



Meeting Date: April 21, 2015

AGENDA MEMORANDUM

To: Honorable Mayor and Members of Town Council

From: Jack Cauley, Chief of Police

Title: Restrictions on Marijuana Cultivation

Executive Summary

In 2010 and again in 2013, the Town of Castle Rock adopted ordinances (**Attachment A**) prohibiting businesses from selling or establishing commercial cultivation operations of medical or retail marijuana within the Town limits. The ordinances did not restrict the private, residential cultivation of medical or recreational marijuana for personal use.

At the February 17, 2015 Council meeting, Council directed staff to evaluate ordinances restricting the cultivation of marijuana in private residences to limit or reduce the impact on neighborhoods and Town resources resulting from unregulated private cultivation of marijuana. In order to facilitate a timely execution of developing an updated marijuana ordinance, staff has drafted a proposed ordinance for Town Council consideration.

The principal proposed changes to the Town's marijuana ordinance are as follows:

- Require that permissible medical marijuana cultivation and permissible personal use cultivation occur in a secure area of primary residence accessible only by the person possessing, growing or processing the marijuana plants.
- Prohibit marijuana plants from being grown or processed in the common areas of a multi-family or attached residential development.
- Prohibit growing and processing of marijuana plants in any accessory structure.
- Restrict the cultivation of marijuana inside a primary residence to no more than 32 square feet and no more than 10 feet in height.
- Prohibit marijuana cultivation in any location other than a primary residence.
- Restrict lighting for indoor cultivation of marijuana to light-emitting diodes (LEDs), compact fluorescent lamps (CFLs) or fluorescent lighting.
- Prohibit the use of compressed gas products such as butane or flammable solvents for indoor marijuana cultivation or processing.
- Prohibit indoor cultivation of marijuana in a kitchen, bathroom or primary bedroom.

- Require marijuana cultivation to comply with applicable building and fire codes.
- Require marijuana cultivation to comply with applicable water and sewer regulations.
- Require marijuana cultivation occur in an area with a ventilation and filtration system designed to ensure odors from the cultivation are not detectable beyond the residence or building and designed to prevent mold and moisture.
- Prohibit the storage of chemicals used for marijuana cultivation inside the habitable areas of the residence or within public view from neighboring properties and public rights-of-way.
- Prohibit marijuana cultivation in rental properties without the written permission of the property owner or property management company.

Discussion

Background – Colorado State Constitution and Statutes

In November 2000, Colorado voters approved Amendment 20 to the State Constitution (Article XVIII, Section 14), which allowed for the creation of licensed medical marijuana centers and cultivation operations. The amendment further permitted the cultivation of marijuana and possession of marijuana by residents with certain debilitating medical conditions who had been diagnosed and prescribed marijuana by a physician. Those individuals were then authorized to apply to the State of Colorado for a medical marijuana license to possess and grow marijuana. The regulation of medical marijuana was further clarified under the Colorado Medical Marijuana Code, 12-43.3-101, Colorado Revised Statutes and by regulations established by the Colorado Department of Revenue Enforcement Division.

- Patients were permitted to possess no more than two ounces of marijuana and no more than six marijuana plants, three or fewer being mature, flowering plants.
- Increases to these quantities were permitted with the approval of the prescribing physician, based on medical need as determined by the physician. Pending State legislation seeks to limit this number to 99 plants (Senate Bill 15-041).
- Primary caregivers were permitted to possess these same quantities for themselves as well as these same quantities for each person registered to that primary caregiver.

In November 2012, Colorado voters approved Amendment 64 to the State Constitution (Article XVIII, Section 16), which authorized the retail sale and cultivation operations of recreational marijuana for use by adults, age 21 or older. The amendment further permitted adults (age 21 or older) to cultivate, possess, transfer and consume quantities of marijuana in their private residence.

The regulation of recreational marijuana was further clarified under the Colorado Retail Marijuana Code, 12-43.4-101, Colorado Revised Statutes and by regulations established by the Colorado Department of Revenue Enforcement Division. The Constitution and Statutes provides the following:

- Adults may cultivate up to six marijuana plants each, of which no more than three would be in the flowering stage.
- Retain possession of all quantities of marijuana they produce at the location it was grown.
- Possession of one ounce or less in public.
- Transfer of one ounce or less of marijuana to another adult over 21 years of age without remuneration.
- Consumption of marijuana in public remained a prohibited act.

Common approaches to regulation

Local governments have taken two primary approaches to the regulation of personal medical or recreational marijuana grown in private residences. One approach is to limit the number of plants. The City of Boulder has limited plant numbers to six as authorized in the State Constitution. The cultivation of plants in excess of six would then require licensing as a commercial producer. Commercial cultivation of marijuana is prohibited in residential neighborhoods in Boulder.

The City of Denver amended their zoning ordinances in 2013 to limit the permissible number of plants in Denver to 6 per adult, with a maximum of 12 plants per dwelling within residential neighborhoods. This approach can still result in a marijuana grow of significant size as plants can exceed 10 feet in height and several feet in diameter.

The other predominant approach is to regulate the size, construction, odor emissions, and security of private residential cultivations. This approach, as used by the City of Greenwood Village, limits the physical size of the area authorized to cultivate marijuana plants to 32 square feet. It also restricts the location of the cultivation within the dwelling, the release of noxious odor, the use of LED or CFL grow lights and providing physical security for the grow area.

In Douglas County, municipal and county ordinances vary. The Town of Parker permits residents to possess quantities of medical marijuana as authorized by the State Constitution and Statute provided that the plants are contained in a 150 square foot growing space. The Town of Parker restricts possession of recreational marijuana to six plants per adult in the same 150 square foot space (**Attachment B**).

The City of Castle Pines restricts possession to 6 plants per person (**Attachment C**). Their ordinance, however, provides an affirmative defense for holders of medical marijuana registry cards. This allows for extended plant numbers for those persons within the City of Castle Pines.

The City of Lone Tree, Town of Castle Rock and Douglas County do not have restrictions on plant numbers or physical size (**Attachment D, Attachment A, Attachment E**).

Community impact and health, safety and welfare concerns of non-licensed cultivations

Residential medical marijuana cultivations operated by a primary caregiver can supply marijuana to the caregiver and up to five patients. This scenario would provide for 36 plants; however, additional plants for each patient may be prescribed by a physician, up to 99 plants. Plants can exceed 10 feet in height and several feet in diameter. Private recreational marijuana cultivations can supply up to six plants per adult over the age of 21 residing in the home. Community impacts include:

- Noxious odors due to improper ventilation and filtration of vented air.
- Excessive electrical usage.
- Excessive water consumption.
- Excessive waste water and waste water contaminated with pesticides and fertilizers.
- Unsafe storage of pesticides and chemicals.
- Unsafe and unpermitted modifications to structural, electrical and plumbing systems.
- Blocked egress in the event of fire or other emergency.
- Large amounts of un-tracked, non-licensed marijuana provide an opportunity for crime and diversion.
- Fire and explosion hazards from the processing of marijuana to concentrated forms through the use of compressed gases and flammable solvents.

Marijuana processing operations/hash production

Marijuana can be processed by several methods at home to produce a concentrated THC known as hash oil. The extraction process can involve the use of compressed gases, flammable solvents and heat. Solvents include alcohol, ethanol and butane. In the case where butane is used, explosive by-products are created. Numerous residential fire and explosions have been reported across the country from these activities. THC extraction in private residences poses a danger to occupants of the home, the community and emergency service personnel.

Number of plants or square footage

The State Constitution permits residential cultivation of recreational and medical marijuana by number per adult or licensed medical marijuana user (**Attachment F**;

Attachment G). In the case of a primary caregiver with five patients, the number of plants is 36. The number of plants allowed to be grown for an individual can be increased by prescription to more than 100 plants thus creating a situation whereby a primary caregiver could legally grow more than 500 plants in a residential dwelling. In fact, in Castle Rock we have observed legal cultivations by primary caregivers in excess of 300 marijuana plants.

Limiting the number of plants authorized under the constitution remains a gray area and appeals of those restrictions have not taken place yet. A number of municipalities in California have successfully addressed this problem and related issues by limiting the square footage of cultivations rather than the plant number. The City of Greenwood Village has taken this same approach.

A common restriction in California limits the size of residential grows to 32 square feet and extending no higher than 10 feet. This size also corresponds to a commercially produced 32 square foot growing cabinet designed for home use. This approach avoids the constitutionally undecided area of plant numbers. It also removes the negative impacts to the residential neighborhood by virtue of its size.

Regulation analysis

Currently, cultivation of marijuana for personal use and for medical marijuana by primary caregivers is allowed. The cultivation of personal use marijuana is limited to six marijuana plants per adult per residence. The cultivation of medical marijuana by a primary caregiver can exceed 500 marijuana plants.

In Castle Rock, the cultivation of large quantities of marijuana plants in a residential dwelling has resulted in health and safety concerns such as building code violations and offensive odors of marijuana plants detected across property lines. Additionally, the cultivation of large quantities of marijuana increases the likelihood of trespassing, theft and violent encounters between growers and persons attempting to steal marijuana plants. Indoor grows can cause health and safety problems such as fire hazards, mold, fungus and pests.

In order to address health and safety concerns associated with large residential marijuana grows, the proposed ordinance provides for appropriate restrictions such as limiting the square footage of residential marijuana grows to 32 square feet and requiring ventilation and filtration systems to ensure odors are not detectable beyond property lines and to prevent mold and moisture.

Staff has thoroughly reviewed Denver-Metro area marijuana related ordinances, consulted with law enforcement agencies within Douglas County, Town Staff, as well as the Colorado Cannabis Chamber of Commerce.

Staff identified twenty five (25) regulations within Denver-Metro area ordinances (**Attachment H**). Staff identified the twelve (12) restrictions listed below as regulations recommended being included in the proposed amended marijuana ordinance (**Attachment I**). Staff is confident these regulations will provide a more stringent and comprehensive marijuana ordinance that will address health and welfare concerns and improve public safety within our community.

The regulations staff identified in the proposed ordinance include:

- (1) It is unlawful to grow marijuana for personal or medicinal use anywhere in the Town other than in a secure area within the primary residence accessible only by the person possessing, growing or processing the marijuana plants for personal use. Secure premises shall be fully enclosed and locked to prevent access by children, visitors, casual passersby, vandals, or anyone not authorized to possess marijuana.
- (2) Such marijuana plants shall not be grown or processed in the common areas of a multi-family or attached residential development.
- (3) Such possession, growing and processing of marijuana plants shall not occur in any accessory structure.
- (4) It is unlawful to cultivate marijuana inside a residential dwelling or commercial building in an area exceeding thirty-two (32) square feet or exceeding a height of ten (10) feet. This limit applies regardless of the number of qualified patients or caregivers or persons otherwise allowed to possess and grow marijuana for personal use residing in the residence.
- (5) It is unlawful to use any lighting for the indoor cultivation of marijuana other than light-emitting diodes (LEDs), compact fluorescent lamps (CFLs) 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 prohibited.
- (6) It is unlawful to use compressed gas products (e.g., CO₂, butane) or flammable solvents for indoor marijuana cultivation or processing.
- (7) It is unlawful to use a kitchen, bathroom or primary bedrooms for the indoor cultivation of marijuana.
- (8) It is unlawful to cultivate marijuana in any structure without complying with applicable building and fire codes, including plumbing and electrical, and all applicable zoning codes, including but not limited to lot coverage, setback and height requirements.
- (9) Such possession, growing and processing cultivation shall meet the requirements of all adopted water and sewer regulations promulgated by the applicable water and sewer provider within the Town.
- (10) Any indoor marijuana cultivation area shall include ventilation and filtration system designed to ensure that odors from the cultivation are not detectable beyond the property line for detached single-family residential dwelling or the exterior walls of a multi-family dwelling and designed to prevent mold and moisture and otherwise protect the health and safety of persons residing in the residence. This shall include, at a minimum, a system meeting Castle Rock Municipal Code requirements of Chapter 15.06.020.

- (11) It is unlawful to store chemicals used for marijuana cultivation inside of the habitable areas of the residence or within public view from neighboring properties and public rights-of-way.
- (12) Prohibit marijuana cultivation in rental properties without the written permission of the property owner or property Management Company.

Public Safety Commission

The Public Safety Commission discussed the proposed restrictions included in the attached proposed ordinance and recommended approval of those restrictions.
(Unanimous vote: 5 yeas, 2 absences)

Staff Recommendation

Staff recommends the proposed marijuana ordinance to protect the health, safety and welfare of the residents of the Town of Castle Rock.

Proposed Motion

“I move to authorize staff to notice and present an ordinance at first reading after referral to the planning commission.”

Attachments

- Attachment A: Town of Castle Rock Municipal Code
- Attachment B: Town of Parker Municipal Code
- Attachment C: City of Castle Pines Municipal Code
- Attachment D: City of Lone Tree Municipal Code
- Attachment E: Douglas County Ordinances
- Attachment F: Colorado State Constitution, Article XVIII, Section 14
- Attachment G: Colorado State Constitution, Article XVIII, Section 16
- Attachment H: Selected Prohibition in the Metropolitan Area
- Attachment I: Proposed Ordinance