

## **ORDINANCE NO. 1153**

### **AN ORDINANCE AMENDING CHAPTER 17, ARTICLE 10, OF THE TOWN OF BERTHOUD CODE, TOWN OF BERTHOUD, LARIMER AND WELD COUNTIES, COLORADO**

WHEREAS, Chapter 17, Article 10 of the Town of Berthoud Code establishes general offenses and penalties regarding the possession, use, transfer and manufacture of drugs and drug paraphernalia within the Town; and

WHEREAS, the people of the State of Colorado authorized the possession, use, and cultivation of small amounts of marijuana by adults 21 years of age or older by the passage of Amendment 64, which has been incorporated into Article XVIII of the State Constitution; and

WHEREAS, Amendment 64 makes lawful certain activities previously proscribed by Chapter 17, Article 10 of the Town of Berthoud Code; and

WHEREAS, it is the desire of the Town to incorporate the changes of law resulting from the passage of Amendment 64 into the Town of Berthoud Code in order to clarify to citizens of the Town what activities related to the use, possession, transfer, and manufacture of marijuana are lawful, and those that remain unlawful; and

WHEREAS, the Town Board of Trustees desires to amend Chapter 17 Article 10, of the Town of Berthoud Development Code,

### **NOW THEREFORE BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, LARIMER AND WELD COUNTIES, COLORADO:**

**Section 1:** Chapter 17 of the Town of Berthoud Development Code, Article 10, shall be amended as follows:

#### **Article 10: Drugs and Drug Paraphernalia**

##### **17-10-110 Purpose**

The Town Board determines that items of drug paraphernalia encourage the illicit use of controlled substances, that the availability, display, and sale of such items lends a permissiveness and apparent legitimacy to the unlawful use of controlled substances, that the availability, display and sale of such items greatly threatens the peace, health and safety of the citizens of the community and that such activities should be prohibited.

##### **17-10-120 Definitions**

As used in this Article the following definitions shall apply:

- (1) *Controlled Substance* Means a drug as defined in Section 18-18-102(5), C.R.S., as amended.

- (2) *Items or Item of Drug Paraphernalia* Means all equipment, products or materials of any kind which are used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing, testing, analyzing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of the laws of this state or the United States.

#### **17-10-130 Sale of Paraphernalia Unlawful**

It is unlawful for any person to knowingly sell or offer for sale any item of drug paraphernalia, except as authorized by Article XVIII of the Colorado Constitution and local ordinance.

#### **17-10-140 Prosecutions – Evidence**

In any prosecution for violation of this Section, the following factors shall be considered in determining whether the defendant knowingly offered for sale or sold drug paraphernalia:

- (a) Statements by an owner or anyone in control of the item concerning its use;
- (b) The proximity of the item to a controlled substance;
- (c) Knowledge by the defendant of the use to which a purchaser or prospective purchaser intends to put the item
- (d) Oral or written instructions provided in connection with the item concerning its use;
- (e) Descriptive materials accompanying the object or displayed in connection with the item suggesting, explaining, or depicting its use;
- (f) The circumstances and manner in which the item is displayed for sale;
- (g) The character and nature of other merchandise displayed or sold;
- (h) Knowledge by the defendant of a common use to which the item is put in the community;
- (i) The existence of common lawful uses for the item in the community;
- (j) Expert testimony concerning the use of the item;
- (k) All other relevant evidence showing the character and nature of the time, and the circumstances surrounding its sale or offering for sale.

#### **17-10-150 Possession of Drug Paraphernalia**

It shall be unlawful for any person to possess drug paraphernalia who knows, or reasonably should know, that the drug paraphernalia could be used under circumstances in violation of the laws of this state. Notwithstanding the foregoing, it shall not be unlawful for individuals with a State of Colorado Medical Marijuana Registry card, or who are twenty one (21) years of age or older, to possess "Marijuana Accessories" as that term is defined in Article XVIII of the Colorado Constitution.

#### **17-10-160 Possession of Cannabis**

- (1) For the purposes of this Section, the term cannabis shall include all parts of the plant *Cannabis sativa L.*, whether growing or not; the seed thereof; the resin extracted from



any part of such plant; and every compound, manufacture, salt derivative, mixture or preparation of such plant, its seeds or resin; but shall not include the mature stalks of such plant, fiber produced from its stalks, oil or cake, or the sterilized seed of such plant, which is incapable of germination. The term *cannabis concentrate* means hashish, tetrahydroncannabinols or any alkaloid, salt derivative, preparation, compound or mixture, whether natural or synthesized, of tetrahydrocannabinols.

- (2) It is unlawful for anyone under twenty one (21) years of age who does not possess a current State of Colorado Medical Marijuana Registry Card to possess cannabis or cannabis concentrate, and upon conviction thereof, or plea of guilty or no contest thereto, punishment shall not be by imprisonment, but shall be by a fine as set forth in this Code.
- (3) It is unlawful for anyone to possess more than one ounce of cannabis or cannabis concentrate, except as authorized by Article XVIII of the Colorado Constitution, and upon conviction thereof, or plea of guilty or no contest thereto, punishment shall not be by imprisonment, but shall be by a fine as set forth in this Code.

#### **17-10-170 Consumption of Cannabis**

- (1) It is unlawful for any person who does not possess a current State of Colorado Medical Marijuana Registry Card and who is under twenty one (21) years of age to consume cannabis or cannabis concentrate.
- (2) It is unlawful openly and publicly, or in a manner that endangers others, to consume cannabis or cannabis concentrate, and upon conviction thereof, or a plea of guilty or no contest thereto, punishment shall be as set out in this Code.

#### **17-10-180 Sale and Transfer of Cannabis.**

- (1) It is unlawful for any person to sell, or exchange to another person for remuneration, cannabis or cannabis concentrate, except as authorized by Article XVIII of the Colorado Constitution and local ordinance.
- (2) It is unlawful for any person to transfer, with or without remuneration, cannabis or cannabis concentrate to any person under twenty one (21) years of age, except as authorized by Article XVIII of the Colorado Constitution and local ordinance.

#### **17-10-190 Cultivation of Cannabis.**

- (1) It is unlawful for anyone under twenty one (21) years of age to cultivate cannabis, unless they are in possession of a current State of Colorado Medical Marijuana Registry Card and are otherwise authorized to cultivate cannabis.
- (2) It is unlawful for anyone twenty one (21) years of age or older to cultivate more than six marijuana plants, with three or fewer being mature, flowering plants, unless otherwise authorized by state law and local ordinance to cultivate additional cannabis.

- (3) It is unlawful to cultivate cannabis openly or publicly, or in a space that is not locked and enclosed.
- (4) The space within any residence where cannabis is grown, cultivated, or processed shall meet all applicable requirements of the Town's building codes and shall meet the requirements of all adopted water, sewer, and fire district regulations applicable.
- (5) The cultivation of cannabis must not be perceptible from the exterior of the primary residence, including but not limited to:
  - (a) Common visual observation;
  - (b) Unusual odors, smells, fragrances, or other olfactory stimulus;
  - (c) Light pollution, glare, or brightness that disturbs the repose of another;
  - (d) Undue vehicular or foot traffic, including excess parking within the residential zone; and
  - (e) Excessive noise from fans, reasonably likely to disturb surrounding property owners.
- (6) The smell or odor of cannabis growing within any residence shall not be capable of being detected by a person with a normal sense of smell from any adjoining lot, parcel, or tract of land not owned by the owner of the residence, or from any adjoining public right of way.

#### **17-10-200 Penalty (Drug Paraphernalia and Drugs)**


- (1) In addition to the penalties imposed under Article 1 of Chapter 17 for a violation of this Article 10, the court may, in its discretion and as part of the sentence to be imposed, require a person convicted of violating any portion of this Article 10 to complete court-approved public service in an amount to be set by the court. Whenever the court requires that a person complete any amount of public service pursuant to this Article 10, the court shall also impose upon that person, in addition to any other fine, cost or penalty, a public service fee in an amount set by resolution of the Town Board.
- (2) It is unlawful for the parent, guardian, or other adult person having the duty of care and custody of a minor under the age of eighteen years to knowingly allow or permit such minor to violate this Article 10.

#### **Section 3: Emergency Clause – Effective Date**

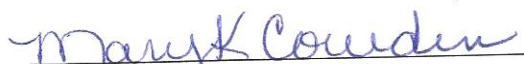
This Ordinance shall take effect upon adoption by a majority of the Board of Trustees, based upon the Board's findings that the health, safety and welfare of the citizens of the Town of Berthoud necessitate the immediate implementation of this ordinance.

Introduced, read, adopted, approved, signed and ordered published in full by the Board of Trustees of the Town of Berthoud this 26<sup>th</sup> day of February, 2013.

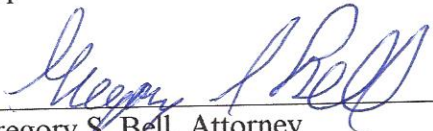
Town of Berthoud:

  
\_\_\_\_\_  
Jan Dowker, Mayor Pro-Tem

ATTEST:

  
\_\_\_\_\_  
Mary K. Cowdin Town Clerk

Approved as to form:

  
\_\_\_\_\_  
Gregory S. Bell, Attorney

Published in the Berthoud Surveyor

March 7, 2013