

ORDINANCE NO. 1154

AN ORDINANCE OF THE TOWN OF BERTHOUD, COLORADO, PROHIBITING THE OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES OR RETAIL MARIJUANA STORES EXCEPT MEDICAL MARIJUANA BUSINESSES AND FACILITIES PROPERLY LICENSED AND OPERATING PURSUANT TO ALL APPLICABLE FEDERAL AND LOCAL REGULATIONS, WITHIN THE TOWN BOUNDARIES OF THE TOWN OF BERTHOUD, STATE OF COLORADO

WHEREAS, the Board of Trustees ("Board") has the authority to exercise all Town powers for the statutory town of Berthoud, Colorado; and

WHEREAS, on November 6, 2012, the voters of Colorado approved the adoption of Amendment 64, Personal Use and Regulation of Marijuana; and

WHEREAS, said Amendment 64 became effective upon official declaration of the vote hereon by proclamation of the Governor, pursuant to Section 1(4) of Article V, of the Colo. Constitution; and

WHEREAS, Amendment 64 added a new Section 16 to Article XVIII of the Colo. Constitution; and

WHEREAS, Amendment 64 defines a "Locality" in part in section 2(e) of Section 16 to include a town; and

WHEREAS, part 5(f) of Section 16 provides the following:

(f) A LOCALITY MAY ENACT ORDINANCES OR REGULATIONS, NOT IN CONFLICT WITH THIS SECTION OR WITH REGULATIONS OR LEGISLATION ENACTED PURSUANT TO THIS SECTION, GOVERNING THE TIME, PLACE, MANNER AND NUMBER OF MARIJUANA ESTABLISHMENT OPERATIONS; ESTABLISHING PROCEDURES FOR THE ISSUANCE, SUSPENSION, AND REVOCATION OF A LICENSE ISSUED BY THE LOCALITY IN ACCORDANCE WITH PARAGRAPH (h) OR (i), SUCH PROCEDURES TO BE SUBJECT TO ALL REQUIREMENTS OF ARTICLE 4 OF TITLE 24 OF THE COLORADO ADMINISTRATIVE PROCEDURE ACT OR ANY SUCCESSOR PROVISION; ESTABLISHING A SCHEDULE OF ANNUAL OPERATING, LICENSING, AND APPLICATION FEES FOR MARIJUANA ESTABLISHMENTS, PROVIDED, THE APPLICATION FEE SHALL ONLY BE DUE IF AN APPLICATION IS SUBMITTED TO A LOCALITY IN ACCORDANCE WITH PARAGRAPH (i) AND A LICENSING FEE SHALL ONLY BE DUE IF A LICENSE IS ISSUED BY A LOCALITY IN ACCORDANCE WITH PARAGRAPH (h) OR (i); AND ESTABLISHING CIVIL PENALTIES FOR VIOLATION OF AN ORDINANCE OR REGULATION GOVERNING THE TIME, PLACE, AND MANNER OF A MARIJUANA ESTABLISHMENT THAT MAY OPERATE IN SUCH LOCALITY. A LOCALITY MAY PROHIBIT THE OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, OR RETAIL MARIJUANA STORES THROUGH THE ENACTMENT OF AN ORDINANCE OR THROUGH AN INITIATED OR REFERRED MEASURE; PROVIDED, ANY INITIATED OR REFERRED MEASURE TO PROHIBIT THE

OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, OR RETAIL MARIJUANA STORES MUST APPEAR ON A GENERAL ELECTION BALLOT DURING AN EVEN NUMBERED YEAR (underline added), and;

WHEREAS, the Board of Trustees of the Town of Berthoud has determined that allowing businesses and facilities permitted by Amendment 64 within the Town is not in the best interests of the Town or its residents at this time; and

WHEREAS, consistent with the authority granted to the Board in Amendment 64, the Board desires to adopt this ordinance prohibiting the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores, except Medical Marijuana businesses and facilities properly licensed and operating pursuant to all applicable state and local regulations, within the limits of the Town of Berthoud, Colorado; now therefore,

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD AS FOLLOWS:

Purpose. The purpose of this ordinance is to promote the general public welfare and safety throughout the Town of Berthoud by prohibiting the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores, except Medical Marijuana businesses and facilities properly licensed and operating pursuant to all applicable state and local regulations.

Definitions. Unless otherwise specified or the context otherwise requires, any terms used herein shall have the same meanings as provided in Article XVIII, Section 16 of the Colo. Constitution. These definitions include, but are not limited to the following:

1. "MARIJUANA" OR "MARIHUANA" MEANS ALL PARTS OF THE PLANT OF THE GENUS CANNABIS WHETHER GROWING OR NOT, THE SEEDS THEREOF, THE RESIN EXTRACTED FROM ANY PART OF THE PLANT, AND EVERY COMPOUND, MANUFACTURE, SALT, DERIVATIVE, MIXTURE, OR PREPARATION OF THE PLANT, ITS SEEDS, OR ITS RESIN, INCLUDING MARIJUANA CONCENTRATE. "MARIJUANA" OR "MARIHUANA" DOES NOT INCLUDE INDUSTRIAL HEMP, NOR DOES IT INCLUDE FIBER PRODUCED FROM THE STALKS, OIL, OR CAKE MADE FROM THE SEEDS OF THE PLANT, STERILIZED SEED OF THE PLANT WHICH IS INCAPABLE OF GERMINATION, OR THE WEIGHT OF ANY OTHER INGREDIENT COMBINED WITH MARIJUANA TO PREPARE TOPICAL OR ORAL ADMINISTRATIONS, FOOD, DRINK, OR OTHER PRODUCT.
2. "MARIJUANA ACCESSORIES" MEANS ANY EQUIPMENT, PRODUCTS, OR MATERIALS OF ANY KIND WHICH ARE USED, INTENDED FOR USE, OR DESIGNED FOR USE IN PLANTING, PROPAGATING, CULTIVATING, GROWING, HARVESTING, COMPOSTING, MANUFACTURING, COMPOUNDING, CONVERTING, PRODUCING, PROCESSING, PREPARING, TESTING, ANALYZING, PACKAGING, REPACKAGING, STORING, VAPORIZING, OR CONTAINING MARIJUANA, OR FOR INGESTING, INHALING, OR OTHERWISE INTRODUCING MARIJUANA INTO THE HUMAN BODY,

EXCEPT THOSE ACCESSORIES SPECIFICALLY USED FOR MEDICAL MARIJUANA PURPOSES.

3. "MARIJUANA CULTIVATION FACILITY" MEANS AN ENTITY LICENSED TO CULTIVATE, PREPARE, AND PACKAGE MARIJUANA AND SELL MARIJUANA TO RETAIL MARIJUANA STORES, TO MARIJUANA PRODUCT MANUFACTURING FACILITIES, AND TO OTHER MARIJUANA CULTIVATION FACILITIES, BUT NOT TO CONSUMERS.
4. "MARIJUANA ESTABLISHMENT" MEANS A MARIJUANA CULTIVATION FACILITY, A MARIJUANA TESTING FACILITY, A MARIJUANA PRODUCT MANUFACTURING FACILITY, OR A RETAIL MARIJUANA STORE.
5. "MARIJUANA PRODUCT MANUFACTURING FACILITY" MEANS AN ENTITY LICENSED TO PURCHASE MARIJUANA; MANUFACTURE, PREPARE, AND PACKAGE MARIJUANA PRODUCTS; AND SELL MARIJUANA AND MARIJUANA PRODUCTS TO OTHER MARIJUANA PRODUCT MANUFACTURING FACILITIES AND TO RETAIL MARIJUANA STORES, BUT NOT TO CONSUMERS.
6. "MARIJUANA PRODUCTS" MEANS CONCENTRATED MARIJUANA PRODUCTS AND MARIJUANA PRODUCTS THAT ARE COMPRISED OF MARIJUANA AND OTHER INGREDIENTS AND ARE INTENDED FOR USE OR CONSUMPTION, SUCH AS, BUT NOT LIMITED TO, EDIBLE PRODUCTS, OINTMENTS, AND TINCTURES.
7. "MARIJUANA TESTING FACILITY" MEANS AN ENTITY LICENSED TO ANALYZE AND CERTIFY THE SAFETY AND POTENCY OF MARIJUANA.
8. "MEDICAL MARIJUANA CENTER" MEANS AN ENTITY LICENSED BY A STATE AGENCY TO SELL MARIJUANA AND MARIJUANA PRODUCTS PURSUANT TO SECTION 14 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE.
9. "RETAIL MARIJUANA STORE" MEANS AN ENTITY LICENSED TO PURCHASE MARIJUANA FROM MARIJUANA CULTIVATION FACILITIES AND MARIJUANA AND MARIJUANA PRODUCTS FROM MARIJUANA PRODUCT MANUFACTURING FACILITIES AND TO SELL MARIJUANA AND MARIJUANA PRODUCTS TO CONSUMERS.

Enforcement. This ordinance shall be enforced by the Authorized law enforcement agency of the Town of Berthoud, which at this time is the Berthoud Police Department, and by local Code Enforcement officials.

Violation. It shall be unlawful for any person to violate any provision of this ordinance.

Disposition of Fines and Forfeitures. Unless otherwise provided by law, all fines and penalties, and the surcharge thereon, for the violation of this ordinance shall be paid into the Town. The fine for a first offense and for any subsequent offense shall be one thousand dollars (\$1,000.00) per violation and each day shall be deemed a separate violation.

Surcharges. In addition to the fines and penalties prescribed in this ordinance, any person convicted of a violation of this ordinance shall be subject to the statutory surcharges applicable within the Town. These surcharges shall be paid to the clerk of the court by each person convicted of violating this ordinance.

Scope. This ordinance shall apply within the incorporated territory of the Town of Berthoud. This ordinance shall in no way limit application and enforcement of any statutes of the State of Colorado but shall be in addition thereto.

Severability. If any part or parts of this ordinance are for any reason held to be invalid, such provision 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 hereof, irrespective of the fact that any one part or parts be declared invalid.

Repeal. All ordinances and/or resolutions or parts or ordinances and/or resolutions inconsistent with 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 effective date of this ordinance.

EFFECTIVE DATE.

In order to preserve the immediate health and safety of the Town of Berthoud and its residents, this ordinance shall take effect immediately upon its publication as provided in § 30-15-405, C.R.S.

INTRODUCED, READ AND ADOPTED ON FIRST READING on this 26th day of March, 2013.


TOWN OF BERTHOUD

By: 
Jan Dowker, Mayor Pro-Tem

ATTEST:


Mary Cowdin, Town Clerk

Approved as to form:


Gregory S. Bell, Attorney

Published: March 7, 2013