

ORDINANCE NO. 17-07

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, AMENDING SECTION 23A AND ASSOCIATED DEFINITIONS IN SECTION 36 OF THE CASTLE PINES ZONING ORDINANCE REGARDING LIMITS ON THE NUMBER OF MARIJUANA PLANTS PERMITTED IN RESIDENTIAL STRUCTURES

WHEREAS, the City of Castle Pines is a statutory municipality organized pursuant to Article 4 of Title 31 of the Colorado Revised Statutes; and

WHEREAS, the City is authorized pursuant to Section 31-15-401, C.R.S., to exercise its police powers to promote and protect the health, safety, and welfare of the community and its inhabitants; and

WHEREAS, the City prohibits medical marijuana businesses and recreational marijuana businesses in all zoning districts but protects the lawful rights of medical marijuana patients and primary care-givers to reasonably cultivate, produce, possess, and process medical marijuana within their primary residences in accordance with Article XVIII, Section 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, and the Colorado Medical Marijuana Program; and

WHEREAS, Section 23A of the City's Zoning Ordinance as adopted by Ordinance No. 11-11 currently allows medical marijuana patients and primary care-givers a maximum of thirty (30) medical marijuana plants in the patient's or primary caregiver's primary residence; and

WHEREAS, in March 2017 the Colorado General Assembly passed House Bill 17-1220 ("HB17-1220"), which becomes effective on January 1, 2018 and amends Sections 18-18-406 and 25-1.5-106 of the Colorado Revised Statutes regarding the maximum number of marijuana plants allowed in residential structures for all persons, including medical marijuana patients and primary care-givers; and

WHEREAS, HB17-1220 limits the number of marijuana plants grown or possessed in residential structures to twelve (12) but provides an exception, where the limit is twenty-four (24) plants, if a municipality does not expressly limit the number of marijuana plants in its municipal code; and

WHEREAS, Article XVIII, Section 16 of the Colorado Constitution was adopted after the City's adoption of Ordinance No. 11-11 and makes it lawful for *any person* who is age twenty-one (21) or older to possess, grow, process, or transport no more than six marijuana plants, with three or fewer being mature, flowering plants, and possession of the marijuana produced by the plants on the premises where the plants were 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; and

WHEREAS, in furtherance of the best interests of the City and the preservation and protection of the health, safety, prosperity, security, and general welfare of the public, the City Council desires to update and amend Section 23A of the Castle Pines Zoning Ordinance to place a cap on the number of marijuana plants allowed in residential structures for all persons legally permitted under Colorado law to grow, possess, cultivate, produce, and process marijuana within residential structures in Castle Pines in accordance with HB17-1220 and amend the definitions in Section 36 of the Zoning Ordinance to be consistent with the amendments to Section 23A; and

WHEREAS, the Planning Commission has considered the proposed amendments to Section 23A and Section 36 of the Zoning Ordinance at a duly noticed public hearing held on October 26, 2017 and has unanimously recommended approval of same to the City Council; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO:

Section 1. Section 23A, entitled “Regulation of Residential Cultivation of Medical Marijuana by Patients and Primary Care-givers”, of the Zoning Ordinance is hereby repealed and reenacted to read in full as follows:

Section 23A – REGULATION OF RESIDENTIAL CULTIVATION OF MARIJUANA

Section 2301A. Intent.

The intent of this Section 23A is to:

(a) Implement the local authority conferred to the City of Castle Pines by Article XVIII, Sections 14 and 16 of the Colorado Constitution, the Colorado Medical Marijuana Code, the Colorado Medical Marijuana Program, and House Bill 17-1220 (“HB 1220”); and

(b) Protect the lawful rights of Patients, Primary Care-givers, and persons age twenty-one (21) or older to reasonably grow, cultivate, produce, possess, and process marijuana in accordance with Article XVIII, Sections 14 and 16 of the Colorado Constitution, the Colorado Medical Marijuana Code, the Colorado Medical Marijuana Program, and HB 1220; and

(c) Balance the reasonable and lawful rights of Patients, Primary Care-givers, and persons age twenty-one (21) or older with the protection of the health, safety, and welfare of the public through the prevention and mitigation of deleterious and negative secondary effects that may occur or are likely to occur from the presence of marijuana in the City of Castle Pines; and

(d) Supplement, through regulation of matters of local concern as authorized by state law, the provisions of Article XVIII, Sections 14 and 16 of the Colorado Constitution, the Colorado Medical Marijuana Code, the Colorado Medical Marijuana Program, and HB 1220.

Section 2302A. General Requirements.

(a) It shall be unlawful for any person to grow, cultivate, produce, or process Marijuana Plants within the City of Castle Pines except for a person lawfully registered as a Patient, lawfully licensed as a Primary Care-giver, or who is age 21 or older, and provided that:

(1) The growth, cultivation, production, and processing occurs within the Residential Property of the Patient, Primary Care-giver, or person age 21 or older; and

(2) The growth, cultivation, production, and processing fully complies with all applicable provisions of Article XVIII, Sections 14 and 16 of the Colorado Constitution, the Colorado Medical Marijuana Code, the Colorado Medical Marijuana Program, House Bill 17-

1220, this Article, and all applicable requirements of all City of Castle Pines building and safety codes, as may be amended; and

(3) Marijuana is not grown, cultivated, produced, or processed within a garage, whether attached or detached, or other structure designed or intended for the keeping or storage of vehicles, equipment, or goods; and

(4) Marijuana is not grown, cultivated, produced, or processed within any common area(s) of a multi-family or single-family attached residential property; and

(5) Marijuana is not cultivated, produced, or processed in the yard, lot, or other area or structure located outside of the Residential Property, including but not limited to outdoor gardens, ancillary or accessory buildings, greenhouses, sheds, or storage units; and

(6) Marijuana is not produced or processed with the use of chemical(s) for the purposes of enhancing, concentrating, or extracting tetrahydrocannabinol (THC) from Marijuana or Marijuana Plants; and

(7) The area of a Residential Property devoted to the growth, cultivation, production, or processing of Marijuana Plants, including the keeping, storage, and maintenance of all materials, supplies, tools, equipment, and paraphernalia associated with the cultivation, production, and processing of Marijuana Plants, is in an enclosed, locked space that is not open or public, and does not exceed the following:

a. Within a single-family detached dwelling unit, a maximum contiguous one hundred fifty (150) square foot area; or

b. Within any Residential Property other than a single-family detached dwelling unit, a maximum contiguous one hundred (100) square foot area; and

(8) The growth, cultivation, production, and processing is in compliance with all applicable Home Occupation regulations including, but not limited to, restrictions on physical features, building character, and business operations. In the event of a conflict between the provisions of this Section 23A and the City's restrictions on Home Occupations, the more restrictive provision(s) shall govern.

(b) It shall be unlawful for any person to cause or allow the illicit discharge, emission, disposal, pouring, or pumping of chemicals and substances used in the cultivation, production and harvesting of Marijuana either directly or indirectly to any stormwater conveyance system.

Section 2303A. Maximum Number of Marijuana Plants

It shall be unlawful for any person, including Patients and Primary Care-givers, to grow, cultivate, produce, possess, or process, or permit to be cultivated, produced, possessed, or processed more than the following maximum number of Marijuana Plants within the person's Residential Property:

(a) A person may grow, cultivate, produce, possess, or process, or permit to be cultivated, produced, possessed, or processed within a Residential Property:

(1) No more than six (6) Marijuana Plants with three (3) or fewer being mature, flowering plants that are producing a useable form of marijuana for each person residing in the Residential Property; and

(2) In no event shall the maximum number of Marijuana Plants within a Residential Property exceed twelve (12) Marijuana Plants, regardless of the size or stage of growth or the number of persons residing, either temporarily or permanently, at the Residential Property.

Section 2304A. Exterior Impacts Unlawful.

(a) It shall be unlawful for the growth, cultivation, production, possession, or processing of Marijuana Plants within a Residential Property to be perceptible from the exterior of the Residential Property by means including, but not limited to:

(1) Common visual observation, including any form of signage;

(2) Odors, smells, fragrances, or other olfactory stimulus generated by the growth, cultivation, production, possession, or processing of Marijuana Plants; or

(3) Light pollution, glare, or brightness of artificial illumination associated with the growth, cultivation, production, possession, or processing of Marijuana Plants.

Section 2305A. Special Provisions for Primary Care-givers.

(a) The cultivation, production, or processing of Medical Marijuana and Medical Marijuana Plants by Primary Care-givers for Patients is a Class 1 home occupation as defined by the Castle Pines Zoning Ordinance and the sale or distribution of Medical Marijuana to Patients is a taxable transaction in accordance with state and local law. Primary Care-givers shall therefore comply with other applicable provisions of the Castle Pines Zoning Ordinance as well as the business licensing and sales tax licensing and reporting requirements set forth in applicable provisions of the Ordinances of Castle Pines.

(b) A Primary Care-giver shall provide the registry identification card number of each of his or her Patients to employees and contractors of the City and to law enforcement agencies, upon inquiry in the course of their official duties while investigating compliance with the requirements of this Section 23A.

(c) To the extent required by law, documentation that evidences the name, address, or other information of a Patient or Primary Caregiver including, but not limited to, applications, permits, and correspondence, shall be maintained by the City as confidential. No person shall be permitted to gain access to such confidential documentation except for authorized employees and contractors of the City in the course of their official duties and authorized employees of state or local law enforcement agencies.

Section 2306A. Private Covenants Not Affected.

This Section 23A is not intended to impair and does not supersede or override provisions of any lawful privately imposed contracts, covenants, conditions, or restrictions that are more restrictive regarding the use of a Residential Property for the growth, cultivation, production, possession, and processing of Marijuana or Marijuana Plants. Nothing in this Section 23A is intended to defer to or to permit privately imposed contracts, covenants, conditions, or restrictions that would authorize any activity or action prohibited or regulated by this Section 23A. The City shall not enforce private covenants except to the extent specifically provided by law.

Section 2307A. Penalties for Violation.

(a) In addition to any other penalties that may exist under state, federal and local laws, any person charged with a violation of this Section 23A, upon conviction or plea of *nolo contendere* thereof, shall be punished as follows:

(1) For an offense involving the growth, cultivation, production, possession, or processing of one (1) or more Marijuana Plants in excess of the maximum number of Marijuana Plants permitted by this Section 23A, such fine shall be not less than Seven Hundred Fifty Dollars (\$750.00) and not more than One Thousand Dollars (\$1,000.00) for each Marijuana Plant cultivated, produced, possessed, or processed in excess of such maximum; or

(2) For any other violation of this Section 23A not set forth in subparagraph (1) above, such fine shall be not less than Five Hundred Dollars (\$500.00) and not more than One Thousand Dollars (\$1,000.00) for each offense.

(b) Each person violating any provision of this Section 23A shall be guilty of a separate offense for each and every day during any portion of which any violation of this Section 23A is committed, continued, or permitted by such person.

(c) The Castle Pines Municipal Court shall retain the discretion to suspend, reduce, or impose a lesser fine upon recommendation of the Municipal Court prosecutor pursuant to a mutually accepted plea agreement with the defendant.

Section 2308A. Search Warrants Authorized.

(a) The City Council declares that a violation of this Section 23A involves a serious threat to public safety or order within the meaning of Rule 241(a)(1) of the Colorado Municipal Court Rules of Procedure.

(b) If the owner or occupant of the premises denies officials of the City's Community Development Department or other authorized official permission to inspect the Residential Property, such official may request the Castle Pines Municipal Court to issue a search warrant for the inspection of the premises pursuant to the procedure and standards as set forth in Rule 241 of the Colorado Municipal Court Rules of Procedure.

(c) The Castle Pines Municipal Court may issue a search warrant authorizing officials of the City's Community Development Department or other authorized official or law

enforcement personnel to inspect a Residential Property for the growth, cultivation, production, possession, or processing of Marijuana Plants in accordance with Rule 241(b) of the Colorado Municipal Court Rules of Procedure. Any search warrant issued pursuant to this Section 23A shall fully comply with the applicable provisions of Rule 241 of the Colorado Municipal Court Rules of Procedure.

(d) The Castle Pines Municipal Court may impose such conditions on a search warrant as may be necessary to protect the private property rights of the owner of the premises to be inspected or to otherwise ensure that the warrant complies with applicable law.

(e) It shall be unlawful for any owner or occupant to deny officials of the City's Community Development Department or other authorized official or law enforcement personnel access to the property owned or occupied by such owner or occupant if the authorized person presents a warrant issued pursuant to this Section 23A.

Section 2. Section 36 of the Zoning Ordinance, titled "Definitions" is hereby amended to add the following definitions, shown in bold and underlined, and to amend the following definitions, with deletions shown in strike-through and additions in bold and underlined, as follows:

Contiguous: In terms of determining the area devoted to the cultivating, producing, possessing, or processing of ~~medical m~~**Marijuana** and ~~medical m~~**Marijuana p**Plants, means an uninterrupted expanse of space on the same floor or level of the ~~Primary Residence~~ **a Residential Property** that can be measured by framing the area with four or more continuous and connected straight lines. The space within a single room which is defined by permanent perimeter walls is contiguous; the space within adjoining rooms divided by a permanent wall or permanent structure but accessible via a common doorway or connected by a common hallway is contiguous; however, nonadjacent spaces separated by two (2) or more permanent walls or separated by floors or levels of the building are not contiguous.

Enclosed, Locked Space: **An area in a Residential Property used for the growth, cultivation, production, or processing of Marijuana Plants that is not open or public; is not outside; cannot be accessed by persons under the age of twenty-one (21), whether those persons live in the Residential Property or are visiting the Residential Property; and meets the requirements set forth in Section 2302A of this Zoning Ordinance and applicable State law.**

Marijuana Plants: **Marijuana plants, seedlings, or any part thereof in a living condition that are lawfully cultivated, produced, possessed, or processed pursuant to the provisions of Article XVIII, Section 14 and Section 16 of the Colorado Constitution, the Colorado Medical Marijuana Code, the Colorado Medical Marijuana Program, and other applicable laws or regulations governing the growth, cultivation, production, possession, or processing of marijuana.**

Residential Property: **For purposes of Section 23A means a Primary Residence or single unit providing living facilities for one or more persons, including permanent provisions for living sleeping, eating, cooking and**

sanitation. "Residential Property" also includes the real property surrounding a structure, owned, rented or leased in common with the structure, that includes one or more single units providing living facilities.

Section 3. Severability. If any section, paragraph, clause, or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

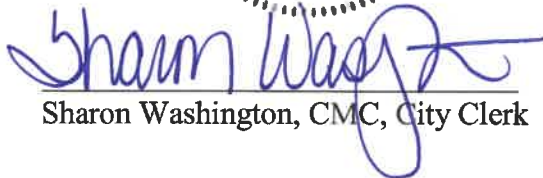
Section 4. Effective Date. This Ordinance shall take effect and be in force thirty (30) days after publication following final adoption.

INTRODUCED, READ, AND PASSED ON FIRST READING, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO THE 12TH DAY OF SEPTEMBER, 2017.

READ, PASSED, AND ADOPTED ON SECOND READING, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO THE 14TH DAY OF NOVEMBER, 2017.



ATTEST:


Sharon Washington, CMC, City Clerk


Jeffrey T. Huff, Mayor

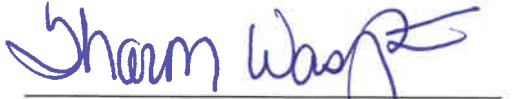
Approved as to form:


Linda C. Michow, City Attorney

CERTIFICATION OF PUBLICATION

I hereby attest and certify that the within and foregoing Ordinance was introduced and read on first reading at a noticed public meeting of the Castle Pines City Council on September 12, 2017; published by reference by title only in the *Douglas County News-Press*, together with the statement that “[t]he complete text of all ordinances is available through the City Offices and on the City’s official website”; and finally passed and adopted by the City Council on November 14, 2017 following a duly noticed public meeting and ordered published by title only, with amendments if any, one time in the *Douglas County News-Press* on November 23, 2017.

ATTEST:



Sharon Washington, CMC, City Clerk