

ORDINANCE _____
(Series of 2013)

AN ORDINANCE OF THE TOWN OF EAGLE, COLORADO AMENDING THE EAGLE LAND USE AND DEVELOPMENT CODE, CONTAINED IN TITLE 4 OF THE EAGLE MUNICIPAL CODE, CONCERNING THE TOWN'S ZONING REGULATIONS GOVERNING THE CULTIVATION OF MARIJUANA IN RESIDENTIAL AND NON-RESIDENTIAL ZONE DISTRICTS FOR PERSONAL USE.

WHEREAS, in November 2012 Colorado voters approved a constitutional amendment known as Amendment No. 64, codified as Article XVIII, Section 16 of the Colorado Constitution, which makes the personal use, possession and limited home growing of marijuana for adults twenty-one (21) years of age or older legal under Colorado law; and

WHEREAS, under Article XVIII, Section 16 (3)(a) of the Colorado Constitution, any person who is twenty-one (21) years of age or older may possess, grow, process or transport no more than six (6) marijuana plants, with three (3) or fewer being mature, provided that the growing take place in an enclosed, locked space, is not conducted publicly or openly, and is not made available for sale; and

WHEREAS, the Board of Trustees of the Town of Eagle has carefully considered the provisions of Article XVIII, Section 16 of the Colorado Constitution, and the impact of marijuana cultivation for personal use in residential structures on the health, safety and welfare of the Town and the inhabitants thereof, and has determined that it is necessary and appropriate as an exercise of its local land use authority, to regulate such marijuana cultivation in residential and non-residential zone districts in accordance with the Eagle Land Use and Development Code;

WHEREAS, the density and close proximity of housing units in which marijuana is cultivated can affect the health, safety and welfare concerns of neighboring units including problems with odors, ventilation, mold, mildew and fire safety and the Board of Trustees finds that limiting the number of marijuana plants and limiting space requirements for the growing of marijuana for personal use in residential units is necessary; and

WHEREAS, government regulation of conduct which is essential to the public health, safety and welfare and the preservation of constitutional rights must be carried out in a manner that appropriately balances the needs of the public and the rights and legitimate expectations of the individuals; and

WHEREAS, by enacting the Eagle Land Use and Development Code, contained in Title 4 of the Eagle Municipal Code, the Town of Eagle has enacted a comprehensive zoning ordinance for the Town; and

WHEREAS, although the Eagle Land Use and Development Code addresses the cultivation of medical marijuana by patients and caregivers, it does not expressly address the matter of cultivation of recreational marijuana for personal use in residential dwelling units; and

WHEREAS, the Town of Eagle Board of Trustees has initiated an application by the Town to amend the Town's zoning regulations in the particulars hereinafter set forth concerning the cultivation of marijuana for personal use in residential and non-residential zone districts; and

WHEREAS, the Town of Eagle Planning and Zoning Commission has reviewed the zoning text amendment application at a public hearing thereon, held September 17, 2013 and recommended to the Board of Trustees that the application be approved in the particulars hereinafter set forth; and

WHEREAS, public notice has been given as required by Section 4.03.060 of the Eagle Municipal Code; and

WHEREAS, a public hearing before the board of Trustees on said application was held on September 24, 2013.

WHEREAS, the Board of Trustees finds and determines that in order to protect the public health, safety and welfare and control the adverse affects resulting from the unlimited cultivation of marijuana for personal use in single family and multi-family dwellings, including odors, mold, mildew, ventilation and fire safety, the cultivation of marijuana for personal use in residential and other zone districts should be reasonably regulated while preserving individual's rights under Article XVIII, Section 16 of the Colorado Constitution; and

WHEREAS, the Board of Trustees finds and determines that the amendments to the Eagle Land Use and Development Code as contained herein are compatible and consistent with the Town's goals, policies and plans including the Town's Master Plan and the Eagle Area Community Plan.

NOW, THEREFORE, BE IT HERBY ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF EAGLE, COLORADO:

Section 1. That the Schedule Of Uses Permitted In Residential Zone Districts contained in Section 4.04.060 and the Schedule Of Uses Permitted In Non-Residential Zone Districts contained in Section 4.04.070 of the Eagle Municipal Code shall be amended to include as a use "Cultivation of Marijuana for Personal Use in Residential Units" as a "P⁴" (Permitted Use) in the Residential High Density (RH), Residential Multi-Family (RMF), Residential Medium Density (RM), Residential Single Family (R1), Residential Low Density (RL), Rural Residential (RR), Resource (R), MHP/PUD Mobile Home Park, Central Business District (CBD), Commercial General (CG), Commercial Limited (CL), Public Area (PA), and the Industrial (I) zone Districts. Section 4.04.060 and Section 4.04.070 of the Eagle Municipal Code shall further be amended to include the following note at the end of the Schedule of Uses Permitted in Residential Zone Districts and the Schedule of Uses Permitted in the Non-Residential Zone Districts: "See Section 4.04.100(S) concerning supplementary regulations and standards for the cultivation of marijuana for personal use in residential units in both residential and non-residential zone districts."

Section 2. That Section 4.04.100 of the Town of Eagle Land Use and Development Code, contained in Title 4 of the Eagle Municipal Code, concerning supplemental zoning regulations and standards, is hereby amended to include the following additional subsection:

S. Cultivation of Marijuana for Personal Use in Residential Dwelling Units in Both Residential and Non-Residential Zone Districts.

1. Purpose. This subsection is intended to apply to the growing of marijuana in residential dwelling units for personal use to the extent authorized by Article XVIII, Section 16 (3)(b) of the Colorado Constitution.
2. Any person, for purposes of this subsection and consistent with Article XVIII, Section 16 (3)(b) of the Colorado Constitution, who is twenty-one (21) years of age or older that is cultivating marijuana plants for his or her own use, may possess, grow, process or transport no more than six (6) marijuana plants with three (3) or fewer being mature, flowering plants, subject to the following requirements:
 - a. Such processing, growing, possessing, or transporting of marijuana plants for personal use must be in full compliance with all applicable provisions of Article XVIII, Section 16 of the Colorado Constitution.

- b. Except as provided below, such marijuana plants shall be possessed, grown, or processed within the primary residence of the person possessing, growing or processing the marijuana plants for personal use, as defined by subsection (4) below. No more than six (6) marijuana plants may be cultivated in a primary residence. If persons living in a primary residence desire to cultivate more than six (6) marijuana plants, such persons may cultivate no more than a total of six (6) marijuana plants per person for personal use as a permitted use in non-residential units or structures in the Industrial (I) Zone District only. No sales or barter of cultivated marijuana is permitted. See subsection (T) below.
- c. The possession, growing and processing of such marijuana plants must not be observable from the exterior of the primary residence, including, but not limited to:
 - i. Common visual observation, including any form of signage;
 - ii. Unusual odors, smells, fragrances, or other olfactory stimulus;
 - iii. Light pollution, glare, or brightness that disturbs others.
- d. Marijuana plants shall not be grown or processed in the common areas of a planned community or of a multi-family or attached residential development or commercial or industrial buildings.
- e. Such cultivation, production, growing and processing of marijuana plants shall be limited to the following space limitations within a primary residence:
 - i. Within a single family dwelling (Group R-3 as defined by the International Building Code): a secure, defined, contiguous area not exceeding one hundred fifty (150) square feet within the primary residence of the person possessing, growing or processing the marijuana plants for personal use.
 - ii. Within a multi-family dwelling unit (Group R-2 as defined by the International Building Code) or a residential dwelling unit in a commercial or industrial building: a secure, defined, contiguous area not exceeding one hundred (100) square feet within the primary residence of the person possessing, growing, or processing the marijuana plants for personal use.
 - iii. Such possession, growing and processing of marijuana plants shall not occur in any accessory structure.
- f. Such possession, growing and processing of marijuana plants shall meet the requirements of all adopted Town building and life/safety codes, including requirements concerning electrical systems and ventilation systems, as the same may be amended from time to time. Any person cultivating marijuana for personal use shall have an initial building and safety inspection conducted by the Town, shall comply with any conditions of said inspection, and shall submit to periodic building and safety code inspections thereafter. No odor shall be permitted to emanate from the premises.
- g. Pursuant to Section 9-7-113, C.R.S., the use of a compressed flammable gas as a solvent in the extraction of THC or other cannabinoids is prohibited.

- h. The possession, growing and processing of marijuana plants shall meet the requirements of all adopted water and wastewater regulations promulgated by the Town.
- 3. Cultivation of marijuana in a residential unit that is not a primary residence is not permitted.
- 4. For the purposes of this subsection “primary residence” means the place that a person, by custom and practice, makes his or her principle domicile and address 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 the use of the residential address for domestic purposes, such as, but not limited to, slumber, preparation of meals, package delivery, vehicle and voter registration, or credit and utility billings. A person shall have only one (1) primary residence. A primary residence shall not include accessory buildings.
- 5. For purposes of this subsection (S), a “secure area” means an area within the primary residence accessible only to the person possessing, growing or processing the marijuana plants for personal use. Secure premises shall be locked or partitioned off to prevent access by children, visitors, or anyone not authorized to possess marijuana.

Section 3. That the Schedule Uses Permitted in Non-Residential Zone Districts contained in Section 4.04.070 of the Eagle Municipal Code shall be amended to include as a use, “Cultivation of Marijuana for Personal Use in Non-Residential Units or Structures” as a “P⁵” (Permitted Use) in the Industrial (I) Zone District only. Section 4.04.070 of the Eagle Municipal Code shall further be amended to include the following note at the end of the Schedule of Uses Permitted in Non-Residential Zone Districts: “⁵ See Section 4.04.100(T) concerning supplementary regulations and standards for the cultivation of marijuana for personal use in non-residential units or structures in non-residential zone districts.”

Section 4. That Section 4.04.100 of the Town of Eagle Land Use and Development Code, contained in Title 4 of the Eagle Municipal Code, concerning supplemental zoning regulations and standards, is hereby amended to include the following additional subsection:

T. Cultivation of Marijuana for Personal Use in Non-Residential Units or Buildings in Non-Residential Zone Districts.

The cultivation, production, or possession of marijuana plants for personal use by a person twenty-one (21) years of age or older, as permitted by Section 16 of Article XVIII of the Colorado Constitution, shall be allowed in non-residential units or buildings in the Industrial (I) Zone District as a permitted use subject to the following conditions:

- 1. The cultivation, production or possession of marijuana plants shall be in full compliance with all applicable provisions of Article XVIII, Section 16 of the Colorado Constitution.
- 2. No more than six (6) marijuana plants, with three (3) or fewer being mature, flowering plants per person may be cultivated.
- 3. Marijuana plants shall not be grown in the common area of any commercial or industrial building.
- 4. The cultivation of marijuana plants in any building or unit within Industrial (I) Zone Districts shall meet the requirements of all adopted Town building and safety codes. In addition to these codes, these personal grow operations shall meet State of Colorado standards for retail or medical marijuana cultivation operations. Any person cultivating

marijuana for personal use shall have an initial building and safety inspection conducted by the Town, shall comply with any conditions of said inspection, and shall submit to a periodic building and safety code inspection thereafter.

5. All cultivation shall be located within a secure building. Cultivation operations in permanent or temporary greenhouses are not permitted.
6. No more than 36 plants may be grown in any industrial unit.
7. The cultivation of marijuana plants shall not be permitted on exterior portions of a lot or a building. The cultivation, production or possession of marijuana plants within a building or unit must not be perceptible from the exterior of the building or unit.
8. Any form of signage shall be prohibited; unusual odors, smells, fragrances or other olfactory stimulants shall be prohibited; light pollution, glare or brightness resulting from grow lamps that disturbs adjacent property shall be prohibited; and excessive noise from ventilation fans shall be prohibited.
9. Pursuant to Section 9-7-113, C.R.S., the use of a compressed flammable gas as a solvent in the extrication of THC or other cannabinoids is prohibited.

Section 5. The Board of Trustees finds, determines and declares that this Ordinance is promulgated under the Town's general police powers, that is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health, safety, and for the protection of the public welfare. The Board of Trustees further determines that this Ordinance bears a rational relation to the proper legislative objective sought to be attained.

Section 6. Any other provisions of the Eagle Municipal Code in conflict herewith is hereby repealed.

Section 7. If any part, section, subsection, clause, phrase or other portion of this ordinance is invalidated for any reason, by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Trustees specifically finds and declares that it would have passed this Ordinance, and each part thereof, regardless of the fact that one or more parts could be declared invalid.

INTRODUCED READ, PASSED, ADOPTED AND ORDERED PUBLISHED at a regular meeting of the Board of Trustees of the Town of Eagle, Colorado held on _____, 2013

TOWN OF EAGLE, COLORADO

By: _____

ATTEST:

Yuri Kostick, Mayor

Sarah Braucht, Town Clerk

Ordinance Publication Date:

Trustee _____ introduced, read and moved the adoption of the ordinance titled,

AN ORDINANCE OF THE TOWN OF EAGLE, COLORADO AMENDING THE EAGLE LAND USE AND DEVELOPMENT CODE, CONTAINED IN TITLE 4 OF THE EAGLE MUNICIPAL CODE, CONCERNING THE TOWN'S ZONING REGULATIONS GOVERNING THE CULTIVATION OF MARIJUANA IN RESIDENTIAL AND NON-RESIDENTIAL ZONE DISTRICTS FOR PERSONAL USE.

and upon adoption that it be published pursuant to law and recorded in the Book of Ordinances.

Trustee _____ seconded the motion. On roll call, the following trustees voted

"Aye":

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Trustees voted "Nay":

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