

ORDINANCE NO. 2049

INTRODUCED BY: AMADOR, BENSON, BULLOCK, CARSON, DOUGLAS, ELLIOTT, FORD,
MCELDOWNEY, TETER

AN ORDINANCE AMENDING ARTICLE IV OF CHAPTER 12 OF THE COMMERCE CITY REVISED MUNICIPAL CODE BY THE ADDITION OF SECTION 12-6012 REGULATING MARIJUANA CULTIVATION AND PROCESSING IN RESIDENTIAL STRUCTURES

WHEREAS, in November 2000, the voters of the State of Colorado approved Amendment 20 amending the Colorado Constitution to create an exception from criminal liability under Colorado law (as opposed to federal law) for seriously ill persons in need of marijuana to use and possess marijuana in limited circumstance;

WHEREAS, the Colorado legislature adopted the Colorado Medical Marijuana Code which became effective in 2010;

WHEREAS, in November 2012, the voters of the State of Colorado approved Amendment 64 to the Colorado Constitution which, among other things, provides that it is not unlawful under Colorado law for a person twenty-one years of age or older to possess, grow, process, or transport not more than six marijuana plants, with three or few being mature, flowering plants, and to possess the marijuana produced by the plants on the premises where the plants are grown, provided that the growing takes place in an enclosed, locked space, is not conducted openly or publicly, and is not made available for sale;

WHEREAS, the unregulated growing and processing of marijuana plants in residential settings has resulted in explosions and fires, both of which pose a serious risk to the health, safety, and welfare of the occupants of the residential structure within which the marijuana is grown and persons occupying nearby structures;

WHEREAS, nothing in the Colorado Constitution or state law immunizes persons who grow or process marijuana in a residential setting from local regulations intended to protect the health, safety, and welfare of the public; and

WHEREAS, the City Council of the City of Commerce City finds it necessary to regulate the growing and processing of marijuana in residential areas to protect the health, safety, and welfare of its residents and ensure that the activity does not create a nuisance that negatively impacts neighbors.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO AS FOLLOWS:

SECTION 1. That Chapter 12, Article IV of the Commerce City Revised Municipal Code is hereby amended by the addition of Section 12-6012 which shall read as follows:

Sec. 12-6012 Marijuana Cultivation and Processing in Residential Structures

(a) Definitions. The following terms shall have the meanings ascribed to them in this section.

- (1) *Enclosed and locked space* means an area within a primary residence separated from the remainder of the residence by walls constructed of solid materials that is accessible only to the person growing the marijuana through one or more locked doors. All access to the space, including windows, must be secured from unauthorized entry. For the safety of all occupants, any mechanism used to secure entrance into the space must allow for easy egress. .
- (2) *Marijuana* means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. The term includes medical marijuana but does not include industrial hemp.
- (3) *Primary residence* means the place that a person, by custom or practice, makes his or her personal domicile and the place to which the person intends to return, following temporary absence, such as vacation. Primary residency shall be established by actual daily physical presence, use, and occupancy of the structure for domestic purposes such as sleep, meal preparation and consumption, mail delivery, and vehicle and voter registration. A person shall have only one primary residence. A primary residence shall not include attached or detached garages or accessory buildings.

(b) Prohibitions, restrictions and limitations.

- (1) *Structures.* It shall be unlawful for any person to cultivate or process marijuana in any structure except in a one-family or two-family dwelling structure that serves as the primary residence of the person who is growing or processing the marijuana.
- (2) *Ownership.* It shall be unlawful for any person to cultivate or process marijuana on property not owned by such person without the express written permission of the property owner(s). The required permission must be obtained prior to the cultivation or processing of any marijuana and a copy of such permission must be kept on the premises at all times and produced upon request.
- (3) *Size.* It shall be unlawful to cultivate marijuana in an area that exceeds thirty-two square feet of floor space or that exceeds 10 feet in height. Within the absolute 10-foot height limitation, a minimum clearance of 24 inches between plant and ceiling must be maintained. The limitations contained in this paragraph apply regardless of the number of qualified patients, caregivers, or

persons otherwise allowed to grow marijuana for personal use residing in the residence.

- (4) *Enclosed and locked space.* It shall be unlawful for any person to cultivate, store, or process marijuana in any area other than an enclosed and locked space.
- (5) *Lighting.* It shall be unlawful to use any lighting for cultivating marijuana other than light emitting diodes (LED), compact fluorescent lamps (CFL), or 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 are expressly prohibited.
- (6) *Hazardous materials.* It shall be unlawful to use gas products (e.g. CO₂, butane) or flammable or hazardous materials in the cultivation or processing of marijuana.
- (7) *Chemical storage.* It shall be unlawful to store chemicals used for marijuana cultivation inside the habitable areas of the residence where the marijuana is processed or cultivated, within public view from the neighboring properties of such residence, or the public rights-of-way.
- (8) *Sales prohibited.* It shall be unlawful for any person to sell marijuana produced pursuant to this section.
- (9) *Compliant with all regulations.* It shall be unlawful for any person to cultivate or process marijuana in any manner that is not fully compliant with all applicable state and local laws, including building and fire codes.
- (10) *Imperceptible to others.* It shall be unlawful for any person to cultivate or process marijuana in any manner that is perceptible from the exterior of the primary residence where the marijuana is cultivated or processed, and such activity shall not cause or create any of the following:
 - (a) Unusual odors, smells, fragrances, or other olfactory stimulus;
 - (b) Light pollution, glare, or brightness that unreasonably disturbs others;
 - (c) Undue vehicular or foot traffic, including excess parking;
 - (d) Excessive noise.

(c) Inspections and Warrants.

- (1) *Consent presumed.* The cultivation or processing of marijuana plants in any structure within the city shall be deemed consent by the person cultivating or processing such plants, for the city, at reasonable hours, to enter and inspect the premises to assure compliance with the provisions of this section.

(2) *Inspection Warrants.* If entry is refused by the occupant or landowner or the structure is locked and the city has been unable to obtain actual consent to enter the premises, a city agent may request that an inspection warrant be issued by the municipal court judge pursuant to Rule 241 of the Colorado Municipal Court Rules of Procedure.

(a) For purposes of analyzing such request, the municipal court judge is instructed that the city council has determined that the inspection of structures to ensure compliance with this section is necessary and in the interest of public safety.

(b) It shall be unlawful for any person to deny the city access to the property if the city presents an inspection warrant issued by the municipal court judge.

(3) *Emergencies.* In case of any emergency involving imminent danger to public health, safety, or welfare, an authorized city agent may enter any residential structure within city limits to conduct an emergency inspection for the cultivation or processing of marijuana without a warrant or the consent of the property owner or occupant.

SECTION 2. This Ordinance shall take effect May 1, 2015.

INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE
ORDERED THIS 16TH DAY OF MARCH 2015.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED
THIS 6TH DAY OF APRIL, 2015.

CITY OF COMMERCE CITY, COLORADO

Sean Ford, Mayor

ATTEST:

Laura J. Bauer, CMC, City Clerk