

ORDINANCE NO. 27-2012
Series of 2012

AN ORDINANCE OF THE TOWN OF ERIE, COLORADO, AMENDING TITLE 4, "BUSINESS REGULATIONS," OF THE MUNICIPAL CODE OF THE TOWN OF ERIE, COLORADO WITH THE ADDITION OF A NEW CHAPTER 10, "CULTIVATION OF MEDICAL MARIJUANA WITHIN PRIMARY RESIDENCES;" SETTING FORTH DETAILS IN RELATION THERETO; AND, DECLARING AND EMERGENCY THEREFORE.

WHEREAS, the Town of Erie is a statutory municipality created and organized pursuant to Title 31, Colorado Revised Statutes; and

WHEREAS, by virtue of Title 31, Colorado Revised Statutes, including but not limited to §31-15-401 and §31-23-301, the Town of Erie has broad authority to exercise its police powers to promote and protect the health, safety and welfare of the community and its inhabitants; and

WHEREAS, the Town of Erie is authorized pursuant to C.R.S. §31-15-01(1)(c) to license and regulate any lawful occupation or business; and

WHEREAS, planning, land use and business regulation are well established as purely matters of local concern; and

WHEREAS, in November 2000, the Colorado voters approved Amendment 20, which was subsequently codified as Section 14 of Article XVIII of the Colorado Constitution ("Article XVIII" or "Amendment 20"); and

WHEREAS, Amendment 20 created a limited exception and affirmative defense to state criminal liability under Colorado law for the specific use of medical marijuana by persons in Colorado suffering specified debilitating medical conditions who have been placed on a statewide registry pursuant to receiving acknowledgement from a licensed Colorado physician that those persons may benefit from the medical use of marijuana; and

WHEREAS, Amendment 20 created a limited exception to criminal liability under Colorado law for physicians who advise patients about the risks and benefits of the medical use of marijuana and that they might benefit from the medical use of marijuana, or who provide patients with documentation as to such potential benefit; and

WHEREAS, the Board of Trustees finds that the plain language of Article XVIII extends limited protection to only persons qualified as a "primary caregiver," a "patient," and a physician who advises a patient and that no other person is entitled to the protections afforded by Article XVIII; and

WHEREAS, subsequent to the voters' approval of Amendment 20, the possession, sale and use of marijuana with the sole exception of those activities set forth in Article XVIII, remains unlawful under state law; and

WHEREAS, both prior to and subsequent to the adoption of Article XVIII, the use of marijuana for any purpose, including the treatment of debilitating medical conditions, was and remains unlawful under federal law; and

WHEREAS, there is no reference to or evidence contained in Article XVIII to establish that Article XVIII is intended to address or regulate land use, planning, development, or operations of businesses engaging in the production, distribution, processing or dispensing of medical marijuana; and

WHEREAS, anecdotal evidence known to the Town Board of Trustees from law enforcement, news media, and stories, reports and studies commonly available on the Internet reveal that the high value and easy portability of marijuana makes persons and businesses that cultivate, acquire, possess, store, produce, prepare, manufacture, package, use, sell, administer, dispense, distribute, or transport marijuana likely targets for robbery, burglary, theft, assault, and other related crimes; and

WHEREAS, since the recent proliferation of primary caregivers growing and processing medical marijuana for their patients in a residential setting, reports of criminal activities related to these activities have increased, particularly home invasions and related crimes; and

WHEREAS, the Board of Trustees finds that cultivation, production, and processing of medical marijuana plants in residential buildings may produce a variety of deleterious effects upon the integrity of residences and the welfare of residential communities, including, but not limited to, potentially unsafe structural alterations or additions to residences; extraordinary demands on and potentially unsafe alterations to residential electrical systems; additions of conduits for water and humidity that can facilitate the growth of dangerous or damaging molds and fungi; increased risk of fire and electrocution due to the proximity of electrical uses and water supplies, potential toxicity of residential air supply due to the use of heating devices, generators, and the addition of carbon monoxide to growing environments; and increased risk of fire due to the presence of hazardous materials such as fertilizers and other flammable or volatile substances used in the cultivation, production, and processing of medical marijuana plants or derivatives thereof; and

WHEREAS, permitting any person to cultivate, acquire, possess, store, produce, prepare, manufacture, package, use, sell, administer, dispense, distribute, or transport medical marijuana in any form pursuant to Article XVIII without appropriate local regulation could create conflicts with the goals and objectives of the City's comprehensive land use plan, be inconsistent with residential land uses and other uses, or otherwise be detrimental to the public health, safety and welfare; and

WHEREAS, by adoption of Ordinance 32-2010 the Board of Trustees made it unlawful for any person to operate, cause to be operated or permit to be operated a medical marijuana center, an optional premises cultivation operation, or a medical marijuana infused products manufacturing facility in the town; and,

WHEREAS, the Board of Trustees of the Town of Erie believes it is in the best interest of Erie to amend the Code as set forth herein, and that such action is necessary for the immediate preservation of the public property, peace, health, safety, and welfare of the Town and for the financial well being of the Town.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, AS FOLLOWS:

Section 1. Title 4, “Business Regulations,” of the Municipal Code of the Town of Erie, Colorado shall be and is hereby amended to add a new Chapter 10, “Cultivation of Medical Marijuana Within Primary Residences,” to read as follows:

**TITLE 4
BUSINESS REGULATIONS**

**CHAPTER 10 CULTIVATION OF MEDICAL MARIJUANA WITHIN
PRIMARY RESIDENCES**

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4-10-1: PURPOSE

The purpose of this Title is to:

- (A) Implement the local authority conferred to the town of Erie by Article XVIII, Section 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, and the Colorado Medical Marijuana Program; and

(B) Protect the lawful rights of patients and primary caregivers to reasonably cultivate, produce, possess, and process medical marijuana in accordance with Article XVIII, Section 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, and the Colorado Medical Marijuana program; and

(C) Balance the reasonable and lawful rights of patients and primary caregivers 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 medical marijuana in the Town of Erie; and

(D) Supplement, though regulation of matters of local concern as authorized by the Colorado Revised Statutes, the provisions of Article XVIII, Section 14 of the Colorado Constitution, the Colorado Medical Marijuana Code and the Colorado Medical Marijuana Program; and

(E) Comply with requirements imposed upon Colorado municipalities by Article XVIII, Section 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, and the Colorado Medical Marijuana Program. However, neither this Chapter nor its adoption, implementation, or enforcement shall be construed as an intent of the Town, its elected officials, or its employees or contractors to violate federal law, including, but not limited to, the Controlled Substances Act of 1970, as amended, nor shall such adoption, implementation, or enforcement be construed as acquiescence or conspiracy by the Town, its elected officials, or its employees or contractors to violate such federal law.

4-10-2: DEFINITIONS

The following words, terms and phrases, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise:

Colorado Medical Marijuana Code means Sections 12-43.3-101, et seq., of the Colorado Revised Statutes, as may be amended.

Colorado Medical Marijuana Program means that program defined by Section 25-1.5-106(2)(d), Colorado Revised Statutes, as may be amended.

Contiguous, in terms of determining the area devoted to the cultivating, producing, possessing or processing of medical marijuana and medical marijuana plants, means an uninterrupted expanse of space on the same floor or the level of the primary residence 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.

Lot means that real property around the primary residence and the buildings thereon that are commonly used for domestic and residential purposes.

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

Medical marijuana plants means 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 of the Colorado Constitution, the Colorado Medical Marijuana Code, the Colorado Medical Marijuana Program, and other applicable laws or regulations governing the cultivation, production, possession or processing of medical marijuana.

Medical use means that use described and defined in Article XVIII, Section 14 of the Colorado Constitution, the Colorado Medical Marijuana Code and the Colorado Medical Marijuana Program.

Patient means a person who meets the definition of patient under Article XVIII, Section 14(1)(d) of the Colorado Constitution and applicable law.

Physician means a doctor of medicine as defined in Article XVIII, Section 14(1)(e) of the Colorado Constitution and meeting all requirements of Section 25-1.5-106, Colorado Revised Statutes, as may be amended.

Primary caregiver means a person who meets the definition of primary caregiver under Article XVIII, Section 14(1)(f) of the Colorado Constitution and applicable law.

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 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 of and consumption 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.

4-10-3: GENERAL REQUIREMENTS

(A) It shall be unlawful for any person to cultivate, produce or process medical marijuana plants within the Town of Erie unless such person is lawfully registered as a patient with the State of Colorado, and with the Town of Erie as provided in this Chapter, or lawfully licensed as a primary caregiver with the State of Colorado, and has obtained a town business license as a primary caregiver as provided in this Chapter, and, provided that:

- (1) The cultivation, production, and processing occurs within the primary residence of the patient or the primary caregiver.
- (2) The cultivation, production and processing fully complies with all applicable provisions of Article XVIII, Section 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, the Colorado medical Marijuana Program, this Chapter, and all applicable requirements of the Town of Erie ordinances, resolutions, and regulations including, but not limited to, building and safety codes, and the Erie Unified Development Code, as may be amended.
- (3) Medical marijuana is not 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.
- (4) Medical marijuana is not cultivated, produced or processed within any common area(s) of a multi-family or single family attached residential property.
- (5) Medical marijuana is not cultivated, produced, or processed in the yard, lot, or other area or structure located outside of the primary residence, including but not limited to outdoor gardens, ancillary or accessory buildings, greenhouses, sheds, or storage units.
- (6) Medical marijuana is not produced or processed with the use of chemical(s) for the purpose of enhancing, concentrating or extracting tetrahydrocannabinol (THC) from medical marijuana or medical marijuana plants.
- (7) The area of a primary residence devoted to the cultivation, production or processing of medical marijuana plants, including the keeping, storage and maintenance of all materials, supplies, tools, equipment and paraphernalia associated with the cultivation, production and processing of medical marijuana plants, 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 structure other than a single family dwelling unit, a maximum contiguous one hundred (100) square foot area.
- (8) A primary caregiver may not charge a patient more than the cost of cultivation of the medical marijuana, but may charge for caregiver services.

4-10-4: PRIMARY CAREGIVER: BUSINESS LICENSE REQUIRED

- (A) No person acting in the capacity of primary caregiver, shall cultivate, produce, possess or process medical marijuana without first having obtained a business license therefore, as provided in this Section.

(B) Application for a business license as a primary caregiver shall be completed on forms provided by the Erie Town Clerk's office. The application for primary caregiver business license shall include the registration identification number and name of each patient of the primary caregiver. An application fee in the amount of \$75.00 shall accompany each application.

(C) Proof of ownership of the real property where the primary caregiver intends to cultivate, produce, possess or process medical marijuana shall be provided to the Town Clerk with the application for business license. In the event the primary caregiver is not the legal owner of the property, a written notarized statement from the legal owner acknowledging the intended use of the property to cultivate, produce, possess or process medical marijuana by the tenant/primary caregiver shall be included with the application for business license.

(D) Prior to issuance of any business license pursuant to this Section, the Town Clerk's office shall obtain written documentation from the Erie Building Department that the property where the primary caregiver will cultivate, produce, possess or process medical marijuana is fully compliant with all provisions of the this Chapter, provisions of the Erie Municipal Code, and all uniform codes adopted and enforced by the Erie Building Department. No business license shall be issued to a primary caregiver in the event the applicant is not fully compliant with Erie Municipal Code provisions, and the provisions of the uniform codes adopted and enforced by the Town of Erie.

(E) In addition to compliance with the Erie Municipal Code and uniform code provisions, the primary caregiver shall:

(1) conduct the cultivation, production, possession and processing of medical marijuana in a fully enclosed area of the residence, secured by adequate lock system, and consistent with the provisions of Section 4-10-3(A)(7);

(2) store all fertilizers and other chemicals in a separate and secure area;

(3) ensure sufficient ventilation, consistent with and compliant with uniform codes adopted and enforced by the Town;

(4) prohibit any person other than the primary caregiver access to the area where medical marijuana is cultivated, produced, possessed or processed;

(5) prohibit any person under the age of eighteen (18) years of age access to the area where medical marijuana is cultivated, produced, possessed or processed.

(F) A business license shall expire one year from the date of issuance. Application for a new business license shall be submitted to the Town Clerk's office, along with payment of the application fee, prior to expiration of the business license. A late fee of \$50.00 shall be assessed upon the filing of a late application.

(G) Failure to obtain a business license, as required herein, is deemed to be a criminal violation, and upon conviction, penalties set forth at Title 1, Chapter 4 of this Code shall apply.

4-10-5: PATIENT: REGISTRATION REQUIRED

(A) No patient, as defined in this Chapter, shall cultivate, produce, possess or process medical marijuana for his or her own use without first having registered with the Town.

(B) Application for a registration as a patient shall be completed on forms provided by the Erie Town Clerk's office. An application fee in the amount of \$50.00 shall accompany each application.

(C) Proof of ownership of the real property where the patient intends to cultivate, produce, possess or process medical marijuana shall be provided to the Town Clerk with the application for business license. In the event the patient is not the legal owner of the property, a written notarized statement from the legal owner acknowledging the intended use of the property to cultivate, produce, possess or process medical marijuana by the tenant/patient shall be included with the application for business license.

(D) Prior to issuance of any registration pursuant to this Section, the Town Clerk's office shall obtain written documentation from the Erie Building Department that the property where the patient will cultivate, produce, possess or process medical marijuana is fully compliant with all provisions of the this Chapter, provisions of the Erie Municipal Code, and all uniform codes adopted and enforced by the Erie Building Department. No registration shall be issued to a patient in the event the applicant is not fully compliant with Erie Municipal Code provisions, and the provisions of the uniform codes adopted and enforced by the Town of Erie.

(E) In addition to compliance with Erie Municipal Code and uniform code provisions, the patient shall:

(1) conduct the cultivation, production, possession and processing of medical marijuana in a fully enclosed area of the residence, secured by adequate lock system, and consistent with the provisions of Section 4-10-3(A)(7);

(2) store all fertilizers and other chemicals in a separate and secure area;

(3) ensure sufficient ventilation, consistent with and compliant with uniform codes adopted and enforced by the Town;

(4) prohibit any person other than the patient access to the area where medical marijuana is cultivated, produced, possessed or processed;

(5) prohibit any person under the age of eighteen (18) years of age access to the area where medical marijuana is cultivated, produced, possessed or processed.

(F) A registration shall expire one year from the date of issuance. Application for a new registration shall be submitted to the Town Clerk's office, along with payment of the application fee, prior to expiration of the business license. A late fee of \$25.00 shall be assessed upon the filing of a late application.

(G) Failure to register, as required herein, is deemed to be a criminal violation, and upon conviction, penalties set forth at Title 1, Chapter 4 of this Code will apply.

4-10-6: MAXIMUM NUMBER OF MEDICAL MARIJUANA PLANTS

(A) It shall be unlawful for any patient to cultivate, produce, possess or process, or permit to be cultivated, produced, possessed or processed more than six (6) medical marijuana plants, of which no more than three (3) plants may be mature.

(B) It shall be unlawful for any primary caregiver to cultivate, produce, possess or process, or permit to be cultivated, produced, possessed or processed more than twelve (12) medical marijuana plants, of which no more than six (6) plants may be mature. Where more than one patient and/or primary caregiver resides within a single dwelling unit, such persons may cultivate, produce, possess or process a maximum of twelve (12) medical marijuana plants, of which nor more than six (6) may be mature.

4-10-7: EXTERIOR IMPACTS UNLAWFUL

(A) It shall be unlawful for the cultivation, production, possession or processing of medical marijuana plants within a primary residence to be perceptible from the exterior of the primary residence 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 cultivation, production, possession or processing of medical marijuana plants; or

(3) Light pollution, glare, or brightness of artificial illumination associated with the cultivation, production, possession, or processing of medical marijuana plants.

4-10-8: SPECIAL PROVISIONS FOR PRIMARY CAREGIVERS

(A) A primary caregiver shall provide the registry identification card number of each of his or her patients to employees and contractors of the Town and to law enforcement agencies, upon inquiry in the course of their official duties while investigating compliance with the requirements of this Chapter.

(B) 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 Town as confidential. No person shall be permitted to gain access to such confidential documentation except for authorized employees and contractors of the Town in the course of their official duties and authorized employees of the state or local law enforcement agencies.

(C) A primary caregiver shall not delegate to any other person his or her authority to provide medical marijuana to a patient nor may a primary caregiver engage others to assist in the cultivation, production, processing or providing medical marijuana to a patient.

(D) Two or more primary caregivers shall not join together for the purpose of cultivating medical marijuana.

4-10-9: USE OF MEDICAL MARIJUANA

(A) A patient or primary caregiver shall not:

(1) Engage in the medical use of marijuana in a way that endangers the health and well-being of a person.

(2) Engage in the medical use of marijuana in plain view of or in a place open to the general public, including, but not limited to, any town park, open space or trail.

(3) Undertake any task while under the influence of medical marijuana, when doing so would constitute negligence or professional malpractice.

(4) Possess medical marijuana or otherwise engage in the use of medical marijuana in or on the grounds of a school or in a school bus. As used herein, "school" shall mean a public, parochial, or nonpublic school that provides a basic academic education in compliance with school attendance laws for students in grades one to twelve.

(5) Operate, navigate, or be in actual physical control of any vehicle, aircraft or motorboat while under the influence of medical marijuana.

4-10-10: PRIVATE COVENANTS NOT AFFECTED

This Chapter 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 primary residence for the cultivation, production, possession and processing of medical marijuana or medical marijuana plants. Nothing in this Chapter 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 Chapter. The Town shall not enforce private covenants except the extent specifically provide by law.

4-10-11: PENALTY; NUISANCE DECLARED

(A) It is unlawful for any person to violate any of the provisions of this Chapter. Any such violation is hereby designated a criminal violation, and any person found guilty (including a plea of guilt or *nolo contendere*) of violating any of the provisions of this Chapter shall, upon conviction, be punished pursuant to Title 1, Chapter 4 of this Code.

(B) Each day that a violation of any of the provisions of this Chapter continues to exist shall be deemed a separate and distinct violation.

(C) The conduct of any activity in violation of this Chapter is hereby declared to be a public nuisance, which may be abated pursuant to the applicable provisions of this Code.

(D) In addition to other remedies available to the Town, the Town may commence an action to enjoin the alleged violation of any provision of this Chapter, or to authorize and compel the removal, termination or abatement of such violation.

4-10-12: SEARCH WARRANT AUTHORIZED

(A) The Town declares that a violation of this Chapter involves a serious threat to public safety or order within the meaning of Rule 241(a)(I) of the Colorado Municipal Court Rules of Procedure.

(B) If the owner or occupant of the premises denies officials of the Town, including any law enforcement officer, permission to enter and inspect the residential structure, or any accessory building, including but not limited to any shed or detached garage, authorized law enforcement personnel may request the Erie Municipal Court to issue a search warrant for the inspection of the premises pursuant to the procedures and standards set forth in Rule 241(a)(I) of the Colorado Municipal Court Rules of Procedure.

(C) The Erie Municipal Court may issue a search warrant authorizing officials of the Town, including but not limited to any law enforcement officer, to inspect a residential structure for the cultivation, production, possession or processing of medical marijuana plants in accordance with Rule 241(a)(I) of the Colorado Municipal Court Rules of Procedure. Any search warrant issued pursuant to this Chapter shall fully comply with the applicable provisions of Rule 241(a)(I) of the Colorado Municipal Court Rules of Procedure.

(D) The Erie 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 and a violation of this Chapter for any owner or occupant to deny any official of the Town access to the property owner or occupied by such owner or occupant if the authorized person presents a warrant issued pursuant to this Chapter.

4-10-13: MOST STRINGENT LAW APPLIES

Nothing in this Chapter is intended to supersede or modify applicable provisions of state law concerning the same subject. To the extent this Chapter is interpreted to authorize an action or activity otherwise prohibited by state law, such authorization shall mean such action or activity is not prohibited by local law. To the extent that a provision of state law is or becomes more stringent than a provision of this Chapter, the most stringent requirement or construction shall govern or apply.

Section 2. Severance Clause. If an 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 Board of Trustees of the Town of Erie, Colorado hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts may be declared invalid or unconstitutional.

Section 3. Repeal. All other ordinances, or parts of any ordinances or other Code provisions in conflict herewith are hereby repealed.

Section 4. Reason for Emergency. Primary residences within the Town are currently being used for cultivation of medical marijuana, and the problems and unsafe conditions created by such unregulated cultivation are being suffered by Town residents and Town employees.

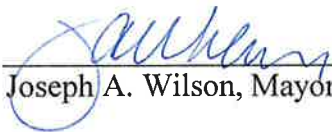
Section 5. Emergency Declared. For the reasons stated herein, the Board of Trustees for the Town of Erie, Colorado hereby declares an emergency to exist concerning the subject matter of this Ordinance and its immediate effect is necessary in order to preserve and protect the public property, peace, health, safety, and welfare of the Town and for the financial well being of the Town.

Section 6. Effective Date. The within emergency ordinance shall take effect upon final adoption.

INTRODUCED, PASSED, ADOPTED AND APPROVED AS AN EMERGENCY ORDINANCE, AND ORDERED PUBLISHED IN FULL BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE THIS 13TH DAY OF NOVEMBER, 2012.

PUBLISHED IN FULL ON THE 21st DAY OF November 2012.

TOWN OF ERIE, COLORADO, a Colorado municipal corporation

By: 
Joseph A. Wilson, Mayor

ATTEST:

By: 
Nancy J. Parker, Town Clerk