

Cook, Mishawn

From: Cook, Mishawn
Sent: Tuesday, May 31, 2016 8:31 AM
To: Cook, Mishawn
Subject: Additional legal clarification of Marijuana Business Licensees comingling books and records
Attachments: Mishawn memo re compliance with 9 re books and records. KH.pdf

Hello, after my email last week to our Boulder Marijuana Businesses about the requirement for separate books and records for each Boulder marijuana license as defined by unique city license number and associated license type, I have received several questions about bank accounts.

As such, I have sought additional information about that topic from Kathy Haddock with the City Attorney's Office. Her memo to me is attached here for your information.

Please let me know if you have additional questions and thank you, Mishawn

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May 27, 2016

Mishawn Cook
cookm@bouldercolorado.gov

Re: Enforcement of BRC 6-14-9 and 6-16-9 – Marijuana Codes re Books and Records

Dear Mishawn:

As you know, I was very disappointed to learn from the auditors that most of the marijuana businesses that have been audited are not following any part of the above code requirements. I appreciate you sending out the e-mail blast to the businesses of their responsibility to comply with all parts of the marijuana code. I understand that several businesses are concerned because it is difficult to get bank accounts at all, so complying with 6-14-9(b) or 6-16-9(b) is difficult if not impossible. In view of this, I am recommending that we not enforce subsection (b) of 6-14-9 or 6-16-9 so long as:

1. the business is in full compliance with subsections (a), (c), (d), (e), (f) and (g) of 6-14-9 or 6-16-9, depending on whether it is a medical or recreational business, separately for each marijuana license held (if there is any co-mingling between businesses with 2 separate license of any of the items identified in those subsections, the business is not complying with this condition); and
2. if the business cannot obtain separate bank accounts for each license held, the business maintains separate deposit slips for each license, separate checks for payment of all expenses of each license, separate credit card machines for each license, and separate sales records for each license.

I further understand that businesses have asked for an explanation of the requirements of 6-14-9 and 6-16-9. While the code language is clear, I have copied the requirements from the recreational marijuana code and attempted abbreviated explanations in bold. The same explanations apply to the medical marijuana code. The "business" below refers to the marijuana business identified by a separate number and letters in the license issued by the city.

6-16-9. - Right of Entry - Records to Be Maintained.

- (a) Records to Be Maintained. Each licensee **the business for which the records are maintained shall keep a complete this means ALL financial records of the business set**

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of books of account, invoices, copies of orders and sales, shipping instructions, bills of lading, weigh bills, correspondence, bank statements, including cancelled checks and deposit slips, and all other records **This means what it says.** necessary to show fully the business transactions of such licensee. **Retail locations may not have shipping instructions, but a cultivation facility or a MIP will. In such a case "fully the business transactions of each licensee" would not include non-required shipping instructions.** Receipts shall be maintained in a computer program or by pre-numbered receipts and used for each sale. **This means each sale must be identified in the computer program or a pre-numbered receipt that is created at the same time as the sale is made.** The records of the business shall clearly track recreational marijuana product inventory purchased and sales and disposal thereof to clearly track revenue from sales of any recreational marijuana from other paraphernalia or services offered by the recreational marijuana business. **This means for any sale of tangible thing or service, the business must be able to show the revenue received for each item or service.** The licensee shall also maintain inventory records evidencing that no more recreational marijuana was within the recreational marijuana business than allowed by applicable law. **In order to show that the business does not have more marijuana than allowed, the records must show each sale and each delivery and shipment so it can be determined for each day how much marijuana was in the licensed premises.** All such records shall be open at all times during business hours for the inspection and examination of the city or its duly authorized representatives. **This means that all of the records described in this section must be available for inspection during business hours.** The city may require any licensee **owner, financier, business manager** to furnish such information as it considers necessary for the proper administration of this chapter. The records shall clearly show the source, amount, price, and dates of all marijuana received or purchased, and the amount, price, and dates for all recreational marijuana sold. **This means that anything about the source, amount, price or date of all marijuana received or purchase and sold that is not disclosed in the records describe above, must be identified on a separate record.**

- (b) Separate Bank Accounts. The revenues and expenses of the recreational marijuana business shall not be commingled in a checking account or any other bank account with any other business or individual person's deposits or disbursements. **Recognizing that it is difficult for marijuana businesses to get bank accounts, this is the subsection we are recommending not be enforced if the business is in compliance with all other subsections**
- (c) Disclosure of Records. By applying for a recreational marijuana business license, the licensee is providing consent to disclose the information required by this chapter. Any document that the applicant considers eligible for protection under the Colorado Open Records Act shall be clearly marked as confidential, and the reasons for such confidentiality shall be stated on the document. In the event that the licensee does appropriately submit documents so as not to be disclosed under the Colorado Open Records Act, the city shall not disclose it to other parties who are not agents of the city, except law enforcement agencies. **Gives the business an opportunity to submit documents it is**

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required to submit to the city with a marking that the business does not want the document disclosed to the public. If the city finds that such documents are subject to inspection as public records of the city, it will attempt to provide at least twenty-four-hour notice to the applicant prior to such disclosure. **If the city receives a request for disclosure of a record that the business has asked not to be disclosed, the city will attempt to provide at least 24 hour notice so the business can defend itself separately from the city' objection from any challenge to the city for not disclosing public records.**

- (d) Audits. The city may require an audit to be made of the books of account and records of a recreational marijuana business on such occasions as it may consider necessary. Such audit may be made by an auditor to be selected by the city that shall likewise have access to all books and records of the recreational marijuana business. The expense of any audit determined necessary by the city shall be paid by the recreational marijuana business. **The city can audit the marijuana business at any time.**
- (e) Consent to Inspection. Application for a recreational marijuana business license or operation of a recreational marijuana business, or leasing property to a recreational marijuana business, constitutes consent by the applicant, and all owners, managers, and employees of the business, and the owner of the property, to permit the city manager to conduct routine inspections of the recreational marijuana business to ensure compliance with this chapter or any other applicable law, rule, or regulation. **By applying for a marijuana business license, the business has consented to the city to conduct inspections to assure compliance with applicable laws.** The owner or business manager on duty shall retrieve and provide the records of the business pertaining to the inspection, including the security tapes from the cameras required by the security plan. **The business is required to obtain from off-site locations, and provide to the city, any records that the business is required to keep.** For purposes of Rule 241 of the Colorado Rules of Municipal Procedure and Subsection 2-6-3(e) of this code, inspections of recreational marijuana businesses and recordings from security cameras in such businesses are part of the routine policy of inspection and enforcement of this chapter for the purpose of protecting the public safety, individuals operating and using the services of the recreational marijuana business, and the adjoining properties and neighborhood, as provided in Section 6-14-1, "Legislative Intent and Purpose," B.R.C. 1981. **Allows city to get municipal search warrant for any business that does not comply.** Application for a recreational marijuana business license constitutes consent to inspection of the business as a public premise without a search warrant, and consent to seizure of any surveillance records, camera recordings, reports, or other materials required as a condition of a recreational marijuana license without a search warrant. **The application for a marijuana license provides consent by the business for the city to inspect the business and take its records and recordings without a search warrant.**
- (f) Reporting of Source, Quantity, and Sales. The records to be maintained by each recreational marijuana business shall include the source and quantity of any marijuana distributed, produced, or possessed within the premises. **The business must maintain**

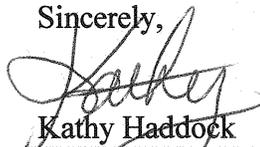
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reports that show the source and quantify of marijuana distributed, produced or possessed within the premises. If the information is not within the records described in (a) above, the business must create a report with this information. Such reports shall include, without limitation, for both acquisitions from wholesalers and retail sales transactions, the following: **The following is the minimum amount of information that is required to be maintain in the records of the business.**

- (1) Date, weight, type of marijuana, and dollar amount or other consideration of transaction;
 - (2) For wholesale transactions, the State of Colorado, and city, if any, sales and use tax license number of the seller; and
 - (3) The amount of marijuana within the restricted area.
- (g) Reporting of Energy Use and Carbon Offset Purchases. **Because this is enforced by LEAD, I have not included an explanation.** The records to be maintained and submitted to the city on a quarterly basis, by each recreational marijuana business shall include, without limitation, records showing on a monthly basis the use and source of energy and the number of certified Renewable Energy Credits (RECs) purchased, or the subscription level for another renewable energy acquisition program approved by the city manager. A statement of the projected daily average peak electric load anticipated to be used by the business and certification from the building owner or landlord and utility provider that the premises are equipped to provide the required electric load, or necessary upgrades will be performed. Such records shall include all statements, reports, or receipts to verify the items included in the report of the business. By application for a recreational marijuana business license from the city, the recreational marijuana business grants permission to providers of the energy or point of origin of the RECs or other renewable energy acquisition program to disclose the records of the business to the city. For recreational marijuana businesses that cultivate recreational marijuana the report shall include the number of certified RECs purchased, or the subscription level for another renewable energy acquisition program approved by the manager.

Mishawn, please let me know if I can provide further information.

Sincerely,



Kathy Haddock
City Attorney
City of Boulder