

ORDINANCE NO. 36

Series 2020

AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 14 OF TITLE 4 OF THE BRECKENRIDGE TOWN CODE CONCERNING REGULATED MARIJUANA BUSINESSES

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. Chapter 14 of Title 4 of the Breckenridge Town Code is repealed and reenacted with changes so as to read in its entirety as follows:

CHAPTER 14

MARIJUANA LICENSES AND REGULATIONS

SECTION:

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4-14-1: SHORT TITLE: This Chapter is to be known and may be cited as the "Town Of Breckenridge 2020 Marijuana Licensing Ordinance."

4-14-2: FINDINGS: The Town Council adopts this Chapter based upon the following findings of fact:

- A. The Colorado Marijuana Code (Article 10, Title 44, C.R.S.) recognizes the power of a municipality to adopt and enforce its own rules and regulations for

the licensing of regulated marijuana businesses within its jurisdiction. Specifically, the Colorado Marijuana Code authorizes municipalities to:

1. prohibit the operation of medical marijuana stores, medical marijuana cultivation facilities, and medical marijuana-infused products facilities manufacturers' licenses within the municipality (Section 44-10-104(1)(b), C.R.S.);
 2. enact ordinances or regulations governing the time, place, manner, and number of retail marijuana businesses within the boundaries of the municipality, which may include a local licensing requirement (44-10-104(3), C.R.S.);
 3. adopt an ordinance containing specific standards for the issuance of local licenses (Section 44-10-301(2)(a)(I), C.R.S.);
 4. adopt additional local standards for the issuance of medical marijuana stores, medical marijuana cultivation facilities, and medical marijuana-infused products manufacturers' licenses, including, but not limited to, distance restrictions between premises for which licenses are issued; reasonable restrictions on the size of an applicant's licensed premises; and any other local requirement necessary to ensure the control of the premises and the ease of enforcement of the terms and conditions of the license (Section 44-10-301(2)(a)(II), C.R.S.);
 5. impose additional requirements necessary for the approval of applications under the Colorado Marijuana Code (Section 44-10-301(2)(c), C.R.S.);
 6. impose a separate local licensing requirements as a part of the municipality's restrictions on time, place, manner, and number of marijuana businesses within the municipality (Section 44-10-301(3)(b), C.R.S.);
 7. establish an application fee for a local license (Section 44-10-302(1), C.R.S.);
 8. enact ordinances or resolutions concerning matters authorized to local governments (Section 44-10-305(3), C.R.S.);
 9. enact reasonable regulations or other restrictions applicable to medical marijuana businesses licenses based on local government zoning, health, safety and public welfare laws for the distribution of medical marijuana that are more restrictive than the Colorado Marijuana Code (Section 44-10-313(1)(a), C.R.S.);
 10. adopt and enforce regulations for retail marijuana businesses that are at least as restrictive as the Colorado Marijuana Code and the state administrative regulations (Section 44-10-313(1)(b), C.R.S.);
 11. impose reasonable restrictions upon a local license (Section 44-10-313(7), C.R.S.); and
 12. adopt and impose operating fees on marijuana businesses located within its jurisdiction in an amount determined by the municipality (Section 44-10-803(3), C.R.S.).
- B. On November 6, 2012 the voters of the State of Colorado approved Amendment 64. Amendment 64 added Section 16 of Article XVIII to the Colorado Constitution.
- C. Section 16(5)(f) of Article XVIII of the Colorado Constitution authorizes a municipality to enact an ordinance or regulation, not in conflict with Section 16 of Article XVIII of the Colorado Constitution, governing the time, place, manner,

and number of marijuana establishments within the boundaries of the municipality.

- D. The presence of regulated marijuana businesses within the Town's Downtown Overlay District may discourage tourism, which is the economic lifeblood of the community. As such, regulated marijuana businesses should all be located outside of the Downtown Overlay District in order to protect, defend, and preserve the economic vitality of the Town.
- E. The Town Council finds, determines, and declares that to the extent the requirements of this Chapter differ from the requirements of the Colorado Marijuana Code, the requirements of this Chapter are more restrictive than the Colorado Marijuana Code.
- F. This Chapter is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort, and convenience of the Town and the inhabitants thereof.

4-14-3: PURPOSE: It is the purpose of this Chapter to:

- A. Require that regulated marijuana businesses that are located within the Town be operated in a safe manner that do not endanger the public welfare.
- B. Mitigate potential negative impacts that regulated marijuana businesses and that are located within the Town might cause on surrounding properties and persons.
- C. Regulate the conduct of persons owning, operating, and using regulated marijuana businesses that are located within the Town in order to protect the public health, safety, and welfare.
- D. Establish a non-discriminatory mechanism by which the Town can control, through appropriate regulation, the location and operation of regulated marijuana businesses that are located within the Town.
- E. Establish requirements and limitations on the location of regulated marijuana businesses without requiring the immediate closure of any currently licensed business.

4-14-4: AUTHORITY: The Town Council hereby finds, determines, and declares that it has the power to adopt this Chapter pursuant to:

- A. Section 16 of Article XVIII to the Colorado Constitution;
- B. The Colorado Marijuana Code, Article 10 of Title 44, C.R.S.;
- C. The applicable administrative regulations;
- D. The Local Government Land Use Control Enabling Act, Part 1 of Article 20 of Title 29, C.R.S.;
- E. Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers);
- F. Section 31-15-103, C.R.S. (concerning municipal police powers);
- G. Section 31-15-401, C.R.S. (concerning municipal police powers);
- H. Section 31-15-501, C.R.S. (concerning municipal authority to regulate businesses);
- I. The authority granted to home rule municipalities by Article XX of the Colorado Constitution; and
- J. The powers contained in the Breckenridge Town Charter.

4-14-5: DEFINITIONS:

- A. The definitions contained in the Colorado Marijuana Code and the applicable administrative regulations (as defined in Subsection B of this Section), each as amended from time to time, are incorporated into this Chapter by reference.
- B. As used in this Chapter the following words have the following meanings, unless the context clearly requires otherwise:

ADJACENT:	Adjacent to or contiguous with the proposed location of a regulated marijuana business. Adjacency is to be determined without regard to the existence of a platted or dedicated public street or alley, and real property that would otherwise be determined to be adjacent to a proposed regulated marijuana business does not lose its adjacency by virtue of the existence of a platted or dedicated public street or alley.
APPLICABLE ADMINISTRATIVE REGULATIONS:	Whichever of the state administrative regulations apply to the application or the license, including, but not limited to the regulations of the Colorado Department of Revenue, Marijuana Enforcement Division, found at 1 CCR 212.3, as amended from time to time, as well as any administrative regulations issued by the Local Licensing Authority pursuant to Section 4-14-33 of this Chapter.
APPLICANT:	A person who has submitted an application for license to the Local Licensing Authority that has not been approved or denied by the Local Licensing Authority.
APPLICATION:	An application for license submitted to the Local Licensing Authority.
BUILDING OFFICIAL:	The Chief Building Official of the Town, or the Chief Building Official's designee authorized to act pursuant to Section 1-7-2 of this Code.
COLORADO MARIJUANA CODE:	Article 10 of Title 44, C.R.S., as amended from time to time.
DAY:	A calendar day, unless otherwise indicated.
DOWNTOWN OVERLAY DISTRICT:	The geographic area of the Town identified as the Downtown Overlay District in the Town's Land Use Guidelines, as amended from time to time.
GOOD CAUSE:	For the purpose of denial of an application, the denial of the renewal of a license, or the imposition of discipline of a licensee, means: <ol style="list-style-type: none"> 1. The licensee or the applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, of provisions of this Chapter, the terms and conditions of any licensed issued by the Local Licensing Authority pursuant to this Chapter, the Colorado Marijuana Code, or any applicable administrative regulation; 2. The licensee or the applicant has failed to comply with any special terms or conditions that were placed on the license pursuant to an order of the State Licensing Authority or the Local Licensing Authority; or 3. The licensee's licensed premises have been operated in a manner that adversely affects the public health, welfare, or the

	safety of the immediate neighborhood in which the business is located.
HALFWAY HOUSE:	A group care facility for adults or juveniles who have been placed on probation or parole under applicable law.
LAND USE GUIDELINES:	Has the meaning provided in Section 9-1-5 of this Code.
LICENSE:	A license to operate a regulated marijuana business issued by the Local Licensing Authority pursuant to the this Chapter.
LICENSED PREMISES:	The premises that are the subject of a license.
LICENSEE:	A person holding a license.
LOCAL LICENSING AUTHORITY:	The Town Breckenridge Liquor and Marijuana Licensing Authority created pursuant to Title 2, Chapter 5 of this code.
MARIJUANA ACCESSORIES:	Has the meaning provided in Section 16(2)(g) of Article XVIII of the Colorado Constitution.
MEDICAL MARIJUANA BUSINESS:	Has the meaning provided in the Colorado Marijuana Code.
PERSON:	Has the meaning provided in Section 1-3-2 of this Code.
PRIMARY CAREGIVER:	Has the meaning provided in Section 25-1.5-106(2)(d.5), C.R.S.
PRIMARY CAREGIVER PERMIT:	A permit issued to a primary caregiver by the Local Licensing Authority pursuant to Section 4-14-28 of this Chapter.
REGULATED MARIJUANA BUSINESS:	A medical marijuana businesses and a retail marijuana businesses.
RESIDENTIAL USE:	Has the meaning provided in Section 9-1-5 of this code.
RETAIL MARIJUANA BUSINESS:	Has the meaning provided in the Colorado Marijuana Code.
STATE ADMINISTRATIVE REGULATIONS:	The administrative rules and regulations for regulated marijuana businesses issued by the Colorado Department of Revenue, Marijuana Enforcement Division, and found at 1 CCR 212.3, as amended from time to time.
STATE LICENSING AUTHORITY:	Has the meaning provided in the Colorado Marijuana Code.
TOWN:	Has the meaning provided in Section 1-3-2 of this Code.

4-14-6: LICENSE REQUIRED:

- A. No person may operate a regulated marijuana business within the Town without both a valid license issued by the Local Licensing Authority and a valid license issued by the State Licensing Authority.
- B. A separate license shall be required for each specific business or business entity and for each geographic location.

4-14-7: ADOPTION OF STATE CODE AND ADMINISTRATIVE REGULATIONS:

- A. The following laws, rules, and regulations are adopted by reference and made a part of this Chapter:
 - 1. The Colorado Marijuana Code;
 - 2. The state administrative regulations; and
 - 3. Any administrative regulations issued by the Local Licensing Authority pursuant to Section 4-14-33.
- B. Except where the provisions of this Chapter are inconsistent with or differ from the laws, rules, and regulations adopted by reference in Subsection A of this Section, or where, by their nature, the adopted laws, rules, and regulations cannot apply to the Local Licensing Authority, all of the provisions of the adopted laws, rules, and regulations apply to all applications received and licenses issued by the Local Licensing Authority pursuant to this Chapter. Where a provision of the adopted laws, rules, and regulations are applicable to the Local Licensing Authority the terms "State Licensing Authority," "Department," and "Division" shall mean the Local Licensing Authority, unless the context clearly indicates otherwise.
- C. If there is a conflict between the provisions of this Chapter and the adopted laws, rules, and regulations the provisions of this Chapter shall control to the fullest extent permitted by applicable law.

4-14-8: APPLICATION FOR LICENSE:

- A. A person seeking to obtain a license from the Local Licensing Authority shall file an application with the Town's Municipal Services Office. The Municipal Services Office is responsible for providing application forms to prospective applicants, and for generally supervising the application process up to the point that a completed application is submitted to the Local Licensing Authority for a decision. Once an application is determined to be complete, the application and all supporting documentation shall be forwarded to the Local Licensing Authority. The Local Licensing Authority shall make a final decision on the Application in accordance with Section 4-14-12.
- B. The Local Licensing Authority is only authorized to issue licenses for the following types of regulated marijuana businesses:
 - Retail Marijuana Store
 - Retail Marijuana Cultivation Facility
 - Retail Marijuana Products Manufacturer
 - Type 1 Medical Marijuana Center
 - Type 2 Medical Marijuana Center
 - Type 3 Medical Marijuana Center
 - Optional Premises Cultivation (Medical Marijuana)
 - Medical Marijuana Products Manufacturer
- C. The Local Licensing Authority shall not: (i) accept or process an application for a new regulated marijuana business, or (ii) approve and issue any new regulated marijuana business license or permit under this Chapter. However, the Local Licensing Authority may approve a transfer of ownership of an existing local license or a change of location of an existing licensed premises in accordance with the Marijuana Code, the applicable administrative regulations, and the applicable requirements of this Chapter. For the purpose of this Section, a "new regulated marijuana business" means a proposed regulated marijuana business that was not properly licensed by the Local Licensing Authority prior to November 11, 2014.
- D. A license issued by the Local Licensing Authority does not eliminate the need for the licensee to obtain other required Town licenses and permits related to the operation of the licensed premises, including, without limitation:

1. a development permit if required by the terms of Chapter 1 of Title 9 of this Code;
 2. a Town sales tax license;
 3. a Town Business and Occupational Tax License; and
 4. a building permit, mechanical permit, plumbing permit, or electrical permit if required by the terms of the Town's building and technical codes.
- E. Properly completed applications shall be processed by the Local Licensing Authority in order of receipt.
- F. At all times during the application process the applicant has the burden of establishing it is entitled to the license that is applied for.

4-14-9: FEES:

- A. An applicant for a new license shall pay to the Town a non-refundable operating fee when the application is filed. The purpose of the fee is to cover the direct and indirect costs to the Town of administering the local licensing mechanism established by this Chapter. For applications filed in 2020 the operating fees are as follows:

1. New medical marijuana business license:

Type of License	Local Operating fee
Type 1 Medical Marijuana Center	\$2,812.50
Type 2 Medical Marijuana Center	\$6,562.50
Type 3 Medical Marijuana Center	\$10,500.00
Optional Premises Cultivation License	\$2,062.50
Medical Marijuana-Infused Products Manufacturers' License	\$2,062.50

2. Medical marijuana center applying for retail marijuana store license:

Type of License	Local Operating fee
Medical Marijuana Center 1 Applying For Retail Marijuana Store License	\$2,812.50
Medical Marijuana Center 2 Applying For Retail Marijuana Store License	\$6,562.50
Medical Marijuana Center 3 Applying For Retail Marijuana Store License	\$10,500.00

business): 3. New retail marijuana business license (not an existing medical marijuana

Type of License	Local Operating Fee
Retail Store	\$2,062.50
Retail Marijuana Cultivation Facility	\$2,062.50
Retail Marijuana Products Manufacturing	\$2,062.50
Retail Marijuana Testing Facility	N/A ¹

B. Fees for the annual renewal of any license issued by the Town shall be fifty percent of the fee for the issuance of a new license as described in Subsection A of this Section.

C. The following administrative service/operating fees shall be paid to Town at the time the service is requested:

Service Requested	Fee
Transfer of Ownership of Business License or Application	\$250.00
Corporation or LLC Structure Change (per person)	\$100.00
Change of Location	\$500.00
Modification of Premises	\$150.00

D. The Town is entitled to receive its share of the license application fees received by the State Licensing Authority pursuant to Section 16 of Article XVIII of the Colorado Constitution.

E. At least annually, the amount of fees charged by the Town pursuant to this Section shall be reviewed and, if necessary, adjusted as provided in Subsection F to reflect the direct and indirect costs incurred by the Town in connection with the adoption, administration, and enforcement of this Chapter.

F. Beginning with the fiscal 2021 budget, the amount of the fees charged by the Town pursuant to this Section shall be fixed by the Town Council as part of its annual budget process. If, for any reason, such fees are not fixed by the Town Council as part of its annual budget process, the fees for the preceding year shall continue in full force and effect until changed by the Town Council.

4-14-10: INVESTIGATION OF APPLICATION:

A. Upon receipt of a properly completed application, together with all information required in connection therewith, and the payment of the applicable fee as required by Section 4-14-9, the Local Licensing Authority shall transmit copies of the application to:

¹ The Local Licensing Authority is not authorized to issue a local Retail Marijuana Testing Facility License. See Section 4-14-8(B).

1. the Police Department;
 2. the Department of Community Development; and
 3. any other person or agency which the Local Licensing Authority or the Municipal Services Office determines should properly investigate and comment upon the application.
- B. Upon receipt of a completed application the Police Department shall promptly obtain and review a criminal background records search on the applicant.
- C. Within twenty (20) days of receipt of a completed application those Town departments and other referral agencies described in Subsection A of this Section shall provide the Local Licensing Authority with comments concerning the application.
- D. An applicant shall cooperate with the Local Licensing Authority with respect to the review and investigation of the application.

4-14-11: AUTHORITY TO IMPOSE CONDITIONS ON LICENSE: The Local Licensing Authority may impose such reasonable terms and conditions on a license as may be necessary to protect the public health, safety, and welfare, and obtain compliance with the requirements of this Chapter, the Colorado Marijuana Code, the applicable administrative regulations, and other applicable law.

4-14-12: DECISION BY LOCAL LICENSING AUTHORITY:

- A. The Local Licensing Authority shall approve, deny, or conditionally approve an application within ninety (90) days of the date of the approval of the applicant's state license; provided, however, the deadline for deciding an application may be extended by the Local Licensing Authority for up to an additional sixty (60) days if the Local Licensing Authority reasonably determines that it is necessary for the applicant to submit additional information in order for the Local Licensing Authority to complete the investigation and review of the application. The applicant shall provide any additional information requested by the Local Licensing Authority.
- B. No public hearing is required to be held in connection with an application.
- C. The Local Licensing Authority shall issue a license under this Chapter when, from a consideration of the application, the investigation, and such other information as may otherwise be obtained, the Local Licensing Authority determines that:
1. The application (including any required attachments and submissions) is complete and signed by the applicant, and the applicant has provided any additional information concerning the application requested by the Local Licensing Authority;
 2. The applicant has paid the applicable operating fee and any other fees required by Section 4-14-9;
 3. The application does not contain a material falsehood or misrepresentation;
 4. The application complies with all of the requirements of this Chapter, the Colorado Marijuana Code, and the applicable administrative regulations; and
 5. The applicant holds a valid state license for the licensed premises of the same class as has been applied for under this Chapter.
- D. The Local Licensing Authority shall deny an application for a license under this Chapter if it determines that:

1. The application is incomplete, or the applicant has failed to provide any additional information about the application requested by the Local Licensing Authority;
 2. Information contained in the application, or supplemental information requested from the applicant contains a material falsehood or misrepresentation;
 3. The application does not comply with all of the requirements of this Chapter, the Colorado Marijuana Code, and the applicable administrative regulations; or
 4. The applicant does not hold a valid state license for the licensed premises of the same class as has been applied for under this Chapter.
- E. If an application is denied, the Local Licensing Authority shall clearly set forth in writing the grounds for denial.
- F. If the application is conditionally approved, the Local Licensing Authority shall clearly set forth in writing the conditions of approval.
- G. If an application is denied the operating fee paid to the Town at the time of the filing of the application shall not be refunded.

4-14-13: APPEAL OF DENIAL OR CONDITIONAL APPROVAL OF LICENSE: Any decision made by the Local Licensing Authority pursuant to Section 4-14-12 is a final decision and may be appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The applicant's failure to timely appeal the decision is a waiver the applicant's right to contest the denial or conditional approval of the application.

4-14-14: INSPECTION OF PREMISES: In addition to the inspection required by the Colorado Marijuana Code or other applicable law, prior to the issuance of a license the premises proposed to be licensed shall be inspected by the Building Official to determine compliance with the Town's building and technical Codes. No license shall be issued if the proposed licensed premises does not comply with the Town's building and technical codes. Throughout the term of the license the Building Official may inspect the licensed premises to determine continuing compliance with the Town's building and technical codes. Access to such premises shall be obtained by the Building Official in accordance with the applicable provisions of such codes or other applicable law.

4-14-15: TERM OF LICENSE; RENEWAL:

- A. Each license issued pursuant to this Chapter shall be valid for one year from the date of issuance, and may be renewed as provided in the Colorado Marijuana Code, the applicable administrative regulations, and this Chapter; provided, however, that a license shall not be renewed if the Local Licensing Authority determines that the licensed premises have been inactive, without good cause, for at least one year.
- B. The Local Licensing Authority may refuse to renew a license for good cause.
- C. No license for a regulated marijuana business shall be renewed by the Local Licensing Authority until the licensee provides verification that a license was issued and granted by the State Licensing Authority pursuant to the Colorado Medical Marijuana Code for the previous license term.
- D. Notwithstanding anything contained in this Chapter to the contrary, a licensee has no vested right to the renewal of a license, and no property right in the renewal of a license

4-14-16: NOTICE OF ISSUANCE OF LICENSE: Immediately upon the issuance of a license, the Local Licensing Authority shall send a copy of the license to:

- A. The Police Department;

- B. The Community Development Department;
- C. The Town Clerk;
- D. The Finance Director; and
- E. Any other person as determined by the Local Licensing Authority.

4-14-17: DUTIES OF LICENSEE: It is the duty and obligation of each licensee to:

- A. Comply with all of the terms and conditions of the license, and any special conditions on the license imposed by the Local Licensing Authority pursuant to Section 4-14-11;
- B. Comply with all of the requirements of this Chapter;
- C. Comply with all other applicable Town ordinances;
- D. Comply with all applicable state laws and administrative regulations pertaining to the category of business for which the license was issued, including, but not limited to:
 1. the Colorado Marijuana Code;
 2. the applicable administrative regulations;
 3. Sections 18-18-406.3 and 25-1.5-106, C.R.S., to the extent applicable; and
 4. the administrative regulations issued by the Colorado Department of Public Health and Environment found at 5 CCR 1006-2, to the extent applicable,

all as amended from time to time. Compliance with the requirements of this Section is a standard condition of each license issued by the Local Licensing Authority.

- E. Comply with all applicable federal laws, rules, or regulations.

4-14-18: SUSPENSION OR REVOCATION OF LICENSE:

- A. A license issued by the Local Licensing Authority may be suspended or revoked by the Local Licensing Authority for of any of the following reasons:
 1. Violation of the Colorado Marijuana Code;
 2. Violation of any applicable administrative regulation;
 3. Violation of this Chapter;
 4. Violation of the terms and conditions of a license;
 5. Misrepresentation or omission of any material fact, or false or misleading information, on the license application or any amendment thereto, or any other information provided by the licensee to the Local Licensing Authority related to the licensee's business;
 6. Violation of any law which, if it occurred prior to the submittal of the license application could have been cause for denial of the license application;
 7. Failure to maintain or to provide to the Local Licensing Authority upon request any books, recordings, reports, or other records as required by applicable law;

8. Failure to timely notify the Local Licensing Authority and to complete any necessary forms for changes in financial interest, business manager, financier, or agent.
 9. Temporary or permanent closure or other sanction of the licensee by the Local Licensing Authority, the Colorado Department of Public Health and Environment, or other governmental entity with jurisdiction, for failure of the licensee to comply with applicable provisions of the Colorado Marijuana Code;
 10. Revocation or suspension of the state or local license of another medical marijuana business or retail marijuana business owned or controlled by the holder of Town medical marijuana business or retail marijuana business license; or
 11. The failure of a licensee to timely correct any violation of the Colorado Marijuana Code, any applicable administrative regulation, this Chapter, or the terms and conditions of the licensee's license within the time stated in a notice or order issued by Local Licensing Authority.
- B. The procedure to suspend or revoke a local license shall be as set forth in this Chapter.
- C. In connection with the suspension of a license, the Local Licensing Authority may impose reasonable conditions.
- D. In deciding whether a license should be suspended or revoked, and in deciding what conditions to impose in the event of a suspension, if any, the Local Licensing Authority shall consider mitigating and aggravating factors when considering the imposition of a penalty. These factors may include, but are not limited to:
1. Any prior violations that the Licensee has admitted to or was found to have engaged in.
 2. Action taken by the Licensee to prevent the violation (e.g., training provided to employees).
 3. Licensee's past history of success or failure with compliance checks.
 4. Corrective action(s) taken by the Licensee related to the current violation or prior violations.
 5. Willfulness and deliberateness of the violation.
 6. Likelihood of reoccurrence of the violation.
 7. Circumstances surrounding the violation, which may include, but are not limited to:
 - a. Prior notification letter to the Licensee that an underage compliance check would be forthcoming.
 - b. The dress or appearance of an underage operative used during an underage compliance check (e.g., the operative was wearing a high school letter jacket).
 8. The Owner or a manager is the violator or has directed an employee or other individual to violate the law.
- E. Participation in State-approved educational programs related to the operation of a retail marijuana Establishment business, if applicable.

- F. If an offense is described in the applicable administrative regulations, the Local Licensing Authority shall follow the provisions of such regulation in deciding the appropriate sanction to be imposed upon the licensee.
- G. A license issued by the Local Licensing Authority may be revoked if the Local Licensing Authority determines that the licensed premises have been inactive, without good cause, for at least one (1) year.
- H. If the Local Licensing Authority suspends or revokes a license the licensee may appeal the suspension or revocation to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The licensee's failure to timely appeal the decision is a waiver of the licensee's right to contest the denial or conditional approval of the application.
- I. No fee previously paid by a licensee in connection with the application shall be refunded if the licensee's license is suspended or revoked.
- J. If the Local Licensing Authority revokes or suspends a license, the licensee may not remove any marijuana from the licensed premises except under the supervision of the Town's police department.

4-14-19: TRANSFER OF OWNERSHIP; CHANGE OF LOCATION; MODIFICATION OF PREMISES:

- A. Subject to the limitations of Subsections B and C of this Section, the ownership of a license may be transferred, the permanent location of a licensed premises may be changed, and the licensed premises may be modified in accordance with the Colorado Marijuana Code, the applicable administrative regulations, and this Chapter.
- B. No change of location of a licensed premises shall be approved by the Local Licensing Authority if the proposed new location of the licensed premises is not a location that is permitted by this Chapter.
- C. The permanent location of a licensed premises shall not be changed so as to relocate the licensed premises into the Downtown Overlay District from a location outside of the Downtown Overlay District.
- D. The licensed premises may be modified in accordance with the Colorado Marijuana Code, the applicable administrative regulations, and this Chapter.

4-14-20: CONSIDERATION OF NUMBER OF EXISTING LICENSES: Before entering a decision approving or denying an application the Local Licensing Authority shall consider, among the other relevant factors described in the Colorado Marijuana Codes, the number, type, and availability of regulated marijuana businesses located in or near the premises for which the application has been submitted.

4-14-21: LOCATION OF LICENSED PREMISES; CO-LOCATION:

- A. No regulated marijuana business shall be located at a location that does not conform to the requirements of this Section.
- B. No regulated marijuana business shall be located within the Town except within Land Use Districts 5, 9, 11, 19, 20, or 31.
- C. In addition to the restriction imposed by Subsection B of this Section, no regulated marijuana business shall be located:
 - 1. within 500 feet of a licensed child care facility;
 - 2. within 500 feet of any educational institution or school, college or university, either public or private;
 - 3. within 500 feet of any halfway house;

4. adjacent to property being used for a residential use; provided, however, this restriction does not apply to an adjacent mixed use building containing both residential and commercial units; or
 5. within any building or structure that contains a residential unit-
- D. The distances described in Subsection C of this Section shall be measured as a straight line from the nearest property line of the existing land use described in subsections (C)(1), (C)(2), or (C)(3), above, to the nearest portion of the building for which the license is requested. This Subsection D shall not affect a license that was in effect on September 14, 2016, and any such license may be renewed, the ownership of such license may be transferred or changed, and the premises that are the subject of such license may be modified, all as provided in this Chapter, notwithstanding the provisions of this Section.
 - E. The distance limitations established by Subsection C of this Section shall control over the distance limitations set forth in the Colorado Marijuana Code or applicable administrative regulation.
 - F. Nothing in this Chapter prevents a licensee from physically delivering medical marijuana to a homebound patient when done in compliance with the Colorado Marijuana Code and the applicable administrative regulations.
 - G. No licensed premises shall be operated as a “home occupation” as described in Section 9-1-19-38A, “Policy 38 (Absolute) Home Occupations,” of this Code.
 - H. A medical marijuana business may be located at the same location as a retail marijuana business subject to the requirements of the Colorado Marijuana Code and the applicable administrative regulations.

4-14-22: HOURS OF OPERATION: A licensed premises may open no earlier than 8 A.M. and shall close no later than 10 P.M. the same day, Monday through Sunday. No marijuana shall be sold or dispensed at a licensed premises when the licensed premises are required to be closed pursuant to this Section.

4-14-23: SIGNAGE: All signage for a licensed premises shall comply with the requirements of Title 9, Chapter 15 of this Code; the Colorado Marijuana Code; and the applicable state regulations. In addition, no licensee shall display a sign for a licensed premises that contains the word “marijuana” or a graphic/image of any portion of a marijuana plant.

4-14-24: MARIJUANA ACCESSORIES: Marijuana accessories may lawfully be sold at regulated marijuana business, subject to the requirements of applicable law.

4-14-25: ON-SITE CULTIVATION, GROWING AND PROCESSING: The growing, cultivation, or processing of marijuana on or within a licensed premises is prohibited unless done pursuant to the appropriate license issued by the State and the Local Licensing Authority. Any premises licensed for the growing, cultivation, or processing of marijuana shall be equipped with a proper ventilation system that filters out the odor of marijuana so that the odor is not capable of being detected by a person with a normal sense of smell at the exterior of the licensed premises.

4-14-26: DISPLAY OF MARIJUANA: No marijuana shall be displayed within a licensed premises so as to be visible through a glass, a window, or a door by a person of normal visual acuity standing at the outside perimeter of the licensed premises.

4-14-27: TAXES: Each licensee shall collect and remit to the appropriate taxing authority all sales and excise taxes that are lawfully due in accordance with applicable law.

4-14-28: DUTIES OF PRIMARY CAREGIVERS:

- A. Any primary caregiver cultivating marijuana in a residential structure within the Town shall provide to the Local Licensing Authority a copy of such primary caregiver’s registration with the State Licensing Authority filed pursuant to Section 25-1.5-106(7)(e)(I)(A), C.R.S.

- B. If not contained in the primary caregiver's registration with the State Licensing Authority filed pursuant to Section 25-1.5-106(7)(e)(I)(A), C.R.S., the primary caregiver shall provide the following information to the Local Licensing Authority:
1. Location of any medical marijuana cultivation;
 2. The Registry identification number for each patient; and
 3. The number of plants authorized to cultivate for each patient.

The caregiver must update the registry within ten (10) days of any changes.

- C. A primary caregiver shall maintain a list of his or her patients including the registry identification card number of each patient at all times.
- D. Upon receipt of a copy of the primary caregiver's state registration, the Local Licensing Authority shall issue a Town of Breckenridge Primary Caregiver Permit to such primary caregiver. Primary Caregiver Permits shall be for a term of one (1) calendar year, and shall be renewable upon compliance with all the provisions of this Section. There shall be no fee for the issuance or renewal of a Primary Caregiver Permit.
- E. Two or more primary caregivers shall not join together for the purpose of cultivating medical marijuana.
- F. A person may not register as a primary caregiver if he or she is licensed as a medical marijuana business or retail marijuana business.
- G. A primary caregiver who fails to register with the Local Licensing Authority shall do so within ten (10) days of being informed of the duty to register by law enforcement or any Town official.
- H. If any person fails to register pursuant to notification, such person shall be prohibited from ever registering and acting as a primary caregiver within the Town.
- I. If a primary caregiver is charged with failing to register, a law enforcement agency shall not be civilly liable for the loss or destruction of the primary caregiver's medical marijuana plants.
- J. The Town shall share with other law enforcement agencies the minimum necessary information as allowed by the Federal Health Insurance Portability and Accountability Act of 1996, PL 104-191, and the implementing administrative regulations, such as patient and caregiver identification numbers, to ensure that a patient does not have more than one primary caregiver, or have both a caregiver and a medical marijuana center cultivating medical marijuana on his or her behalf at any given time.
- K. The information provided to the Local Licensing Authority pursuant to this Section shall not be provided to the public and is confidential. However, upon receiving an address-specific request for verification, the Local Licensing Authority or Town police department shall verify the location of a primary caregiver cultivation operation and share the information with another law enforcement or regulatory agency. The location of the cultivation operation must comply with all applicable local laws, rules, and regulations.
- L. A primary caregiver for no more than five (5) patients on the medical marijuana program registry at any time.

4-14-29: WAREHOUSE STORAGE PERMITS: The Local Licensing Authority is authorized to give the Town's consent to the state's issuance of a warehouse storage permit pursuant to any applicable state administrative regulation.

4-14-30: VIOLATIONS; PENALTIES; INJUNCTIVE RELIEF:

- A. It is unlawful and a civil infraction for any person to violate any provision of this Chapter. Any person found to be in violation of this Chapter, or against whom a default judgment has been entered for a violation of this Chapter, shall be punished as provided in Section 1-4-1-1 of this Code.
- B. It is unlawful and a misdemeanor offense for any person to violate any of the misdemeanor offenses described in Part 9 of the Colorado Marijuana Code. Any person convicted of any of the misdemeanor offenses described in Part 9 of the Colorado Marijuana Code shall be punished as provided in Section 1-4-1 of this Code.
- C. It is unlawful and a misdemeanor offense for any person to violate the following provisions of the state administrative regulations. Any person convicted of having violated any of the following provisions of the state administrative regulations shall be punished as provided in Section 1-4-1 of this code:
 - Regulation 3-220 – Security Alarm and Lock Standards;
 - Regulation 3-225 – Video Surveillance;
 - Regulation 3-230 – Waste Disposal;
 - Regulation 3-310 – General Safety Requirements
 - Regulation 3-905 – Business Records Required; and
 - Regulation 8-810 – Requirement for Inspections and Investigations, Searches, Administrative Holds, and Such Additional Activities as May Become Necessary From Time to Time
- D. The operation of a regulated marijuana business in violation of this Chapter, the Colorado Marijuana Code, or the applicable administrative regulations, may be enjoined by the Town in an action brought in a court of competent jurisdiction.
- E. If any action is brought in a court of law by any person concerning the enforcement, interpretation, or construction of this Chapter, or any license issued by the Local Licensing Authority, the Town shall recover its reasonable attorney fees, expert witness fees, and court costs if it is the prevailing party.
- F. The remedies provided in this Section are in addition to any other remedy provided by applicable law.

4-14-31: NO TOWN LIABILITY: By operating a business pursuant to a license issued by the Local Licensing Authority a licensee releases the Town, its officers, elected officials, employees, attorneys, and agents from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of the licensee, or the licensee's owners, operators, employees, clients, or customers, for a violation of any state or federal law, rule or regulation related to retail marijuana or medical marijuana, or from the forced closure of the licensed premises because the Colorado Marijuana Code, any applicable administrative regulation, and/or this Chapter, are found to be invalid under any superior law.

4-14-32: OTHER LAWS REMAIN APPLICABLE: Before issuing a license the Local Licensing Authority shall obtain written confirmation from the licensee that the licensee understands and agrees to the following:

- A. Neither this Chapter, nor the act of obtaining a license from the Local Licensing Authority, protects licensees, or the owners, operators, employees, customers, and clients of a licensed premises, from criminal prosecution pursuant to any superior law that prohibits the cultivation, sale, use, or possession of controlled substances, including, but not limited to, medical marijuana and retail marijuana.
- B. As of the date of the adoption of this Chapter the cultivation, sale, possession, distribution, and use of marijuana remains a violation of federal law, and this Chapter affords licensees, and licensee's owners, operators, employees, customers, and clients, with no protection from criminal prosecution under such law. Licensees, and their owners, operators, employees, customers, and

clients assume any and all risk and liability arising or resulting from the operation of the licensed premises under federal law.

- C. The Town has no liability to a licensee or any other person for injuries, damages, or liabilities of any kind, under any legal theory of liability, arising from the forced closure of the licensed premises if the Colorado Marijuana Code, the applicable administrative regulations, and/or this Chapter are found to be invalid or illegal under any superior law.
- D. To the greatest extent permitted by law, any action taken under the provisions of this Chapter by any public officer or officers, elected or appointed officials, employees, attorneys, and agents of the Town of Breckenridge, is not a personal liability of such person or of the Town.

4-14-33: RULES AND REGULATIONS: The Local Licensing Authority may from time to time adopt, amend, alter, and repeal administrative rules and regulations as may be necessary for the proper administration of this Chapter. Such regulations shall be adopted in accordance with the procedures established by Chapter 18, Title 1 of this Code.

Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the various secondary codes adopted by reference therein, continue in full force and effect.

Section 3. If any section, paragraph, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional or otherwise invalid or ineffective by the final, non-appealable order or judgment of any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance. The Town Council hereby declares that it would have adopted each section, paragraph, sentence, clause and phrase of this ordinance irrespective of the fact that any one or more sections, paragraphs, sentences, clauses or phrases may be declared unconstitutional, invalid or ineffective.

Section 4. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 27th day of October, 2020.

This ordinance was published in full on the Town of Breckenridge website on October 28, October 29, October 30, October 31 and November 1, 2020.

A public hearing on this ordinance was held on November 10, 2020.


READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE TOWN'S WEBSITE this 10th day of November, 2020. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE



Helen Cospolich, CMC, Town Clerk



Eric S. Mamula, Mayor

APPROVED IN FORM



Town Attorney

11/10/20

Date

This Ordinance was published on the Town of Breckenridge website on November 11, November 12, November 13, November 14 and November 15, 2020. This ordinance shall become effective on December 15, 2020.