



## RESOLUTION

## A RESOLUTION ADOPTING THE MARIJUANA ESTABLISHMENT VIOLATIONS AND SENTENCING GUIDELINES FOR DISCIPLINARY ACTIONS REGARDING MARIJUANA ESTABLISHMENTS.

WHEREAS, the City has adopted a new Article X, Chapter 42, of the City Code pertaining to Marijuana Licensing provisions for Marijuana Establishments; and

WHEREAS, the new Marijuana Licensing scheme established a Marijuana Licensing Authority for purposes of evaluating license applications and to appoint a Hearing Officer to preside over alleged violations of operating regulations and unlawful acts committed by licensed Marijuana Establishments; and

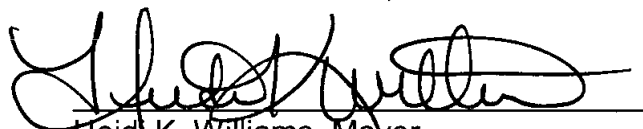
WHEREAS, the attached Marijuana Establishment Violation and Sentencing Guidelines are for the Hearing Officer to use as a guide in imposing civil penalties, and/or license suspensions, or revocations for Marijuana Establishments found in violation of operational regulations or engaged in unlawful acts related to the Marijuana Establishment. The proposed guidelines were prepared with reference to sentencing procedures of other Denver Metro area jurisdictions licensing marijuana sales, and to state standard penalty ranges related to marijuana regulation.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:


1. That the Marijuana Establishment Violation and Sentencing Guidelines attached hereto and incorporated herein by this reference, are hereby approved.
2. This resolution shall take effect on final passage.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Thornton, Colorado, on August 23, 2016.

CITY OF THORNTON, COLORADO

  
Heidi K. Williams, Mayor

ATTEST:

  
Nancy A. Vincent, City Clerk

## MARIJUANA ESTABLISHMENT VIOLATIONS AND SENTENCING GUIDELINES

## I. PURPOSE

The purpose of these sentencing guidelines is to provide the Marijuana Hearing Officer (“hearing officer”) guidance in imposing penalties against licensees for violations related to the operation of any Marijuana Establishment in the City of Thornton, or to order the suspension or revocation of any license of a Marijuana Establishment in the City of Thornton. The guidelines are intended to provide consistency in the imposition of penalties, suspensions and revocations resulting from violations, but the hearing officer shall consider the individual facts and circumstances of each alleged violation, and the actual sentence imposed against a licensee for a violation may vary under the guidelines depending upon those unique facts and circumstances.

## II. SCOPE

The hearing officer shall consult the sentencing guidelines in all circumstances where there is a violation of any law or regulation under Chapter 42, Article X of the Thornton Municipal Code (“Code”) either when there has been a finding by the hearing officer that a violation has occurred or when a proposed stipulation concerning a violation is to be considered.

## III. FINE IN LIEU

As authorized by Section 42-735 of the Code, any licensee found in violation of the Code may petition the hearing officer for permission to pay a fine in lieu of having the license suspended for all or part of the suspension period, except the period of any mandatory suspension as required pursuant to these sentencing guidelines. The amount of the fine-in-lieu will be calculated at 20% of the licensee’s average gross revenues from the sale of only marijuana or marijuana infused products over a 90 day period preceding the suspension period. The fine will be for each day a fine in lieu is requested during the period of the proposed suspension. Any petition for a fine-in-lieu requires that the licensee pay a \$250.00 non-refundable fee. Approval of any such petition is at the sole discretion of the hearing officer. Payment of a fine in lieu of suspension may also be agreed to by stipulation of the City Attorney and licensee prior to a hearing, which stipulation shall be considered by the hearing officer, and approval of which is at the sole discretion of the hearing officer.

## IV. VIOLATIONS

- A. License Infractions. This category of violation is the least severe and may include, but is not limited to, failure to display required badges, unauthorized modifications of the licensed premises of a minor nature, failure to use a proof of age scanner, failure to replace an inoperable proof of age scanner within seven days, and failure to comply with Colorado Retail Marijuana Code Rule 406(B)(2),(3), (5), (6), and (7). The range of penalties for this category of violation may include a civil penalty of up to \$5,000 per occurrence, per day, a license suspension, a fine in lieu of suspension of

up to \$10,000, and/or license revocation depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license.

- B. License Violations. This category of violation is more severe than a license infraction but generally does not have an immediate impact on the health, safety and welfare of the public at large. License violations may include, but are not limited to, advertising and/or marketing violations, packaging or labeling violations that do not directly impact consumer safety, failure to maintain minimum security requirements, failure to keep and maintain adequate business books and records, or minor or clerical errors in the inventory tracking procedures, unauthorized modification of the licensed premises, or failure to have the registered manager on premises during hours of operation. The range of penalties for this category of violation may include a license suspension, a fine in lieu of suspension of up to \$50,000, and/or license revocation depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license.
- C. License Violations Affecting Public Safety. This category of violation is the most severe and may include, but is not limited to, sales of marijuana to persons under the age of 21 years, permitting any person under 21 years of age to enter or remain on or within the licensed premises, consuming or allowing the consumption of marijuana on the licensed premises, marijuana sales in excess of the relevant transaction limit, permitting the diversion of marijuana outside the regulated distribution system, possessing marijuana obtained from outside the regulated distribution system or from an unauthorized source, making misstatements or omissions in the Inventory Tracking System, failing to continuously escort a visitor in a Limited Access Area, failure to maintain books and records to fully account for all transactions of the business, advertising violations directly targeting minors, packaging or labeling violations that directly impact consumer safety, cultivating or manufacturing marijuana on the licensed premises, providing marijuana to any person for free, or selling or distributing marijuana to any person who shows visible signs of intoxication from alcohol, marijuana, or other drugs, failure to allow regular or random inspections, and failure to report criminal activity within 12 hours of the occurrence. Violations of this nature generally have an immediate impact on the health, safety, and welfare of the public at large. The range of penalties for this category of violation include a minimum mandatory 2-day suspension for which a fine-in-lieu may not be considered, additional license suspension of up to 30 days, a fine in lieu of any non-mandatory suspension of up to \$100,000, and/or license revocation depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license.

## V. SENTENCING GUIDELINES

A. Factors. In deciding whether to impose a civil penalty, or whether a license should be suspended or revoked, the hearing officer shall consider mitigating and aggravating circumstances, including, but not limited to, the following:

- 1. Mitigation
  - a. Corrective measures, if any, taken by the licensee
  - b. Participation in Responsible Vendor training
  - c. Implementation of new systems or processes to ensure future

compliance

2. Aggravation
  - a. Violation committed by licensee or manager versus an employee
  - b. Prior similar violations
  - c. Willfulness or deliberateness of the violation
3. Other factors
  - a. Nature and seriousness of the violation
  - b. Prior violations, if any, at the licensed premises
  - c. Effectiveness of prior corrective action, if any
  - d. Likelihood of recurrence
  - e. Length of time the license has been held by the licensee
  - f. Length of time since previous violation, if any
  - g. Previous sanctions imposed against the licensee, if any

B. First Violation Sentencing Options

1. License Infractions
  - a. Imposition of a civil penalty of up to \$5,000 per license for each day the violation occurs or continues; or
  - b. License suspension of up to 20 days
  - c. Fine in lieu of suspension or a portion of suspension of up to \$10,000;
  - d. Restrictions on license designated to ensure future compliance
2. License Violations
  - a. License suspension of between two and 25 days
  - b. Fine in lieu of suspension or a portion of suspension of up to \$50,000
  - c. Revocation of license
  - d. Restrictions on license designated to ensure future compliance
3. License Violations Affecting Public Safety
  - a. Mandatory minimum license suspension of two days for which a fine in lieu of suspension may not be considered; and
  - b. Additional license suspension of up to 30 days
  - c. Fine in lieu of additional license suspension of up to \$100,000
  - d. Revocation of license
  - e. Restrictions on license designated to ensure future compliance

D. Second Violation Sentencing Options

1. License Infractions
  - a. Imposition of a civil penalty of up to \$5,000 per license for each day the violation occurs or continues; or
  - b. License suspension of up to 20 days
  - c. Fine in lieu of suspension of up to \$10,000
  - d. Restrictions on license designated to ensure future compliance
2. License Violations
  - a. License suspension of between two and 25 days
  - b. Fine in lieu of suspension of up to \$50,000
  - c. Revocation of license
  - d. Restrictions on license designated to ensure future compliance

3. License Violations Affecting Public Safety
  - a. Mandatory minimum license suspension of four days for which a fine in lieu may not be considered; and
  - b. Additional license suspension of up to 30 days
  - c. Fine in lieu of additional license suspension of up to \$100,000
  - d. Revocation of license
  - e. Restrictions on license designated to ensure future compliance

E. Third Violation Sentencing Options

1. License Infractions
  - a. Imposition of a civil penalty of up to \$5,000 per license for each day the violation occurs or continues; or
  - b. License suspension of up to 20 days
  - c. Fine in lieu of suspension of up to \$10,000
  - d. Restrictions on license designated to ensure future compliance
2. License Violations
  - a. License suspension of between two and 25 days
  - b. Fine in lieu of suspension of up to \$50,000
  - c. Revocation of license
  - d. Restrictions on license designated to ensure future compliance
3. License Violations Affecting Public Safety
  - a. Mandatory minimum license suspension of seven days for which a fine in lieu may not be considered; and
  - b. Additional license suspension of up to 30 days
  - c. Fine in lieu of additional license suspension of up to \$100,000
  - d. Revocation of license
  - e. Restrictions on license designated to ensure future compliance

F. Fourth or More Violation Sentencing Options

1. License Infractions
  - a. Imposition of a civil penalty of up to \$5,000 per license for each day the violation occurs or continues; or
  - b. License suspension of up to 20 days
  - c. Fine in lieu of suspension of up to \$10,000
  - d. Restrictions on license designated to ensure future compliance
2. License Violations
  - a. License suspension of between two and 25 days
  - b. Fine in lieu of suspension of up to \$50,000
  - c. Revocation of license
  - d. Restrictions on license designated to ensure future compliance
3. License Violations Affecting Public Safety
  - a. Revocation of license