

**Town of Erie
Ordinance No. 17-2021**

An Ordinance of the Board of Trustees of the Town of Erie Revising Section 6-6-4.A. of the Erie Municipal Code, Entitled "Damage to Property," and Section 1-4-3.D., entitled "Alternatives in sentencing," and Amending Chapter 10 of Chapter 6 of the Erie Municipal Code by the Addition of a New Section 6-10-17, Entitled "Open Marijuana Container"

Whereas, the Board of Trustees finds that it is in the best interest of the Town to amend the Erie Municipal Code as set forth herein below, and that such an amendment is necessary to for the public health, safety, and welfare.

Now Therefore be it Ordained by the Board of Trustees of the Town of Erie, Colorado, that:

Section 1. Section 6-6-4.A. of the Erie Municipal Code, entitled "Damage to Property," is hereby repealed in its entirety and reenacted to read as follows:

6-6-4 - Damage to property.

A. *Criminal mischief*: It shall be unlawful to knowingly damage the real or personal property of one or more other persons, including property owned by the person jointly with another person or property owned by the person in which another person has a possessory or proprietary interest.

* * *

Section 2. Section 1-4-3.D. of the Erie Municipal Code is hereby repealed in its entirety and reenacted to read as follows:

1-4-3 - Alternatives in sentencing.

* * *

D. Every order of conviction, to include a plea of guilt or *nolo contendere* by the defendant, shall include a consideration of restitution. Each such order shall include one or more of the following:

1. An order of a specific amount of restitution to be paid by the defendant; or

2. An order that the defendant is obligated to pay restitution, but that the specific amount of restitution shall be determined within the 91 days immediately following the entry of the conviction, unless good cause

is shown for extending the time period by which the restitution amount shall be determined; and

3. An order, in addition to or in a place of a specific amount of restitution, that the defendant pay restitution covering the actual costs of specific future treatment of any victim of the crime; and

4. If more than one defendant owes restitution to the same victim for the same pecuniary loss, the orders for restitution shall be joint and several obligations of the defendants.

Section 3. The Erie Municipal Code is hereby amended by the addition of the following new Section 6-10-17:

6-10-17 – Open marijuana container.

A. Definitions.

Marijuana shall have the same meaning as in Section 16(2)(f) of Article XVIII of the state constitution, as amended.

Motor vehicle means 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.

Open marijuana container means a receptacle or marijuana accessory that contains any amount of marijuana and:

1. That is open or has a broken seal;
2. The contents of which are partially removed; and
3. There is evidence that the marijuana has been consumed in the motor vehicle.

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 seating position, including but not limited to the glove compartment.

B. Prohibitions.

1. Except as otherwise permitted in paragraph 2 of this subsection B, a person while in the passenger area of a motor vehicle that is on a public highway, street or roadway in the Town limits or the right-of-way of a public highway, street or roadway may not knowingly:

- a. Use or consumer marijuana; or
- b. Have in their possession an open marijuana container.
- 2. The provisions of this subsection B shall not apply to:
 - a. 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;
 - b. 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 house coach, house trailer, motor home, as defined in C.R.S. § 42-1-102(57), as amended, or trailer coach, as defined in C.R.S. § 42-1-102(106)(a);
 - c. The possessor 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
 - d. The possession of an open marijuana container in an area not normally occupied by the driver or a passenger in a motor vehicle that is not equipped with a trunk.

C. This Section is declared a non-criminal violation, subject to the penalties set forth in Section 1-4-4.A.

Section 4. Severability. 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 Board of Trustees hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that anyone, or part, or parts be declared unconstitutional or invalid.

Section 5. Safety. The Board of Trustees finds that the adoption of this Ordinance is necessary for the protection of the public health, safety and welfare.

Section 6. Effective Date. This Ordinance shall take effect 30 days after publication following adoption.

Introduced, read, passed and ordered published this 22nd day of June, 2021.

Jennifer Carroll, Mayor

Attest:

Heidi Leatherwood, Town Clerk