ORDINANCE NO. 06 , Series 2014
INTRODUCED BY: COUNCILOR TOM DOWLING

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, ENACTING ARTICLE IV OF CHAPTER 70 OF THE CODE OF ORDINANCES OF LAFAYETTE, CONCERNING MARIJUANA RESIDENTIAL CULTIVATION RESTRICTIONS

WHEREAS, on April 5, 2012, Council, to address concerns that the state's regulations did not adequately address the City's health, safety and welfare concerns regarding the cultivation of medical marijuana, adopted Ordinance No. 10, Series 2011, which imposed regulations upon patients and primary caregivers' cultivation of medical marijuana pursuant to Article XVIII, Section 14 of the Colorado Constitution and the Colorado Medical Marijuana Program (C.R.S. §25-1.5-106); and

WHEREAS, at the November 6, 2012 general election the voters of the state adopted Amendment 64 (Article XVIII, Section 16) of the Colorado Constitution which, in part, permits persons twenty-one years of age or older to cultivate no more than six marijuana plants, subject to certain restrictions including the requirement that the marijuana be grown in a secure locked place, and that it not be available for sale; and

WHEREAS, Council finds that the lack of state regulation which caused it to adopt Ordinance 10, Series 2011, are also present regarding the cultivation of recreational marijuana by those twenty-one years of age or older under Amendment 64; and

WHEREAS, Council desires to update its regulations imposed upon patients and primary caregivers' cultivation of marijuana, and enact regulations upon the cultivation of marijuana for personal use, pursuant to Amendment 64.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AS FOLLOWS:

Section 1. Article IV of Chapter 70 of the Code of Ordinances of Lafayette, Colorado, "Marijuana Residential Cultivation Restrictions," is enacted to provide as follows:

ARTICLE IV MARIJUANA RESIDENTIAL CULTIVATION RESTRICTIONS

Section 70-30. Legislative Powers.

The city council hereby finds and declares that it has the power to enact this article and the regulations herein pursuant to Article XX, Section 6 and Article XVIII of Section 14, and Section 16, of the Colorado Constitution, Article XX, Section 6 of the Colorado Constitution, the Colorado Medical Marijuana Program (C.R.S. §25-1.5-106), "Use of flammable gases in home marijuana cultivation prohibited" (C.R.S. § 9-7-113), Article 15 of Title 31 C.R.S. (exercise of municipal powers) and the city's home rule charter and code.

Section 70-31. Cultivation regulations/legislative.

(a) The cultivation, production or possession of marijuana plants for medical use by a patient or primary caregiver as such terms are defined by Article XVIII, Section 14 of the Colorado Constitution and the Medical Marijuana Program, C.R.S.§ 25-1.5-106 shall be allowed in residential structures subject to the requirements set forth in this article.

(1) The cultivation, production, or possession of medical marijuana plants must be in full compliance with all applicable provisions of Article XVIII, Section 14 of the Colorado Constitution, and the Medical Marijuana Program, C.R.S. § 25-1.5-106; and

(2) Any primary caregiver acting as a home occupation shall conduct such business in accordance with the requirements of Home Occupations (section 26-14-01 of the code) as same may be amended from time to time.

(b) The cultivation, production or possession of marijuana plants for personal use by persons twenty-one years of age or older, as such terms are defined by Article XVIII of Section 16 of the Colorado Constitution shall be allowed in residential structures subject to full compliance with the applicable provisions of Article XVIII of Section 16 of the Colorado Constitution and the requirements set forth in this article.

Section 70-32. Cultivation operational regulations.

(a) In addition to the requirements set forth herein in section 70-31 of this article, the cultivation, production or possession of marijuana for medical use by a patient, or primary caregiver, or for recreational use by any person twenty-one years of age or older shall be subject to the following conditions.

(1) The marijuana plants must be cultivated, produced, processed and possessed within a person's primary residence, as defined in paragraph (a) 9 herein; and

(2) The cultivation, production, processing and possession of marijuana plants must not be conducted in an open and public manner meaning it must not be perceptible from the exterior of the primary residence, and such activity shall not cause or create any of the following:

(i) Unusual odors, smells, fragrances, or other olfactory stimulus detectable by any person with a normal sense of smell upon or within any adjacent unit or property;

(ii) Light pollution, glare, or brightness that unreasonably disturbs others in the use or enjoyment of their property, or constitutes a nuisance;

(iii) Undue vehicular or foot traffic, including excess parking within the residential zone;

(iv) Excessive noise.

(3) Marijuana plants shall not be cultivated, produced, processed or possessed in the common areas of a multi-family or attached residential development; and

(4) The cultivation, production, processing or possession of marijuana plants shall be limited to the following space limitations within a primary residence as follows:

(i) For a single-family dwelling unit (Group R-3 as defined by the most current international building code adopted by the city), within an enclosed locked, defined, contiguous area not to exceed 12 plants and/or 150 square feet within such person's primary residence;

(ii) For a multi-family dwelling unit (Group R-2 as defined by the most current international building code, adopted by the city), within an enclosed locked, defined, contiguous area not to exceed 12 plants and/or 100 square feet within such person's primary residence.

(5) Marijuana plants shall not be cultivated, produced, processed or possessed in any accessory structure; and

(6) The cultivation, production, processing or possession of marijuana plants shall meet the requirements of all adopted city building and life/safety codes; and

(7) The use of any compressed flammable gas as a solvent in the extraction of tetrahydrocannabinols or other cannabinoids in a residential setting is prohibited; and

(8) Marijuana cultivation lighting shall not exceed one thousand two hundred (1200) watts total for the entire cultivation area within a dwelling.

(9) For purposes of this section, "primary residence" means the place that 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 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, sleep, preparation of and partaking of meals, regular mail delivery, vehicle and voter registration, or credit, water and utility billing. A person shall have only one primary residence. A primary residence shall not include accessory buildings.

(10) For purposes of this section, "enclosed locked" area means a location within the primary residence accessible only to the person growing the marijuana through one or more locked doors with walls and roofing that must be constructed of solid materials. Such premises must remain secure at all times and any windows must be locked to prevent access by children, visitors or casual passersbys.

Section 2. If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one

part or parts be declared unconstitutional or invalid.

Section 3. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 4. The repeal or modification of any provision of the Code of Ordinances of Lafayette, Colorado by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 5. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 6. Violations of this ordinance shall be punishable in accordance with Section 1-10 of the Municipal Code of the City of Lafayette, Colorado.

Section 7. This ordinance shall become effective upon the latter of the 10th day following enactment, or the day following final publication of the ordinance.

INTRODUCED AND PASSED ON FIRST READING THE 18TH DAY OF FEBRUARY, 2014.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THE 4TH DAY OF MARCH 2014.

CITY OF LAFAYETTE, COLORADO

_____
Christine Berg, Mayor

ATTEST:

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Susan Koster, CMC
City Clerk

APPROVED AS TO FORM:

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David S. Williamson, City
Attorney