

**ORDINANCE NO. 1174
SERIES 2013**

**MARIJUANA REGULATIONS POSSESSION AND CONSUMPTION ON CITY
PROPERTY; UNDERAGE (18-20) POSSESSION AND CONSUMPTION AND
PROHIBITION OF PRIVATE AND PUBLIC MARIJUANA SMOKING CLUBS**

WHEREAS, Amendment 64 to the Colorado Constitution, regarding the use and regulation of marijuana in Colorado, has legalized the possession and/or consumption of small amounts of marijuana (up to an ounce) (six plants); and,

WHEREAS, Amendment 64 does not allow for consumption of marijuana openly and publically or in a manner that endangers others; and,

WHEREAS, Amendment 64 allows a person, employer, school, hospital, detention facility, corporation or any other entity who occupies, owns or controls a property to prohibit or otherwise regulate the possession, consumption, use, display, transfer, distribution, sale, transportation or growing of marijuana on or in that property; and,

WHEREAS, the City of Cortez finds it in the best interests of all its citizens to regulate the possession, consumption, use, display, transfer, distribution, sale, transportation or growing of marijuana in or on City property; and,

WHEREAS, Amendment 64 makes it legal for persons 21 years of age or older to use, possess or consume small amounts of marijuana.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF CORTEZ CITY COUNCIL THAT:

The Cortez City Code is hereby amended to add, Section 18-56 Marijuana, Possession, Consumption of Marijuana on City Property

(a) Definitions

(1) "Marijuana" or "Marihuana" whenever used in the Cortez City Code 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" or "marihuana" 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.

(2) City Property: City property shall include, but is not limited to, all real estate owned occupied or used by the City such as City Hall, all parks and other facilities, trails, river property, streets and sidewalks etc. Whether located in the City limits or not.

(3) City: City means the City of Cortez

(b) It shall be unlawful for any person to possess, consume, use, display, transfer, distribute, sell, transport or grow any marijuana or marijuana products as defined in paragraph (a) above on City property as defined above. Except that the transportation of small amounts of marijuana (1 ounce or less and up to 6 plants) of marijuana as defined in (a) above shall be allowed on City streets and sidewalks.

(c) A violation of this section shall be punishable as set forth in Chapter 17 Section 17-15A Sentencing: Municipal Court Cortez City Code now in effect or as may be amended from time to time.

BE IT FURTHER ORDAINED THAT THE Cortez City Code is amended to add:

Section 18-57 Underage Consumption/Possession of Marijuana

(a) Any person age 18 to 20 years of age who possesses, consumes, uses, displays, transfers, distributes, sells, or grows marijuana or marihuana as defined in Cortez City Code Section 18-56(a)(1) Definitions, in the City of Cortez commits illegal possession or consumption of marijuana by an underage person.

Illegal possession or consumption of marijuana by an underage person is a strict liability offense.

(b) Illegal possession or consumption of marijuana by an underage person shall be punished as set forth in Section 17-16A Sentencing: Municipal Court Cortez City Code now in effect or as may be amended from time to time. The court, upon sentencing a defendant pursuant to this paragraph (b), may, in addition to any fine, suspend jail time on condition that the defendant submit to and complete a substance abuse or assessment, a substance abuse education program, or a substance abuse program at such defendant's own expense.

(c) Prima facie evidence of a violation of subsection (a) of this section shall consist of:

(1) Evidence that the defendant was age 18 to 20 years of age and possessed, consumed, used, displayed, transferred, distributed, sold or grew marijuana as defined in Cortez City Code Section 18-56(a)(1) anywhere in the City of Cortez; or

(2) Evidence that the defendant was age 18 to 20 years of age and manifested any of the characteristics commonly associated with marijuana consumption, or impairment, or is under the influence of marijuana while present anywhere in the City of Cortez.

(d) The qualitative result of a marijuana test or tests shall be admissible at the trial of any person charged with a violation of subsection (a) of this section upon a showing that the device or devices used to conduct such test or tests have been approved as accurate in detecting marijuana by the executive director of the appropriate state department which regulates marijuana detection testing.

(e) In any judicial proceeding in the Cortez Municipal Court concerning a charge of underage possession/consumption, the court shall take judicial notice of methods of testing a person's blood, breath, saliva, or urine for the presence of marijuana and of

the design and operation of devices certified by the department of public health and environment or other state agency in charge of marijuana detection testing standards for testing a person's blood, breath, saliva, or urine for the presence of marijuana. 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.

(f) No law enforcement officer shall enter upon any private property to investigate any violation of this section without probable cause.

A violation of this section shall be punishable as set forth in Chapter 17 Section 17-16A Cortez City Code Sentencing Municipal Court now in effect or as may be amended from time to time.

BE IT FURTHER ORDAINED THAT THE Cortez City Code is amended to add:

There shall be added to the Cortez City Code Chapter 18 Section 18-57 Prohibition of Clubs or other Places for the Consumption of Marijuana.

(a) It shall be illegal to consume marijuana as defined in Cortez City Code Section 18-56(a)(1) in any marijuana smoking club or other place as defined in subsection (b) below.

(b) Definitions: Marijuana Smoking Club means any place where people pay a membership or other fee to consume marijuana as defined in Cortez City Code Section 18-56(a)(1). This includes but is not limited to commercial operations, private groups or any organization which allows for the consumption of marijuana on its premises.

(c) A violation of this section shall be punished as set forth in Chapter 17 Section 17-16A Cortez City Code Sentencing Municipal Court now in effect or as may be amended from time to time.

REPEALER. All orders, bylaws, ordinances, and resolutions of the City, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

SEVERABILITY. If any section, paragraph, clause, or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

RECORDING AND AUTHENTICATION. Upon adoption hereof, this Ordinance shall be recorded in a book kept for that purpose and shall be authenticated by the signatures of the Mayor and the City Clerk.

EFFECTIVE DATE. This ordinance shall be effective upon publication after final passage.

PUBLIC HEARING. This ordinance shall be considered for second or final reading on the 12th day of February 2013, at the hour of 7:30 p.m., in the City Board Chambers in City Hall, Cortez Colorado, at which time and place all persons may appear and be heard concerning the same.

PASSED, ADOPTED AND APPROVED ON FIRST READING THIS 22nd DAY OF JANUARY, 2013.

CITY OF CORTEZ

ATTEST:

DAN PORTER, Mayor

LINDA SMITH, City Clerk

PASSED, ADOPTED AND APPROVED ON SECOND AND FINAL READING THIS 12TH DAY OF FEBRUARY, 2013.

CITY OF CORTEZ

ATTEST:

DAN PORTER, Mayor

LINDA SMITH, City Clerk

APPROVED AS TO FORM:

MICHAEL F. GREEN, City Attorney