

ORDINANCE OF THE  
BOARD OF COUNTY COMMISSIONERS  
OF THE  
COUNTY OF DELTA, STATE OF COLORADO

**ORDINANCE NO. 2018-01**

**AN ORDINANCE LIMITING THE CULTIVATION, GROWTH, OR PRODUCTION OF MARIJUANA PLANTS TO RESIDENTIAL PROPERTY WITHIN UNINCORPORATED DELTA COUNTY AND TO LIMIT TO TWELVE THE NUMBER OF MARIJUANA PLANTS PER RESIDENTIAL PROPERTY REGARDLESS OF THE NUMBER OF PERSONS RESIDING AT THE PROPERTY**

**WHEREAS**, the Board of County Commissioners (BoCC) of Delta County, Colorado is a legal and political subdivision of the State of Colorado for which the BoCC may act; and

**WHEREAS**, the Board of County Commissioners is vested with authority under §§ 30-11-101(2) and 30-15-401(1), Colorado Revised Statutes (C.R.S.) to adopt ordinances for the control or licensing of purely local concern, and to do all acts and make all regulations which may be necessary or expedient for the promotion of the health, safety and welfare of the present and future residents of Delta County, Colorado; and

**WHEREAS**, In November 2000, Colorado voters approved Amendment 20, which was subsequently codified as Section 14 of Article XVIII of the Colorado Constitution (“Amendment 20”); and

**WHEREAS**, Amendment 20 created a limited exception and affirmative defense to state criminal liability under Colorado law for the specific possession and use of medical marijuana by persons in Colorado suffering specific debilitating medical conditions who have been placed on a statewide registry by their authorized primary caregivers; and

**WHEREAS**, Amendment 20 generally allows patients to possess and cultivate up to six (6) marijuana plants and further allows a primary caregiver to possess and cultivate marijuana plants for up to five (5) patients (with six (6) plants per patient) ; and

**WHEREAS**, on November 6, 2012, the voters of the State of Colorado approved Amendment 64 which added Section 16 of Article XVIII to the Colorado Constitution (“Amendment 64”) and created a limited exception from criminal liability under Colorado law for persons twenty-one years of age and older acting in conformance thereof for the possession and use of small amounts of marijuana and marijuana plants; and

**WHEREAS**, Amendment 64 allows limited cultivation activities associated with persons twenty-one years of age and older to no more than six plants per person; and

**WHEREAS**, on February 4, 2013, the BoCC adopted Ordinance No. 2013-01 prohibiting the operation of marijuana cultivation facilities, retail marijuana product manufacturing facilities, and sales and testing facilities of retail marijuana and marijuana products in the unincorporated territory of Delta County; and,

**WHEREAS**, to provide clarification as to the number of marijuana plants a person is authorized to cultivate, grow or produce, the Colorado General Assembly enacted House Bill 17-1220 which was signed into law on June 8, 2017, to take effect on January 1, 2018, which places a maximum cap of 12 marijuana plants that can be cultivated, grown or produced on or in a residential property regardless of whether the plants are for medical or recreational use, or to knowingly allow more than 12 marijuana plants to be cultivated, grown, or produced on or in a residential property, unless a county, municipality, or city and county law expressly permits the cultivation, growth, or production of more than 12 marijuana plants on or in a residential property and the person is cultivating, growing, or producing the plants in an enclosed and locked space and within the limit set by the county, municipality, or city and county where the plants are located; and

**WHEREAS**, as found by the Colorado General Assembly and recited in House Bill 17-1220, the BoCC finds that the large-scale cultivation of marijuana plants on or in residential structures may produce a variety of harmful effects upon the integrity of residents 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 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; in addition to the 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 marijuana plants and derivatives thereof ; and

**WHEREAS**, pursuant to the recited authority herein, the BoCC desires to implement H.B. 17-1220 limitations of 12 marijuana plants that can be cultivated, grown or produced on or in a residential property regardless of whether the plants are for medical or recreational use, or to knowingly allow more than 12 marijuana plants to be cultivated, grown, or produced on or in a residential property.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Delta County:

**Section 1**      **Purpose:**

- 1.1 This ordinance protects the public health, safety and welfare of the citizens and residents of Delta County, Colorado by limiting the number of marijuana plants to 12 that may be cultivated, grown or produced on residential property throughout unincorporated Delta County, Colorado, regardless of whether the plants are for medical or recreational use.
- 1.2 This ordinance protects the public health, safety and welfare of the citizens and residents of Delta County, Colorado by restricting the cultivation, growth, or production of marijuana plants throughout unincorporated Delta County, Colorado to residential property.

**Section 2**      **Authority/Effect:**

- 2.1 This Ordinance is authorized, *inter alia*, under HB17-1220, effective January 1, 2018 amending and adding to §§18-18-406(3) and 25-1.5-106, C.R.S.

**Section 3**      **Applicability:**

- 3.1 This Ordinance shall apply throughout the unincorporated area of Delta County, Colorado. This Ordinance shall in no way limit application and enforcement of any statutes of the State of Colorado.
- 3.2 If any section, subsection, sentence, clause or phrase of this Ordinance is held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of County Commissioners declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of whether sections, subsections, sentencing, clauses and phrases are declared unconstitutional or invalid.

**Section 4**      **Definitions:**

- 4.1 Board or BoCC - Means the Board of County Commissioners of Delta County, Colorado.
- 4.2 Enclosed - Means a permanent or semi-permanent area covered and surrounded on all sides. Temporary opening of windows or doors or the temporary removal of wall or ceiling panels does not convert the area into an unenclosed space.
- 4.3 Flowering - Means the reproductive state of the cannabis plant in which there are physical signs of flower budding out of the nodes in the stem.
- 4.4 Locked space - Means secured at all points of ingress or egress with a locking mechanism designed to limit access such as with a key or combination lock.

- 4.5 Marijuana - Means all parts of the plant cannabis sativa L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin. It does not include fiber produced from the stalks, oil, or cake made from the seeds of the plant, or sterilized seed of the plant which is incapable of germination if these items exist apart from any other item defined as "marijuana". Marijuana does not include "marijuana concentrate" as defined by statute.
- 4.6 Plant - Means any cannabis plant in a cultivating medium which plant is more than four inches wide or four inches high or a flowering cannabis plant regardless of the plant's size.
- 4.7 Residential Property - Means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation. Residential property also includes the real property surrounding a structure, owned in common with the structure, that includes one or more single units providing complete independent living facilities.

**Section 5**      **Unlawful Acts:**

- 5.1 Regardless of whether the plants are for medical or recreational use, Delta County hereby expressly forbids and prohibits cultivation, growth, or production of any marijuana plants on or in all property other than residential property.
- 5.2 Regardless of whether the plants are for medical or recreational use, Delta County hereby expressly limits the cultivation, growth, or production of more than twelve marijuana plants on or in a residential property.
- 5.3 Delta County hereby declares that it is unlawful for a patient or primary caregiver to possess at or cultivate on a residential property more than twelve marijuana plants regardless of the number of persons residing, either temporarily or permanently, at the property.

**Section 6**      **Enforcement**

- 6.1 Any sheriff, undersheriff, or deputy sheriff of the Delta County Sheriff's Office is authorized to enforce the provisions of this Ordinance.
- 6.2 Enforcement of this Ordinance shall be through any applicable Colorado Revised Statute.

**Section 7**      **Safety Clause:**

7.1 The Board finds, determines and declares this Ordinance is necessary for the health, safety and welfare of the citizens of Delta County, Colorado for the reasons cited herein and if adopted shall take effect on the date of adoption by the Board of County Commissioners, Delta County.

**Section 8: Publication and Effective Date:**

8.1 The foregoing text is the authentic text of Delta County Ordinance No. 2018-01. The first reading of the Ordinance took place on January 2, 2018, at a regular Board of County Commissioners Meeting. The Ordinance was published in full in the Delta County Independent on January 10, 2018. It was considered for adoption on a second reading at a regular Board of County Commissioners' Meeting on February 5, 2018, and shall take effect on February 10, 2018.

ADOPTED this 5th day of February, 2018, at Delta, Colorado.

ATTEST:



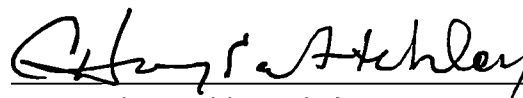
Teri A. Stephenson  
Delta County Clerk and Recorder

[SEAL]

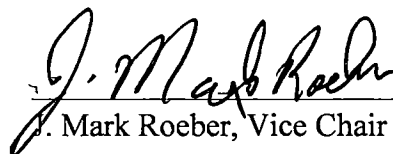


BOARD OF COUNTY COMMISSIONERS  
OF DELTA COUNTY, COLORADO

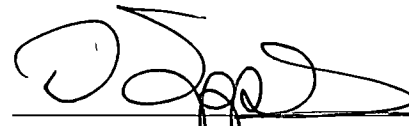
By:



C. Douglas Atchley, Chair



J. Mark Roeber, Vice Chair



Don Suppes, Commissioner