

ORDINANCE NO. 4

Series 2011

AN ORDINANCE ADOPTING CHAPTER 13 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE RESIDENTIAL GROWING OF MEDICAL MARIJUANA

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. The Breckenridge Town Code is amended by the addition of a new Chapter 13 of Title 9, to be entitled "Residential Growing of Medical Marijuana", which shall read in its entirety as follows:

CHAPTER 13

RESIDENTIAL GROWING OF MEDICAL MARIJUANA

SECTION:

- 9-13-1: SHORT TITLE
- 9-13-2: FINDINGS
- 9-13-3: PURPOSE
- 9-13-4: AUTHORITY
- 9-13-5: DEFINITIONS
- 9-13-6: REGULATIONS FOR THE GROWING OF MEDICAL MARIJUANA IN A RESIDENTIAL STRUCTURE
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- 9-13-9: CONDITION PRECEDENT TO CHALLENGE

9-13-1: SHORT TITLE: This Chapter is to be known and may be cited as the "Town Of Breckenridge Residential Medical Marijuana Ordinance."

9-13-2: FINDINGS: The Town Council adopts this Chapter based upon the following findings of fact:

- A. On November 7, 2000 the voters of the State of Colorado approved Amendment 20. Amendment 20 added §14 of Article XVIII to the Colorado Constitution, and created a limited exception from criminal liability under Colorado law (as opposed to federal law) for seriously ill persons who are in need of marijuana for specified medical purposes and who obtain and use medical marijuana under the limited circumstances described in Amendment 20.
- B. The Colorado legislature recently passed and the governor signed into law HB10-1284, entitled "An Act Concerning Regulation of Medical Marijuana, and Making an Appropriation Therefor." HB10-1284 adopted the "Colorado Medical Marijuana Code." HB10-1284 became effective July 1, 2010.
- C. The growing of marijuana plants in a residential setting presents significant regulatory challenges not currently addressed by Town ordinances.
- D. The growing of marijuana plants in a residential setting can affect the health, safety, and welfare of both the occupants of the residential building within which the marijuana is grown, and of persons occupying nearby buildings.
- E. The Town has about a year's worth of experience with the unregulated growing of marijuana in a residential setting. To date, the Town's experience is that the unregulated growing of residential medical marijuana results in a significant number of instances of non-compliance with the Town's building and other technical codes. In addition to other potentially serious problems, non-compliance with the Town's building and other technical codes has the potential to result in a fire emanating from the residential structure within which the medical marijuana is grown. Such a fire would affect the health, safety, and welfare of both the occupants of the residential building within which the marijuana is grown, and of persons occupying nearby buildings.

- F. Neither Amendment 20 nor HB10-1284 specifically address the growing of medical marijuana in a residential setting, or the local regulation of such activity.
- G. Nothing in Amendment 20, HB10-1284, or any other applicable law, immunize persons who grow medical marijuana in a residential setting from local regulation, or establish a fundamental legal right to grow medical marijuana within a residence or its curtilage.
- H. Section 12-43.3-103(2)(a), C.R.S., which is part of the Colorado Medical Marijuana Code, provides that prior to July 1, 2011 a municipality may adopt and enforce an ordinance regulating the cultivation of medical marijuana. The provisions of this Chapter are such an ordinance.
- I. The Colorado Medical Marijuana Code further recognizes the power of a municipality to adopt and enforce its own rules and regulations within respect to the growing of medical marijuana within its jurisdiction. Specifically, the Colorado Medical Marijuana Code authorizes municipalities to:
 - 1. Enact ordinances or resolutions concerning matters authorized to local governments (Section 12-43.3-305(3), C.R.S.); and
 - 2. Enact reasonable regulations or other restrictions based on local government zoning, health, safety and public welfare laws for the distribution of medical marijuana that are more restrictive than the Colorado Medical Marijuana Code (Section 12-43.3-310(1), C.R.S.);
- J. Section 12-43.3-305(3), C.R.S., further specifically provides that nothing in the Colorado Medical Marijuana Code preempts or otherwise impairs the power of a local government to enact an ordinance concerning matters authorized to local governments.
- K. The Town Council finds, determines, and declares that to the extent the requirements of this Chapter differ from the requirements of the Colorado Medical Marijuana Code, the requirements of this Chapter are more restrictive than the Colorado Medical Marijuana Code.
- L. As of the date of the adoption of this Chapter there are numerous licensed retail medical marijuana outlets within the Town. As a result, medical marijuana is readily available for purchase within the Town by those persons licensed to purchase and possess it.
- M. The Town is a home rule municipal corporation organized and existing under its Charter and Article XX, Section 6 of the Colorado Constitution. As such, the Town possesses all powers granted to home rule municipalities by Colorado law.
- N. This Chapter is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort, and convenience of the Town and the inhabitants thereof, and to reduce the number of public nuisances that exist within the Town.

9-13-3: PURPOSE: It is the purpose of this Chapter to require that persons growing medical marijuana in a residential setting within the Town do so in a safe manner that does not endanger the public health, safety, and welfare, or create a public nuisance.

9-13-4: AUTHORITY: The Town Council hereby finds, determines, and declares that it has the power to adopt this Chapter pursuant to:

- A. The Colorado Medical Marijuana Code, Article 43.3 of Title 12, C.R.S.;
- B. The Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.;
- C. Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers);
- D. Section 31-15-103, C.R.S. (concerning municipal police powers);
- E. Section 31-15-401, C.R.S. (concerning municipal police powers, including, but not limited to, the power to declare what is a nuisance and to abate the same);

- F. The authority granted to home rule municipalities by Article XX, Section 6 of the Colorado Constitution; and
- G. The powers contained in the Breckenridge Town Charter.

9-13-5: DEFINITIONS:

- A. The definitions contained in Amendment 20, the Colorado Medical Marijuana Code, and the Colorado Medical Marijuana Program, all as amended from time to time, are incorporated into this Chapter by reference.
- B. As used in this Chapter the following words have the following meanings, unless the context clearly requires otherwise:

AMENDMENT 20:	The voter-initiated amendment to the Colorado Constitution adopted November 7, 2000. Amendment 20 added §14 of Article XVIII to the Colorado Constitution.
COLORADO MEDICAL MARIJUANA CODE:	Article 43.3 of Title 12, C.R.S., as amended from time to time.
COLORADO MEDICAL MARIJUANA PROGRAM:	Section 25-1.5-106, C.R.S., as amended from time to time.
MEDICAL MARIJUANA PLANT:	A marijuana plant that is grown, cultivated, or processed pursuant to the provisions of Amendment 20, the Colorado Medical Marijuana Code, the Colorado Medical Marijuana Program, or other applicable law regulating the growing or cultivation of medical marijuana.
MULTI-UNIT RESIDENTIAL USE:	Has the meaning provided in Section 9-1-5 of this Code.
PERSON:	Has the meaning provided in Section 1-3-2 of this Code.
POLICE CHIEF:	The Police Chief of the Town, or his designee.
PRIMARY RESIDENCE:	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 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 (if available), vehicle and voter registration, or credit, water and other utility billing. a person shall have only one primary residence. A primary residence must be within a residential structure. A primary residence does not include any accessory buildings.
RESIDENTIAL STRUCTURE:	A structure devoted to a residential use.
RESIDENTIAL USE:	Has the meaning provided in Section 9-1-5 of this Code.
SECURE:	An area within a primary residence that is accessible only to the patient or primary caregiver. Secure premises shall be located or

partitioned off to prevent access by children, visitors, passersby, thieves or anyone else not licensed to possess medical marijuana.

SINGLE-FAMILY
RESIDENTIAL UNIT:

Has the meaning provided in Section 9-1-5 of this Code.

STRUCTURE:

Has the meaning provided in Section 9-1-5 of this Code.

TOWN:

Has the meaning provided in Section 1-3-2 of this Code.

9-13-6: REGULATIONS FOR THE GROWING OF MEDICAL MARIJUANA IN A RESIDENTIAL STRUCTURE: Medical marijuana may not be grown, cultivated, or processed in or around any residential structure within the Town except in compliance with the following regulations:

- A. The growing, cultivation, or processing of medical marijuana within a residential structure shall be done in full compliance with all applicable provisions of Amendment 20, the Colorado Medical Marijuana Code, the Medical Marijuana Program, and other applicable law.
- B. Medical marijuana may be grown, cultivated, or processed only within a patient's or his or her primary caregiver's primary residence. Medical marijuana may not be grown, cultivated, or process in the yard, curtilage, or other area outside of the patient's or his or her primary caregiver's primary residence.
- C. Medical marijuana may be grown, cultivated, or processed *within a primary residence* only by a primary caregiver for his or her patients, or a patient for himself or herself. A primary caregiver may not lawfully grow, cultivate, or process medical marijuana for a patient who does not reside at the primary residence where the growing, cultivating, or processing occurs.
- D. Not more than six medical marijuana plants may be grown, cultivated, or processed within a primary residence; provided, however, that up to twelve medical marijuana plants may be grown, cultivated, or processed within a primary residence if more than one patient or primary caregiver resides within the primary residence.
- E. The growing, cultivation, and processing of medical marijuana plants shall be limited to the following areas within a patient's or primary caregiver's primary residence:
 1. Within a detached single-family residential unit, medical marijuana may be grown, cultivated, or processed only within a secure, defined, contiguous 150 square foot area;
 2. Within any residential structure other than a detached single-family residential unit, medical marijuana may be grown, cultivated, or processed only within a secure, defined, contiguous 100 square feet area; and
 3. Medical marijuana shall not be grown, cultivated, or processed within the common area of any real property that is devoted to a residential use.
- F. If a patient or primary caregiver is authorized by law to grow, cultivate, and process quantities of medical marijuana requiring more than the square footage or number of plant limitations set forth above, such patient or primary caregiver must act in full compliance with all applicable laws, and:
 1. Such patient or caregiver may grow, cultivate, and process medical marijuana plants in excess of the square footage limitation and plant number limitations set forth above *only in those locations where a medical marijuana center may be licensed under Chapter 14 of Title 1 of this Code; and*
 2. Such patient or caregiver must ensure that such premises are secure, and that no children, visitors, passersby, thieves or anyone else not licensed to possess medical marijuana may access the premises.

3. Such growing is subject to the requirements of subsections G and H of this section.
- G. The growing, cultivation, and processing of medical marijuana shall not be perceptible from the exterior of the primary residence, including, but not limited to:
 1. Common visual observation;
 2. Light pollution, glare, or brightness that disturbs the repose of another;
 3. Undue vehicular or foot traffic, including unusually heavy parking in front of the primary residence; and
 4. Noise from an exhaust fan in excess of the maximum permissible noise level described in Section 5-8-5 of this Code.
 - H. The smell or odor of marijuana growing within the primary residence 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 primary residence, or from any adjoining public right of way.
 - I. The space within the primary residence where medical marijuana is grown, cultivated, or processed shall meet all applicable requirements of the Town's building and technical codes adopted in Chapter 1 of Title 8 of this Code.
 - J. If a patient or primary caregiver grows, cultivates, or processes medical marijuana within a primary residence that he or she does not own, the primary caregiver or patient shall obtain the written consent of the property owner before commencing to grow, cultivate or process medical marijuana on the property.
 - K. No chemical shall be used by a patient or primary caregiver to enhance or extract tetrahydrocannabinol (THC) from medical marijuana that is grown in a primary residence.
 - L. It is unlawful and a misdemeanor offense for a person to violate any provision of this section. In accordance with Section 1-4-1(B) of this Code, a person shall be guilty of a separate offense for each and every day during any portion of which any violation of the requirements of this section is committed, continued, or permitted by such person.

9-13-7: INSPECTION; INSPECTION WARRANT:

- A. Subject to the requirements and limitations of this section, the Police Chief shall have the right to enter upon any residential structure within the Town where medical marijuana is being grown, cultivated, or processed during reasonable hours for the purpose of conducting a physical inspection of the premises to determine if the premises comply with the requirements of this Chapter. However, no agent or employee of the Town shall enter upon any property to conduct such an inspection without either the permission of the landowner or occupant, or without an inspection warrant issued pursuant to this section.
- B. If verbal permission to inspect the residential structure from the affected landowner or occupant is not obtained, or if the residential structure is locked and the Police Chief has been unable to obtain permission of the landowners or occupant, the Police Chief may request that an inspection warrant be issued by the municipal court judge pursuant to Rule 241 of the Colorado Municipal Court Rules of Procedure.
- C. In case of an emergency involving imminent danger to public health, safety, or welfare, the Police Chief may enter any residential structure within the Town to conduct an emergency inspection for the growing, cultivation, or processing of medical marijuana without a warrant and without complying with the requirements of section.
- D. The Town Council declares that this Chapter is an ordinance involving a serious threat to the public safety or order within the meaning of Rule 241(a)(1) of the Colorado Municipal Court Rules of Procedure.
- E. The municipal court judge may issue an inspection warrant authorizing the inspection of a residential structure for the growing, cultivation, or processing of medical marijuana in accordance with Rule 241(b) of the Colorado Municipal Court Rules of Procedure. Any inspection warrant issued pursuant to this section shall fully comply with the applicable provisions of Rule 241 of the Colorado Municipal Court Rules of Procedure.

- F. The municipal judge may impose such conditions on an inspection warrant as may be necessary in the judge's opinion to protect the private property rights of the landowner of the property to be inspected, or to otherwise make the warrant comply with applicable law.
- G. It shall be unlawful and a misdemeanor offense for any landowner or occupant to deny the Police Chief or other authorized person access to the property owned or occupied by such landowner or occupant if the Police Chief or other authorized person presents an inspection warrant issued pursuant to this Section.

9-13-8: APPLICABILITY OF NUISANCE ORDINANCE: The cultivation of medical marijuana within a residential structure in the Town in any manner that is not in compliance with the requirements of Section 9-13-6 is declared to be a public nuisance, and may be abated in the manner provided in Chapter 1 of Title 5 of this Code. Section 5-1-12 of this Code concerning the non-exclusivity of the nuisance abatement procedure described in Chapter 1 of Title 5 of this code applies with respect to the enforcement of this Chapter as well.

9-13-9: CONDITION PRECEDENT TO CHALLENGE: It is a condition precedent to any legal challenge to any portion of this chapter, or the application of any portion of this chapter to any specific property, that the person initiating such challenge shall have first given the Town written notice of intent to bring such challenge not less than ninety days before filing any legal proceeding. Such notice shall be sent to the Town Council of the Town of Breckenridge by certified mail, return receipt requested, at P.O. Box 168, Breckenridge, Colorado 80424, and shall set forth: (i) the name and address of the claimant and the claimant's attorney, if any; and (ii) a concise statement of the factual and legal basis for the claimant's challenge to the this chapter, or the application of this chapter to the claimant's property. To the extent that the provisions of this section conflict with the notification requirements of section 24-10-109, C.R.S., or any other applicable law, the provisions of such statute or other applicable law shall control.

Section 2. Town Code. Except as specifically amended hereby, the Breckenridge Town Code, and the various secondary Codes adopted by reference therein, continue in full force and effect.


Section 3. Severability. If any section, paragraph, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional or otherwise invalid or ineffective by the final, nonappealable order or judgment of any court of competent jurisdiction, such decision will not affect the validity or effectiveness of the remaining portions of this ordinance. The Town Council hereby declares that it would have adopted each section, paragraph, sentence, clause and phrase of this ordinance irrespective of the fact that any one or more sections, paragraphs, sentences, clauses or phrases may be declared unconstitutional, invalid or ineffective.

Section 4. Effective Date. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

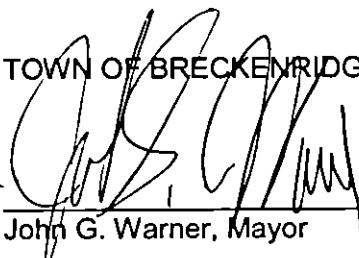
INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
 PUBLISHED IN FULL this 25th day of January, 2011. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 8th day of February, 2011, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

ATTEST:

TOWN OF BRECKENRIDGE



 Mary Jean Loufek, CMC, Town Clerk



 John G. Warner, Mayor

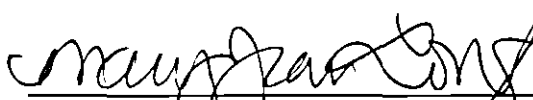
This Ordinance was published in full on the Town of Breckenridge website, on January 27, January 28, January 29, January 30, and January 31, 2011.

The public hearing on this ordinance was held on February 8, 2011.


READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE TOWN'S WEBSITE this 8th day of February, 2011. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE




Mary Jean Loufek, CMC, Town Clerk



John G. Warner, Mayor

APPROVED IN FORM



Town Attorney

2/8/11

Date

This Ordinance was published on the Town of Breckenridge website on February 10, February 11, February 12, February 13, and February 14, 2011. This ordinance shall become effective on March 16, 2011.