

**TOWN OF BERTHOUD
ORDINANCE NO. 1242**

**AN ORDINANCE OF THE TOWN OF BERTHOUD, COLORADO ADOPTING
RETAIL MARIJUANA AUTHORIZATIONS AND REGULATIONS AS PART OF THE
BERTHOUD MUNICIPAL CODE**

WHEREAS, the Town Board for the **TOWN OF BERTHOUD** (the “Town”), in response to approval by the voters of the Town for retail marijuana sales through existing medical marijuana outlets, has developed regulations governing retail marijuana sales within the Town; and

WHEREAS, the Town Board finds that the availability of marijuana through retail outlets in nearby locales exposes the Town of Berthoud to all of the impacts of such sales without providing any offsetting revenue or employment benefits to the Town; and

WHEREAS, the Town Board finds that retail sale of marijuana products through existing medical marijuana outlets in their existing locations will not significantly increase impacts on the citizens of the Town; and

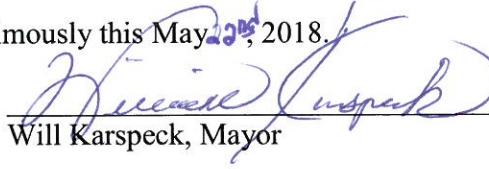
WHEREAS, the Town Board hereby determines that amendments to the Berthoud Municipal Code as set forth herein, together with the sales taxes previously authorized by the voters and the Board of Trustees will provide a beneficial regulatory and financial basis for retail marijuana sales.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF BERTHOUD, COLORADO THAT:

1. The Berthoud Municipal Code is hereby amended by a new Section 13.16, as more fully set out in exhibit “A” (pages 3 through 19, inclusive) to this ordinance, which is hereby fully incorporated by reference;
2. No sales shall be authorized until all provisions of the Marijuana sales tax as approved by the voters of the Town in November 2017, are fully implemented and in force;
3. All sections of the BERTHOUD Municipal Code inconsistent with the foregoing are hereby repealed.

The Town Board finds and concludes that this Ordinance is necessary for the immediate preservation of the peace, health, welfare, safety and economic well-being of the citizens of the Town of Berthoud, and shall therefore take effect immediately upon passage by the Board of Trustees.

INTRODUCED, READ and PASSED unanimously this May 22, 2018.


Will Karspeck, Mayor

ATTEST:

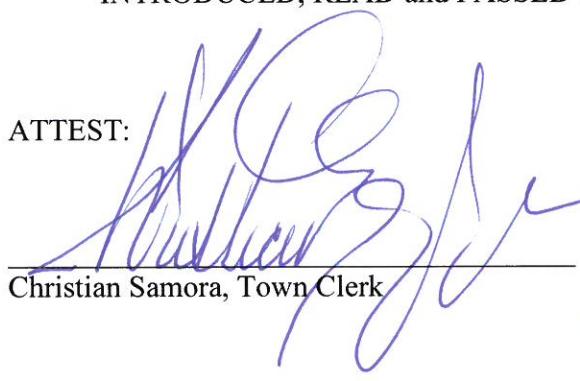

Christian Samora, Town Clerk



EXHIBIT “A” – BERTHOUD RETAIL MARIJUANA CODE ADOPTION

CHAPTER 13.16 – RETAIL MARIJUANA ESTABLISHMENTS

13.16-1 Authority to Regulate

Section 16 of Article XVIII of the Colorado Constitution, also commonly known as Amendment 64 of 2012, authorizes a system of state licensing for businesses engaging in the cultivation, testing, manufacturing, and retail sale of marijuana, collectively referred to as “marijuana establishments” by the constitution. Subsection 16(5)(f) of Article XVIII allows localities, within their respective jurisdictions: to prohibit operation of marijuana establishments; to regulate the time, place and manner in which marijuana establishments may operate; and to limit the total number of marijuana establishments. The authority of localities to prohibit or regulate marijuana establishments within their respective jurisdictions, including the authority to engage in local licensing of marijuana establishments, is also reflected in various provisions of the Colorado Retail Marijuana Code, article 43.4 of title 12, C.R.S. (“Colorado Retail Marijuana Code”), and other provisions of state law and regulations. This section is adopted pursuant to the aforesaid constitutional and statutory authority.

13.16-2 Intent and Purpose

- A. Intent. The Town Board of Trustees intends to regulate the use, acquisition, production and distribution of retail marijuana in a manner that is consistent with Section 16 of Article XVIII of the Colorado Constitution (“Amendment 64”) and the Colorado Retail Marijuana Code.
- B. Purpose. The purpose of this chapter is to implement regulations to protect the public health, safety and welfare of the residents of the Town by prescribing the manner in which retail marijuana establishments can be conducted in the Town. Further, the purpose of this chapter is to:
 1. Provide for the safe sale and distribution of marijuana to individuals who are old enough to obtain, possess and use marijuana for recreational purposes under Amendment 64.
 2. Protect public health and safety through reasonable limitations on business operations as they relate to noise, air and water quality, food safety, neighborhood and resident safety, security for the business and its personnel and other health and safety concerns.
 3. Promote lively street life and high-quality neighborhoods by limiting the concentration of any one type of business in specific areas.
 4. Impose fees to cover the cost to the Town of licensing retail marijuana businesses in an amount sufficient for the Town to recover its costs of the licensing program.

5. Adopt a mechanism for monitoring compliance with the provisions of this chapter and state law.
6. Create regulations that address the particular needs of the residents of the Town and coordinate with laws that may be enacted by the state regarding the issue.
7. Facilitate the implementation of Amendment 64 and the Colorado Retail Marijuana Code without going beyond the authority granted therein.

C. Relationship to State Law. Any provisions in this Section that are different from the State Law are consistent with the Town's responsibility to protect the public health, safety and welfare of its citizens. The Town intends that both State Law and this chapter apply within the Town of Berthoud. This Section is to be interpreted consistently with State Law, but where such an interpretation is not possible, State Law shall govern.

D. Waiver. Adoption of this Section is not intended to waive or otherwise impair any portion of any local option to prohibit Retail Marijuana Establishments in the future.

E. Severability. If any provision of this Section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

13.16-3 Definitions

The definitions set forth in subsection 16(2) of Article XVIII of the Colorado Constitution, the Colorado Medical Marijuana Code, C.R.S. §12-43.3-104, as amended, the regulations thereto at 1 CCR 212-1, as well as the Colorado Retail Marijuana Code, C.R.S. § 12-43.4-103, as amended, and the regulations thereto at 1 CCR 212-2, shall apply equally to this chapter, unless the context clearly indicates otherwise, and except as specifically defined below:

Applicant means any person who has submitted an application for a license to operate a retail marijuana store to the local licensing authority.

Good cause, for purposes of the refusing or denying a license or license renewal, means:

- A. The licensee or applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of any applicable state or local law, or any rule and regulation adopted pursuant thereto, related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marijuana;

- B. The licensee or applicant has failed to comply with its approved plans or any special term or condition placed on the license by order of the state licensing authority or the local licensing authority;
- C. Evidence the licensed premises have been operated in a manner that adversely affects the public health, safety or the general welfare of the Town or the immediate neighborhood where the establishment is located, which evidence may include a continuing pattern of violations of the terms and conditions of a license issued pursuant to this chapter, a continuing pattern of unlawful or violent activity occurring in the location and in association with the operation of the business, or other violations of this code; or
- D. Evidence the licensee, or any principal officer, director, owner, manager, agent or employee of the license is not of good moral character or has violated any provision of this chapter or committed any unlawful act under this chapter.

License means a revocable privilege to lawfully operate a retail marijuana store pursuant to this chapter.

Licensed premises means the premises specified in an application for a license this chapter, which are owned or will be in the possession of the licensee and within which the licensee is authorized to sell marijuana in accordance with all applicable laws.

Licensee means a person licensed pursuant to this chapter.

Manager means the individual designated by the owner of the retail marijuana store as the person responsible for all operations of the business in the absence of the owner from the business premises.

Marijuana means and includes the following, as defined by 1 CCR 212-1 and 1 CCR 212-16 2: medical marijuana, medical marijuana concentrate, medical marijuana-infused product, edible retail marijuana product, retail marijuana, retail marijuana concentrate, and retail marijuana product.

Marijuana store means a facility licensed by the Town and state to operate in the Town as a retail marijuana store, or a co-located retail marijuana store and medical marijuana center, that distributes, dispenses, displays, sells, or otherwise provides marijuana to consumers, patients or caregivers as authorized pursuant to section 16 of article XVIII of the Colorado Constitution and other applicable state law.

Moral character means the degree to which a person's history demonstrates honesty, fairness, and respect for the rights of others and for conformance to the law, which may include considerations of whether an individual has:

- A. Ever had a professional license denied, suspended, or revoked;

- B. Ever had a business license denied, suspended, or revoked;
- C. Ever surrendered, been denied, or had any type of marijuana-related business license placed on an administrative hold, suspended or revoked;
- D. Ever been denied any type of marijuana-related business license;
- E. Ever had a business temporarily or permanently closed for failure to comply with any tax, health, building, fire, zoning or safety law;
- F. Ever had an administrative, civil or criminal finding of delinquency for failure to file or failure to pay sales or use taxes or any other taxes;
- G. Ever been convicted to a felony or other offense involving a crime of moral turpitude; or
- H. Within the previous twelve months been indicted, charged with or convicted of any offense, whether a criminal felony, misdemeanor, petty offense or any local ordinance violation related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marijuana.

Principal officer means the chief executive officer, president, vice president, secretary, treasurer, chief financial officer, chief operating officer, and executive director.

13.16-4 Retail Marijuana Licensing Authority

- A. Creation. There is created a local retail marijuana licensing authority, hereinafter referred to in this section as the licensing authority. The licensing authority established by Chapter 13.13-3 of the Berthoud Municipal Code for medical marijuana shall constitute the licensing authority for retail marijuana establishments. Two members shall constitute a quorum, and the Authority shall be authorized to act by unanimous consent without meeting on uncontested administrative matters. The initial licensing of a Retail Marijuana Business shall always be conducted as a quasi-judicial proceeding after notice and opportunity to be heard to both the applicant and the public. Public notice shall be made in the same manner as required for liquor license applications.
- B. Under no circumstances shall the authority receive or act upon any application for local licensing of a retail marijuana establishment in circumstances where the state has failed to act in accordance with section 16 of Article XVIII of the Colorado Constitution, it being the intent of this article that no marijuana establishment may lawfully exist in the Town absent the issuance of a state license and full regulatory oversight of the establishment as a retail marijuana store by the state as well as the Town. Accordingly, the authority shall not receive or act upon any application for licensing submitted independently and in lieu of state licensing nor shall the authority grant any license if the state fails to act within 90 days on any specific application for licensing of a retail

marijuana establishment in accordance with paragraph 16(5)(g)(III) of Article XVIII of the Colorado Constitution.

C. Duties and powers of the Authority. The Authority shall have the power to grant or deny an application pursuant to this chapter, and to impose any conditions on the applicant or licensee related to the granting of the license. The authority shall have the authority to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of any hearing so held. The Authority may adopt rules of procedure regulating the conduct of its meetings and hearings. The Authority shall have the authority to approve or deny applications for license renewals, transfers of ownership, changes of corporate structure, changes of location, modifications of licensed premises or approved plans, and changes in manager registration. The authority shall have the authority to summarily suspend a license pending a hearing. The authority shall have the power, after hearing, to revoke or suspend any license, or to impose fines in lieu of suspension, civil penalties, sanctions, or other conditions on the applicant, the licensee, or the manager, relating to the license.

13.16-5 Licensing Authorized

The authority may issue only licenses for Retail Marijuana Stores, as defined in Rule 103 of the Code of Colorado Regulations 1 CCR 212-2 (Retail Marijuana Code) and as authorized by state law. No other types of retail marijuana establishment may be licensed or may operate in the Town.

13.16-6 License Required

- A. The license requirement set forth in this Section shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state, or local law, including, by way of example, a sales and use tax business license granted and issued by the Town, or any applicable zoning, development, or building permits.
- B. The issuance of any license pursuant to this Section does not create an exception, defense, or immunity to any person in regard to any potential civil or criminal liability.
- C. It shall be unlawful for any person to operate a retail marijuana store in the Town without obtaining a local license to operate pursuant to the requirements of this Section while concurrently holding a license in good standing from the state.
- D. A separate license shall be required for each specific business and for each geographic location.
- E. Only a licensed medical marijuana center in good standing with the state and local licensing authorities may be licensed as, or may operate, a retail marijuana store in the Town.

F. A retail marijuana store and medical marijuana center held by the same licensee shall be contiguous, located within the same building and under the exclusive control of the licensee.

13.16-7 Application Requirements

- A. All applications for a license shall be submitted to the Town on forms provided by the authority and shall include all materials required for a new license under state law and regulations. To the extent any materials have been included with the applicant's state license application and forwarded to the Town by the state licensing authority, the authority may rely upon the information forwarded from the state without requiring resubmittal of the same materials to the authority. The authority may, in its discretion, require additional documentation associated with the application, including any other information that may be relevant, as may be necessary to enforce the requirements of state law and this code.
- B. Complete applications. For purposes of this chapter an application for a license shall not be considered complete until the authority has (i) determined that all requirements of the application have been provided to the Town, (ii) received the local share of the application fee from the state, and (iii) obtained all other information the authority determines necessary to make a decision whether to approve or deny the license application, or approve it with conditions.
- C. All applications may be subject to disclosure under the Colorado Open Records Act. Notwithstanding the foregoing, the security plan required by this Section will be protected from disclosure as provided under the Colorado Open Records Act, § 24-72-203(2)(a)(VIII), C.R.S. If the Town finds that such documents are subject to inspection, it will attempt to provide at least twenty-four hour notice to the applicant prior to such disclosure.
- D. The authority may promulgate and make available forms for different types of applications under this Section, and if a form exists for a particular type of application, the authority shall not consider such application unless it includes such completed form. Along with or as a part of such forms, the authority may specify page or word limits for applications or any part of any application as it determines necessary to ensure an orderly process.
- E. Every applicant and licensee under this chapter shall be deemed, by virtue of applying for, holding, or renewing a license, to have expressly consented to the procedures set forth in this chapter.

13.16-8 Locations of Retail Marijuana Stores

Retail Marijuana Stores shall only be authorized to operate in the zones where medical marijuana businesses are allowed to operate pursuant to the restrictions set forth in Section 3, of Chapter 30 of the Berthoud Municipal Code.

13.16-9 Submittal Requirements for a New License

Each application for a license shall include:

- A. A cover letter providing an overview of the proposed establishment and reasons the applicant is qualified and should be authorized to operate in Berthoud.
- B. All applicable fees, including any annual operating fee due for the first year of operations. The Town shall refund the annual operating fee if the application is not selected for approval.
- C. Copies of background checks, photo identification, and fingerprints of all applicants and owners of the applicant entity, as well as a statement of all violations and penalties for any infractions or offenses by the applicant or applicant's owners, principal officers, managers, or employees relating to any marijuana establishment in the state or a statement that no such violations or penalties have occurred.
- D. A site control plan, including:
 1. A detailed description, floor plan, and vicinity map of the proposed location, including a full address.
 2. A general description of site improvements proposed and the land development approvals required therefor.
 3. A zoning confirmation form from the Town, establishing compliance with land use requirements for such businesses.
 4. Demonstration that the applicant has control of the site. If the applicant does not own the property, the applicant shall provide a letter from the property owner(s) expressly approving the use of the property as a marijuana store.
- E. Neighborhood Responsibility Plan. A plan that demonstrates how the business will fulfill its responsibilities to the neighborhood, including neighborhood outreach, methods for future communication, and dispute resolution.
- F. Odor mitigation plan. A plan for ventilation of the marijuana store that describes the ventilation system that will be used to prevent any odor of marijuana off the premises of the business.
- G. Security Plan. All licensees shall file a written security plan with the authority. The security plan will be protected from public disclosure to the extent provided under the Colorado Open Records Act, § 24-72-203(2)(a)(VIII), C.R.S. The written security plan shall address, at a minimum, the following elements:

1. Evidence that the premises will comply with all security and video surveillance requirements set forth in this charter, Rules 305 and 306 of the Code of Colorado Regulations 1 CCR 212-2 (Retail Marijuana Code) and Rules 305 and 306 of the 3 Code of Colorado Regulations 1 CCR 212-1 (Medical Marijuana Code), if applicable;
2. A site plan showing the entire vicinity in which the marijuana establishment is located, including the street(s), parking lot(s), other tenants within the property, and any other entities that physically border the establishment;
3. A floor plan of the marijuana establishment detailing the locations of the following:
 - a. All entrances and exits to the establishment;
 - b. The location of any windows, skylights, and roof hatches;
 - c. The location of all cameras, and their field of view;
 - d. The location of all alarm inputs (door contacts and motion detectors);
 - e. The location of the digital video recorder and alarm control panel, including the location of the off-site storage or network service provider for storage of the required copies of surveillance recordings; and
 - f. Restricted and public areas.
4. The type of security training provided for, and completed by, establishment personnel, including conflict resolution training and procedures for handling violent incidents;
5. How the licensee intends to use and maintain an incident log;
6. The establishment's procedures for preventing the use of marijuana on the licensed premises;
7. Security measures taken by the licensee to prevent individuals from entering the limited access area portion of the licensed premises;
8. The licensee's closing procedures after the cessation of business each day;
9. The licensee's plan to prevent theft or the diversion of marijuana, including maintaining all marijuana in a secure, locked room that is accessible only to authorized persons;
10. The type of alarm system and outdoor lighting to be used by the licensee;

11. The licensee's procedures for accepting delivery of marijuana at the establishment, including procedures for how it is received, where it is stored, and how the transaction is recorded;
13. A lighting plan showing the lighting outside of the marijuana establishment for security purposes and compliance with applicable Town requirements;
14. A plan for disposal of any marijuana that is not sold; and
15. A plan for preventing underage persons from entering the premises.

13.16-10 Inspection

An inspection of the proposed retail marijuana store by the Town's designated agent shall be required prior to issuance of a license. Such inspection shall occur after the licensed premises is ready for operation, but prior to the stocking of the business with any retail marijuana, and prior to the opening of the retail marijuana store to the general public. The inspection is to verify that the business facility is constructed and can be operated in accordance with the application submitted and the applicable requirements of the code and any other applicable law, rule or regulation. Nothing herein shall be construed to prevent an existing medical marijuana center properly licensed with the Town to continue to sell to medical marijuana patients during the application review process for a retail marijuana store license.

13.16-11 Investigation

The investigation of the application by the Town is not complete until the authority has (i) determined the application is complete, (ii) determined that the retail marijuana store is prepared and able to operate in compliance with all applicable laws, (iii) conducted an inspection of the business, (iv) obtained all other information the authority determines necessary to make a decision whether to approve or deny the license application, or approve it with conditions, and (v) the authority has voted to approve the license application.

13.17-11 Approval Requirements

The authority may issue a retail marijuana store license if the inspection, background checks and all other information available to the Town verify that the applicant has submitted a full and complete application, has made improvements to the business location consistent with the application and is prepared to operate the business with other owners and managers as set forth in the application, all in compliance with this Code and any other applicable law, rule or regulation. The authority shall deny any application that does not meet the requirements of this Section or any other applicable law, rule or regulation or that contains any false or incomplete information. The conditions of an

approval of a retail marijuana store license shall include, at a minimum, operation of the business in compliance with all of the plans and information made part of the application.

13.16-16 Hearings

The authority is authorized to conduct any hearing required by provisions of the Colorado Constitution or state or local laws related to marijuana establishment licensure in the Town, or as it deems necessary to make determinations under this Section. The authority shall require any notice of hearings required by state law.

13.16-17 Duty to Supplement Information

- A. If, at any time before or after a license or other approval is issued pursuant to this chapter, any information required by state or local law or regulations changes in any way from that which is stated in any application, the licensee shall supplement such information in writing to the authority within 14 days from the date upon which such change occurs.
- B. An applicant or licensee has a duty to notify the authority in writing of any pending criminal charge, and any criminal conviction of a felony or other offense involving a crime of moral turpitude by the applicant, any owner, principal officer, manager, or employee within 14 days of the event.
- C. An applicant or licensee has a duty to notify the authority in writing of any pending criminal charge, or any criminal conviction, whether a felony, misdemeanor, petty offense, or any violation related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marijuana, or any building, fire, health or zoning statute, code or ordinance related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marijuana, by the applicant, any owner, principal officer, manager, or employee within 14 days of the event.

13.16-18 Transfer of Ownership and Changes in Business Structure

- A. For the purposes of this section, a transfer of ownership shall also include any reallocation of ownership or change in business structure necessitating an application for transfer of ownership or change in business structure under state law, including 1 CCR § 212-2 Rule 19 R 205. No such change of ownership may occur except upon the authority's approval of a local application for the change. Any such application shall include all of the information required by this Section for all proposed owners for a license application.
- B. No transfer of ownership shall be approved by the authority until all taxes, fees, fines, penalties, and interest assessed against or imposed upon such licensee and due to the Town in relation to the licensed business are paid in full.

- C. No transfer of ownership shall be approved by the authority until the proposed new owner establishes that their moral character, record, and reputation are satisfactory to ensure safe, lawful, and effective management of the marijuana establishment.

13.16-19 Change of Location

No license may be transferred to another location except upon approval of an application for such transfer. The application shall include all of the submittal materials required for an application for a new license. This approval shall be required in addition to any other approvals required by other provisions of the municipal code, and such other municipal applications shall proceed under generally applicable procedures including any appeal procedures.

13.16-20 Modification of Premises or Change of Plan

A licensee shall not make changes, alterations, or modifications to the licensed premises, or practices related thereto, that materially or substantially alter the licensed premises or the usage of the licensed premises from the plans originally approved by the authority without submitting an application for such change, alteration, or modification, and obtaining the approval of the authority to make such proposed modifications. This approval shall be required in addition to any other approvals required by other provisions of the municipal code, and such other municipal applications shall proceed under generally applicable procedures including any appeal procedures.

13.16-21 Terms of Licenses; Renewals

- A. Beginning with the date of license approval, any license issued pursuant to this chapter shall be valid for a period of one year. Notwithstanding anything contained in this Section, a licensee has no vested right to the renewal of a license, and no property right in the renewal of a license. Licenses that are the subject of a suspension, a disciplinary action, a lapse deadline extension, or any other proceeding are subject to the requirements of this Section. Licenses that are not timely renewed shall expire. The authority shall take no action on any renewal of any license except as described in this section.
- B. A licensee may apply for the renewal of an existing license by filing an application for renewal on forms provided by the authority not less than 28 days but not more than 91 days prior to the expiration of the license. An application for renewal will only be accepted if it is accompanied by the requisite fees and any supplemental materials required by the authority. If the licensee fails to apply for renewal at least 28 days prior to the expiration of the license but does apply prior to the expiration of the license, the authority may process the renewal application if the applicant submits a late filing fee, in addition to the renewal application fee, at the time of submittal of the renewal application. The authority may elect to administratively continue the license beyond the expiration date while a renewal application is pending, but in no event shall the license be administratively continued for more than 63 days.

Notwithstanding the foregoing, the licensee may also apply for license renewal early if necessary to align the local license renewal with any state license renewal process.

- C. The Town shall not accept renewal applications after the expiration date of the license unless the licensee is able to establish extenuating circumstances justifying its failure timely renew, as determined by the authority in its sole and absolute discretion. In the event the license is not renewed prior to expiration and the authority determines that no reasonable basis for licensee's failure to timely renew exists, the marijuana establishment shall not operate, and the license shall be considered expired and terminated.
- D. Grounds for denial. The following constitute grounds for denial of a license renewal application:
 1. The authority may deny a license renewal for good cause.
 2. The authority shall not renew any license that has lapsed unless the licensee extenuating circumstances justifying its failure timely renew, as determined by the authority in its sole and absolute discretion.
 3. The authority shall not renew any license until the licensee has paid the annual operating fee, if any has been established by the Town Board of Trustees, for the following year and until all other taxes, fees, fines, penalties, and interest assessed against or imposed upon such licensee and due to the Town in relation to the licensed business are paid in full.
 4. The authority shall not renew any license if the licensee has made any materially false statement in any license or renewal application.
 5. The authority shall not renew any license if the licensee has failed to maintain a valid state-issued license, or does not or cannot meet the requirements of applicable state or local laws or regulations.
- E. Upon receipt of a renewal application, the authority shall issue a decision on the renewal application. Approval of an application for renewal shall renew the license for a period of one year from the original expiration date of the prior licensure or license renewal period, as applicable.

13.16-22 Fees

- A. Fees shall be applied only in the circumstances allowed under the Colorado Constitution and applicable state and local laws and regulations. Annual operating fees shall apply as a condition of receiving a license and on each annually-required license renewal.

B. The Town Board of Trustees may by resolution set fees relating to applications, reviews, reports, licensing, and operations governed by this Section. Applicants and licensees shall pay all such applicable fees.

13.16-23 Unlawful Acts

- A. It shall be unlawful for any person under 21 years of age to be on or within the limited access area of any retail marijuana store.
- B. It shall be unlawful for any person to display, transfer, distribute, serve, sell, give away, allow consumption of, or dispose of any marijuana in a public place.
- C. It shall be unlawful to violate or permit any person to violate any provision of this Section or any condition of approval placed upon a license granted pursuant to this Section, or any law, rule or regulation applicable to the use of marijuana or the operation of a marijuana establishment.
- D. It shall be unlawful to operate a marijuana establishment without a license from the Town and the state.
- E. It shall be unlawful to operate a marijuana establishment in a manner that is not consistent with the application, or is in violation of any plan or condition made part of the license application.
- F. It shall be unlawful to operate a retail marijuana store without obtaining and passing all building inspections and obtaining all permits required by the Town.
- G. It shall be unlawful to operate a retail marijuana store in violation of any building, fire, zoning, plumbing, electrical, or mechanical codes as adopted and amended by the Town.
- H. It shall be unlawful to modify or allow any modification to the licensed premises without approval of the authority.
- I. It shall be unlawful to operate or possess a marijuana establishment in violation of this Section, any ordinance of the Town or any state law or regulation.

13.16-24 Disciplinary Actions, Sanctions, and Civil Penalties

- A. A violation of any of the provisions of this Section, other applicable provisions of this code, any applicable state law, or any of the rules or regulations adopted pursuant thereto related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marijuana, or any violation of any terms and conditions of a license issued by the authority pursuant to this chapter, may be

grounds for additional terms and conditions being placed upon a license, for the denial of an application to renew a license, or for the suspension or revocation of a license.

- B. If the authority has probable cause to believe that a licensee has violated any provision of this chapter or engaged in conduct which imposes an undue risk to the public health, safety, or welfare, the authority may enter an order for the summary suspension of such license, pending further investigation and hearing. No summary suspension shall be for a period exceeding 60 days.
- C. The hearing officer may, after notice and hearing, impose a civil penalty, or suspend or revoke any license if the hearing officer finds that:
 - 1. The licensee has failed to pay all required fines, costs and fees;
 - 2. The licensee has failed to file tax returns when due as required by the Town code, or the licensee is overdue on his or her payment to the Town of taxes, fines, interest, or penalties assessed against or imposed upon such licensee in relation to the licensed business;
 - 3. The licensee has made any materially false statement in the license or renewal application;
 - 4. The licensee has failed to comply with his or her duty to supplement the license application;
 - 5. The licensee has failed to file any reports, notifications, or furnish any information as required by the provisions of this code, state law, or any rule or regulation adopted pursuant thereto relating to the operation of the marijuana establishment;
 - 6. The licensee has refused to allow an inspection or intentionally obstructs, impairs or hinders the inspection of the licensed premises as authorized by the Town code or state law, by using or threatening to use violence, force, or physical interference or obstacle;
 - 7. The licensee has failed to operate the retail marijuana store in accordance with state law, this code, any applicable building, fire, health or zoning statute, code, ordinance, or any rule and regulation adopted pursuant thereto, or of any special term and condition placed upon a license by the authority;
 - 8. The licensee has failed to comply with its security plan or other plans or materials included in its application;
 - 9. The licensee, or any of the agents or employees of the licensee, have committed any unlawful act as described in this chapter or violated any ordinance of the

Town or any state law on the premises or have permitted such a violation on the premises by any other person;

10. The licensee engaged in any form of business or commerce in the Town involving the cultivation, processing, manufacturing, storage, sale, distribution, testing, or consumption of any form of marijuana other than the privileges granted under their license;
11. The licensee has materially or substantially changed, altered, or modified the licensed premises, or use of the licensed premises, without obtaining prior approval to make such changes, alterations, or modifications from the authority;
12. The licensee has failed to maintain a valid state issued license; or
13. The odor of marijuana is perceptible to an ordinary person at the exterior of the building at the licensed premises or is perceptible within any space adjoining the licensed premises.

D. The authority, in its sole discretion, may permit the licensee to pay a fine in lieu of license suspension or in lieu of part of the duration of a license suspension. Any fine imposed in lieu of a suspension by the authority shall not be less than \$500.00 and not more than \$100,000.00.

E. Any suspension of a license shall not be for a period longer than six months.

F. The authority may impose the costs to conduct a public hearing upon a licensee who has violated any of the provisions of this Section. The costs to conduct such a public hearing shall be established by the authority.

G. Payment of any fine or costs pursuant to this section shall be in the form of a certified check or cashier's check made payable to the Town.

H. In connection with the suspension of a license, the authority may impose reasonable conditions upon the license.

I. In deciding whether a license should be suspended or revoked in accordance with this section, in deciding what conditions to impose in the event of a suspension, if any, and in deciding whether to allow payment of a fine in lieu of license suspension, the authority shall consider:

1. The nature and seriousness of the violation;
2. Corrective action, if any, taken by the licensee;
3. Prior violations, if any, at the licensed premises by the licensee, the recency of such violations, and the effectiveness of any prior corrective action;

4. The likelihood of recurrence;
5. All circumstances surrounding the violation;
6. Whether the violation was willful, knowing, or reckless;
7. The length of time the license has been held by the licensee;
8. Previous sanctions, if any, imposed against the licensee; and
9. Any other factor making the situation with respect to the licensee or the licensed premises unique or the violation of greater concern.

F. If the authority finds that the license should be suspended or revoked or a fine imposed for all or part of a suspension, or conditions should be imposed upon the license, the licensee shall be provided written notice of such fine, suspension, conditions imposed, or revocation and the reasons therefor within 35 days following the date of the hearing.

G. If the authority suspends or revokes a license, imposes conditions, or imposes a fine in lieu of all or part of a suspension, the licensee may appeal the fine, suspension or revocation pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The licensee's failure to timely appeal the decision is a waiver of the licensee's right to contest the fine or conditions imposed or the suspension or revocation of the license.

H. No fee previously paid by a licensee in connection with a license shall be refunded if the licensee's license is suspended or revoked.

13.16-25 Other Remedies

The Town is specifically authorized to seek an injunction, abatement, restitution or any other remedy necessary to prevent, enjoin, abate, or remove any violation or unlawful act under this Section, and any remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law or in equity.

13.16-26 Rules and Regulations

- A. The authority may make such reasonable rules and regulations as may be necessary for the purpose of administering and enforcing the provisions of this chapter and any other ordinances or laws relating to and affecting the licensing and operation of marijuana establishments.
- B. It shall be unlawful for any person to violate a rule or regulation adopted by the authority pursuant to this section.

Repeal of Ordinance No. 1154, Published March 7, 2013.

Ordinance No. 1154, Published March 7, 2013 and prohibiting the licensing and operation of retail marijuana establishments within the Town of Berthoud is hereby repealed in its entirety.

30-3-113 Medical and Retail Marijuana

Chapter 30, Section 3, Title 113 of the Berthoud Municipal Code shall be modified to include and authorize retail marijuana stores in all locations where medical marijuana centers are currently allowed