

FINAL APPROVED VERSION

ORDINANCE NO. 2181

AN ORDINANCE AMENDING CERTAIN SECTIONS OF CHAPTER 5-42 OF THE BROOMFIELD MUNICIPAL CODE RELATED TO REGULATING MARIJUANA ESTABLISHMENTS WITHIN IN THE CITY AND COUNTY OF BROOMFIELD

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY AND COUNTY OF BROOMFIELD, COLORADO:

Section 1. Section 5-42-030(A)(6) of the Broomfield Municipal Code is hereby amended to state as follows:

5-42-030 - Definitions.

(A) As used in this chapter, unless the context clearly requires otherwise, the following words and terms shall have the meanings set forth in this section:

- (1) *Affiliated entity* or *affiliate* means a person, as defined herein, having ownership or any level of control in common with an entity, in whole or in part, including, without limitation, an entity's parent corporation, franchisor, licensor, and any subsidiaries or affiliates of such parent corporations. Affiliate also means a person that has direct business or an immediate familial relationship with another person. Affiliate also means a person using the same trade name as another person.
- (2) *Applicant* means a person that has submitted an application for licensure, or application for renewal of licensure, pursuant to these rules.
- (3) *City clerk* means the city and county clerk, or the clerk's designee.
- (4) *City manager* means the city and county manager, or the manager's designee.
- (5) *Entity* means a domestic or foreign corporation, cooperative, general partnership, limited liability partnership, limited liability company, limited partnership, limited liability limited partnership, limited partnership association, nonprofit association, nonprofit corporation, or any other organization or association that is formed under a statute or common law of the state of Colorado or any other jurisdiction as to which the laws of this state of Colorado or the laws of any other jurisdiction governs relations among owners and between the owners and the organization or association and that is recognized under the laws of the state of Colorado or the other jurisdiction as a separate legal entity.
- (6) Good cause, for purposes of refusing or denying a license application, revoking or suspending a license, or denying a license renewal, means:
 - a. The licensee or applicant has violated, does not meet, or has failed to comply with, any of the terms, conditions, or provisions of any applicable state or local law, or any rule and regulation adopted pursuant thereto, related to the

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cultivation, processing, manufacture, storage, sale, distribution, testing, transport, or consumption of any form of marijuana;

- b. The licensee or applicant has failed to comply with its approved plans or any special term or condition placed on the license by order of the state licensing authority or the licensing authority;
 - c. Evidence the licensed premises have been operated in a manner that adversely affects the public health, safety, or the general welfare of the city or the immediate neighborhood where the establishment is located, which evidence may include a continuing pattern of violations of the terms and conditions of a license issued by the city or the state, a continuing pattern of unlawful or violent activity occurring in the location and in association with the operation of the business, or other violations of this code;
 - d. Evidence the licensee, or any principal officer, any person required to request a finding of suitability by state law or administrative rule, manager, agent, or employee of the license has violated any provision of this chapter or committed any unlawful act under this chapter; **or**
 - e. **The applicant, or the applicant's principal officers, directors, members, or owners who now, or at any time in the past, have had 25% or more ownership in any marijuana business have had, or the business has had, a marijuana license suspended or revoked by the State of Colorado or any other state, or any local jurisdiction's local licensing authority or controlling authority.**
- (7) *Investigator* means such person(s) authorized by the city to perform the investigative duties set forth in this chapter and such other duties as the city or local license authority may reasonably direct.
- (8) *License* means a revocable privilege to lawfully operate a marijuana establishment pursuant to this chapter.
- (9) *Licensed premises* means the premises specified in an application for a license under this chapter, which are owned or will be in the possession of the licensee and within which the licensee is authorized to sell marijuana in accordance with all applicable laws.
- (10) *Licensee* means a person licensed pursuant to this chapter.
- (11) *Limited access area* means a building, room, or other contiguous area upon the licensed premises where marijuana is stored, weighed, packaged, sold, possessed for sale, or transferred, under control of the licensee.

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- (12) *Licensing authority* means the city clerk as authorized to issue licenses and renewal licenses pursuant to C.R.S. §§ 44-10-103(28) and 44-10-301 and pursuant to this chapter.
- (13) *Local licensing authority* is the local licensing authority, as established in sections 5-28-050 and 5-32-050, B.M.C., which is authorized to hear and decide violations of this chapter by a licensee, to impose penalties for violations as provided for by this chapter, and to approve or deny changes as provided for by this chapter.
- (14) *Manager* includes that person or those persons who manage, direct, supervise, oversee, and administer the transactions and acts of servants of the establishments governed by this chapter and includes, when applicable, the definition provided in the Colorado Marijuana Rules and C.R.S. § 44-10-103, as amended.
- (15) *Marijuana* means all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. "Marijuana" does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant that is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.
- (16) *Marijuana accessories* means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.
- (17) *Marijuana establishment or marijuana store or marijuana business* means a facility licensed by the city and state to operate in the city as a retail marijuana store, or a co-located retail marijuana store and medical marijuana store, that distributes, dispenses, displays, sells, or otherwise provides marijuana products to consumers, patients, or caregivers as authorized pursuant to Section 16 of Article XVIII of the Colorado Constitution and other applicable state law.
- (18) *Marijuana products* means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including but not limited to concentrate, that is cultivated, manufactured, distributed, or sold by a licensed marijuana establishment. "Marijuana products" include medical marijuana as defined in this chapter.

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- (19) *Medical marijuana* means marijuana that is grown, manufactured, or sold for a purpose authorized by Section 14 of Article XVIII of the Colorado Constitution.
- (20) *Medical marijuana store* means a person authorized to be licensed to operate a business as described in the state statutes and Colorado Marijuana Rules that sells medical marijuana to registered patients or primary caregivers as defined in Section 14 of Article XVIII of the Colorado Constitution, but is not a primary caregiver, and which a municipality is authorized to prohibit as a matter of law, or an entity licensed by a state agency to sell marijuana and marijuana products pursuant to Article XVIII, Section 14 of the Colorado Constitution, state statutes, or the Colorado Marijuana Rules.
- (21) **Operator** means a person who is in possession of a retail marijuana business operator license issued pursuant to C.R.S. § 44-10-606, as amended.
- (22) *Owner* means the person or persons who has an interest in a marijuana establishment as defined in the Colorado Marijuana Code.
- (23) *Person* means a natural person, an estate, a trust, an entity, or a state or other jurisdiction.
- (24) *Retail marijuana store or establishment* means an entity or operation, whether licensed or not, that purchases or obtains marijuana from marijuana cultivation facilities and/or marijuana and marijuana products from marijuana product manufacturing facilities to sell marijuana and marijuana products to consumers.
- (25) *Selection committee* means a committee composed of staff, which may include but is not limited to representatives with experience and expertise in land use planning, law, code enforcement, safety, public health, or sustainability. Chapter 2-70, B.M.C. - Ethics, applies to this committee, and committee members are considered appointees for chapter 2-70 purposes.

(B) Other definitions not specifically enumerated in this section shall be as defined, as applicable, in the state statutes and Colorado Marijuana Rules and in chapter 1-04 of this code.

Section 2. Section 5-42-050(D) of the Broomfield Municipal Code is hereby amended to state as follows:

5-42-050 - Licensing authority; established; powers.

- (A) Broomfield City Council designates the city clerk as the licensing authority referred to in C.R.S. § 44-10-103(28) that has the authority for the city to issue marijuana business licenses.
- (B) The city clerk shall have and is vested with the authority to grant or to refuse for good cause or as set forth in this chapter, licenses for the sale at retail of marijuana products

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and to refer matters to staff or the investigator for investigation. The city clerk shall have all the powers provided in this chapter, and shall have all the powers of the local licensing authority, as set forth in C.R.S. §§ 44-10-103(28) and 44-10-301 and the Colorado Marijuana Rules, and the regulations promulgated thereunder.

- (C) The selection committee is vested with the authority to review and select or deny applications as set forth in the chapter.
- (D) The local licensing authority shall have and is vested with the authority to suspend or revoke licenses granted under this chapter for good cause or as set forth in this chapter. The local licensing authority shall have all the powers provided in this chapter, including the power to approve changes authorized in B.M.C. section **5-42-270**.
- (E) Nothing in this chapter shall be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a license issued pursuant to this code.

Section 3. Section 5-42-070 of the Broomfield Municipal Code is hereby amended to state as follows:

5-42-070 - City clerk; powers and duties - licensing

The city clerk shall serve as the official secretary of the local licensing authority, and shall provide or cause to be provided the necessary secretarial and reporting services for the authority. The city clerk shall attend all meetings of the authority. All public notices required by this chapter and by the Colorado Marijuana code, and the Colorado Marijuana Rules, as amended, and the regulations promulgated thereunder, shall be accomplished by the city clerk. The city clerk shall receive all applications for licenses and permits and, upon receipt of full payment of such fees as are required by state law and by this chapter, shall issue all licenses and permits as approved by the selection committee.

Section 4. Section 5-42-080 of the Broomfield Municipal Code is hereby repealed and will be marked "reserved" as follows:

5-42-080 - **Reserved**

Section 5. Section 5-42-090(C)(6) of the Broomfield Municipal Code is hereby amended to state as follows:

5-42-090 - Locational Requirements.

- (A) No application for a license or for a change of location shall be granted for premises proposed on a residentially zoned or used property, on any property designated open space or open lands, or any property used for a public purpose.

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(B) Setbacks and separation requirements shall be measured from the parcel boundary of the parcel of land that the premises is proposed on to the parcel boundary of the adjacent use subject to the setback standards established in subsection C.

(C) An application for a license or for a change of location may only be granted if it meets the following minimum required setbacks:

- (1) Licensed premises shall **not be located within** any residentially zoned or used property (zoning districts A(B), A(W), A(W)-RR, A-1, A-1(J), A-1(A), A-2(J), A-2(A), A-3(A), E-1, E-2, E-3, R-1, R-1(J), R-1-PUD, R-1A(J), R-2(J), R-3, R-3-PUD, R-5, R-5-PUD, R-PUD, RC(J), RE(A), RR, RR(B), and PUD plans including only residential uses within Broomfield.)
- (2) Licensed premises shall be no less than 1,000 feet from any public or private school serving students in any grade from kindergarten through 12th grade.
- (3) Licensed premises shall be no less than 1,000 feet from any drug or alcohol treatment facility.
- (4) Licensed premises shall be no less than 1,000 feet from any other licensed premises. **This requirement shall not apply to a property proposed in an application submitted during the second round of the initial licensing process, expected in late 2022 or early 2023, so long as the property was proposed by the same applicant in an application that was merit-approved but not selected for a license by the city in February 2022 during first round of the initial licensing process. The “initial licensing process” means the process to select the first recipients of the original six marijuana licenses.**

(D) Any medical marijuana establishment licensed in Broomfield must be co-located with a licensed retail marijuana establishment.

Section 6. Section 5-42-100 of the Broomfield Municipal Code is hereby amended to state as follows:

5-42-100 - Application contents.

(A) An applicant shall file with the city clerk the following at the time of application for a license, **and within the page limits set by the city clerk**, pursuant to this chapter:

- (1) A cover letter providing an overview of the proposed establishment and reasons the applicant has chosen to locate in Broomfield.
- (2) An operating plan for the proposed marijuana establishment including the following information:
 - a. A detailed description and vicinity map of the proposed location, including a full address.

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- b. A general description of site improvements proposed and the land development approvals required therefor.
- c. A floor plan showing all interior dimensions of the licensed premises and the layout of the marijuana establishment, including all limited access areas, **and** areas of ingress and egress. Such floor plan shall also show the principal uses of the floor area depicted therein.
- d. A description of the design of the establishment.
- e. A description of the products and services to be provided by the facility.
- f. A community outreach plan, including:
 - 1. The applicant's history of community and neighborhood involvement with other similar businesses;
 - 2. Written policies and procedures to address community concerns and complaints;
 - 3. A designated point of contact, with comprehensive contact information, for public questions and concerns; and
 - 4. Measures and procedures for mitigating any impacts to the neighborhood, foreseen or unforeseen.
- g. An odor management plan establishing the ability to prevent odor of marijuana from being detected by an ordinary person at the exterior of the store or perceptible at any adjoining business, building, or property of the marijuana store and the ability to install an air filtration system if necessary, including a description and plan of the odor control system to be utilized, such as roof ventilation and/or carbon air filtration, or other applicable odor control as required for compliance.
- h. A security plan indicating how the applicant intends to comply with the requirements of state statutes and the Colorado Marijuana Rules as well as the following detailed information:
 - 1. Evidence that the premises will comply with all security and video surveillance requirements set forth in the Code of Colorado Regulations 1 CCR 212-3, if applicable;
 - 2. The establishment's procedures for preventing the use of marijuana on the licensed premises;

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3. Security measures taken by the licensee to prevent unauthorized individuals from entering the limited access area portion of the licensed premises;
 4. The licensee's plan to prevent theft or the diversion of marijuana, including maintaining all marijuana in a secure, locked room that is accessible only to authorized persons and, when the business is closed to the public, in a safe or vault or equivalent secured fixture **and are strongly preferred to be located within a secured room and not on the sales floor;**
 5. The type of alarm system and outdoor lighting to be used by the licensee;
 6. A copy of the licensee's security alarm system monitoring contract;
 7. A lighting plan showing the lighting outside of the marijuana establishment for security purposes and compliance with applicable city requirements;
 8. A plan for disposal of any marijuana that is not sold and any waste generated from store operations; and
 9. A plan for preventing underage persons from entering the premises.
 - i. A sustainability plan that describes business practices that will be implemented to mitigate environmental impacts including energy consumption, water consumption, and waste generation. Suggested items for inclusion in the sustainability plan include office operations and supplies, drinking water and other water usage, and facility cleaning, waste handling, and energy usage.
 - j. If marijuana delivery is contemplated, a delivery plan that includes details around security and buyer age verification during the delivery process.
 - k. If walk-up or drive through marijuana services are contemplated, a description of how this would be set up and security measures to address youth diversion of marijuana and potential criminal behavior.
- (3) Proof of ownership of the property on which the establishment will be located or, in the event the applicant is not the owner of record of the real property upon which the marijuana establishment is or is to be located, the application must be accompanied by a notarized statement and consent from the owner of the property acknowledging that a marijuana establishment is or may be located on the

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property. In addition to furnishing such notarized statement, the applicant shall furnish the name and address of the owner of record of the property, as well as a copy of the lease or rental agreement pertaining to the premises in which the marijuana establishment is or may be located;

- (4) Zoning compliance verification. Applicants must obtain a preliminary determination from the Broomfield Planning Division in the form of a zoning verification letter, which states whether the location proposed for licensing is an eligible location for a marijuana establishment. This preliminary determination shall not preclude a later determination that the proposed location does not comply with any one or more zoning or land use laws of the city.
- (5) Copies of background checks, photo identification, and fingerprints of all persons who are required to request a finding of suitability by state law or regulation, and any other person required by the licensing authority, as well as a statement of all violations and penalties for any infractions or offenses by the applicant or applicant's controlling beneficial owners, principal officers, managers, agents, or employees relating to any marijuana establishment in this or any other state or a statement that no such violations or penalties have occurred.
- (6) A statement of whether or not any person holding any ownership interest has:
 - a. Been denied an application for a marijuana establishment license by the state, in this or any other jurisdiction **in the state**, or in any other state, or had such a license suspended or revoked in Colorado or any other state; and
 - b. Been convicted of a felony or has completed any portion of a sentence due to a felony charge within the preceding seven years.
- (7) **Reserved.**
- (8) All licensing, operating, and other fees due and payable to operate a marijuana establishment as determined by the city manager or his or her designee.
- (9) Any additional document(s) or information reasonably requested by either the city **clerk** or his or her designee.
- (10) A business plan, including the following:
 - a. A general description of the business, a market analysis, including an analysis of the Broomfield market, and a marketing plan.
 - b. Details of overall management and operations including hours of operation, curricula vitae of all principal officers and managers, and staffing plans, including any specific commitments of the licensee toward staffing the establishment with a diverse workforce of Broomfield

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residents, planned recruitment process for filling positions, and benefits packages for all levels of staff.

- c. Financial information demonstrating a formalized relationship with an established financial institution, financial projections including assumptions used, and sources of funds.
- d. A description of the applicant's experience operating licensed marijuana businesses in Colorado or elsewhere, including compliance with state and local laws or violations or alleged violations pending determination.

Section 7. Section 5-42-110 of the Broomfield Municipal Code is hereby amended to state as follows:

5-42-110 **Accepting** applications.

(A) When a marijuana store license becomes available, the city clerk shall post notice on the city's website, opening a 60-day application period for the filing and acceptance of new applications. 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 for acceptance of applications.

(B) Applications will be deemed submitted only when complete, pursuant to the requirements in this chapter, and when accompanied by the applicable fees.

(C) The clerk shall inform the applicant in writing of its determination of whether or not the application is complete within thirty-five days of its receipt of the application. Such determination shall be expressed in writing and shall identify those matters that prevent the determination of completeness or that shall inform that the application has been accepted as being complete. An applicant who has been denied a determination of completeness may resubmit the application to correct any deficiencies in completeness if the resubmittal occurs within the deadline for all applications. If less than thirty-five days are left in the application acceptance period when an initial submittal or resubmittal occurs, the clerk may still have thirty-five days to determine completeness. This does not extend the application acceptance period.

(D) Completed applications will be sent by the clerk to the selection committee for evaluation, pursuant to section 5-42-150, B.M.C.

Section 8. Section 5-42-120 of the Broomfield Municipal Code is hereby amended to state as follows:

5-42-120 - Application for new license or permit; generally.

(A) Local marijuana establishment licenses can only be issued after the applicant(s) has obtained the corresponding conditional state marijuana license(s). Conditional state licenses will only meet this requirement if the only remaining condition on that license is

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the issuance of a local license. The issuance of any local licenses issued pursuant to this chapter is specifically conditioned on the applicant/licensee obtaining and maintaining a valid license of the same type for the same activity, at the same location issued by the state licensing authority.

- (B) A local marijuana establishment license may be requested by, without limitation, any owner or person having an interest in the property on which the marijuana business is proposed to be located. The applicant has the burden of proof to demonstrate the use fully complies with all state and local standards and regulations and meets the criteria for approval.
- (C) No person or entity, to include affiliates, shall apply for **or have any interest in** more than one license in any location in the city.
- (D) No owner of any business applying for a license or in possession of a license within the city may apply for, or be an owner of or be an affiliate of any other business entity applying for another license within the city.
- (E) The licensing authority is authorized to issue a total of **six** licenses for the purpose of regulating marijuana establishments subject to the provisions and restrictions provided in this chapter.
- (F) All applications for new licenses for the sale of marijuana products shall be on forms provided by the city clerk's office and may be obtained from and shall be filed with the city clerk.
- (G) The city clerk shall publish the public aspects of all applications deemed complete, pursuant to the Colorado Open Records Act, on the city's website.
- (H) There shall be a procedure for public comment on each of the published applications. All public comment received prior to the decision on the application shall be collected by the city clerk and provided to the selection committee for consideration.

Section 9. A new Section 5-42-125 Neighborhood Notice is hereby added to the Broomfield Municipal Code and will state as follows:

5-42-125 - Neighborhood Notice

- (A) Within ten (10) days of the publication of complete application(s) pursuant to Section 5-42-120(G), the applicant shall post a notice in a conspicuous location at the proposed marijuana establishment that identifies it as a location of a proposed marijuana establishment with a pending application and provides information about the City's process and deadline for members of the public to submit comments on the application. A posted sign shall be no less than twenty-two inches by twenty-eight inches in size and shall remain at the location for 30 days from the date of the clerk's publication of the completed application pursuant to**

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5-42-120(G). Proof of the posting shall also be sent to the clerk to be added to the application.

(B) Failure to post the required notices contained in this subsection constitutes full and adequate grounds for denying an application for a license.

Section 10. Section 5-42-130 of the Broomfield Municipal Code is hereby amended to state as follows:

5-42-130 - Application - **Administrative** grounds for denial.

In addition to the prohibitions on persons as licensees found in C.R.S. **44-10-307, as amended**, each of the following, in and of itself, constitutes full and adequate grounds for **administrative denial of** an application for a license:

- (A) The applicant has not paid all applicable fees required by this chapter;
- (B) The application is not complete;
- (C) The applicant has not complied with or does not meet the requirements of this chapter, state statutes, the Colorado Marijuana Rules, any rules or regulations adopted pursuant thereto, or any other applicable state or local law or regulation;
- (D) The applicant has been denied a license from the state in regard to the concurrent application;
- (E) The application contains false, misleading, or incomplete information; **or**
- (F) The location proposed for licensing does not comply with all zoning and land use laws of the city;

Section 11. Section 5-42-140 of the Broomfield Municipal Code is hereby amended to state as follows:

5-42-140 - Investigation, fingerprinting of applicant.

- (A) Prior to the acceptance of applications for a new license, transfer of ownership, change of corporate structure, or permit as outlined in **the Colorado Marijuana Code** and the Colorado Marijuana Rules, **as amended**, the following individuals shall present themselves to the police department to be fingerprinted and shall pay the costs thereof:
 - (1) If the applicant is a natural person, that person;
 - (2) If the applicant is a partnership, all of the partners;
 - (3) If the applicant is a corporation, both the officers and directors, together with any person owning more than 10% of the stock thereof; and

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(4) Irrespective of the identity of the applicant, the manager of the proposed establishment.

(B) The investigator **may** acquire such information, either upon direction of the **licensing** authority or on their own initiative, as necessary to properly carry out the provisions of **the Colorado Marijuana Code** and the Colorado Marijuana Rules, **as amended**, the regulations promulgated thereunder, this chapter, and the rules and regulations of the licensing authority and local licensing authority.

Section 12. Section 5-42-150 of the Broomfield Municipal Code is hereby amended to state as follows:

5-42-150 - Application evaluation **and selection.**

(A) Upon receipt of a completed application from the city clerk, the selection committee shall evaluate each application based on the general criteria listed below **and shall select applicants to award a conditional license. The number of such conditional licenses, in addition to the number of active licenses within the City, shall not exceed the total number of licenses permitted by this Chapter.**

(B) The following criteria will be used **by the selection committee to make the selection determination:**

- (1) The applicant's experience operating a licensed marijuana business in Colorado or any other state, including compliance with state and local laws, violations, or alleged violations thereof;
- (2) The impact of the proposed establishment on the neighborhood surrounding the proposed location, the community as a whole, and the natural environment, and the applicant's commitment to take specific measures to mitigate such impacts;
- (3) The convenience of the proposed location to the residents of the city, considering any synergies, redundancies, or conflicts posed by the proposed locations of other marijuana store applications;
- (4) The compatibility of the proposed location with the surrounding properties, including aesthetic considerations;
- (5) The diversity of retail choices the applications would bring to the city, **to include the geographic diversity of the proposed location as compared to other licensed marijuana establishments;**
- (6) The applicant's ability to demonstrate, through a business plan, its ability to operate and develop the proposed establishment in a highly regulated industry;
- (7) The applicant's demonstrated ability to operate an effective and lawful analogous business;

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- (8) Diversity of ownership of marijuana industry licenses or permits, including consideration of **minority-owned businesses, local/small business ownership,** ownership of any active licenses or establishments located in the United States;
 - (9) The quality and detail of the proposed security plan, business plan, community outreach plan, sustainability plan, and other application materials;
 - (10) The degree of detail and completeness provided in the application and the extent to which the application includes false or misleading information;
 - (11) Community benefit including providing a living wage and employee benefits and compliance with local, state, and federal employee non-discrimination policies;
 - (12) Broomfield citizen public comment;
 - (13) Any unique benefits the application would present to the inhabitants of the city;
 - (14) **Any existence of false, apparently false, misleading, or incomplete information; and**
 - (15) **Any other factor that may be relevant.**
- (C) The selection committee shall make its evaluations **and selection** based on a multi **criteria** balancing test, considering the totality of the circumstances **and with a focus on promoting equitable ownership and employment opportunities in the marijuana industry in Broomfield for minority-owned businesses, locally-owned businesses, and small business owners,** with the overall goal of selecting those applications that provide the greatest benefit to the city and its inhabitants by offering and maintaining the safest environment, the best service, and the fewest negative impacts to the community.
- (D) The committee shall issue a written **order** stating the determinations of the committee and a brief explanation of the basis thereof **and selecting those applicant(s) who have priority for any available license(s). Upon the discretion of the selection committee, the selection committee may provide a ranking list of alternate(s) should the selected applicant(s) not complete the process for the license. The city clerk or designee shall post selection orders online, shall notify the public thereof by publication on the City's website, and shall notify each affected applicant. The selection committee's order** shall be added to the application file.
- (E) **Should the City receive fewer applications than the maximum number of licenses the Clerk is authorized to award, or should fewer applicants than the maximum number of available licenses demonstrate an acceptable level of satisfaction of the factors listed in subsection B above, the selection committee may select fewer applicants than the maximum available licenses.**
- (F) **The selected applicants must complete the process to be issued a license. No marijuana sales or operations shall begin until the license process is finalized as**

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described in this Chapter. If any applicant does not complete the process and there is an available license, the clerk will contact the alternative applicants, if any, in the order provided by the selection committee to move through the post-selection stages of the licensing process.

(G) The application of any selected applicant and of any alternate applicant selected pursuant to subsection D above will remain active/available until all available licenses are issued.

(H) After all available licenses are issued or after the list of selected and any alternative applicants has been exhausted, the process is closed and any applications will be retained for file purposes only. Any license(s) that remain available will be subject to a new licensing process.

Section 12. Section 5-42-160 of the Broomfield Municipal Code is hereby repealed and will be marked “reserved” as follows:

5-42-160 - **Reserved**

Section 13. Section 5-42-190 of the Broomfield Municipal Code is hereby amended to state as follows:

5-42-190 - License term, renewal, and expiration.

(A) The term of a license is one year and will expire on the date stated in the license.

(B) All renewal applications for marijuana licenses shall be submitted to the city clerk on the prescribed forms no later than forty-five days prior to the date on which the license expires, except that the city clerk, for good cause, may waive the time requirement set forth in this subsection. The forms shall be accompanied by all the required fees and such additional materials as the city manager or his or her designee deems necessary to carry out the provisions of **the Colorado Marijuana Code and the Colorado Marijuana Rules, as amended**, this chapter, and all applicable regulations.

(C) No renewal application shall be accepted by the city clerk that is not complete in every detail. Any application mailed to or deposited with the city clerk that, 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.

(D) The city **clerk** or his or her designee may, in their discretion, schedule a hearing on the application for renewal before the local licensing authority if the licensee has had complaints filed against it, if the licensee has a history of violation(s), or if the licensee has committed any unlawful acts, and/or if there are allegations against the licensee that would constitute good cause as that term is defined herein.

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- (E) In the event that a hearing is scheduled, notice of such hearing shall be posted on the licensed premises for a period of ten days prior to the hearing and the applicant shall be notified of such hearing at least ten days prior to the hearing.
- (F) The hearing shall comport with the other provisions of these regulations concerning violation hearings.
- (G) All renewal applications shall be reviewed and evaluated by the licensing authority if no hearing is scheduled. The licensing authority may refuse to renew any license for good cause as that term is defined in this chapter and any applicable local law or regulation.
- (H) If an applicant has been denied renewal of a local marijuana license, then that applicant shall be required to wait twelve months before re-applying for a local marijuana establishment license in the city.
- (I) **A licensee must apply for a renewal prior to the expiration of the license.** A licensee who **timely applies for renewal** and pays the requisite fee may continue to operate until the licensing authority has taken final action to approve or deny the licensee's renewal application.
- (J) **Except as permitted under subsection (I) of this section,** a licensee whose license has expired shall not, under any circumstances, distribute, or sell any marijuana until a new required license has been obtained.

Section 14. Section 5-42-250 of the Broomfield Municipal Code is hereby amended to state as follows:

5-42-250 Operational requirements.

- (A) Minimum standards. A marijuana establishment shall not be permitted to operate until the licensee has acquired all of the necessary permits, licenses, and authorizations, including a certificate of occupancy, and demonstrates implementation of the requirements of this section.
- (B) Compliance with plans. Marijuana establishments shall fully comply with the security plan, community outreach plan, and any sustainability, employment, or other plan approved by the authority for the location.
- (C) Video surveillance. Marijuana establishments are required to install a video surveillance system satisfying the minimum standards described below, in addition to the state requirements set forth in 1 CCR 212-3, as amended:
 - (1) All surveillance recordings shall be retained for a minimum of sixty days and shall be in a digital format that can be easily accessed for viewing and that ensures authentication of the recording as being legitimately captured without alterations.

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- (2) In addition to maintaining surveillance recordings in a locked area on the licensed premises, a copy of the surveillance recordings must be stored at a secure off-site location or through a network "cloud" service that provides on-demand access to the recordings. The off-site location or network service provider shall be included in the security plan submitted to the city and updated within seventy-two hours of any change to the location or provider.
 - (3) Video surveillance records and recordings must be made available immediately upon request of the licensing authority, local licensing authority, or police department.
 - (4) If video surveillance or storage equipment becomes inoperable, or storage network service becomes disabled, the marijuana establishment shall cease all transactions and require all patrons to exit the building until the equipment or network service is made operable.
- (D) Security alarm system. All marijuana establishments shall install, maintain, and use a professionally monitored security alarm system meeting the following requirements:
- (1) The system shall provide coverage of all facility entrances and exits, rooms with exterior windows, rooms with exterior walls or walls shared with other building tenants, roof hatches, skylights, and storage rooms containing safes or vaults;
 - (2) The system shall include at least one silent holdup or duress alarm that can be manually triggered in case of emergency;
 - (3) The alarm system must be equipped with a failure notification and a battery backup system sufficient to support a minimum of four hours in the event of a power outage;
 - (4) The alarm system must be monitored by a company that is staffed twenty-four hours a day, seven days a week. The security plan submitted to the city shall identify the company monitoring the alarm, including contact information, and shall be updated within seventy-two hours in the event the monitoring company is changed; and
 - (5) The licensee shall maintain for a period of three years reports of any incidents triggering an alarm, and such reports shall be made available to the city during any inspection of the facility.
- (E) Secured storage. All marijuana establishments must install a safe or vault for storage of cash on the premises and a separate safe or vault or equivalent secured fixture for storage of marijuana on the premises when the business is closed to the public. The safes or vaults must be incorporated into the building structure or secured to the structure in such a manner as to prevent removal **and are strongly preferred to be located within a secured room and not on the sales floor.**

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- (F) Proof of age. The business shall verify the proof of age of every person entering the licensed premises **and again prior to** completing a sale therein, by a form of valid identification listed in **Code of Colorado Regulations 1 CCR 212-3 rule 3-405(C)**, as amended. The business shall verify the proof of age of every person entering the business with an electronic identification scanner. An electronic identification scanner is a device that is capable of quickly and reliably confirming the validity of an identification using computer processes. If the proof of age scanner becomes inoperable, the equipment shall be replaced within seven days, and the establishment may not conduct or permit any employee to conduct any sales transactions while the electronic identification scanner or equipment is inoperable.
- (G) Odor management. For all marijuana establishments, the odor of marijuana must not be perceptible to an ordinary person at the exterior of the building of the licensed premises or in any space adjoining the licensed premises.
- (H) Hours of operation. Marijuana establishments may only be open to the public between the hours of 8:00 a.m. and 10:00 p.m., daily. No sale, delivery, or other distribution may occur outside of those hours. Hours of operation must be posted at the main entry of the store.
- (I) Documents to be displayed. All marijuana and sales tax licenses shall be conspicuously posted inside the establishment near the main entrance.
- (J) Contact information for a business representative that the public may contact with concerns or comments shall be conspicuously posted inside the establishment near the main entrance.
- (K) Registered manager. No marijuana establishment shall be operated or managed by any person other than the **licensed operator**, with the exception of a manager registered with the authority. Such licensee or manager shall be on the premises and responsible for all activities within the licensed business during all times when the business is open. In the event the licensee intends to employ a manager who was not identified on the license application, the licensee shall report the name of such manager to the licensing authority, and such manager shall submit to the licensing authority, at least twenty-eight days prior to serving as a manager, an application containing all of the information required for a manager by this chapter on a license application, and shall submit the requisite fees. A licensee shall report to the licensing authority any change in managers at least twenty-eight days prior to employing an additional manager, and no more than five days after a manager is released from such position. Notwithstanding the foregoing, when a licensee reports to the licensing authority as a new manager a person who holds an active occupational license from the state licensing authority as a key employee and provides proof thereof in the application, the person may begin serving as a manager of the licensee immediately and until such time as the licensing authority acts on the application. Any timely report of a change in manager may be approved administratively. However, the authority may refuse to accept any person's registration as a manager

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upon a determination that the person's record or reputation is unsatisfactory to ensure safe, lawful, and effective management of the marijuana establishment.

(L) Inspections.

- (1) Grant of authorization. By signing and submitting a license application, the applicant/licensee certifies that the applicant/licensee has received permission from the property owner to allow inspections as may be required under state or local licensing law. In addition, the licensee authorizes city staff designated by the city manager to enter upon and inspect the premises upon presentation of official credentials. These inspections are part of the routine policy of inspection and enforcement of these regulations for the purpose of protecting the public safety, individuals operating and using the services of the marijuana establishment, and the adjoining properties and neighborhood. This rule shall not limit any inspection authority authorized under any other provision of law or regulation, including those of police, fire, building, and code enforcement officials.
- (2) Initial inspection. The city shall inspect all marijuana establishments prior to final issuance of a license to verify that the facilities are constructed and can be operated in accordance with the application submitted and the requirements of laws of the city and the state. **The selection committee, or its delegate(s) shall establish criteria for this initial inspection.** The initial inspection shall occur after the marijuana establishment is ready for operation, but a license that has not yet become final shall not entitle the licensee to allow marijuana to be present on the premises before the inspection is complete.
- (3) Regular inspections. At a minimum, the city shall be authorized to perform regular inspections on a quarterly basis during the first year following licensure, and on a yearly basis prior to license renewal following the first year of operation.
- (4) Random inspections. The regular licensing inspection procedures described shall not prevent the city from inspecting marijuana establishments at random intervals and without advance notice.
- (5) Inspection of records. Upon request, the licensee or manager on duty shall retrieve and provide any relevant business records pertaining to the inspection, including but not limited to, security camera recordings, marijuana inventory manifests, and copies of invoices and receipts. The city may require any licensee to furnish such information as it considers necessary for the proper administration of these regulations.

(M) Reporting of source, quantity, and sales. The records to be maintained by each marijuana establishment shall include the source and quantity of any marijuana distributed, produced, or possessed within or from the premises. Such reports shall

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include the following information, at a minimum, for both acquisitions from wholesalers and sales transactions:

- (1) Date, weight, type of marijuana, and dollar amount or other consideration of transaction;
 - (2) For wholesale transactions, the sales and use tax license number of the seller from the State of Colorado and city, if any; and
 - (3) The amount of marijuana within the marijuana establishment. Each year, with the licensee's application for license renewal, the licensee shall submit a report to the authority with this information for the prior operational year. The secretary of the authority may designate the form of the report.
- (N) Reporting of criminal activity. Reports of all criminal activities or attempts of violation of any law at the marijuana establishment, including the curtilage surrounding the licensed premises and the designated parking area, or related in any way to the marijuana business, shall be reported to the police department immediately and to the city manager or his or her designee by the licensee within twelve hours of occurrence. Additionally, any violation of any law related in any way to the marijuana business by any licensee, controlling beneficial owner, manager, principal officer, agent, or applicant of the marijuana business shall be reported to the city manager or his or her designee within seventy-two hours.
- (O) Disposal of marijuana and marijuana byproducts. All marijuana and any **marijuana byproduct** must be made unusable and unrecognizable prior to removal from the business in compliance with all applicable laws. This provision shall not apply to licensed law enforcement, including, without limitation, the police department and local fire district.
- (P) The manager of a marijuana business is required to respond by phone or email within twenty-four hours of contact by a city official concerning its marijuana business at the phone number or email address provided to the city as the contact for the business. Each 24-hour period during which an owner or manager does not respond to the city official shall be considered a separate violation.
- (Q) Confiscation of Fraudulent IDs. If a licensee or an employee of a marijuana business has reasonable cause to believe that person is under twenty-one years of age and is exhibiting fraudulent proof of age in an attempt to enter a marijuana business or to obtain any marijuana or marijuana product, the licensee or employee shall be authorized to confiscate such fraudulent proof of age. Within seventy-two hours, any fraudulent proof of age confiscated shall be turned over to the Broomfield Police Department.
- (R) Signs and Advertising.

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- (1) Marijuana establishments are prohibited from using the terms "pharmacy," "pharmacist," "pharmaceutical," "RX," or any other similar variation of such terms as their corporate, business, or "doing business as" name, so as to prevent a reasonable person from concluding such business is involved in the practice of pharmacy, as regulated by **the state**. Additionally, no marijuana establishment may use any of the above terms or any similar variation thereof in any of its signs, placards, promotional, or advertising materials.
- (2) Any person or premises licensed as a marijuana establishment shall comply with all city ordinances regulating signs and advertising. In addition, no marijuana establishment 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 eighteen years of age.
- (3) Except as otherwise provided in this subsection 3, no marijuana establishment shall 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 zoning 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:
 - a. Any sign located on the same zone lot as a marijuana establishment which exists solely for the purpose of identifying the location of the marijuana establishment and which otherwise complies with the city's zoning requirements and any other applicable city laws and regulations; or
 - b. Any advertisement contained within a newspaper, magazine, or other periodical of general circulation within the city; or
 - c. Advertising which is purely incidental to sponsorship of a charitable event by a marijuana establishment.
- (4) For purposes of the subsection, the terms "advertise," "advertising," or "advertisement," mean the act of drawing the public's attention.

Section 15. Section 5-42-270 of the Broomfield Municipal Code is hereby amended to state as follows:

5-42-270 - Change in status of license, management, employees.

- (A) A license granted under the provisions of this chapter shall not be transferable to any other person except as provided in this chapter.

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- (B) Transfer of ownership. A transfer of ownership of any marijuana store license issued pursuant to this article shall be prohibited for two years after the date the license is issued by the city, except in the event of the death of a licensee who was a sole proprietor, and when transfer of ownership to the licensee's heir is requested. Any request for transfer of ownership of any license issued more than two years after the date the license was issued, or in the event of death of the sole proprietor and a request to transfer ownership to the sole proprietor's heir, shall require the filing of an application and payment of the requisite fees, and shall be subject to all licensing requirements and shall be heard and approved or denied by the local licensing authority.
- (C) Change of corporate structure. A change of corporate structure of any marijuana store that results in any of the changes in subsections (1) through (3) 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 local licensing authority.
- (1) Any transfer or assignment of ten percent or more of the capital stock of any corporation, or ten percent or more of the ownership interests of any limited partnership interest in any year, or transfer of a controlling interest regardless of size.
 - (2) Any change in the officers 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.
 - (3) 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 of an ownership interest in the business entity if that individual's ownership interest did not exceed ten percent prior to the transfer.
 - (4) A change of corporate structure that results in any transfer or assignment of less than ten percent of the capital stock of any corporation or less than ten percent 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.
- (D) No application for transfer of ownership or change in corporate structure may be approved by the local licensing 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.

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- (E) In determining whether to permit a transfer of ownership, the local licensing authority may consider the requirements of state statutes and the Colorado Marijuana Rules. In addition, no application for a transfer of ownership will be considered by the local licensing authority if, at the time of such application, the licensee is under a notice of violation or other unlawful acts issued by either the local licensing authority or the state licensing authority.
- (F) A licensee of a license issued pursuant to this chapter shall report each transfer or change of financial interest in the license and/or the licensee to the local licensing 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 transfers of capital stock of any corporation regardless of 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.
- (G) Any request for transfer of ownership shall be filed with the city clerk on the provided form. All requests for transfer of ownership shall be reviewed by the local licensing authority. The licensee shall provide any requested information to the local licensing authority for their review. The local licensing authority shall either grant or deny the transfer of ownership based on a review of the application, history of the new ownership and any other information requested by the local licensing authority. In determining whether to permit a transfer of ownership, the local licensing authority shall consider only the requirements of the Colorado state laws and all regulations and requirements set forth in this chapter.
- (H) A marijuana establishment shall notify the licensing authority in writing within ten days after an owner, officer, agent, or employee ceases to work at, manage, own, or otherwise be associated with the operation. The owner, officer, or employee shall surrender his or her identification card to the state licensing authority on or before the date of notification. A licensed operation shall also notify the licensing authority in writing of the name, address, and date of birth of an owner, officer, manager, or employee within ten days of the new owner, officer, or employee begins working at, managing, owning, or being associated with the operation.
- (I) A licensee shall notify the licensing authority in writing if its state license of the same type for the same type of activity at the same location as that issued by the local licensing authority has been denied, expired, renewed, revoked, or transferred within three days of the change.
- (J) A licensee shall notify the licensing authority in writing if it has sought bankruptcy protection.

Section 16. Section 5-42-300 of the Broomfield Municipal Code is hereby amended to state as follows:

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5-42-300 Penalties, suspension, and revocation of license

- (A) The local licensing authority shall hear all actions relating to the suspension or revocation of licenses pursuant to this chapter. The local licensing authority shall have the authority to impose remedial sanctions for violations as well as suspend or revoke the license in its entirety. Any proceedings involving suspension, revocation, fines, or other sanction shall comply with C.R.S. § 44-10-901. In the event of a conflict between this section and C.R.S. § 44-10-901, **C.R.S. § 44-10-901** controls.
- (B) The city shall commence suspension or revocation proceedings by petitioning the local licensing authority to issue an order to the licensee to show cause why the licensee's license(s) should not be suspended or revoked. The local licensing authority shall issue such an order to show cause if the petition demonstrates that evidence exists to determine that one or more grounds exist pursuant to subsection (A) to suspend or revoke the licensee's license. The order to show cause shall set the matter for a public hearing before the authority.
- (C) The city clerk shall give written notice of the public hearing no later than ten 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 local licensing 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 local licensing 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 local licensing authority shall be permitted to accept any evidence that they find to be relevant to the show cause proceeding.
- (D) The **licensing** authority may impose the costs to conduct a public hearing upon a licensee who has violated any of the provisions of this chapter. The costs to conduct such a public hearing shall be established by the licensing authority.
- (E) The following shall be grounds for suspension or revocation of the licensee's license(s):
- (1) A violation by a licensee or a licensee's officers, agents, or employees of any of the provisions of this chapter, or any laws of the city or the State of Colorado relating to the sale of marijuana products;
 - (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;

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- (5) Fraud, misrepresentation, or a false statement of a 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 chapter 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; **or**
 - (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 local licensing authority finds that a violation has occurred the local licensing 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 **\$1000.00** but no more than \$100,000.00; or
 - (4) Establish conditions that must be met before the license holder may apply for reinstatement of the license.
 - (5) In connection with the suspension of a license, the authority may impose reasonable conditions upon the license.
- (G) When imposing a suspension, fine, or fine in lieu of suspension against a marijuana establishment licensed under this chapter, the licensing authority shall not take into consideration any violation of this chapter by the licensee that occurred more than five years before the date on which the violation for which the suspension or fine is being imposed occurred.
- (H) The local licensing 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.
- (I) Payment of any fine pursuant to the provisions of this chapter shall be in the form of cash or in the form of a certified check or cashier's check made payable to the clerk and recorder's office, and paid within fifteen days of the imposed sanction.
- (J) 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 chapter 5-42, B.M.C., and that all sales of marijuana products are prohibited for the period of the

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suspension. The signage shall be prominently displayed at all entrances on the premises for the entirety of the suspension or revocation.

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

INTRODUCED AND APPROVED after first reading on August 9, 2022 and ordered published in full.

INTRODUCED A SECOND TIME and approved on September 13, 2022, and further ordered published.

THE CITY AND COUNTY OF BROOMFIELD,
COLORADO



Mayor

ATTEST:



Office of the City and County Clerk



APPROVED AS TO FORM:



NCR

City and County Attorney

First Publication: August 14, 2022

Second Publication: September 18, 2022