O-2014-3

AN ORDINANCE

AMENDING SECTIONS 1.16.020 OF TITLE 1 OF THE LAKEWOOD MUNICIPAL CODE PERTAINING TO GENERAL PROVISIONS, AMENDING SECTIONS 6.01.010 AND 6.04.015 OF TITLE 6 OF THE LAKEWOOD MUNICIPAL CODE PERTAINING TO ANIMALS, AND AMENDING SECTIONS 9.38.020, 9.38.030, 9.38.040, 9.38.060, 9.38.070, 9.44.010, 9.64.010, 9.64.020, AND 9.65.010 AND REPEALING SECTIONS 9.65.020 AND 9.65.030 AND ADDING SECTIONS 9.38.045 AND 9.38.075 OF TITLE 9 OF THE LAKEWOOD MUNICIPAL CODE PERTAINING TO PUBLIC PEACE AND SAFETY

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. Section 1.16.020 of the Lakewood Municipal Code is hereby amended and shall be as follows:

1.16.020 Penalties designated.

A. Whenever in any section of this code, or of any other ordinance, rule or regulation of the City, with the exception of Title 10 of the Code entitled "Vehicles and Traffic," or unless otherwise stated by a specific ordinance, the doing of any act is required, prohibited or declared to be unlawful, any person who pleads guilty or nolo contendere, or who is convicted of a violation of any such section shall, for each offense, be fined in a sum of not more than two thousand six hundred fifty dollars or shall be imprisoned for a term of not more than three hundred sixty-five days, or shall be both so fined and imprisoned. As part of such sentence, the court may order restitution to any aggrieved party for actual damage or loss caused by the offense to which a defendant pled guilty, nolo contendere, or was convicted. The municipal judge may suspend all or part of a sentence or fine of any defendant, and/or place him on probation for a period not to exceed one year.

- A. 1. The limitation on municipal court fines set forth in Subsection 1.16.020(A) shall be adjusted for inflation on January 1, 2014, and on January 1 of each year thereafter. Inflation means the annual percentage change in the United States Department of Labor, bureau of labor statistics, consumer price index for Denver-Boulder, all items, all urban consumers, or its successor index.
- B. Any person who is convicted of any act prohibited or declared to be unlawful by any section of Title 10 of this code shall be subject to the following penalties, which are based on the classification of each offense as set forth in Title 10.

- 1 There are no Class 1 traffic offenses contained in Title 10 of this code
- 2 365 days imprisonment or \$1000 fine, or both
- 3 \$400 fine, no imprisonment
- 4 \$200 fine, no imprisonment
- C. Any child who is convicted of any act prohibited by any ordinance, rule or regulation of the City, with the exception of Title 10 of the Code entitled "Vehicles and Traffic," or unless otherwise stated by a specific ordinance, shall be subject to any penalty or sanction described in Subsection 1.16.020A except imprisonment. This chapter shall not apply to any child under ten years of age. Any child who fails to comply with a lawful order of the Municipal Court, including an order to pay a fine or restitution, may be confined to a juvenile detention facility operated or contracted by the Department of Human Services. Any confinement of a child for contempt of Municipal Court shall not exceed forty-eight hours. The court may require in-home detention for a child who fails to comply with a lawful order of the Municipal Court. The in-home detention shall not exceed ten days time and shall be monitored by a designee of the court. The court may order the costs associated with the in-home detention to be paid by the child.
- D. A defendant who has been granted probation may be required to make restitution to any aggrieved party for actual damage or loss caused by the offense to which the defendant plead quilty, nolo contendere, or was convicted.
- E. 1. If facts are presented to the court upon application of the city attorney or the probation division from which it reasonably appears that the conditions of probation have been violated by any person on probation, the court shall issue a warrant for the arrest of the person and require that person to be brought before the court to show cause why the probation should not be revoked.
- 2. At or prior to the commencement of the probation revocation hearing, the court shall advise the probationer of his rights pursuant to the Colorado Municipal Court Rules of Procedure as applicable to the probationer the charges against him, the possible penalties therefor, and shall require the probationer to plead guilty or not guilty. There shall be no right to a trial by jury in proceedings for revocation of probation. If the probationer is in custody, the court may admit such probationer to bail conditioned upon his appearance before the court on a day certain. Such bail may be continued from time to time until final order of the court. If the probationer remains in custody and unable to post bond, the hearing shall be held within fifteen days after the filing of the complaint, unless a continuance is granted by the court at the instance or request of the probationer, or for other good cause found by the court justifying the continuance.
- F. 1. At the probation revocation hearing, the prosecution has the burden of establishing by a preponderance of the evidence the violation of a condition of probation; except that the commission of a criminal offense must be established beyond a reasonable doubt unless the probationer has been convicted thereof in a criminal proceeding. When, in a revocation hearing, the alleged violation of a condition is the probationer's failure to pay probation fees, court costs, or restitution, evidence of the failure to pay shall constitute prima facie evidence of a violation. The court may, when it appears that the alleged

violation of conditions of probation consists of an offense with which the probationer is charged in a criminal proceeding then pending, continue the probation revocation hearing until the termination of the criminal proceeding. Any evidence having probative value shall be received regardless of its admissibility under the exclusionary rules of evidence if the defendant is accorded a fair opportunity to rebut hearsay evidence.

2. If at the probation revocation hearing the judge determines that such probationer is not guilty of a violation of the conditions of probation, the judge shall enter an order in accordance therewith and forthwith order the probationer's release, if in custody. If the judge determines that the violation of the conditions of such probation has been committed, the judge shall either revoke or continue the probation within five days after the hearing. If probation is revoked and no sentence has been previously imposed, the court may impose any sentence which might originally have been imposed. If probation is revoked and sentence has been previously imposed, the court may vacate the suspension of sentence and reinstate the sentence originally imposed. Any person who has been admitted to probation and against whom proceedings for the revocation of probation have not been commenced within the term of probation shall be conclusively presumed to have satisfied the sentence or fine imposed. Upon a specific court finding that a defendant has not fully complied with a court order or that the defendant has failed to appear during the period of probation or the period of a suspended or stayed sentence, the court may extend such period not to exceed one year.

SECTION 2. Section 6.01.010 of the Lakewood Municipal Code is hereby amended by the revision of the following definitions as follows:

6.01.010 Definitions.

"Animal shelter" means the authorized facility, established by intergovernmental agreement, and designated by the city for the boarding and care of any animal impounded under the provisions of this title or any other ordinance or law of the State of Colorado.

"Dog license administrator" means the entity delegated the authority by the Jefferson County Animal Shelter/Dog Licensing/Funding Intergovernmental Agreement to issue licenses and collect fees for said dog licenses on behalf of all parties.

SECTION 3. Section 6.04.015 of the Lakewood Municipal Code is hereby amended as follows:

6.04.015 Dog license required.

- A. It shall be unlawful for any owner of any dog over the age of four (4) months, or within thirty (30) days of acquisition of said dog or within thirty (30) days of the owner moving into the City, whichever occurs last, to fail to obtain a license for such animal.
- B. The dog license administrator will administer the City of Lakewood's dog licensing program and distribute the dog license. Application for such license shall be made to the dog licensing administrator.
- C. To obtain a dog license, a dog owner must submit proof of a rabies vaccination administered by a licensed veterinarian within 365 days prior to the licensing, or if a booster vaccination, within the time period recommended by the annual compendium of animal rabies control unless the dog owner has obtained a valid and current rabies vaccination waiver from a licensed veterinarian. This waiver shall be an acceptable substitution for the proof of rabies vaccination requirement.
- D. The dog owner must renew this dog license once every 365 days.
- E. The license fee, including fee for replacement licenses shall be in amounts consistent with County ordinance regarding dog license fees and such monies shall be used for administration of the licensing program and for capital improvements and operations of the animal shelter. Proof of spay/neuter from a licensed veterinarian or a certification by the dog owner that the dog has been spayed/neutered is required to be eligible for a reduced license fee.
- F. It shall be unlawful for any person to knowingly provide false information on a dog license application.
- G. A dog owner may request a reduced license fee, if for medical reasons, the dog cannot be spayed/neutered. In this event, a dog owner must submit an affidavit to the dog license administrator from a licensed veterinarian stating the reasons why the dog is unable to be spayed/neutered.
- H. An assistance dog is required to be licensed. A person with a disability is exempt from any licensing fees that might otherwise apply in connection with owning an assistance dog as set forth in Section 24-34-803, C.R.S.
- I. Any dog owner or any entity exempt from the county's dog licensing requirements shall be exempt from the provisions of this Section.

SECTION 4. Section 9.38.020 of the Lakewood Municipal Code is hereby amended by the revision and addition of the following definitions as follows:

9.38.020 Definitions.

"Marijuana" shall have the same meaning as in section 16(2)(f) of article XVIII of the Colorado Constitution.

"Smoking" means the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco or marijuana.

SECTION 5. Section 9.38.030 of the Lakewood Municipal Code is hereby amended as follows:

9.38.030 General smoking restrictions.

A. INDOOR AREAS. Except as provided in Section 9.38.040, and in order to reduce the levels of exposure to environmental tobacco and marijuana smoke, smoking shall not be permitted and no person shall smoke in any indoor area, including, but not limited to:

- 1. Public meeting places;
- 2. Elevators;
- 3. Government-owned or operated means of mass transportation, including, but not limited to, buses, vans, and trains;
- 4. Taxicabs and limousines;
- 5. Grocery stores;
- 6. Gymnasiums;
- 7. Jury waiting and deliberation rooms;
- 8. Courtrooms;
- 9. Child day care facilities;
- 10. Health care facilities including hospitals, health care clinics, doctors' offices, and other health care related facilities:
- 11. Any place of employment that is not exempted. In the case of employers who own facilities otherwise exempted from this Chapter, each such employer shall provide a smoke-free work area for each employee requesting not to have to breathe environmental tobacco smoke. Every employee shall have a right to work in an area free of environmental tobacco smoke:

| 12. Food service establishments; | | |
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| 13. Bars; | | |
| 14. Indoor sports arenas; | | |
| 15. Restrooms, lobbies, hallways, and other common areas in public and private buildings, condominiums, and other multiple-unit residential facilities; | | |
| 16. Restrooms, lobbies, hallways, and other common areas in hotels and motels, and in at least seventy-five percent of the sleeping quarters within a hotel or motel that are rented to guests; | | |
| 17. Bowling alleys; | | |
| 18. Billiard or pool halls; | | |
| 19. Facilities in which games of chance are conducted; | | |
| 20. (a) The common areas of retirement facilities, publicly owned housing facilities, and, except as specified in Section 24-14-205(1)(k), nursing homes, but not including any resident's private residential quarters or areas of assisted living facilities specified in Section 25-24-205(1)(k); | | |
| (b) Nothing in this Chapter affects the validity or enforceability of a contract, whether entered into before, on, or after July 1, 2006, that specifies that a part or all of a facility or home specified in this paragraph (20) is a smoke-free area. | | |
| 21. Public buildings; | | |
| 22. Auditoria; | | |
| 23. Theaters; | | |
| 24. Museums; | | |
| 25. Libraries; | | |
| 26. To the extent not otherwise provided in Section 25-14-103.5, public and nonpublic schools; and | | |
| 27. Other educational and vocational institutions. | | |
| B. OUTDOOR AREAS. Except as provided in Section 9.38.040, and in order to reduce the levels of exposure to environmental tobacco smoke, the smoking of tobacco shall not be permitted and no person shall smoke tobacco in the following outdoor areas: | | |

- 1. The entryways of all buildings and facilities listed in paragraphs (1) to (27) of subsection (A).
- 2. The following facilities in City-owned outdoor parks:
- a. Playgrounds, swimming pools, skate parks, athletic fields, picnic shelters, tennis courts and similar locations; and
- b. Outdoor locations where people congregate to partake in City events such as Cider Days or outdoor musical concerts.
- 3. Transit stops, including light-rail platforms and bus stops, with or without benches and/or shelters.
- C. Nothing herein shall be deemed to permit the smoking of marijuana that is conducted openly and publicly or in a manner that endangers others or otherwise violates state law.

SECTION 6. Section 9.38.040 of the Lakewood Municipal Code is hereby amended as follows:

9.38.040 Exceptions to tobacco smoking restrictions.

- A. The prohibitions set forth in Section 9.38.030 shall not apply to smoking tobacco in:
- 1. Private homes, private residences, and private automobiles; except that this Chapter shall apply if any such home, residence, or vehicle is being used for child care or day care or if a private vehicle is being used for the public transportation of children or as part of health care or day care transportation;
- 2. Limousines under private hire;
- 3. A hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed twenty-five percent;
- 4. Any retail tobacco business; provided, however, that no person under eighteen (18) years of age shall be allowed on the premises. No retail tobacco business may be located in a liquor-licensed premises.
- 5. A cigar-tobacco bar as provided herein;
- 6. The outdoor area of any business, including the patios of liquor-licensed establishments and business establishments where food or beverages are served;
- 7. A place of employment that is not open to the public and that is under the control of an employer that employs three or fewer employees;

- 8. A private, nonresidential building on a farm or ranch, as defined in Section 39-1-102, C.R.S., that has an annual gross income of less than five hundred thousand dollars; or
- 9. (a) The areas of assisted living facilities:
- i. That are designated for smoking for residents;
- ii. That are fully enclosed and ventilated; and
- iii. To which access is restricted to the residents or their guests.
- (b) As used in this paragraph (9), "assisted living facility" means a nursing facility, as that term is defined in Section 25.5-4-103, C.R.S., and an assisted living residence, as that term is defined in Section 25-27-102.
- 10. Hookah bars, as provided herein; and
- 11. The outdoor areas of golf courses.

SECTION 7. Section 9.38.045 of the Lakewood Municipal Code is hereby added and shall be as follows:

9.38.045 Exceptions to marijuana smoking restrictions.

The prohibitions set forth in Section 9.38.030 shall not apply to smoking marijuana in: private homes or private residences; except that this Chapter shall apply if such home or residence is being used for child care or day care.

SECTION 8. Section 9.38.060 of the Lakewood Municipal Code is hereby amended by the addition of Subsection (D) as follows:

9.38.060 Hookah Bars.

D. It shall be unlawful for any person to smoke marijuana in a hookah bar.

SECTION 9. Section 9.38.070 of the Lakewood Municipal Code is hereby amended by the addition of Subsection (D) to read in full as follows:

9.38.070 Cigar-tobacco Bars.

D. It shall be unlawful for any person to smoke marijuana in a cigar-tobacco bar.

SECTION 10. Section 9.38.075 of the Lakewood Municipal Code is hereby added to read in full as follows:

9.38.075 Tobacco business.

It shall be unlawful for any person to smoke marijuana in a tobacco business.

SECTION 11. Section 9.44.010 of the Lakewood Municipal Code is hereby amended as follows:

9.44.010 Definitions.

- A. "Drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the laws of this state. "Drug paraphernalia" includes, but is not limited to:
- 1. Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances under circumstances in violation of the laws of this state:
- 2. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
- 3. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marihuana;
- 4. Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;
- 5. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
- 6. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances; or
- 7. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, such as:
- a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- b. Water pipes;

- c. Carburetion tubes and devices:
- d. Roach clips, meaning objects used to hold burning material, such as a marihuana cigarette that has become too small or too short to be held in the hand;
- e. Miniature cocaine spoons and cocaine vials;
- f. Chamber pipes;
- g. Carburetor pipes;
- h. Electric pipes;
- i. Air-driven pipes;
- j. Chillums;
- k. Bongs; or
- I. Ice pipes or chillers.
- B. "Drug paraphernalia" does not include any marijuana accessories as defined in section 16(2)(g) of article XVIII of the state constitution if possessed or used by a person age twenty-one or older.

SECTION 12. Section 9.64.010 of the Lakewood Municipal Code is hereby amended to read in full as follows:

9.64.010 Shoplifting-Unlawful.

It is unlawful for any person to knowingly conceal or otherwise carry away, or to knowingly aid another to conceal or otherwise carry away, 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 avoid payment thereof and to permanently deprive the store or mercantile establishment of the benefit of the unpurchased goods, wares or merchandise; provided, however, that the aggregate value of such unpurchased goods, wares, or merchandise shall be less than two thousand dollars.

SECTION 13. Section 9.64.020 of the Lakewood Municipal Code is hereby amended to read in full as follows:

9.64.020 Price switching.

It is unlawful for any person to willfully 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; provided, however, that this

section shall not apply to goods, wares or merchandise of a value of two thousand dollars or more.

SECTION 14. Section 9.65.010 of the Lakewood Municipal Code is hereby amended to read in full as follows:

9.65.010 Petty theft-Unlawful.

It is unlawful for any person knowingly to obtain, retain, or exercise control over anything, of the value of less than two thousand dollars, of another without authorization, or by threat or deception; or to receive, loan money by pawn or pledge on, or dispose of anything of value or belonging to another that he or she knows or believes to have been stolen, and:

- A. Intends to deprive such other person permanently of the use or benefit of such thing of value; or
- B. Knowingly uses, conceals, or abandons such thing of value as to deprive such other person permanently of the use or benefit of the same; or
- C. Uses, conceals, or abandons such thing of value, intending that such use, concealment, or abandonment will deprive such other person permanently of the use or benefit of the same; or
- D. Demands any consideration to which such person is not legally entitled, as a condition of restoring such thing of value to such other person; or
- E. Knowingly retains the things of value more than seventy-two hours after the agreedupon time of return in any lease or hire agreement.
- SECTION 15. Section 9.65.020 of the Lakewood Municipal Code is hereby repealed.
- SECTION 16. Section 9.65.030 of the Lakewood Municipal Code is hereby repealed.
- SECTION 17. This Ordinance shall take effect thirty (30) days after final publication.

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a regular meeting of the Lakewood City Council on the 27th day of January, 2014; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the 30th day of January, 2014; set for public hearing on the 10th day of February, 2014, read, finally passed and adopted by the City Council on the 10th day of February, 2014 and, signed and approved by the Mayor on the 11th day of February, 2014.

| | Bob Murphy, Mayor | |
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| ATTEST: | | |
| | | |
| Margy Greer, City Clerk | | |
| 4 D D D O V E D A O T O E O D M | | |
| APPROVED AS TO FORM: | | |
| | | |
| Tim Cox, City Attorney | | |