ORDINANCE NO. 11

Series 2013

June 18, 2013: Introduced as Council Bill 10, Series 2013 by Councilor Scott Roswell, seconded by Councilor Russell Stewart and considered in full text on first reading. Passed by a vote of 6 yes and 0 no.

July 16, 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 18 OF THE MUNICIPAL CODE TO ADD A NEW ARTICLE XII CONCERNING MARIJUANA CULTIVATION IN RESIDENTIAL STRUCTURES

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, there is no reference to or evidence contained in Article XVIII to establish that Article XVIII is 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, Article XVIII does not declare any of its provisions to be a matter of statewide concern; and

WHEREAS, the City Council finds that cultivation, production, and processing 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 medical 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 hearing on this Ordinance and also recognizes that activities associated with the growing, cultivation, or processing of marijuana in or from a residential

MNB302

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. Chapter 18 of the Cherry Hills Village Municipal Code is hereby amended to add a new Article XII to read in full as follows:

Sec. 18-12-10. Purpose, Intent.

It is the intent of this Article XII to reasonably regulate certain building and use activities relating to the growing or processing, within a residential structure and certain accessory structures within the City, of marijuana by patients and primary caregivers pursuant to Article XVIII, Section 14 of the Colorado Constitution, state statutes, and other applicable laws and regulations, and by other authorized persons pursuant to Article XVIII, Section 16 of the Colorado Constitution, state statutes, and other applicable laws and regulations so as to ensure that such activities are conducted in a safe manner. In furtherance of the City's intent, the City Council finds that this Article is necessary to prevent or mitigate the secondary effects and negative impacts associated with the growing and processing of marijuana plants within residential homes and neighborhoods in order to preserve the health, safety and welfare of the community.

Sec. 18-12-20. Authority and Applicability.

The City of Cherry Hills Village is a home rule municipality and the City Council is empowered to adopt such ordinances as are necessary and convenient to protect the health, safety and welfare of the City and its residents. This Article shall apply to all persons and property situated within the municipal boundaries of the City.

Sec. 18-12-30. Definitions.

Accessory structure shall have that meaning set forth in Section 16-1-10 of this Code.

Authorized person means a person twenty-one years of age or older lawfully permitted to engage in the personal use of marijuana, including growing and processing marijuana plants, pursuant to Article XVIII, § 16 of the Colorado Constitution.

Contiguous, in terms of determining the area devoted to the growing, cultivating, manufacturing, preparing, processing, or packaging of marijuana and marijuana plants, means an uninterrupted expanse of space on the same floor or level of the primary residence that can be measured by framing the area with four (4) or more continuous and connected straight lines. The space within a single room which is defined by permanent perimeter walls is contiguous; the space within adjoining rooms divided by a permanent wall or permanent structure *but* accessible via a common doorway or connected by a common hallway is contiguous; however, nonadjacent spaces separated by two (2) or more permanent walls or separated by floors or levels of the building are not contiguous.

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

Growing and *cultivating* are interchangeable and mean and encompass all steps or stages in the process of producing, developing, tending, and keeping a marijuana plant through harvest (or, in the alternative, to serve as a "mother plant") including, but not limited to, planting, germination, cloning, vegetative growth, flowering, and harvest.

Marijuana shall have the meaning set forth in Section 10-12-20(1) of this Code.

Marijuana plants mean marijuana plants, seedlings or any part thereof in a living condition that are lawfully cultivated, produced, possessed or processed pursuant to the Colorado Constitution and other applicable laws or regulations.

Patient shall have the meaning set forth in Section 10-11-20 of this Code.

Primary caregiver shall have the meaning as set forth in Section 10-11-20 of this Code.

Primary residence means the place that a person, by custom and practice, makes his or her principal 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 a residential structure on a lot or parcel and the use of the residential address for domestic purposes, such as, but not limited to, sleep, preparation and consumption of meals, regular mail delivery, vehicle and voter registration, or credit, water and

other utility billing. A person shall have only one primary residence but such primary residence shall include, for purposes of this Article, accessory structures located on the same lot or parcel as the residential structure.

Processing means and encompasses all steps or stages in the process of preparing a harvested marijuana plant for utilization as a usable form of marijuana including, but not limited to, cutting, manicuring, drying, curing, extracting, packaging, and storing.

Residential structure means a structure or that portion of a structure devoted to a single-family detached dwelling; or, in the alternative, an allowed accessory building or structure associated with and on the same lot as such dwelling. For purposes of the home growing or processing of marijuana plants pursuant to Article XVIII, Section 16 or Section 14 of the Colorado Constitution, such activities shall be carried out in either the dwelling or the associated accessory building or structure, but not both.

Single-family dwelling shall have the meaning set forth in Section 16-1-10 of this Code.

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

(a) It shall be unlawful to grow, cultivate, or process marijuana or marijuana products for personal or medical use anywhere in the City other than an enclosed space within a residential structure in full compliance with the Colorado Constitution, any applicable state statutes, any rules or regulations promulgated thereunder, any other applicable law, and the following regulations:

1. Marijuana plants may be grown, cultivated or processed only in a patient's primary residence, the primary residence of the patient's primary caregiver, or the primary residence of an authorized person.

2. Marijuana plants may be grown, cultivated or processed within the primary residence of a patient for himself or herself, or by the patient's primary caregiver for such patient, subject to the square footage limitations set forth in subsection (a)(3) of this Section. A primary caregiver may not lawfully grow, cultivate or process marijuana plants for a patient in another patient's primary residence unless such is also the primary residence of the patient.

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 one hundred fifty (150) square foot area of enclosed space within a single family detached dwelling; or

(b) A maximum contiguous one hundred fifty (150) square foot area of enclosed space within an accessory structure separated by a minimum ten (10) foot setback from any single family detached dwelling.

4. Marijuana plants shall not be grown, cultivated or processed outdoors in the yard or other open area outside of a residential structure.

5. Marijuana plants shall not be grown, cultivated or processed in any rooms used for sleeping purposes by any occupant of a residential structure.

6. The use of high intensity discharge lighting, including but not limited to mercury-vapor lamps, metal halide lamps, ceramic metal halide lamps, sodium-vapor lamps, high pressure sodium lamps and xenon short-arc lamps, for the growing, cultivation or processing of marijuana plants shall be prohibited unless the enclosed space within the residential structure used for marijuana growing, cultivation or processing, including the walls, roof and doors, is constructed with a firewall assembly of Type X drywall meeting the minimum building code requirements for residential structures.

7. Marijuana plants may not be processed with the use of any chemical to enhance tetrahydrocannabinol (THC) in marijuana.

8. The processing of marijuana or marijuana plants shall not involve the use of any chemical extraction method, including but not limited to any method using butane, acetate, isopropyl, ethyl alcohol, white gas, sulfuric acid, hydrochloric acid or any substance prohibited by state law.

9. The use of a residential structure for the growing, cultivation or processing of marijuana shall comply with all applicable building, fire and safety

MNB302

codes adopted by the City, including plumbing, electrical, and all applicable zoning requirements, including but not limited to lot coverage, building height and setbacks.

10. The enclosed space within which marijuana plants are grown, cultivated or processed shall be properly ventilated in accordance with all applicable building codes adopted by the City.

(b) If a patient, primary caregiver or authorized person grows, cultivates or processes marijuana plants within a residential structure that he or she does not own, such patient, primary caregiver or authorized person shall obtain the written consent of the property owner before commencing to grow, cultivate or process marijuana plants on the property. Such written documentation shall also include the owner's express consent to any material alterations to the residential structure associated with the growing, cultivating or processing of marijuana plants including but not limited to alterations to walls, windows, ventilation, plumbing or electrical; shall be maintained on the premises of the residential structure; and shall be shown to any authorized City official upon request.

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, 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.

Sec. 18-12-60. Exterior impacts unlawful.

It shall be unlawful to grow, cultivate, or process marijuana plants within a residential structure in such a manner as to be perceptible from the exterior of the residential structure by means including, but not limited to:

(a) Common visual observation, including any form of signage;

(b) Odors, smells, fragrances, or other olfactory stimulus generated by the cultivation, production, possession, or processing of marijuana plants;

(c) Noise from exhaust fans, other equipment, or other sources associated with or connected to such growing or processing in excess of any applicable permissible noise levels set forth in Section 7-1-30 of this Code; or

(d) Light pollution, glare, or brightness of artificial illumination associated with the cultivation, possession, or processing of marijuana plants.

Sec. 18-12-70. Search warrants authorized.

(a) The City Council declares that a violation of this Article involves a serious threat to public safety or order within the meaning of Rule 241(a)(1) of the Colorado Municipal Court Rules of Procedure.

(b) If the owner or occupant of a residential structure denies officials of the City's Community Development Department, Building Division, or any police officer permission to inspect the residential structure, the City may request the Municipal Court to issue a search warrant for the inspection of the premises pursuant to the procedure and standards as set forth in Rule 241 of the Colorado Municipal Court Rules of Procedure.

(c) The Municipal Court may issue a search warrant authorizing City officials to inspect a residential structure for the growing of marijuana plants in accordance with Rule 241(b) of the Colorado Municipal Court Rules of Procedure. Any search warrant issued pursuant to this Article XII shall fully comply with the applicable provisions of Rule 241 of the Colorado Municipal Court Rules of Procedure.

(d) The Municipal Court may impose such conditions on a search warrant as may be necessary to protect the private property rights of the owner of the premises to be inspected or to otherwise ensure that the warrant complies with applicable law.

(e) It shall be unlawful for any owner or occupant to deny any authorized City official access to the property owned or occupied by such owner or occupant if the authorized person presents a warrant issued pursuant to this Article.

Sec. 18-12-80. Penalties and Violations.

(a) A violation of the provisions of this Article shall be punishable as follows:

(1) Each and every day a violation of the provisions of this Article is committed, exists or continues shall be deemed a separate offense;

(2) The City is specifically authorized to seek an injunction, abatement, restitution or any other remedy necessary to prevent, enjoin, abate or remove the violation;

(3) 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

(4) In addition to any other penalties that may exist under state, federal and local laws, violation of this Article shall be punishable as set forth in section 1-4-20 of this Code.

(b) In addition to any other lawful method of enforcement which method shall not be deemed exclusive, a violation of this Article is declared to be a public nuisance that may be abated as provided in Chapter 7, Article I of this Code.

Sec. 18-12-90. Most stringent law or construction applies.

Nothing in this Article is intended to supersede or modify applicable provisions of state law concerning the same subject. To the extent this Article is interpreted to authorize an action or activity otherwise prohibited by state law, such authorization shall mean such action or activity is not prohibited by local law. To the extent that a provision of state law is or becomes more stringent than a provision of this Article, the most stringent requirement or construction shall apply.

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. 11 Series 2013, by the City Council of the City of Cherry Hills Village, Colorado this 16th day of July, 2013.

(SEAL)

Douglas M. Tisdale, Mayor

ATTEST:

Laura Smith, City Clerk

APPROVED AS TO FORM:

Linda Michow, City Attorney

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CITY OF CHERRY HILLS VILLAGE
ADOPTION OF ORDINANCE
ORDINANCE 11, SERIES 2013

A BILL FOR AN ORDINANCE OF THE CITY OF CHERRY HILLS VILLAGE AMENDING THE MUNICIPAL CODE REGARDING REGULATION OF MARIJUANA CULTIVATION IN RESIDENTIAL STRUCTURES

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

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MNB302