

Ordinance No. 19-01

AN ORDINANCE OF CUSTER COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF COLORADO, REGULATING RESIDENTIAL GROWING, CULTIVATING, AND PROCESSING OF MARIJUANA IN THE UNINCORPORATED AREAS OF SAID COUNTY

Whereas, Sections 14 and 16 of Article XVIII of the Constitution of the State of Colorado (Amendments 20 and 64, respectively) authorize persons to grow limited amounts of marijuana or to assist others in growing marijuana; and

Whereas, Amendment 20 granted to local governments the general authority to prohibit commercial marijuana operations; and

Whereas, with the adoption of Ordinance No. 13-01 on September 5, 2013, by the Board of County Commissioners for Custer County (“the Board”), commercial marijuana operations were prohibited within the unincorporated areas of Custer County; and

Whereas, neither Amendment 20 nor Amendment 64 permit local governments to deny individuals the constitutional right to engage in non-commercial, unlicensed grow operations; and

Whereas, regulations of the State of Colorado pertaining to commercial marijuana operations are generally not directed toward non-commercial, unlicensed individual grow operations; and

Whereas, this circumstance has resulted in a proliferation of non-licensed and unregulated marijuana grow operations in Custer County that present significant health and public safety concerns, with multiple violations of the Custer County Zoning Resolution and also violations of electrical, mechanical, plumbing, and fire codes that are in force for the unincorporated areas of the county; and

Whereas, §30-11-101 (2), C.R.S., gives the Board the authority to adopt and enforce ordinances regarding health, safety and welfare issues and to provide penalties for the violation of same; and

Whereas, the Board is further authorized pursuant to §25-1.5-106 (13.5), C.R.S., to regulate the growing of marijuana, commercial or otherwise; and

Whereas, the Board is further authorized pursuant to §9-7-113, C.R.S., to ban the use of compressed flammable gas in the extraction of THC or other cannabinoids in a residential setting; and

Whereas, the Board has determined that the adoption of regulations governing the growing, cultivating, and processing of marijuana in a residential setting is necessary and desirable for the health, safety, and welfare of the citizens of Custer County; and

Whereas, This Ordinance No. 19-01 does not unreasonably impair or impede the exercise of constitutional rights afforded citizens under Amendments 20 and 64;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CUSTER COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF COLORADO, as follows:

PART I

Section 1. Scope of Ordinance and Authority: This Ordinance No. 19-01 applies within the unincorporated areas of Custer County and regulates the growing, cultivating, and processing of marijuana on any lot, parcel, or tract of land by any person, including but not limited to patients, primary caregivers, or persons engaging in such conduct for personal use.

Section 2. Definitions: The definitions contained in Amendment 20 to the Colorado Constitution, the Colorado Medical Marijuana Code, the Colorado Medical Marijuana Program, and any regulations promulgated by the Colorado Department of Public Health and Environment and the Colorado Department of Revenue, as amended from time to time, are incorporated into this Ordinance No. 19-01 by reference, including but not limited to, definitions of “marijuana”, “medical marijuana”, “patient”, and “primary caregiver”. All other applicable definitions are as stated herein.

- a. “Accessory Structure” means: A subordinate structure detached from but located on the same lot, parcel or tract of land as the primary residence, the use of which is incidental and accessory to that of the primary residence.
- b. “Accessory Use” means: A use incidental to and subordinate to the primary residence.
- c. “Primary Residence” means: A residence where a person, by custom and practice, makes his or her principal domicile and address and to which the person intends to return following any temporary absence, such as a vacation. Residence is evidenced by actual daily physical presence, occupancy and use on a regular basis for domestic purposes such as, but not limited to, slumber, preparation and partaking of meals, regular mail delivery, vehicle registration, or water and utility billing. A person shall have only one primary residence.
- d. “Primary Use” means: The main use of a structure or land, as distinguished from an accessory use.

Section 3: Growing, Cultivating, and Processing of Marijuana:

- a. Marijuana may only be grown, cultivated, or processed as an accessory use at the primary residence of the person engaging in such activity, and only (1) for such person's own consumption and use, or (2) if the person is acting as a primary caregiver, then for the consumption and use of that person's patient(s).
- b. Marijuana may only be grown, cultivated, or processed in a primary residence where residential use is the primary use of the structure, or in an accessory structure to the primary residence on the same property.
- c. The space used for the growing, cultivating, or processing of marijuana, whether in a primary residence or an accessory structure, shall be limited to a contiguous 1000 cubic foot volume.
- d. The use of an accessory structure for the growing, cultivating, or processing of marijuana shall only be permitted on a lot, parcel, or tract of land that is one acre in size or greater.
- e. Marijuana shall not be grown, cultivated, or processed in more than one structure on any single lot, parcel, or tract of land.
- f. Marijuana shall not be grown, cultivated, or processed within the common areas of a multi-family or attached residential development.
- g. Any area used for the growing, cultivating, or processing of marijuana shall be fully enclosed and locked, ensuring accessibility only by the person growing, cultivating, or processing the marijuana for personal use or for medical use, and to prevent access by children, visitors, casual passersby, or anyone not authorized to possess marijuana.
- h. Any area used for the growing, cultivating, or processing of marijuana shall comply with all applicable land use codes, building codes and fire codes, including plumbing, electrical and mechanical regulations and requirements.
- i. Non-residential buildings or structures that are not accessory to a primary residence shall not be used for the growing, cultivating, or processing of marijuana.
- j. Marijuana shall not be grown, cultivated, or processed outdoors.

Section 4. Marijuana Plant Limits: At any given time, no more than 12 marijuana plants, in any stage of maturity, may be grown, cultivated, or processed in a primary residence or in an accessory structure on a single lot, parcel, or tract of land, regardless of how many persons 21 years of age or older may occupy said primary residence. This limitation, which is based on §18-18-406 (3)(a)(II)(A), C.R.S., supersedes the statutory provision that grants to each person 21 years of age or older the right to grow 6 marijuana plants for personal use, and also supersedes the statutory provision that grants to a primary caregiver the right to grow more than 12 plants for his or her patients.

Section 5. Use of Compressed Flammable Gas Products or Flammable Liquids: No compressed flammable gas (e.g., butane) or flammable liquid may be used in the growing, cultivating, or processing of marijuana. For purposes of this section, “flammable liquid” means a liquid that has a flash point below one hundred degrees (100°) Fahrenheit, and includes all forms of alcohol and ethanol.

Section 6. Marijuana Activities shall not be Perceptible: The growing, cultivating, or processing of marijuana shall not be perceptible from the exterior of the structure in which such activities occur, including, but not limited to:

- a. Common visual observation.
- b. Light pollution, glare, or brightness that disturbs the repose of another.
- c. Undue vehicular or foot traffic, including unusually heavy parking in the immediate vicinity of the primary residence.

Section 7. Smell or Odor: The smell or odor of marijuana growing, being cultivated, or being processed at a primary residence or in an accessory structure shall not be detectable by a person with a normal sense of smell from any adjoining lot, parcel, tract of land, public right-of-way- or building unit.

Section 8. Rental Property: Any lessee or tenant who uses a rental property, in whole or in part, for growing, cultivating, or processing marijuana shall obtain written, notarized permission from the property owner prior to commencing such use.

PART II

Section 1. Administration and Enforcement: The Custer County Sheriff shall be responsible for the administration and enforcement of this Ordinance No. 19-01.

Section 2. Penalty for Violations: Any person who violates any provision of this Ordinance No. 19-01 after its effective date commits a class 2 petty offense pursuant to §30-15-402 (1), C.R.S., and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars (\$1000.00) for each separate violation, plus a surcharge of Ten Dollars (\$10.00) pursuant to §30-15-402 (2), C.R.S. Each day during which such violations exist shall be deemed a separate offense.

Section 3. Penalty Assessment Procedure: The penalty assessment procedure set forth in §16-2-201, C.R.S., shall be followed by law enforcement officers charged with enforcement of this Ordinance. Pursuant to the penalty assessment procedure, the violator may, in lieu of going to court, choose to pay a fine in the amount of One Thousand Dollars (\$1000.00) plus a Ten Dollar (\$10.00) surcharge for a violation of any provision of this Ordinance. If the penalty assessment procedure is declined by an alleged violator who chooses instead to appear in the County Court

for Custer County and who is ultimately convicted of a violation of this Ordinance in said court, then customary court costs may be assessed in addition to the fine.

Section 4. Disposition of Fines. All fines and surcharges assessed for violations of this Ordinance shall be paid to the Treasurer of Custer County.

Section 5. Additional Remedies: The remedies provided in this Ordinance shall be cumulative and in addition to any other federal, state or local remedy, criminal or civil, which may be available.

Section 6. Severability: Should any section, clause, sentence, or part of this Ordinance be adjudged by any court of competent jurisdiction to be unconstitutional or invalid, the same shall not affect, impair or invalidate the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

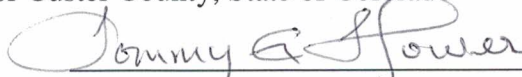
Section 7. Safety Clause: The Board of County Commissioners for Custer County hereby finds, determines and declares that this Ordinance No. 19-01 is necessary for the immediate preservation of the public health, welfare and safety.

Section 8. Effective Date: In order to preserve the immediate health and safety of the residents and citizens of Custer County, this Ordinance No. 19-01 shall take effect immediately upon its adoption on second and final reading as provided in §30-15-405, C.R.S.

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INTRODUCED, READ AND ADOPTED ON FIRST READING ON THE 31ST DAY OF Jan, 2019, AND ORDERED PUBLISHED IN THE WET MOUNTAIN TRIBUNE.

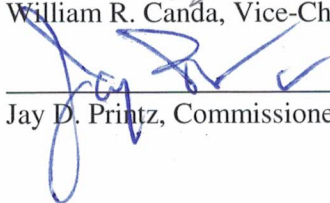
The Board of County Commissioners for Custer County, State of Colorado



Tommy G. Flower, Chairman



William R. Canda, Vice-Chairman



Jay D. Printz, Commissioner



ATTEST:



Kelley Camper, County Clerk and Recorder

ADOPTED ON SECOND AND FINAL READING ON THE ____ DAY OF _____, 2019,
AND ORDERED PUBLISHED BY REFERENCE TO TITLE ONLY IN THE WET
MOUNTAIN TRIBUNE.

The Board of County Commissioners for Custer County, State of Colorado

Tommy G. Flower, Chairman

William R. Canda, Vice-Chairman

Jay D. Printz, Commissioner

SEAL:

ATTEST:

Kelley Camper, County Clerk and Recorder