

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: CBI

ORDINANCE NUMBER: 2021-1

TITLE: A BILL FOR AN ORDINANCE AMENDING CHAPTER 6 OF THE BLACK HAWK MUNICIPAL CODE AND ADDING A NEW ARTICLE XXI CREATING A LICENSING SYSTEM FOR RETAIL MARIJUANA HOSPITALITY AND SALE ESTABLISHMENTS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLACK HAWK, GILPIN COUNTY:

Section 1. Section 6-602 of the Black Hawk Municipal Code is hereby amended with the addition of the following definition to appear in alphabetical order:

Sec. 6-602. Definitions

Retail Marijuana Hospitality and Sales Establishment means a facility, which cannot be mobile, licensed to permit the consumption of only the retail marijuana or retail marijuana products it has sold pursuant to the license issued by the City of Black Hawk pursuant to this Article.

Section 2. Section 6-605 of the Black Hawk Municipal Code is hereby amended as follows:

Sec. 6-605. Location criteria; limitation on number of marijuana hospitality establishments.

* * *

(d) In addition to the location limitations set forth herein, no new marijuana hospitality establishment application shall be accepted for filing in the event one (1) marijuana hospitality establishment or one (1) retail marijuana hospitality and sales establishment is already licensed as of the date of the proposed new application.

Section 3. Chapter 6 of the Black Hawk Municipal Code is hereby amended with the addition of a new Article XXI entitled, "Retail Marijuana Hospitality and Sales Establishment" to read as follows:

ARTICLE XXI
RETAIL MARIJUANA HOSPITALITY AND SALES ESTABLISHMENT

Sec. 6-801. Findings of Fact.

The City Council recognizes that open or public consumption of marijuana is illegal in the state despite legalization of the substance under the Colorado Constitution and state law, and finds there is an unmet need within the City for private, safe and regulated places where adults can legally use and consume marijuana in a social setting. The City Council finds such private social use or consumption of marijuana should be regulated locally, consistent with the state regulatory process set forth in House Bill 19-1230, to minimize the potential adverse impacts on its citizens potentially caused by violations, underage consumption and civil disturbances, as well as to maintain peace and tranquility within the City.

Sec. 6-802. Definitions.

The following words, when used in this Article shall have the following meanings:

Alcoholic Beverage means fermented malt beverage or malt, vinous or spirituous liquors; except that alcoholic beverage shall not include confectionery containing alcohol within the limits prescribed by C.R.S. § 25-5-410(1)(i)(II).

Good Cause means (i) the licensee or applicant violated, has not met, or has failed to comply with any terms or conditions of state or local law or regulations; (ii) the licensee or applicant failed to comply with special terms or conditions that were placed on its license pursuant to an order of state or local licensing authorities; or (iii) the licensed premises operated in a manner that adversely affects the public health or the safety of the immediate neighborhood in which the establishment is located.

License means a retail marijuana hospitality and sales establishment license issued pursuant to this Article.

Local Licensing Authority means the Board of Aldermen for the City of Black Hawk.

Marijuana has the same meaning as defined in Section 6-555 of this Code.

Marijuana Hospitality Establishment means a facility licensed to permit the consumption, but not the sale of, medical or retail marijuana, medical or retail marijuana concentrate, and medical or retail marijuana-infused products pursuant to Article XIX of this Chapter.

Marijuana Products means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients that are intended for

use or consumption, such as but not limited to, edible products, ointments and tinctures.

Open and public or openly and publicly means a place not protected from unaided observation lawfully made from outside its perimeter not involving physical intrusion and to which the public or a substantial number of the public has access without restriction including, without limitation, highways, transportation facilities, places of amusement, parks, playgrounds, and the common areas of public buildings and facilities that are generally open or accessible to members of the public without restriction.

Premises means the distinct and defined private location of a marijuana hospitality establishment, which may include a building, a part of a building, a room, or any other definite contiguous area adequately separated by physical barriers and ventilation to prevent observation of the premises by site, sound or smell from outside of the premises.

Retail Marijuana Hospitality and Sales Establishment means a facility, which cannot be mobile, licensed to permit the consumption of only the retail marijuana or retail marijuana products it has sold pursuant to the license issued by the City of Black Hawk pursuant to this Article.

Smoking means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or any other lighted or heated marijuana or marijuana concentrate intended for inhalation.

Vaping means the activation of an electronic smoking device, or the possession of any activated electronic smoking device, containing marijuana or marijuana concentrate.

Sec. 6-803. License Required.

It shall be unlawful for any person or entity to operate a retail marijuana hospitality establishment within the City without first obtaining a license from the City. Such license must be kept current at all times and failure to maintain a current license constitutes a violation of this Section.

Sec. 6-804. Requirements of Application for License; Payment of Application Fee; Denial of License.

(a) A person seeking a license or renewal of a license issued pursuant to this Article shall submit an application to the local licensing authority on forms provided by the City Clerk. At the time of application, each applicant shall pay a nonrefundable fee to the City in the amount to be determined by the City by separate resolution to defray the cost incurred by the City for costs including but not limited to inspection, administration, and enforcement of retail marijuana hospitality and sales establishments. In addition, the applicant shall present one (1) of the following forms of identification:

(1) An operator's, chauffer's or similar type of driver's license issued by any state within the United States or a U.S. territory;

(2) An identification card, issued by any state for purpose of proving age using requirements similar to those in C.R.S. §§ 42-2-302 and 42-2-303;

(3) A United States military identification card;

(4) A valid passport; or

(5) An enrollment card issued by the government authority of a federally recognized tribe located in the State of Colorado.

(b) The applicant shall also provide the following information for the applicant, and all persons having a ten percent (10%) or more financial interest in the retail marijuana hospitality and sales establishment that is the subject of the application or, if the applicant is an entity, having a ten percent (10%) or more financial interest in the entity:

(1) Name, address, date of birth;

(2) A complete set of fingerprints;

(3) Suitable evidence of proof of lawful presence, residence, if applicable, and good character and reputation that the City may request;

(4) An acknowledgment and consent that the City will conduct a background investigation, including a criminal history check, and that the City will be entitled to full and complete disclosure of all financial records of the retail marijuana hospitality and sales establishment, including records of deposit, withdrawals, balances and loans;

(5) If the applicant is a business entity, information regarding the entity, including, without limitation, the name and address of the entity, its legal status, and proof of registration with, or a certificate of good standing from, the Colorado Secretary of State, as applicable;

(6) The name and complete address of the proposed retail marijuana hospitality and sales establishment, including the facilities to be used in furtherance of such business, whether or not such facilities are, or are planned to be, within the territorial limits of the City;

(7) If the applicant is not the owner of the proposed licensed premises, a notarized statement from the owner of such property authorizing the use of the property for a retail marijuana hospitality and sales establishment;

(8) A copy of any deed, lease, contract or other document reflecting the right of the applicant to possess the proposed licensed premises along with the conditions of occupancy of the premises;

(9) Evidence of a valid sales tax license for the business;

(10) If the retail marijuana hospitality and sales establishment will be providing retail marijuana products in edible form, evidence of at a minimum a pending application for any food establishment license or permit that may be required by the State;

(11) A "to scale" diagram of the premises, showing, without limitation, a site plan, building layout, all entry ways and exits to the retail marijuana hospitality and sales establishment, loading zones and all areas in which retail marijuana will be stored or dispensed;

(12) A comprehensive business operation plan for the retail marijuana hospitality and sales establishment which shall contain, without limitation, the following:

a. A copy of the Articles of Incorporation or Partnership/Operating Agreement for the licensee's business entity;

b. A security plan meeting the requirements of Section 6-574 of this Chapter;

c. A description by category of all products to be sold;

d. A signage plan that is in compliance with all applicable requirements of this Article and other applicable provisions of the Black Hawk Municipal Code, as well as the Colorado Retail Marijuana Code and all rules and regulations promulgated thereunder; and

e. A plan for the disposal of marijuana and related byproducts.

f. A site plan defining the proposed licensed premises, showing where patrons will be permitted to gather, identifying indoor and outdoor seating or gathering areas, showing parking locations for patrons, and identifying all intended uses of the establishment premises. The application shall demonstrate how the premises will be adequately separated by physical barriers and ventilation to prevent observation by site, sound or smell of the premises from outside of the premises. The application shall further describe the methods that will be used to confirm a patron's age and to restrict all underage access to the establishment.

(13) Any additional information that the local licensing authority determines to be necessary in connection with the investigation and review of the application.

(a) The applicant shall verify the truthfulness of the information required by this Section by the applicant's signature on the application.

(b) 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 retail marijuana hospitality and sales establishment, including, without limitation, a license from the State licensing authority and any development approvals or building permits required by this Article and any other applicable provisions of the Black Hawk Municipal Code.

(c) Upon receipt of a completed application, the local licensing authority shall circulate the application to all affected departments of the City to determine whether the application is in full compliance with all applicable laws, rules and regulations.

(d) Upon receipt of an application for a new license, the local licensing authority shall schedule a public hearing on the application to be held not less than thirty (30) days after the date of the completed application. The local licensing authority shall cause a notice of such hearing to be posted in a conspicuous place upon the proposed licensed premises and published in a newspaper of general circulation within the City not less than ten (10) days prior to the hearing. Such posted notice given by posting shall include a sign of suitable material, not less than twenty-two (22) inches wide and twenty-six (26) inches high, composed of letters of not less than one (1) inch in height. Both the posted and the published notice shall state the type of license applied for, the date of the hearing, the name and address of the applicant, and such other information as may be required to fully apprise the public of the nature of the application.

(e) Not less than five (5) days prior to the date of the public hearing for a new license, the local licensing authority shall cause its preliminary findings based on its investigation to be known in writing to the applicant and other parties in interest. The local licensing authority shall deny any application that does not meet the requirements of this Article. The local licensing authority shall also deny any application that contains any false, misleading or incomplete information. The local licensing authority shall also deny or refuse to issue a license for good cause. Denial of an application for a license shall not be subject to further administrative review but only to review by a court of competent jurisdiction.

(f) The City shall, prior to issuance of the license, perform an inspection of the proposed licensed premises to determine compliance with any applicable requirements of this Article or other applicable requirements of the Black Hawk Municipal Code.

Sec. 6-805. Location Criteria.

Prior to the issuance of a license, the Local Licensing Authority shall determine whether the proposed location of the retail marijuana hospitality and sales establishment complies with the requirements of this Section.

(a) No retail marijuana hospitality and sales establishment shall be located except within that one-block portion of the History Appreciation Recreation Destination ("HARD") District identified by the street addresses of 211 Gregory Street, 221 Gregory Street, 231 Gregory Street, and 241 Gregory Street.

(b) No retail marijuana hospitality and sales establishment may operate from a moveable, mobile, or transitory location. The retail marijuana hospitality and sales establishment must be in a permanent location.

(c) The suitability of a location for a retail marijuana hospitality and sales establishment is determined at the time of the issuance of the first license. The fact that changes in the neighborhood occur after the issuance of the first license might render the site unsuitable for retail marijuana hospitality and sales establishment under this Section is not grounds to suspend, revoke, or refuse to renew the license for such business so long as the license remains in effect.

Sec. 6-806. Number of Licenses Limitation.

No new retail marijuana hospitality and sales establishment application shall be accepted in the event that either one (1) retail marijuana hospitality and sales establishment or one (1) marijuana hospitality establishment is already licensed as of the date of the proposed new application.

Sec. 6-807. Persons Prohibited as Licensees and Employees.

(a) No license shall be issued to, held by, or renewed by any of the following:

(1) Any person until all applicable fees have been paid;

(2) Any person who is not of good moral character satisfactory to the local licensing authority;

(3) Any corporation, any of whose officers, directors or stockholders are not of good moral character satisfactory to the local licensing authority;

(4) Any partnership, association or company, any of whose officers are not of good moral character satisfactory to the local licensing authority;

(5) Any person employing, assisted by, or financed in whole or in part by any other person who is not of good character and reputation satisfactory to the local licensing authority;

(6) Any sheriff, deputy sheriff, police officer, prosecuting officer, and State or local licensing authority or any of its members, inspectors or employees;

(7) Any natural person under twenty-one (21) years of age;

(8) Any person for a licensed location that is also a retail food establishment or wholesale food registrant;

(9) Any person who has not been a resident of Colorado for at least two (2) years prior to the date of the application;

(10) Any person who has not possessed a medical marijuana license or provisional medical marijuana license authorizing the sale of marijuana at retail within the meaning of C.R.S. § 44-11-101, et seq., or in the alternative has not possessed a retail marijuana license within the meaning of C.R.S. § 44-12-101, et seq., in another jurisdiction for at least one (1) year prior to the date of the application, with the person having not received any State or local violations of their medical marijuana or retail marijuana license in said other jurisdiction; provided however, this provision shall not be applicable to employees who do not have an ownership interest in the license;

(11) Any person who has discharged a sentence for a felony conviction within the past five (5) years;

(12) Any person who, at any time, has been convicted of a felony for drug possession, distribution or use, unless such felony drug charge was based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offense on the date he or she applied for the license;

(13) Any entity whose directors, shareholders, partners or other persons having a financial interest in said entity do not meet the criteria set forth above;

(14) Any person who employs another person at a retail marijuana hospitality and sales establishment who has not submitted fingerprints for a criminal record history check or whose criminal record history check reveals the employee is ineligible; or

(15) Any person who has made a false, misleading or fraudulent statement on his or her application.

(b) No licensee shall employ or contract with any person to perform work functions directly related to the possession, cultivation, dispensing, selling, or serving of marijuana any of the following:

(1) Any person who is not of good moral character satisfactory to the local licensing authority;

- (2) Any person who is under twenty-one (21) years of age;
- (3) Any person who is not currently a resident of Colorado;
- (4) Any person who has discharged a sentence for a felony conviction within the past five (5) years;
- (5) Any person who, at any time, has been convicted of a felony for drug possession, distribution or use, unless such felony drug charge was based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offense on the date he or she applied for the license; or
- (6) Any sheriff, deputy sheriff, police officer, prosecuting officer, and State or local licensing authority or any of its members, inspectors or employees.

(c) Jurisdiction.

(1) In investigating the qualifications described herein, the 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. In the event the local licensing authority takes into consideration information concerning the applicant's criminal history record, the local licensing authority shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license.

(2) As used in Subsection (c)(1) of this Section, "criminal justice agency" means any federal, State, or municipal court or any governmental agency or sub-unit of such agency that performs the administration of criminal justice pursuant to a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice.

Sec. 6-808. Issuance of License; Duration; Renewal.

- (a) Each license shall be valid for one (1) year from the date of issuance.
- (b) An application for the renewal of an existing license shall be made to the City Clerk between thirty (30) and sixty (60) days prior to the date of expiration of the license.
- (c) A licensee may submit a late renewal application by paying a non-refundable late application fee in the amounts set forth in the City of Black Hawk Fee Schedule for a renewal application. However, in no case shall the City Clerk accept a renewal application after the expiration date of the current license.

(d) The filing of a completed renewal application shall extend the current license until a decision is made on the renewal.

(e) Licensee whose license expires and for which a renewal application has not been received by the expiration date shall be deemed to have forfeited its license.

Sec. 6-809. Authority to Impose Conditions on License.

The local licensing authority shall have the authority to impose such reasonable terms and conditions on a license as may be necessary to protect the public health, safety and welfare, and to obtain compliance with the requirements of this Article and applicable law.

Sec. 6-810. Display of License.

(a) Each license shall be limited to use at the premises specified in the application for such license.

(b) Each license shall be continuously posted in a conspicuous location at the retail marijuana hospitality and sales establishment.

Sec. 6-811. Management of Licensed Premises.

Licensees who are natural persons shall either manage the licensed premises themselves or employ a separate and distinct manager on the premises and report the name of such manager to the local licensing authority. Licensees that are entities shall employ a manager on the premises and report the name of the manager to the local licensing authority. All managers must be natural persons who are at least twenty-one (21) years of age. No manager shall be a person who has discharged a sentence for a felony conviction within the past five (5) years, or who has been convicted of a felony for drug possession, distribution or use, unless such felony drug charge was based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offense on the date he or she applied for the license.

Sec. 6-812. Change in Manager; Change in Financial Interest.

(a) Each licensee shall report any change in managers to the local licensing authority within thirty (30) days after the change. Such report shall include all information required for managers under Section 6-808 of this Article.

(b) Each licensee shall report in writing to the local licensing authority any transfer or change of financial interest in the license holder or in the retail marijuana hospitality and sales establishment that is the subject of the license. Such report must be filed with the local licensing authority within thirty (30) days after any such transfer or change. A report shall be required for any transfer of the capital stock of a public corporation totaling more than ten percent (10%) of the stock in

any one (1) year, as well as any transfer of a controlling interest in the corporation whenever a sufficient number of shares have been transferred to effectuate the transfer of a controlling interest. No person having or acquiring a financial interest in the retail marijuana hospitality and sales establishment that is the subject of a license shall be a person who has discharged a sentence for a felony conviction within the past five (5) years, or who has been convicted of a felony for drug possession, distribution or use, unless such felony drug charge was based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offense on the date he or she applied for the license.

(c) Whenever any licensee causes a change in its officers, directors or manager, and a license addendum is required to be filed with the State, an application fee as set forth by separate resolution shall be paid to the City at the time of filing the addendum with the City.

Sec. 6-813. Transfer of Ownership; Change of Location.

(a) Transfer of ownership. For a transfer of ownership, a license holder shall apply to the State and local licensing authority on forms provided by the State licensing authority. In considering whether to permit a transfer of ownership, the local licensing authority shall consider only the requirements of this Article, the Colorado Retail Marijuana Code, and the regulations promulgated in conformance therewith. The local licensing authority may hold a hearing on the application for a transfer of ownership, but such hearing shall not be held until a notice of such hearing has been posted on the licensed premises for a period of at least ten (10) days prior to such hearing, and the applicant has been provided at least ten (10) days prior notice of such hearing.

(b) Change of location. A licensee from another jurisdiction that has previously obtained a license from the State and any other local licensing authority as applicable may move his or her permanent location to the City of Black Hawk so long as the applicant and the new location conform to the requirements of this Article.

Sec. 6-814. Hours of Operation.

(a) The indoor area of a retail marijuana hospitality and sales establishment may operate from 7:00 a.m. to 2:00 a.m.

(b) The outdoor area of a retail marijuana hospitality and sales establishment may operate from 7:00 a.m. to midnight.

(c) A retail marijuana hospitality and sales establishment may operate seven (7) days a week.

Sec. 6-815. Source of Retail Marijuana and Retail Marijuana Products.

A retail marijuana hospitality and sales establishment may purchase retail marijuana or retail marijuana products from any retail marijuana hospitality and sales establishment, retail marijuana products manufacturer, or retail marijuana cultivation facility.

Sec. 6-816. Signage and Advertising.

All signage and advertising for a retail marijuana hospitality and sales establishment shall comply with all applicable State laws as well as the provisions of this Article and other applicable provisions of the Black Hawk Municipal Code, including Chapter 15 of the Black Hawk Municipal Code.

Sec. 6-817. Security Requirements.

(a) Security measures at retail marijuana hospitality and sales establishment shall include at a minimum the following:

(1) Security surveillance cameras installed to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises;

(2) Robbery and burglary alarm systems which are professionally monitored and maintained in good working condition;

(3) A locking safe room within the licensed premises that is suitable for storage of all marijuana and cash stored overnight on the licensed premises;

(4) Exterior lighting that illuminates the exterior walls of the licensed premises and complies with applicable provisions of this Article and other applicable provisions of the Black Hawk Municipal Code; and

(5) Deadbolt locks on all exterior doors.

(b) All security recordings shall be preserved for at least seventy-two (72) hours by the licensee and be made available to the Black Hawk Police Department upon request for inspection.

Sec. 8-818. Required Notices.

There shall be posted in a conspicuous location in each retail marijuana hospitality and sales establishment, a legible sign containing the following warnings:

(1) That the use of marijuana or marijuana products may impair a person's ability to drive a motor vehicle or operate machinery, and that it is illegal under State law to drive a motor vehicle or to operate machinery when under the influence of or impaired by marijuana;

(2) That possession and distribution of marijuana is a violation of federal law; and

(3) That no one under the age of twenty-one (21) years is permitted on the premises.

Sec. 8-819. Prohibited Acts.

It shall be unlawful for any licensee to:

(a) Engage in multiple sale transactions to the same patron during the same business day when the establishment knows, or reasonably should have known, that the sales transaction would result in the patron possessing more than the sales limit established by the State Licensing Authority;

(b) Allow on-duty employees of the establishment to consume any marijuana in or on the premises;

(c) Distribute or allow distribution of any free samples of marijuana in the establishment;

(d) Sell any retail marijuana or retail marijuana products that contain nicotine or, if the sale of alcohol would require a license or permit, alcohol;

(e) Allow the consumption of alcohol on the premises;

(f) Allow the smoking of tobacco or tobacco products on the premises;

(g) Allow any activity that would require an additional license under Article 12 of Title 44 including but not limited to manufacturing or cultivation activity;

(h) Knowingly permit any activity or acts of disorderly conduct as described in C.R.S. § 18-9-106;

(i) Sell, serve, or permit the sale or serving of retail marijuana or retail marijuana products to any patron who shows signs of visible intoxication;

(j) Permit rowdiness, undue noise, or other disturbances or activity offensive to the average citizens or to the residents of the neighborhood in which the licensed premises is located; or

(k) Admit into the licensed premises of a retail marijuana hospitality and sales establishment any person who is under twenty-one (21) years of age.

Sec. 6-820. Visibility of Activities.

Any licensee under this Article must ensure that the display and consumption of any retail marijuana or retail marijuana products are not visible from outside the establishment.

Sec. 6-821. Disposal of Marijuana Byproducts.

The disposal of marijuana, marijuana products, byproducts and paraphernalia shall be done in accordance with plans and procedures approved in advance by the local licensing authority.

Sec. 6-822. Sales and Business License Required.

At all times that a business is validly operating under this Article XVIII of Chapter 6, the licensee shall also possess a valid business license issued in accordance with the Black Hawk Municipal Code.

Sec. 6-823. Sales Tax.

Each licensee shall collect and remit City sales tax on all retail marijuana, retail marijuana products, paraphernalia and other tangible personal property sold by the licensee, and shall further collect and remit any specific tax imposed on marijuana on all retail marijuana, retail marijuana products and paraphernalia.

Sec. 6-824. Required Books and Records.

(a) Every licensee shall maintain an accurate and complete record of all retail marijuana purchased, sold or dispensed by the retail marijuana hospitality and sales establishment in any usable form. Such record shall include the following:

(1) The total quantity of, and amount paid for, the retail marijuana and/or the retail marijuana product(s); and

(2) The date, time and location of each transaction.

(b) All transactions shall be kept in a numerical register in the order in which they occur.

(c) All records required to be kept under this Article must be kept in the English language in a legible manner and must be preserved and made available for inspection for a period of three (3) years after the date of the transaction. Information inspected by the Black Hawk Police Department or other City departments pursuant to this Article shall be used for regulatory and law enforcement purposes only and shall not be a matter of public record.

Sec. 6-825. Right of Entry.

(a) The Police Department or any authorized agent of the City may conduct routine inspections of the premises to ensure compliance with the requirements of this Article.

(b) If an emergency requires law requires law enforcement, firefighters, emergency medical service providers, or other public safety personnel to enter a

retail marijuana hospitality and sales establishment, ensure that all employees and patrons for the establishment cease all sales, consumption, and other activities until such personnel have completed their investigation or services and have left the premises.

Sec. 6-826. Permitted Activities.

Activities on the premises of a retail marijuana hospitality and sales establishment may include the smoking, vaping, or consumption of marijuana or marijuana products, provided that all other laws, rules and regulations, including without limitation, the requirements of the Colorado Clean Indoor Air Act, C.R.S. § 25-14-201, *et seq.*, and Chapter 7, Article VII, of this Code, applicable to such use and consumption at the particular location are met.

Sec. 6-827. Tracking.

Any licensee under this Article must track of its retail marijuana and retail marijuana products from the point that they are transferred from a retail marijuana store, retail marijuana products manufacturer, or retail marijuana cultivation facility to the point of sale to its patrons.

Sec. 6-828. Transaction Limits.

Any licensee under this Article must limit a patron to one transaction of not more than the sales limit set by the State Licensing Authority.

Sec. 6-829. Packaging and Labeling.

Any licensee under this Article, before allowing a patron to leave the licensed premises with any retail marijuana or retail marijuana products, package and label the marijuana and marijuana products in accordance with the state procedures under C.R.S. § 44-12-202(3)(a)(VIII) and (3)(d)(II).

Sec. 6-830. Report of Disorderly Conduct.

Any licensee under this Article must operate the establishment in a decent, orderly, and respectable manner and shall immediately report to the Police Department any unlawful or disorderly act or conduct committed at or in the retail marijuana hospitality and sales establishment.

Sec. 6-831. Responsible Vendor Training.

Any licensee under this Article must ensure that all employees of the establishment have successfully completed an annual Responsible Vendor Training Program pursuant to C.R.S. § 44-11-1101.

Sec. 6-832. Education Materials

(a) Any licensee under this Article must provide education materials regarding the safe consumption of marijuana as required under state law.

(b) Any licensee under this Article must maintain a record of all education materials for inspection by state and local licensing authorities and law enforcement.

Sec. 6-833. Nonrenewal, Suspension or Revocation of License.

(a) The local licensing authority may, after notice and hearing, suspend, revoke or refuse to renew a license for good cause, including suspension or revocation of the licensee's State license. The local licensing authority is authorized to adopt rules and procedures governing the conduct of such hearings.

(b) The local licensing authority may, in its discretion, revoke or elect not to renew any license if it determines that the licensed premises has been inactive, without good cause, for at least one (1) year.

Sec. 6-834. Violations and Penalties.

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 retail marijuana hospitality and sales establishment, or any customer of such business, who violates any of the provisions of this Article, shall be subject to the following penalties:

(1) It shall be a misdemeanor offense for any person to violate any provision of this Article. Any person convicted of having violated any provision of this Article shall be punished as set forth in Section 1-73 of the Black Hawk Municipal Code.

(2) The operation of a retail marijuana establishment without a valid license issued pursuant to this Article may be enjoined by the City in an action brought in a court of competent jurisdiction, including the Black Hawk Municipal Court.

(3) The operation of a retail marijuana establishment without a valid license issued pursuant to this Article is also specifically determined to be a public nuisance pursuant to Section 7-2 of the Black Hawk Municipal Code.

Sec. 6-835. No City Liability; Indemnification.

(a) By accepting a license issued pursuant to this Article, the licensee waives and releases the City, its officers, elected officials, employees, attorneys and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of retail marijuana establishment owners, operators,

employees, clients or customers for a violation of State or federal laws, rules or regulations.

(b) By accepting a license issued pursuant to this Article, all licensees, jointly and severally, if more than one (1), agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, attorneys, agents, 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 retail marijuana establishment that is the subject of the license.

Sec. 6-836. No Waiver of Governmental Immunity.

In adopting this Article, the City Council is relying on and does not waive or intend to waive by any provision of this Article, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S., as from time to time amended, or any other limitation, right, immunity, or protection otherwise available to the City, its officers or its employees.

Sec. 6-837. Other Laws Remain Applicable.

(a) To the extent the State has adopted or adopts in the future any additional or stricter law or regulation governing the sale or distribution of retail marijuana or retail marijuana products, the additional or stricter regulation shall control the establishment or operation of any retail marijuana establishment in the City. Compliance with any applicable State law or regulation shall be deemed an additional requirement for issuance or denial of any license under this Article, and noncompliance with any applicable State law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

(b) Any licensee may be required to demonstrate, upon demand by the local licensing authority or by law enforcement officers that the source and quantity of any marijuana found upon the licensed premises are in full compliance with any applicable State law or regulation.

(c) If the State prohibits the sale or other distribution of marijuana through retail marijuana hospitality and sales establishment, any license issued hereunder shall be deemed immediately revoked by operation of law, with no ground for appeal or other redress on behalf of the licensee.

(d) The issuance of any license pursuant to this Article shall not be deemed to create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the cultivation, possession, sale, distribution or use of marijuana.

Sec. 6-838. Other Laws Remain Applicable.

(a) To the extent the State has adopted or adopts in the future any additional or stricter law or regulation governing the sale or distribution of retail marijuana or retail marijuana products, the additional or stricter regulation shall control the establishment or operation of any retail marijuana establishment in the City. Compliance with any applicable State law or regulation shall be deemed an additional requirement for issuance or denial of any license under this Article, and noncompliance with any applicable State law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

(b) Any licensee may be required to demonstrate, upon demand by the local licensing authority or by law enforcement officers that the source and quantity of any marijuana found upon the licensed premises are in full compliance with any applicable State law or regulation.

(c) If the State prohibits the sale or other distribution of marijuana through retail marijuana hospitality and sales establishment, any license issued hereunder shall be deemed immediately revoked by operation of law, with no ground for appeal or other redress on behalf of the licensee.

(d) The issuance of any license pursuant to this Article shall not be deemed to create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the cultivation, possession, sale, distribution or use of marijuana.

Sec. 6-839. Rules and Regulations.

The City Manager shall have the authority from time to time to adopt, amend, alter and repeal administrative rules and regulations, and file the same with the City Clerk, as may be necessary for the proper administration of this Article.

Sec. 6-840. Judicial Review.

The City Manager shall have the authority from time to time to adopt, amend, alter and repeal administrative rules and regulations, and file the same with the City Clerk, as may be necessary for the proper administration of this Article.

Section 4. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Black Hawk, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 5. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a

court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 6. Effective Date. The City Clerk is directed to post the Ordinance as required by the Charter. This Ordinance shall become effective upon posting by the City Clerk.

READ, PASSED AND ORDERED POSTED this 13th day of January, 2021.


David D. Spellman, Mayor

ATTEST:


Melissa A. Greiner, CMC, City Clerk

