

CITY OF COMMERCE CITY MARIJUANA LICENSING AUTHORITY RULES AND REGULATIONS

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Rule 1. Authority, Purpose and Applicability

Rule 1.1 *Purpose and Intent.* As permitted by state medical marijuana and retail marijuana codes (title 12, Articles 43.3 and 43.4, respectively), the Commerce City City Council has determined to allow marijuana establishments in the city on the condition that the establishments are operated in compliance with all applicable state and local laws. The City Council has adopted Ordinance 2050 (“the ordinance”) related to the regulation of marijuana establishments. The ordinance created the local licensing authority and vested it with authority to promulgate regulations as necessary for proper administration and enforcement.

The purpose of these regulations is to establish specific standards and procedures for local licensing of marijuana-related establishments and to protect the health, safety, and welfare of the residents and consumers of the City of Commerce City (“the city”) by prescribing the manner in which marijuana establishments can be conducted in the city. Marijuana establishments are a heavily regulated industry in the state and city. The city has a zero-tolerance policy for violations of this ordinance or the regulations contained herein.

By enacting these regulations, the city does not intend to encourage or promote the establishment of any business or operation, or the commitment of any act, that constitutes or may constitute a violation of state or federal law. As of the date of the enactment of these regulations, the use, possession, distribution, and sale of marijuana is illegal under federal law and those who engage in such activities do so at their own risk of criminal prosecution.

Rule 1.2 *Relationship to Other Laws.* The city intends to follow and incorporate all requirements and procedures set forth in the city’s Municipal Code and the state’s medical marijuana and retail marijuana codes. The provisions in these regulations that are different from the applicable state law are consistent with the city’s responsibility to protect the public health, safety, and welfare as authorized by applicable law, and by the home rule authority granted to the city by Article XX of the Colorado Constitution and the charter of the city. Where these regulations conflict with the state regulations, the city regulations shall apply. To the extent that the regulations conflict with the City’s ordinances regulating marijuana related businesses, the City’s ordinance will govern. Nothing in these regulations shall be construed to condone, promote, facilitate or otherwise to permit the cultivation, manufacture sale, distribution, possession or use of marijuana in violation of any applicable law.

Rule 2. Definitions

Rule 2.1 *Defined Terms*. The definitions contained in Sec. 8-2101 of the Municipal Code, CRS § 12-43.4-103 shall apply equally to these regulations except where specifically defined below.

"Good cause" for purposes of refusing or denying a license or permit renewal or initial license or permit issuance, includes:

(a) The licensee or applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of these rules, the municipal code or state law pertaining to marijuana businesses or any state or local rules or regulations pertaining to marijuana businesses in the City or any other jurisdiction;

(b) The licensee or applicant has failed to comply with any special terms or conditions that were placed on its license pursuant to an order of the state or local licensing authority;

(c) The applicant's licensed premises, in this or any other jurisdiction have been operated in a manner that adversely affects the public health or welfare or the safety of the immediate neighborhood in which the establishment is located.

"Good cause" for purposes of extensions, continuances or other such procedural matters means unforeseen or emergency circumstances resulting in extreme and undue hardship that in the licensing authority's determination necessitates a deviation from the time restrictions contained herein, except those time restrictions imposed by state law or local ordinance.

"Licensing authority" means the local marijuana licensing authority appointed by the city council.

"Posted on the property" for purposes of required any notices means at or near the proposed or licensed premises in a conspicuous location accessible to and in a place easily viewed by the public.

"Resident" for purposes of determining the neighborhood needs and desires means an owner or manager of a business, excluding the landlord, sublandlord or property owner of the proposed premises and the applicant, located within the neighborhood boundaries set by the city clerk.

"Secretary" means the city clerk of the City of Commerce City or designee.

Rule 3. Local Authority

3.1 *Creation and Purpose*. Municipal Code § 8-2103 the establishes the local licensing authority for the purpose of regulating and controlling the licensing and sale of marijuana in the city pursuant to the local licensing provisions of the state medical marijuana and retail marijuana codes. The local licensing authority shall have the final authority of review and approval on all such matters.

3.2 *Powers.* The licensing authority shall have all the powers and authority granted to the local marijuana licensing authority by the medical and retail marijuana codes as well as those explicitly granted or reasonably inferred by this code. The licensing authority's powers shall include, but shall not be limited to, the authority to create its own procedural rules, administer oaths, and to issue subpoenas to require the presence of persons or the production of documents, books and records necessary to the determination of any hearing.

3.3. *Duties.* The licensing authority, along with the state licensing authority, shall enforce compliance with the requirements established in these regulations, local ordinances and the applicable provisions of the state medical and retail marijuana codes.

3.4 *Administrative penalties and remedies.* Any applicant or licensee who violates these regulations, any conditions of license issuance, the terms of any municipal code related to marijuana establishments or any provision of the state medical or retail marijuana codes and regulations, as applicable, shall be subject to such administrative penalties as the authority deems appropriate, including without limitation license the suspension, revocation or denial and the imposition of a fine. A conviction shall be grounds for, but shall not be required prior to, the authority taking action against the license.

Rule 4: Licenses and Applications.

4.1 *Licensure required.* It is unlawful for any person to operate a marijuana establishment in the city without obtaining a local license to operate. A valid license from the State of Colorado is also required. The license requirements in these regulations 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. The license does not provide any exception, defense, or immunity to any person in regard to any potential criminal liability the person may have for the production, distribution, or possession of marijuana. Upon denial or revocation of a state license, any license issued under these regulations shall be null and void. If a court of competent jurisdiction determines that the issuance of local licenses violates federal law, all licenses issued under these regulations shall be deemed immediately revoked by operation of law, with no ground for appeal or other redress on behalf of the licensee.

4.2 *General application requirements.* All applicants and licensees shall follow the procedures set forth in Chapter 8, Article II of the Municipal Code, the state medical and retail marijuana codes and regulations pertaining to license applications. All applicants shall submit to the secretary a local license application, including the local background investigation and any associated key person and other application or renewal forms submitted to the State.

4.3 *Fees.* All fees must be paid at the time an application is submitted and no license shall issue unless all fees are paid. All application fees are nonrefundable. A permit or license fee may be refunded only if the license or permit is denied. No portion of the license or permit fee is refunded if the license or permit is suspended, revoked, surrendered or the business otherwise terminated.

4.4 *Neighborhood boundaries and needs and desires of the neighborhood.* The City Clerk shall set the boundaries of the relevant neighborhood for new applications and notify the

applicant of such boundaries. The boundaries will be deemed accepted unless a written objection is filed within five (5) days of receiving said notice. If an objection is filed, the city clerk shall set the matter for hearing pursuant to Municipal Code § 8-2203. Any petitioning to determine the needs and desires of the neighborhood must be conducted by a professional petitioning company and not by the applicant. Only one qualified person per business or residential address may sign a petition. The city will mail notice to all property owners within a ½ mile radius of the property that is the subject of the application regarding the application, including the date and time of the public hearing and the address to which and deadline for any comments or objections to be sent no less than 30 days before the hearing. All petitions or other documents bearing on the neighborhood desires shall be submitted no later than 7 days before the date scheduled for the hearing.

4.5 Preliminary findings. Upon receipt of a complete application and after investigation, the secretary will make preliminary findings in writing regarding the application and shall send such findings to the applicant not less than five days prior to the date of the public hearing. The findings shall encompass the following matters, by way of illustration and not limitation:

(a) Whether the applicant is or will be entitled to possession of the premises for which application is made;

(b) Whether the marijuana business as contemplated by the application at the premises sought to be licensed is not in violation of the land development, fire, building, or other applicable ordinances, regulations, or rules of the city any other applicable laws, regulations, or rules of the State;

(c) The number and type of marijuana businesses located in or near the neighborhood under consideration; and

(d) The status of the background investigation concerning the Applicant.

Rule 4.6 Hearing on applications.

(a) *New and Transfer of Ownership applications.* Upon receipt of a complete application for a new license or transfer of ownership, the authority shall schedule the matter for public hearing not less than thirty (30) days from the date that the application was received by the authority. The hearing shall be open to the public and notice of such hearing shall be posted on the property and published in a newspaper of general circulation in the city not less than ten (10) days prior to the date of the hearing. The applicant shall provide proof of posting to the secretary by affidavit and photograph. The applicant bears the burden of proving that all qualifications for licensure have been satisfied and must also satisfy the licensing authority that the residents of the affected neighborhood desire the business, that the applicant is fit to hold the requested license, and that the applicant is prepared to operate the business in compliance with the requirements of state and local law. If granted, the license and any extraction permit approved by the authority will issue only after the premises has been inspected by the city and will be dated as to coincide with the issuance of the state license.

(b) *Renewal applications.* Renewal applications may be administratively approved by the Secretary if the licensee has met the conditions of the license, has no compliance issues during the preceding year, has no history of violations, or there are no allegations against the licensee that would constitute good cause to deny the application. If a renewal application is not eligible to be administratively approved, the City shall request a renewal hearing from the MLA. Notice of the hearing shall be posted on the licensed premises in the manner described in CRS § 12-43.3-302 (2) for a period of ten days and notice to the applicant shall be provided at least ten days prior to the hearing.

(c) All documents, petitions or other exhibits that any party to a hearing intends to submit for consideration must be marked as exhibits identifying the name of the party and filed with the secretary and a copy provided to the opposing party at least five (5) days preceding the hearing date unless the licensing authority approves a different filing deadline.

(d) Only parties in interest may present evidence and testimony at hearings. The provisions of Section 5.7 (a) and (b) shall apply to new, transfer and renewal application hearings.

Rule 4.7 Good moral character. The licensing authority shall make a finding and determination as to the good moral character of the applicant. A determination that the applicant is not of good moral character constitutes sufficient grounds for denial of the application, regardless of other qualifications. Good moral character means an individual who has a personal history demonstrating honesty, fairness and respect for the rights of others, and conformance to law. It also includes the propensities of the applicant and the applicant's employees toward criminal conduct, in addition to their criminal record. In making the evaluation of the good moral character of an individual identified on an application the licensing authority shall consider the following:

- (a) The criminal history of the applicant and the applicant's employees, including the factors set forth in C.R.S. § 24-5-101 (2);
- (b) Denial, suspension, revocation or other disciplinary action of business and professional licenses currently or previously held by the applicant and the applicant's officers, owners, executives, and key employees;
- (c) The types and dates of criminal or licensure violations, including whether the violations are related to moral turpitude, substance abuse, or public safety;
- (d) Evidence regarding abuse of intoxicating or controlled substances by the applicant and the applicant's officers, owners, executives, and key employees;
- (e) The evidence of rehabilitation, if any, submitted by the applicant; and
- (f) Any additional information that may otherwise directly affect the applicant's ability to operate a marijuana establishment in conformity with applicable laws and regulations.

Rule 4.8 *Prohibited Licensees*. In addition to the prohibitions set out in state law, a license shall not be issued to or held by a person who has been convicted of the offense of operating a marijuana business without a license in the five (5) years immediately preceding the application date.

Rule 4.9 *Waiver or Additional Requirements*. The licensing authority may, at its discretion, waive specific submission requirements or require the submission of additional materials as may be useful in making a determination under these regulations. To the extent any materials have been included with the applicant's state license application and forwarded to the city by the state licensing authority, the licensing authority may rely upon the information forwarded from the state without requiring resubmittal of the same materials in conjunction with the local license application.

4.10 *Expiration of License*. A marijuana establishment license is immediately invalid upon expiration of the license unless the licensee has filed a late renewal application and the licensing authority has granted an administrative continuance of the license as described above. Expiration of a marijuana establishment license for any reason, including, without limitation, failure to file a renewal application in a timely manner, shall be considered an inactive local license as described in C.R.S. § 12-43.4-311. A licensee whose license has expired shall not cultivate, manufacture, distribute, or sell any marijuana until all required licenses have been obtained. If the holder of an expired license files a renewal application after 90 days from date of expiration, the application will be treated as a new license application.

4.11 *Renewal Timeline*. 90 days prior to the expiration of an existing license, the secretary will send a renewal notification to the licensee's mailing address of record via first class mail. Failure to receive a renewal notification does not relieve a licensee of the obligation to renew all licenses in a timely manner. The licensee shall apply for renewal of the marijuana establishment license at least 30 days, but no earlier than 90 days prior to the expiration of the license.

(a) If the applicant fails to apply for renewal at least 30 days before the expiration of the license, but does apply for renewal prior to expiration of the license, the city may process the renewal application if the applicant provides a written explanation of the reasons for the late renewal and submits a late filing fee at the time of submittal of the renewal application.

(b) If the licensing authority finds good cause has been shown to accept a late application as described above, it may elect to administratively continue the license beyond the expiration date while the renewal process is pending.

4.12 *Renewal application procedure*. The licensee shall apply for renewal using forms provided by the city. The application for renewal must include the supplemental information set forth below before the application will be considered complete and processed by the city.

(a) The yearly operating fee, and late fee if applicable, shall accompany the renewal application.

(b) In the event there has been a change to any of the plans identified in the license application which were submitted to and approved by the city with the application or an earlier renewal, the renewal application shall include specifics of the changes or proposed changes in any of such plans.

(c) In the event any person who has an interest as described in the disclosures made to the city pursuant to this chapter, or any business manager, financier, agent as defined herein, or employee, has been charged with or accused of violations of any law since such disclosure, the renewal application shall include the name of the violator, the date of the violation, the court and case number where the violation was filed, and the disposition of the violation with the renewal application.

(d) In the event the marijuana establishment license has been suspended or revoked or a licensee has received any notice of violation of any law, the renewal application shall include a copy of the notice, suspension, or revocation.

(e) The renewal application shall include verification that the marijuana establishment has a valid state license and the state license is in good standing.

(f) The renewal application shall include a summary report for the previous twelve months showing the amount of marijuana purchased; the amount of marijuana sold, the forms in which marijuana was sold; the details of any disciplinary actions taken against the licensee by any state or local jurisdiction in which the licensee holds a marijuana business license, the police report numbers or case numbers of all police calls to the marijuana establishment; and, for calls resulting in a charge of a violation of any law, ordinance or regulation, the charge, case number, and disposition of any of the charges.

4.13 *Denial.* The licensing authority may refuse or deny a new license, transfer or renewal if the issuance of the license will have a harmful or damaging impact on the public health, safety or the general welfare of the city or the neighborhood where the establishment is located and on the basis set forth in Section 5.8 below. Nothing in these regulations limits the licensing authority's consideration of behavior occurring on or about the licensed premises. It may consider behavior that occurs in other jurisdictions in which the licensee conducts business in determining the potential impact on the city and the surrounding neighborhood.

4.14 *Decision and appeals.* The licensing authority shall issue a written decision regarding the grant or denial of any new license, renewal or transfer of ownership application within 30 days of its determination and report the decision to the state licensing authority and provide a copy to the applicant. All decisions of the licensing authority are final, subject only to appeal pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

Rule 5: Hearing Procedures for non-renewal, suspension or revocation of a license.

5.1 *Initiation of hearing process.* An applicant or licensee shall be entitled to a hearing, and the procedures in this rule shall apply, when the licensing authority or other complainant any party in interest seeks to deny renewal, suspend or revoke a marijuana license. In the event of

such proceedings, the licensing authority sits as hearing officer for the purpose of conducting the hearing. The hearing officer shall make the ultimate disposition of the matter.

5.2 Request for show cause hearing. An administrative hearing may be initiated by a request for a show cause hearing, supported by affidavit from a complainant that provides specific facts indicating probable cause exists for the nonrenewal, suspension or revocation of a license. The affidavit shall set forth the alleged violation and the factual basis that supports the violation. Such request may be filed by the City Attorney's Office.

5.3 Order to show cause and notice of hearing. If the licensing authority on its own initiative or upon a request for show cause hearing determines that there is probable cause to believe that grounds exist for the non-renewal, suspension or revocation of a license, the licensing authority shall notify the licensee in writing of the proposed action and the basis for such action. The licensing authority shall further order the licensee to appear for a hearing on a specified date to show cause why such nonrenewal, suspension or revocation renewal should not occur. The hearing shall take place no later than 30 days following the issuance of such order. The licensing authority shall notify the licensee of the date, time, place, and nature of the hearing. The secretary shall provide a copy of the notice and order to show cause to the City Attorney and to the licensee by first-class mail to the last mailing address of record for the licensee. Continuances must be requested in writing and may only be granted for good cause shown.

5.4 Summary Suspension. If the licensing authority has probable cause to believe that a licensee has deliberately and willfully violated any applicable law, rule, or regulation, or engaged in conduct which imposes an undue risk to the public health, safety, or welfare, the licensing authority may enter an order for the immediate suspension of such license, pending further investigation and hearing, for a period not exceeding 15 days.

(a) *Contents of Order.* Such order shall be in writing, citing the reasons for the summary suspension, and shall be served upon the licensee forthwith upon its execution, together with a notice to appear before the licensing authority or designee for a hearing to show cause why the license should not be suspended or revoked.

(b) *Hearing Date.* Hearings following a summary suspension shall take place no later than 15 days from the date upon which such order is issued. The secretary shall provide a copy of the notice and order to show cause to the City Attorney and to the licensee by personal service or by email or first-class mail to the last mailing and email address of record for the licensee. Hearings shall be scheduled and held as soon as is practicable. Continuances must be requested in writing and may only be granted for good cause shown.

5.5 Pre-filing of documents for hearing. Discovery is not permitted in connection with any hearing held by the licensing authority. However, all documents, petitions or other exhibits that any party to a hearing intends to submit for consideration must be marked as exhibits and filed with the secretary and a copy provided to the opposing party at least five (5) days preceding the hearing date unless the licensing authority approves a different filing deadline.

5.6 *Subpoena Power.* The licensing authority shall have the power to administer oaths and to have the secretary issue subpoenas to require the presence of persons and the production of papers, books and records necessary to the determination of any hearing the licensing authority is authorized to conduct. Service of a subpoena is on the party requesting the subpoena and must be served at least two business days prior to the hearing. The licensing authority may quash a subpoena if compliance is shown to be unduly burdensome, impracticable, unreasonably expensive or unnecessary.

5.7 *Conduct of hearing.* The hearing shall be recorded. Those who testify shall be placed under oath. All exhibits shall be marked.

(a) The licensing authority will admit exhibits and testimony if it is determined that the information is of probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. The licensing authority may ask questions of witnesses. The formal rules of evidence shall not apply. The licensing authority may, in its discretion, limit the presentation of evidence and cross examination to prevent admission of repetitive, cumulative, incompetent or irrelevant evidence.

(b) The city will, upon request, provide a qualified language interpreter either in person or via telephone during the hearing if either the applicant or witness has limited English proficiency.

(c) At the close of the evidence and statements, the licensing authority may either make the determination immediately or after taking the matter under advisement. If the licensing authority determines that a violation has occurred, the licensing authority may permit the parties to submit evidence, at the hearing or in writing, not previously received that demonstrates aggravating or mitigating circumstances, along with a recommendation as to any penalty to be imposed. The licensing authority shall make findings of fact from the statements and evidence offered as to whether substantial evidence exists to support suspension or revocation of the marijuana establishment license.

5.8 *Basis for suspension, revocation, or nonrenewal.* The licensing authority considers all representations made to it concerning the proposed character of applicants, the method of operation of the business, and the personal, financial, and substantive qualifications of any applicant to be material and directly affecting the decision by the licensing authority to issue or renew a license or permit. Any misrepresentations or significant deviations from such representations concerning these matters and any violation of state law or regulations or local ordinances or regulations concerning marijuana businesses or the operation of such businesses in any manner may constitute good cause for nonrenewal, suspension or revocation of the license or permit, including but not limited to:

(a) The licensee has failed to pay all required fees;

(b) The licensee is overdue on payments to the city of taxes, fines, or penalties assessed against or imposed upon the licensed business;

(c) The licensee has made any false statement as to any of the facts in the license or renewal application;

(d) The licensee has failed to comply with his or her duty to supplement the license application;

(e) The licensee has failed to file any reports or furnish any information as required relating to the operation of the marijuana establishment;

(f) The licensee has refused to allow or has unreasonably interfered with an authorized inspection of the licensed premises;

(g) The licensee has failed to operate the marijuana establishment in accordance with any applicable building, fire, health or zoning statute, code, ordinance, or regulation;

(h) the licensee or any of the agents or employees of the licensee has violated the provisions of Chapter 8, Article II of the Municipal Code, these rules, or any of the terms, conditions, or provisions of the license issued by the licensing authority; or

(i) The licensee has knowingly permitted or encouraged, or has knowingly and unreasonably failed to prevent a public nuisance from occurring in or about the licensed premises; or

(j) The licensee has failed to comply with the state retail marijuana code or regulations.

5.9 Mitigating and Aggravating Factors. In deciding whether a license should be suspended, revoked, or denied renewal, and in deciding what conditions to impose in the event of a suspension, if any, the licensing authority shall consider:

(a) The nature and seriousness of the violation;

(b) Corrective action, if any, taken by the licensee;

(c) Prior violation(s), if any, at the licensed premises by the licensee and the effectiveness of prior corrective action, if any;

(d) The likelihood of recurrence;

(e) All circumstances surrounding the violation;

(f) Whether the violation was willful;

(g) The length of time the license has been held by the licensee;

(h) The number of violations by the licensee within the applicable 12 month period;

(i) Previous sanctions, if any, imposed against the licensee;

(j) Whether the licensee has been designated a Responsible Vendor pursuant to CRS § 12-43.3-1102; and

(k) Any other factor making the situation with respect to the licensee or the licensed premises unique or the violation of greater concern

5.10 *Decision and appeal.* If the licensing authority concludes that the license should be, denied, suspended or revoked, the licensing authority shall provide the licensee with written notice of such nonrenewal, suspension or revocation, and the reasons therefore, within 30 days following the date of the hearing. The decision shall also include findings of fact, conclusions and any penalty or conditions to be imposed on the license. The decision of the licensing authority is final, subject only to appeal pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

5.11 *Required posting of suspension and prohibited activity during suspension.* During the term of any license suspension, the licensee shall post a Notice of Suspension provided by the secretary on the premises in a conspicuous place easily viewed by passersby.

(a) During the term of any license suspension, a marijuana establishment may not conduct any operations on the licensed premises except as described below.

- i. *Store Licensee.* Unless otherwise ordered, during any period of active license suspension the licensee shall not engage in the selling, serving, giving away, distribution, transfer, or transport of any product, including marijuana, marijuana product, or paraphernalia and accessories, on the licensed premises, nor allow customers to enter the licensed premises.
- ii. *Cultivation Facility Licensee.* Unless otherwise ordered, during any period of active license suspension the licensee shall not sell, distribute, transfer, transport, or otherwise remove any marijuana or marijuana product from the licensed premises. However, the licensee may maintain on hand inventory and otherwise care for its marijuana product and plant inventories during the period of suspension.
- iii. *Product Manufacturing Facility Licensee.* Unless otherwise ordered, during any period of active license suspension the licensee shall not manufacture any marijuana product or concentrates, nor permit the selling, distribution, transfer, or transport of marijuana or marijuana product on or from the licensed premises.
- iv. *Testing Facility Licensee.* Unless otherwise ordered, during any period of active license suspension the licensee shall not receive any marijuana for testing, perform any testing on marijuana, or otherwise transfer or transport any marijuana or marijuana product on or from the licensed premises.

5.12 *Removal or destruction prohibited.* During any period of active license suspension, marijuana and marijuana product shall not be removed from the licensed premises or destroyed except under the supervision of the Police Department as ordered by the licensing authority.

Rule 6 Amendments

These Rules may be amended from time to time by the licensing authority and shall be posted on the city's website.

Revised, adopted and effective this 24th day of March, 2017.

LOCAL LICENSING AUTHORITY
CITY OF COMMERCE CITY, COLORADO

Attest:

City Clerk

By: 

Teresa Ablao