

## ORDINANCE NO. 1139

### AN ORDINANCE OF THE TOWN OF BERTHOUD, COLORADO, ADOPTING BY REFERENCE THE BERTHOUD MEDICAL MARIJUANA CODE

WHEREAS, the Town of Berthoud Development Code establishes permissible zoning conditions for Medical Marijuana Businesses which are operated in conformity with Colorado state statutes and regulations; and

WHEREAS, additional rules and regulations relative to the cultivation of medical marijuana and the operation of medical marijuana related facilities as authorized by Section 14 of Article XVIII of the State Constitution are required to allow the Town to adequately monitor the compliance of persons and entities operating within the Town limits; and

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

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 the Berthoud Municipal Code to address registration, licensing and regulation of such businesses; and

WHEREAS, the Town has drafted the Berthoud Medical Marijuana Code which shall be available for inspection at the Town Clerk's office for at least fifteen days prior to public hearing on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF BERTHOUD, COLORADO THAT THE BERTHOUD MEDICAL MARIJUANA CODE BE ENACTED, ADOPTED BY REFERENCE, AND INCORPORATED HEREIN AS THE EFFECTIVE ORDINANCE OF THE TOWN OF BERTHOUD.

**Penalty Provisions.** All penalty provisions contained within the Berthoud Medical Marijuana Code are provided below in compliance with C.R.S. § 31-16-204:

#### Section 4: License Required.

(a) **License Required.** It shall be unlawful for any person to operate a medical marijuana business without obtaining a license to operate pursuant to the requirements of this chapter. This licensing requirement applies to all medical marijuana businesses regardless of whether the business was established before or after the Town adopted laws regarding medical marijuana.

(1) Any medical marijuana business that commenced operation prior to August 2, 2010, and had obtained a valid sales and use tax license from the Town may continue in operation pending final action by the Local Licensing Authority on the application

submitted pursuant to this chapter, provided that an application for a sales tax license for such medical marijuana business was submitted to the Town by 5 p.m. February 15, 2012.

- (2) Any existing medical marijuana business that does not meet the licensing requirements set forth in this chapter shall terminate its operation upon the effective date of this chapter.

#### **Section 7: Persons Prohibited as Licensees and Business Managers.**

(a) It shall be unlawful for any of the following persons to have a financial interest in or manage a medical marijuana business, and no license provided by this chapter shall be issued to or held by, and no medical marijuana business shall be managed by:

- (1) Any person until the annual fee for the license has been paid;
- (2) Any person not of good moral character;
- (3) Any corporation, any of whose officers, directors or stockholders holding an ownership interest are not of good moral character;
- (4) Any partnership, association or company, any of whose officers or members holding an interest therein, or a managing member, are not of good moral character;
- (5) Any person employing, assisted by or financed in whole or in part by any other person who is not of good moral character;
- (6) Any person, unless such person's character, record and reputation are satisfactory to the Local Licensing Authority;
- (7) Any natural person who is under twenty-one years of age; or
- (8) Any person who operates or manages a medical marijuana business contrary to the provisions of this chapter, any other applicable law, rule or regulation, or conditions imposed on land use or license approvals, or contrary to the terms of the plans submitted with the license application, as such plans may be amended as provided in this chapter.
- (9) A licensed physician making patient recommendations;

- (10) A person licensed pursuant to this article who, during a period of licensure, or who, at the time of application, has failed to remedy an outstanding delinquency for taxes owed, or an outstanding delinquency for judgments owed to a government.
- (11) A sheriff, deputy, police officer, or prosecuting officer, or an officer or employee of the state licensing authority or a local licensing authority;
- (12) A person whose authority to be a primary caregiver as defined in § 25-1.5-106(2), C.R.S. has been revoked by the state health agency; or
- (13) A person that is a licensee for a location that is currently licensed as a retail food establishment or a wholesale food registrant.

#### **Section 9: Non-Commercial Cultivation Regulations**

- (a) The Cultivation, production, or possession of marijuana plants for medical use by a patient or primary caregiver as defined by Article XVIII, Section 14 of the Colorado Constitution, shall be allowed in residential structures subject to the following conditions:
  - (1) Such marijuana plants are cultivated, produced, or possessed within a licensed patient's or registered caregiver's primary residence, and
  - (2) Medical marijuana may be grown, cultivated, or possessed only within a licensed patient's or registered caregiver's primary residence. Medical marijuana may not be grown, cultivated or processed in the yard, curtilage, or other area outside the patient or primary caregiver's primary residence.
    - A. Within a detached single-family residence unit, medical marijuana may be grown, cultivated, or processed only within a secure, defined, contiguous 150 square foot area.
    - B. Within any residential structure other than a detached single-family residential unit, medical marijuana may be grown, cultivated, or processed only within a secure, defined, contiguous 100 square foot area; and
    - C. Medical marijuana shall not be grown, cultivated, or processed within the common area of any real property that is devoted to a residential use.
    - D. Primary caregivers who have registered with the state and Town may request a special exception to the above sections 9(a)(2)(A) and (B), which exception shall not be withheld so long as the primary caregiver can show to the satisfaction of

the Town's Local Licensing Authority that additional space is necessary to adequately service the primary caregiver's patients and that the cultivation operation is otherwise compliant with state and local law.

- (3) The space within the primary residence where medical marijuana 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; and
- (4) The cultivation, production, or possession of such marijuana plants must not be perceptible from the exterior of the primary residence, including by not limited to:
  - A. Common visual observation, which would prohibit any form of signage;
  - 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.
- (5) The smell or odor of marijuana growing within the primary 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 primary residence, or from any adjoining public right of way.
- (6) It is unlawful and a misdemeanor offense for a person to violate any provision of this section. A person shall be guilty of a separate offense for each and every day during any portion of which any violation of the requirements of this section is committed, continued, or permitted by such person.

**Certification.**

This ordinance has been introduced and a notice describing the Code and setting the date of the public hearing has been published twice, at least fifteen days and eight days preceding the hearing.

The Town Clerk shall certify to the passage of this ordinance and make not less than three copies of the adopted Code available for inspection by the public during regular business hours.

**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.

At its meeting on March 6, 2012 this Ordinance was read and two notices of the public hearing were ordered to be published by the Board of Trustees.

At the regular meeting of the Board of Trustees on the 27<sup>th</sup> day of March, a public hearing was conducted, this Ordinance was read, passed and ordered published.

ATTEST:



Mary K. Cowdin – Town Clerk

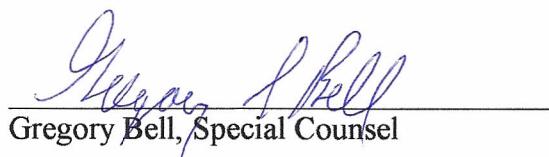
TOWN OF BERTHOUD



T.P. Patterson – Mayor

Published: April 5, 2012

Approved as to form:

  
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Gregory Bell, Special Counsel