

**ORDINANCE NO. 10**  
**Series 2017**

October 17, 2017: Introduced as Council Bill 8, Series 2017 by Councilor Katy Brown, seconded by Councilor Earl Hoellen and considered in full text on first reading. Passed by a vote of 6 yes and 0 no.

November 7, 2017: Considered in full text on second reading. Passed by a vote of 5 yes and 0 no.

**A BILL FOR AN ORDINANCE  
OF THE CITY OF CHERRY HILLS VILLAGE  
AMENDING ARTICLE XII OF CHAPTER 18 OF THE MUNICIPAL CODE TO REDUCE  
THE MAXIMUM NUMBER OF MARIJUANA PLANTS IN RESIDENTIAL  
STRUCTURES AND THE ALLOWABLE CULTIVATION AREA FOR SUCH  
MARIJUANA PLANTS**

**WHEREAS**, the City of Cherry Hills Village is a home rule municipal corporation created and organized pursuant to Article 20 of the Colorado Constitution and the Home Rule Charter of the City of Cherry Hills Village ("Village"); and

**WHEREAS**, by virtue of Article 20 of the Colorado Constitution, and as further authorized by state law, including, but not limited to, Sections 31-15-401 and 31-23-301 of the Colorado Revised Statutes, the Village has broad authority to exercise its police powers to promote and protect the health, safety, and welfare of the community and its citizens; and

**WHEREAS**, in November 2000, the 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 specified debilitating medical conditions who have been placed on a statewide registry and by their authorized primary caregivers; and

**WHEREAS**, Amendment 20 generally allows a patient 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 or 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 or older to no more than six plants per person; and

**WHEREAS**, to provide clarification as to the number of marijuana plants a person is authorized to possess or grow, the Colorado General Assembly enacted House Bill 17-1220 which places a maximum cap of twelve plants that can be possessed or grown on a residential property unless a local municipality allows more plants; and

**WHEREAS**, there is no reference to or evidence contained in Article XVIII of the Colorado Constitution or in House Bill 17-1220 to establish that any such marijuana laws are intended to modify, affect, limit, or otherwise restrict the Constitutional powers conferred upon home rule municipalities by Article XX of the Colorado Constitution and, specifically, House Bill 17-1220 does not declare any of its provisions to be a matter of statewide concern; and

**WHEREAS**, as found by the Colorado General Assembly and recited in House Bill 17-1220, the City Council finds that larger-scale cultivation of marijuana plants in residential structures may produce a variety of deleterious effects upon the integrity of residences 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; and 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 or derivatives thereof; and

**WHEREAS**, while the City Council recognizes the protections afforded by Amendment 20 and Amendment 64 and affirms the ability of patients, primary caregivers and persons twenty-one years or older to otherwise be afforded the protections of such constitutional provisions, the City Council has reviewed certain information, accounts, and reports as presented during the public meeting on this Ordinance and also recognizes that activities associated with the growing, cultivation, or processing of marijuana in or from a residential structure (including accessory structures) have the potential to produce secondary effects and impacts detrimental to the health, safety, and welfare of the Village community and its inhabitants, and that therefore such activities are subject to reasonable regulation at the local level.

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

**Section 1.** Section 18-12-30, *Definitions*, of Article XII of Chapter 18 of the Cherry Hills Village Municipal Code is hereby amended to amend the following definition of *Enclosed Space* and to add the following definition of *Locked* with additions shown in double underline text and deletions shown as strikethroughs; the remaining definitions in Section 18-12-30 to remain in full force and effect:

**Sec. 18-12-30. Definitions.**

*Enclosed Space* means an area within a residential structure having a roof and all sides closed to the weather and locked to prevent unauthorized entry.

*Locked* 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.

**Section 2.** Subsection (a)(3) of Section 18-12-40 of Article XII of Chapter 18 of the Cherry Hills Village Municipal Code is hereby amended to read in full as follows with additions shown in double underline and deletions shown as strikethroughs:

**Sec. 18-12-40. Regulations for growing and processing marijuana plants in residential structures.**

(a) (3) The growing, cultivation or processing of marijuana plants including the keeping, storage, and maintenance of all materials, supplies, tools, equipment, and paraphernalia associated with the same, shall be limited to one of the following two areas within a residential structure:

a. A maximum contiguous thirty-two (32) ~~one hundred fifty~~ square foot area of enclosed space within a single family detached dwelling; or

b. A maximum contiguous thirty-two (32) ~~one hundred fifty~~ square foot area of enclosed space within an accessory structure separated by a minimum ten (10) foot setback from any single family detached dwelling.

**Section 3.** Section 18-12-40 of Article XII of Chapter 18 of the Cherry Hills Village Municipal Code is hereby amended to add a new subparagraph (c) to read in full as follows with additions shown in double underline:

(c) It shall be unlawful for any person to sell or offer for sale marijuana or marijuana plants from or within the City.

**Section 4.** Section 18-12-50 of Article XII of Chapter 18 of the Cherry Hills Village Municipal Code is hereby amended to read in full as follows with additions shown in double underline and deletions shown as strikethroughs:

**Sec. 18-12-50. Maximum number of Marijuana Plants.**

It shall be unlawful for any authorized person, patient or primary caregiver to possess, grow, cultivate, or process more than the number of marijuana plants allowed under the Colorado Constitution, any applicable state statutes, any rules or regulations promulgated thereunder, or any other applicable law. In no event shall the maximum number of marijuana plants within any residential structure exceed thirty (30) plants until and including December 31, 2017, and thereafter twelve (12) marijuana plants, regardless of size or stage of growth or

the number of residents lawfully allowed to reside in the residential structure and to possess and grow marijuana for any purpose.

**Section 5. 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 6. Safety.** This Ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

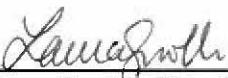
**Section 7. Effective Date.** This Ordinance shall become effective ten (10) days after publication after second reading in accordance with Section 4.5 of the Charter for the City of Cherry Hills Village.

Adopted as Ordinance No. 10 Series 2017, by the City Council of the City of Cherry Hills Village, Colorado this 7<sup>th</sup> day of November, 2017.

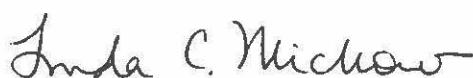
(SEAL)

  
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Laura Christman, Mayor

ATTEST:

  
\_\_\_\_\_  
Laura Smith, City Clerk

Approved as to form:

  
\_\_\_\_\_  
Linda C. Michow  
Linda C. Michow, City Attorney

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CITY OF CHERRY HILLS  
VILLAGE  
ADOPTION OF ORDINANCE  
ORDINANCE 10, SERIES 2017  
  
A BILL FOR AN ORDINANCE OF  
THE CITY OF CHERRY HILLS  
VILLAGE AMENDING ARTICLE  
XII OF CHAPTER 18 OF THE  
MUNICIPAL CODE TO REDUCE  
THE MAXIMUM NUMBER OF  
MARIJUANA PLANTS IN RESI-  
DENTIAL STRUCTURES AND  
THE ALLOWABLE CULTIVATION  
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PLANTS

Copies of the Ordinances are on  
file at the office of the City Clerk  
and may be inspected during regu-  
lar business hours.

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