

AN ORDINANCE AMENDING CHAPTER 17, MUNICIPAL OFFENSES, OF THE BERTHOUD MUNICIPAL CODE.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, LARIMER COUNTY, COLORADO, THAT CHAPTER 17 OF THE BERTHOUD MUNICIPAL CODE IS HEREBY AMENDED TO READ AS FOLLOWS:

CHAPTER 17.

MUNICIPAL OFFENSES

17.1 ASSAULT. A person commits the crime of assault if he knowingly or recklessly causes bodily injury to another person or with criminal negligence he causes bodily injury to another person by means of a deadly weapon.

17.2 MENACING. A person commits the crime of menacing if, by any threat or physical action, he knowingly places or attempts to place another person in fear of imminent serious bodily injury.

17.3 RECKLESS ENDANGERMENT. A person who recklessly engages in conduct which creates a substantial risk of serious bodily injury to another person commits reckless endangerment.

17.4 ARSON. A person who knowingly or recklessly starts or maintains a fire or causes an explosion, on his own property or that of another, and by so doing places another person in danger of death or serious bodily injury or places any building or property of another in danger of damage commits arson.

17.5 THEFT. A person commits theft when he knowingly obtains or exercises control over anything of value of another without authorization, or by threat or deception, and:

(a) Intends to deprive the other person permanently of the use or benefit of the thing of value; or

(b) Knowingly uses, conceals, or abandons the thing of value in such manner as to deprive the other person permanently of its use or benefit; or

(c) Uses, conceals, or abandons the thing of value intending that such use, concealment, or abandonment will deprive the other person permanently of its use and benefit; or

(d) Demands any consideration to which he is not legally entitled as a condition of restoring the thing of value to the other person.

17.6 OBTAINING CONTROL OVER ANY STOLEN THING OF VALUE. Every person who obtains control over any stolen thing of value, knowing the thing of value to have been stolen by another, may be tried, convicted, and punished whether or not the principal is charged, tried, or convicted.

17.7 CONCEALMENT OF GOODS. If any person willfully conceals unpurchased goods, wares, or merchandise owned or held by and offered or displayed for sale by any store or other mercantile establishment, whether the concealment be on his own person or otherwise and whether on or off the premises of said store or mercantile establishment, such concealment constitutes *prima facie* evidence that the person intended to commit the crime of theft.

17.8 THEFT BY RECEIVING. A person commits theft by receiving when he receives, retains, loans money by pawn or pledge on, or disposes of anything of value of another, knowing or believing that said thing of value has been stolen, and when he intends to deprive the lawful owner permanently of the use or benefit of the thing of value.

17.9 CRIMINAL MISCHIEF. It shall be unlawful for any person to knowingly damage the real or personal property of one or more other persons.

17.10 CRIMINAL TRESPASS. A person commits the crime of criminal trespass if he unlawfully enters or remains in or upon the real property or personal property of another which property is closed or enclosed in a manner designed to exclude intruders or are fenced.

17.11 CRIMINAL TAMPERING. A person commits the crime of criminal tampering if, with intent to cause interruption or impairment of a service rendered to the public by a utility or by an institution providing health or safety protection, he tampers with property of a utility or institution.

17.12 CRIMINAL TAMPERING. A person commits the crime of criminal tampering if he tampers with property of another with intent to cause injury, inconvenience, or annoyance to that person or to another.

17.13 DEFACING PROPERTY. Any person who destroys, defaces, removes or damages any historical monument or who defaces or causes, aids in, or permits the defacing of any public or private property without the consent of the owner of such property commits defacing of property.

17.14 LITTERING OF PUBLIC AND PRIVATE PROPERTY.

(1) Any person who deposits, throws, or leaves any litter on any public or private property or in any waters commits littering.

(2) It shall be an affirmative defense that:

(a) Such property is an area designated by law for the disposal of such material and the person is authorized by the proper public authority to so use the property; or

(b) The litter is placed in a receptacle or container installed on such property for that purpose; or

(c) Such person is the owner or tenant in lawful possession of such property, or he has first obtained written consent of the owner or tenant in lawful possession, or the act is done under the personal direction of said owner or tenant.

(3) (a) The term "litter" as used in this section shall include but not be limited to all rubbish, waste material, canine feces, refuse, garbage, trash, debris, or other foreign substances, solid or liquid of every form, size, kind and description.

(b) The phrase "public or private property" as used in this section includes, but is not limited to, the right-of-way of any road or highway, any body of water or watercourse, including frozen areas or the shores or beaches thereof, any park, playground, or building, any refuge, conservation, or recreation area, and any residential, farm, or ranch properties or timberlands.

17.15 CRIMINAL SIMULATION. A person commits a criminal simulation when:

(a) With intent to defraud, he makes, alters, or represents any object in such fashion that it appears to have an antiquity, rarity, source or authorship, ingredient, or composition which it does not in fact have; or

(b) With knowledge of its true character and with intent to use to defraud, he utters, misrepresents, or possesses any object made or altered as specified in section (a) above.

17.16 THEFT OF CREDIT DEVICE. It is unlawful for a person to steal, take, or remove a credit card or other credit device from the person or possession of the person to whom it is issued, with intent to use, deliver, circulate, or sell it without the consent of the person to whom it is issued, or with intent to cause it to be so used, delivered, circulated, or sold.

17.17 CRIMINAL POSSESSION OF CREDIT DEVICE. It shall be unlawful if a person has in his possession or under his control or received from another person, with intent to use, deliver, circulate, or sell it or with intent to cause the use, deliver, circulation, or sale of it, any credit card or other credit device which he knows or reasonably should know to be forged, altered, counterfeited, spurious, or stolen.

17.18 FRAUD BY CHECK. As used in this section, unless the context otherwise requires:

(a) "Check" means a written, unconditional order to pay a sum certain in money, drawn on a bank, payable on demand, and signed by the drawer.

(b) "Drawee" means the bank upon which a check is drawn.

(c) "Drawer" means a person, either real or fictitious, whose name appears on a check as the primary obligor, whether the actual signature be that of himself or of a person authorized to draw the check on himself.

(d) "Insufficient funds" means a drawer has insufficient funds with the drawee to pay a check when the drawer has no checking account with the drawee, or has funds in a checking account with the drawee in an amount less than the amount of the check plus the amount of all other checks outstanding at the time of issuance; and a check dishonored for "no account" shall also be deemed to be dishonored for "insufficient funds".

(e) "Issue". A person issues a check when he makes, draws, delivers, or passes it or causes it to be made, drawn, delivered, or passed.

Any person, knowing he has insufficient funds with the drawee, who, with intent to defraud, issues a check for the payment of services, wages, salary, commissions, labor, rent, money, property, or other thing of value, commits fraud by check.

17.19 OBSTRUCTING GOVERNMENT OPERATIONS. A person commits the crime of obstructing government operations if he intentionally obstructs, impairs, or hinders the performance of a governmental function by a public servant, by using or threatening to use violence, force, or physical interference or obstacle.

(1) It shall be an affirmative defense that:

(a) The obstruction, impairment, or hindrance was of unlawful action by a public servant; or

(b) The obstruction, impairment, or hindrance was of the making of an arrest.

17.20 RESISTING ARREST.

(1) A person commits resisting arrest if he knowingly prevents or attempts to prevent a peace officer, acting under color of his official authority, from effecting an arrest of the actor or another, by:

(a) Using or threatening to use physical force or violence against the peace officer or another; or

(b) Using any other means which creates a substantial risk of causing physical injury to the peace officer or another.

(2) It is no defense to a prosecution under this section that the peace officer was attempting to make an arrest which in fact was unlawful, if he was acting under color of his official authority, and in attempting to make the arrest he was not resorting to unreasonable or excessive force giving rise to the right of self-defense. A peace officer acts "under color of his official authority" when, in the regular course of assigned duties, he is called upon to make, and does make, a judgment in good faith based upon surrounding facts and circumstances that an arrest should be made by him.

(3) The term "peace officer" as used in this section means a peace officer in uniform or, if out of uniform, one who has identified himself by exhibiting his credentials as such peace officer to the person whose arrest is attempted.

17.21 OBSTRUCTING A PEACE OFFICER OR FIREMAN.

(1) A person commits obstructing a peace officer or fireman when, by using or threatening to use violence, force, or physical interference, or obstacle, he knowingly obstructs, impairs, or hinders the enforcement of the penal law or the preservation of the peace by a peace officer, acting under color of his official authority, or knowingly obstructs, impairs, or hinders the prevention, control or abatement of fire by fireman, acting under color of his official authority.

(2) This section does not apply to obstruction, impairment, or hindrance of the making of an arrest.

17.22 REFUSAL TO PERMIT INSPECTIONS.

(1) A person commits a crime if, knowing that a public servant is legally authorized to inspect property:

(a) He refuses to produce or make available the property for inspection at a reasonable hour; or

(b) If the property is available for inspection he refuses to permit the inspection at a reasonable hour.

(2) For purposes of this section "property" means any real or personal property, including books, records, and documents which are owned, possessed, or otherwise subject to the control of the defendant. A "legally authorized inspection" means any lawful search, sampling, testing, or other examination of property, in connection with the construction or repair of real property; or, regulation of a business or occupation, that is authorized by statute or lawful regulatory provision.

17.23 FALSE REPORTING TO AUTHORITIES.

(1) A person commits false reporting to authorities if:

(a) He knowingly causes a false alarm of fire or other emergency to be transmitted to or within an official or volunteer fire department, ambulance service, or any other government agency which deals with emergencies involving danger to life or property; or

(b) He makes a report or knowingly causes the transmission of a report to law enforcement authorities of a crime or other incident within their official concern when he knows that it did not occur; or

(c) He makes a report or knowingly causes the transmission of a report to law enforcement authorities pretending to furnish information relating to an offense or other incident within their official concern when he knows that he has no such information or knows that the information is false.

17.24 DISORDERLY CONDUCT.

(1) A person commits disorderly conduct if he intentionally, knowingly, or recklessly:

(a) Makes a coarse and obviously offensive utterance, gesture, or display in a public place; or

(b) Abuses or threatens a person in a public place in an obviously offensive manner; or

(c) Makes unreasonable noise in a public place or near a private residence that he has no right to occupy; or

(d) Fights with another in a public place except in an amateur or professional contest of athletic skill; or

(e) Not being a peace officer, discharges a firearm in a public place except when engaged in lawful target practice or hunting; or

(f) Not being a peace officer, displays a deadly weapon in a public place in a manner calculated to alarm.

(2) It is an affirmative defense to prosecution under subsection (1) (b) of this section that the actor had significant provocation for his abusive or threatening conduct.

17.25 OBSTRUCTING HIGHWAY OR OTHER PASSAGEWAY.

(1) An individual or corporation commits an offense if without legal privilege he intentionally, knowingly, or recklessly:

(a) Obstructs a highway, street, sidewalk, railway, waterway, building entrance, elevator, aisle, stairway, or hallway to which the public or a substantial group of the public has access or any other place used for the passage of persons, vehicles, or conveyances, whether the obstruction arises from his acts alone or from his acts and the acts of others; or

(b) Disobeys a reasonable request or order to move issued by a person he knows to be a peace officer, a fireman, or a person with authority to control the use of the premises, to prevent obstruction of a highway or passageway or to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot, or other hazard.

(2) For purposes of this section, "obstruct" means to render impassable or to render passage unreasonably inconvenient or hazardous.

17.26 DISRUPTING LAWFUL ASSEMBLY. A person commits disrupting lawful assembly if, intending to prevent or disrupt any lawful meeting, procession, or gathering, he significantly obstructs or interferes with the meeting, procession, or gathering by physical action, verbal utterance, or any other means.

17.27 INTERFERENCE WITH STAFF, FACULTY, OR STUDENTS OF EDUCATIONAL INSTITUTIONS.

(1) No person shall, on or near the premises or facilities of any educational institution, willfully deny to students, school officials, employees, and invitees:

(a) Lawful freedom of movement on the premises;

(b) Lawful use of the property or facilities of the institution;

(c) The right of lawful ingress and egress to the institution's physical facilities.

(2) No person shall, on the premises of any educational institution or at or in any building or other facility being used by any educational institution, willfully impede the staff or faculty of such institution in the lawful performance of their duties or willfully impede a student of the institution in the lawful pursuit of his educational activities through the use of restraint, abduction, coercion, or intimidation or when force and violence are present or threatened.

(3) No person shall willfully refuse or fail to leave the property of or any building or other facility used by any educational institution upon being requested to do so by the chief administrative officer, his designee charged with maintaining order on the school premises and in its facilities, or a dean of such

educational institution, if such person is committing, threatens to commit, or incites others to commit any act which would disrupt, impair, interfere with, or obstruct the lawful missions, processes, procedures, or functions of the institution.

(4) It shall be an affirmative defense that the defendant was exercising his right to lawful assembly and peaceful and orderly petition for the redress of grievances, including any labor dispute between an educational institution and its employees, any contractor or subcontractor, or any employee thereof.

17.28 HARASSMENT.

(1) A person commits harassment if, with intent to harass, annoy, or alarm another person, he:

(a) Strikes, shoves, kicks, or otherwise touches a person or subjects him to physical contact; or

(b) In a public place directs obscene language or makes an obscene gesture to or at another person; or

(c) Follows a person in or about a public place; or

(d) Engages in conduct or repeatedly commits acts that alarm or seriously annoy another person and that serve no legitimate purpose; or

(e) Initiates communication with a person, anonymously or otherwise by telephone, in a manner intended to harass or threaten bodily harm or property damage, or makes any comment, request, suggestion, or proposal by telephone which is obscene; or

(f) Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation; or

(g) Makes repeated communications at inconvenient hours or in offensively coarse language; or

(h) Repeatedly insults, taunts, or challenges another in a manner likely to provoke a violent or disorderly response.

(2) As used in this section, unless the context otherwise requires, "obscene" means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus, or excretory functions.

17.29 LOITERING - DEFINITION.

(1) The word "loiter" means to be dilatory, to stand idly around, to linger, delay, or wander about, or to remain, abide, or tarry in a public place.

(2) A person commits loitering if he:

(a) Loiters for the purpose of begging; or

(b) Loiters for the purpose of unlawful gambling with cards, dice, or other gambling paraphernalia; or

(c) Loiters for the purpose of engaging or soliciting another person to engage in prostitution or deviate sexual intercourse; or

(d) Loiters in or about a school building or grounds, not having any reason or relationship involving custody of, or responsibility for, a pupil or any other specific, legitimate reason for being there, and not having written permission from a school administrator; or

(e) Loiters with one or more persons for the purpose of unlawfully using or possessing a narcotic or dangerous drug.

(3) It shall be an affirmative defense that the defendant's acts were lawful and he was exercising his rights of lawful assembly as a part of peaceful and orderly petition for the redress of grievances, either in the course of labor disputes or otherwise.

17.30 DISCHARGE OF WEAPONS. It shall be unlawful for any person, except a law enforcement officer in the performance of his duties, to fire or discharge within the town a revolver or pistol of any description, shotgun or rifle which may be used for the explosion of cartridges or shells, or any air gun, gas operated gun, or spring gun, sling shot, or bow and arrow.

17.31 FIREWORKS PROHIBITED. Except as provided in sections 12-28-103 and 12-28-106 of the Colorado Revised Statutes 1973, it shall be unlawful in the town of Berthoud for any person to offer for sale, expose for sale, sell, or have in his possession with intent to offer for sale, sell, use, or explode any fireworks.

17.32 DISTRIBUTION OF HANDBILLS. No show bills, or advertising matter of any kind shall be posted, fastened or affixed to any building, post, pole, fence, tree, motor vehicle or other device or be distributed about the town, but all such distributed matter shall be placed within the buildings.

17.33 USE OF LOUDSPEAKERS PROHIBITED. It shall be unlawful for any person to use any radio, loudspeaker, musical instrument, or, any noise making group or device within the town for the purpose of vending, advertising or soliciting the sale of any merchandise or tickets of admission to any show or event, or for the purpose of attracting attention to any signs or exhibits which are displayed in connection therewith.

17.34 OPEN DISPLAY OF FERMENTED MALT BEVERAGES AND ANY MALT, VINOUS OR SPIRITUOUS LIQUORS. It shall be unlawful to drink or openly display any fermented malt beverages and any malt, vinous or spirituous liquors in or upon any street, alley or other public way within the town of Berthoud. And it shall be unlawful to sell, serve, drink or openly display any fermented malt beverages and any malt, vinous or spirituous liquors in or upon any public building, public park or any other public place within the town or upon the premises of any restaurant, lunch stand, store or other place of business within the town, except at such places where the same may lawfully be sold or sold and served as provided by the laws of the State of Colorado, and at such times and places as expressly authorized by the Town Board to meet the requirements of the community and encourage the use of the town's parks and other amusement centers for community welfare.

17.35 LOITERING OF MINORS. It shall be unlawful for any person under the age of eighteen (18) years to be or remain in or upon any area open to the public after the hour of eleven o'clock (11:00) P.M., or prior to the hour of five o'clock (5:00) A.M., Sunday through Thursday of each week hereafter, or after the hours of twelve o'clock (12:00) Midnight on Friday and Saturday, and prior to five o'clock (5:00) A.M. of the following day; provided, however, that the provisions of this Section shall not apply to a minor who is:

- (a) Engaged in lawful employment; or
- (b) Accompanied by the parent, guardian or other person of age of twenty-one (21) years; having permission of the parent or guardian to have the custody and care of such minor; or
- (c) Accompanied by any person between the ages of eighteen (18) and twenty-one (21) years having in his or her possession written permission from the parent or guardian to have the care or custody of such child; or
- (d) Upon an emergency errand or legitimate business directed by the parent, guardian or other adult person having the care and custody of the minor.

17.36 RESPONSIBILITY OF PARENTS FOR MINORS. It shall be unlawful for the parent, guardian or other adult person having the care and custody of a minor under the age of eighteen (18) years to knowingly permit such minor to be or remain in or upon any area open to the public after the hour of eleven o'clock (11:00) P.M., or prior to the hour of five o'clock (5:00) A.M., Sunday through Thursday of each week hereafter, or after the hours of twelve o'clock (12:00) Midnight on Friday and Saturday, and prior to five o'clock (5:00) A.M. of the following day; provided, however, that the provisions of this Section shall not apply to those instances excepted in Section 17.35 above.

17.37 PARKING OF TRAILERS OR TRAILER COACHES UPON PUBLIC WAYS. No trailer or trailer coach constructed or designed for dwelling or sleeping purposes, nor any trailer constructed or designed for hauling purposes shall be parked or permitted to stand upon any public street or alley for a period longer than 72 hours.

17.38 FAILURE TO OBEY SUMMONS OR NOTICE. It shall be unlawful for any person to violate his promise to appear given to an officer upon arrest or issuance of a summons or notice for any violation of this ordinance.

17.39 WHEN COMPLAINT MAY BE ISSUED. In the event any person fails to comply with the notice given to such person, or fails to respond to a summons directing an appearance in the court having jurisdiction, the clerk of the court having jurisdiction may have a complaint issued against such person and may issue and have served a warrant for his arrest.

17.40 MEANING OF CERTAIN WORDS AND PHRASES. Whenever any words and phrases used in this Chapter are not defined herein but are defined in the Code of Criminal Procedure or Criminal Code of the State of Colorado, any such definition therein shall be deemed to apply to such words and phrases used in this Chapter.

17.41 PENALTIES. The following penalties, herewith set forth in full, shall apply to this ordinance:

(a) It is unlawful for any person to violate any of the provisions stated or adopted in this ordinance.

(b) Every person convicted of a violation of any provision stated or adopted in this ordinance shall be punished by a fine not exceeding three hundred dollars (\$300.00), or by imprisonment not exceeding ninety (90) days, or by both such fine and imprisonment, provided however that no person less than eighteen (18) years of age may be imprisoned.

17.42 VALIDITY. If any part or parts of this ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Trustees hereby declares that it would have passed this ordinance and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid.

17.43 REPEAL. Existing ordinances or parts of ordinances covering the same matters as embraced in this ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this ordinance.

Section 2. Effective Date

The Board of Trustees of the town of Berthoud herewith finds, determines, and designates that this Ordinance shall take effect and be in force thirty (30) days after publication.

This Ordinance was introduced and read and a public hearing set for August 24, 1982, by the Board of Trustees of the Town of Berthoud at its meeting held this 10th day of August, 1982. After a public hearing, this Ordinance was read, passed, and ordered published by the Board of Trustees at its meeting this 24th day of August, 1982.

TOWN OF BERTHOUD:

ATTEST:

Richard D. Sturman
Mayor

Orchelle Patterson
TOWN CLERK

Published August 31, 1982