

CITY COUNCIL ORDINANCE

ORDINANCE NO. 2156

INTRODUCED BY: Edwards

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON AMENDING CHAPTER 9, *PUBLIC PEACE, MORALS AND WELFARE OF THE BRIGHTON MUNICIPAL CODE* BY THE ADDITION OF A NEW ARTICLE 9-31, *RETAIL MARIJUANA ESTABLISHMENTS; PROHIBITED*; PROHIBITING THE LICENSING AND OPERATION WITHIN THE CITY OF BRIGHTON OF RETAIL MARIJUANA STORES, MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, AND MARIJUANA TESTING FACILITIES; DESIGNATING THE CITY CLERK TO RECEIVE NOTIFICATIONS FROM THE STATE DEPARTMENT OF REVENUE OF ANY STATEMENTS OF INTENT TO APPLY FOR RETAIL MARIJUANA LICENSES OF ANY KIND AND TO CORRESPOND WITH THE DEPARTMENT RELATED THERETO; ADOPTING PENALTIES AND DECLARING A NUISANCE; AND SETTING FORTH DETAILS RELATED TO THE FOREGOING.

WHEREAS, Colorado voters approved Amendment 64 to the State Constitution, at Article XVIII, Section 16, which allows in part for the retail sale and cultivation of marijuana in the State of Colorado; and

WHEREAS, Section 16(5)(f) of Article XVIII of the Colorado Constitution authorizes local governments, such as the City of Brighton, to “*prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores through the enactment of an ordinance;*” and

WHEREAS, the City Council has carefully considered the provisions of Article XVIII, Section 16, of the Colorado Constitution, and the impact of the operation and licensing of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, retail marijuana store on the health, safety and welfare of the City and the inhabitants thereof, and has determined, as an exercise of its local land use authority, and in accordance with its other general police powers for the protection of the public health, safety and welfare, that such marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores shall not be located within the corporate limits of the City.

WHEREAS, the 2013 Colorado General Assembly adopted House Bills 13-1317 and 13-1318, and Senate Bill 13-283, all of which have been signed into law by Governor Hickenlooper, which include in part the adoption of the Colorado Retail Marijuana Code found in Article 43.4 of the Colorado Revised Statutes; and

WHEREAS, in addition, House Bill 13-1317 clarifies Colorado law regarding the scope and extent of Amendment 64 to the Colorado Constitution, which added Article XVIII, Section 16 to the Constitution, and at the same time establishes in the Colorado Retail Marijuana Code, a licensing and regulatory scheme for the retail sale, distribution, cultivation and dispensing of marijuana by licensed retail marijuana stores, and additional marijuana facilities and establishments; and

WHEREAS, C.R.S. §12-43.4-104(3) of the Colorado Retail Marijuana Code specifically authorizes a municipality “*to prohibit the operation of retail marijuana establishments through the enactment of an ordinance or through a referred or initiated measure*”; and

WHEREAS, the City Council has carefully considered the provisions of Section 16, Article XVIII of the Colorado Constitution and the legislative measures adopted pursuant thereto, and the adverse impacts of retail marijuana establishments within the City, on the health, safety and welfare of the City's inhabitants, and has determined, as an exercise of its local land use authority and in accordance with its other general police powers for the protection of the public's health, safety and welfare, that such retail marijuana establishments authorized under the Colorado Retail Marijuana Code should not be located, licensed, or operated within the City's corporate limits; and

WHEREAS, the City Council has carefully considered the Controlled Substance Act (21U.S.C. 811 *et. seq.*), the Colorado Uniform Controlled Substances Act (C.R.S. 18-18-101 *et. seq.*), and the real and possible adverse affects of marijuana establishments on the health, safety, and welfare of the City and its residents; and

WHEREAS, the City Council finds and determines that enactment of the following provisions to the Brighton Municipal Code are reasonable and necessary.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO AS FOLLOWS:

Section 1. Chapter 9, *Public Peace, Morals and Welfare* of the Brighton Municipal Code, is amended by the adoption of a new Article 9-31, *Retail Marijuana Establishments; Prohibited*, to read as follows:

Article 9-31. Retail Marijuana Establishments; Prohibited

- Section 9-31-10. *Findings and intent.*
- Section 9-31-20. *Authority.*
- Section 9-31-30. *Definitions.*
- Section 9-31-40. *Marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana store licenses prohibited.*
- Section 9-31-50. *City Clerk, designated authority.*
- Section 9-31-60. *Penalties, nuisance declared.*

9-31-10 Findings and legislative intent.

The City Council makes the following legislative findings:

- A) The City Council finds and determines that Article XVIII, Section 16, of the Colorado Constitution specifically authorizes in part that the governing body of a municipality may enact an ordinance to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores.
- B) The City Council finds and determines after careful consideration of the provisions of Article XVIII, Section 16, of the Colorado Constitution, and after evaluating, *inter alia*, the potential secondary impacts associated with the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores, that such land uses have an adverse effect on the health, safety and welfare of the City and the inhabitants thereof.
- C) The City Council therefore finds and determines that as a matter of the City's local land use and zoning authority as a home rule municipality pursuant to the provisions of Article XX, Section 6 of the Colorado Constitution, and consistent with the authorization provided by Article XVIII, Section 16, of the Colorado Constitution, that no suitable location exists within the corporate limits of the City of Brighton for the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores, or the licensing thereof.

Section 9-31-20 Authority.

The City Council hereby finds, determines and declares that it has the power and authority to adopt this Article pursuant to:

- A) Article XVIII, Section 16, of the Colorado Constitution;
- B) The authority granted to home rule municipalities by Article XX of the Colorado Constitution;
- C) The powers contained in the City of Brighton Home Rule Charter; and
- D) The Local Government Land Use Control Enabling Act, article 20 of title 29, C.R.S.

Section 9-31-30 Definitions.

For purposes of this Article, the following terms shall have the following meanings:

Marijuana means all parts of the plant of the genus *cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. "*Marijuana*" does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or

the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

Marijuana accessories means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

Marijuana cultivation facility means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

Marijuana establishment means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

Marijuana product manufacturing facility means an entity licensed to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

Marijuana products means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

Marijuana testing facility means an entity licensed to analyze and certify the safety and potency of marijuana.

Retail marijuana store means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

Section 9-31-40. Marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores prohibited.

It is unlawful for any person to operate, cause to be operated, or permit to be operated, any marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores within the City, and all such uses are hereby prohibited in any location within the City, or within any area hereinafter annexed to the City.

Section 9-31-50. City Clerk, designated authority.

The City Clerk is hereby designated as the officer of the City for the receipt of notifications from the Colorado Department of Revenue of the filing of any Notice of

Intent to apply for a license for a retail marijuana establishment to be located within the City, to notify the Department of the prohibitions as set forth in this Article, and to generally communicate with the Department relative to retail marijuana establishments.

Section 9-31-60. Penalties, nuisance declared.

- A) It is unlawful for any person to violate any of the provisions of this Article. Any such violation is hereby designated a criminal offense, and any person found guilty of violating any of the provisions of this Article shall, upon conviction thereof, be punished by a fine or imprisonment, or both, pursuant to Article 1-24. **General Penalty** of the Brighton Municipal Code, as it may be amended from time to time. Each day that a violation of any of the provisions of this Article continues to exist shall be deemed a separate and distinct violation.
- B) The conduct of any activity or business in violation of this Article is hereby declared to be a public nuisance, which may be abated pursuant to the provisions for the abatement of nuisances provided in Article 8-24. **Nuisances** of the Brighton Municipal Code, as the same may be amended from time to time.

Section 2. The recitals of this Ordinance are hereby adopted by the City Council as additional findings. The City Council hereby finds, determines, and declares that this Ordinance is enacted under the City's general police powers and as specifically authorized by State law; that it is enacted for the public's health, safety and welfare; and that it is necessary for the preservation of the public's health, safety and welfare.

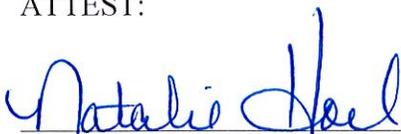
Section 3. Validity. If any part or parts of this ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid.

INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED THIS 18th DAY OF June, 2013.

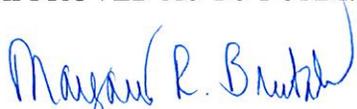
CITY OF BRIGHTON, COLORADO


Richard N. McLean, Mayor

ATTEST:


Natalie Hoel, City Clerk

APPROVED AS TO FORM:


Margaret R. Brubaker, City Attorney

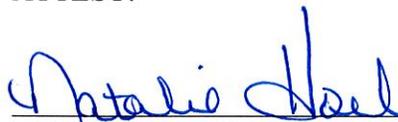
Published in the *Standard Blade*
First Publication: June 26, 2013

PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED BY
TITLE ONLY THIS 2nd DAY OF July, 2013.

CITY OF BRIGHTON, COLORADO

By: 
Richard N. McLean, Mayor

ATTEST:


Natalie Hoel, City Clerk

Published in the *Standard Blade*
Final Publication: July 10, 2013