

RESOLUTION 2022 -- _____

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF ARCHULETA COUNTY, COLORADO,
AMENDING THE ARCHULETA COUNTY LAND USE REGULATIONS**

WHEREAS, pursuant to C.R.S. § 30-28-101, *et.seq.* and in particular, C.R.S. §§ 30-28-111 and 30-28-133, the Archuleta County Planning Commission made a comprehensive revision to the zoning plan and subdivision regulations for the unincorporated territory of Archuleta County, and pursuant to C.R.S. § 30-28-112, certified the *Archuleta County Land Use Regulations* to the Board of County Commissioners by Planning Commission Resolution No. 2006-01; and,

WHEREAS, pursuant to C.R.S. § 30-28-112, the Archuleta County Board of County Commissioners (the “Board”) adopted the *Archuleta County Land Use Regulations* by Resolution No. 2006-13, and as subsequently amended; and,

WHEREAS, pursuant to C.R.S. § 30-28-116, from time to time, the Board of County Commissioners may amend provisions of the zoning resolution, when first submitted for the approval, disapproval, or suggestions of the County Planning Commission; and,

WHEREAS, the Archuleta County Development Services Department has drafted proposed amendments to Section 1 General Administration, Section 3 Zoning Regulations, Section 5 Development Standards and Section 11 Definitions of the *Archuleta County Land Use Regulations*; and,

WHEREAS, the Archuleta County Planning Commission conducted a public meeting on March 23, 2022, after due public notice, to consider proposed amendments to the *Archuleta County Land Use Regulations*; and unanimously recommended approval certifying said amendments to the Board; and,

WHEREAS, the Board has conducted a public hearing to consider proposed amendments to the Archuleta County Land Use Regulations; and,

WHEREAS, public notice of the hearing was given by publication in a newspaper of general circulation in the County as required by C.R.S. § 30-28-116; and,

WHEREAS, at the public hearing, testimony was taken from all persons appearing and wishing to give testimony; and,

WHEREAS, the Board has considered the public need, legal authority and purpose of the land use regulations.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ARCHULETA COUNTY, COLORADO, AS FOLLOWS:

Section 1. Findings.

- a. The proposed amendments meet the criteria for amendment of the *Archuleta County Land Use Regulations* in Section 1.1.9.

Section 2. Adoption and Effective Date.

- a. The proposed amendments to Sections 1, 3, 5 and 11 of the *Archuleta County Land Use Regulations*, attached hereto as Exhibit A, are hereby adopted.
- b. The proposed amendments shall take effect upon the date of adoption, unless otherwise indicated.

APPROVED AND ADOPTED THIS 5th DAY OF APRIL, 2022.

ATTEST:

**Board of County Commissioners
Archuleta County, Colorado**

Kristy Archuleta, County Clerk & Recorder

Alvin Schaaf, Chair

SECTION 1 - GENERAL ADMINISTRATION

1.1 GENERAL PROVISIONS

1.2 DECISION-MAKING BODIES

1.3 NON-CONFORMING LAND USE

1.4 ENFORCEMENT

1.4.1 Responsibility for Enforcement:

1.4.2 Violations:

1.4.3 Remedies and Enforcement Powers

1.4.3.1 Withhold Permits:

1.4.3.2 Permits Approved with Conditions:

1.4.3.3 Revoke Approval:

1.4.3.4 Stop Work/Suspend Use:

1.4.3.5 Revoke Plan or Other Approval:

1.4.3.6 Injunctive or Other Equitable Relief:

1.4.3.7 Abatement:

1.4.3.8 Penalties: The County may:

(1) Levy daily fines as allowed by the Archuleta County Fee Schedule;

(2) Record letters outlining un-remedied building code violations to cloud future title searches on a property;

(3) Seek such additional criminal or civil penalties as are provided by Colorado law.

SECTION 3 – ZONING REGULATIONS

3.1 DISTRICT REGULATIONS

3.1.1 Zoning Map:

3.1.2 Zoning Districts Established:

3.1.3 Zoning District Uses:

Table 3 identifies Uses-By-Right and Conditional Uses that may be permitted in each of the zoning districts listed in Section 3.1.2. Any use not specifically listed may be considered by the Board of County Commissioners as a Conditional Use. Additional permits may be required.

TABLE 3: USES BY ZONING DISTRICT

	<i>Type of Permit</i>	
R	– Use by Right	Geo
VRP	– Vacation Rental Permit	O&G
C/BC	– Conditional Use / Board Conditional Use Permit	S&G
		– Geothermal
		– Oil & Gas
		– Sand & Gravel

Note: The Director of Development is authorized to interpret the meaning and scope of the uses listed herein. The Director of Development’s interpretation may be appealed to the Board of Adjustment.

USE	AF	AR	AE	RR	R	MH	C	I
AGRICULTURAL								
RESIDENTIAL								
COMMERCIAL								
INDUSTRIAL								
RECREATIONAL								
OTHER								
Major New Sewage Systems	BC	BC	BC	BC	BC	BC	BC	BC
Major New Water Systems	BC	BC	BC	BC	BC	BC	BC	BC
Marijuana Cultivation for Personal Use, or Caregiver Medical Use		R	R	R	R	R	R	R
Meeting Place and Place for Public Assembly	C	R	R	R	C	BC	R	R

SECTION 5 – DEVELOPMENT STANDARDS

5.1 SUBDIVISION DESIGN STANDARDS

5.2 ENVIRONMENTAL STANDARDS

5.2.1 Preservation of Surface Water Resources

5.2.2 Preservation of Natural Features and Resources

5.2.3 Mitigation of Natural Hazards

5.2.3.1 Steep Land:

- (1) Any structure **built upon** slopes of greater than 20% shall require engineered foundation plans.
- (2) Slopes of 33.3% or greater shall not be **built upon** with habitable structures unless a geotechnical investigation and report proves no geologic hazards exist, such as excessive erosion, landslides, rock falls, collapsible soils, etc., or unless appropriate provisions identified in the report are incorporated into engineered foundation plans to eliminate or control the hazard(s).
- (3) Habitable structures **built adjacent** to slopes of 33.3% or greater must meet setbacks outlined in the Adopted Building Code, or as identified in a geotechnical investigation and report. Any roads, trails or driveways shall only be built in accordance with *Archuleta County Road and Bridge Design Standards*, except for purposes of forestry management or wildfire protection.

5.3 INFRASTRUCTURE STANDARDS

5.4 SITE DEVELOPMENT STANDARDS

5.5 PUBLIC ACCOMMODATIONS AND LODGING STANDARDS

5.6 SUPPLEMENTARY USE STANDARDS

5.6.1 Adult-Oriented Businesses

5.6.2 Gardening and Raising Animals as Accessory Uses

- 5.6.2.1 The raising, harvesting, producing, or keeping of plants (i.e. fruits, vegetables, marijuana, flowers, etc.) for personal, non-commercial use is considered gardening. This use does not qualify as an agricultural use for purposes of property tax calculations or

building permit exemptions. Marijuana cultivation is the only form of gardening discussed in the following sections.

5.6.2.2 The constitutional provisions for both medical and personal recreational marijuana provide protections for personal marijuana cultivation (home grows), but these provisions are silent on the question of time, place, and manner where marijuana plants may be grown. To strike a balance between the rights of Archuleta County citizens who wish to grow marijuana for their own recreational or medical use (“personal use”), Medical Marijuana Caregivers (“caregiver medical use”), and the rights of all others, the following common sense standards and marijuana plant count limits are to be maintained. This use does not qualify as an agricultural use for purposes of property tax calculations or building permit exemptions.

(1) Marijuana Plant Count Limits. The purpose of setting marijuana plant count limits applicable in all zoning districts is to set reasonable limits on unlicensed, non-regulated marijuana cultivation, as is consistent with the authority provided in H.B. 17-1220, to stop or reduce the diversion of legal marijuana to the illegal market. Additionally, marijuana cultivation on a large scale can have a significant impact on valuable and scarce natural resources. Marijuana Plant Count Limits are effective immediately upon the adoption of this section.

- a. There shall be no marijuana cultivation allowed in Archuleta County on unoccupied parcels or parcels that do not contain a legal dwelling, regardless of zoning district.
- b. Each individual must reside full-time on any parcel where and while they cultivate marijuana for personal use or caregiver medical use.
- c. Not more than six (6) marijuana plants per adult (21 years or older) shall be cultivated for personal use at any time, in any zoning district, with no more than twelve (12) marijuana plants per occupied parcel.
- d. Medical Marijuana Primary Caregivers who are registered with the Colorado licensing authority and the Department of Revenue may cultivate not more than twelve (12) marijuana plants for one patient with a State issued medical marijuana card, with a limit of twelve (12) plants per occupied parcel.
- e. Requests to cultivate more than twelve (12) marijuana plants for any use on any single occupied parcel in any zoning district shall require Use-By-Right approval from the County Planning Department.
- f. No parcel in Archuleta County may be used to simultaneously cultivate marijuana for personal use and caregiver medical use.

(2) Standards for cultivation of marijuana for personal use and caregiver medical use.

Because of the potential for causing adverse impacts on neighboring parcels, the following standards shall apply to cultivation of marijuana for personal use and caregiver medical use and do not apply to licensed commercial marijuana operations. Standards in this section are effective October 1, 2022.

- a. Marijuana cultivation must be conducted in an enclosed, locked, non-temporary, building compliant with the current building codes. Marijuana plants must be shielded from public view.

- b. Marijuana cultivation must meet a setback of fifty (50) feet from all property lines of a parcel, one hundred (100) feet from the Ordinary High Water Mark for any body of water, and one hundred (100) feet from any Special Flood Hazard Area (SFHA) or designated wetlands. As with all setbacks, a property owner may seek a Variance per Section 2.4.
- c. Medical Marijuana Primary Caregiver cultivation facilities shall follow all health and safety requirements of Archuleta County marijuana licensing ordinances.
- d. Medical Marijuana Primary Caregiver operations shall comply with the Industrial Performance standards in Sec. 5.4.2, including sound, vibration, emissions (including odor), outdoor storage, and water pollution. Any extraction must follow requirements of Colorado statutes.

(3) Marijuana operations and activities are expressly prohibited as a Home Occupation.

(4) Per Section 1.4.1, this Regulation, including these sections, is enforced by the Director of Development through Code Enforcement Officers. Persons who cultivate marijuana plants in excess of the Marijuana Plant Count Limits set forth in these Regulations, may also be subject to criminal prosecution for violation of §18-18-406(3)(a)(I)(II), C.R.S., as it may be amended in future, or under any other applicable statute. Depending upon the scale of the violation, the marijuana plant count limit requirement may also be enforced by the Archuleta County Sheriff's Office and may be criminally prosecuted.

5.6.2.3 The following chart identifies limitations on the number and type of animals permitted in each zoning district.

SECTION 11 – DEFINITIONS

11.1 ABBREVIATIONS

11.1.1 The following abbreviations are defined as follows:

ADA	Americans with Disabilities Act (1990 and as amended)
BHP	Break Horsepower
BOA	Board of Adjustment
CC&Rs	Covenants, Codes & Restrictions
CDMG	Formerly Colorado Division of Minerals and Geology
CDOT	Colorado Department of Transportation
CDOW	Formerly Colorado Division of Wildlife
CDPHE	Colorado Department of Public Health and Environment
CDPS	Colorado Discharge Permit System
CFS	Cubic Feet per Second
COGCC	Colorado Oil & Gas Conservation Commission
CPW	Colorado Parks & Wildlife
C.R.S.	Colorado Revised Statutes
FAA	Federal Aviation Administration
FBFM	Flood Boundary-Floodway Map
FEMA	Federal Emergency Management Agency
FHA	Federal Housing Administration
FIRM	Flood Insurance Rate Map
HUD	Department of Housing and Urban Development
ITE	Institute of Traffic Engineers
NFIP	National Flood Insurance Program
NGVD	National Geodetic Vertical Datum
NRCS	Natural Resource Conservation Service
OHWM	Ordinary High Water Mark
PDF	Portable Document Format or equivalent electronic file
PUD	Planned Unit Development
WQCD	Water Quality Control Division

11.2 WORDS AND TERMS

11.2.1 **Definitions.** The following specific words and terms are defined as follows:

Excavation: The process of removing earth to create a cavity or hole in the ground.

Marijuana Cultivation for Caregiver Medical Use: Cultivating marijuana plants by a Medical Marijuana Primary Caregiver who is registered with the Colorado licensing authority and the Department of Revenue for the use of patient(s) with a state issued medical marijuana card.

Marijuana Cultivation for Personal Use: Cultivating marijuana plants for your own use, either recreationally or medically, but not commercially or for others use.

Occupied Parcel: A parcel of land with an approved residential structure (dwelling) which is lived in more than 9 months of the year.