



Legislation Text

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*Department of Community Development*

Reference: Marijuana Home Grow Regulations

To: Mayor Richard N. McLean and Members of City Council

Through: Manuel Esquibel, City Manager

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Date Prepared: January 21, 2015

**PURPOSE**

To adopt a new article 9-38 titled Marijuana Cultivation within Residential Structures, and to amend certain sections of 9-28-20 and 9-28-80, of the *Brighton Municipal Code* (BMC) in order to establish regulations for the personal and medical cultivation of marijuana within residential structures as established by Article XVIII, Section 14 and Article XVII, Section 16 both of the Colorado Constitution.

**BACKGROUND**

In March of 2011, the City Council adopted Ordinance No. 2086, prohibiting the licensing and operation within the city of *Medical Marijuana Centers, Optional Premises Cultivation Operations and Medical Marijuana-Infused Products Manufacturers*. Similarly, in response to Amendment 64 to the Colorado Constitution, in July of 2013, the City Council adopted Ordinance No. 2156, prohibiting the licensing and operation within the City of *Retail Marijuana Stores, Marijuana Cultivation Facilities, Marijuana Product Manufacturing Facilities, and Marijuana Testing Facilities*. According to CML, 53 municipalities are allowing/licensing of these retail facilities and 181 are prohibiting or have moratoria in place.

Notwithstanding these prohibitions, both medical marijuana and marijuana for personal use will still be legally present in the city of Brighton. Thus, at the time the ordinances were adopted by the Council, staff indicated that it would be necessary to amend certain provisions of the Municipal Code to address public health, safety and welfare issues associated with the legalization of personal marijuana and medical marijuana use and the home grows related to such use.

In order to determine what additional regulation, if any, is needed to address the personal use of marijuana, it is important to first understand what regulations exist within the adopted regulations.

**Amendment 20:** Permits patients with written permission from a physician for the use of marijuana to obtain a license with the state for the growth and use of marijuana. Such licensed person may legally possess up to two ounces of marijuana and up to six (6) marijuana plants (max. 3 mature). There is also a provision within this amendment that states the patient or care-giver may grow additional plants if the patient's medical condition warrants them to do so (There may be legislation in 2015 addressing doctors that are writing referrals above the six plants, requiring caregivers to register to ensure people are not allocating plant counts to more than one caregiver.) Amendment 20 also addresses the sales of medical marijuana through the operation of Medical Marijuana Centers. However, Ordinance No. 2086 prohibits these centers from establishing within the city limits of Brighton.

**Amendment 64:** States that persons aged 21 or older may purchase and possess marijuana accessories and up to one ounce of marijuana, plus up to six marijuana plants (max. 3 mature). The Amendment also states that the plants must be grown in an enclosed, locked space, and the cultivation may not be conducted openly or publicly and may not be made available for sale. It also allows personal consumption of marijuana, but prohibits it from being conducted openly or publicly in a manner that endangers others.

While the amendments do adopt the basic rights for personal use of marijuana, certain provisions of the Amendments are not clearly defined, which has caused confusion in the interpretation of the regulations. As with most regulation, vagueness has also provided opportunities for personal use within the law that may pose significant health and safety concerns to the greater public. As a result, other municipalities have adopted their own regulations to clarify these interpretations. Several months ago, staff worked to research and contact over twenty Colorado communities to understand how they are interpreting and additionally regulating personal marijuana use. A full summary of the research results has been attached to this staff report for your review and reference while considering this matter.

In response to the research results and meeting internally with city departments, staff has drafted a code amendment to address how marijuana might be appropriately cultivated within residential structures. Below is a general summary of the proposed regulations. *(Please refer to the attached Ordinance to view the full text of the drafted code amendment.)*

1. The cultivation, processing, production or possession of marijuana may only occur within primary or accessory structures used for residential purposes, and must be done within a fully enclosed and locked space.
2. Cultivation must be done by the owner of the property and structure or with the written consent of the owner and any other common interest owner. The written consent document must remain in the same location as the cultivation area and be provided upon request by any city authority. Lastly, obtaining the consent shall be the sole responsibility of the person residing on the property and operating the marijuana cultivation.
3. The cultivation area shall not exceed:
  - a. 50 SF for a single family detached structure;
  - b. 35 SF for a multifamily/attached structure;
  - c. 50 SF for a detached accessory structure;
  - d. A max. of 100 SF total for single family detached properties (includes residence and accessory structure) or a max. of 75 SF total for multifamily/attached properties (includes residential unit and accessory structure)
  - e. All cultivation areas must have a minimum of twenty-four inches (24") of clearance between the ceiling and the cultivated materials
4. The cultivation area cannot be perceptible from the exterior of the residence or accessory structure.
5. Lighting fixtures shall be limited to LED, CLF or fluorescent lighting typical of residential properties. Lights typical of industrial uses such as metal-halide or high-pressure sodium lighting are prohibited.
6. The kitchen, bathroom or any occupied bedroom cannot be used for the purposes of cultivation.
7. Chemicals used for the storing or processing of marijuana cannot be stored within habitable areas of the residence or within view of any neighboring property or right-of-way.
8. Cultivation cannot adversely affect the health or safety of the residents, users or occupants of adjacent properties by creating dust, glare, heat, noise, noxious gases, odor, smoke, traffic, vibration or other impacts.
9. Marijuana cannot be grown, processed or possessed in the common areas of a multi-family or attached residential development. 'Common Area' is defined as areas within a building or within a residential development that are available for common use by all owners, tenants or occupants (e.g., clubhouse,

courtyard, parking area, storage area, etc.).

10. The operation of a home occupation permit which involves the presence of a minor in absence of their parent or guardian shall be prohibited from locating on any property with a marijuana cultivation area.
11. The process of extracting marijuana concentrate shall be prohibited for all residential properties.
12. Violations of these regulations is considered a criminal offense and punishable by fine or imprisonment pursuant to Article 1-24, BMC.

In addition to the proposed amendment, there are additional options which staff has not included in the draft ordinance, but which the Council may wish to consider. Below is a brief list of the major issues as well as staff's reasoning for excluding them from the draft ordinance:

- 1) All home grow operations shall require a permit by the city, in order to confirm that the regulations within the Code are being met, and in order to require additional improvements such as ventilation systems, mold and fire resistant building materials, electrical loading, etc.
  - a. With over 12,000 residential units within City limits, the requirement to permit every personal and medical marijuana use could create significant burden on staff resources, and additional staff would be requested in order to address these needs. Instead, staff found that by limiting the location and size of the cultivation area, the significant safety and health impacts could be reduced and negate the need for inspections and building improvements.
  - b. Additionally, at the study session held on October 28, 2014, one of the council members noted that staff should draft reasonable regulations that did not overly restrict or invade on the privacy of people's homes or require permits.
- 2) Increase or decrease the cultivation area permitted within the residential units.
  - a. A significant discussion was held with staff to determine the appropriate cultivation areas for residential units. Staff found that health and safety concerns typically correspond with the size of the cultivation area. Limiting the cultivation area to 50 SF helps to keep the moisture levels, light needs, and processing materials at a level that is believed to be safely appropriate for buildings intended for residential uses. For adults that need additional grow area, staff has proposed to also allow 50 SF of cultivation area in an accessory structure on the same property. This option helps to divide the cultivation impacts into two structures and reduce the health and safety impacts typical of larger grow areas. The area within multifamily and attached units was reduced in comparison to single family detached units, because these residences are typically smaller in size, have fewer rooms for cultivation areas, have fewer occupants, and are more likely to create a nuisance with adjacent property owners by sharing walls, ventilation systems and other utilities.
- 3) Permit certain, safe, methods of marijuana concentrate production.
  - a. With additional research, staff does not feel confident that certain purported "safer" methods of creating marijuana concentrate are appropriate within residential structures. Considering the severe danger these methods pose to the user and surrounding residents, staff felt it would be appropriate to ban the action from residential properties at this time. The Colorado Attorney General has issued an opinion that the production of marijuana concentrate ("hash oil") was not contemplated by Amendment 64 and is, therefore, not permissible. It appears that efforts will be made to address this issue in the 2015 Legislative Session. Staff will continue to monitor the State's progress on researching and regulating this issue, and notify Council if methods are proven and determined to be safe for residents in our community. Overall, the regulations before the Council have been drafted to ensure that the home cultivation of marijuana

does not impede on the primary residential use, and does not create negative health and safety impacts to the owner, resident, surrounding residents, and community as a whole. At the same time, the regulations support the basic right established in the Colorado Constitution for the personal and medicinal use of marijuana without creating a system that is overly burdensome or invasive to the resident.

#### **PUBLIC COMMENT**

While not required by the BMC, staff submitted a public notice of the City Council meeting to consider the proposed Ordinance in order to continue to be a more transparent local government. Because this will not be a public hearing, whether the Council wants to receive public comment will be at the option of the Mayor and Council. The notice was published in the *Brighton Blade* on January 21, 2015. However, no public comment has been received as of this day, January 27, 2015.

#### **STAFF RECOMMENDATION**

Staff is recommending approval of the proposed code amendments with input/revisions from the City Council.

#### **OPTIONS FOR COUNCIL CONSIDERATION**

- Approve the Ordinance as drafted at first reading, or
- Approve the Ordinance with specific changes at first reading, or
- Deny the Ordinance as drafted.

#### **ATTACHMENTS**

- Ordinance (Draft)
- Surrounding Community Regulations
- Ordinance No. 2086
- Ordinance No. 2156