

TOWN OF OAK CREEK

ORDINANCE NO. 645

AN ORDINANCE AMENDING AND MODIFYING THE OAK CREEK LAND USE CODE AT VARIOUS SECTIONS REGARDING RESIDENTIAL GROWING OF MARIJUANA

WHEREAS, the Oak Creek Planning Commission (Planning Commission) held a public meeting on July 20, 2016 and forwarded a recommendation to the Oak Creek Board of Trustees on the addition of Chapter 17.15, Residential Growing of Marijuana, to the Oak Creek Land Use Code (Land Use Code) to be considered at a duly noticed public hearing; and

WHEREAS, notice of a public hearing was published on June 26, 2016 in the Steamboat Pilot, a paper of general circulation in the Town; and

WHEREAS, the Oak Creek Board of Trustees (Board) held a public hearing on August 11, 2016 to consider the Planning Commission's recommendation and to hear public comments regarding the proposed amendment to the Land Use Code. Public comment was received at said public hearing; and

WHEREAS, following the public hearing the Board determined that additional public input was needed prior to further consideration of residential growing of marijuana regulations; and

WHEREAS, the Board tasked the Marijuana Advisory Panel (MAP), a diverse group of interested individuals and business owners, to prepare a recommendation for residential growing of marijuana regulations for further consideration by the Planning Commission and Board; and

WHEREAS, the Oak Creek Planning Commission held a public meeting on April 19, 2017 to consider the MAP's recommendation, and forwarded a recommendation to the Board on various proposed amendments to the Town of Oak Creek Land Use Code (Land Use Code) to be considered at a duly noticed public hearing; and

WHEREAS, notice of a public hearing was published on April 30, 2017 in the Steamboat Pilot, a paper of general circulation in the Town; and

WHEREAS, the Oak Creek Board of Trustees held a public hearing on May 11, 2017 to consider the Planning Commission's recommendation and to hear public comments regarding the proposed amendments to the Land Use Code. Public comment was received at said public hearing; and

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WHEREAS, Trustee McElfish made a motion to approve the recommendation of the Planning Commission regarding amendments to the Land Use Code with the finding of fact that the proposed changes to the Town of Oak Creek's Land Use Code are in conformance with the purpose and intent of the Town of Oak Creek's Comprehensive Plan. Trustee Mayor Pro Tem Wisecup seconded the motion. The motion passed unanimously.


NOW, THEREFORE, be it ordained by the Board of Trustees of the Town of Oak Creek as follows:

SECTION 1. AMENDMENTS. The Oak Creek Land Use Code codified as Chapter 17 of the Oak Creek Municipal Code is hereby amended as shown on Exhibit A hereto (additions are underlined, deletions are struck-through):

SECTION 2. SEVERABILITY, CONFLICTING ORDINANCES REPEALED. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. All other ordinances in conflict with the provisions of this Ordinance are hereby repealed.

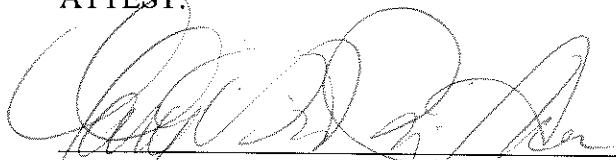
SECTION 3. EFFECTIVE DATE. This ordinance shall take effect and be in full force and effect ninety (90) days after adoption and publication pursuant to C.R.S. § 31-16-105.

INTRODUCED, READ, APPROVED AND ORDERED PUBLISHED this 11th day of May, 2017.



Nikki Knoebel, Mayor

ATTEST:



Mary Alice Page-Allen
Town Administrator/Clerk

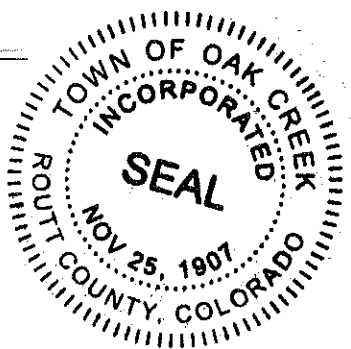


EXHIBIT A

Chapter 17.02 DEFINITIONS

17.02.127 Enclosed and Locked Space: The area within the residential structure where marijuana is cultivated pursuant to Sections 14 and 16 of Article XVIII of the Colorado Constitution, and that is secured at all points of ingress or egress with a locking mechanism such as a key or combination lock designed to limit access.

17.02.342 Primary Residence: The place that 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 vacation. Residence is evidenced by actual daily physical presence, use, and occupancy of the primary residence and the use of the residential address for domestic purposes, such as, but not limited to, slumber, preparation of and partaking of meals, regular mail delivery, vehicle and voter registration, or credit, water, and utility billing. A person shall have only one primary residence within the Town.

17.02.356 Residential Structure: A structure devoted to a residential use and related accessory structures, not including multi-family dwellings as defined in 17.02.285 of the Town's Land Use Code.

Chapter 17.03 DEVELOPMENT APPLICATIONS, REVIEW AND PROCEDURES

Sections:

- 17.03.01 Introduction.
- 17.03.02 Regulations waived.
- 17.03.03 Applications for land use changes - categories.
- 17.03.04 Exemptions.
- 17.03.05 Land use changes of no impact.
- 17.03.06 Land use changes of minor impact.
- 17.03.07 Land use changes of major impact.
- 17.03.08 Applications for land use changes - how reviewed.
- 17.03.09 Public notice provisions.
- 17.03.010 Pre-application work session.
- 17.03.011 Review procedure for land use changes of no impact.
- 17.03.012 Review procedure for land use changes of minor impact.
- 17.03.013 Review procedure for land use changes of major impact.
- 17.03.014 Expiration of land use change approvals.
- 17.03.015 Renewal of land use change approvals.

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17.03.016 Standards by which the planning commission and the Board of Trustees will be guided.

17.03.017 Conditional use review criteria.

17.03.018 Review process chart.

17.03.019 Residential growing of marijuana – general provisions.

17.03.04 Exemptions.

Certain activities or development may be exempt from development permit review. Exemption does not exempt any development or its use from any other applicable requirement of this Code or the requirement to obtain a building permit and certificate of occupancy. Any person may request a written determination from the Town Board regarding whether a specific proposed development is exempt from one or more of the review processes contained in this article. Exemptions are as follows:

- F. Growing of marijuana within a primary residence as defined in Section 17.02 only if all of the following conditions exist.
 - 1. The use is compliant with all of the general provisions outlined in Section 17.19 of this code.
 - 2. The growing, cultivating, and processing of marijuana area shall not exceed a defined one hundred twenty (120) square foot area inside the primary residence or 25% of the total square footage of the primary residence, whichever is less.

17.03.05 Land use changes of no impact.

These will be reviewed administratively by the Town Public Works Director, Town Clerk, and the District Fire Chief within the scope of their authority in accordance with the current adopted Uniform Fire and Building Codes in all cases and selected sections of this Code where specifically referenced, and require no review by the planning commission and the Board of Trustees unless requested by the Public Works Director, Town Clerk, and/or the District Fire Chief (see Section 17.03.11), and include:

- L. Growing of marijuana within a residential structure as defined in Section 17.02 only if all of the following conditions exist.
 - 1. The use is compliant with all of the general provisions outlined in Section 17.19 of this code.
 - 2. The growing, cultivating, and processing of marijuana shall be limited to a defined three hundred (300) square foot area or less of the residential structure's total square footage.

17.03.06 Land use changes of minor impact.

- M. Growing of marijuana within a residential structures and primary residences as each are defined in Section 17.02 in a defined area(s) that exceeds 300 square feet and the use is compliant with all of the general provisions outlined in Section 17.19 of this code.

17.03.019 Residential Growing of Marijuana - General Provisions

The following standards shall apply to all residential structures and primary residences as each are defined in Section 17.02 where the growing of marijuana is present and permitted.

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- A. The possession, growing, and transportation of marijuana plants within a residential structure shall be done in full compliance with all applicable provisions of Section 14 and Section 16 of Article XVIII of the Colorado Constitution.
- B. Marijuana may be possessed, grown, or processed within a residential structure only by a person twenty one (21) years of age or older.
- C. The residential structure in which marijuana is grown shall be either a single-family dwelling or duplex.
- D. If a person under twenty one (21) years of age resides at the residential structure, the cultivation area for the marijuana plants must be enclosed and locked space as defined in Section 17.02.
- E. If no person under twenty one (21) years of age resides at the residential structure, the external locks of the residential structure constitute an enclosed and locked space as defined in Section 17.02; however, if a person under twenty one (21) years of age enters the residential structure, the owner of the marijuana plants must ensure that access to the marijuana cultivation location is reasonably restricted for the duration of that person's presence at the residential structure.
- F. The growing, cultivation, and processing of marijuana shall not be perceptible from the exterior of the residential structure where the plants are grown, including, but not limited to:
 - a. Common visual observation;
 - b. Light pollution, glare, or brightness that disturbs the repose of another; and
 - c. Noise from an exhaust fan in excess of the maximum permissible noise level described in Section 08.08.04R of this code.
- G. The smell or odor of marijuana growing within a residential structure shall not be capable of being detected by a person with a normal sense of smell from any adjoining lot, parcel, or tract of land not owned by the owner of the residential structure, or from any adjoining public right of way.
- H. The space within a residential structure where marijuana is grown, cultivated, or processed shall meet all applicable requirements of the Town's building, life safety and technical codes adopted in Chapter 15.04 of this code.
- I. Marijuana plants may be cultivated and produced under the provisions of this section only within a residential structure.
- J. The use of Inherently Hazardous Substances, as such is defined at Colorado Revised Statutes § 18-18-406.6(4), to manufacture marijuana concentrate is prohibited.
- K. Prior to August 20, 2017 (90 days after publication of the legal notice of adoption), the owner or tenant of a residential structure used for the residential growing of marijuana in compliance with the provisions of this Section 17.03.019, and that would require a Land Use Change of No Impact or Land Use Change of Minor Impact approval pursuant to Oak Creek Land Use Code, may register the residential structure for its continued use for the residential growing of marijuana subject to the following:
 - a. The owner or tenant shall submit an application to register the residential structure for the residential growing of marijuana prior to August 10, 2017;
 - b. The request shall be reviewed administratively in accordance with the provisions of Section 17.03.011, Review Procedure for Land Use Changes of No Impact, Oak Creek Land Use Code;
 - c. Unless the Town Administrator/Clerk requests that the owner or tenant provide additional information within fifteen (15) days of the date upon which the application to register the residential structure was deemed complete, it shall thereafter be deemed a permitted residential structure authorized for use under the Oak Creek Land Use Code for the residential growing of marijuana. If the owner or tenant fails to provide the requested information within fifteen (15) days of the request, the registration shall be cancelled.

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- d. If it is determined that the residential structure is not entitled to be registered, the Town Administrator/Clerk shall notify the owner or tenant in writing and the owner or tenant shall have the right to appeal to the Oak Creek Board of Trustees (Board) by filing a written notice of appeal with the Board within thirty (30) days of the date of the Town Administrator/Clerk's decision. The determination of the Board shall be final.
- e. No charge shall be made for the registration of these residential structures used for the residential growing of marijuana or the appeal of any determination that the residential structure is not entitled to be registered.