

AGENDA ITEM SUMMARY

August 20, 2019

City Council

STAFF

Ginny Sawyer, Policy and Project Manager
Bronwyn Scurlock, Legal

SUBJECT

First Reading of Ordinance No. 103, 2019, Adding a New Article XII to Chapter 12 of the Code of the City of Fort Collins Relating to the Cultivation and Extraction of Hemp.

EXECUTIVE SUMMARY

The purpose of this item is to regulate the personal cultivation of hemp within the City of Fort Collins in the same manner that marijuana cultivation is regulated.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

In 2013-14, the City went through a thorough process to develop and implement regulations related to non-commercial/unlicensed cultivation of marijuana (cannabis). Those regulations focus on non-licensed residential growing and extraction for personal use and include the following restrictions:

- No more than 12 plants in a dwelling unit
- No cultivation in a dwelling with shared walls (duplex, apartment, etc.)
- No extractions with any flammable liquid, including alcohol
- Cultivation may only occur in a locked and enclosed space (no outdoor growing)
- No cultivation in a detached outbuilding

With the recent federal and state laws that legalized hemp (which is also cannabis but with less than .3% THC) communities are starting to see non-commercial growing and extraction. This is typically done for the utilization of CBD (cannabidiol, a non-psychoactive ingredient of hemp).

Marijuana and hemp are both cannabis, are indistinguishable in the plant state, and only testing of plants can determine the level of THC and whether a plant would be considered marijuana or hemp. The proposed ordinance will provide consistent safety and nuisance regulations for all cannabis cultivation in Fort Collins and will aid in enforcement.

Under state law, all growers of hemp are required to be registered with the Colorado Department of Agriculture. Hemp registrants already exist in Fort Collins. Because of this, staff is recommending an exemption from this ordinance for those hemp growers that are registered with the Colorado Department of Agriculture on or before August 30, 2019.

Staff will be tracking, monitoring, and researching industrial/commercial and research and development related hemp cultivation to determine if local licensing or other local action would be beneficial. Staff is also

participating as a stakeholder on the "Cultivation" and "Transportation" groups of the Colorado Department of Agriculture CHAMP initiative (Colorado Hemp Advancement & Management Plan.)

Champ: Project Timeline and Deliverables

- The CHAMP initiative is a year-long project that will conclude with the publishing of the CHAMP Report in spring 2020.
- The timing of the project, as well as the deliverables, will be split into two phases:
 - Phase 1 will explore the first four steps of the supply chain and concludes with the submission of Colorado's official state management plan to the USDA. The tentative target date for submission of Colorado's management plan is fall 2019.
 - Phase 2 will address the steps in the second half of the supply chain and conclude with the publication of the comprehensive CHAMP report addressing all eight steps in the supply chain. Phase 2 will conclude, and the CHAMP report will be published in spring 2020.
- The initiative includes the development of a governing blueprint for the full supply chain in order to identify:
 - Legislative and regulatory development
 - Department resources
 - Industry guidelines and areas for support
 - Research and advancement needs and opportunities
 - Center of excellence development

Staff will provide memo updates on the CHAMP initiative going forward.

PUBLIC OUTREACH

Staff conducted significant outreach in the development of marijuana regulations. The health and safety concerns for hemp are the same when considering growing and/or extracting in residential properties.

ORDINANCE NO. 103, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ADDING A NEW ARTICLE XII TO CHAPTER 12 OF THE CODE OF THE CITY OF
FORT COLLINS RELATING TO THE CULTIVATION AND EXTRACTION OF HEMP

WHEREAS, in 2018, the federal government enacted the “Agriculture Improvement Act of 2018” (“Federal Act”), which removed hemp from Schedule I of the federal “Controlled Substances Act”; and

WHEREAS, the Federal Act requires the United States Department of Agriculture (“USDA”) to develop a plan for the regulation of hemp and authorizes each state to seek approval from the USDA to have primary regulatory authority over hemp production within the state by preparing and submitting a state plan of regulation to the secretary of the USDA; and

WHEREAS, in 2019, the Colorado General Assembly adopted SB19-220 to update the laws governing Colorado’s industrial hemp regulatory program to align with the Federal Act and to put the Colorado Department of Agriculture (“CDA”) in a position to prepare and submit a plan to the secretary of the USDA; and

WHEREAS, the CDA has partnered with state, local, and tribal agencies, as well as industry experts in cultivation, testing, research, processing, finance and economics to establish a year-long project known as the Colorado Hemp Advancement & Management Plan (“CHAMP”), which will conclude with a report in the Spring of 2020; and

WHEREAS, staff is actively involved in CHAMP, and will help to establish a comprehensive blueprint for how the state will manage hemp cultivation, production, sale and distribution; and

WHEREAS, the Colorado Department of Public Health & Environment (“CDPHE”) currently permits registered persons in the state to carry out the processing, sale and distribution of industrial hemp-based products; and

WHEREAS, the CDA currently regulates the cultivation of industrial hemp by requiring growers to register, and administers a certified seed program; and

WHEREAS, growers of any amount of hemp, regardless of the size of the operation, must be registered with the CDA; and

WHEREAS, there is currently minimal CDA enforcement of industrial hemp cultivation, and no local regulations in place governing the size, number or location of hemp plants in the City; and

WHEREAS, Fort Collins Police Services has seen an increase in the production of hemp in and around the City; and

WHEREAS, in 2019, the Colorado General Assembly also adopted SB19-240 authorizing local governments to adopt ordinances regulating the storage, extraction, processing, or manufacturing of industrial hemp or industrial hemp products; and

WHEREAS, staff has recommended locally prohibiting hemp extractions within dwellings to protect the health, safety and welfare of the inhabitants of Fort Collins in a manner consistent with the laws of the State; and

WHEREAS, further, staff has recommended locally regulating the storage, size, number and location of hemp cultivation to protect the health, safety and welfare of the inhabitants of Fort Collins in a manner consistent with the laws of the State; and

WHEREAS, the City Council has determined that these proposed amendments to the City Code are in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the Code of the City of Fort Collins is hereby amended by the addition of a new Article XII of Chapter 12 which new article reads in its entirety as follows:

ARTICLE XII
CULTIVATION AND EXTRACTION OF HEMP

Sec. 12-220. Scope and purpose.

These rules govern the cultivation and extraction of hemp in the City.

Sec. 12-221. Definitions.

Dwelling shall mean a building used exclusively for residential occupancy and for permitted accessory uses, including single-family dwellings, two-family dwellings and multi-family dwellings. The term *dwelling* shall not include hotels, motels, tents or other structures designed or used primarily for temporary occupancy.

Enclosed space shall mean an area having a roof and all sides closed to the weather and able to be locked to prevent unauthorized entry.

Industrial hemp or *hemp* shall mean the plant *cannabis sativa* L. and any part of the plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of no more than three-tenths (3/10) of one (1) percent on a dry-weight basis.

Inherently hazardous substance shall mean any liquid chemical, compressed gas, or commercial product that has a flash point at or lower than thirty-eight degrees Celsius or one-hundred degrees Fahrenheit, including butane, propane, diethyl ether, alcohol and ethanol.

Locked shall mean secured so as to prevent access.

Mixed-use dwelling shall mean a dwelling that is located in the same building as a non-residential use.

Multi-family dwelling shall mean a dwelling containing three (3) or more dwelling units, not including hotels, motels, and similar group accommodations.

Openly shall mean perceptible from a place that is open to the general public.

Public right-of-way shall mean any street, avenue, boulevard, road, highway, sidewalk, alley or similar place that is leased, owned or controlled by a governmental entity.

Publicly shall mean occurring on any publicly owned property, or on any nonresidential property that is open to the general public, including, but not limited to, roadways, transportation facilities, offices, retail stores, restaurants, places of amusement, parks, playgrounds and the common areas of public buildings and facilities.

Single-family attached dwelling shall mean a single-family dwelling attached to one (1) or more dwellings or buildings, with each dwelling located on its own separate lot.

Single-family dwelling shall mean a dwelling containing no more than one (1) dwelling unit.

Two-family dwelling shall mean a dwelling containing two (2) dwelling units.

Sec. 12-222. Hemp cultivation.

(a) Cultivation, generally.

- (1) No person shall cultivate hemp openly or publicly.
- (2) All persons cultivating hemp shall comply with all applicable requirements of the laws and regulations of the City and the State.
- (3) No person shall cultivate hemp in detached outbuildings.
- (4) No person shall cultivate hemp other than in a locked and enclosed space.
- (5) No person shall produce hemp for sale under this Section.

(b) Cultivation within dwellings.

(1) No person shall use a dwelling primarily as a place to cultivate hemp.

(2) No person shall cultivate or keep twelve (12) hemp plants of any size, or six (6) mature hemp plants on the same legal parcel as any single-family dwelling.

(3) No person shall cultivate or keep hemp plants within any dwelling unit in a two-family, multi-family or single-family attached dwelling.

(4) No person shall cultivate hemp so as to be perceptible from the exterior of the dwelling in which the cultivation occurs.

(5) No person shall use any lighting for indoor hemp cultivation other than light-emitting diodes (LEDs), compact fluorescent lamps (CFLs) or other 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, is prohibited.

(6) No person shall cultivate hemp such that it results in the emission of any gas, vapors, odors, smoke, dust, heat or glare that is noticeable at or beyond the property line of the dwelling at which the cultivation occurs. Sufficient measures and means of preventing the escape of such substances from a dwelling must be provided at all times. In the event that any gas, vapors, odors, smoke, dust, heat or glare or other substances exit a dwelling, the owner of the subject premises shall be liable for such conditions and shall be responsible for immediate, full clean-up and correction of such condition. The owner shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations. In the event there is a lessee of the subject premises, the owner and the lessee shall be jointly and severally liable for such conditions.

(c) *Cultivation within mixed-used dwellings.* No person shall cultivate or keep hemp plants within, or on the same legal parcel as, any mixed-use dwelling.

(d) *Applicability.* This Section shall not apply to any person who cultivates hemp and is registered on or before August 30, 2019, with the Colorado Department of Agriculture.

Sec. 12-223. Use of inherently hazardous substances, alcohol, including ethanol for hemp extractions prohibited.

It shall be unlawful for any person to knowingly use inherently hazardous substances, or alcohol, including ethanol, in the extraction of THC or other cannabinoids from hemp in the City.

Sec. 12-224. Violations and penalties.

Any person who violates any of the provisions of this Article shall be guilty of a misdemeanor criminal offense punishable in accordance with § 1-15 of this Code.

Introduced, considered favorably on first reading, and ordered published this 20th day of August, A.D. 2019, and to be presented for final passage on the 3rd day of September, A.D. 2019.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 3rd day of September, A.D. 2019.

Mayor

ATTEST:

City Clerk