



**CITY CLERK'S OFFICE MEMORANDUM**  
**#20-2019**

**DATE:** October 28, 2019

**TO:** Honorable Mayor Antonio B. Esquibel and City Council Members

**THROUGH:** Heather Geyer, City Manager 

**FROM:** Johanna Small, City Clerk 

**SUBJECT:** CB-1939 – Public Consumption Definition Amendment

---

**PURPOSE**

To consider an amendment to Section 9-9-2(e)(2) of the Northglenn Municipal Code concerning the definition of “openly and publicly” regarding the possession of marijuana.

**BACKGROUND**

It is unlawful for a person to openly and publicly display, consume, or use marijuana pursuant to Section 9-9-2 of the Northglenn Municipal Code and Colorado Revised Statutes (C.R.S.) § 18-18-406(b)(I). Earlier this year, Senate Bill 19-224 added language to C.R.S. § 18-18-102 to define “open and publicly,” which determines when someone may be charged with open and public consumption. “Open and public” does not include any activity occurring on residential property by the occupant or their guests. Under the new State definition, a person is prohibited from displaying, consuming, or using marijuana 1) in a manner that is observable by the public; and 2) in an area to which the public has unrestricted access.

The City previously defined “openly and publicly” in Section 9-9-2 of the Municipal Code in 2013 after the passage of Amendment 64, which legalized marijuana for recreation use in Colorado. The City’s current definition satisfies the definition of “public” (“an area accessible by the public”), but does not include the definition of “open” (that the action be observable by the public).

The City Attorney presented information about the State’s new definition to City Council at the September 30, 2019 study session. It was the consensus of Council to amend the City’s definition in Section 9-9-2(e)(2) of the Code to include language that the consumption must be “observable by the public.”

Language Adopted by Senate Bill 19-224 (C.R.S. 18-18-102(20.3))

- (a) "Open" or "openly" means observable by the public or a substantial number of the public.
- (b) "Public" or "publicly" means a place to which the public or a substantial number of the public has access without restriction, including but not limited to streets and highways, transportation facilities, places of amusement, parks, playgrounds, and the common areas of buildings and other facilities.
- (c) "Open and public" or "openly and publicly" does not include any activity occurring on private residential property by the occupant or his or her guests.

Current Language in Northglenn Municipal Code Section 9-9-2(e)(2)

For purposes of this section, the term "openly and publicly" means the consumption or growing of marijuana in a place commonly or usually open to or accessible by the general public, or to which members of the general public may resort, including without limitation public ways, streets, sidewalks, alleys, bicycle paths, trails, public buildings, parks, open spaces, parking lots, shopping centers, places of business usually open to the general public, and automobiles or other vehicles in or upon any such place or places, but excluding the interior or enclosed yard area of private homes, residences, condominiums or apartments. For purposes of this section, "openly or publicly" expressly includes the consumption or growing of marijuana in any place not used for residential purposes where individuals gather to consume or grow marijuana, regardless of whether such place calls itself private or public or charges an admission or membership fee.

Proposed Language for Northglenn Municipal Code Section 9-9-2(e)(2)

For purposes of this section, the term "openly and publicly" means (a) in a manner observable by the public or a substantial number of the public; (b) in an area to which the public has access without restriction, including, but not limited to, streets, public ways, highways, sidewalks, alleys, bicycle paths, trails, public buildings, parks, open spaces, parking lots, shopping centers, places of business usually open to the general public, playgrounds, transportation facilities, places of amusement, and the common areas of buildings and other facilities, but shall not include any activity occurring on private residential property by the occupant or their guests.

**STAFF RECOMMENDATION**

Attached to this memorandum is an ordinance which, if adopted, would amend Northglenn Municipal Code Section 9-9-2(e)(2) to further define the term "openly and publicly" regarding the possession of marijuana. Staff recommends approval of CB-1939 on first reading.

**BUDGET/TIME IMPLICATIONS**

There are no budget implications. If CB-1939 is approved on first reading, a public hearing and second reading of the ordinance will be scheduled for November 25, 2019.

**STAFF REFERENCE**

If Council members have any comments or questions they may contact Johanna Small, City Clerk, at [jsmall@northglenn.org](mailto:jsmall@northglenn.org) or 303.450.8757.

SPONSORED BY: MAYOR ESQUIBEL

COUNCILMAN'S BILL

ORDINANCE NO.

No. CB-1939  
Series of 2019

Series of 2019

A BILL FOR AN ORDINANCE AMENDING SECTION 9-9-2, SUBSECTION (e)(2) OF THE NORTHGLENN MUNICIPAL CODE REGARDING THE DEFINITION OF "OPENLY AND PUBLICLY" FOR THE PURPOSES OF MARIJUANA POSSESSION AND/OR CONSUMPTION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. Section 9-9-2(e)(2) of the Northglenn Municipal Code is amended to read as follows:

**Section 9-9-2. Possession of Marijuana.**

(e) The provisions of this section shall not apply to the personal use of marijuana and marijuana accessories by any person that is twenty-one years of age or older to the extent provided by Article XVIII, Section 16(3) of the Colorado Constitution.

\* \* \*

(2) For purposes of this section, the term "openly and publicly" means ~~the consumption or growing of marijuana in a place commonly or usually open to or accessible by the general public, or to which members of the general public may resort, including without limitation public ways, streets, sidewalks, alleys, bicycle paths, trails, public buildings, parks, open spaces, parking lots, shopping centers, places of business usually open to the general public, and automobiles or other vehicles in or upon any such place or places, but excluding the interior or enclosed yard area of private homes, residences, condominiums or apartments. For purposes of this section, "openly or publicly" expressly includes the consumption or growing of marijuana in any place not used for residential purposes where individuals gather to consume or grow marijuana, regardless of whether such place calls itself private or public or charges an admission or membership fee.~~ (a) IN A MANNER OBSERVABLE BY THE PUBLIC OR A SUBSTANTIAL NUMBER OF THE PUBLIC; (b) IN AN AREA TO WHICH THE PUBLIC HAS ACCESS WITHOUT RESTRICTION, INCLUDING, BUT NOT LIMITED TO, STREETS, PUBLIC WAYS, HIGHWAYS, SIDEWALKS, ALLEYS, BICYCLE PATHS, TRAILS, PUBLIC BUILDINGS, PARKS, OPEN SPACES, PARKING LOTS, SHOPPING CENTERS, PLACES OF BUSINESS USUALLY OPEN TO THE GENERAL

PUBLIC, PLAYGROUNDS, TRANSPORTATION FACILITIES, PLACES OF AMUSEMENT, AND THE COMMON AREAS OF BUILDINGS AND OTHER FACILITIES, BUT SHALL NOT INCLUDE ANY ACTIVITY OCCURRING ON PRIVATE RESIDENTIAL PROPERTY BY THE OCCUPANT OR THEIR GUESTS.

INTRODUCED, READ AND ORDERED POSTED this \_\_\_\_ day of \_\_\_\_\_,  
2019.

\_\_\_\_\_  
ANTONIO B. ESQUIBEL  
Mayor

ATTEST:

\_\_\_\_\_  
JOHANNA SMALL, CMC  
City Clerk

PASSED ON SECOND AND FINAL READING this \_\_\_\_ day of \_\_\_\_\_,  
2019.

\_\_\_\_\_  
ANTONIO B. ESQUIBEL  
Mayor

ATTEST:

\_\_\_\_\_  
JOHANNA SMALL, CMC  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
COREY Y. HOFFMANN  
City Attorney