TOWN OF LOCHBUIE  
COUNTIES OF WELD AND ADAMS  
STATE OF COLORADO  

ORDINANCE NO. 2019-644  

AN ORDINANCE AMENDING CHAPTER 10 OF THE LOCHBUIE MUNICIPAL CODE CONCERNING GENERAL OFFENSES BY THE ADDITION OF A NEW SECTION 10-6-35 GOVERNING THE PERSONAL OR PRIMARY CAREGIVER CULTIVATION OF MARIJUANA WITHIN THE TOWN  

WHEREAS, Article XVIII, Sections 14 and 16 of the Colorado Constitution decriminalizes certain activity with respect to the cultivation, distribution, manufacturing, consumption, and dispensing of marijuana; and  

WHEREAS, Colorado law allows each adult to possess, cultivate, and process 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 cultivated, provided that the cultivation takes place in an enclosed, locked space, is not conducted openly or publicly, and the marijuana is not made available for sale; and  

WHEREAS, by Ordinance 621, adopted November, 2016, the Town Board addressed the indoor cultivation or processing and manufacture of marijuana products for personal or medicinal use, and the operation of marijuana clubs within the Town; and  

WHEREAS, by Ordinance 629, adopted November 10, 2017, the Town Board repealed all of then-existing Chapter 16 of the Lochbuie Municipal Code and adopted a new Chapter 19 as its updated Land Development Code, which new Chapter 19 inadvertently did not include the regulations set forth in the provisions of Ordinance 621; and  

WHEREAS, to protect the health safety and welfare of the Town’s inhabitants, the Town Board desires to regulate the activities addressed in Ordinance 621 in accordance with its legal authority; and  

WHEREAS, the Town's authority to adopt this ordinance is found in the Colorado Medical Marijuana Code, Section 44-11-101, et seq., C.R.S., and the Colorado Retail Marijuana Code, 44-12-101, et seq., C.R.S; Article XVIII of the Colorado Constitution; and Sections 31-15-103 and 31-15-401, C.R.S. (municipal police powers), authorizing municipalities to regulate the cultivation, distribution, manufacturing, consumption, and dispensing of marijuana.  

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF LOCHBUIE, COLORADO:  

Section 1.- The Lochbuie Municipal Code is amended by the adoption of a new Section 10-6-35 to read as follows in its entirety.  

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Sec. 10-6-35. Marijuana Cultivation and Use.

(a) Definitions. The following words, terms and phrases, when used in this Section, shall have the following meanings unless the context clearly indicates otherwise:

(1) “Marijuana” shall mean all parts of the plant cannabis sativa L., 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 whether grown for personal use. It does not include industrial hemp, fiber produced from the stalks, oil or cake made from the seeds of the plant, or 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, if these items exist apart from any other item defined as marijuana. For the purposes of this Section, marijuana shall include medical marijuana.

(2) “Primary residence” shall mean the addressed inhabitable structure that a person, by custom and practice, makes his or her principle domicile and to which the person intends to return, following any temporary absence, such as vacation. Such residence is evidenced by actual daily physical presence, use, and occupancy of the structure 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 deliver, vehicle and voter registration, or credit, water, and utility billing. A person shall have only one primary residence.

(b) Applicability. This Section shall apply to all property within the Town. To the extent that the Town is required to allow the cultivation of marijuana for personal or medicinal use under state law, the rules set forth herein shall apply. Nothing in this Section shall be interpreted to permit retail marijuana stores or medical marijuana establishments of any kind otherwise prohibited by Chapter 19 or any other Chapter. If the Colorado Medical Marijuana Code, Article XVIII, § 14 of the Colorado Constitution, the Colorado Retail Marijuana Code or Article XVIII, § 16 of the Colorado Constitution are declared unlawful in violation of federal law, nothing in this Code shall be deemed to permit the cultivation, possession or use of marijuana for medicinal use or any other purpose. Nothing in this Section shall be deemed to provide a defense to the prosecution of offenses under the Federal Controlled Substances Act occurring in the Town.

(c) Prohibitions regarding marijuana cultivation for personal or medicinal use.
(1) It is unlawful to cultivate marijuana for personal or medicinal use or consumption anywhere in the Town other than in an enclosed, locked space within a detached single-family residential property or single-family residential garage or in a detached accessory building under the ownership of the person cultivating the marijuana or with the written permission of the property owner but only so long as the person cultivating marijuana also maintains his or her primary residence on such property. Enclosed means having a roof and all sides closed to the weather with walls, windows or doors.

(2) It is unlawful to cultivate or process marijuana in the common areas of a multi-family or attached residential development.

(3) Except for medicinal use by a patient or primary caregiver, as such terms are defined by Article XVIII, Section 14 of the Colorado Constitution, any cultivation, production or possession of marijuana plants shall not exceed six marijuana plants, with three or fewer being mature flowering plants, for each individual who is over 21 years of age and for whom the property on which those activities occurs is maintained as his or her primary residence.

(4) It is unlawful to cultivate marijuana inside a residential dwelling in an area exceeding thirty-two (32) square feet or exceeding a height of ten (10) feet. This limit applies regardless of the number of qualified patients or primary caregivers or persons otherwise allowed to possess and grow marijuana for personal use residing in the residence. The cultivation area shall contain at least one (1) smoke detector and shall be a single, locked area and shall not be accessible to anyone under the age of twenty-one (21).

(5) It is unlawful for any person to cultivate marijuana in a detached accessory structure or attached or detached garage unless such structure or garage is on property of the person’s primary residence. Any garage or accessory structure used for the cultivation of marijuana, including all walls, doors and the roof, shall be constructed with a firewall assembly of Type X drywall meeting the minimum building code requirements for residential structures. The cultivation area shall contain at least one (1) smoke detector and shall be a locked area and not accessible to anyone under the age of twenty-one (21). Other provisions of this Chapter notwithstanding, a permit is required for an accessory structure used for cultivating marijuana.

(6) It is unlawful to cultivate marijuana in an accessory structure in an area that exceeds fifty (50) square feet and more than ten (10) feet in height.
(7) It is unlawful to cultivate marijuana in an attached or detached garage in an area that is greater than thirty-two (32) square feet and more than ten (10) feet in height.

(8) It is unlawful to use any lighting for the indoor cultivation of marijuana other than light-emitting diodes (LEDs), compact fluorescent lamps (CFLs) or fluorescent lighting. All high-intensity discharge (HID) lighting, including but not limited to mercury-vapor lamps, metal-halide (MH) lamps, ceramic MH lamps, sodium-vapor lamps, high-pressure sodium (HPS) lamps and xenon short-arc lamps, are prohibited.

(9) It is unlawful to use gas products (e.g., CO2, butane) for indoor marijuana cultivation or processing.

(10) It is unlawful to use a kitchen, bathroom or primary bedrooms for the indoor cultivation of marijuana.

(11) It is unlawful to cultivate marijuana in any structure without complying with applicable building and fire codes, including plumbing and electrical, and all applicable zoning codes, including but not limited to lot coverage, setback and height requirements.

(12) Any indoor marijuana cultivation area shall include a ventilation and filtration system designed to prevent mold and moisture and otherwise protect the health and safety of persons residing in the residence. This shall include, at a minimum, a system meeting the requirements of the current edition of the International Residential Building Code adopted by the Town.

(13) It is unlawful to store chemicals used for marijuana cultivation inside of the habitable areas of the residence or within public view from neighboring properties and public rights-of-way.

(14) It is unlawful to cultivate marijuana within public view from neighboring properties and public rights-of-way.

(15) It is unlawful for any marijuana cultivation activity to adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration or other impacts; or be hazardous due to the use or storage of materials, processes, products or wastes, or from other actions related to the cultivation.

(d) Penalty; Nuisance declared.
(1) It is unlawful for any person to violate any of the provisions of this Section. Any such violation is hereby designated a criminal offense, and any person found guilty of violating any of the provisions of this Section shall, upon conviction thereof, be punished by a fine or imprisonment or both pursuant to Article IV of Chapter 1 of this Code. Each day that a violation of any of the provisions of this Section continues to exist shall be deemed a separate and distinct violation.

(2) The conduct of any activity in violation of this Section is hereby declared to be a public nuisance, which may be abated pursuant to the provisions for the abatement of nuisance provided for in Article II of Chapter 7 of this Code.

(e) Authorization for application for search warrant. In the interest of public safety, officers of the police department may make application to the Town’s municipal court for a warrant to enforce the provisions of this section. Such application and any warrant issued pursuant thereto shall comply with the provisions in Rule 241 of the Colorado Municipal Court Rules of Procedure.

Section 2. Severability. If any provision of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining provisions of this Ordinance will remain valid, it being the intent of the Town of Lochbuie that the provisions of this Ordinance are severable.

Section 3. Effective Date. This Ordinance shall take effect thirty (30) days following its publication by title only.

ADOPTED by a vote of 6 in favor, 0 against and 0 abstaining, AND ORDERED PUBLISHED by title only following public hearing, this 20th day of August, 2019.

TOWN OF LOCHBUIE, COLORADO

[Signature]
Jacob Lofgren, Mayor

I hereby certify that the above Ordinance was adopted by the Board of Trustees of the Town of Lochbuie at its meeting of August 20, 2019 and ordered published by title only one time by The Brighton Blade newspaper on August 28, 2019.

ATTEST:

[Signature]
Linda Blackston, Town Clerk