO. 039, 2014
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ESTABLISHING REGULATIONS FOR THE CULTIVATION OF MARIJUANA

WHEREAS, on November 6, 2012, Colorado voters approved an amendment to Article XVIII, Section 16 of the Colorado Constitution (Amendment 64), that legalizes, under Colorado law, the personal use, possession and limited cultivation of recreational marijuana for adults twenty-one years of age or older; and

WHEREAS, Amendment 64 requires that the cultivation of recreational marijuana for personal use take place in an enclosed, locked space, but does not define such terms; and

WHEREAS, City staff recommends that the City Code be amended to define “enclosed, locked space” to ensure the effective and proper enforcement of the limitations set forth in Amendment 64; and

WHEREAS, Chapter 15, Article XVII of the City Code currently regulates the cultivation of medical marijuana by patients and primary caregivers in dwellings; and

WHEREAS, City staff has recommended that, in light of the passage of Amendment 64, such regulations be repealed in their entirety and be re-written into Chapter 12 of the City Code to address the cultivation and consumption of both medical and recreational marijuana; and

WHEREAS, the City Council is authorized to adopt this Ordinance under Article XX of the Colorado Constitution and Amendment 64; and

WHEREAS, additional authority to adopt this Ordinance is found in the Local Government Land Use Control Enabling Act, Section 29-20-101, C.R.S.; Section 31-23-101, C.R.S. (municipal zoning powers); and Section 31-15-501, C.R.S. (municipal authority to regulate businesses); and

WHEREAS, the City Council has determined that these proposed amendments to the City Code are in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That Chapter 12 of the Code of the City of Fort Collins is hereby amended by the addition of a new Article IX which reads in its entirety as follows:

**ARTICLE IX.
CULTIVATION OF MARIJUANA**

Sec. 12-140. Scope and purpose.

These rules govern the cultivation of marijuana in the City.

Sec. 12-141. Definitions.

Dwelling shall mean a building used exclusively for residential occupancy and for permitted accessory uses, including single-family dwellings, two-family dwellings and multi-family dwellings. The term *dwelling* shall not include hotels, motels, tents or other structures designed or used primarily for temporary occupancy.

Enclosed space shall mean an area having a roof and all sides closed to the weather and able to be locked to prevent unauthorized entry.

Locked shall mean secured so as to prevent access.

Marijuana products shall mean either concentrated marijuana products or marijuana products that are comprised of marijuana and other ingredients and intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

Openly shall mean perceptible from a place that is open to the general public.

Publicly shall mean occurring on any publicly owned property, or on any non-residential property open to the general public, including any place to which the public or a substantial number of the public have access without restriction, including, but not limited to, roadways, transportation facilities, offices, retail stores, restaurants, places of amusement, parks, playgrounds, and the common areas of public buildings.

Public right-of-way shall mean any street, avenue, boulevard, road, highway, sidewalk, alley or similar place that is leased, owned or controlled by a governmental entity.

Single-family attached dwelling shall mean a single-family dwelling attached to one (1) or more dwellings or buildings, with each dwelling located on its own separate lot.

Single-family dwelling shall mean a dwelling containing no more than one (1) dwelling unit.

Two-family dwelling shall mean a dwelling containing two (2) dwelling units.

Multi-family dwelling shall mean a dwelling containing three (3) or more dwelling units, not including hotels, motels, fraternity houses and sorority houses and similar group accommodations.

Sec. 12-142. Marijuana cultivation.

(a) *Cultivation, generally.*

- (1) No marijuana cultivation shall be conducted openly or publicly.
- (2) Marijuana cultivation shall comply with all applicable requirements of the laws and regulations of the City and the state.
- (3) Marijuana cultivation shall not occur in detached outbuildings.
- (4) In no event shall a person cultivating marijuana pursuant to this Article keep, cultivate or process more marijuana than such person is entitled to possess under Article XVIII, Sections 14 or 16 of the Colorado Constitution.
- (5) All marijuana cultivation shall take place in a locked and enclosed space.
- (6) All marijuana products kept on premises where marijuana plants are grown shall be stored in a locked and enclosed space.
- (7) No marijuana produced under this section shall be made available for sale.

OPTION A:

(b) *Cultivation within dwellings.*

- (1) No dwelling shall be used primarily as a place to cultivate marijuana.
- (2) In no event shall more than twelve (12) marijuana plants of any size, or six (6) mature marijuana plants, be cultivated or kept within, or on the same legal parcel as, any single-family dwelling.
- (3) No marijuana plants may be cultivated within any dwelling unit in a two-family, multi-family or single-family attached dwelling.
- (4) Marijuana cultivation shall not be perceptible from the exterior of the dwelling in which the cultivation occurs.
- (5) The use of compressed gases and solvents for marijuana cultivation is prohibited.
- (6) The use of any lighting for indoor marijuana cultivation shall be limited to light-emitting diodes (LEDs), compact fluorescent lamps (CFLs) or other fluorescent lighting. All high-intensity discharge (HID) lighting, including, but not limited, to mercury-vapor lamps, metal-halide (MH) lamps, ceramic MH

lamps, sodium-vapor lamps, high-pressure sodium (HPS) lamps and xenon short-arc lamps, is prohibited.

(7) No marijuana cultivation activity shall result in the emission of any gas, vapors, odors, smoke, dust, heat or glare that is noticeable at or beyond the property line of the dwelling at which the cultivation occurs. Sufficient measures and means of preventing the escape of such substances from a dwelling must be provided at all times. In the event that any gas, vapors, odors, smoke, dust, heat or glare or other substances exit a dwelling, the owner of the subject premises shall be liable for such conditions and shall be responsible for immediate, full clean-up and correction of such condition. The owner shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations. In the event there is a lessee of the subject premises, the owner and the lessee shall be jointly and severally liable for such conditions.

OPTION B:

(b) *Cultivation within dwellings.*

(1) No dwelling shall be used primarily as a place to cultivate marijuana.

(2) In no event shall more than twelve (12) marijuana plants of any size, or six (6) mature marijuana plants, be cultivated or kept within, or on the same legal parcel as any ~~single-family~~ dwelling.

~~(3) No marijuana plants may be cultivated within any dwelling unit in a two-family, multi-family, or single-family attached dwelling.~~

(4) Marijuana cultivation shall not be perceptible from the exterior of the dwelling in which the cultivation occurs.

(5) The use of compressed gases and solvents for marijuana cultivation is prohibited.

(6) The use of any lighting for indoor marijuana cultivation shall be limited to light-emitting diodes (LEDs), compact fluorescent lamps (CFLs) or other fluorescent lighting. All high-intensity discharge (HID) lighting, including, but not limited, to mercury-vapor lamps, metal-halide (MH) lamps, ceramic MH lamps, sodium-vapor lamps, high-pressure sodium (HPS) lamps and xenon short-arc lamps, is prohibited.

(7) No marijuana cultivation activity shall result in the emission of any gas, vapors, odors, smoke, dust, heat or glare that is noticeable at or beyond the property line of ~~the~~ a single-family dwelling at which the cultivation occurs, or beyond any commonly-shared wall of a dwelling unit in a two-family, multi-family, or single-family attached dwelling at which the cultivation occurs.

Sufficient measures and means of preventing the escape of such substances from a dwelling must be provided at all times. In the event that any gas, vapors, odors, smoke, dust, heat or glare or other substances exit a dwelling, the owner of the subject premises shall be liable for such conditions and shall be responsible for immediate, full clean-up and correction of such condition. The owner shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations. In the event there is a lessee of the subject premises, the owner and the lessee shall be jointly and severally liable for such conditions.

(c) Cultivation within two- family, multi- family or single- family attached dwellings.

(1) All two-family, multi-family or single-family attached dwellings in which marijuana is cultivated shall be equipped with a fire-suppression (fire-sprinkler) system installed in accordance with the International Building Code in effect at the time of construction.

(2) Marijuana cultivation or storage shall take place in a locked and enclosed space not exceeding one-hundred (100) square feet.

(3) The use of any humidifier for marijuana cultivation is prohibited, unless the humidifier was originally installed as part of the approved mechanical system for the dwelling.

(4) The use of extension cords, power strips or multi-outlet assemblies for marijuana cultivation is prohibited.

(5) The use or storage of any commercial grade fertilizer for marijuana cultivation is prohibited.

Sec. 12-143. Violations and Penalties.

Any person who violates any of the provisions of this Article shall be guilty of a misdemeanor criminal offense punishable in accordance with § 1-15 of this Code.

Section 2. That Chapter 15, Article XVII is hereby repealed in its entirety.

Introduced, considered favorably on first reading, and ordered published this 4th day of March, A.D. 2014, and to be presented for final passage on the 18th day of March, A.D. 2014.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 18th day of March, A.D. 2014.

Mayor

ATTEST:

City Clerk