

**TOWN OF BASALT, COLORADO**  
**ORDINANCE NO. 08**  
**Series of 2014**

**AN ORDINANCE AMENDING TITLE 10, GENERAL OFFENSES, OF THE  
BASALT TOWN CODE FOR THE REGULATION OF MARIJUANA WITHIN  
THE TOWN OF BASALT**

**WHEREAS**, the Town of Basalt, in the Counties of Eagle and Pitkin and the State of Colorado (hereinafter the "Town"), is a home rule municipal corporation duly organized and existing under laws of the State of Colorado and the Town Charter (hereinafter the "Charter"); and

**WHEREAS**, the members of the Town Council of the Town (hereinafter the "Council") have been duly elected and qualified;

**WHEREAS**, The Town, acting by and through the Council, has the power to amend the Municipal Code of the Town of Basalt ("hereinafter the "Code") pursuant to the Charter and Section 1-58 of the Code, and all such amendments shall become a part of the Code; and

**WHEREAS** the Council finds that regulation of marijuana within the Town is of public concern and efficient police regulation of marijuana within the Town would preserve the general welfare of the citizens and guests of the Town.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF  
THE TOWN OF BASALT, COLORADO, THAT;**

Section 1. Title 27, Chapter 10, Article II: Offenses Against Public Peace, Order and Safety, Basalt Town Code, is hereby repealed and re-established as follows:

**10-27- Unlawful Use and Possession of Marijuana and Related Offenses**

**10-27-1 Definitions.**

For purposes of this chapter, the following words shall have the following definitions:

*Marijuana* means all parts of the plant *cannabis sativa L.*, 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. It does not include fiber produced from the stalks, oil, or cake made from the seeds of the plant, or sterilized seed of the plant which is incapable of germination, if these items exist apart from any other item defined as marijuana in this subsection. *Marijuana* shall include any product containing marijuana, which shall include but not be limited to extracts, by-products and vapors.

*Registry identification card* shall have the same meaning as is set forth in Article XVIII, Section 14(1)(b) of the Colorado Constitution, or as may be more fully defined in any applicable state law or regulation.

*Underage person* means any person under twenty-one years of age.

#### **10-27-2 Consumption of Marijuana in Public Prohibited.**

(a) No person shall consume any marijuana in public.

(b) For purposes of this section, *in public* means:

(1) In or upon any public way or public right of way, whether in a vehicle or not;

(2) On any property or in any building that is owned, leased, used by, or open to the public; or

(3) In or upon those portions of any private property upon which the public has an express or implied license to enter or remain or for which the public can observe such use in plain view.

(c) No person shall drive or sit in any motor vehicle, other than one licensed to carry passengers for hire, in which a violation of subsection (a) of this section is occurring.

(d) The maximum penalty for a conviction, based on date of violation of this section, is a fine of \$100.00.

#### **10-27-3 Unlawful to Sell or Give to or Procure for Minors.**

No person shall sell, serve, deliver, or give away any marijuana or any product containing marijuana to any person under the age of twenty-one or purchase marijuana or marijuana-infused product for an person under the age of twenty-one.

#### **10-27-4 Possession and Sale by Minors Unlawful.**

(a) No person under the age of twenty-one shall consume, possess or have under such person's control or request that any other person purchase for such person under the age of twenty-one or sell, serve, give away or offer for sale any marijuana or any product containing marijuana, which shall include but not be limited to extracts, by-products and vapors.

(b) Prima facie evidence that a violation of this chapter occurred within the Town shall consist of:

(1) Evidence that the defendant was under the age of twenty-one years and possessed or consumed marijuana or any product containing marijuana, which shall include but not be limited to extracts, by-products and vapors within the Town;

(2) Evidence that the defendant was under the age of twenty-one years and manifested any of the characteristics commonly associated with marijuana use or impairment while present anywhere within the Town; or

(3) Indicia including bloodshot eyes, watery eyes, eyelid tremors, green particulate on tongue, dilated pupils, dry mouth or any other indicator of marijuana consumption.

(c) An underage person and one or two other persons shall be immune from criminal prosecution under this section if they establish the following:

(1) One of the underage persons called 911 and reported that another underage person was in need of medical assistance due to marijuana consumption;

(2) The underage person who called 911 and, if applicable, one or two other persons acting in concert with the underage person who called 911 provided each of their names to the 911 operator;

(3) The underage person was the first person to make the 911 report; and

(4) The underage person and, if applicable, one or two other persons acting in concert with the underage person who made the 911 call remained on the scene with the underage person in need of medical assistance until assistance arrived and cooperated with medical assistance and law enforcement personnel on the scene.

(d) In any judicial proceeding in any court of this state concerning a charge under this section, the court shall take judicial notice of methods of testing a person's blood, breath, saliva or urine for the presence of Tetrahydrocannabinol (THC) and of the design and operation of devices certified by the department of public health and environment for testing a person's blood, breath, saliva or urine for the presence of Tetrahydrocannabinol (THC). This subsection shall not prevent the necessity of establishing during a trial that the testing devices were working properly and that such testing devices were properly operated. Nothing in this subsection shall preclude a defendant from offering evidence concerning the accuracy of testing devices.

(e) It shall be an affirmative defense to a charged violation of this section that the underage person (1) on the date of the alleged offense lawfully possessed a current registry identification card issued by the state of Colorado to the underage person, and (2) possessed no more marijuana than the amount permitted by Article XVIII, Section 14 of the Colorado Constitution. Before evidence of this affirmative defense is presented to a jury, the underage person shall first provide written notice of this defense to the court and prosecution and a photocopy of the underage person's registry identification card, at least 10 days prior to trial. An underage person who raises this defense waives doctor-patient

privilege and confidentiality concerning the underage person's patient registry information.

(f) The maximum penalty for a conviction, based on date of violation of this section, is a fine of \$100.00.

#### **10-27-5 Evidence of Marijuana in Trials.**

(a) In any trial for a violation of this chapter, any witness with prior personal experience of the appearance, taste, or smell of marijuana may state an opinion that a substance was marijuana, based on his or her observations and experience. The witness need not be offered as an expert witness.

(b) In any trial for a violation of this chapter, any witness may testify that a person manifested characteristics commonly associated with marijuana use if the witness has personal experience or training that would enable the witness to recognize the characteristics. The witness need not be offered as an expert witness.

(c) In any trial for a violation of this section, any container or wrapper with labeling indicating the contents of the container or wrapper shall be admissible into evidence and the information on any label on such container or wrapper shall be admissible into evidence and shall not constitute hearsay. A jury or a judge, whichever is appropriate, may consider the information upon such label in determining whether the contents of the container or wrapper were composed in whole or in part of marijuana. A label identifying the contents of the container as "marijuana," "MJ," "weed," "bud," "sativa," "indica," or "kush" or any other slang term used for the identification of marijuana or its by-products shall constitute prima facie evidence that the contents of the container were composed in whole or in part of marijuana.

(d) In any trial for a violation of this section, testimony of a competent witness, including the arresting officer, that the substance possessed exhibited the smell, appearance or other characteristics of marijuana shall be sufficient to establish that the substance in question was marijuana. The defendant may rebut such testimony with a laboratory test, performed at the defendant's expense demonstrating that the substance was not marijuana.

**10-27-6 Possession in Schools, Daycares or Governmental Buildings.** No person shall consume, possess or have under such person's control or sell, serve, give away or offer for sale any marijuana or any product containing marijuana, which shall include but not be limited to extracts, by-products and vapors, in or upon the property of any public or private primary or secondary school, daycare center or governmental building.

**10-27-7** Except as otherwise specified herein, any person who fails to comply with any provision of this Section shall be guilty of a misdemeanor and, on conviction thereof, shall be punished by a fine as specified in Chapter 1, Article IV of this Code.

**Section 2.** If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance; and the Council hereby declares it would have passed this ordinance, and each part, section, subsection, sentence, clause or phrase thereof, regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases is declared invalid.

**Section 3.** The amendment of any provision of the Town Code as provided in this ordinance shall not affect any rights which have accrued, any duty imposed, any violation that occurred prior to the effective date hereof, any prosecution commenced, nor any other action or proceeding as commenced under or by virtue of this provision amended. The amendment of any provision hereby shall not revive any provision or any ordinance previously repealed or superseded unless expressly stated herein.

**Section 4.** All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are repealed to the extent only of such inconsistency. This repealer shall not be construed to revise any bylaw, order, resolution or ordinance, or part thereof, theretofore repealed.

**Section 5.** The Council hereby finds, determines and declares that this ordinance is necessary and proper for the health, safety and welfare of the Town and the inhabitants thereof.

**INTRODUCED, READ ON FIRST READING, APPROVED, AND ORDERED PUBLISHED ONCE IN FULL ON FIRST READING** this \_\_\_\_ day of \_\_\_\_\_, 2014; and a public hearing for second reading of this Ordinance is set for the \_\_\_\_ day of \_\_\_\_\_, 2014 at \_\_\_\_:00 p.m. in the Council Chambers of the Basalt Municipal Building, Basalt, Colorado.

\_\_\_\_\_  
Jacque Whitsitt, Mayor

ATTEST:

\_\_\_\_\_  
Pamela Schilling, Town Clerk

**INTRODUCED, READ, ADOPTED AND ENACTED ON SECOND READING AND ORDERED PUBLISHED IN FULL** this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Jacque Whitsitt, Mayor

ATTEST:

\_\_\_\_\_  
Pamela Schilling, Town Clerk