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El Paso County, CO



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RESOLUTION NO. 15- 427

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO**

RESOLUTION TO REGULATE PERSONAL CULTIVATION OF MARIJUANA BY AMENDING SECTIONS 5.2.30 HOME OCCUPATIONS AND 5.2.42 RESIDENTIAL ACCESSORY STRUCTURES AND USES OF, AND ADDING SECTION 5.2.32 AND TWO DEFINITIONS TO, THE EL PASO COUNTY LAND DEVELOPMENT CODE (LDC-15-001)

WHEREAS, pursuant to C.R.S. §§30-11-101(1)(e), 30-11-103, and 30-11-107(1)(e), the Board of County Commissioners of El Paso County, Colorado (hereinafter "Board"), has the legislative authority to manage the business and concerns of the County and to exercise such other and further powers as are conferred by law when deemed by the Board to be in the best interests of the County and its inhabitants, and is further authorized by, *inter alia*, C.R.S. §§30-28-101, *et seq.*, C.R.S. §§30-28-201, *et seq.*, and C.R.S. §§29-20-101, *et seq.*, to adopt regulations for the protection of the public health, safety, and welfare of the inhabitants of El Paso County; and

WHEREAS, the El Paso County Development Services Department did file a request for approval of Amendments to Section 5.2.30 Home Occupations and 5.2.42 Residential Accessory Structures and Uses of, and the Addition of Section 5.2.32 and two definitions to, the El Paso County Land Development Code as herein described (LDC-15-001); as well as conforming amendments throughout the Code to regulate the Personal Cultivation of Marijuana; and

WHEREAS, a public hearing was held by the El Paso County Planning Commission on October 20, 2015 upon which date the Planning Commission did by formal resolution recommend approval of the subject amendments; and

WHEREAS, a public hearing was held by this Board on October 27, 2015; and

WHEREAS, based on the evidence, testimony, exhibits, recommendations of the El Paso County Planning Commission, comments of the El Paso County Development Services Department, comments of public officials and agencies, and comments from all interested parties, this Board finds as follows:

1. That proper publication and public notice were provided as required by law for the hearings before the Planning Commission and the Board of County Commissioners of El Paso County, Colorado.
2. That the hearings before the Planning Commission and the Board were extensive and complete, that all pertinent facts, matters and issues were submitted and that all interested parties were heard at those hearings.
3. That all data, surveys, analyses, and studies, as are required by the State of Colorado and El Paso County have been submitted, reviewed, and found to meet the intent of the General Provisions of the El Paso County Land Development Code.
4. That the proposal shall hereby amend the Land Development Code for El Paso County.

5. That the current zoning regulations are inadequate to address the unique impacts of the personal cultivation of marijuana conducted pursuant to and in compliance with Article XVIII, Section 14 and 16 of the Colorado Constitution.
6. That for the above-stated and other reasons, the proposed Amendments are in the best interest of the health, safety, morals, convenience, order, prosperity and welfare of the citizens of El Paso County.

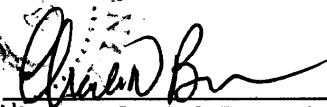
NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of El Paso County, Colorado, hereby Amends the El Paso County Land Development Code as more particularly described in Exhibit A, which is attached hereto and incorporated by reference, and approves any necessary conforming amendments through the Code;

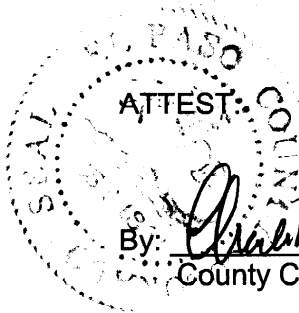
BE IT FURTHER RESOLVED that, in the case of any inconsistency with these amendments and any previous Zoning Regulations, these revisions shall prevail;

AND BE IT FURTHER RESOLVED that the record and recommendations of the El Paso County Planning Commission be adopted.

DONE THIS 27th day of October, 2015 at Colorado Springs, Colorado.

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

ATTEST:
By: 
County Clerk & Recorder



By: 
Amy Lathen, Chair



New Definitions

Marijuana, Personal Cultivation of

The growing or processing of marijuana plants, including the extraction of THC or other cannabinoids, as a patient or caregiver pursuant to Article XVIII, Section 14 of the Colorado Constitution or for personal use pursuant to Article XVIII, Section 16 of the Colorado Constitution.

Marijuana Cultivation Facilities, Marijuana Product Manufacturing Facilities, Marijuana Testing Facilities, Retail Marijuana Stores

These uses, as defined in Article XVIII, Section 16 of the Colorado Constitution, are prohibited in unincorporated El Paso County in accordance with Ordinance 13-01.

Revision to Current Code Language

5.2.30 Home Occupations

There are two categories of home occupations: residential home occupation and rural home occupation. Separate standards and criteria apply to each category. This Section is not meant to regulate a small home lawn mowing service, lemonade stand, magazine sales, cookie sales, or other traditional small-scale businesses or business-like activities operated by a child residing in the dwelling, which are considered exempt from the provisions of this Code; however in no instance may a medical marijuana land use or personal cultivation of marijuana qualify as a home occupation. A site plan and/or home occupation permit may be necessary to verify compliance with the home occupation standards.

5.2.42 Residential Accessory Structures and Uses

The following structures and uses are considered accessory to a residential use, as further detailed in Table 5-2:

- Detached private parking garage or carport;
- Storage shed;
- Gazebo;
- Deck (attached or detached, covered or uncovered);
- Pets;
- Barn;
- Swimming pool, hot tub, tennis court or similar private recreational facility;
- Private greenhouse;
- Personal cultivation of marijuana
- Fence, wall and hedge;
- Antennas, radio facilities, and satellite dishes, subject to the requirements of this Code;
- Solar energy systems and wind-powered generator; and

Airplane hanger for personal use on property 2.5 acres or greater, where the property owner can demonstrate authority to utilize an adjacent or nearby airport or private airport

Accessory uses shall meet the general accessory structure and use standards, any applicable specific accessory use standards, and the general development standards in Chapter 6.

New Code Section

5.2.32 Marijuana, Personal Cultivation of

(A) Accessory to a Residential Use

Personal cultivation of marijuana shall only be an accessory use to a dwelling unit, and may only occur in those zone districts where a residential use is allowed.

(B) Located in Primary Residence

Personal cultivation of marijuana may only occur in the primary residence of the patient, caregiver or person over 21 years old, or in an accessory structure on the same property.

(C) Location within Primary Residence

All personal cultivation of marijuana must occur in a separate, enclosed, locked space, not to exceed 150 square feet for a single-family dwelling or 100 square feet for all other dwelling units, within the dwelling unit or accessory structure,

(D) Plant Limits

No more than 12 marijuana plants, with ½ or fewer being mature, flowering plants can be grown in a single dwelling unit, regardless of the number of patients, caregivers or persons over 21-years old, or any combination thereof, that reside in the dwelling unit.

(E) Extraction

No compressed, flammable gas or volatile solvent may be used in the extraction of THC or other cannabinoids. For purposes of this paragraph, "volatile solvent" means a liquid that is capable of dissolving other material and vaporizes at room temperature.

(F) Cannot be Considered a Home Occupation

In no instance may personal cultivation of marijuana qualify as a home occupation.

(G) Cannot be Perceptible

The odor of marijuana shall not be detectible by a person with a typical sense of smell from any adjoining lot, parcel, tract, public right-of-way, or building unit. Personal cultivation of marijuana shall not be perceptible from the exterior of the dwelling unit or accessory structure visually or as a result of undue parking or vehicular or foot traffic.

(H) Enforcement

The El Paso County Sheriff's Office is specifically authorized to enforce the provisions of this section upon coordination with the DSD Director or his/her designee. The requirement for a show cause hearing found in Section 11.3.2 of this Code shall not apply to the enforcement of standards related to personal cultivation of marijuana.