

ORDINANCE NO. 2439
INTRODUCED BY: Johnston

AN ORDINANCE AMENDING AND REPEALING CERTAIN SECTIONS OF THE CITY OF BRIGHTON MUNICIPAL CODE AND ENACTING SECTIONS RELATED TO THE SALE OF MARIJUANA

WHEREAS, Article XVIII, Sections 14 and 16 of the Colorado Constitution provides that a locality may enact ordinances governing the time, place, manner, and number of marijuana establishment operations within a city; and

WHEREAS, City Council desires to consider amending the *Brighton Municipal Code* to allow for the operation of marijuana stores within the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

Section 1. The below definition set forth in Section 9-30-10 is hereby amended, as follows:

Colorado Medical Marijuana Code shall mean Title 44, Article 10 of the Colorado Revised Statutes, and the corresponding Colorado Department of Revenue Rules found at 1 CCR 212-3, as each may be amended from time to time.

Section 2. The definition of *Medical marijuana center* set forth in Section 9-30-10 is hereby deleted in its entirety.

Section 3. Section 9-30-20 of the Brighton Municipal Code is hereby amended, as follows:

Sec. 9-30-20. – Optional premises cultivation operations and medical marijuana-infused products manufacturers’ licenses—prohibited.

(a) The operation of optional premises cultivation operations and medical marijuana-infused products manufacturers licensed within the corporate limits of the City, which might otherwise be authorized under the Colorado Medical Marijuana Code, is hereby prohibited.

(b) It shall be unlawful and a violation under this Article for any person to establish, operate, continue to operate, cause to be operated or permit to be operated within the corporate limits of the City, and within any area annexed into the City after the effective date of the ordinance codified herein, a facility, business or any other operation requiring a license under the Colorado Medical Marijuana Code to operate as an optional premises cultivation operation or as a medical marijuana-infused products manufacturer.

Section 4. Section 9-30-30 of the Brighton Municipal Code is hereby amended effective, as follows:

Sec. 9-30-30. – Cultivation of medical marijuana prohibited.

No person shall cultivate medical marijuana within the City's boundaries unless such person does so as a patient or primary care-giver registered in accordance with the Colorado Medical Marijuana Code.

Section 5. Article 9-31 of the Brighton Municipal Code is hereby repealed in its entirety and re-enacted, as follows:

Sec. 9-31-10. – Findings and legislative intent.

The City Council makes the following legislative findings:

(a) The City Council finds and determines that Article XVIII, Section 16 of the Colorado Constitution specifically authorizes in part that the governing body of a municipality may enact an ordinance to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, and marijuana testing facilities, and further authorizes the governing body of a municipality to enact an ordinance to regulate the operation of marijuana stores.

(b) The City Council finds and determines, after careful consideration of the provisions of Article XVIII, Section 16 of the Colorado Constitution and after evaluating, *inter alia*, the potential secondary impacts associated with the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, and marijuana testing facilities, that such land uses have an adverse effect on the health, safety and welfare of the City and the inhabitants thereof.

(c) The City Council therefore finds and determines that, as a matter of the City's local land use and zoning authority as a home rule municipality pursuant to the provisions of Article XX, Section 6 of the Colorado Constitution and consistent with the authorization provided by Article XVIII, Section 16 of the Colorado Constitution, no suitable location exists within the corporate limits of the City for the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, and marijuana testing facilities, or the licensing thereof.

Sec. 9-31-20. – Authority.

The City Council hereby finds, determines, and declares it has the power and authority to adopt this Article pursuant to:

- (a) Article XVIII, Sections 14 and 16 of the Colorado Constitution;
- (b) The authority granted to home rule municipalities by Article XX of the Colorado Constitution;
- (c) The powers contained in the City Home Rule Charter; and

(d) The Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.

Sec. 9-31-30. – Definitions.

For purposes of this Article, the following terms shall have the following meanings:

Authority means the Marijuana Licensing Authority of the City.

Colorado Marijuana Code shall mean Title 44, Article 10 of the Colorado Revised Statutes, and the corresponding Colorado Department of Revenue Rules found at 1 CCR 212-3, as each may be amended from time to time.

Hearing officer means that person appointed by the City Council to serve as the Marijuana Licensing Authority.

Marijuana as used in this Article 9-31 shall be as defined in Section 9-28-20, Definitions, of this Code, as amended.

Marijuana accessories as used in this Article 9-31 shall be as defined in Section 9-28-20, Definitions, of this Code, as amended.

Marijuana cultivation facility means an entity licensed to cultivate, prepare and package marijuana and sell marijuana to marijuana stores, to marijuana product manufacturing facilities and to other marijuana cultivation facilities, but not to consumers.

Marijuana establishment means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility or a marijuana store.

Marijuana product manufacturing facility means an entity licensed to purchase marijuana; manufacture, prepare and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to marijuana stores, but not to consumers.

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.

Marijuana store means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers; an entity licensed pursuant to the Colorado Marijuana Code to operate a business that sells medical marijuana to registered patients or primary caregivers, but is not a primary caregiver.

Marijuana testing facility means an entity licensed to analyze and certify the safety and potency of marijuana.

Sec. 9-31-40. – State laws and regulations.

Except as otherwise specifically provided herein, this Article incorporates the requirements and procedures set forth in the Colorado Marijuana Code and are adopted as if set forth fully herein. In the event of a conflict between the provisions of this Article and the provisions of the Colorado Marijuana Code, or any other applicable state or local law or regulation, the more restrictive provision shall control.

Sec. 9-31-50. – Marijuana cultivation facilities, marijuana product manufacturing facilities, and marijuana testing facilities prohibited.

It is unlawful for any person to operate, cause to be operated or permit to be operated any marijuana cultivation facilities, marijuana product manufacturing facilities, and marijuana testing facilities within the City, and all such uses are hereby prohibited in any location within the City or within any area hereinafter annexed to the City.

Sec. 9-31-60. – City Clerk designated authority.

The City Clerk is hereby designated as the officer of the City for the receipt of notifications from the Colorado Department of Revenue of the filing of any notice of intent to apply for a license for a marijuana establishment to be located within the City, to notify the Department of the prohibitions as set forth in this Article and to generally communicate with the Department relative to marijuana establishments.

Sec. 9-31-70. – Penalties, nuisance declared.

(a) It is unlawful for any person to violate any of the provisions of this Article. Any such violation is hereby designated a criminal offense, and any person found guilty of violating any of the provisions of this Article shall, upon conviction thereof, be punished by a fine or imprisonment, or both, pursuant to Article 1-24 of this Code. Each day that a violation of any of the provisions of this Article continues to exist shall be deemed a separate and distinct violation.

(b) The conduct of any activity or business in violation of this Article is hereby declared to be a public nuisance, which may be abated pursuant to the provisions for the abatement of nuisances provided in Article 8-24 of this Code.

Sec. 9-31-80. – Licensing requirements.

(a) It shall be unlawful for any person to operate a marijuana store without obtaining a license to operate such business in accordance with the requirements of this Article.

(b) The license requirement set forth in this Article shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state, or local law, rule, or regulations, including, by way of example, any applicable local zoning or building code.

(c) A marijuana store shall be located only within the C-2—Restricted Retail and Services, C-3—General Retail & Services, and/or I-1—Light Industrial zoning district. For any planned development or planned unit development that does not reference a marijuana store as an allowed use, a marijuana store is prohibited, even if the underlying zoning would allow it.

(d) Prior to submitting an application for a local license, an applicant must obtain an approved zoning verification letter from the City’s Community Development Department which, based upon an applicant’s submittal of the county assessor’s parcel identification number for the property and an area map drawn to scale, demonstrates that the proposed marijuana store is in compliance with the location restrictions set forth in this Article. Applicants shall submit the approved zoning verification letter to the City Clerk along with the completed State Marijuana Enforcement Division forms, together with all supplemental information required by the City.

(e) Marijuana stores shall not be permitted if, at the time of application for such license, such location is within one thousand 1,000 feet of:

- (1) Any school;
- (2) Any residential child care center; and
- (3) Any juvenile or adult halfway house, correctional facility, or substance abuse rehabilitation center.

(f) The distance restrictions described above shall be computed by direct measurement from the nearest property line of the parcel of land on which the protected use is located to the nearest portion of the building or unit in which the proposed marijuana store would be located, using a route of direct pedestrian access. The distance regulations described above shall not be applicable to the renewal of a license once granted.

(g) The maximum number of licensed marijuana stores within the City shall not exceed four (4). At least two (2) marijuana store licenses may only be issued to a qualified Social Equity Licensee, as defined by the Colorado Marijuana Code. A Social Equity Licensee shall provide proof of such certification to the City Clerk at the time of application. Initial applications for the issuance of a new marijuana store license shall be accepted by the City Clerk for a period of sixty (60) days beginning March 1, 2024. Subsequent applications for the issuance of a new marijuana store license or renewal of a marijuana store license shall be accepted by the City Clerk annually during the first sixty (60) days of the calendar year. The City Clerk will specify the start and end date and time of the application period, and may, in his or her discretion, increase the time period of acceptance of new applications. If a marijuana store license becomes available outside of the application period, the City Manager, in his or her discretion, may allow for an off-cycle application period. The City Clerk shall create a review committee to select applications and further define the approval process.

(h) All marijuana stores shall comply with all labeling requirements of the Colorado Marijuana Code and associated State regulations.

(i) Any and all distribution, possession, storage, display, or sales of marijuana shall occur only within the restricted area of a marijuana store and shall not be visible from the exterior of the store.

(j) The store manager of a marijuana store shall register with the state and the Authority. Whenever a person ceases to be a registered manager of a marijuana store, the marijuana licensee shall notify the licensing authorities within five (5) days and shall designate a new registered manager within thirty (30) days. Either the state or the Authority may refuse to accept any person as a registered manager unless the person is satisfactory to the respective licensing authorities as to character and record. In determining a registered manager's character and record, the state or local licensing authority may have access to criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency.

(l) Hours of operation. A marijuana store shall be closed to the public, and no sale or other distribution of marijuana shall occur upon the premises between the hours of 12:00 a.m., thru and including 8:00 a.m.

(m) Use of pesticides. A marijuana store shall comply with the Colorado Marijuana Code and all applicable laws regarding use of pesticides.

(n) Ventilation required. A marijuana store shall be ventilated to ensure the odor of marijuana cannot be detected by a person with a normal sense of smell at the exterior of the marijuana store or at any adjoining property.

(o) Wastewater requirements. All marijuana stores shall be operated in such a manner as to not permit, allow, or cause to be discharged any substance or material prohibited by the City into or upon any watercourse or City reclamation conduit, facility, or plant.

(p) Storage prohibitions of marijuana and marijuana product prohibited. No marijuana store may store marijuana or any marijuana product in any off-premises storage facility located within the City.

(q) Reporting requirements. A marijuana store shall report to the local licensing authority each of the following events within the time specified. If no time is specified, the report shall be provided within seventy-two (72) hours of the event.

- (1) Transfer or change of financial interest, or financier in the license to the City at least thirty (30) days before the transfer or change.
- (2) Taxable transactions and sales and use tax reports and remits to the City monthly.
- (3) A violation of any law by any licensee or applicant of a marijuana store.
- (4) A change in the store manager of a marijuana store.

(r) Each licensee shall post and keep at all times visible to the public, in a conspicuous place on the premises, a sign to be furnished by the City Clerk's office, which sign shall be in the following form: "WARNING: THE CITY OF BRIGHTON POLICE DEPARTMENT MUST BE NOTIFIED IMMEDIATELY OF ALL UNLAWFUL ACTS AND DISTURBANCES IN THIS ESTABLISHMENT." Licensees shall immediately report to the police department any unlawful act, conduct, or disturbance committed upon the premises.

(s) Respond to inquiry. An owner or manager of a marijuana store is required to respond by phone or email within one business day of contact by a City official concerning its marijuana store at the phone number or email address provided to the City as the contact for the business. Each twenty-four-hour period during which an owner or manager does not respond to the City official shall be considered a separate violation.

(t) Signs and advertising. In addition to the items listed, all licensees shall comply with all City ordinances regulating signs.

(1) Any entity licensed as a marijuana store shall comply with all City ordinances regulating signs and advertising. In addition, no marijuana store shall use any advertising material that is misleading, deceptive, false, or that, as evidenced either by the content of the advertising material or the medium or the manner in which the advertising is disseminated, is designed to appeal to persons under twenty-one (21) years of age.

(2) Except as otherwise provided in this subsection (2), it shall be unlawful for any person licensed under this Article or any other person to advertise any marijuana product anywhere in the City where the advertisement is visible to members of the public from any street, sidewalk, park, or other public place, including advertising utilizing any of the following media: any billboard or other outdoor general advertising device as defined by the *Land Use and Development Code*; any sign mounted on a vehicle, any hand-held or other portable sign; or any handbill, leaflet or flier directly handed to any person in a public place, left upon a motor vehicle, or posted upon any public or private property without the consent of the property owner. The prohibition set forth in this section shall not apply to:

- i. Any sign located on the same lot as a marijuana store which exists solely for the purpose of identifying the location of the marijuana store and which otherwise complies with the City's zoning requirements and any other applicable City laws and regulations; or
- ii. Any advertisement contained within a newspaper, magazine, or other periodical of general circulation within the City; or
- iii. Advertising which is purely incidental to sponsorship of a charitable event by a marijuana store.

(3) For purposes of this subsection(s), the terms "advertise," "advertising," or "advertisement," means the act of drawing the public's attention to a marijuana

establishment in order to promote the sale of marijuana goods or products by the establishment.

Sec. 9-31-90. – Application.

(a) Application forms required under this Article 9-31 shall be available at the office of the City Clerk.

(b) All applications for a marijuana store license shall be submitted to the City Clerk on the prescribed forms. The forms shall be accompanied by all the required fees and such additional materials as the City Clerk and/or the Authority deems necessary to carry out the provisions of the Colorado Marijuana Code and the provisions of the ordinances of the City applicable to such license and all regulations promulgated pursuant thereto. No application shall be accepted by the City Clerk which is not complete in every detail. Any application mailed to or deposited with the City Clerk which, upon examination, is found to have some omission or error shall be returned to the applicant for completion or correction without any action on the part of the City Clerk or the Authority. In addition to the documents and information required under subsection (c) below, the applicant shall furnish such additional documentation or information as the City Clerk and/or the Authority deems necessary to make the determinations required by the Colorado Marijuana Code and applicable City ordinances and regulations.

(c) The application must be returned to the office of the City Clerk with all necessary attachments as follows:

- (1) New licenses, Change of Location, or Transfer of interest in a licensed business.
 - i. Three (3) letters of reference for each individual, partnership member or corporate officer, director and stockholder holding at least ten percent (10%) ownership interest.
 - ii. Lease agreement, assignment of the lease to the applicant or deed to the premises in the name of the applicant.
 - iii. Partnership agreement or, for a corporation, articles of incorporation, certificate of incorporation and certificate of good standing.
 - iv. Consolidated financial statements of the applicant, which includes a balance sheet, income statement, and cash flow statement for the previous calendar year, including auditor's reports and footnotes, if applicable.
 - v. Written verification executed by a duly authorized representative of a State certified or City approved training program, which shall be kept current with the City Clerk's office, that the applicant (licensee) and manager have completed the State certified or City approved training program for marijuana sales that meets the standards required by the Colorado Marijuana Code.
 - vi. An agreement of sale of the business or other documentation demonstrating a transfer of possession of the licensed premises by operation of law, including a petition in bankruptcy pursuant to federal bankruptcy law, the

appointment of a receiver, a foreclosure action by a secured party or a court order dispossessing the prior licensee of all rights of possession pursuant to Section 13-40-101, et seq., C.R.S.

- vii. No person shall make application nor shall any application be received for transfer of a license under this Article until such time as all occupational fees, license fees, sales and use taxes and other fees and charges related to the licensed premises due and owing the City are paid in full.
- viii. A plan for disposal of any marijuana waste product that is not sold in a manner that protects any portion thereof from being possessed or ingested by any person or animal.
- ix. A plan for ventilation of the marijuana store that fully describes the ventilation systems that will ensure the odor of marijuana cannot be detected by a person with a normal sense of smell at the exterior of the marijuana store or at any adjoining property.
- x. Fingerprints and personal background information for all owners, managers, and financiers employed by or under contract to provide services to the marijuana store, directly, or as a member, partner, or officer of a corporation, partnership, association, or company.
- xi. All applications must include all documents and information required by the Colorado Marijuana Code, including its rules and any information that the City deems reasonably necessary for the investigation and review of the application.
- xii. Interior floor plan and plot or site plans of the premises.

(2) Applications for renewal of marijuana store licenses.

- i. All renewal applications for marijuana store licenses shall be submitted to the City Clerk on the prescribed forms no later than forty-five (45) days prior to the date on which the license expires. The forms shall be accompanied by all the required fees and such additional materials as the City Clerk and/or the Authority deems necessary to carry out the provisions of the Colorado Marijuana Code and regulations and the ordinances of the City related to marijuana stores and all regulations promulgated pursuant thereto. No renewal application shall be accepted by the City Clerk which is not complete in every detail. Any application mailed to or deposited with the City Clerk which, upon examination, is found to have an omission or error shall be returned to the applicant for completion or correction without any action on the part of the City Clerk or the Authority. Should any renewal application be received in completed form less than forty-five (45) days prior to the date on which the license expires, it shall be deemed a late application. Neither the City Clerk nor the Authority shall be responsible for the failure of a license to issue by the expiration date on any late application.

- ii. An application for renewal of a license shall include written verification executed by a duly authorized representative of a State certified or City approved training program, which shall be kept current with the City Clerk's office, that the licensee, manager and each employee of the licensee who shall be selling marijuana has completed the State certified or City approved training program for marijuana sales that meets the standards required by City or State law.
- iii. No application for renewal of a license shall be accepted after the date of expiration; provided, however, that a licensee whose license has been expired for not more than ninety (90) days may file a late renewal application upon the payment of all required fees.
- iv. If there is information before the City Clerk tending to constitute good cause for not renewing a particular license for an additional year, the City Clerk shall refer the renewal application to the Authority, shall cause to be issued a notice of hearing on the license renewal. If the Authority requires a hearing to renew a license, such hearing shall be held only after a notice of hearing has been conspicuously posted on the licensed premises for a period of ten (10) days and has been provided to the applicant at least ten (10) days prior to the hearing.
- v. Hearings held on any renewal or late renewal application after proper notice has been given may result in denial of renewal of the license for good cause, as defined in the Colorado Marijuana Code.
- vi. If a marijuana store license is renewed by the Authority, such renewal will not affect a pending violation or show cause order which relates to an incident that occurred prior to the date of the renewal. The Authority shall be authorized to take whatever action is necessary against the license, either in the form of suspension or revocation of the marijuana store license, regardless of when such license has been renewed.
- vii. No person shall make application for nor shall any application be received for renewal of a license under this Article until such time as all occupational fees, license fees, sales and use taxes and other fees and charges related to the licensed premises due and owing the City are paid in full.

(3) Applications for late renewal of marijuana store licenses.

- i. Any applicant for late renewal of a license shall be required to submit a late renewal application.
- ii. In no event shall a late renewal application be accepted by the City Clerk more than ninety (90) days after the expiration of a licensee's permanent annual license.
- iii. The Authority, in its discretion, may hold a public hearing to determine the qualifications of an applicant for late renewal of a license.

(d) The completed application will be processed by the City Clerk and may be reviewed by any department as needed and presented to the Authority for public hearing.

(1) An application for a new license or for change of location of a licensed business requires a public hearing which will be set by the Authority pursuant to the notice requirements set forth in the Colorado Marijuana Code.

(2) No licensee shall make application for, nor shall any application be received for, a new license or for change in location under this Article until such time as all occupational fees, license fees, sales and use taxes and other fees and charges related to the licensed premises due and owing the City are paid in full.

(e) In the event the criminal history of an owner, member, manager, financier, or other person named on the application contains information regarding conviction of a crime or previous denial or revocation of any medical or retail marijuana or professional license, that person may include with the license application any information regarding such conviction, denial, or revocation. Such information may include, but is not limited to, evidence of rehabilitation, character references, and educational achievements, especially documentation pertaining to the period of time between the applicant's last criminal conviction and the date of the application.

(f) A license issued pursuant to this Article does not eliminate the need for the licensee to obtain other required permits or licenses related to the operation of the marijuana store, including, without limitation, any State of Colorado license or any sales tax license, business registration, development approvals, or building permits required by the Code.

Sec. 9-31-100. – Findings of the Authority.

(a) The Authority may specify terms, conditions or provisions upon granting of a license as the Authority may deem necessary to carry out the exercise of police powers, provided that these terms, conditions or provisions do not conflict with the laws of the State, the Colorado Marijuana Code, or ordinances of the City.

(b) The Authority shall have the power to impose on a licensee as a condition of a period of suspension held in abeyance or as a condition of renewal any conditions reasonably related to the offenses leading to the suspension or the conduct of the business for which the license is to be renewed.

(c) The decision of the Authority shall constitute final agency action of the Authority for all purposes under the applicable State statutes, and the Colorado Marijuana Code.

Sec. 9-31-110. – Issuance of license; duration, renewal.

(a) Each license shall show the name of the licensee, the physical address for which the license is issued, and the type of marijuana establishment for which it is issued. The license, along with the City sales tax license and the current contact information for the owner(s), shall be displayed continuously in a conspicuous location at the physical address indicated on the license.

(b) Each license issued pursuant to this Article shall be valid for one (1) year from the date of issuance and may be renewed only as provided in this Article. All renewals of a license shall be for no more than one (1) year. The local licensing authority shall act on renewal applications in accordance with the applicable provisions of the Colorado Marijuana Code and its rules. The timely filing of a renewal application shall extend the current license until a decision is made on the renewal.

(c) A local license, which shall only be applicable to a specifically identified business at a fixed location within an enclosed and secure premises, shall not be issued until a state license has been granted, appropriate land use process, if required, has been approved and the building in which the store's business is to be conducted has passed all applicable inspections and is ready for occupancy with such furniture, fixtures, and equipment in place as are necessary to comply with any applicable provisions of the Code or any state law, rule, or regulation.

Sec. 9-31-120. – Annual operating and administrative fees.

In addition to application, renewal and an annual operating fee, the City shall impose administrative fees for services, which include the transfer of ownership, background investigations, change of business manager, modification of premises, change of location, change of corporate structure, change of financier, zoning verification, duplicate license, temporary permit, change of trade name, change of class of license, with all such fees to be established by resolution of City Council.

Sec. 9-31-130. – Nonrenewal, suspension, or revocation of a license.

(a) The Authority may, after notice and hearing, suspend, revoke or refuse to renew a license for any of the following reasons:

- (1) The applicant or licensee, or his or her agent, manager or employee, or financier has violated, does not meet, or has failed to comply with, any of the terms, requirements, conditions or provisions of this Article or with or with any applicable state or local law or regulation.
- (2) The applicant or licensee, or his or her agent, manager or employee, or financier has failed to comply with any special terms or conditions of its license pursuant to an order of the state or the Authority, including those terms and conditions that were established at the time of issuance of the license and those imposed as a result of any disciplinary proceedings held subsequent to the date of issuance of the license.
- (3) The marijuana store has been operated in a manner that adversely affects the public health, safety or welfare.

- (4) Misrepresentation or omission of any material fact, or false or misleading information, on the application or any amendment thereto, or any other information provided to the City related to the marijuana store;
 - (5) Violation of any law by which, if occurring prior to submittal of the application, could have been cause for denial of the license application.
 - (6) Distribution of retail marijuana and/or medical, marijuana in violation of this Article or any other applicable law, rule, or regulation.
 - (7) Failure to maintain, or provide to the City upon request, any books, recordings, reports, or other records required by this Chapter.
 - (8) Failure to timely notify the City and to complete necessary forms for changes in financial interest, controlling interest, financier, or agent.
 - (9) Temporary or permanent closure, or other sanction of the business, by the City, or by the county or state public health department or other governmental entity with jurisdiction, for failure to comply with health and safety provisions of this Article or otherwise applicable to the business or any other applicable law.
 - (10) Revocation or suspension of any other license issued by the City, the State, or any other jurisdiction held by any licensee of the marijuana store.
 - (11) Failure to timely correct any violation of any law or comply with any order to correct a violation of any law within the time stated in the notice or order.
- (b) Evidence to support a finding under subsection (a) above may include, without limitation, one or a combination of the following;
- (1) A continuing pattern of disorderly conduct;
 - (2) A continuing pattern of drug-related criminal conduct within the premises of the marijuana store or in the immediate area surrounding such business;
 - (3) A continuing pattern of criminal conduct directly related to or arising from the operation of the marijuana store; or
 - (4) An ongoing nuisance condition emanating from or caused by the marijuana store.
 - (5) Criminal conduct shall be limited to the violation of a state or City law or regulation.
- (c) In the event a business or licensee is charged with violation of any law, upon which a final judgment would be grounds for suspension or revocation of the license, the City may suspend the license pending the resolution of the alleged violation.

(d) If the City revokes or suspends a license, the business may not move any marijuana from the premises except under the supervision of the City of Brighton Police Department.

(e) The Authority shall conduct a review of all licenses at least annually and, in addition to examining the factors enumerated in this subsection, may hold a hearing on each license at which the general public shall be invited to appear and provide testimony as to the effects of the license on the surrounding community and the City at large, and the Authority may take such views into consideration when deciding whether to continue or renew such license.

(f) In the event of the suspension of a marijuana store license, during the period of suspension, the business:

(1) Shall post two (2) notices provided by the Authority, in conspicuous places, one on the exterior and one on the interior of its premises for the duration of the suspension; and

(2) Shall not distribute marijuana, nor allow any customers into the licensed premises.

Sec. 9-31-140. – Unlawful acts of licensees and persons.

(a) It shall be unlawful for any licensee to:

(1) Violate or fail to comply with any provision, term, condition, or requirement of the Colorado Marijuana Code, including its rules.

(2) Allow marijuana or marijuana products to be consumed upon its licensed premises.

(3) Use advertising material that is misleading, deceptive, false, or designed to appeal to persons under twenty-one (21) years of age.

(4) Sell retail marijuana or retail marijuana products to a person under twenty-one (21) years of age or to a person who does not present a government-issued identification at the time of purchase.

(5) Refuse to allow inspection of a marijuana store upon request of an authorized City employee. Any licensee, owner, business manager, operator of a marijuana store, or owner of the property where a marijuana store is located may be charged with violation of this requirement.

(6) Advertise or publish materials or display signs that are in violation of this Article.

(7) Violate any provision of this Article or any condition of an approval granted pursuant to this Article, or any law, rule, or regulation applicable to the use of marijuana or the operation of a marijuana store.

(8) Distribute marijuana or marijuana product within a marijuana store to any person who shows visible signs of intoxication from alcohol, marijuana, or other drugs.

(9) No marijuana store may store marijuana or marijuana-infused products in any off-premises storage facility located within the City.

(b) It shall be unlawful for any person to engage in any form of business or commerce involving the sale of marijuana other than those forms of business and commerce that are expressly permitted by Section 14 of Article XVIII of the Colorado Constitutions, Section 16 of Article XVIII of the Colorado Constitution, the Colorado Marijuana Code including its rules, and this Article, which permits only marijuana stores.

Sec. 9-31-150. – Inspection of books and records.

(a) Each licensee shall keep a complete set of all records necessary to show fully the business transactions of the licensee, all of which shall be open at all times during business hours for the inspection and examination by the Authority, its duly authorized representatives, and the City of Brighton for the purposes of investigating and determining compliance with the provisions of this Article and any other applicable state and local laws or regulations. The Authority may require any licensee to furnish such information as it considers necessary for the proper administration of this Article. It may also require an audit to be made of the books of accounts and records on such occasions as it may consider necessary by an auditor to be selected by the local licensing authority, who shall likewise have access to all books and records of the licensee.

(b) The licensed premises shall be subject to inspection by the Authority, its duly authorized representatives, and the City's Police Department or any other City Department during all business hours and other times of apparent activity, for the purpose of inspection or investigation. For examination of any inventory or books and records required to be kept by the licensees, access shall be required during business hours. Where any part of the licensed premises consists of a locked area, upon demand to the licensee by the local licensing authority or any other authorized City personnel, such area shall be made available for inspection without delay.

(c) Each licensee shall retain all books and records necessary to show fully the business transactions of the licensee for a period of the current tax year and the three (3) immediately prior tax years.

Sec. 9-31-160. – Transfer of ownership.

(a) A marijuana store license is not transferable or assignable, in whole or in part, including, without limitation, to a different premises, to a different type of business, or to a different owner or licensee. A marijuana store license is valid only for the owner named thereon and the location for which the license issued. The licensee of a marijuana store is only those persons disclosed in the application or subsequently disclosed to the City in accordance with this Article. A transfer of a marijuana store shall be permitted in the following circumstances:

- (1) The new owner and all licensees of the business have submitted completed applications and passed a background check by the City;
- (2) The new owner is not making any changes to any of the plans or conditions that are part of the license; and
- (3) The license transfer is an arms-length third party transaction to one hundred percent new owners and managers.

(b) Full transfer or partial transfer of ownership of any marijuana license issued pursuant to this Article shall be governed by the standards and procedures set forth in the Colorado Marijuana Code and any regulations adopted pursuant thereto and the Authority shall administer transfers of local licenses in the same manner as the state licensing authority administers transfers of state licenses. The public hearing requirement set forth in Article shall apply to all applications for full or partial transfer of ownership of any marijuana store license.

(c) The submission or pendency of an application for full or partial transfer of ownership does not relieve the license holder from the obligation to properly apply to renew such license in accordance with Article.

Sec. 9-31-170. – Change of corporate structure.

A change of corporate structure of a marijuana store that results in any of the changes in subsection (a) through (c) below shall require the filing of an application and payment of the requisite fees and shall be subject to all requirements of the post-award licensing process. A change of corporate structure shall be heard and approved or denied by the Authority.

(a) Any transfer or assignment of ten percent (10%) or more of the capital stock of any corporation, or ten percent (10%) or more of the ownership interests of any limited partnership interest in any year, or transfer of a controlling interest regardless of size.

(b) Any change of officer or directors of a corporation that involves the addition or substitution of individual(s) who was not previously an officer or director of the corporation during a period of time that the corporation held the license.

(c) Any transfer of the capital stock of any corporation, or transfer of any limited partnership interest in any general partnership of a limited partnership, or transfer of any limited liability company interest in a limited liability company of any kind, joint venture or business entity that results in any individual owning more than ten percent (10%) of an ownership interest in the business entity if that individual's ownership interest did not exceed ten percent (10%) prior to the transfer.

(d) A change of corporate structure that results in any transfer or assignment of less than ten percent (10%) of the capital stock of any corporation or less than ten percent (10%) of the ownership interests of any limited partnership interest in any year to a person who currently has

an interest in the business, and that does not result in a change of controlling interest, shall not require an application for change of corporate structure.

(e) No application for transfer of ownership or change in corporate structure may be approved by the Authority until all City and state occupational taxes, City and state sales and use taxes, excise taxes, any fines, penalties, and interest assessed against or imposed upon such licensee in relation to operation of the licensed business are paid in full.

(f) In determining whether to permit a transfer of ownership, the Authority may consider the requirements of state statute and the Colorado Marijuana Rules. In addition, no application for transfer of ownership will be considered by the Authority if, at the time of such application, the licensee is under a notice of violation or other unlawful acts issued by either the Authority or the state licensing authority.

(g) A licensee shall report each transfer or change of financial interest in the license and/or the licensee to the Authority prior to any such transfer or change pursuant to and in accordance with the provisions of state statutes and the Colorado Marijuana Rules. A report shall be required for transfer of capital stock of any corporation regardless of the size, for transfers of member interests of any limited liability company regardless of size, and for any transfer of an interest in a partnership or other entity or association regardless of size.

Sec. 9-31-180. – Violations and penalties.

(a) The Authority shall hear all actions relating to the suspension or revocation of licenses pursuant to this Article. The Authority shall have the authority to impose remedial sanctions for violations as well as suspend or revoke the license in its entirety.

(b) In addition to the possible denial, suspension, revocation or nonrenewal of a license under the provisions of this Article, any person, including but not limited to, any licensee, manager or employee of a marijuana store, or any customer of such business, who violates any of the provisions of this Article, shall be guilty of a misdemeanor offense punishable in accordance with this Code. A person committing a violation shall be guilty of a separate offense for each and every day during which the offense is committed or continued to be permitted by such person and shall be punished accordingly.

(c) The City shall commence suspension or revocation proceedings by petitioning the Authority to issue an order to the licensee to show cause that the licensee's license(s) should not be suspended or revoked. The Authority shall issue such an order to show cause if the petition demonstrates that evidence exists to determine that one or more grounds exist to suspend or revoke the licensee's license(s). The order to show cause shall set the matter for a public hearing before the Authority.

(d) The City Clerk shall give written notice of the public hearing no later than ten (10) days prior to the hearing by mailing, either electronically or by first class mail, the notice to the licensee at the address contained in the licensee's license. At the hearing, the licensee shall have the opportunity to be heard, to present evidence and witnesses, and to cross examine witnesses.

presented by the City. The Authority shall have the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of any hearing that the Authority is authorized to conduct. The standard of proof at such hearings shall be a preponderance of the evidence. The burden of proof shall be upon the City. The Authority shall be permitted to accept any evidence that they find to be relevant to show cause proceeding.

(e) The following shall be grounds for suspension or revocation of the licensee's license(s):

- (1) A violation by a licensee or licensee's officers, agents, or employees of any of the provisions of this Article, or any laws of the City or the State of Colorado relating to the sale of marijuana.
- (2) Violations of any conditions imposed in connection with the issuance or renewal of the license.
- (3) Failure to pay state or local taxes related to the operation of the business associated with the license.
- (4) Loss of right of possession to the licensed premises.
- (5) Fraud, misrepresentation, or a false statement of material fact contained in the original or renewal license application or communication with the City.
- (6) The licensee, or any of the agents or employees of the licensee, have committed any unlawful act as described in this Article or violated any ordinance of the City or any state law on the premises or have permitted such a violation on the premises by any other person.
- (7) The odor of marijuana is perceptible to an ordinary person at the exterior of the building at the licensed premises or is perceptible within any space adjoining the licensed premises.

(f) If the Authority finds that a violation has occurred, the Authority may:

- (1) Revoke the license for any period up to and including permanent revocation;
- (2) Suspend the license for any period of time;
- (3) Impose a fine or fine in lieu of suspension of at least five hundred dollars (\$500.00) but no more than one hundred thousand dollars (\$100,000.00); or
- (4) Establish conditions that must be met before the license holder may apply for reinstatement of the license.

(g) The Authority must establish factors to consider when determining the amount of fine to impose and a matrix of steps for fine amounts. These factors and matrix must be used consistently for all imposed penalties. The Colorado State Marijuana Enforcement Penalty Schedule may be used as a guide to create the local sentencing scheme.

(h) Payment of any fine pursuant to the provisions of this Article shall be in the form of cash or in the form of a certified check or cashier's check made payable to the City and paid within fifteen (15) days of the imposed sanction.

(i) If a license is suspended for any period of time, the licensee must post signage that states the license is under suspension or revocation due to violations of this Article, and that all sales of marijuana products are prohibited for the period of the suspension. The signage shall be prominently displayed at all entrances on the premises for the entirety of the suspension or revocation.

(j) When a license has been revoked, no new license shall be issued to the same licensee for the period of one year after the revocation.

(k) All licensees are assumed to be fully aware of the law and the City shall not therefore be required to issue warnings before issuing citations for violations of this Chapter.

Sec. 9-31-190. – No City liability; indemnification.

(a) By accepting a license issued pursuant to this Article, the licensee waives and releases the City, its officers, elected and appointed officials, employees, attorneys, agents, and authorized volunteers from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of the owners, operators, employees, clients, or customers of the marijuana store for a violation of state or federal laws, rules, and regulations.

(b) By accepting a license issued pursuant to this Article, all licensees, jointly and severally, if more than one, agree to indemnify, defend, and hold harmless the City, its officers, elected and appointed officials, employees, attorneys, agents, authorized volunteers, insurers, and self-insurance pool, against all liability, claims, and demands on account of any injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the marijuana store that is the subject of the license.

Section 6. All definitions, sections, and subsections not expressly modified herein remain in full force and effect.

Section 7. As provided in City Charter Section 5.9(A), this Ordinance, either as presented or as amended, shall be published in full as it was adopted after the initial reading. This Ordinance shall be in full force and effect five days after its final publication, as provided in City Charter Section 5.8, except as set forth herein.

INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED THIS 15th DAY OF AUGUST 2023.

INTRODUCED, PASSED ON FINAL READING AND ORDERED PUBLISHED BY TITLE ONLY THIS 6th DAY OF February 2024.

CITY OF BRIGHTON, COLORADO

GREGORY MILLS, Mayor

ATTEST:

NATALIE HOEL, City Clerk

Published in the *Brighton Standard Blade*

First Publication: August 24, 2023

Final Publication: February 15, 2024

APPROVED AS TO FORM:

YASMINA GIBBONS, Deputy City Attorney