City of Boulder
1777 Broadway, P.O. Box 791
Boulder, Colorado 80302
303 -441- 4192

CITY OF BOULDER MEDICAL MARIJUANA BUSINESS (MMB) LICENSE CONVERSION OR COLLOCATION TO RECREATIONAL MARJUANA BUSINESS (RMB) APPLICATION FORM AND ACKNOWLEDGEMENT OF CHAPTER 6-16, BOULDER REVISED CODE

This Application is for the following Premise Location License Type (please check only 1 license type and file a separate form for each existing medical marijuana business that you desire to convert or collocate:

[ ] Dispensary [ ] Greenhouse Nursery/Grow

MMB City License Number _____

Applicant Name _____

Trade Name of Establishment (doing business as) _____

Address of Premise Location_____
Street Address City State Zip Code

Business Mailing Address (if different from Premise location)_____
Street Address City State Zip Code

Business Telephone _____ Business Email Address _____

Plant Count _____ Lights Count _____ Lights Wattage Used _____

City Sales & Use Tax License No. _____State Sales Tax License No. _____ FEIN No. _____

1. Select and Initial one of the following conversion or collocation processes:
   [__] ___ initials: 100% conversion from MMB to RMB facility (not accepted before January 2, 2014) or
   [__] ___ initials: Co-locate of both MMB & RMB within existing MMB facility foot print (not accepted before January 21, 2014)
   [__] ___ initials: Co-locate & expand existing MMB then divide for both MMB and RMB business facilities (not accepted before February 3, 2014).

Please note that any conversion or co-location construction must be in full compliance with all building and safety codes and future RM business operations must operated in compliance with the attached BRC, Chapter 6-16, Recreational Marijuana Businesses law.

Please also note that in any conversion or collocation process, the current city license must be surrendered at the same time that the new license is issued. This application will not be considered complete until city has received the $250 Conversion fee from the state.

2. Please attach the following to submit a complete application for either conversions or collocations:
   i. This completed and signed Conversion Application.
   ii. RM Business License Application fully completed and signed.
   iii. Letter from Landlord that confirms that proposed change to RM business operations, and physical change to property (if any), by tenant is permissible.
   iv. For cultivation facilities, Operating fee of $1 per plant over 1,000 payable to the City of Boulder.

3. If the application is for a co-location, whether in same or expanded footprint, of MMB and RMB businesses, please also attach (items here are not required for 100% conversions):
   i. Permanent modification change form for MMB business licensed premises complete, including, MMB change form, new operating plan and general diagram for MMB licensed location, new security plan and security diagram for MMB licensed location, and $3,000 modification fee to City of Boulder.
   ii. New operating plan and new general diagram for RM business premise.
   iii. New security plan and new security diagram for RM business premise.

iv. New business license for sales and use tax application with zoning form completed and attached so building permits may be applied and reviewed with $25 application fee to City of Boulder.
v. $2,000 operating fee for licensing to City of Boulder.

4. If this application is for a co-located business within an area larger than the footprint of the existing MMB business pursuant to BRC 6-16-3(h), initial one of the following as your oath of accuracy:

   This application is for a co-located dispensary and the size of both premises does not exceed 3,000 sq. ft. ___ Initials

   This application is for co-located cultivation facility and the size of both premises does not exceed15,000 sq. ft ___ Initials

5. Initial each of the following as your oath of accuracy:

   - I do not have an ownership interest in another recreational business center ____[initials] or in five already licensed cultivation facilities ____[initials] (initial the business type that is the subject of this application) in the City of Boulder.
   - I will pay the additional state and city excise and sales and use tax, as appropriate, for the RMB on a monthly basis ____[initials].
   - I will use an ID scanner acceptable to the city as soon as possible upon entry of every person to the business premises to determine if the person is at least 21 years old and will remove any person from the premises that is not verified by the ID scanner as being at least 21 years of age ____[initials].
   - No owner, financier, business manager, or other licensee shall be added to the marijuana business(es) associated with this application prior to such time as the State of Colorado makes criminal history information available to the city for the purpose of processing RMB applications ____[initials].
   - The license(s) associated with this application will be revoked and I can no longer operate the related business(es) if an owner, financier, business manager, or other licensee is added to the marijuana business(es) associated with this application prior to such time as the State of Colorado makes criminal history information available to the city for the purpose of processing RMB applications ____ [initials].

Violations of the above provisions and other associated sections of the Boulder Revised Code may subject the business to penalties, including without limitation fines and license suspension, license revocations, and criminal penalties.

Oath of Application

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Boulder Revised Code, Colorado Law, and all Rules and Regulations, and any other applicable law which govern this Application and any issued Medical Marijuana and Recreational Marijuana Business Licenses.

Authorized Signature	Printed Name and Title	Date

ORDINANCE NO. 7930

AN EMERGENCY ORDINANCE ADDING A NEW CHAPTER 6-16, "RECREATIONAL MARIJUANA," B.R.C. 1981 AND ADDING A NEW SECTION 4-20-67, "RECREATIONAL MARIJUANA BUSINESSES," B.R.C. 1981 TO IMPLEMENT AND COMPLY WITH THE REQUIREMENTS OF AMENDMENT 64 TO THE COLORADO STATE CONSTITUTION, AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER,

Section 1. A new chapter 6-16, B.R.C. 1981, is added to read:

Title 6: Health and Safety and Sanitation

Chapter 6-16: Recreational Marijuana

6-16-1 Legislative Intent, Findings, and Purpose.

(a) Legislative Intent and Findings. The City Council intends to regulate the use, possession, cultivation, production and distribution of marijuana in a manner that is consistent with Article XVIII, Section 16 of the Colorado Constitution (the "Recreational Marijuana Amendment" also known as Amendment 64) and finds that the provisions of this Chapter 6-16 are directly and demonstrably related to the operation of marijuana establishments in a manner to minimize negative impacts on the community.

(1) The city adopts this law to apply to all recreational marijuana operations in the city under the Recreational Marijuana Amendment, or any recreational marijuana business permitted under the state law.

(2) Marijuana use, distribution, cultivation and production can have an impact on health, safety, and community resources and the code is intended to permit marijuana cultivation, distribution, production and testing where it will have a minimal impact, and potential negative impacts are minimized.

(3) Use, distribution, cultivation, production, possession and transportation of marijuana remains illegal under federal law, and marijuana remains classified as a "Level 1 Controlled Substance" by federal law.

(4) The General Assembly has adopted enabling legislation that provides for local licensing, however the state law is not intended to, and does not, address the local impacts of marijuana operations, making it appropriate for local regulation of marijuana operations.

(5) Nothing in this chapter is intended to promote or condone the production, distribution or possession of marijuana in violation of any applicable law.

(6) This chapter is to be construed to protect the public over marijuana business interests. Operation of a recreational marijuana business is a revocable privilege and not a right in the city. There is no property right for an individual or business to have marijuana in the city.

(7) Marijuana businesses are a heavily regulated industry in the city, and the city has a zero tolerance policy for violations of this chapter.

(8) This chapter is not intended to replace the Medical Marijuana law in Chapter 6-14 of this code, and any person may apply for and operate a medical marijuana business pursuant to Chapter 6-14 without complying with this chapter.

(9) This chapter is intended to specify the time, place, and manner restrictions for operating a recreational marijuana business in the city as specified in the Recreational Marijuana Amendment.

(10) The operation of a marijuana business without a license from the city as provided in this chapter is prohibited within the city.

(11) The experience of the city in processing and enforcing medical marijuana business licensing evidences that the provisions herein are capable and worthy of being carried out in practice by a reasonably prudent businessperson.

(12) The Colorado Administrative Procedures Act, Article 4 of Title 24 of the Colorado Revised Statutes (the "APA"), does not apply to local governments and the state has not been able to resource the process thereof in a timely manner. The procedures herein for issuance and enforcement of a recreational marijuana business license are consistent with the requirements of the APA and have been determined by the Boulder District Court to provide the level of due process required by the United States and Colorado Constitutions.

(13) A licensee is not acting in his or her capacity as an owner, employee, or agent of a licensed marijuana establishment if the licensee is operating in violation of this chapter or any other applicable law.

(14) The City Council has determined to allow marijuana establishments in the city on the condition that the establishments are operated in compliance with this chapter rather than banning marijuana establishments in the city as permitted by the Recreational Marijuana Amendment.

(b) Purpose. The purpose of this chapter is to protect the public health, safety and welfare of the residents, businesses, and property in the city by prescribing the manner in which recreational marijuana businesses can be conducted in the city. Further, the purpose of this chapter is to:

(1) Provide for a means of cultivation, production, and distribution of marijuana to persons permitted to obtain, possess and use marijuana for recreational purposes under the Recreational Marijuana Amendment;

(2) Protect public health and safety through reasonable limitations on business operations as they relate to noise, air and water quality, food safety, neighborhood and public safety, security for the business and its personnel, and other health and safety concerns;

(3) Promote lively street life and high quality neighborhoods by limiting the concentration of any one type of business in specific areas;

(4) Impose fees for licensing recreational marijuana businesses in an amount sufficient for the city to recover its costs of the licensing program;

(5) Adopt a mechanism for monitoring compliance with the provisions of this chapter;

(6) Create regulations that address the particular needs of the residents and businesses of the city and coordinate with laws that may be enacted by the state regarding recreational marijuana;

(7) Facilitate the implementation of the Recreational Marijuana Amendment without going beyond the authority granted by it;

(8) Support Boulder's Sustainability and Climate Action Plan goals by requiring renewable sources for energy use to grow recreational marijuana;

(9) Issue recreational marijuana business licenses only to individuals and entities that have demonstrated an intent and ability to comply with this chapter without monitoring by city officials;

(10) Protect public safety and residential areas by limiting the areas of the city where more than six marijuana plants may be grown;

(11) Exclude from the definition of a *recreational marijuana business* the private possession, production and recreational use of marijuana by an individual or the private possession, production, distribution and recreational use of marijuana by an individual, in the person's residence, to the extent permitted by Article XVIII, Section 16 of the Colorado Constitution; and

(12) Designate the city manager as the recreational marijuana licensing authority responsible for licensing recreational marijuana for the City of Boulder.

(c) Relationship to State Law. The provisions in this chapter 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. The city intends that

both state law and this chapter apply within the city. Where this chapter conflicts with the state law, this chapter shall apply.

(d) Adoption of this Chapter 6-16 is not intended to waive or otherwise impair any portion of the local option available under the Recreational Marijuana Amendment.

6-16-2 Definitions.

The following words and phrases used in this chapter have the following meanings unless the context clearly indicates otherwise:

Addiction recovery facility shall have the same meaning as set forth in Section 9-16-1, "General Definitions," B.R.C. 1981.

Advertise means the act of drawing the public's attention, whether on print, signs or electronic means, to a recreational marijuana business in order to promote the sale of marijuana by the business.

Business manager means the individual designated by the owner of the recreational marijuana business as the person responsible for all operations of the business in the absence of the owner from the business premises. Business manager shall include any person with managerial authority in the business, and any person that has access to lock or unlock the safe, to lock or unlock the business, or set or disarm the alarm.

Co-located marijuana business means a medical marijuana wellness center or cultivation facility that held a license from the city on October 22, 2013, that is permitted by the owner of the building and all applicable laws, to divide the licensed medical marijuana business to allow for both a medical and a recreational marijuana wellness center or cultivation facility as separate business premises with separate licenses from the city within the same footprint and owned by the same person(s) as the medical marijuana wellness center or cultivation facility. *Cultivation* or *cultivate* means (i) all phases of growth of marijuana from seed to harvest; or (ii) preparing, packaging or repackaging, labeling or relabeling of marijuana prior to consumption or incorporation into a recreational marijuana-infused product.

Cultivation facility means a licensed recreational marijuana business that produces and harvests marijuana plants for distribution by a licensed recreational marijuana center or a licensed recreational marijuana-infused product manufacturer. Except as included in this definition, a cultivation facility may not operate any production on its premises.

Distribute or *distribution* means the actual, constructive or attempted transfer, delivery, sale or dispensing of marijuana to another, with or without remuneration.

Fermented malt beverage has the same meaning as its meaning under the Colorado Beer Code, C.R.S. 12-46-103.

Financier means any person who lends money or otherwise provides assets to any person applying for a license or who has been issued a license under this chapter. Financier shall not include a bank, savings and loan association, credit union or industrial bank supervised and regulated by an agency of the state or federal government.

Licensee means the recreational marijuana business named on the recreational marijuana business license, and all individuals named in the recreational marijuana business license application or later reported to the city, including without limitation, owners, business managers, financiers and individuals owning any part of an entity that holds a financial or ownership interest in a recreational marijuana business.

Mall means the downtown Boulder business improvement district boundaries set forth in Appendix 8-B of Title 8 of this code, including the downtown pedestrian mall established by Ordinance No. 422 adopted February 18, 1975.

Malt, vinous and spirituous liquor has the same meaning as its meaning under the Colorado Liquor Code, C.R.S. 12-47-108.

Marijuana for this Chapter 6-16 means:

(i) The same as set forth in the Recreational Marijuana Amendment; or

(ii) As may be more fully defined in any applicable state law or regulation.

Marijuana accessories shall have the same meaning as in the Recreational Marijuana Amendment.

Marijuana business means any medical marijuana business as defined in Chapter 6-14, "Medical Marijuana," B.R.C. 1981 or recreational marijuana business as defined in this chapter.

Marijuana establishment means a recreational marijuana business that has a license from the state and the city to operate.

Marijuana testing facility means a recreational marijuana business that has been licensed as a marijuana testing facility by the state that is in good standing, and has a license in good standing with the city.

Marijuana warehouse means a marijuana establishment that is not licensed by the city as a medical marijuana business or a licensed recreational marijuana business. No marijuana warehouses are allowed in the city.

Minor means a person under 21 years of age.

Mixed use development means a building or a project or a development that contains dwelling units in any zone district.

Place open to the general public means any property owned, leased or used by a public entity, and any place on private property open to the public, common areas of buildings, private club, vehicles, those portions of any private property upon which the public has an express or implied license to enter or remain, and any place visible from such places. Place open to the general public shall not include any fenced area of a private residence regardless of whether it can be seen from a place open to the public

Possess or *possession* means having physical control of an object, or control of the premises in which an object is located, or having the power and intent to control an object, without regard to whether the one in possession has ownership of the object. Possession may be held by more than one person at a time. Use of the object is not required for possession. The owner of a recreational marijuana business shall be considered in possession of the recreational marijuana business at all times. The business manager of a recreational marijuana business shall be considered in possession of the recreational marijuana business at all times that the business manager is on the premises of the business or has been designated by the owner as the business manager in the absence of the owner in accordance with this chapter.

Premises means a distinct and definite location, which may include a building, a part of a building, a room, or any other defined contiguous area.

Private club means any location, other than a residence of a person at the residence, or a marijuana establishment.

Produce or *production* means (i) combining marijuana with any other substance for distribution, including storage and packaging for resale; or (ii) preparing, compounding, processing, encapsulating, packaging or repackaging, labeling or relabeling, of marijuana or its derivatives, whether alone or mixed with any amount of any other substance. Production shall not include packaging or repackaging labeling or relabeling of marijuana if no production has occurred and such packaging and labeling qualify as cultivation.

Recreational marijuana means any marijuana intended for recreational use which meets all requirements for recreational marijuana contained in Chapter 6-16 of this code, the Recreational Marijuana Amendment, and any other applicable law.

Recreational marijuana amendment means Article XVIII, Section 16 of the Colorado Constitution.

Recreational marijuana business means (a) any person that cultivates, produces, distributes, possesses, transports or makes available more than six marijuana plants or one ounce of marijuana, or (b) any person that sells any amount of marijuana or (c) any person who possesses marijuana openly or publicly. The term *recreational marijuana business* shall not include the private cultivation, possession, production or use within a person's residence of no more than (a) six plants in an enclosed, locked space, or (b) one ounce of marijuana, or (c) the marijuana produced by no more than six plants on the premises where the plants were grown if the plants were grown in an enclosed locked space.

Recreational marijuana center means a licensed recreational marijuana business that distributes marijuana to any person or to recreational marijuana-infused product manufacturers or to another recreational marijuana center.

Recreational marijuana-infused product means a product infused with marijuana that is processed for use or consumption, including, without limitation, edible products, concentrates, ointments, tinctures and any item defined as a "marijuana product" in the Recreational Marijuana Amendment.

Marijuana-infused product manufacturer means a licensed marijuana business that produces marijuana-infused products.

Recreational marijuana local licensing authority means the city manager. The city manager shall be the local licensing authority responsible for processing applications under this chapter for the purpose of the Recreational Marijuana Amendment and any state law that requires the city to designate a local licensing authority.

Recreational marijuana plant means a marijuana seed and all parts of the growth therefrom including, without limitation, roots, stalks and leaves so long as the flowers, roots, stalks and leaves are all connected and in a growing medium. For purposes of this chapter, any part of the plant removed is considered harvested and no longer part of a recreational marijuana plant, but marijuana.

Restricted area means the portion of a recreational marijuana business premises within which the licensee defines on its application it intends to cultivate, distribute, possess or produce recreational marijuana and which area is clearly identified as the restricted area on the floor plan submitted with the recreational marijuana business license application for the business.

University Hill commercial area means the area described as the University Hill General Improvement District in Appendix 8-A of Title 8 of this code.

Violation of any law or *violated any law* means a plea or finding of a violation of any law in a criminal, civil or administrative proceeding, whether part of a plea agreement, settlement agreement, or determination by an arbitrator, hearing officer, court or jury.

6-16-3 License Required.

(a) License Required. It shall be unlawful for any person to operate a recreational marijuana business without obtaining a license to operate pursuant to the requirements of this chapter and holding a license in good standing from the state.

(b) Additional Licenses and Permits May be Required. The license requirement set forth in this chapter 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, including, by way of example, a

retail sales and use tax license, a retail food establishment license or any applicable zoning or building permit.

(c) License Does Not Provide any Exception, Defense or Immunity from Other Laws. The issuance of any license pursuant to this chapter does not create an 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.

(d) Separate License Required for Each Location. A separate license shall be required for each premise from which a recreational marijuana business is operated. No two or more different businesses, including recreational marijuana businesses, may be treated as one premise. Unless higher performance is required by applicable law, there must be a minimum of a one-hour fire separation wall between a recreational marijuana business and any adjacent business.

(e) License Non-Transferable. A recreational marijuana business license is not transferable or assignable, including without limitation, not transferable or assignable to a different premise, to a different type of business (including another marijuana business), or to a different owner or licensee. A recreational marijuana business license is valid only for the owner named thereon, the type of business disclosed on the application for the license, and the location for which the license is issued. The licensees of a recreational marijuana business license are only those persons disclosed in the application or subsequently disclosed to the city in accordance with this chapter.

(f) Conversion of Licenses to Different Marijuana Business. A license for a marijuana establishment may not be converted to a license for a medical marijuana business. A license for a medical marijuana business that was licensed, open and operating on October 22, 2013, or that had submitted a complete application for a medical marijuana business on October 22, 2013, may be converted to the same type of marijuana establishment by complying with the requirements of this chapter for a renewal of a marijuana license and paying the application fee specified in Section 4-20-67 of this code. The license for the medical marijuana business must be surrendered to the city before the recreational marijuana business license will be issued. The term of the license shall be the same as the existing medical marijuana business license.

(g) Conversion to a Co-located Marijuana Business Within the Footprint of the Medical Marijuana Business. A licensee of a medical marijuana wellness center or cultivation facility may apply for a co-located marijuana business license by submitting an application for a co-located marijuana business on forms approved by the city. At a minimum, the application form shall include a modification of the existing medical marijuana business to conform to the new footprint of the medical marijuana portion of the co-located marijuana business and all components of the application described in Section 6-16-5 of this code determined applicable by the city manager for the recreational marijuana portion of the co-located marijuana business, and paying the modification of premises fee and operating fee specified in Section 4-20-67 of this code. The license for the medical marijuana business must be surrendered to the city before the

co-located marijuana business license will be issued. The term of the co-located marijuana business license shall be the same as the existing medical marijuana business license. For purposes of separation from other marijuana businesses in Paragraph 6-16-7(e)(2) of this code, the co-located medical and recreational marijuana business shall be considered one marijuana business.

(h) Conversion to a Co-located Marijuana Business In an Expansion of the Existing Footprint of the Medical Marijuana Business. A licensee of a medical marijuana wellness center or cultivation facility may apply for a co-located marijuana business license within a footprint that is an expansion of its existing medical marijuana business by submitting an application for modification of the existing medical marijuana business, and an application for co-location of a medical and recreational business within the modified premises on forms approved by the city by March 1, 2014. At a minimum, the application shall include (i) the same owners and financiers of the existing medical marijuana businesses, (ii) the proposed modification of the existing and expanded area of the existing medical marijuana business to depict the two new businesses separated as required by this code, (iii) all components of the application described in Section 6-16-5 of this code determined applicable by the city manager for the recreational marijuana portion of the co-located marijuana business, and (iv) the modification of premises fee, conversion fee, and operating fee specified in Section 4-20-67 of this code. The license for the medical marijuana business must be surrendered to the city before the co-located marijuana business license will be issued. The term of the co-located marijuana business license shall be the same as the existing medical marijuana business license. For purposes of separation from other marijuana businesses in Paragraph 6-16-7(e)(2) of this code, the co-located medical and recreational marijuana business shall be considered one marijuana business.

(i) Until such time as the State of Colorado provides the City of Boulder with access to criminal history information for the purpose of issuing marijuana business licenses, no conversion under subsections (f) or co-location under subsection (g) above shall be approved if there is any change in the identity of the individuals required to be listed on the application as reported to the city by October 22, 2013 pursuant to this chapter.

6-16-4 General Provisions.

(a) General Licensing Provisions. The general procedures and requirements of licenses, as more fully set forth in Chapter 4-1, "General Licensing Provisions," B.R.C. 1981, shall apply to recreational marijuana business licenses. To the extent there is any conflict between the provisions of this chapter and Chapter 4-1, the provisions of this chapter shall control for recreational marijuana business licenses.

(b) Defense to Criminal Prosecutions. Compliance with the requirements of this chapter shall not provide an exception, immunity or defense to criminal prosecution under any applicable law, except in the Boulder Municipal Court for a violation of this chapter as specifically provided herein.

(c) Insurance Required. The insurance specified in Section 4-1-8, "Insurance Required," B.R.C. 1981, is required for a license under this chapter.

(d) Costs of Inspection and Clean-Up. In the event the city incurs costs in the inspection, clean-up, surrender of plants, or any other requirements to remove marijuana of any recreational marijuana business, or any person cultivating, producing, distributing or possessing marijuana, the business and responsible person shall reimburse the city all actual costs incurred by the city for such inspection or clean-up.

(e) Decisions on Application or Revocation Final. The decision of the city manager on an application for a recreational marijuana business license or revocation thereof pursuant to this chapter shall be the final decision of the city subject only to judicial review pursuant to Colorado Rule of Civil Procedure 106(a)(4), unless the notice of the decision includes an opportunity for a hearing as provided in Section 1-3-3 of this code. No defense or objection may be presented for judicial review unless it is first presented to the city manager prior to the effective date of the decision.

(f) Forfeiture of License. In the event that a recreational marijuana business does not commence operations within 30 days of issuance of a license from the city, the license shall be deemed forfeited, and the business may not commence operations.

(g) Landlord Duty. It shall be unlawful for the owner of a building to lease space or allow the use of any portion of the building by a recreational marijuana business unless the tenant has a valid recreational marijuana business license or has applied for and not been denied a recreational marijuana business license or no marijuana is located on the premises until a license has been issued by the city. In the event that the city has an articulable reason to believe that a recreational marijuana business is being operated in a building, it shall be unlawful for the owner of the building to refuse to allow the city access to the portion of the building in which the suspected recreational marijuana business is located to determine whether any marijuana is on the premises.

(h) Time Periods for Accepting Applications for Recreational Marijuana Businesses.

(1) No applications for conversion of a medical marijuana business to a recreational marijuana business pursuant to Section 6-13-3(f) shall be accepted before January 2, 2014. As a condition of the city accepting an application for conversion of a medical marijuana business, the applicant and all licensees shall be the same as those identified for the medical marijuana license and affirm that there will be no changes in licensees for the recreational marijuana business. If a license is issued, and the business makes any changes in licensees prior to such time as the State of Colorado makes criminal history information available for the purpose of processing recreational marijuana business licenses, the license may be revoked.

(2) No applications for conversion to a co-located medical and recreational marijuana business pursuant to Section 6-13-3(g) of a medical marijuana business shall be accepted

before January 21, 2014. As a condition of the city accepting an application for conversion to a co-located marijuana business, the applicant and all licensees shall be the same as those identified for the medical marijuana license and affirm that there will be no changes in licensees for the recreational marijuana business. If a license is issued, and the business makes any changes in licensees prior to such time as the State of Colorado makes criminal history information available for the purpose of processing recreational marijuana business licenses, the license may be revoked.

(3) No applications for conversion to a co-located medical and recreational marijuana business pursuant to Section 6-13-3(h) of a medical marijuana business within a footprint that is larger than the existing medical marijuana business shall be accepted before February 3, 2014. As a condition of the city accepting an application for conversion to a co-located marijuana business, the applicant and all licensees shall be the same as those identified for the medical marijuana license and affirm that there will be no changes in licensees for the recreational marijuana business. If a license is issued, and the business makes any changes in licensees prior to such time as the State of Colorado makes criminal history information available for the purpose of processing recreational marijuana business licenses, the license may be revoked.

(4) No applications for a new recreational marijuana business (that is not a conversion from a medical marijuana business pursuant to Section 6-16-3(f) or a co-located marijuana business pursuant to Section 6-16-3(g) or a co-located marijuana business pursuant to Section 6-16-3(h)) shall be accepted before June 1, 2014.

6-16-5 Application.

(a) Application Requirements. An application for a recreational marijuana business license shall be made to the city on forms provided by the city manager for that purpose. The applicant shall use the application to demonstrate its compliance with this chapter and any other applicable law, rule or regulation. In addition to the information required by Chapter 4-1, "General Licensing Provisions," B.R.C. 1981, the application shall include the following information:

(1) Name and address of the owner or owners of the recreational marijuana business in whose name the license is proposed to be issued.

(A) If an owner is a corporation, the name and address of any officer or director of the corporation and of any person holding issued and outstanding capital stock of the corporation.

(B) If an owner is a partnership, association or company, the name and address of any person holding an interest therein and the managing members. If a managing member is an entity rather than an individual, the same disclosure shall be required for each entity with an ownership interest until a managing member that is a natural person is identified.

(C) If an owner is not a natural person, the organizational documents for all entities identified in the application, identification of the natural person that is authorized to speak for the entity and contact information for that person.

(2) Name and address of:

(A) Any business managers of the recreational marijuana business, if the business manager is proposed to be someone other than the owner;

(B) All financiers of the recreational marijuana business; and

(C) All agents of the recreational marijuana business who either (I) act with managerial authority, (II) provide advice to the recreational marijuana business for compensation, or (III) receive periodic compensation totaling $1,000 or more in a single year for services related to the recreational marijuana business. It shall be an affirmative defense that the undisclosed person was an attorney, accountant, bookkeeper, mail delivery person, or other contractor performing services for the business that are unrelated to the cultivation, production, or distribution of recreational marijuana.

(3) A statement of whether or not any of the named owners, members, business managers, financiers, or persons named on the application have been:

(A) Denied an application for a marijuana business license pursuant to this chapter, Chapter 6-14 of this code, or any similar state or local licensing law, rule or regulation, or had such a license suspended or revoked.

(B) Denied an application for a liquor license pursuant to Title 12, Article 47 or Article 46, C.R.S., or any similar state or local licensing law, or had such a license suspended or revoked.

(C) Violated any law, other than a traffic offense, or completed any portion of a sentence due to a violation of any law.

(D) Convicted of driving or operating other machinery under the influence of alcohol, drugs or medication, driving while impaired or driving with excessive alcohol content in violation of § 42-4-1301, C.R.S., or any comparable law, or a misdemeanor related to abuse of alcohol or a controlled substance.

(4) Proof of ownership or legal possession of the restricted area for a recreational marijuana business for the term of the proposed license. If the recreational marijuana business is not the owner of the premises of the business, the applicant

shall provide written authorization to the city from the owner to enter the property for inspection of the premises on a form approved by the city.

(5) Proof of insurance as provided in Section 4-1-8, "Insurance Required," B.R.C. 1981.

(6) An operating plan for the proposed recreational marijuana business, including the following information:

(A) A description of the products and services to be provided by the recreational marijuana business.

(B) A dimensioned floor plan, clearly labeled, showing:

(i) The layout of the structure and the floor plan in which the recreational marijuana business is to be located;

(ii) The principal uses of the floor area depicted on the floor plan, including but not limited to the areas where underage persons will be permitted, storage areas, retail areas, and restricted areas where recreational marijuana will be located;

(iii) Areas where any services other than the distribution of recreational marijuana are proposed to occur in the premises; and

(iv) The separation of the areas that are open to persons who are underage from those areas open to persons qualified to use marijuana.

(C) A neighborhood responsibility plan that demonstrates how the business will fulfill its responsibilities to the neighborhood, including neighborhood outreach, methods for future communication and dispute resolution.

(D) For cultivation facilities and marijuana-infused product manufacturers, a plan that specifies the methods to be used to prevent the growth of harmful mold and compliance with limitations on discharge into the wastewater system of the city as set forth in Chapter 11-3, "Industrial and Prohibited Discharges," B.R.C. 1981.

(E) For a marijuana-infused product manufacturer or a marijuana testing facility, a plan that specifies all means to be used for extraction, heating, washing, or otherwise changing the form of the marijuana plant, or testing any marijuana, and verification of compliance with all applicable laws for ventilation and safety measures for each process. The city shall require the manufacturer or testing facility to obtain a report from an industrial

hygienist to verify that the plan submitted, and the improvements to be constructed, adequately protect the business and adjacent properties and persons, and comply with all applicable laws.

(F) The maximum amount of marijuana or marijuana-infused products that may be on the business premises.

(7) A security plan indicating how the applicant will comply with the requirements of this chapter and any other applicable law, rule or regulation. The security plan includes specialized details of security arrangements and will be protected from disclosure as provided under the Colorado Open Records Act, § 24-72-203(2)(a)(VIII), C.R.S. If the city finds that such documents are subject to inspection, it will attempt to provide at least twenty-four-hour notice to the applicant prior to such disclosure.

(8) A lighting plan showing the lighting outside of the marijuana business for security purposes and compliance with applicable city requirements.

(9) A zoning confirmation form from the city, to ascertain within a radius of one-quarter mile from the boundaries of the property upon which the recreational marijuana business is located, the proximity of the property to any school or other facility identified in this chapter, or state licensed child care center, to any other marijuana business or to any residential zone district or a mixed-use development containing one or more residences.

(10) Fingerprints and personal histories as may be specified on forms provided by the city manager. This requirement shall apply to all owners, business managers, and financiers employed by or under contract to provide services to the recreational marijuana business, including all individuals who have an interest as described herein of any portion of the recreational marijuana business, directly or as an agent, or a member, partner or officer of a corporation, partnership, association or company, and the reports from the Colorado and Federal Bureaus of Investigation for each person.

(11) A plan for disposal of any recreational marijuana or marijuana-infused product that is not sold in a manner that protects any portion thereof from being possessed or ingested by any person or animal.

(12) A plan for ventilation of the marijuana business that describes the ventilation systems that will be used to prevent any odor of marijuana off the premises of the business. For cultivation facilities, such plan shall also include all ventilation systems used to control the environment for the plants and describe how such systems operate with the systems preventing any odor leaving the premises. For marijuana infused product manufacturers and marijuana testing facilities, such plan shall also include all ventilation systems used to mitigate noxious gases or other fumes used or created as part of the production process.

(13) A description of all toxic, flammable or other materials regulated by a federal, state or local government that would have authority over the business if it was not a marijuana business, that will be used, kept, or created at the marijuana business, the location of such materials and how such materials will be stored.

(14) A description of the process(es) used to extract or distill marijuana from its source and the process used to incorporate marijuana into all products produced, including verifying compliance of all processes regulated by a federal, state or local government that would have authority over the business if it was not a marijuana business.

(15) A statement of the amount of the projected daily average and peak electric load anticipated to be used by the business and certification from the landlord and utility provider that the premises are equipped to provide the required electric load, or necessary upgrades will be performed prior to final inspection of the premises.

(16) For applications for a marijuana-infused product manufacturer, the location of the cultivation facility(ies) which will supply the marijuana for processing in the city owned by the licensee.

(b) Evidence of Rehabilitation May be Submitted. In the event the history of an owner, member, business manager, financier, or other person named on the application contains information regarding violations of any law, or previous denial or revocation of a license, that person may include with the license application any information regarding such violation, denial or revocation. Such information may include, but is not limited to, evidence of rehabilitation, character references and educational achievements, and other regulatory licenses held without compliance violations, especially those items pertaining to the period of time between the applicant's last violation of any law and the date of the application.

(c) Fee Required. Any application for a license for a marijuana business under this chapter shall be accompanied by the operating fee, criminal background fee, annual license fee, and any other applicable fees, as required by Section 4-20-67, "Recreational Marijuana Businesses," B.R.C. 1981. Unless the state has forwarded the application fee pursuant to Colorado Constitution art. XVIII, § 16(5)(g)(II) to the city, the applicant shall submit the application fee set forth in Section 4-20-67, "Recreational Marijuana Businesses," B.R.C., 1981 to the city with the application.

(d) Inspection. An inspection of the proposed recreational marijuana business by the city shall be required prior to issuance of a license. Such inspection shall occur after the premises are ready for operation, but prior to the stocking of the business with any recreational marijuana, and prior to the opening of the business to the public. The inspection is to verify that the business facilities are constructed and can be operated in accordance with the application submitted and the applicable requirements of the code and any other applicable law, rule or regulation.

(e) Complete Application. For purposes of this chapter an application shall not be considered complete until the city manager has (i) determined that all requirements of the application have been provided to the city, (ii) received the reports from the fingerprint cards of each person required to submit such cards from the Colorado and Federal Bureaus of Investigation, (iii) received the local share of $2,500 for the application fee from the state and (iv) obtained all other information the city manager determines necessary to make a decision whether to approve or deny the license application, or approve it with conditions.

(f) Approval Requirements. The city manager may issue a recreational marijuana business license if the inspection, background checks and all other information available to the city verify that the applicant has submitted a full and complete application, has made improvements to the business location consistent with the application, is prepared to operate the business with other owners and managers as set forth in the application, and has submitted the annual operating fee, all in compliance with this Code and any other applicable law, rule or regulation. The city manager will deny any application that does not meet the requirements of this chapter or any other applicable law, rule or regulation or that contains any false or incomplete information. The conditions of an approval of a recreational marijuana business license shall include, at a minimum, operation of the business in compliance with all of the plans and information made part of the application.

6-16-6 Persons Prohibited as Licensees and Business Managers.

(a) It shall be unlawful for any of the following persons to have an ownership or a financial interest in a recreational marijuana business, and no license provided by this chapter shall be issued to or held by, and no recreational marijuana business shall be managed by:

(1) Any person until the annual fee for the license has been paid;

(2) Any person not of good moral character;

(3) Any corporation, any of whose officers, directors or stockholders are not of good moral character;

(4) Any partnership, association or company, any of whose officers or members holding an interest therein, or a managing member, are not of good moral character;

(5) Any person employing, assisted by or financed in whole or in part by any other person who is not of good moral character;

(6) Any person, unless such person's character, record and reputation are satisfactory to the city manager;

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

(8) Any person who operates or manages a recreational marijuana business contrary to the provisions of this chapter, any other applicable law, rule or regulation, or conditions imposed on land use or license approvals, or contrary to the terms of the plans submitted with the license application, as such plans may be amended as provided in this chapter, or has operated a business in violation of any law;

(9) Any person applying for a license to operate a recreational marijuana center who has been licensed to operate another recreational marijuana center in the city pursuant to this chapter;

(10) Any person applying for a license to operate a marijuana-infused product manufacturer facility who has been licensed to operate another marijuana-infused product manufacturer facility in the city pursuant to this chapter;

(11) A person licensed pursuant to this article who, during a period of licensure, or who, at the time of application, has failed to remedy an outstanding delinquency for taxes owed, or an outstanding delinquency for judgments owed to a government;

(12) A sheriff, deputy, police officer, or prosecuting officer, or an officer or employee of the state licensing authority or a local licensing authority;

(13) A person whose authority to be a primary caregiver as defined in § 25-1.5-106(2), C.R.S. has been revoked by the state health agency; or

(14) A person that is a licensee for the application location that is currently licensed as a retail food establishment or a wholesale food registrant.

(b) In making the evaluation of the good moral character of an individual identified on an application or amendment thereof, the city manager shall consider the following:

(1) An applicant's violation of a law shall not, by itself, be grounds for denying an application;

(2) Verification of, or lack of ability to verify, items disclosed by the individual;

(3) When an individual has a history of violation of any law, or a history including denial, revocation or suspension of a license, the types and dates of violations; the evidence of rehabilitation, if any, submitted by the individual; whether the violations of any laws are related to moral turpitude, substance abuse or other violations of any laws that may directly affect the individual's ability to operate a recreational marijuana business; or whether the violations of any law are unrelated to the individual's ability to operate such a business;

(4) The evidence or lack of evidence regarding the ability of the individual to refrain from being under the influence of intoxicating or controlled substances while performing regular tasks and operating a recreational marijuana business;

(5) Rules adopted by the city manager to implement this chapter;

(6) Law, rules and regulations applicable to evaluation of other types of licenses issued by governments that consider the good moral character of the applicants; and

(7) Any additional information the city manager may request of the individual if the individual has a violation of any laws, evidence of substance abuse issue, or items disclosed by the individual which require additional information in order for the city manager to make a determination regarding issuance of the license.

6-16-7 Locations of Recreational Marijuana Businesses.

(a) Fixed Location Required. It shall be unlawful to operate a recreational marijuana business or to grow recreational marijuana outside of a locked enclosed space within a building. All recreational marijuana business licenses shall be issued for a specific fixed location within an enclosed building. The portion of such premises upon which the floor plan shows recreational marijuana may be produced, dispensed or possessed shall be considered the "restricted area" portion of the business premises.

(b) Location–Permitted Use in Zoning District. A recreational marijuana business license may be issued only if the business qualifies as a use permitted as a matter of right in the zone district where it is proposed to be located as follows:

(1) as "personal service" for a recreational marijuana center; or

(2) as "greenhouse/nursery" for a recreational marijuana cultivation facility; or

(3) as "manufacturing ≤15,000 square feet" for a recreational marijuana cultivation facility or for a marijuana-infused product manufacturer.

(c) No Recreational Marijuana Business in Building with Residences or Residential Zone Districts. It shall be unlawful to operate a recreational marijuana business in a building which contains a residence, or within a dwelling unit within any zone district, or within a residential zone district or within a mixed-use development that includes a residence.

(d) No Retail Sales in Cultivation Facilities or Manufacturing. It shall be unlawful for any person to permit retail sales within a recreational marijuana business that is not a licensed recreational marijuana center.

(e) Separation from Schools and Other Facilities.

(1) No recreational marijuana business license shall be issued for a recreational marijuana center at a location within 1,000 feet of any public or private elementary, vocational or secondary school, or a college, university, or a state licensed day care center, or an addiction recovery facility. Distances shall be

measured by the city on official maps as the radius from the closest points on the perimeter of the applicant's property to the closest point of the property of the school or named facility.

(2) No license for a recreational marijuana cultivation facility, a marijuana-infused product manufacturer, or a marijuana testing facility, shall be issued for a location within 500 feet of the real property comprising an elementary, vocational or secondary school or a public or private college, junior college, or university, or a state licensed day care, or an addiction recovery facility. This restriction shall not apply to a medical marijuana cultivation facility that had submitted an application or held a license by the city on October 22, 2013.

(3) No recreational marijuana business license shall be issued for a recreational marijuana business at a location within 500 feet of three other marijuana businesses.

(4) No recreational marijuana business license shall be issued for a recreational marijuana center at a location on the street level of the mall or the University Hill commercial area.

(5) Distances shall be measured by the city on official maps as the radius from the closet points on the perimeter of the applicant's property to the closest point of the property of any other recreational marijuana business.

(6) To determine the proximity to other recreational marijuana businesses and the priority of applications, businesses shall have priority in the following order:

(A) Licensed medical marijuana businesses;

(B) Marijuana establishment;

(C) Businesses for either medical or recreational business whose applications have been approved but licenses not yet issued;

(D) Applications for medical or recreational marijuana business licenses that have been submitted by the applicant and declared complete by the city; and

(E) No other applications shall be considered "businesses" for this determination.

(7) Businesses that convert all or part of a medical marijuana business pursuant to Subsection 6-16-3(f) of this code are not subject to paragraphs (1), (2), and (3) of this Subsection 6-16-7(e). This exception is not transferrable.

(f) Limitations on Dual Licenses. A recreational marijuana business license may not be issued for any location which also is a part of the restricted area of a business holding a

beverages license pursuant to Section 4-2-3, "Authority to Issue City Licenses," B.R.C. 1981 or a marijuana business license under this chapter or Chapter 6-14 "Medical Marijuana," B.R.C. 1981.

(g) Limitations on Recreational Marijuana Centers and co-located marijuana center. The following shall be the minimum requirements for a recreational marijuana center and a co-located marijuana center:

(1) The area of the business is ≤3,000 square feet, and the restricted area components of the required security and all paper and electronic records are 1,000 square feet or less;

(2) The business does not sell or distribute anything other than marijuana and marijuana products or marijuana accessories; and

(3) There is a separate reception area for verification of age.

(h) Limitations on Recreational Marijuana-Infused Product Manufacturers. No marijuana-infused product manufacturer shall be allowed in the city unless the same licensee has a medical or recreational marijuana cultivation facility that provides at least 70% of the marijuana used by the manufacturer located in the city. The area of the premises may not be more than 15,000 square feet.

(i) Limitation on Cultivation Facility Licenses. No licensee shall hold licenses for more than five marijuana cultivation facilities. This limitation limits the total number of cultivation facility licenses, including both licenses for medical and recreational marijuana cultivation facilities. The area of the premises of a cultivation facility may not be more than 15,000 square feet.

6-16-8 Requirements Related to Operation of Recreational Marijuana Businesses.

(a) Onsite Use Prohibited. No marijuana shall be smoked, eaten or otherwise consumed or ingested within the recreational marijuana business.

(b) Restriction on Access to Business. No person under twenty-one years of age shall be in the business premises. No person shall be allowed entry into the business premises area without showing a valid picture identification. The business shall have an electronic scanner able to verify the legitimacy of the identification and maintain records for enforcement, as approved by the city manager. If a person does not have a valid picture identification that the electronic scanner recognizes as legitimate as verification that the person is at least twenty-one years of age, the owner or business manager on the premises shall require that the person leave the business and any surrounding area possessed or controlled by the business.

(c) Display of Licenses Required. The name and contact information for the owner or owners and any business manager of the recreational marijuana business, the recreational marijuana business license and the sales tax business license shall be conspicuously posted in the business.

(1) All marijuana-infused products are hand-packaged, sealed and labeled as provided in this chapter and the products stored in closed containers that are labeled as provided in this section;

(2) All recreational marijuana in a usable form is packaged and stored in closed containers that are labeled as provided in this section;

(3) Each container used to transport recreational marijuana is labeled with the amount of recreational marijuana or marijuana-infused products, or the number and size of the plants, in the container. The label shall include the name and address of the recreational marijuana business that the recreational marijuana is being transported from and the name and address of the recreational marijuana business that the recreational marijuana is being transported to. The label shall be shown to any law enforcement officer that requests to see the label;

(4) Unless otherwise specifically allowed by applicable law, recreational marijuana may be transported with proper bill of sale completed before transport only:

(A) From a cultivation facility to a recreational marijuana center or marijuana-infused product manufacturer, and which recreational marijuana business is owned by the same person as owns the cultivation facility; or

(B) Between one recreational marijuana center to another center; or

(C) Between a marijuana-infused product manufacturer and a medical or recreational marijuana center.

(5) The recreational marijuana must be accompanied by the manifest and confirmation e-mail from the state in accordance with state requirements for transportation of recreational marijuana;

(6) The recreational marijuana must be accompanied by the e-mail receipt confirmation from the Boulder Police Department in accordance with the rules therefore established by the police department;

(7) When determining and reporting the route for delivery, licensees should select the most direct route that provides efficiency and safety; and

(8) Transport may occur only during the hours allowed for operation of the center.

(n) Disposal of Recreational Marijuana and Marijuana Byproducts. All recreational marijuana and any product containing a usable form of marijuana 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 Boulder Police Department and the Boulder Fire Department.

(o) Possession of Mature Flowering Plants. No more than one-half of the recreational marijuana plants within a recreational marijuana business may be mature, flowering plants.

(p) Advertisement. A recreational marijuana business may not advertise in a manner that is misleading, deceptive, false or is designed to appeal to minors. The following conditions shall apply:

(1) Except as otherwise provided in this paragraph (1), it shall be unlawful for any person licensed under this article or any other person to advertise any recreational marijuana or recreational marijuana-infused product anywhere in the city where the advertisement is in plain view of, or in, a place open to the general public, 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. The prohibition set forth in this paragraph (1) shall not apply to:

A. Any sign located on the same zone lot as a recreational marijuana center which exists solely for the purpose of identifying the location of the recreational marijuana center and which otherwise complies with this code 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 on the internet; or

C. Advertising which is purely incidental to sponsorship of a charitable event by a recreational marijuana center or a recreational marijuana-infused products manufacturer.

(2) It is an affirmative defense if a recreational marijuana business employee provided another individual, upon request, a business card for the purpose of providing that person's name and business affiliation, including without restriction, title, mailing address, email address, and telephone number;

(3) No marijuana business shall distribute or allow the distribution of any marijuana without charge within a marijuana business or any place open to the public for the purpose of promotion or advertising;

(4) No marijuana business shall distribute or allow the distribution of any coupon or similar writing, electronically or on paper, which purports to allow the bearer to exchange the same for any marijuana product either free or at a discount; and

(5) No recreational marijuana business shall sell, distribute or provide, or allow the sale, distribution or provision of, products marked with its name or logo, other than packaging in which marijuana is sold or on recreational marijuana products. This prohibition shall not prevent employees of the business from wearing

uniforms with the name or logo while working for the business on the business premises.

(q) The owner or a business manager of a recreational marijuana business is required to respond by phone or email within 24 hours of contact by a city official concerning its recreational marijuana business at the phone number or e-mail 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.

(r) Separation of Marijuana Businesses. A cultivation facility and manufacturer are separate marijuana businesses requiring separate licenses and separate premises. A medical marijuana center or cultivation facility and a recreational marijuana center or cultivation facility are separate marijuana businesses requiring separate licenses and separate premises. In addition to all other application requirements for separate premises, each business shall:

(1) Have separate operations, ventilation, security, and fire suppression systems, and separate access from a public area; and

(2) Be divided within a building from floor to roof. Unless higher performance is required by applicable law, there must be a minimum of a one-hour fire separation between a recreational marijuana business and any adjacent business; and

(3) Obtain delivery documents and manifests for movement of any marijuana between the cultivation facility and the manufacturer.

(s) Additional Requirements for Testing or Production of Recreational Marijuana.

(1) No recreational marijuana business may use metals, butane, propane, or other solvent or flammable product, or produce flammable vapors to process or test marijuana unless the process used and the premises are verified as safe and in compliance with all applicable codes by a qualified industrial hygienist; and

(2) The city shall require the business to obtain verification from a qualified industrial hygienist that the manner in which the business producing or testing marijuana complies with all applicable laws and does not produce noxious or dangerous gases or odors or otherwise create a danger to any person or entity in or near the businesses.

(t) Packaging at a Recreational Marijuana Center. Provided that recreational marijuana has been delivered to a recreational marijuana center from a cultivation facility packaged and labeled as provided in this chapter, employees at a recreational marijuana center may package and label any marijuana that results from the sale of recreational marijuana in amounts less than as packaged for delivery to the center.

(u) Packaging of Marijuana-Infused Product. Unless the actual amount of marijuana in a marijuana-infused product is contained on the label of the packaged product, any product over one ounce shall be presumed to have more than one ounce of marijuana in the product.

(v) Scanner for Proof of Age. The marijuana business shall verify the proof of age of every person entering the business with an electronic ID scanner. An "electronic ID scanner" is a device that is capable of quickly and reliably confirming the validity of an identification using computer processes that contains all of the components approved by the city manager.

(w) Organization of Cultivation Facilities. All cultivation facilities shall be organized in orderly rows with aisles at least three feet wide, and no more than eight feet between an aisle and the next aisle or the aisle and a wall, and clear access to all exits, unless the city manager determines that the business has provided a dimensioned floor plan that provides equivalent access and separation between plants and to exits.

6-16-9 Right of Entry – Records to be Maintained.

(a) Records to be Maintained. Each licensee shall keep a complete set 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 necessary to show fully the business transactions of such licensee. Receipts shall be maintained in a computer program or by pre-numbered receipts and use for each sale. 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. The licensee shall also maintain inventory records evidencing that no more recreational marijuana was within the recreational marijuana business than allowed by applicable law. 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. The city may require any licensee 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.

(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.

(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. If the city finds that such documents

(d) Business Conducted Within Building. Any and all cultivation, production, distribution, possession, storage, display, sales or other distribution of marijuana shall occur only within the restricted area of a recreational marijuana business and shall not be visible from the exterior of the business.

(e) Owner or Business Manager Required on Premises. No recreational marijuana business shall be managed by any person other than the licensee or the business manager listed on the application for the license or a renewal thereof. Such licensee or business manager shall be on the premises and responsible for all activities within the licensed business during all times when the business is open or in the possession of another person. In the event the licensee intends to employ a business manager that was not identified on the license or renewal application, the licensee shall report the name of such business manager to the city, and such business manager shall submit to the city, at least thirty days prior to commencing serving as the business manager, an application containing all of the information required by this chapter and on the license application. Such licensee shall report to the city any change in business managers at least thirty days prior to employing an additional business manager, and no more than five days after a business manager is released from such position.

(f) Hours of Operation. A recreational marijuana center shall be closed to the public, and no sale, or other distribution of marijuana shall occur upon the premises or via delivery from the premises, between the hours of 7:00 p.m. and 8:00 a.m.

(g) Use of Pesticides. No pesticides or insecticides which are prohibited by applicable law for fertilization or production of edible produce shall be used on any marijuana cultivated, produced, or distributed by a recreational marijuana business. A recreational marijuana business shall comply with all applicable law regarding use of pesticides including without limitation, Chapter 6-10, "Pesticide Use," B.R.C. 1981.

(h) Ventilation Required. A recreational marijuana business shall be ventilated so that the odor of marijuana cannot be detected by a person with a normal sense of smell at the exterior of the recreational marijuana business or at any adjoining use or property.

(i) Renewable Energy Usage Required. A marijuana business shall directly offset 100% of its electricity consumption through the purchase of renewable energy in the form of Windsource, a verified subscription in a Community Solar Garden or renewable energy generated onsite, or an equivalent that is subject to approval by the city. For a recreational marijuana center that has converted pursuant to Subsection 6-16-3(f) or co-located pursuant to Subsection 6-16-3(g), or a marijuana-infused product manufacturer licensed by the city on October 22, 2013, this requirement shall apply at the time of renewal of the marijuana business license following October 22, 2013.

(j) Limitations on Inventory. The recreational marijuana business shall not maintain any more marijuana within the premises than the amount stated on the business' license application to the state and city. No plants shall be located in a recreational marijuana center or a marijuana-

infused product manufacturer. In addition, the establishment shall not maintain any more marijuana within the restricted area than:

(1) Cultivation facility: 1,000 plants, provided however a cultivation facility may have more than 1,000 plants if the licensee provides an additional enforcement fee in an amount of $1 per plant over 1,000 plants. Such fee shall be payable annually at the time of licensing and renewal; or

(2) MIP: 600 pounds of marijuana that has not been incorporated into a product and 150 pounds of marijuana-infused products; or

(3) Testing facility: 100 pounds of raw marijuana and 100 pounds of marijuana-infused product.

(k) Reporting Requirements. A recreational marijuana business shall report to the recreational marijuana licensing authority each of the following within the time specified. If no time is specified, the report shall be provided within 72 hours of the event.

(1) Transfer or change of financial interest, business manager, or financier in the license to the city at least thirty days before the transfer or change;

(2) Sales and taxable transactions and file sales and use tax reports to the city monthly;

(3) A violation of any law by any licensee or applicant of a recreational marijuana business;

(4) A notice of potential violation of any law related to the licensee;

(5) Any report that the recreational marijuana business is required to provide to the state; or

(6) Reports of all criminal activities or attempts of violation of any law at the recreational marijuana business or related thereto shall be reported to the Boulder Police Department within 12 hours of occurrence.

(l) No Sales Except Directly to User; No Deliveries. All sales of recreational marijuana shall be made in person in the restricted area of a recreational marijuana center. All sales shall be in person, directly to the purchaser. No sales shall be made via telephone, internet or other means of remote purchase. Deliveries shall occur only in person to the purchaser at the time of purchase in the restricted area of a recreational marijuana center.

(m) Delivery Between Recreational Marijuana Businesses. It shall be unlawful for any person to transport recreational marijuana, except as specifically allowed by applicable law, unless the recreational marijuana being transported meets the following requirements:

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.

(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.

(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. 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. 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. 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.

(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. Such reports shall include, without limitation, for both acquisitions from wholesalers and retail sales transactions, the following:

(1) Date, weight, type of marijuana and dollar amount or other consideration of transaction; and

(2) For wholesale transactions, the 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 Renewable Energy Credit (REC) Purchases. The records to be maintained 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 business 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 city manager.

6-16-10 Requirements Related to Monitoring and Security of Restricted Areas and Inventory.

All components of the security plan submitted with the application, as it may be amended, shall be in good working order, monitored and secured 24-hours per day. A separate security system is required for each business. The security plan must include, at a minimum, the following security measures:

(a) Cameras. The recreational marijuana business shall install and use security cameras to monitor and record all areas of the premises (except in restrooms), and where persons may gain or attempt to gain access to marijuana or cash maintained by the recreational marijuana business. Cameras shall record operations of the business to the off-site location, as well as all potential areas of ingress or egress to the business with sufficient detail to identify facial features and clothing. Recordings from security cameras shall be maintained for a minimum of forty days in a secure off-site location in the city or through a service over a network that provides on-demand access, commonly referred to as a "cloud." The off-site location shall be included in the security plan submitted to the city and provided to the Boulder Police Department upon request, and updated within 72 hours of any change of such location.

(b) Use of Safe for Storage. The recreational marijuana business shall install and use a safe for storage of any processed marijuana and cash on the premises when the business is closed to the public. The safe shall be incorporated into the building structure or securely attached thereto. For marijuana-infused products that must be kept refrigerated or frozen, the business may lock the refrigerated container or freezer in a manner authorized by the city in place of use of a safe so long as the container is affixed to the building structure.

(c) Alarm System. The recreational marijuana business shall install and use an alarm system that is monitored by a company that is staffed twenty-four (24) hours a day, seven (7) days a week. The security plan submitted to the city shall identify the company monitoring the alarm, including contact information, and updated within 72 hours of any change of monitoring company.

6-16-11 Requirements for Public Health and Labeling.

(a) Recreational Marijuana-Infused Products. The production of any marijuana-infused product shall be at a marijuana-infused product manufacturer that meets all requirements of a retail food establishment as set forth in § 25-4-1601, et seq., C.R.S., the Food Protection Act. The production of any product containing marijuana shall comply with all health and safety standards thereof. The licensee shall comply with all applicable state and local health regulations related to the production, preparation, labeling and sale of prepared food items as if the recreational marijuana infused products were food items.

(b) Labeling and Packaging Requirements. All recreational marijuana sold or otherwise distributed by the licensee shall be packaged and labeled in a manner that advises the purchaser that it contains marijuana and specifies the amount of marijuana in the product, and that the marijuana is intended for use solely by a person lawfully possessing recreational marijuana. The label shall be in compliance with all applicable requirements of the state.

(c) The product shall be packaged in a sealed container that cannot be opened without obvious damage to the packaging.

6-16-12 Compliance with Other Applicable Law.

(a) Application of State Law. Except as may be provided otherwise in this chapter, or rules adopted pursuant to this chapter or interpretations by the city, any law or regulation adopted by the state governing the cultivation, production, possession or distribution of marijuana for recreational use shall also apply to recreational marijuana businesses in the city. Provided however, if a state law or regulation permits what this chapter prohibits, this chapter shall prevail. Compliance with any applicable state law or regulation that does not permit what this chapter prohibits shall be deemed an additional requirement for issuance or denial of any license under this chapter, and noncompliance with any applicable state law or regulation is unlawful and shall be grounds for revocation or suspension of any license issued under this chapter. No recreational marijuana business shall continue operations in violation of an additional state law or regulation, which does not permit what this chapter prohibits, applicable within the city after the effective date of the state law or regulation.

(b) Revocation of License Upon Denial or Revocation of State License or Applicable Federal Prohibition. If the state prohibits the cultivation, production, possession or other distribution of marijuana through recreational marijuana businesses, or if a recreational marijuana business is denied a recreational marijuana business license or has such license revoked pursuant to § 12-43.3-101, et seq., C.R.S. or if a court of competent jurisdiction determines that the federal government's prohibition of the cultivation, production, possession or other distribution of marijuana through recreational marijuana businesses supersedes state law, any license issued pursuant to this chapter shall be deemed to be immediately revoked by operation of law, with no ground for appeal or other redress on behalf of the licensee.

(c) Revocable Privilege. A recreational marijuana business license is a revocable privilege, and no applicant therefore or holder thereof shall be deemed to have acquired any property interest therein.

6-16-13 Prohibited Acts.

(a) Prohibited Acts. It shall be unlawful for any person to:

(1) Cultivate, distribute, possess, produce, smoke, use or ingest marijuana openly or publicly in a place open to the general public;

(2) Smoke, use or ingest on the premises of the recreational marijuana business (1) marijuana, (2) fermented malt beverage, (3) malt, vinous and spirituous liquor, or (4) a controlled substance, except in compliance with the directions on a legal prescription for the person from a doctor with prescription writing privileges;

(3) Operate or be in physical control of any recreational marijuana business, liquor establishment, vehicle, aircraft or motorboat while under the influence of alcohol or marijuana or other intoxicant;

(4) Possess more than six marijuana plants without a recreational marijuana business license for a cultivation facility;

(5) Possess more than one ounce of a usable form of marijuana without a recreational marijuana business license for a center or a marijuana-infused product manufacturer;

(6) Obtain marijuana for remuneration from a person who is not licensed as a recreational marijuana business;

(7) Possess or operate a recreational marijuana business in violation of this chapter;

(8) Produce, distribute or possess more marijuana than allowed in this chapter, or than disclosed in the application to the state for a recreational marijuana business license, or other applicable law;

(9) Distribute marijuana for remuneration without a recreational marijuana business license or outside of the restricted area of the recreational marijuana business;

(10) Possess recreational marijuana, or own or manage a recreational marijuana business, or own or manage a building with a recreational marijuana business, where there is possession of recreational marijuana, by a person who is not lawfully permitted to possess recreational marijuana;

(11) Possess or operate a recreational marijuana business in a location or in a manner for which a recreational marijuana business license is prohibited by the terms of this chapter;

(12) Operate a recreational marijuana business without a recreational marijuana business license from the city;

(13) Operate a recreational marijuana business in a manner that is not consistent with the items disclosed in the application for the recreational marijuana business, or is in violation of any plan made part of the license application;

(14) Operate a recreational marijuana business without disclosing, in the application for a recreational marijuana business license or an amendment thereto, an agent who either (1) acts with managerial authority, (2) provides advice to the recreational marijuana business for compensation, or (3) receives periodic compensation totaling $1,000 or more in a single year for services related to the recreational marijuana business. It shall be an affirmative defense that the undisclosed person was an attorney, accountant, bookkeeper, or mail delivery person;

(15) Own or manage a recreational marijuana business where distribution occurs of a marijuana-infused product that was produced in a manner that is not in compliance with this chapter;

(16) Operate a recreational marijuana business without a recreational marijuana business license prior to passing the inspection required by this chapter;

(17) Make any changes, or for the licensee to allow any changes, to the items included in the plans submitted with the license application and approved by the city, or the individuals identified in the application, without prior approval of the city;

(18) Attempt to use or display a recreational marijuana business license at a different location or for a different business entity than the location and business entity disclosed on the application for the issued license;

(19) Own or manage a recreational marijuana business in which another person cultivates, produces, distributes or possesses marijuana, in violation of this chapter or any other applicable law;

(20) Allow an owner or business manager that has not been disclosed to the city as required by this chapter to operate the business;

(21) Own, manage or possess a recreational marijuana business where marijuana is outside of the restricted area portion of such business.

(22) Possess a number of flowering plants that is more than one-half of the recreational marijuana plants that are lawfully possessed by a person;

(23) Dispose of marijuana or any byproduct of marijuana containing marijuana in a manner contrary to this chapter;

(24) Distribute a marijuana plant to any person;

(25) Deliver or transport marijuana to a person or between recreational marijuana businesses in a manner contrary to this chapter or other law;

(26) Refuse to allow inspection of a recreational marijuana business upon request of a city employee or consultant of the city. Any licensee, owner, business manager, or operator of a recreational marijuana business, or the owner of the property where a recreational marijuana business is located, may be charged with this violation;

(27) Advertise or publish materials or display signs that are in violation of this code;

(28) Violate any provision of this code or any condition of an approval granted pursuant to this code or any law, rule or regulation applicable to the use of recreational marijuana or the operation of a recreational marijuana business;

(29) Permit any other person to violate any provision of this code or any condition of an approval granted pursuant to this code, or any law, rule or regulation applicable to the use of recreational marijuana or the operation of a recreational marijuana business;

(30) Lease any property to a recreational marijuana business that has marijuana on the property without a recreational marijuana business license from the city;

(31) Operate a private club where marijuana is possessed or used by any person at the private club;

(32) Remove marijuana harvested from a plant from the enclosed locked space where the plant was grown, except as provided in this chapter;

(33) Distribute marijuana within a recreational marijuana center to any person who shows visible signs of intoxication from alcohol, marijuana, or other drugs; or

(34) Permit a minor on the premises of the business;

(b) Prima Facie Evidence. Prima facie indicia of impairment or being under the influence of marijuana includes bloodshot eyes, watery eyes, eyelid tremors, green particulate on tongue, dilated pupils, or dry mouth, or any other indicators of impairment.

6-16-14 Suspension or Revocation of License; Imposition of Fines.

(a) A recreational marijuana business license may be suspended or revoked for any of the following violations:

(1) Conviction of the business, a licensee or any owner, business manager, or financier of any violation of this chapter or any other law, rule or regulation applicable to the use of recreational marijuana or operation of a recreational marijuana business;

(2) Misrepresentation or omission of any material fact, or false or misleading information, on the application or any amendment thereto, or any other information provided to the city related to the recreational marijuana business;

(3) Violation of any law by which, if occurring prior to submittal of the application, could have been cause for denial of the license application;

(4) Distribution of recreational marijuana, including, without limitation, delivery or transporting marijuana, in violation of this chapter or any other applicable law, rule or regulation;

(5) Operation of a recreational marijuana business in violation of the specifications of the license application, any conditions of approval by the city, or any violation of this chapter or any other law, rule or regulation applicable to the use of recreational marijuana or operation of a recreational marijuana business;

(6) Failure to maintain, or provide to the city upon request, any books, recordings, reports or other records required by this chapter;

(7) Failure to timely notify the city and to complete necessary city forms for changes in financial interest, business managers, financier or agent;

(8) Temporary or permanent closure, or other sanction of the business, by the city, or by the county or State Public Health Department or other governmental entity with jurisdiction, for failure to comply with health and safety provisions of this chapter or otherwise applicable to the business or any other applicable law;

(9) Revocation or suspension of another recreational marijuana business license or any other license issued by the city, the state, or any other jurisdiction held by any licensee of the recreational marijuana business; or

(10) Failure to timely correct any violation of any law, or comply with any order to correct a violation of any law within the time stated in the notice or order.

(b) In the event a business or licensee is charged with violation of any law, upon which a final judgment would be grounds for suspension or revocation of the license, the city may suspend the license pending the resolution of the alleged violation.

(c) Civil penalties for violations of this chapter may be imposed by the city against the business or any licensee up to $5,000 per licensee per occurrence.

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

6-16-15 Term of License – Renewals – Expiration of License.

(a) Term of License. A recreational marijuana business license shall be valid for one year. The license shall expire on the date stated on the license, but no more than twenty-four months,

to facilitate the administration by the city of renewals and coordinate with the date for renewal of the state license of such licenses.

(b) Renewal of License. The licensee shall apply for renewal of the recreational marijuana business license at least forty-five days before the expiration of the license. The licensee shall apply for renewal using forms provided by the city. If the applicant fails to apply for renewal at least forty-five 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 application submits a late filing fee of $5,000 at the time of submittal of the renewal application.

(1) The renewal license fee, and late fee if applicable, shall accompany the renewal application. Such fee is nonrefundable.

(2) 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.

(3) 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.

(4) In the event the business 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.

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

(6) 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 police report numbers or case numbers of all police calls to the recreational marijuana business; and for calls resulting in a charge of a violation of any law, the charge, case number and disposition of any of the charges.

(7) The city shall not accept renewal applications after the expiration of the license, but instead shall require the applicant to file a new license application.

(8) In the event there have been allegations of violations of this code by any of the licensees or the business submitting a renewal application, the city may hold a hearing pursuant to Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, prior to approving the renewal application. The hearing shall be to determine whether the application and proposed licensees comply with this chapter and whether the

operation of the business has been in compliance with this code. If the city does not hold a hearing and the application and the licensees do not meet the requirements of this chapter, or the business has been operated in the past in violation of this code, the renewal application may be denied or issued with conditions, and the decision shall be final subject to judicial review as provided in Subsection 6-16-4(e).

(c) Nonpayment of Tax. In the event a recreational marijuana business that has been open and operating and submitting monthly sales and use tax returns to the city ceases providing sales and use tax returns to the city for a period of three months or longer, the recreational marijuana business license shall be deemed to have expired and a new license shall be required prior to reopening at the location of the business.

(d) Expiration of License. Expiration of a recreational marijuana business license for any reason including without limitation, pursuant to subsection (c) above shall be considered an inactive local license as described in § 12-43.3.312, C.R.S.

6-16-16 City Manager Authorized to Issue Rules.

The city manager may adopt rules and regulations that the city manager determines are reasonably necessary to implement the requirements of this chapter.

Section 2. A new section 4-20-67, B.R.C. 1981, is added to read:

4-20-67 Recreational Marijuana Businesses.

Application and license fees for recreational marijuana businesses shall be up to the following amounts:

(a)	Application fee for conversion of licenses under Chapter 6-14, 'Medical Marijuana,"B.R.C. 1981 (to be received from the state before application is deemed complete):	$ 250
(b)	Application fee for new recreational marijuana licenses not converted from medical marijuana businesses (to be received from state before application is deemed complete):	$ 2,500
(c)	Criminal background check fee, per person checked:	Actual Costs
(d)	License fee, per year:	$ 2,475
(e)	Operating fee, per year	$ 2,000
(f)	Renewal application fee, per year:	$ 3,480

(g)	Application for a new business manager:	$ 150
(h)	Business entity changes or addition of financiers:	$ 2,000
(i)	Modification of premises:	$ 3,000
(j)	Excess plant fee for each plant over 1,000 in cultivation facility:	$1 annually per plant

The application fee, operating fee, costs, excess plant fee, and renewal fee paid are nonrefundable. The new license fee may be refunded if the new license application is denied. No fee will be refunded in the instance of suspension or revocation.

Section 3. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 4. The City Council finds that preservation of the public, peace, health, and property justify the adoption of this ordinance as an emergency measure. The nature of the emergency is described, in part, by the findings of fact set forth in this ordinance. The City Council further finds that changes were adopted by the council at second reading and this is the last meeting before this council's term expires on November 19, 2013 when this ordinance must be finally adopted. Therefore, the City Council orders that this ordinance shall be effective upon passage.

Section 5. The City Council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 3rd day of September 2013.

Mayor

Attest:

City Clerk

READ ON SECOND READING, PASSED, ADOPTED AS AN EMERGENCY MEASURE BY TWO-THIRDS OF COUNCILMEMBERS PRESENT, AND ORDERED PUBLISHED BY TITLE ONLY this 12th day of November, 2013.

Mayor

Attest:

City Clerk

ORDINANCE NO.7916

(Recreational Marijuana Excise and Sales Tax)

AN EMERGENCY ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF BOULDER AT THE GENERAL MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2013, THE ISSUE OF WHETHER THE CITY OF BOULDER TAXES SHOULD BE INCREASED BY AN EXCISE TAX OF UP TO 10 PERCENT AND A SALES AND USE TAX ON RECREATIONAL MARIJUANA OF UP TO 10 PERCENT AND SETTING FORTH RELATED DETAILS.

WHEREAS the City Council finds that:

A. Section 16 of Article XVIII of the Colorado Constitution authorizes a system of state and local licensing for businesses engaged in the cultivation, testing, manufacturing and retail sale of marijuana.

B. City Council has determined to allow recreational marijuana businesses within the city.

C. There are indirect costs to the city of the use of marijuana that are not covered by the license and application fees paid by the marijuana businesses. Many of those costs are related to the fact that marijuana is illegal at the federal level and the state has not been able to fully fund enforcement of laws adopted at the state level, leaving enforcement of marijuana laws to the city. Further, there are not comprehensive substance abuse programs related to the legal use of marijuana.

D. Imposing the tax contemplated by the constitutional amendment legalizing recreational marijuana would provide the resources necessary for the city to be able to pay the indirect costs, including education and programs, related to the use of marijuana.

E. It is appropriate for voters to approve collection, retention, and expenditure of the full amount collected from the tax proposed by the ballot issue described below.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. A general municipal coordinated election will be held in the City of Boulder, County of Boulder and State of Colorado, on Tuesday, November 5, 2013, between the hours of 7 a.m. and 7 p.m.

Section 2. At that election, there shall be submitted to the electors of the City of Boulder entitled by law to vote the issue of an excise and a sales tax on recreational marijuana.

Section 3. The official ballot shall contain the following ballot title, which shall also be the designation and submission clause for the issue:

BALLOT ISSUE NO. ___

RECREATIONAL MARIJUANA TAX

SHALL CITY OF BOULDER TAXES BE INCREASED BY ($3,360,000 first full fiscal year dollar increase) ANNUALLY AND BY SUCH AMOUNTS AS ARE RAISED ANNUALLY THEREAFTER BY THE IMPOSITION OF AN EXCISE TAX OF 5 PERCENT IN 2014 AND UP TO 10 PERCENT THEREAFTER ON THE CULTIVATION FACILITY AT THE AVERAGE MARKET RATE AT THE POINT OF TRANSFER FROM THE CULTIVATION FACILITY AND AN ADDITIONAL SALES AND USE TAX OF 3.5 PERCENT IN 2014 AND UP TO 10 PERCENT THEREAFTER ON RECREATIONAL MARIJUANA AS PROVIDED IN ORDINANCE NO. 7916 COMMENCING JANUARY 1, 2014 **WITH SUFFICIENT REVENUES FROM THE EXCISE AND SALES AND USE TAX TO BE USED FOR PUBLIC SAFETY, ENFORCEMENT AND ADMINISTRATIVE PURPOSES AND FOR COMPREHENSIVE SUBSTANCE ABUSE PROGRAMS INCLUDING WITHOUT LIMITATION PREVENTION, TREATMENT, EDUCATION, RESPONSIBLE USE, INTERVENTION, AND MONITORING, WITH AN EMPHASIS ON YOUTH, AND WITH THE REMAINDER USED BY THE GENERAL FUND**;

AND IN CONNECTION THEREWITH,

SHALL THE FULL PROCEEDS OF SUCH TAXES AT SUCH RATES AND ANY EARNINGS THEREON BE COLLECTED, RETAINED, AND SPENT, AS A VOTER-APPROVED REVENUE CHANGE WITHOUT LIMITATION OR CONDITION, AND WITHOUT LIMITING THE COLLECTION, RETENTION, OR SPENDING OF ANY OTHER REVENUES OR FUNDS BY THE CITY OF BOULDER UNDER ARTICLE X SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

FOR THE MEASURE ____ AGAINST THE MEASURE ____

Section 4. If a majority of all the votes cast at the election on the measure submitted are for the measure, the measure shall be deemed to have passed, and the City Council authorized to make amendments to the Boulder Revised Code as provided below, effective January 1, 2014, and City Council may adopt amendments to these provisions and adopt other amendments to the Boulder Revised Code to implement these excise and sales and use taxes as may be necessary to implement the intent and purpose of this ordinance.

Section 5. If approved by the voters, effective January 1, 2014, the Boulder Revised Code is amended as follows:

Chapter 3-14 Recreational Marijuana Taxes

3-14-1 Legislative Intent.

The City Council intends that an additional excise tax be imposed on the first sale or transfer of recreational marijuana by a retail cultivation facility within the city and an additional sales tax imposed on every retail sale of recreational marijuana or recreational marijuana-infused product. The purpose of this tax is to increase the revenue base for the city to provide municipal improvements and services related to the introduction of a new marijuana industry to the city. Revenues from the tax shall be deposited in the general fund and shall be available to pay for the general expenses of government. However, although the City Council recognizes that it cannot bind future City Councils, it nonetheless declares its intention that sufficient revenues generated by this tax be appropriated by future City Councils for public safety, enforcement and administrative purposes and for comprehensive substance abuse programs including without limitation prevention, treatment, education, responsible use, intervention and monitoring, with an emphasis on youth with the remainder used to fund other governmental expenses

including police, fire, libraries transportation and general government. Each council shall decide what constitutes sufficient funds. As used here, "sufficient" shall mean an amount determined by council to balance the revenue received with the established need in the community for programs to address the subjects identified above.

3-14-2 Imposition and Rate of Tax.

(a) Excise Tax. There is levied and shall be paid and collected an excise tax of five percent on the average market rate of unprocessed recreational marijuana that is sold or transferred from a recreational marijuana cultivation facility.

(b) Sales and Use Tax. There is hereby levied and there shall be collected and paid a sales and use tax, in addition to the sales and use tax levied in Chapter 3-2, "Sales and Use Tax," B.R.C. 1981, of 3.5 percent on the full purchase price paid or charged for tangible personal property and taxable services purchased or sold at retail by every recreational marijuana business exercising a taxable privilege in the city by the sale or use of such property or services. The sales tax is levied on all sales of tangible personal property or taxable services, except those specifically exempted and is collected by the vendor and remitted to the city. The use tax is levied upon the privilege of using in the city, personally or as part of rendering a service, tangible personal property or taxable services upon which a municipal sales and use tax has not been paid and is paid by either the recreational marijuana business in the city or the consumer.

3-14-3 Vendor Liable for Tax.

(a) Excise Tax. Each recreational marijuana cultivation facility shall pay the tax imposed in Section 3-14-2(a) on every sale or transfer of recreational marijuana from the cultivation facility.

(b) Sales and Use Tax. Each recreational marijuana center shall pay the tax imposed in Section 3-14-2(b) on every sale or transfer of recreational marijuana or a recreational marijuana product from the recreational marijuana center.

(c) The burden of proving that any transaction is not subject to the tax imposed by this Chapter is upon the person upon whom the duty to collect the tax is imposed.

3-14-4 Taxes Collected are Held in Trust.

All sums of money paid by a person as the additional excise or sales and use tax on recreational marijuana tax imposed by this Chapter are public monies that are the property of the city. The person required to collect and remit the additional recreational marijuana excise or sales and use tax shall hold such monies in trust for the sole use and benefit of the city until paying them to the city manager.

3-14-5 Definition.

As used in this Chapter, "average market rate" means the amount determined by the State of Colorado pursuant to § 39-28.8-101(1) C.R.S. or such alternate amount as may be determined by the city manager as the average price of unprocessed recreational marijuana that is sold or transferred from a cultivation facility to a retail marijuana center or manufacturer.

3-14-6 Licensing and Reporting Procedure.

(a) Every person with a duty to collect the excise or the sales and use tax imposed by this Chapter shall obtain the license required by Section 3-2-11, "Sales and Use Tax License," B.R.C., 1981 to collect the tax and shall report such taxes collected on forms prescribed by the city manager and remit such taxes to the city on or before the twentieth day of the month for the preceding month or months under report.

(b) Each recreational business is required to obtain a license pursuant to Section 3-2-11 "Sales and Use Tax License," B.R.C., 1981. Such license is valid so long as:

(1) the business remains in continuous operation, and

(2) the sales and use tax license is not canceled by the licensee or revoked by the city, and

(3) so long as the business holds a valid recreational marijuana business license from the city.

(c) Whenever a business entity that is required to be licensed under this Chapter is sold, purchased, or transferred, so that the ownership interest of the purchaser or seller changes in any respect, the purchaser shall obtain a new sales tax license.

(d) The sales tax license may be revoked as provided in Section 3-2-13, "Revocation of License," B.R.C. 1981.

3-14-7 Maintenance and Preservation of Tax Returns, Reports, and Records.

(a) The city manager may require any person to make such return, render such statement, or keep and furnish such records as the manager may deem sufficient and reasonable to demonstrate whether or not the person is liable under this Chapter for payment or collection of the tax imposed hereby.

(b) Any person required to make a return or file a report under this Chapter shall preserve those reports as provided in Section 3-2-18, "Taxpayer Duty to Keep Records, Provide Information and File Returns," B.R.C. 1981.

(c) The city manager shall maintain all reports and returns of taxes required under the Chapter as provided in Section 3-2-20, "Preservation of Tax Returns and Reports," B.R.C. 1981.

3-14-8 Interest and Penalties for Failure to File Tax Return or Pay Tax.

(a) Penalties for failure of a person to collect the additional recreational marijuana excise or sales and use tax or to make a return and remit the correct amount of tax required by this Chapter and procedures for enforcing such penalties are as prescribed in Section 3-2-22, "Penalties for Failure to File Tax Return or Pay Tax (Applies to Entire Title)," B.R.C. 1981.

(b) Interest on overpayments and refunds is as prescribed in Section 3-2-24, "No Interest on Overpayments and Refunds (Applies to Entire Title)," B.R.C. 1981.

3-14-9 Refunds.

Refunds of taxes paid under this Chapter are as prescribed in Section 3-2-23, "Refunds (Applies to Entire Title)," B.R.C. 1981.

3-14-10 Enforcement of Tax Liability.

(a) The additional recreational marijuana excise and sales and use tax imposed by this Chapter, together with all interest and penalties pertaining thereto, is a first and prior lien on tangible personal property in which the person responsible to collect and remit the tax has an ownership interest, subject only to valid mortgages or other liens of record at the time of and prior to the recording of a notice of lien, as provided in Subsection 3-2-27(c), "Tax Constitutes Lien," B.R.C. 1981.

(b) The provisions of Sections 3-2-27, "Tax Constitutes Lien,"3-2-29, "Sale of Business Subject to Lien," 3-2-30, "Certificate of Discharge of Lien," 3-2-31, "Jeopardy Assessment," 3-2-32, "Enforcing the Collection of Taxes Due (Applies to Entire Title)," 3-2-33, "Recovery of Unpaid Tax by Action at Law," 3-2-34, "City May be a Party Defendant," 3-2-35, "Injunctive Relief," 3-2-36, "Obligations of Fiduciaries and Others," 3-2-37, "Violations of Tax Chapter," and 3-2-38, "Limitations," B.R.C. 1981, govern the authority of the city manager to collect the taxes, penalties and interest imposed by this Chapter.

3-14-11 Duties and Powers of City Manager.

The city manager is authorized to administer the provisions of this Chapter and has all other duties and powers prescribed in Section 3-2-17, "Duties and Powers of City Manager," B.R.C. 1981.

3-14-12 City Employee Conflicts of Interest Prohibited.

No deputy, agent, clerk or other officer or employee of the city engaged in any activity governed by this Chapter shall engage in the business or profession of tax accounting or accept employment with or without compensation from any person holding a sales tax license from the city for the purpose, directly or indirectly, of preparing tax returns or reports required by the city, the State of Colorado, its

political subdivisions, any other state or the United States, or accept any employment for the purpose of advising, preparing materials or data or auditing books or records to be used in an effort to defeat or cancel any tax or part thereof that has been assessed by the city, the State of Colorado, its political subdivisions, any other state, its political subdivisions or the United States.

3-14-13 Prohibited Acts.

It is unlawful for any recreational marijuana business to sell or transfer retail marijuana without the sales tax license required by Section 3-2-11, "Sales and Use Tax License," B.R.C. 1981, and the recreational marijuana business license required by Chapter 6-14, "Medical Marijuana," B.R.C. 1981, and any other license required by law, or to willfully make any false or fraudulent return or false statement on any return, or to willfully evade the payment of the tax, or any part thereof, as imposed by this Chapter.

Section 6. The election shall be conducted under the provisions of the Colorado Constitution, the Charter and ordinances of the City, the Boulder Revised Code, 1981, and this ordinance, and all contrary provisions of the statutes of the State of Colorado are hereby superseded.

Section 7. The officers of the City are authorized to take all action necessary or appropriate to effectuate the provisions of this ordinance and to contract with the county clerk to conduct the election for the City.

Section 8. If any section, paragraph, clause, or provision of this ordinance shall for any reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining provisions of this ordinance. The tax established by this measure is intended to be authorized under any lawful means of taxation, including license taxation pursuant to city of Boulder Charter Section 122.

Section 9. This ordinance is necessary to protect the public health, safety and welfare of the residents of the City, and covers matters of local concern.

Section 10. The City Council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

Section 11. The City Council finds that this ordinance is necessary for the preservation of the public peace, health, or property. The City Council amended the ordinance on third reading. This ordinance includes a ballot measure. Emergency passage is necessary to allow time for this matter to be placed on the November 5, 2013 ballot.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 16th day of July 2013.

Mayor

Attest:

City Clerk

READ ON SECOND READING, AMENDED, AND ORDERED PUBLISHED BY TITLE ONLY this 5th day of August 2013.

Mayor

Attest:

City Clerk

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READ ON THIRD READING, AMENDED, PASSED, ADOPTED AS AN EMERGENCY MEASURE BY TWO-THIRDS COUNCILMEMBERS PRESENT, AND ORDERED PUBLISHED BY TITLE ONLY this 20th day of August 2013.

Mayor

Attest:

City Clerk

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