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Douglas County, CO. Merlin Klotz, Clerk and Recorder

ORDINANCE NO. O-016-002

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, COLORADO

AN ORDINANCE REGULATING THE GROWING, CULTIVATING, AND PROCESSING OF MARIJUANA

WHEREAS, Article XVIII, Sections 14 and 16 of the Colorado Constitution (Amendment 20 and 64, respectively), authorize persons to grow limited amounts of marijuana or assist others in growing marijuana; and

WHEREAS, Amendment 20 cedes general authority to local government to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores ("Commercial Marijuana Operations"); and

WHEREAS, with the adoption of Ordinance No. O-012-003, the Board of County Commissioners of the County of Douglas, Colorado (the "Board") prohibited Commercial Marijuana Operations within unincorporated Douglas County; and

WHEREAS, neither Amendment 20 nor Amendment 64 permit local government to prohibit non-commercial unlicensed individual grow operations; and

WHEREAS, State regulations pertaining to Commercial Marijuana Operations are generally not directed toward non-commercial unlicensed individual grow operations; and

WHEREAS, this circumstance has resulted in a proliferation of non-licensed and unregulated marijuana grow operations that present significant health and public safety concerns with multiple and persistent violations of County building, electrical, mechanical, plumbing, and fire codes; and

WHEREAS, the Board is authorized pursuant to Section 30-11-101(2), C.R.S., "to adopt and enforce ordinances and resolutions regarding health, safety, and welfare issues"; and

WHEREAS, the Board is further authorized pursuant to Section 29-1.5-106(13.5), C.R.S., to regulate the growing of marijuana, commercially or otherwise; and

WHEREAS, the Board is further authorized pursuant to Section 9-7-113, C.R.S., to ban the use of compressed flammable gas in the extraction of THC or other cannabinoids in a residential setting; and

WHEREAS, the Board has determined that the adoption of regulations governing the growing, cultivating, and processing of marijuana is necessary and desirable for the health, safety, and welfare of the citizens of Douglas County; and

WHEREAS, this Ordinance does not unreasonably impair or impede the exercise of rights afforded citizens under Amendment 20 and 64; now therefore,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS as follows:

Section I. Scope of Ordinance and Authority:

This Ordinance applies within the unincorporated territory of Douglas County, Colorado, and applies to the growing, cultivating, and processing of marijuana on any lot, parcel, or tract of land by any person, including but not limited to patients, primary caregivers, or persons for personal use.

Section II. Definitions:

The definitions contained in Amendment 20, the Colorado Medical Marijuana Code, the Colorado Medical Marijuana Program, and any regulations promulgated by the Colorado Department of Public Health and Environment and the Colorado Department of Revenue, as amended from time to time, are incorporated into this Ordinance by reference, including but not limited to, definitions of Marijuana, Medical Marijuana, Patient, and Primary Caregiver. All other applicable definitions are as stated herein.

a. "Accessory Structure" means: A subordinate structure detached from but located on the same lot as the primary residence, the use of which is incidental and accessory to that of the primary residence.
b. "Accessory Use" means: A use incidental to and subordinate to a primary residence.
c. "Primary Residence" means: A residence where a person, by custom and practice, makes his or her principle domicile and address and to which the person intends to return following any temporary absence, such as a vacation. Residence is evidenced by actual daily physical presence, use and occupancy of the primary residence and use of the residential address for domestic purposes, such as, but not limited to, slumber, preparation and partaking of meals, regular mail delivery, vehicle registration, or credit, water and utility billing. A person shall have only one primary residence.
d. "Primary Use" means: The main use of a structure or land, as distinguished from an accessory use.

Section III. Growing, Cultivating, and Processing of Marijuana:

a. Accessory Use to Primary Residence

   Marijuana may only be grown, cultivated, or processed as an accessory use at the primary residence of the person conducting such activity, and only for such person's own use, or by a primary caregiver on behalf of a patient.

b. Location of Growing, Cultivating, and Processing of Marijuana

1. Marijuana may only be grown, cultivated, or processed in a primary residence where residential use is the primary use of the structure or in an accessory structure to the primary residence on the same property.
2. The space used for the growing, cultivating, or processing of marijuana shall be limited to a contiguous 1000 cubic foot volume.
3. The use of an accessory structure for the growing, cultivating, or processing of marijuana shall only be permitted on a lot, parcel, or tract one acre in size or greater.
4. Marijuana shall not be grown, cultivated, or processed in more than one structure on any single lot, parcel, or tract.
5. Marijuana shall not be grown, cultivated, or processed within the common areas of a multi-family or attached residential development.
6. Any area used for the growing, cultivating, and processing of marijuana shall be fully enclosed and locked ensuring accessibility only by the person growing, cultivating or processing the marijuana for medical or personal use and to prevent access by children, visitors, casual passersby, or anyone not authorized to possess marijuana.
7. Any area used for the growing, cultivating, or processing of marijuana shall comply with all applicable building and fire codes, as amended and adopted, including plumbing, electrical and mechanical.
8. Nonresidential buildings or structures that are not accessory to a primary residence shall not be used for the growing, cultivating, or processing of marijuana.
9. Marijuana shall not be grown, cultivated, or processed outdoors.

c. Marijuana Plant Limits

At any given time, no more than 12 marijuana plants, in any stage of maturity, may be grown, cultivated or processed at a primary residence.

d. Use of Compressed Flammable Gas Products or Flammable Liquids

No compressed flammable gas (e.g. butane) or flammable liquid may be used in the growing, cultivating, or processing of marijuana. For purposes of this paragraph, "flammable liquid" means a liquid that has a flash point below one hundred degrees (100°) Fahrenheit, and includes all forms of alcohol and ethanol.

e. Cannot be Perceptible

The growing, cultivating, or processing of marijuana shall not be perceptible from the exterior of the structure in which such activities occur, including, but not limited to:

1. Common visual observation.
2. Light pollution, glare, or brightness that disturbs the repose of another.
3. Undue vehicular or foot traffic, including unusually heavy parking in front of the primary residence.

f. Smell or Odor

The smell or odor of marijuana growing, cultivating, or processing at a primary residence shall not be detectable by a person with a normal sense of smell from any adjoining lot, parcel, tract, public right-of-way, or building unit.

g. Rental Property

Any lessee or tenant that uses a rental property, in whole or in part, for growing, cultivating, or processing of marijuana shall obtain written, notarized permission from the property owner prior to establishing such use.

Section IV. Administration and Enforcement:

The Douglas County Sheriff shall be responsible for the administration and enforcement of this ordinance.

Section V. Penalty for Violations:

Any person who violates this ordinance from its effective date commits a class 2 petty offense under section 30-15-402(1), C.R.S. and, upon conviction thereof, shall be punished by a fine of not more than $1,000.00 for each separate violation, plus a surcharge of $10 under section 30-15-402(2), C.R.S. Each day during which such violations exist shall be deemed a separate offense.

Section VI. Penalty Assessment Procedure:

The penalty assessment procedure provided in section 16-2-201, C.R.S., may be followed by the arresting officer for any such violation of this ordinance. Pursuant to the penalty assessment procedure, the violator may pay a fine in the amount of one thousand dollars ($1,000.00), plus a ten dollar ($10) surcharge for the first and any subsequent violations of any of the provisions of this Ordinance. If the penalty assessment procedure is not utilized by a person cited for violating this Ordinance, and the alleged offender is ultimately found guilty by the Douglas County Courts, court costs and any additional financial requirements deemed necessary or appropriate to the Court may be assessed in addition to the fine.

Section VII. Disposition of Fines and Forfeitures:

All fines and forfeitures for the violation of this ordinance shall be paid to the Treasurer of Douglas County.

Section VIII. Additional Remedies:

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.

Section IX. Severability:

Should any section, clause, sentence, or part of this Ordinance be adjudged by any court of competent jurisdiction to be unconstitutional or invalid, the same shall not affect, impair or invalidate the ordinance as a whole or any part thereof other than the part so declared to be invalid.

Section X. Safety Clause:

The Board of County Commissioners hereby finds, determines and declares that this Ordinance is necessary for the immediate preservation of the public welfare, health and safety.

Section XI. Effective Date.

In order to preserve the immediate health and safety of Douglas County and its residents, this Ordinance shall take effect immediately upon its adoption on Second and Final Reading as provided in Section 30-15-405, C.R.S.

INTRODUCED, READ AND ADOPTED ON FIRST READING on July 12, 2016, and ordered published in the DOUGLAS COUNTY NEWS-PRESS.

THE BOARD OF COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO

By: _____
David A. Weaver, Chair

ATTEST:

_____
Deputy Clerk to the Board

DOUGLAS COUNTY, COLORADO SEAL EST. 1874

ADOPTED ON SECOND AND FINAL READING on August 9, 2016, and ordered published by reference to title only in the DOUGLAS COUNTY NEWS-PRESS.

THE BOARD OF COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO

By: _____
David A. Weaver, Chair

ATTEST:

_____
Deputy Clerk to the Board

CERTIFICATE

I hereby certify that the foregoing Ordinance No. O-016-002 was introduced, read and adopted on first reading at the regular meeting of the Board of County Commissioners of the County of Douglas on July 12, 2016, and the same was published in full in the Douglas County News-Press, a newspaper of general circulation published in Douglas County, on July 28, 2016, and thereafter was adopted on second and final reading at a regular public hearing of the Board of County Commissioners of the County of Douglas on August 9, 2016. Said ordinance was published by reference to title only on August 18, 2016. Said ordinance shall become effective as of August 9, 2016.

Deputy Clerk to the Board

DOUGLAS COUNTY, COLORADO SEAL EST. 1874

State of Colorado)
)ss.
County of Douglas)

Subscribed and sworn to before me this 17th day of August, 2016, by Meghan McCann, Deputy Clerk to the Board.

Notary Public

My commission expires: N/a

AMY T. WILLIAMS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19974000634
MY COMMISSION EXPIRES 02/08/2017

CERTIFICATION

I, Meghan McCann, Douglas County Deputy Clerk, do hereby certify that the foregoing Ordinance No. O-016-002, entitled: **AN ORDINANCE REGULATING THE GROWING, CULTIVATING, AND PROCESSING OF MARIJUANA,** 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 Douglas County, and that said ordinance is in full force and effect.

Deputy Clerk to the Board

DOUGLAS COUNTY, COLORADO SEAL EST. 1874