

**LARIMER COUNTY RESOLUTION
FOR PERSONAL CULTIVATION OF MEDICAL AND RECREATIONAL MARIJUANA**

I. Title

This Resolution shall be known and may be cited as the “Larimer County Resolution for Personal Cultivation of Medical and Recreational Marijuana.”

II. Authority

This Resolution is authorized by:

Colorado Constitution Article XVIII, Section 14, commonly referred to as Amendment 20.

Colorado Constitution Article XVIII, Section 16, commonly referred to as “Amendment 64.”

Colorado Revised Statutes §12-43.3-101, *et seq.*; §12-43.4-101 *et seq.*; §25-1.5-106; §29-20-104(1)(h); §§30-28-111(1) and 112; and §30-28-115(1).

Colorado Code of Regulations 1CCR 212-1 and 1 CCR 212-2.

III. Intent and Purpose

A. The intent and purpose of this Resolution is to regulate and control the cultivation of marijuana for personal recreational use, for personal medical use and for primary caregiver use in unincorporated Larimer County in order to minimize the market for unlawful marijuana and promote the efficient use of law enforcement resources.

B. Amendments 20 and 64 authorize persons to grow limited amounts of marijuana for their personal recreational and medical use and for use by caregivers.

C. Neither Amendment 20 nor amendment 64 allow local government to prohibit non-commercial unlicensed personal grow operations by individuals.

D. State regulations pertaining to Commercial Marijuana Operations are generally not directed toward non-commercial unlicensed personal grow operations by individuals.

E. This has resulted in a proliferation of non-licensed and unregulated marijuana grow operations that present significant health and public safety concerns.

F. A board of county commissioners is authorized pursuant to Section 25-1.5-106(13.5) C.R.S. to regulate the growing of marijuana, commercially or otherwise.

G. This Resolution shall be deemed an exercise of the police powers of Larimer County as a political subdivision of the State for the protection of the economic and social welfare and the health, peace and morals of the people of Larimer County.

H. This Resolution does not unreasonably impair or impede the exercise of rights afforded citizens under Amendments 20 and 64.

IV. Applicability

This Resolution applies in unincorporated Larimer County, including all Growth Management Areas and the Estes Valley.

V. Definitions

The definitions contained in Amendments 64 and 20, the Colorado Medical Marijuana Code (C.R.S. 12-43.3-101 et.seq.), the Colorado Medical Marijuana Program (C.R.S. 25-1.50106 (13.5)), and any regulations promulgated by the Colorado Department of Public Health and Environment and the Colorado Department of Revenue, as amended from time to time, are incorporated into this Resolution by reference, including but not limited to, definitions of Marijuana, Medical Marijuana, Patient, Primary Caregiver, and Retail (recreational) Marijuana. All other applicable definitions are as stated herein.

A. Accessory Use – A use incidental to and subordinate to a primary residence.

B. Person - A natural person, partnership, association, company, corporation, limited liability company, or organization; except that “Person” does not include any governmental organization.

C. Primary Residence – A residence where 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 use of the residential address for domestic purposes, such as, but not limited to, slumber, preparation and partaking of meals, regular mail delivery, vehicle registration, or credit, water and utility billing. A person shall have only one primary residence.

D. Primary Use – The main use of a structure or land, as distinguished from an accessory use.

VI. Cultivation

A. Marijuana for personal medical use or for personal recreational use may only be cultivated as an accessory use at the primary residence of the person cultivating the marijuana and only for such person’s own use.

B. Marijuana for medical use by a primary caregiver on behalf of the caregiver’s patient(s) may only be cultivated as an accessory use at the primary residence of the primary caregiver. Only one primary caregiver may be allowed to cultivate marijuana for the caregiver’s patient(s) on any given parcel of land.

D. Marijuana cultivated pursuant to this Resolution shall not be visible to the naked eye at or beyond the boundary of the property on which the marijuana is cultivated.

E. Marijuana cultivated pursuant to this Resolution shall not result in odors detectable by a person with a normal sense of smell at or beyond the boundary of the property on which the marijuana is cultivated.

VII. Administration

A. This Resolution shall be implemented and administered by the Larimer County Retail Marijuana Administrator (“Administrator”) and/or his/her designee(s).

B. The Board shall appoint an officer or employee of Larimer County to serve as the Administrator.

VIII. Waiver

A. A person who asserts he/she is unable to cultivate marijuana on his/her primary residence may request a waiver of such requirement by the Board of County Commissioners.

B. A request for a waiver shall be submitted to the Administrator in writing and shall state the reasons why the requirement to cultivate marijuana at the person's primary residence is not possible, the alternate location where the person seeks to cultivate the marijuana, and the impact on and compatibility with the adjoining properties.

C. Upon the Administrator's receipt of a written waiver request, the Administrator shall schedule a public hearing before the Board of County Commissioners. Such hearing shall be scheduled for a date not in excess of sixty (60) days from the date on which the waiver request is received by the Administrator.

D. Notice of the public hearing shall be advertised in a local newspaper of general circulation at least fourteen days prior to the date of the hearing. Written notice shall also be mailed to property owners within a radius of five-hundred (500) feet measured from the boundary of the parcel of the alternate residence.

E. In determining whether to grant or deny the waiver request, the Board shall consider the following criteria as applicable:

1. The location and nature of the primary residence of the person requesting the waiver.

2. The reasons why the person requesting the waiver cannot cultivate the marijuana at such person's primary residence.

3. The location and nature of the alternative residence.

4. The number of marijuana plants the person requesting the waiver intends to cultivate.

5. The number of persons who cultivate or would be able to cultivate marijuana at the alternative residence .

6. The impacts of cultivating marijuana at the alternative residence and on adjacent and surrounding properties.

7. Whether allowing the person requesting the waiver to cultivate marijuana at the alternative residence will be compatible with adjacent and/or surrounding properties.

8. Whether requiring the person requesting the waiver to cultivate marijuana at the person's primary residence would be unreasonably impracticable.

9. Whether requiring the person requesting the waiver to cultivate marijuana at the person's primary residence would be counterproductive or would minimally promote the intent and purpose of this Resolution.

F. At the conclusion of the hearing, the Board of County Commissioners may grant the waiver, grant the waiver with conditions or deny the waiver.

G. The Board of County Commissioners' decision will be issued in writing in the form of a Findings and Resolution.

H. The Board of County Commissioners' written Findings and Resolution will be effective on the date on which the Findings and Resolution is signed.

IX. Compliance with Other Regulations

Nothing in this Resolution is intended to waive a person's requirement to comply with other applicable federal, state or local regulations, including but not limited to the Colorado Retail Marijuana Code and implementing regulations, building codes, fire codes, sign codes, health laws and regulations, and County noise ordinance.

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X. Inspections of Premises

A. The Administrator and/or his/her designee(s) is authorized to enter or inspect the property where a person or persons is cultivating marijuana pursuant to this Resolution to ensure compliance with this Resolution. These inspections will be carried out during normal business hours except in emergency situations described in subsection X(E) below.

B. Entry onto the property for inspection will be made only after contact with the person cultivating the marijuana, whose permission for the inspection must be obtained.

C. If the person cultivating the marijuana cannot be located or permission to enter cannot be obtained, the Administrator may seek an administrative search warrant or court order allowing entry by submitting a sworn affidavit to the county or district court detailing facts to support a reasonable belief that a violation exists or is likely to exist and that further investigation of the premises is warranted.

D. Any subsequent entry and inspection must be conducted in accordance with the administrative search warrant or order issued by the court. Inspections may be conducted from public property or right-of-way, or from adjacent private property without the permission of the person cultivating the marijuana.

E. Notwithstanding the provisions of subsections X(A-D) above, permission to enter or a court order is not required in emergency situations in which the Administrator has reason to believe public health or safety is in imminent danger and could be jeopardized by any delay in obtaining permission to enter or a court order.

XI. Violation

A. It is a violation of this Resolution for any Person:

1. To cultivate marijuana for personal recreational use, for personal medical use or for use by a primary caregiver on behalf of the caregiver's patients other than as an use accessory to a person's primary residence, or

2. To fail to comply with any of the terms, conditions or provisions of this Resolution, or

3. To fail to comply with any terms, conditions or provisions of any waiver of this Resolution.

XII. Enforcement

A. Civil Penalties

1. The Board may impose a civil penalty against any person who violates this Resolution, or any terms, conditions or provisions of a License ("Violator"), in the amounts specified below:

\$100 to \$1,000 for the first violation.

\$1,000 to \$2,000 for the second violation within 30 days of the first violation.

\$2,000 to \$5,000 for each successive violation within 30 days of the prior violation.

2. No civil penalty shall be imposed by the Board until the alleged Violator has been given written notice and an opportunity to be heard.

3. Notice shall be given to the alleged Violator and shall state the objective facts or conduct that may warrant a Civil Penalty and the date, time and place of the hearing. Notice may be hand delivered to the Violator or mailed first class to the address of the Violator's primary residence or to the last address furnished by the alleged Violator or available. Notice shall be given no less than 10 days in advance of the hearing.

4. The Board is authorized to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of any hearing that the Board is authorized to conduct.

5. At the hearing, the Board shall consider all relevant information presented by the alleged Violator and others, including testimony and documents.

6. The Board may consider mitigating and aggravating factors when considering the imposition of a civil penalty, including but not limited to:

- a. Prior violations.
- b. Effectiveness of prior enforcement measures.
- c. Willfulness and deliberateness of the violation.
- d. Likelihood of reoccurrence of the violation.

7. The Board may announce its decision at the conclusion of the hearing. The Board's final, official decision shall be in writing and shall set out its findings and conclusions. The Board's decision may be hand delivered to the Violator or mailed first class to the Violator in accordance with Subsection XII(A)(3) above.

8. Payment of any civil penalty pursuant to the provisions of this subsection XII(A) shall be in the form of cash or certified check or cashier's check made payable to Larimer County.

9. The Board shall cause such moneys to be paid into the general fund of Larimer County.

B. Civil Remedies

1. The Board may initiate injunction or abatement proceedings or any other appropriate legal action in district court or other court having jurisdiction against any Person or Licensee who fails to comply with any provision of this Resolution or any requirement or condition imposed under this Resolution.

2. The Board may seek a court order in the nature of mandamus, abatement, injunction or other action to abate or remove a violation or otherwise restore the premises to the condition that existed prior to the violation.

C. Remedies Cumulative

All penalties and remedies for violation of this Resolution are cumulative.

XIII. Amendments

A. The Board may amend this Resolution after notice and hearing by the Board of County Commissioners.

B. The Board of County Commissioners may make non-substantive amendments (e.g. typographical errors, language clarifications, etc.) administratively at any open meeting.

XIV. Severability

The provisions of this Resolution are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Resolution or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Resolution.

XV. Effective Date

This Resolution shall be effective on July 17, 2017.

Adopted this ____ day of _____, 2017.

BOARD OF COUNTY COMMISSIONERS OF
LARIMER COUNTY, COLORADO

By: _____
Chair

ATTEST:

Deputy Clerk to the Board