

**ORDINANCE NO. 14-01**

**INTRODUCED BY:  
Council Member Ishikawa  
Council Member Dick**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FEDERAL HEIGHTS,  
COLORADO, AMENDING CHAPTER 38 OF THE FEDERAL HEIGHTS  
MUNICIPAL CODE PERTAINING TO MISCELLANEOUS OFFENSES**

WHEREAS, as a result of amendments to the state constitution, and the Colorado Revised Statutes, it is necessary to amend certain provisions of Chapter 38 of the Federal Heights Municipal Code; and

WHEREAS, the City also desires to amend the impersonation and counterfeit insignia offenses of Article VI of Chapter 38 of the Federal Heights Municipal Code pertaining to police officers to include firefighters.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FEDERAL HEIGHTS, COLORADO:

Section 1. Chapter 38, Article I, Section 38-1, “Definitions,” is amended by deleting the definition of lewd and indecent in its entirety.

Section 2. Chapter 38, Article IV, Section 38-47 (b), “Theft” of the Federal Heights Municipal Code is amended to provide:

(b) This section shall not apply when the aggregate value of the items taken in any one criminal episode exceeds the maximum dollar amount for a class 1 misdemeanor as set forth in C.R.S. § 18-4-401(2)(e), as amended, nor where the item taken is a motor vehicle, rental property, trade secret or credit device. Further, this section shall not apply where the theft is committed by fraudulent use of a credit device.

Section 3. Chapter 38, Article IV, Section 38-48 (d), “Shoplifting” of the Federal Heights Municipal Code is amended to provide:

(d) This section shall not apply where the value of the unpurchased goods, wares or merchandise exceeds the maximum dollar amount for a class 1 misdemeanor as set forth in C.R.S. § 18-4-401(2)(e), as amended.

Section 4. Chapter 38, Article IV, Section 38-49, “Price switching” of the Federal Heights Municipal Code is amended to provide:

It is unlawful for any person to knowingly alter, remove or switch the indicated price of any unpurchased goods, wares or merchandise owned or held by, and offered or displayed for sale by any store or other mercantile establishment with the intent to deprive the owner, seller or mercantile establishment of a portion of the indicated price of any goods, wares, or merchandise; provided, however, that this section shall not apply to goods, wares or merchandise whose value exceeds the maximum dollar amount for a class 1 misdemeanor as set forth in C.R.S. § 18-4-401(2)(e), as amended.

Section 5. Chapter 38, Article IV, Section 38-50, “False pretenses” of the Federal Heights Municipal Code is amended to provide:

It shall be unlawful for any person to obtain any food, drink, goods, wares or merchandise under false pretenses, or to enter any public place and call for refreshment or other articles and receive and refuse to pay for same, or depart without paying for, or satisfying the person from whom he received the food, goods, wares, and merchandise. This section shall not apply where the value of any food, drink, goods, wares or merchandise exceeds the maximum dollar amount for a class 1 misdemeanor as set forth in C.R.S. § 18-4-401(2)(e), as amended.

Section 6. Chapter 38, Article IV, Section 38-52, “Destruction of property” of the Federal Heights Municipal Code is amended to provide:

It is unlawful for any person to either knowingly, maliciously, wantonly, intentionally or through criminal negligence, injure, damage or destroy the real or personal property of another or of the city; provided, however, that this section shall not apply to any person showing a legal right or authority to injure, damage or destroy such property. This section shall not apply where the aggregate damage to such real or personal property exceeds the maximum dollar amount for a class 1 misdemeanor as set forth in C.R.S. § 18-4-501, as amended, or where the damage is effected by means of fire or explosives with the intent to defraud.

Section 7. Chapter 38, Article IV, Section 38-56 (3), “Theft of rental property” of the Federal Heights Municipal Code is amended to provide:

(3) This section shall not apply if the value of said personal property exceeds the maximum dollar amount for a class 2 misdemeanor as set forth in C.R.S. § 18-4-401(2)(e), as amended.

Section 8. Chapter 38, Article IV, Section 38-57 (e), “Fraud by check” of the Federal Heights Municipal Code is amended to provide:

Nothing in this section shall apply where the value of the check exceeds the maximum dollar amount for a class 1 misdemeanor as set forth in C.R.S. § 18-5-205(3)(b.5), as amended, or

where a person has been charged for an offense involving the issuance of two or more checks within any 60-day period in the state with an aggregate value which exceeds the maximum dollar amount for a class 1 misdemeanor as set forth in C.R.S. § 18-5-205(3)(b.5), as amended.

Section 9. Chapter 38, Article VI, Section 38-125, “Impersonating police officers” of the Federal Heights Municipal Code is amended to provide:

- (a) It shall be unlawful, except upon the authorization of the city manager, or manager’s designee, for any person other than a police officer or firefighter of the city to wear the uniform, or any insignia of a police officer or firefighter of the city or any imitation of such as adopted and worn by police officers or firefighters of the city.
- (b) It shall be unlawful for any person other than a police officer or firefighter of the city, to, in any manner, represent him or herself to another as a police officer or firefighter of the city.

Section 10. Chapter 38, Article VI, Section 38-127, “Counterfeit insignia” of the Federal Heights Municipal Code is amended to provide:

It shall be unlawful for any person to counterfeit, imitate, or cause to be counterfeited, or imitated, any insignia of office used by the police or fire department.

Section 11. Chapter 38, Article IX, Section 38-222, “Public indecency” of the Federal Heights Municipal Code is repealed in its entirety and reenacted to provide:

1. It shall be unlawful for any person to commit public indecency. Any person who performs any of the following in a public place, or where the conduct may reasonably be expected to be viewed by members of the public, commits public indecency:
  - (a) An act of sexual intercourse;
  - (b) A lewd exposure of an intimate part as defined herein of the body, not including the genitals, done with the intent to arouse or to satisfy the sexual desire of any person;
  - (c) A lewd fondling or caress of the body of another person;
  - (d) A knowing exposure of the person’s genitalia to the view of a person under circumstances in which such conduct is likely to cause affront or alarm to the other person.
2. *Affirmative defense to prosecution.* It shall be an affirmative defense to a prosecution under this section:
  - (a) That a person who has exposed her breast had the consent or assent of all persons who viewed or may have viewed such act. Persons who utilize public places or patronize businesses where they know or should know that such will be exposed shall be deemed to have given their consent to such conduct.
  - (b) That the person exposing her breast was nursing an infant.
3. For the purposes of this section, “intimate parts” shall mean the external genitalia or the

perineum or the anus or the buttocks of any person, or the breast of any woman

Section 12. Chapter 38, Article XI Section 38-313, "Possession of marijuana," of the Federal Heights Municipal Code is repealed in its entirety and reenacted to provide:

**Sec. 38-313. - Possession of marijuana.**

(a) For the purposes of this article, the following words and phrases shall mean as follows:

"Marijuana" means all parts of the plant of the genus cannabis 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, including marihuana concentrate. "Marijuana" does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

"Marijuana products" means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments and tinctures.

"Openly" means occurring or existing in a manner that is unconcealed, undisguised or obvious.

"Publicly" means occurring or existing in a public place; or occurring or existing in any outdoor location on private non-residential property where the consumption of marijuana is clearly observable by the naked eye from a public place or occurring or existing in any outdoor location on private residential property where the use or consumption of marijuana is clearly observable by the naked eye from a public street, highway or sidewalk.

"Public place" means a place to which the public or a substantial number of the public have access, and includes, but is not limited to, streets, sidewalks, and highways, transportation and recreation facilities, schools, places of amusement, parks, playgrounds and the common areas of public and private buildings or facilities.

(b) It shall be unlawful for any person to possess one ounce or less of marijuana, or any marijuana products, unless such person is twenty-one years of age or older or otherwise permitted by law to possess marijuana or marijuana products.

(c) It shall be unlawful for any person except as specifically authorized by law to; (i) sell one ounce or less of marijuana or marijuana products to any person or (ii) to permit the transfer of marijuana or marijuana products, with or without remuneration, to any person under the age of twenty-one years, or (iii) to permit any person under the age of twenty-one years to purchase, possess, use, transport, grow or consume marijuana or marijuana products.

(d) It shall be unlawful for any person to: (i) openly and publicly consume marijuana, or (ii) to possess, use, sell, grow, distribute, display or consume marijuana or marijuana products upon or within any city park, athletic field, play ground, recreation area, trail, parking lot or building or facility owned, occupied or controlled by the city.

(e) Upon conviction of violating the provisions of subsections (b), (c), or (d) of this section 38-313, a fine not exceeding an amount of \$500.00 shall be imposed.

Section 13. Chapter 38, Article X1, Section 38-313.5, "Open marijuana container-motor vehicle prohibited" of the Federal Heights Municipal Code is enacted to provide:

(1) For the purposes of this section, the following words and phrases shall mean as follows:

(a) "Motor vehicle" shall mean a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways but does not include a vehicle operated exclusively on a rail or rails.

(b) "Motor home" means a vehicle designed to provide temporary living quarters and which is built into an integral part of, or a permanent attachment to, a motor vehicle chassis or van.

(c) "Open marijuana container" means a receptacle or marijuana accessory that contains any amount of marijuana and:

- (i) that is open or has a broken seal;
- (ii) the contents of which are partially removed; or
- (iii) there is evidence that marijuana has been consumed within the motor

vehicle.

(d) "Passenger area" means the area designed to seat the driver and passengers, including seating behind the driver, while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in his or her seated position, including but not limited to the glove compartment.

(e) "Trailer coach" means a wheeled vehicle having an overall length, excluding towing gear and bumpers, of not less than twenty-six feet, without motive power that is designed and generally and commonly used for occupancy by persons for residential purposes, in temporary locations, and that may occasionally be drawn over the public highways by a motor vehicle and is licensed as a vehicle.

(2) (a) Except as otherwise permitted in paragraph (b) of this subsection (2), a person while in the passenger area of a motor vehicle that is on a public street or roadway, or the right-of-way of a public street or roadway, may not knowingly:

- (i) use or consume marijuana; or
- (ii) have in his or her possession an open marijuana container.

(b) The provisions of this subsection (2) shall not apply to:

(i) passengers, other than the driver, or a front seat passenger, located in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation;

(ii) the possession by a passenger, other than the driver or a front seat passenger, of an open marijuana container in the living quarters of a motor home, or trailer coach;

(iii) the possession of an open marijuana container in the area behind the last upright seat of a motor vehicle that is not equipped with a trunk; or

(iv) the possession of an open marijuana container in an area not normally occupied by the driver of a passenger in a motor vehicle that is not equipped with a trunk.

Section 14. Chapter 38, Article XI, Section 38-314(a), “Definitions,” “Controlled Substance,” of the Federal Heights Municipal Code is amended to provide:

*Controlled substance* means a drug or other substance as defined under federal or state law.

Section 15. Chapter 38, Article XI, Section 38-314(a), subsections (8) and (9) of “Definitions,” “Drug paraphernalia,” of the Federal Municipal Code are enacted to provide as follows:

(a) (8) “Marijuana accessories” means any equipment, products, or materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for investing, inhaling, or otherwise introducing marijuana into the human body.

(a) (9) “Drug paraphernalia” does not include marijuana accessories if possessed or used by any person twenty-one years of age or older, or who is otherwise lawfully permitted to use and possess or use marijuana accessories.

Section 16. If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The city council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 17. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portions hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 18. The repeal or modification of any provision of the Federal Heights Municipal Code by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 19. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 20. Violations of this ordinance are subject to the penalties set forth in Section 1-15 of Federal Heights Municipal Code or as otherwise provided in this ordinance.

INTRODUCED, READ AND PASSED AS AN ORDINANCE, ON FIRST READING,  
AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF FEDERAL  
HEIGHTS, COLORADO, the 21<sup>st</sup> day of January, 2014.

READ, PASSED AND ADOPTED AS AN ORDINANCE ON SECOND READING,  
AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF FEDERAL  
HEIGHTS, COLORADO, the 4<sup>th</sup> day of February, 2014

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Joyce Thomas, Mayor

ATTEST:

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Patti K. Lowell, CMC, City Clerk

APPROVED AS TO FORM:

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William P. Hayashi, City Attorney

PUBLISHED:  
Westminster Window  
January 30, 2014  
February 13, 2014