

ORDINANCE NO. 2015-19

**AN ORDINANCE ADOPTING A NEW CHAPTER 5.18 AND
AMENDING SECTION 17.01.080 OF THE CASTLE ROCK MUNICIPAL CODE
REGULATING MARIJUANA CULTIVATION**

WHEREAS, for the reasons stated in Section 1 of this Ordinance, the unregulated cultivation of marijuana may jeopardize the public health, safety and welfare of the citizens of the Town of Castle Rock,

WHEREAS, this Ordinance does not unreasonably impair or impede the exercise of rights afforded citizens under Article XVIII, §14 and Article XVIII, §16 of the Colorado Constitution.

NOW, THEREFORE, IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK, COLORADO AS FOLLOWS:

Section 1. Amendment. Title 5 of the Castle Rock Municipal Code is amended to add a new Chapter 5.18, Marijuana Cultivation, to read as follows:

**5.18
Marijuana Cultivation**

- 5.18.010 Intent, authority and applicability**
- 5.18.020 Definitions**
- 5.18.030 Marijuana cultivation areas; prohibitions**
- 5.18.040 Violations; penalties**

5.18.010 Intent, authority and applicability.

A. It is the intent of this Chapter to prohibit certain activities and land uses related to marijuana cultivation, and in support thereof, the Town Council makes the following findings:

1. The Colorado Medical Marijuana Code, §12-43.3-101 et seq., C.R.S. and Article XVIII, §14 of the Colorado Constitution, Article XVIII, §16 of the Colorado Constitution permit under prescribed terms and conditions the cultivation of marijuana for medicinal or personal use, as applicable.

2. The unregulated cultivation of marijuana may create secondary adverse effects on the health, safety and welfare. On several occasions, cultivation of marijuana in residential neighborhoods within the Town has created a public nuisance and health and safety concerns, and negative impacts on the peace and enjoyment of Town residents.

3. The unregulated cultivation of marijuana by utilizing electrical devices in residences may create a risk of fire or other public safety concerns endangering lives and property.

B. The Town's authority to adopt this Chapter is found in the Colorado Medical Marijuana Code, §12-43.3-101, C.R.S.; Article XVIII, §16 of the Colorado

Constitution, the Local Government Land Use Control Enabling Act, §29-20-101, C.R.S.; §31-23-101, C.R.S. (municipal zoning powers); §§31-15-103 and 31-15-401, C.R.S. (municipal police powers); §31-15-601, C.R.S. (building and fire regulations); and the Town of Castle Rock Home Rule Charter.

C. This Chapter shall apply to all property within the municipal limits of the Town of Castle Rock. To the extent that the Town is required to allow the cultivation of marijuana for medicinal or personal use under law, the rules set forth herein shall apply. Nothing in this Chapter shall be interpreted to permit any activity or land use related to marijuana which is otherwise prohibited under the Castle Rock Municipal Code, including specifically the prohibitions under Chapters 5.06 and 5.07.

5.18.020 Definitions.

For the purpose of this Chapter, the following terms shall have the meaning ascribed to them below:

Accessory building means a subordinate building, such as a garage or storage shed, the use of which is incidental to that of the principal use on the same lot.

Chapter means this Chapter 5.18.

Code means the Castle Rock Municipal Code.

Cultivation area means the secure location within a residential dwelling unit for the growing, processing and storage of marijuana which meets the criteria and regulations set forth in Section 5.18.030 of this Chapter.

CMMC means the Colorado Medical Marijuana Code, C.R.S. §12-43.3-101, et seq.

Demising Wall means a boundary wall that separates one tenant's space from that of another or from the common corridor.

Marijuana shall have the same meaning as the term "useable form of marijuana" as set forth in Article XVIII, Section 14(1)(i) of the Colorado Constitution, or, as applicable, the same meaning as "marijuana" as defined in Article XVIII, Section 16(2)(f), or as such terms may be more fully defined in any applicable state law or regulation.

Medical marijuana means marijuana that is grown or sold for a purpose authorized by Section 14 of Article XVIII of the Colorado Constitution.

Patient or qualified patient shall have the same meaning as set forth in Article XVIII, Section 14(1)(d) of the Colorado Constitution, or as may be more fully defined in any applicable state law or regulation.

Primary caregiver shall have the same meaning as set forth in Article XVIII, Section 14(1)(f) of the Colorado Constitution, or as may be more fully defined in any applicable state law or regulation.

Residential dwelling or residence means an attached single-family dwelling unit, a detached single-family dwelling unit, a multi-family dwelling unit or manufactured home as those terms are defined in Title 17 of this Code.

Primary residence means the place 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 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 and partaking of meals, regular mail delivery, vehicle and motor registration, or credit, water and utility billing. A person shall have only one primary residence. A primary residence shall not include accessory buildings.

In addition, terms used in this Chapter which are defined or described under the CMMC or Article XVIII, Section 16 of the Colorado Constitution shall have the meaning and effect ascribed to them under and in the context of the CMMC or Article XVIII, Section 16 of the Colorado Constitution.

5.18.030 Marijuana cultivation area, prohibitions.

Unless grown and processed within a cultivation area in compliance with this Section 5.18.030, it shall be unlawful to grow marijuana for medicinal or personal use anywhere in the municipal limits of the Town. The cultivation area within a residence must strictly adhere to the following:

- A. Marijuana may only be cultivated within a primary residence.
- B. The cultivation area for which marijuana can be grown or processed within a residential dwelling, including but not limited to all cultivation accessories such as water reservoirs, hydroponic systems, fans, filters, pumps, and lighting shall not exceed thirty-two (32) square feet of floor area within a residence nor shall the cultivation area exceed a height of ten (10) feet. This limit applies irrespective of the number of qualified patients or caregivers or persons otherwise allowed to possess and grow marijuana for personal use residing in the residence.
- C. The cultivation area must be fully enclosed and locked ensuring accessibility only by the person possessing, growing or processing the marijuana plants for medical or personal use and to prevent access by anyone under 21 years of age, visitors, casual passersby, vandals or anyone not authorized to possess marijuana.
- D. The cultivation area shall not be located in a kitchen, bathroom, primary bedroom or any accessory building.
- E. The cultivation area shall not be located in the common areas of a multi-family or attached residential development.
- F. Lighting used within a cultivation area shall be limited to 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.
- G. The use of compressed gas products (e.g., CO₂, butane) or flammable solvents for growing or processing marijuana in a cultivation area is prohibited.

H. A cultivation area shall include a ventilation and filtration system designed to ensure that odors from the growing or processing of marijuana are not detectable beyond the property line for detached single-family residential dwelling, or the demising 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 the requirements of Chapter 15.06.020 of this Code.

I. Cultivation areas must comply with all applicable building and fire codes, including plumbing and electrical, and all applicable zoning codes. In addition, the growing and processing of marijuana within a cultivation area shall meet the requirements of all adopted water and sewer regulations promulgated by the Town.

J. Only chemicals, including pesticides and fertilizers, rated for indoor residential use shall be used in marijuana cultivation. Those chemicals must be maintained in their original container and labeled by the manufacturer for indoor residential use. Chemicals shall not be stored inside of the habitable areas of the residence or within public view from neighboring properties and public rights-of-way.

K. Marijuana cultivation activity shall not adversely affect the health or safety of the nearby residents.

L. For rental properties, the lessee or tenant must obtain written permission to cultivate marijuana from the property owner or property management company.

5.18.040 Violation; penalties.

In addition to any other penalties that may exist under state, federal and local laws, any person charged with a violation of this Chapter, upon conviction thereof, shall be punished by a fine of not more than \$1,000 or by imprisonment not to exceed one year, or by both such fine and penalty. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation is committed, continues or permitted by any such person.

Section 2. Amendment. Section 17.01.080 of the Castle Rock Municipal Code is amended in its entirety to read as follows:

17.01.080 Marijuana activities prohibited.

The following activities or land uses are prohibited in all Zoning Districts:

A. Marijuana establishments as defined and proscribed under Chapter 5.06 of this Code.

B. Medical marijuana businesses, including medical marijuana centers, optional premises cultivation and medical marijuana-infused manufacturer operations, as proscribed under Chapter 5.07 of this Code.

C. Cultivation of marijuana for medicinal or personal use which is not in strict compliance with the requirements and regulations set forth in Chapter 5.18 of this Code.

Section 3. Severability. If any part or provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 4. Safety Clause. The Town Council finds and declares that this Ordinance is promulgated and adopted for the public health, safety and welfare and this Ordinance bears a rational relation to the legislative object sought to be obtained.

APPROVED ON FIRST READING this 5th day of May, 2015 by a vote of -6- for and -0- against, after publication in compliance with Section 2.02.100.C of the Castle Rock Municipal Code; and

PASSED, APPROVED AND ADOPTED ON SECOND AND FINAL READING this 19th day of May, 2015 by the Town Council of the Town of Castle Rock, Colorado, by a vote of ___ for and ___ against.

ATTEST:

TOWN OF CASTLE ROCK

Sally Misare, Town Clerk

Paul Donahue, Mayor

Approved as to form:

Approved as to content:

Robert J. Slentz, Town Attorney

Jack Cauley, Chief of Police