

ORDINANCE NO. 2**Series 2013**

January 2, 2013: Introduced as Council Bill 1, Series 2013 by Councilor Alex Brown, seconded by Councilor Katy Brown and considered in full text on first reading. Passed by a vote of 5 yes and 0 no.

January 15, 2013: Considered in full text on second reading. Passed by a vote of 6 yes and 0 no.

**A BILL FOR AN ORDINANCE
OF THE CITY OF CHERRY HILLS VILLAGE
AMENDING CHAPTER 10 OF THE CHERRY HILLS VILLAGE
MUNICIPAL CODE CONCERNING GENERAL OFFENSES,
BY THE ADDITION OF A NEW ARTICLE XII TO PROHIBIT THE OPERATION OF
MARIJUANA CULTIVATION FACILITIES AND SALES, MARIJUANA PRODUCT
MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES AND RETAIL
MARIJUANA STORES IN THE CITY OF CHERRY HILLS VILLAGE**

WHEREAS, on November 6, 2012, the voters of Colorado approved the adoption of Amendment 64, Personal Use and Regulation of Marijuana; and

WHEREAS, Amendment 64 became effective upon official declaration of the vote hereon by proclamation of the Governor, pursuant to Section 1(4) of Article V, of the Colorado Constitution on December 10, 2012; and

WHEREAS, Amendment 64 adds a new Section 16 to Article XVIII of the Colorado Constitution; and

WHEREAS, Amendment 64 allows the possession, use, display, purchase and transportation of one ounce or less of marijuana and marijuana accessories; and

WHEREAS, Amendment 64 allows possessing, growing, processing, or transporting no more than six marijuana plants, with three or fewer being mature, flowering plants, and possession of the marijuana produced by the plants on the premises where the plants are grown, provided that the growing takes place in an enclosed, locked space, is not conducted openly or publicly, and the marijuana is not made available for sale; and

WHEREAS, Amendment 64 defines a "Locality" in part in section 2(e) of Section 16 to include a municipality; and

WHEREAS, part 5(f) of Section 16 provides, in pertinent part, the following:

(f) "... A locality may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance or an initiated or referred measure," and;

WHEREAS, at the November 6, 2012 election 59.36% of Cherry Hills Village voters rejected the proposed adoption of Amendment 64; and

WHEREAS, consistent with the authority granted to the Village in Amendment 64 and the will of the voters of Cherry Hills Village, the City Council desires to adopt this ordinance prohibiting the operation of marijuana cultivation facilities and sales, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores within the City of Cherry Hills Village, Colorado.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:

Section 1. Chapter 10 of the Cherry Hills Village Municipal Code is hereby amended by the addition of the new Article XII:

Article XII. Marijuana Cultivation Facilities, Marijuana Product Manufacturing Facilities and Sales, Marijuana Testing Facilities, and Retail Marijuana Stores.

Sec. 10-12-10. Intent, Authority and Applicability.

(1) Intent. The intent of this ordinance is to promote the general public welfare and safety throughout Cherry Hills Village, Colorado by prohibiting the operation of marijuana cultivation facilities and sales, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores.

a. Based upon Article XVIII, § 16 of the Colorado Constitution, Personal Use and Regulation of Marijuana, and the potential secondary effects of marijuana cultivation facilities and sales, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores, such land uses have an adverse effect on the health, safety and welfare of the Village and its inhabitants.

b. As a matter of the Village's local land use and zoning authority, and consistent with the authorization provided by Article XVIII, § 16 of the Colorado Constitution, no appropriate location exists within the Village for the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores.

(2) Authority. The Village's authority to adopt this Section is found in: Article XVIII, § 16 of the Colorado Constitution; the Local Government Land Use Control Enabling Act, C.R.S. § 29-20-101, et seq.; C.R.S. § 31-23-101, et seq. (municipal zoning powers); C.R.S. §§ 31-15-103, 31-15-401. (municipal police powers); and C.R.S. § 31-15-501 (municipal authority to regulate businesses); and the Cherry Hills Village Home Rule Charter.

(3) Applicability. The prohibition of the operation of marijuana cultivation facilities and sales, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores as set forth in this Article shall apply to all property within the Village.

Sec. 10-12-20. Definitions. Unless otherwise specified or the context otherwise requires, any terms used herein shall have the same meanings as provided in Article XVIII, Section 16 of the Colorado Constitution. These definitions include, but are not limited to the following:

(1) "Marijuana" means all parts of the plant of the genus cannabis 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, including marijuana concentrate. "Marijuana" does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

(2) "Marijuana accessories" means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

(3) "Marijuana cultivation facility" means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana

product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

(4) "Marijuana establishment" means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

(5) "Marijuana product manufacturing facility" means an entity licensed to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

(6) "Marijuana products" means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

(7) "Marijuana testing facility" means an entity licensed to analyze and certify the safety and potency of marijuana.

(8) "Medical marijuana center" means a person or entity licensed to operate a business as described in the Colorado Medical Marijuana Code that sells medical marijuana and medical marijuana-infused products to registered patients or primary caregivers as defined in Article XVIII, § 14 of the Colorado Constitution, but is not a primary caregiver, and which a municipality is authorized to prohibit as a matter of law.

(9) "Retail marijuana store" means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

Sec. 10-12-30. Uses prohibited; penalty.

(1) **Uses Prohibited.**

a. It is unlawful for any person to operate marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores in the Village.

b. It is unlawful to grow marijuana for personal use anywhere in the City other than an enclosed, locked space which is not open or public. "Enclosed" means having a roof and all sides closed to the weather with walls, windows or doors.

c. It is unlawful to make marijuana grown for personal use available for sale in any manner.

(2) **Penalty.** A violation of the provisions of this Ordinance shall be punishable as follows:

a. Each and every day a violation of the provisions of this Ordinance is committed, exists or continues shall be deemed a separate offense;

b. The Village is specifically authorized to seek an injunction, abatement, restitution or any other remedy necessary to prevent, enjoin, abate, or remove the violation;

c. Any remedies provided for herein shall be cumulative and not exclusive, and shall be in addition to any other remedies provided by law or in equity; and

d. In addition to any other penalties that may exist under state, federal, and local laws, violation of this Section shall be punishable by a fine not exceeding \$1,000.00, or by imprisonment not exceeding one year, or by both

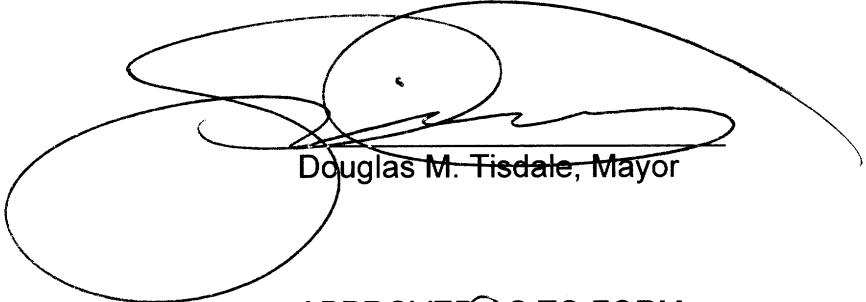
such fine and imprisonment, as set forth in Cherry Hills Village Municipal Code Section 1-4-20.

Section 2. Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this ordinance that can be given effect without the invalid portion, provided that such remaining portions or applications of this ordinance are not determined by the court to be inoperable. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion be declared invalid.

Section 3. Safety. This Ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 4. Effective Date. This Ordinance shall become effective ten (10) days after publication after second reading in accordance with Section 4.5 of the Charter for the City of Cherry Hills Village.

Adopted as Ordinance No. 2, Series 2013, by the City Council of the City of Cherry Hills Village, Colorado this 15th day of January, 2013.



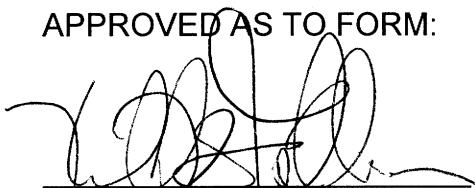
Douglas M. Tisdale, Mayor

ATTEST:



Laura Smith, City Clerk

APPROVED AS TO FORM:



Kenneth S. Fellman,
City Attorney

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**CITY OF CHERRY HILLS VILLAGE
ADOPTION OF ORDINANCE
ORDINANCE 2, SERIES 2013**

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THE CITY OF CHERRY HILLS VILLAGE

Copies of the Ordinances are on file at the
office of the City Clerk and may be in-
spected during regular business hours.

Published in the Villager
Published: January 24, 2013
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