

CITY COUNCIL ORDINANCE

ORDINANCE NO: _____

INTRODUCED BY: Martinez

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO ADOPTING A NEW ARTICLE 9-38, *MARIJUANA CULTIVATION WITHIN RESIDENTIAL STRUCTURES* FOR THE BRIGHTON MUNICIPAL CODE REGARDING INDOOR CULTIVATION AND PROCESSING OF MARIJUANA BY INDIVIDUALS; AMENDING SECTION 9-28-20. *DEFINITIONS*, SECTION 9-28-20, *DRUGS AND PARAPHERNALIA*, AND SECTION 9-28-80, *PENALTY FOR POSSESSION*; AND SETTING FORTH DETAILS IN RELATION THERETO.

WHEREAS, the City Council of the City of Brighton, pursuant to Article XVIII, Section 14 of the Colorado Constitution, and C.R.S §§12-43.3-101, *et. seq.*, The Colorado Medical Marijuana Code, adopted Ordinance No: 2086, to prohibit within the City's boundaries the licensing and operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers, as such facilities are authorized to be licensed under the Colorado Medical Marijuana Code; and

WHEREAS, the City Council of the City of Brighton, pursuant to Article XVIII, Section 16 of the Colorado Constitution (Amendment 64), and C.R.S §§12-43.4-101, *et seq.*, Colorado Retail Marijuana Code, adopted Ordinance No: 2156, to prohibit within the municipality's boundaries the licensing and operation of retail marijuana stores, marijuana cultivation facilities, marijuana product manufacturing facilities, and marijuana testing facilities, as such facilities are authorized to be licensed under the Colorado Retail Marijuana Code; and

WHEREAS, Amendment 64 and the Colorado Retail Marijuana Code permit persons twenty-one years of age and older to possess, use, display, purchase, or transport one ounce or less of marijuana, or marijuana accessories, as well as to grow limited amounts of marijuana; and

WHEREAS, the City of Brighton has the power and authority to make and publish ordinances which are necessary and proper for the safety and preserve the health, safety and welfare of the citizens of the City not inconsistent with the laws of the State; and

WHEREAS, the City Council finds and determines that it is not inconsistent with the Constitution or laws of the State of Colorado to adopt ordinances regarding the manner in which marijuana is cultivated within residential dwellings in order to assure the health, safety and welfare of the residents of the dwelling, the surrounding neighborhood, and the City itself; and

WHEREAS, based on careful consideration of the Colorado Medical Marijuana Code, Article XVIII, §14 of the Colorado Constitution, the Colorado Retail Marijuana Code, Article XVII, §16 of the Colorado Constitution, and the potential secondary effects of the cultivation, processing, and possession of marijuana and marijuana concentrates, the City Council finds and determines that without appropriate regulations and limitations, marijuana cultivation, processing and possession may have an adverse effect on the health, safety and welfare of the City and its inhabitants.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO.

SECTION 1. Section 9-28-20. **Definitions** of Article 9-28. **Drugs and Drug Paraphernalia** of the Brighton Municipal Code is amended as follows:

Section 9-28-20. **Definitions.**

As used in ~~this Article~~ the Brighton Municipal Code, unless the context otherwise requires:

A) The definition of “*Marijuana*” is repealed and a new definition is adopted to read as follows:

“Marijuana” means and includes: all parts of the plant of the genus Cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds, or its resin including marijuana concentrate. The term shall 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 products. “Marijuana products” means concentrated marijuana and other ingredients that are intended for use and consumption, such as, but not limited to, edible products, ointments, and tinctures.

B) A definition of “*Marijuana Accessories*” is added to read as follows:

“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.

C) A definition of “*Marijuana Concentrate*” is added to read as follows:

“Marijuana concentrate” means hashish, hash oil, cannabis oil, cannabinoids, or any alkaloid, salt, derivative, preparation, compound, or mixture, whether natural or synthesized, of cannabinoids.

SECTION 2. Section 9-28-40. **Penalty for possession** of Article 9-28. **Drugs and Drug Paraphernalia** of the Brighton Municipal Code is repealed and reenacted to read as follows:

Section 9-28-40. **Offenses**

(a) *It shall be unlawful for any person to smoke, consume or use marijuana or marijuana products openly and publicly or in a manner that endangers others.*

(b) *It shall be unlawful for any person under twenty-one (21) years of age to possess, smoke consume or use marijuana or marijuana products; provided, however, this*

subsection 9-28-40(b) shall not apply to any person licensed or authorized to possess or use marijuana or marijuana products pursuant to the laws of Colorado or the United States while possessing or using the same in accordance with the requirements and limitations of such license or authorization.

(c) It shall be unlawful for any person twenty-one (21) years of age or older to possess more than one (1) ounce of marijuana; provided, however, this subsection 9-28-40(c) shall not apply to any person licensed or authorized to possess marijuana pursuant to the laws of Colorado or the United States while possessing same in accordance with the requirements and limitations of such license or authorization.

(d) No person under twenty-one (21) years of age shall possess drug paraphernalia when said person knows or reasonably should know that the drug paraphernalia could be used under circumstances in violation of the laws of the State of Colorado.

(e) No person twenty-one (21) years of age or older may possess drug paraphernalia, or other marijuana accessories, when said person knows or reasonably should know that the drug paraphernalia could be used under circumstances in violation of the laws of the State of Colorado.

(f) 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 of this Code. Each day that a violation of any of the provisions of this Article continues to exist shall be deemed a separate and distinct violation.

SECTION 3. Section 9-28-80. **Offenses relating to marijuana** of Article 9-28. **Drugs and Drug Paraphernalia** of the Brighton Municipal Code is amended by the repeal of subsection (a) through (f) and the re-lettering of subsection (g) as (a).

SECTION 4. Section 9-31-30. **Definitions** of Article 9-31. **Retail Marijuana Establishments Prohibited** of the Brighton Municipal Code is amended as follows:

A) The definitions of “Marijuana” and “Marijuana Accessories” are repealed and reenacted to read as follows:

“Marijuana” as used in this Article 9-31 shall be as defined in Section 9-28-20. Definitions. BMC as amended.

“Marijuana Accessories” as used in this Article 9-31 shall be as defined in Section 9-28-20. Definitions. BMC as amended.

SECTION 5. A new Article 9-38. **Marijuana Cultivation within Residential Structures** for the Brighton Municipal Code is adopted to read as follows:

ARTICLE 9-38

Marijuana Cultivation within Residential Structures

Sec. 9-38-10. Authority.

Sec. 9-38-20. Applicability.

Sec. 9-38-30. Definitions.

Sec. 9-38-40. Cultivation within Residential Properties Only.

Sec. 9-38-50. Restrictions and Limitations.

Sec. 9-38-60. Extraction of Marijuana Concentrate Prohibited.

Sec. 9-38-70. Violations and Penalties.

Sec. 9-38-10. Authority.

The City's authority to adopt this Article is found in:

Article XX, §6 of the Colorado Constitution;

The Colorado Medical Marijuana Code, C.R.S §12-43.3-101;

Article XVIII §14 of the Colorado Constitution;

Article XVIII, §16 of the Colorado Constitution;

The Colorado Retail Marijuana Code;

The Local Government Land Use Enabling Act, C.R.S. §29-20-101;

C.R.S. §31-23-101 (municipal zoning powers);

C.R.S. §31-15-103 (municipal police powers); and

The Brighton Home Rule Charter.

Sec. 9-38-20. Applicability.

This Article shall apply to all property within the City. To the extent that the City is required to allow the cultivation of medical marijuana or marijuana for personal use under state law, the rules set forth herein shall apply. Nothing in this section shall be interpreted to permit marijuana stores, cultivation centers, testing facilities, or dispensaries of any kind otherwise prohibited by Articles 9-30, and 9-31, BMC, as amended, or any other ordinance of the BMC. Nothing in this Article 9-38 shall be deemed to prohibit the possession of marijuana as permitted by Sections 14 and 16 of Article XVIII of the Colorado Constitution.

Sec. 9-38-30. Definitions.

Common Area as used in this Article means areas within a building or within a residential development that are available for common use by all owners, tenants or occupants. Examples of common areas include but are not limited to: a clubhouse, courtyard, other shared recreation area; building lobbies, corridors, stairways; parking areas; laundry room; roof; or storage areas.

Cultivation, Cultivate, and Cultivation Areas as used in this Article shall include areas within a primary residence or accessory building used for cultivation and processing of the marijuana plant, including but not limited to the growth, cutting, clipping, drying, and curing of the plant and products.

Flammable Liquid means a liquid that has a flash point below 100° Fahrenheit, and includes all forms of alcohol and ethanol.

Marijuana Cultivation or Cultivation shall mean all growing stages of the marijuana plant. Unless otherwise stated, it shall also include all stages of cultivating, processing or

preparing the plant material including, but not limited to, cutting, trimming and clipping, drying, curing, and storing the marijuana plant materials.

For the purposes of this Article “*Primary Residence*” means the place that a person by custom and practice, makes his or her principle domicile and address to which the person intends to return, following any temporary absence, such as a vacation. Residence is evidenced by actual daily physical presence, use and occupancy of the primary residence, and the use of the residential address for domestic purposes, such as, but not limited to, slumber, preparation of meals, package delivery, vehicle and voter registration, or credit and utility billings. A person shall have only one (1) primary residence.

Processing shall mean all stages of processing the plant material including, but not limited to, cutting, trimming, clipping, drying, curing, and storing the marijuana plant materials.

For purposes of this Article, “*Secure Area*” means an area within the primary residence or accessory structure accessible only to the user, patient or primary caregiver. Secure premises shall be locked or partitioned off to prevent access by persons under the age of 21 not licensed by the State, visitors, casual passersby, or anyone not authorized to possess marijuana. The “secure space” means secured at all points of ingress with a locking mechanism designed to limit access such as with a key or combination lock.

Unit as used in this Article means a physical portion of the common interest community which is designated for separate ownership or occupancy, is used as a primary residence and the boundaries of which are described in or determined from the declaration applicable to the common-interest community. “*Declaration*” means any recorded instruments, however denominated, that create a common interest community, including any amendments to those instruments and also including, but not limited to, plats and maps.

Sec. 9-38-40. Cultivation within residential properties only.

(a) The cultivation, processing, production or possession of medical marijuana for personal use by a registered medical marijuana user or registered primary caregiver or marijuana for personal use shall be unlawful anywhere in the City other than in an enclosed, locked, and secured space used as a cultivation area within residential structures or accessory buildings conducted in full compliance with the requirements of this Article 9-38, BMC, as amended.

(b) Cultivation, processing, production and possessing of marijuana as provided herein shall only be permitted within primary residential properties for personal use of the residents on the property or by a primary caregiver registered under the provisions of the Colorado Medical Marijuana Code. Except as conducted by a licensed primary caregiver, distribution or provision of the marijuana and/or marijuana products derived from the growing of marijuana as permitted in this Article 9-38, BMC, as amended are prohibited.

(c) Cultivation, processing, production and possessing of marijuana may occur in a primary residence or detached accessory structure under the ownership of the person

cultivating the marijuana or by a tenant or occupant of the premises with the written permission of the property owner, manager or person in control thereof or the homeowners association for any multi-family building or development. The written permission by the property owner, manager, person in control thereof of the unit owner's association for a common interest community in which the unit is located shall be kept available at the cultivation center to be produced by the person cultivating the marijuana or an occupant of the premises upon request of any officer or agent of the City. Nothing in this subsection 9-38-40(c) shall be deemed to require the City's agents or officers to secure the required written permission of the owner, manager, person in control of the premises or homeowners association, and it shall be the sole responsibility of the person cultivating the marijuana or occupant of the premises to do so.

(d) The cultivation, production, or possession of marijuana plants, accessories and marijuana products must be in full compliance with all applicable provisions of Article XVIII, §14 and §16 of the Colorado Constitution, the Colorado Medical Marijuana Code, C.R.S. §12-43.3-101, *et seq.*, the Medical Marijuana Program, C.R.S. §25-1.5-101, *et seq.*; and the Colorado Retail Marijuana Code, C.R.S. §12-43.4-101, *et seq.*

Sec. 9-38-50 Restrictions and limitations.

(a) It is unlawful to cultivate marijuana inside (1) a single family detached dwelling (Group R-3 as defined by the International Building Code) in an area exceeding fifty (50) square feet or which fails to provide a minimum of twenty-four inches (24") of clearance between the ceiling and the cultivated materials, or (2) a single family attached or multifamily structure (Group R-4 as defined by the International Building Code) in an area exceeding thirty-five (35) square feet or which fails to provide a minimum of twenty-four inches (24") of clearance between the ceiling and the cultivated materials. These limits apply regardless of the number of qualified patients, caregivers or persons otherwise allowed to possess and grow marijuana for personal use or by a registered primary caregiver residing in the residence. The cultivation area shall be a secure area and shall not be accessible to anyone under the age of twenty-one (21) unless such person is a medical marijuana user registered by the State of Colorado.

(b) For the purposes of these regulations, any accessory dwelling unit shall meet the requirements of single family attached and multifamily residential units and shall be limited to an area which does not exceed thirty-five (35) square feet and provides a minimum of twenty-four inches (24") of clearance between the ceiling and the cultivated materials.

(c) It is unlawful to cultivate marijuana in a detached accessory structure in an area that is greater than fifty (50) square feet and which fails to provide a minimum of twenty-four inches (24") of clearance between the ceiling and the cultivated materials. The cultivation area shall be a secure area and shall not be accessible to anyone under the age of twenty-one (21) unless such person is a medical marijuana user registered by the State of Colorado. Cultivation area within a detached structure may be in addition to the cultivation area located with the associated occupied residential structure. In combination with a primary residence cultivation area described in Sec. 9-

38-50, BMC, as amended, up to one hundred (100) square feet of cultivation area may be permitted for properties occupied by a single detached structure, and up to eighty-five (85) square feet may be permitted for properties containing single family attached or multi-family structures.

(d) The cultivation, production, or possession of marijuana shall not be perceptible from the exterior of the residence or accessory structure.

(e) It is unlawful to use any lighting for the indoor cultivation of marijuana other than light emitting diodes (LED), compact fluorescent lamps (CFL) or fluorescent lighting. All high intensity discharge (HID) lighting including but not limited to Mercury-vapor lamps, Metal-halide (MH) lamps, Ceramic MH lamps, Sodium-vapor lamps, high-pressure Sodium (HPS) lamps and Xenon short-arc lamps are prohibited.

(f) Marijuana shall not be grown, cultivated or processed in

(i) A kitchen in the residence that is used by the residents, their guests or invitees as the primary room or area in the residence for food preparation and consumption;

(ii) A room in the residence with features and functions such as a basin, toilet, tub, shower, bidet or similar plumbing features that qualify the room or area as a bathroom and is regularly used as a bathroom by the residents, their guests or invitees; or

(iii) A room in the residence which is regularly used as a bedroom or sleeping area.

All rooms or areas within the residence used for the growing, cultivation, or processing of marijuana shall be a secure area as defined in this Article 9-38, as amended from time to time.

(g) It is unlawful to store chemicals used for marijuana cultivation or processing inside of the habitable areas of the residence or within public view from neighboring properties and public rights-of-way.

(h) It shall be unlawful for any marijuana cultivation activity to adversely affect the health or safety of the residents, users or occupants of adjacent properties by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts; or be hazardous due to the cultivation and processing for use or storage of materials, processes, products or wastes, or from other actions related to the cultivation or processing.

(i) Marijuana shall not be grown, processed or possessed in the common areas of a multi-family or attached residential development.

(j) Marijuana shall not be grown, cultivated or processed in any residence, whether single-family attached, multifamily or a common-interest community unit, in which a

home occupation approved and licensed under Sec. 17- 24-40(2), (7), BMC, as amended, is conducted or operated that serves or involves persons under the age of eighteen (18) in absence of their parent or guardian. No application for approval or licensing of a home occupation which involves the presence of a minor in absence of their parent or guardian shall be approved or issued for a residence in which marijuana is grown, cultivated or processed.

Sec. 9-38-60. Extraction of Marijuana Concentrate Prohibited

(a) It shall be unlawful for any person to process or manufacture marijuana concentrate anywhere in the City whether by a water-based extraction or food-based extraction method or by the use of a chemical to enhance tetrahydrocannabinol (THC) in marijuana, including any activity involving the use of a chemical extraction method, including but not limited to any method using butane, acetate, isopropyl alcohol, ethyl alcohol, white gas, sulfuric acid, hydrochloric acid, propane, any combustible substance, or substance prohibited by state law, in the processing of any part of the marijuana plant into a marijuana concentrate.

(b) Except as provided in subsection 9-38-60(c) of this section, it shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises anywhere in the City to allow marijuana concentrate to be processed or manufactured on the premises.

Sec. 9-38-70 Violations and penalties

(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, BMC, as amended. 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 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, BMC, as amended.

SECTION 6. PURPOSE. The purpose of this Ordinance is to provide for the health, safety and welfare of the people.

SECTION 7. REPEAL. Existing or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance

SECTION 8. 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. The City Council hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid.

SECTION 6. INTERPRETATION. This Ordinance shall be so interpreted and construed as to effectuate its general purpose.

**INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED
THIS 3RD DAY OF FEBRUARY, 2015.**

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney

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BY TITLE ONLY THIS 3rd DAY OF March, 2015.**

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

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