

## ORDINANCE NO. 1979

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO, ENACTING CHAPTER 5.17 OF THE GOLDEN MUNICIPAL CODE ESTABLISHING MARIJUANA RESIDENTIAL CULTIVATION RESTRICTIONS

WHEREAS, on November 7, 2000, the voters of the State of Colorado approved Section 14 of Article XVIII of the Colorado Constitution, which authorized the use of medical marijuana for the treatment of debilitating medical conditions under a patient/primary caregiver scenario, which authorized either party to cultivate limited amounts of medical marijuana under specified conditions; and

WHEREAS, on May 12, 2011, by Ordinance No. 1898, City Council enacted a comprehensive medical marijuana licensing ordinance, which in part prohibited any medical marijuana businesses as a home occupation; 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 an enclosed locked place, and that it is not available for sale; and

WHEREAS, the permitted cultivation of medical and recreational marijuana has brought about an increase of grows in residential dwellings; and

WHEREAS, Council finds such grows present a risk to children and may also invite unwanted entries if not regulated; and

WHEREAS, Council finds that residential cultivation presents health and safety concerns resulting from the use of pesticides and fertilizers, butane, and carbon dioxide, and increased risks of fire and electrocution and airborne molds; and

WHEREAS, to reduce such risks Council desires to impose restrictions upon the residential cultivation of medical and recreational marijuana.

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GOLDEN,  
COLORADO:

Section 1. Chapter 5.17, "Marijuana Residential Cultivation Restrictions" of the Golden Municipal Code is enacted to provide:

#### ARTICLE IV MARIJUANA RESIDENTIAL CULTIVATION RESTRICTIONS

##### **Section 5.17.010. Legislative Powers.**

The city council hereby finds and declares that it has the power to enact this chapter 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 5.17.020. 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 chapter.

(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 including its regulations set forth in 5 CCR 1006-2; and

(2) Any primary caregiver acting as a home occupation shall conduct such business in accordance with the home occupation requirements set forth in the city's zoning regulations.

(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 chapter.

**Section 5.17.030. Cultivation operational regulations.**

(a) In addition to the requirements set forth herein in section 5.17.020 of this chapter, 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 a single, enclosed locked, defined, contiguous area that cannot contain more than 12 plants 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 a single, enclosed locked, defined, contiguous area that cannot contain more than 12 plants 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) The total load for a single branch circuit shall not exceed the ampacity for the entire cultivation area within a dwelling.

(b) 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.

(c) 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 doors secured by a locking mechanism designed to limit access such as with a key or combination lock, and 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 passersby.

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.

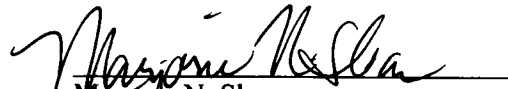
Section 4. The repeal or modification of any provision of the Municipal Code of the City of Golden by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. 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 health, welfare and safety of the community.

Section 6. Violations of this ordinance shall be punishable as set forth in Section 1.01.110 of the Golden Municipal Code.

Introduced, read, passed and ordered published the 22<sup>nd</sup> day of May, 2014.

Passed and adopted upon second reading and ordered published this 5<sup>th</sup> day of June, 2014.


  
Marjorie N. Sloan  
Mayor

ATTEST:

  
Susan M. Brooks, MMC  
City Clerk *Deputy*



APPROVED AS TO FORM:

  
David S. Williamson *by Matthew Munn*  
City Attorney *Assistant City Attorney*

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing ordinance was introduced on first reading and read and a public hearing was held at a regular business meeting of the City Council of said city, held on the 22<sup>nd</sup> day of May, 2014, and was published as a proposed ordinance in the Golden Transcript, legal newspaper, as the law directs seven days or more prior to its passage. A public hearing was held on the 5<sup>th</sup> day of June, 2014, and the said proposed ordinance was read on second reading. The ordinance was passed by the City Council and ordered published in the aforesaid newspaper, as the law directs on the 5<sup>th</sup> day of June, 2014.

Witness my hand and official seal of the City of Golden, Colorado, this 6<sup>th</sup> day of June, 2014.



ATTEST:

*Andrea L. DeLuca, Deputy*  
Susan M. Brooks, MMC, City Clerk of  
the City of Golden, Colorado