

ORDINANCE NO. 1132

**AN ORDINANCE AMENDING CHAPTER 30, SECTION 5, OF
THE TOWN OF BERTHOUD DEVELOPMENT CODE, TOWN OF BERTHOUD, LARIMER
AND WELD COUNTIES, COLORADO**

WHEREAS, the Town of Berthoud Development Code establishes rules and regulations for businesses within a Zoning District; and,

WHEREAS, these rules and regulations have been found to be inappropriate, inadequate and ineffective relative to the location and operation of medical marijuana related facilities as authorized by Section 14 of Article XVIII of the State Constitution; and,

WHEREAS, medical marijuana related businesses characteristically have secondary impacts on the community and the neighboring properties;

WHEREAS, it is the desire of the Town to allow the operation of these businesses in areas of the Town which are zoned or may be zoned for these types of businesses; and,

WHEREAS, the Town Board of Trustees desires to amend Chapter 30 Section 5, 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 30 of the Town of Berthoud Development Code, Section 5, shall be amended with the addition of the following:

Section 30-5-105 USES PERMITTED BY SPECIAL REVIEW

(H) Medical Marijuana. This section applies to medical marijuana related operations within the Town of Berthoud and incorporates the definitions set forth in Section 12-43.3-104 C.R.S. as amended. Those regulations which are and will be adopted by the Colorado Department of Health and Environment and Colorado Department of Revenue are incorporated herein by this reference.

- (1) The Board of Trustees of the Town of Berthoud is hereby designated as the Local Licensing Authority and hereby delegates its authority to conduct hearings and make findings of fact and conclusions of law with respect to any alleged violations of the Town of Berthoud's Municipal Code, Colorado Revised Statutes or rules promulgated by the State of Colorado, as they relate to medical marijuana regarding the operations of Medical Marijuana facilities including but not limited to the suspension of, or reinstatement of licenses, to the Berthoud Municipal Court.

- (2) Applications for a Use by special review for any facility, operation or premises for the cultivation, manufacture, processing, distribution and/or sale of Medical Marijuana, Medical Marijuana-Infused products or related activities must be submitted in conformance with the provisions of this Section 30-5-105 as amended. This includes applications for Medical Marijuana Centers, Optional Premises Cultivation Centers, and Medical Marijuana-Infused Products Manufacturer Premises whether co-located or not. Use by special review applications for all uses identified above shall only be accepted for properties located in the M1: Limited Industrial and M2: Industrial zones designated north of Mountain Avenue, south of Bunyan Avenue, east of the rail line, and west of 1st Street as of the effective date of this Ordinance.

In their review of applications for Use by special review of any medical marijuana premises or facilities the Planning Commission and the Board of Trustees shall consider, at a minimum, the following factors:

- (a) The number, type, and availability of medical marijuana premises or facilities located in or near the location under consideration;
 - (b) That the location must be over 1,000 feet away from established schools, rehabilitation facilities, licensed daycare centers and non-profit centers for the care of minors with such distance measured in a linear (straight line) manner from edge of property to edge of property;
 - (c) That any medical marijuana premise or facility may be no closer than 1,000 feet from any other medical marijuana premise or facility with such distance to be measured linear (straight line) manner from edge of property to edge of property;
 - (d) The size of the premises or facility;
 - (e) The proposed security plans;
 - (f) The character, experience and criminal history of all persons involved as management, employees and owners;
 - (g) Sanitary issues, health safety issues, fire safety issues, building code issues and waste water effluent issues;
 - (h) The needs and desires of the community with respect to the requested special use and specifically, why those needs are not and cannot be met by the existing facility(ies) in the Town of Berthoud at that time. It shall be incumbent upon all applicants to document how the needs of the Berthoud community are not being met by existing premises and/or facilities and to provide data to adequately address this issue.
- (3) Implementation. At such time as an application requesting a use by special review for medical marijuana premises or facilities is submitted to the Town for processing, the Planning Commission shall recommend action, and the Board of Trustees shall review, revise and adopt as appropriate the regulations for such operations, or deny the application. Any regulations or conditions imposed by the Town of Berthoud shall supplement the regulations enacted by the State of Colorado. The fees for processing the application shall be paid in advance.

(4) In addition to the Use by special review application fee the applicant shall agree to pay all costs and administrative fees incurred by the Town in processing any application. Upon approval of the use by special review a written copy of the conditions upon which the license was granted will be provided to the applicant. The Applicant may then apply for a Medical Marijuana license which shall be reviewed annually by the Board of Trustees acting as the Local Licensing Authority to determine whether probable cause exists for the suspension of the License through a referral to the Berthoud Municipal Court.

(5) Medical Marijuana Facilities which are currently in existence within the corporate limits of the Town of Berthoud as of the effective date of this Ordinance shall have six months from the effective date of this Ordinance to come into full compliance with the provisions of this Ordinance with the exception of the geographic and zone district limitations identified in #2 above and the 1,000 foot distance provision as identified in #2(b) above. Upon the sale or transfer of ownership, or any change in ownership, of any Medical Marijuana Facility currently in existence within the corporate limits of the Town of Berthoud as of the effective date of this Ordinance that facility must come into compliance with all provisions of this Ordinance without limitation.

(6) The limits as to the quantity of medical marijuana a person may possess are set forth in Section 14 of Article XVIII of the Colorado Constitution (4) (a):

"A patient's medical use of marijuana, within the following limits, is lawful: (I) No more than two-ounces of a usable form of marijuana; and (II) no more than six marijuana plants, with three or fewer being mature, flowering plants that are producing a usable form of marijuana,"

subject to the exception that additional medical marijuana may be possessed if a patient is authorized to exceed the six-plant and two-ounce limit, pursuant to 12-43.3-901(4) (e) CRS. Without first receiving the applicable zoning approval for a licensed premises or optional premises, no owner or tenant of property within the Town of Berthoud may exceed the foregoing limits on medical marijuana.

(7) Until the applicable license required herein is approved, no patient who has been issued a registry identification card or, if applicable, that patient's registered caregiver may have under their control or possession, directly or indirectly, more than the six-plant, two-ounce limits as more specifically described above.

(8) Penalty Clause and Notice

(a) Penalty Clause - It shall be unlawful to fail to perform any act required herein, fail to pay any fee required herein, or to violate in any manner the requirements of this Ordinance. Each day a violation continues shall constitute a separate and distinct violation punishable by

imprisonment of up to ninety (90) days, or a fine of \$300 or by both such fine and imprisonment for each day an offense continues.

(b) Notice - At least twenty-four (24) hours prior to the issuance of a summons and complaint to the owner(s) of real property the Town shall serve notice on the owner(s) pursuant to C.R.C.P. Rule 4, or by personal contact, requiring the owner(s) to comply with this Ordinance within twenty-four (24) hours.

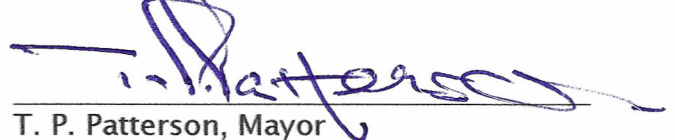
Section 2: Ordinances #1129 and #1131 are hereby repealed and reenacted as set forth in this Ordinance.

Section 3: Emergency Clause - Effective Date


This Ordinance shall take effect upon adoption by a $\frac{3}{4}$ 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 and secondary impacts of these businesses to the community 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 24th day of May, 2011.

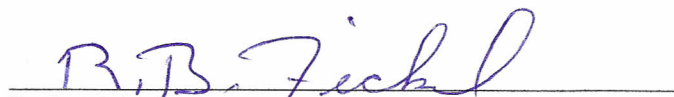
TOWN OF BERTHOUD:


T. P. Patterson, Mayor

ATTEST:


Mary K. Cowdin, Town Clerk

Approved as to form:


R. B. Fickel II, Attorney

Published in the Berthoud Surveyor

June 2, 2011