

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: CB19

ORDINANCE NUMBER: 2019-19

TITLE: A BILL FOR AN ORDINANCE REPEALING AND REENACTING ARTICLE XIX OF CHAPTER 6 OF THE BLACK HAWK MUNICIPAL CODE, ELIMINATING SOCIAL CLUBS AND CREATING A LICENSING SYSTEM FOR MARIJUANA HOSPITALITY ESTABLISHMENTS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLACK HAWK, GILPIN COUNTY:

Section 1. Article XIX of Chapter 6 of the Black Hawk Municipal Code is hereby repealed and reenacted to read as follows:

ARTICLE XIX

MARIJUANA HOSPITALITY ESTABLISHMENTS

Sec. 6-601. Findings of fact.

The City Council recognizes that open or public consumption of marijuana is illegal in the state despite legalization of the substance under the Colorado Constitution and state law, and finds there is an unmet need within the City for private, safe and regulated places where adults can legally use and consume marijuana in a social setting. The City Council finds such private social use or consumption of marijuana should be regulated locally, consistent with the state regulatory process set forth in House Bill 19-1230, to minimize the potential adverse impacts on its citizens potentially caused by violations, underage consumption and civil disturbances, as well as to maintain peace and tranquility within the City.

Sec. 6-602. Definitions.

The following words, when used in this Article, shall have the meanings respectively ascribed to them:

Alcohol beverage means fermented malt beverage or malt, vinous or spirituous liquors; except that alcoholic beverage shall not include confectionery containing alcohol within the limits prescribed by C.R.S. § 25-5-410(1)(i)(II).

License means a marijuana hospitality establishment license issued pursuant to this Article.

Marijuana has the same meaning as defined in Sec. 6-555 of this Code.

Marijuana hospitality establishment means a facility licensed to permit the consumption, but not the sale, of medical or retail marijuana, medical or retail marijuana concentrate, and medical or retail marijuana-infused products pursuant to this Article.

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

Open and public* or *openly and publicly means a place not protected from unaided observation lawfully made from outside its perimeter not involving physical intrusion and to which the public or a substantial number of the public has access without restriction including, without limitation, highways, transportation facilities, places of amusement, parks, playgrounds, and the common areas of public buildings and facilities that are generally open or accessible to members of the public without restriction.

Premises means the distinct and defined private location of a marijuana hospitality establishment, which may include a building, a part of a building, a room, or any other definite contiguous area adequately separated by physical barriers and ventilation to prevent observation of the premises by site, sound or smell from outside of the premises.

Smoking means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or any other lighted or heated marijuana or marijuana concentrate intended for inhalation.

Vaping means the activation of an electronic smoking device, or the possession of any activated electronic smoking device, containing marijuana or marijuana concentrate.

Sec. 6-603. License required.

Any individual or entity desiring to organize or operate a marijuana hospitality establishment within the City must obtain a marijuana hospitality establishment license from the City. Such license shall be kept current at all times, and the failure to maintain a current license shall constitute a violation of this Section.

Sec. 6-604. Requirements of application for license; payment of application fee; denial of license.

(a) Applications for a marijuana hospitality establishment license shall be made to the City Clerk upon forms provided by the City Clerk for that purpose. An application fee pursuant to a separate resolution setting the City of Black Hawk Fee Schedule shall be submitted at the time of application.

(b) The application shall include a site plan defining the proposed licensed premises, showing where patrons will be permitted to gather, identifying indoor and outdoor seating or gathering areas, showing parking locations for patrons, and identifying all intended uses of the establishment premises. The application shall demonstrate how the premises will be adequately separated by physical barriers and ventilation to prevent observation by site, sound or smell of the premises from outside of the premises. The application shall further describe the methods that will be used to confirm a patron's age and to restrict all underage access to the establishment.

(c) The City Council shall grant a marijuana hospitality establishment license, provided that the application is fully completed and is in compliance with this Article and the ordinances of the City.

(d) A license granted pursuant to this Article is valid for a period of one (1) year from issuance, at which point the license expires unless the applicant has filed for and received a renewal.

(e) A license issued pursuant to this Article does not eliminate the need for the licensee to obtain other required permits or licenses related to the operation of the marijuana hospitality establishment, including, without limitation, a license from the State licensing authority and any development approvals or building permits required by any other applicable provisions of this Code.

(f) A marijuana hospitality establishment license issued prior to January 1, 2020 is considered valid and a licensee may operate without a state-issued marijuana hospitality establishment license only if the licensee applies for a state marijuana hospitality establishment license prior to December 31, 2019. The licensee may continue to operate without a state license until the license is approved by the State licensing authority. If the license is denied by the State licensing authority, the licensee shall immediately cease operations. After January 1, 2020, an applicant for a City marijuana hospitality establishment license must obtain a marijuana hospitality establishment license from the State licensing authority before commencing operations in the City.

Sec. 6-605. Location criteria; limitation on number of marijuana hospitality establishments.

Prior to the issuance of a license for a marijuana hospitality establishment, the local licensing authority shall determine whether the proposed location of the marijuana hospitality establishment complies with the requirements of this Section. Failure to comply with the requirements of this Section shall preclude issuance of a license.

(a) No marijuana hospitality establishment shall be located except within the History Appreciation Recreation Destination (HARD) District.

(b) Each marijuana hospitality establishment shall be operated from a permanent location. No marijuana hospitality establishment shall be permitted to operate from a moveable, mobile or transitory location.

(c) The suitability of a location for a marijuana hospitality establishment shall be determined at the time of the issuance of the first license for such business. The fact that changes in the neighborhood that occur after the issuance of the first license might render the site unsuitable for a marijuana hospitality establishment under this Section shall not be grounds to suspend, revoke or refuse to renew the license for such business so long as the license for the business remains in effect.

(d) In addition to the location limitations set forth herein, no new marijuana hospitality establishment application shall be accepted for filing in the event one (1) marijuana hospitality establishment is already licensed as of the date of the proposed new application.

Sec. 6-606. Renewal.

(a) Each license issued pursuant to this Article shall be valid for one (1) year from the date of issuance and may be renewed only as provided in this Article. All renewals of a license shall be for no more than one (1) year. An application for the renewal of an existing license shall be made to the City Clerk not more than sixty (60) days and not less than thirty (30) days prior to the date of expiration of the license. A licensee may submit to the City Clerk a late renewal application on the prescribed forms and pay a non-refundable late application fee in an amount set forth in the City of Black Hawk Fee Schedule for a renewal application made less than thirty (30) days prior to the date of the expiration of the license. All other provisions concerning renewal applications apply to a late renewal application. The timely filing of a completed renewal application or a late renewal application shall extend the current license until a decision is made on the renewal.

(b) A licensee whose license expires and for which a renewal application has not been received by the expiration date shall be deemed to have forfeited its license under this Article. The City shall not accept renewal applications after the expiration date of such license.

Sec. 6-607. Permitted activities.

Activities on the premises of a marijuana hospitality establishment may include the smoking, vaping, or consumption of marijuana or marijuana products, provided that all other laws, rules and regulations, including without limitation, the requirements of the Colorado Clean Indoor Air Act, C.R.S. § 25-14-201, *et seq.*, and Chapter 7, Article VII, of this Code, applicable to such use and consumption at the particular location are met.

Sec. 6-608. Hours of operation.

Any indoor area of a marijuana hospitality establishment may be open from 7:00 a.m. until 2:00 a.m., and any outdoor consumption area may be open from 7:00 a.m. until midnight. A marijuana hospitality establishment may be open seven (7) days a week.

Sec. 6-609. Restrictions.

A licensee under this Article shall not:

- (1) Sell, serve, or permit the sale or service of retail or medical marijuana, marijuana products or alcoholic beverages on the premises;
- (2) Permit, allow, or fail to prevent the consumption of alcoholic beverages on the premises;
- (3) Operate a license issued pursuant to this Article upon the same licensed premises for which a license or permit issued pursuant to Section 6-58(a) or 6-74 of this Code has been issued;
- (4) Permit, allow or fail to prevent open or public consumption of marijuana or marijuana products on the premises or otherwise ensure that the display and consumption of marijuana is not visible from outside the licensed premises, except that consumption of marijuana or marijuana products upon the licensed premises in an outdoor area shall not be deemed to be visible provided adequate screening exists as approved by the City;
- (5) Allow on-duty employees of the establishment to consume any marijuana in or on the premises;

(6) Distribute or allow the distribution of free samples of marijuana in the licensed premises of the establishment;

(7) Allow the smoking of tobacco or tobacco products in the licensed premises of the establishment or otherwise permit, allow, or fail to prevent indoor smoking or other activities in violation of the Colorado Clean Indoor Air Act, C.R.S. § 25-14-201, *et seq.*, or Chapter 7, Article VII, of this Code, on the premises;

(8) Allow onto the premises any person under twenty-one years of age;

(9) Permit the use or consumption of marijuana by a patron who displays any visible signs of intoxication; or

(10) Knowingly permit any activity or acts of disorderly conduct, or otherwise permit rowdiness, undue noise, or other disturbances or activity offensive to the average citizen or to the residents of the neighborhood in which the licensed premises is located.

Sec. 6-610. Report of disorderly conduct.

Any licensee under this Article shall immediately report to the Police Department any unlawful or disorderly act or conduct committed at or in the marijuana hospitality establishment.

Sec. 6-611. Right of entry.

The Police Department or any authorized agent of the City may conduct routine inspections of the premises to ensure compliance with the requirements of this Article.

Sec. 6-612. Violations.

It is unlawful for any person to organize or operate a marijuana hospitality establishment without first obtaining a license from the City as provided in this Article. Any failure to comply with any conditions stated in a license or any of the requirements of this Article shall be a violation of this Article.

Sec. 6-613. Penalties; Revocation of License.

(a) Failure to comply with the terms of this Article shall constitute a civil infraction. Any person who is found guilty of, or pleads guilty or *nolo contendere* to the commission of, the civil infraction shall be subject to a civil penalty as set forth in Section 1-74 of this Code. For each day, or portion thereof, during which any violation continues, a person may be cited for a separate civil infraction.

(b) The City may, after notice and hearing, suspend, revoke or refuse to renew a license for good cause, including suspension or revocation of the licensee's

State license or failure to comply with the terms of this Article. The City is authorized to adopt rules and procedures governing the conduct of such hearings.

Section 2. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Black Hawk, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 3. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.


Section 4. Effective Date. The City Clerk is directed to post the Ordinance as required by the Charter. This Ordinance shall become effective upon posting by the City Clerk.

READ, PASSED AND ORDERED POSTED this 11th day of September, 2019.



David D. Spellman, Mayor

ATTEST:



Melissa A. Greiner, CMC, City Clerk

