

ORDINANCE NO. 314

An Ordinance Relating to the Appointment and Powers of a Police Magistrate and the Operation and Procedures of a Police Court.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, COLORADO:

Section 1. Police Magistrate - Appointment-Bond. The Board of Trustees, at its first regular meeting following each biennial election of the board of trustees, shall appoint a police magistrate who shall preside over the police court for a term of two years and until his successor is duly appointed and qualified. He shall be a resident and a qualified elector of Larimer County, Colorado. He may also be a County Judge if he is otherwise eligible and qualified to be such police magistrate. If a vacancy shall occur in such office, the same shall be filled by the board of trustees, by appointment for the unexpired term. The police magistrate shall give a surety bond to the Town in an amount to be fixed by the board of trustees, conditioned upon the faithful performance of his duties as police magistrate, and for the faithful accounting for and payment of all moneys coming into his hands by virtue of his office.

Section 2. Acting Police Magistrate. In case of the temporary absence, sickness or other inability of the police magistrate to act, the mayor may appoint some competent person to act as such police magistrate until the disability of the police magistrate is removed. Such appointment must be in writing.

Section 3. Compensation of Police Magistrate. The police magistrate shall receive as full compensation for his services a salary of not less than \$ 50.00 per month.

Section 4. Terms of Court. There shall be two (2) terms of the police court each for a duration of six (6) months, beginning on the first Monday of January each year and on the first Monday of July of each year.

Section 5. Jurisdiction. The police court shall have exclusive original jurisdiction to hear, try and determine all causes arising under any of the ordinances of the town, for a violation thereof. and there shall be no change of venue therefrom.

Section 6. Powers. The police magistrate shall have full power and authority to make and adopt rules and regulations for conducting the business of his court, and shall have all powers incident to a court of record in relation to the attendance of witnesses, the punishment of contempt, and enforcing of orders of court; provided that no imprisonment for contempt shall exceed five days, and no fine for such cause shall exceed \$100.00.

Section 7. Examine Complaints & Sessions. The police magistrate shall receive and examine affidavits and complaint, at all times, for the violation of any town ordinance, and shall issue a summons or warrant in every case where there is probable cause, to believe that an offense has been committed. He shall hold regular sessions of his court every day, Sundays and legal holidays excepted, for the trial of cases.

Section 8. Statement of Ordinances. In all actions for the recovery of any fines or penalties incurred for the violation of any ordinance of police regulation of the town it shall be sufficient to state in the complaint or affidavit, the number of the section and title of the ordinance violated, together with the date of its passage, without stating said ordinance or section in full, or the substance thereof.

Section 9. Commencement of Actions - Sentence. All actions brought to recover any fine or to enforce any penalty under any ordinance, shall be brought in the name of the people of the state of Colorado as plaintiff. All such cases shall be commenced by a summons. However, a warrant for the arrest of the accused may issue in the first instance upon the affidavit of any person that any such ordinance has been violated, and that the person making the complaint has reasonable ground to believe that the party charged is guilty thereof. Every person arrested upon such warrant shall be taken, without unnecessary delay, before the police magistrate to be tried for the alleged offense. Any person upon whom any fine or penalty shall be imposed, may be committed, upon order of the police magistrate court, to the town jail, or other place provided by the town for the incarceration of offenders, until such fine, or penalty and costs, shall be fully paid. No such imprisonment shall exceed ninety (90) days for any one offense.

Section 10. Warrant Issued Upon Failure to Appear. In the event any person fails to appear or comply with a notice given to such person or attached to a vehicle, or fails to make appearance pursuant to a summons directing an appearance in the police magistrate's court, the police department shall forthwith secure a warrant for his arrest and execute the same by arresting such person and keeping him in custody until he can be taken before the police magistrate.

Section 11. Bail. When a cause for the violation of this ordinance or any ordinance is continued, the defendant shall give bail for his appearance at the time and place set for trial by depositing a cash bond or executing a written recognizance with two sufficient sureties, in an amount fixed by the police magistrate, and thereupon such person shall be released. If such bail bond is not furnished, the defendant shall be committed to jail until the time of trial.

Section 12. Judgment on Bail Bond. If the defendant shall fail to appear at the time and place specified, or appearance shall depart the court without leave, the police magistrate may enter judgment against the defendant and forfeit any cash bond that has been posted, or he may enter judgment against the defendant and his sureties for the penalty of the bond. Upon the entering of such a judgment against the defendant and his sureties, the police magistrate shall issue a notice to the sureties requiring them to appear and show cause why the judgment should not be confirmed against them and execution issued. On the hearing thereunder the judgment may be set aside for good cause or it may be confirmed and execution issued.

Section 13. Board of Trustees to Furnish Supplies. The board of trustees of the Town shall furnish the necessary books, stationery, forms, furniture and fuel required for the use of the police court, together with suitable rooms for the proper conducting of the business of said court.

Section 14. Jury Trials. (a) Trial by Jury. All trials for a violation of any ordinance of the town shall be tried to the court unless the defendant in writing shall demand a jury trial in which event the court shall empanel a jury. Failure to make a demand in writing for a jury trial shall constitute a waiver of such right.

(b) Jury of Less Than Twelve. The defendant shall be tried by a jury of three (3) in number unless he shall at the time of making the demand for jury trial in (a) above request a greater number, but in no event more than twelve (12) jurors shall be allowed. Failure to designate the number of jurors to try the case as herein provided shall constitute a waiver of a jury in excess of three (3) jurors.

(c) Trial Without a Jury. In a case tried without a jury the court shall make a general finding. The defendant shall have the right to waive a trial by jury and to have his case tried by the court.

Section 15. Fee. Each resident selected to serve as a juror at a trial shall receive a fee of \$3.00 for each day served.

Section 16. Jury Commissioner - Bailiff. The town clerk shall serve as jury commissioner of the police court until such time as a clerk of the court is appointed. Upon such an appointment, the clerk of the court shall serve as jury commissioner. The police magistrate shall appoint a bailiff to act at each jury trial and shall allow such bailiff a fee of \$3.00 for his services at each trial and said fee may be assessed as part of the costs.

Section 17. Preparation of Jury List. On or before January 1st of each year the jury commissioner shall prepare a list of persons whom he believes may be qualified to serve as jurors, such list to include at least 50 persons. The commissioner shall then mail a questionnaire to each of such persons asking questions about their qualifications to serve as jurors. Each person receiving such a questionnaire shall truthfully answer the questions contained therein and return the same to the jury commissioner within 10 days after the receipt of the same. Failure to so complete and return the questionnaire shall constitute a violation of this ordinance. When the questionnaires have been returned, the jury commissioner shall determine which ones are qualified and list their names alphabetically in a book kept for this purpose. Such book shall always be open to public inspection during office hours.

Section 18. Drawing of Prospective Jurors. As soon as the jury list is completed, the commissioner shall write the names of the persons on the list on separate ballots and shall place such ballots in a box to be kept for that purpose. Upon order of the police magistrate, the commissioner shall, in the presence of the mayor, draw by chance from such box a sufficient number of jurors for the next term of court. When so drawn, the names shall be certified by the commissioner to the police magistrate, who shall, when a jury is needed, issue a venire to the town marshal to summon the number of jurors that the magistrate shall deem necessary. The court shall fix the trial of jury cases successively by the same panel of jurors so far as is practicable.

Section 19. Summoning of Jurors. Jurors selected as hereinabove provided shall be summoned to attend upon the court by writ of venire facias directed to the town marshal, and such writ may be returnable upon any day of the term as the magistrate shall direct.

Section 20. Additional Venire. If the jury panel become exhausted or because of any other reason there are not a sufficient number of jurors from the panel available to try a case, the magistrate may summon a jury from the bystanders or he may issue an open venire to the town marshal to obtain the necessary jurors.

Section 21. Juror Failing to Appear - Penalty. If any person summoned as a juror shall fail, neglect or refuse to appear, without reasonable excuse, he shall be deemed guilty of contempt and fined or imprisoned as the court may direct. The court shall have the power to issue a citation directed to the town marshal commanding him forthwith to bring before such court the body of such juror so failing to attend and for such juror to show cause why he should not be punished for contempt, or on the appearance of such juror on such citation it shall be lawful for the court to punish him for contempt or wholly discharge him if satisfactory excuse be made.

Section 22. Challenges for Cause. The police magistrate shall pass on all challenges and objections to jurors, and he shall have the power to rule on all questions of evidence and the admissibility thereof in the same manner as a judge of a court of record.

Section 23. Peremptory Challenges. In each case to be tried before a jury, each side shall be entitled to three peremptory challenges.

Section 24. Jury Fee to be Taxed. A jury fee not to exceed fifteen dollars shall be taxed as part of the costs of each case tried by a jury.

Section 25. Jury Verdict - Sentence. Upon a jury returning a verdict of guilty, the judge shall record the same and shall proceed to fix or determine the punishment, penalty, or sentence, and to render judgment upon such verdict for the punishment, penalty, or sentence so determined by him and for costs; but if the jury return a verdict of not guilty, the defendant shall be discharged without costs.

Section 26. Procedure at Trial. If the town or the defendant is not represented by legal counsel, the judge may interrogate witnesses to the end that justice will be served. Indigent persons, upon proof of that fact, may have counsel appointed to represent them, and such counsel appointed shall have his fee set by the court, but in no event shall such fee exceed \$50.00 for each day devoted to the trial of the case, and said fee may be assessed as part of the costs.

Section 27. Instructions to Jury. At the conclusion of all of the evidence, and before arguments of counsel, the judge shall read to the jury the ordinance section alleged to have been violated by the defendant and shall orally instruct the jury as to any points of law that the judge believes to be pertinent to the issues to be determined by the jury. Counsel for either of the parties may submit written instructions to the judge, and if he believes such instructions to be proper, he may read the same to the jury.

Section 28. Stay of Execution. The police magistrate is hereby authorized, in his discretion, to grant a stay of execution not to exceed 30 days, on any fine assessed or jail sentence imposed, or both. If the defendant does not comply with the terms of the stay of execution, then the execution shall issue and the defendant shall be confined in the jail until the judgment is satisfied.

Section 29. Sentence Suspended. The police magistrate is hereby authorized to suspend the payment of any fine or costs, or any part thereof, assessed for a violation of any ordinance, and he may suspend all or any part of any jail sentence imposed for such a violation. He may impose reasonable conditions upon such suspension and reinstate the sentence for a violation of such conditions.

Section 30. Fines Paid to Town Treasurer. All fines and penalties collected in the police court for the violation of any of the ordinances of the town shall be reported by the police magistrate and paid to the town treasurer monthly.

Section 31. Appeals and Bond. Appeals from any judgment of the police magistrate may be taken as provided by the statutes of the State of Colorado. The appeal bond to be executed by the appellant shall be substantially in the following form:

KNOW ALL MEN BY THESE PRESENTS, That we _____ as Principal, and _____ as Sureties, of the County of Larimer and State of Colorado, are held and firmly found unto the Town of Berthoud, in the penal sum of \$ _____, lawful money of the United States, for the payment of which, well and truly to be made, we and each of us, bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Witness our hands this _____ day of _____, 19 _____.
_____.
_____.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That, whereas, the said _____ was, on the _____ day of _____, 19 _____ found guilty of a violation of Ordinance No. _____ of the Ordinances of the Town of Berthoud or one or more provisions of said Ordinance, and was fined in the sum of \$ _____, and sentenced to the common jail for _____ days, from which judgment the said _____ has prayed for and obtained an appeal to the County Court of said county:

NOW, IF THE SAID _____ shall within ten (10) days from the Judgment of the Court, pay to the clerk or judge of said county court the fee required by the rules of said court for docketing of said cause, and duly prosecute this appeal, and will pay off and satisfy any judgment that may be rendered, upon the trial of said case in the court to which the appeal is taken, or dismissal of the appeal, or that the said _____ will surrender himself in satisfaction of such judgment, then the above obligation to be void, otherwise to remain in full force and effect.
the sureties on such bond shall be two persons over the age of twenty-one (21) years of age who own real property within the State of Colorado of a value in excess of the penal sum set by the police magistrate and all liens and encumbrances thereon, or a corporate surety company duly qualified to do business in the State of Colorado.

Section 32. (a) Prisoner Without Means - Release. Whenever it shall be made satisfactorily to appear to the police magistrate, after all legal means have been exhausted that any person who is confined in jail, or other place of confinement, for any fine or costs of prosecution for any violation of an ordinance of the town, has no estate whatsoever wherewith to pay such fine and costs, or costs only, it shall be the duty of the police magistrate to discharge such person from further imprisonment for such fine and costs, which discharge shall operate as a complete release of such fine and costs; provided, that nothing herein shall authorize any person to be discharged from imprisonment before the expiration of the time for which he may be sentenced to be imprisoned as part of his punishment.

(b) The provisions of this Ordinance are hereby declared to be severable, and if any section, provision, or part thereof shall be declared unconstitutional or invalid, the remainder of this Ordinance shall continue in full force and effect, it being the legislative intent that this Ordinance would have been adopted even if such unconstitutional or invalid matter had not been included therein. It is further declared that if any provision or part of this Ordinance, or the application thereof to any person

or circumstances, is held invalid, the remainder of this Ordinance and the application thereof to any person or circumstances, is held invalid, the remainder of this Ordinance and the application thereof to other persons shall not be affected thereby.

(c) All ordinances or parts of ordinances of the Town of Berthoud in conflict with the provisions of this Ordinance are hereby repealed.

(d) The Board of Trustees herewith finds, determines and designates that this Ordinance is necessary for the immediate preservations of the public peace, health and safety, and whereas in the opinion of the Board of Trustees an emergency exists, this ordinance shall take effect and be in force five (5) days after its final passage, adoption and publication.

Passed and adopted this 19th day of January 1966.

AE Waring

Mayor

ATTEST:

Rolland Fletcher Jr

Clerk Pro-Tem
Pub. January 20, 1966