

STANDARD (NON-EMERGENCY) RULE

Rules 1 through 6 Regarding Medical and Recreational Marijuana Businesses

1. Penalty Schedule Guidelines

The following chart is adopted as the Guidelines for (a) the Marijuana Licensing Authority in recommending fines, suspension or revocation, and (b) the Municipal Court in quasi-judicial proceedings pursuant to Subsections 6-14-14(c) and 6-16-14(c).

City of Boulder Draft Marijuana License Penalty Schedule Guidelines - August 3, 2016

The following is the Penalty Schedule that is used for guidance by the Boulder Marijuana Licensing Authority when proposing penalties. This schedule includes the most frequently occurring violations, but it is not an all-inclusive list of all possible violations of the Boulder Marijuana Codes.

The city Marijuana Enforcement team members are always available to answer questions beforehand about compliance from Boulder Marijuana businesses to ensure that their business operations remain compliant with our local law. Additionally, the City of Boulder offers MJ sales and service training for stores, key-holder training about city inspection requirements and enforcement trends, and MJ city tax requirement trainings so that Boulder Marijuana businesses can acquaint themselves with local laws and operating requirements. Notices for these city trainings will be posted on the City of Boulder licensing office website.

Actual penalties may vary depending on a variety of factors such as mitigating or aggravating circumstances, efforts of business to correct the violation, or time between violations. Boulder marijuana businesses have a right of appeal for fine, suspension, and revocation recommended penalties, and if an appeal is timely filed a quasi-judicial hearing before a city municipal court judge will be held.

<u>Operational Infractions</u>	First Offense	Second Offense	Third Offense	Fourth Offense	Fifth Offense
Unsealed MJ possession by employees at licensed premise or acceptance of samples by employees	\$1,000 fine	\$2,500 fine	\$3,000 fine	\$5,000 fine	Revocation
MJ product or plants not properly packaged for removal/transport or MIP products not properly labeled	\$1,000 fine	\$2,500 fine	\$3,000 fine	\$5,000 fine	Revocation
Unapproved goods sold at licensed premise	\$1,000 fine	\$2,500 fine	\$3,000 fine	\$5,000 fine	Revocation
ID scanner not utilized and/or failure to properly verify ID for determination of age	\$1,000 fine	\$2,500 fine	\$3,000 fine	\$5,000 fine	Revocation
Refusing to remove key-holder from management when background is unapproved by city	\$1,000 fine	\$2,500 fine	\$3,000 fine	\$5,000 fine	Revocation
Failure to obstruct view MJ of sales or storage of MJ from public view	\$1,000 fine	\$2,500 fine	\$3,000 fine	\$5,000 fine	Revocation

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<u>Impact on Community or Safety Violations</u>	First Offense	Second Offense	Third Offense	Fourth Offense
Illegal Advertising	\$2,000 fine	\$3,500 fine	\$5,000 fine	Revocation
For Medical Marijuana wellness centers only, not having a private consultation room or not offering other holistic offerings at licensed location	\$2,000 fine	\$3,500 fine	\$5,000 fine	Revocation
No city approved key-holder or owner on-site	\$2,000 fine	\$3,500 fine	\$5,000 fine	Revocation
Uncooperative with PD with inspections or investigations or misrepresentation to regulators	\$2,000 fine	\$3,500 fine	\$5,000 fine	Revocation
Refusal to allow city inspections or premise access	\$2,000 fine	\$3,500 fine	\$5,000 fine	Revocation
Sale of LLC shares or corporate stock in Boulder business or adding officers/managing members without proper and complete 30-day pre-file with the city	\$2,000 fine	\$3,500 fine	\$5,000 fine	Revocation
Secure dispensing area not locked or restricted licensed location unlocked	\$2,000 fine	\$3,500 fine	\$5,000 fine	Revocation
MJ product transport details not emailed to BPD and email bounce back not printed for transportation by licensee	\$2,000 fine	\$3,500 fine	\$5,000 fine	Revocation
Processing of MJ in violation of the Code (e.g. at store, at a grow or illegal processing at a MIP)	\$2,000 fine	\$3,500 fine	\$5,000 fine	Revocation
Failure to abide by neighborhood responsibility plan	\$2,000 fine	\$3,500 fine	\$5,000 fine	Revocation
Failure to remedy odor violations as directed	\$2,000 fine	\$3,500 fine	\$5,000 fine	Revocation
On-premise consumption by customers	\$2,000 fine	\$3,500 fine	\$5,000 fine	Revocation
Failure to operate business in compliance with the license or its operating plan or security plan	\$2,000 fine	\$3,500 fine	\$5,000 fine	Revocation

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<u>Health, Safety and Security Violations</u>	First Offense	Second Offense	Third Offense	Fourth Offense
Use of unapproved locking storage that does not qualify as a safe	\$3,000 fine	\$4,000 fine	\$5,000 fine	Revocation
Not making disposed of MJ unusable and unrecognizable and not locking dumpsters	\$3,000 fine	\$4,000 fine	\$5,000 fine	Revocation
Not locking product or receipts in a safe for overnight storage	\$3,500 fine	\$5,000 fine	Revocation	
MJ or MJ product outside of a licensed premise	\$3,500 fine	\$5,000 fine	Revocation	
Making a permanent modification of the licensed premises without prior city approval	\$3,500 fine	\$5,000 fine	Revocation	
On-premise consumption by employees, managers or owners	\$3,500 fine	\$5,000 fine	Revocation	
Video unavailable, cameras not working, or 40 days video off-site storage copy unavailable	\$3,500 fine	\$5,000 fine	Revocation	
A person under the age of 21 in the licensed premises of a recreational marijuana business	\$3,500 fine	\$5,000 fine	Revocation	
Sale of MJ or MJ product to a person under 21 years of age	\$4,000 fine	\$5,000 fine	Revocation	

Except for blatant violations including but not limited to selling to minors, it is the practice of the city Marijuana Enforcement Team inspectors to work with a business to assist with compliance before referring a violation to the Marijuana Licensing Authority

When the city proposes revocation, on a case by case basis and balanced with the seriousness of the violations, repeated violations or lack thereof, the city may offer the licensee a one-time opportunity to sell the business to an already approved Boulder licensee with a good enforcement history and prior approved background checks. This will not be offered to a licensed business more than one time.

Mitigating factors include:

- The violation is a first offense with a single count
- the MJ business contacts the city with a plan for future compliance so that the business will not have future violations.

Aggravating factors include:

- multiple counts or a repeat offense
- the violation occurs after the legal requirement has been explained to the licensee
- the licensee does not contact the city to present a plan for future compliance to avoid repeat violations.

2. Chart of Classification for Modifications.

The following chart is adopted as the classification of different type of work that is exempt from the requirement to file a modification application, and work that qualifies as a minor or major modification. A modification shall be considered a Major Modification unless it fits into one of the other categories on this chart.

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Permanent Modifications Chart for Marijuana Businesses-
Stores and Grows August 3, 2016

<p>Non-Modification (inspection at renewal) No Fee</p>	<p>Minor Modification (once application filed, and required building permits are approved, may proceed on modification with inspection later scheduled)</p> <p>Application, Fee, and 1 Dept. Inspection</p> <p>Fee \$250</p>	<p>Major Modification (must be fully approved before modification can be fully utilized)</p> <p>Application, Fee and 4 Dept. Inspections</p> <p>Fee \$1,100</p>
<p>Installation of a Light fixture with existing source of power</p> <p>Upgrading existing equipment that does not require adding outlets, service upgrades or a new electric panel or subpanel</p> <p>camera cleaning and adjustments to maintain view of areas as required in security plan</p> <p>Painting and cleaning</p> <p>Regular maintenance of systems (HVAC, irrigation), such as cleaning and replacing filters</p> <p>Repair or replacement of equipment with same model not requiring building permit and not part of operational plan</p> <p>Moving furniture not associated with MJ sale/service/storage</p> <p>Carpet and tile replacement</p>	<p>Camera Addition, Removal or change of areas monitored and any change to the security system that does not require a change to the security plan</p> <p>Adding or removing a safe</p> <p>Adding, modifying or removing POS within room shown on floor plan</p> <p>Adding an outlet or other change to the electric system that does not require a service upgrade or a new panel or subpanel</p> <p>Grow Trays- adding additional square footage or moving location</p> <p>New or change to equipment (HVAC, irrigation) with no effect on operation plan, floor plan or security plan and not within a MIP,</p> <p>Change of Room Designation with no structural changes</p> <p>Window replacement</p>	<p>Change to square footage, operating plan, floor plan or security plan</p> <p>Structural changes- walls, windows etc.</p> <p>Changes to the electrical system that require service upgrades or new panel or subpanel</p> <p>Changes to the plumbing system that require changes to mold mitigation plan or wastewater plan</p> <p>Change to Room Designation with structural change</p> <p>Material change to sale, storage, or preparation of MJ</p>

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Permanent Modifications Chart for Marijuana Businesses- Marijuana Infused Product Locations August 3, 2016

The fee for Grows and Retail apply to MIPs except for the following:

<p>Minor Modification (once application filed, and required building permits are approved, may proceed on modification with inspection later scheduled)</p> <p>Application, Fee, Building IH confirm, and 1 Dept. Inspection Fee \$500</p>	<p>Major Modification (must be fully approved before modification can be utilized)</p> <p>Application, Fee, Building IH full review, and 4 Dept. Inspections</p> <p>Fee \$1,500</p>
<p>Equipment change as the only change to IH plan</p> <p>SOP change that does not require review by industrial hygienist</p> <p>New or change to equipment (HVAC, irrigation) with no effect on operation plan, floor plan or security plan or industrial hygienist plan</p>	<p>New, replacement or change of equipment or any change to process certified by industrial hygienist</p> <p>Any change to process certified by industrial hygienist</p> <p>Changes to the electrical system that require service upgrades or new panel or subpanel</p> <p>New or change to equipment (HVAC, irrigation) with effect on operation plan, floor plan or security plan or industrial hygienist plan</p> <p>A change to any equipment or system with flammable refinement</p>

3. Examples of “Incidental to Sponsorship”

The following chart is adopted to provide examples of items that do or do not qualify as “incidental to sponsorship” as the term is defined in Sections 6-14-2 and 6-16-2. In the event an advertisement is not clearly incidental to sponsorship, it shall not be considered incidental to sponsorship.

Incidental to Sponsorship of a Charitable Event	Advertising that is not Permitted as Incidental to Sponsorship of a Charitable Event
<p>Donation of any amount of money to the event</p>	
<p>Business name and/or logo can be included in any of the following when other sponsors are similarly listed and the item is prepared by the event organizer: Print or internet advertisement for the event, event posters, event t-shirts, programs for the event, signs at the location of the event, banners, film frames displaying all sponsors at a film festival</p>	<p>No advertising, including without limitation slogan, quote, street or website address is not incidental to sponsorship and cannot be included on any of the following unless otherwise specifically allowed by a Marijuana Code of the City: booths at the event or elsewhere, any advertising prepared by a person other than the event organizer, flags, television or radic announcement of the event with inclusion of the marijuana businesses differently than all other sponsors of the event.</p>
	<p>Distribution of any materials containing advertising of a marijuana business, including without limitation flyers, advertisements, coupons, t-shirts or any other tangible or intangible material at an event</p>

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4. Examples of Educational Materials.

The following chart is adopted to give examples of what qualifies as educational, promotional and company materials, and what does not so qualify. Any writing or tangible object that does not qualify as a particular type of material is not that type of material.

<p>Educational Materials</p> <p>Writings that meet all of the following are considered educational materials</p> <ul style="list-style-type: none"> • Prepared by a governmental or non-profit entity • Designed to provide facts, warnings or other health and safety-related information about consumption of marijuana and marijuana-infused products 	<p>Non-Educational Materials</p> <p>The following writings are not educational materials:</p> <ul style="list-style-type: none"> • Containing arguments for or against the legalization of marijuana • Containing arguments for change to state or local laws; • Encourage the use of marijuana • Any writing that includes the name or logo of a marijuana business • Company material • Promotional Items
<p>Promotional Materials</p> <ul style="list-style-type: none"> • Any writing or object that contains the name and logo of a marijuana business 	<p>Non-Promotional Materials</p> <ul style="list-style-type: none"> • Educational materials
<ul style="list-style-type: none"> • Any writing or tangible object that can be used to expose the name or logo of the business to third parties 	<ul style="list-style-type: none"> • A work uniform worn inside the business
<p>Company materials</p> <p>Any information printed or transmitted electronically that</p> <ul style="list-style-type: none"> • includes the name and logo of a particular marijuana business • includes promotes a particular marijuana business • describes marijuana or marijuana-infused product distributed by a particular marijuana business • promotes a particular marijuana business to potential employees over the age of 21 • potential investors • instructions of use of marijuana or marijuana-infused product distributed by the business 	<p>Non-Company Materials</p> <ul style="list-style-type: none"> • Educational materials

5. Access of Restricted Areas as visitor or tourist

Subsections 6-14-8(b)(2) and 6-16-8(b)(2) describe visitors that may access a restricted area of a marijuana business for educational purposes that do not allow tourists. This rule is intended to provide examples of who may qualify and who may not. The term "educational purposes" is intended to be broad for the purposes of these sections and to include potential employees or investors, parents or other familiar members of employees that desire to see where their family member is working, legislators, business entrepreneurs intending to develop products for the marijuana business. The sections are intended to prohibit those that (a) are seeking access to restricted areas of marijuana businesses without any connection to the business, (b) are curious about marijuana businesses, (c) are looking for tourist stop on a vacation, (d) pay any person for access to the restricted area. Log required for

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registration of visitors shall include the reason for its allowance of any person, other than an employee, within a restricted area.

6. Pre-Orders for Immature Plants

The pre-orders allowed by Subsections 6-14-8(w) and 6-16-8(w) for immature plants may include the following:

- The deposit required with pre-orders may be up to the retail amount of the immature plant;
- That the pre-payment is non-refundable; and
- The immature plant transferred to the center may be destroyed if not purchased by the requesting customer.

Although the plant will be subject to excise tax, the retail sale of the immature plant is not a taxable event for sales tax until the immature plant is purchased by the customer.

Rule 6-14.A.17

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Rules 1 through 6 Regarding Medical and Recreational Marijuana Businesses

- A. This Rule incorporates the guidance, requirements, rules and regulations shown in Attachment A.
- B. The attached rules 1 through 6 apply to Title 6, Chapter 14, "Medical Marijuana," and Chapter 16, "Recreational Marijuana," B.R.C. 198.
- C. To the extent only of any conflict, this rule supersedes any conflicting rules or parts of rules.

Legal Authority: Title 1, Chapter 4, and Sections 6-14-16 and 6-16-16, B.R.C. 1981

Approved as to form and legality for adoption on 3-14-17 (date).

Karl W. Waddell (signature), (Assistant/Deputy) City Attorney.

Approved before publication by City Manager or delegate on March 17, 2017 (date).

Jane S. Brautigam (signature), City Manager (title),

Adopting Authority.

Three copies of the rule filed with City Clerk on 3/21/2017 (date).

Notice publication date (15-day comment period) in the Daily Camera:

3/23/2017 (date).

Rule approved and adopted ~~with~~ without change after considering public comment by City

Manager or delegate on April 10, 2017 (date)

Jane S. Brautigam (signature), City Manager (title),

Adopting Authority.

Adopted rule re-filed with City Clerk and effective on 4/11/2017 (date)

STANDARD (NON-EMERGENCY) REGULATION/RULE

Rule 6-14-16.A.20

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Rule Regarding Marijuana Licensees' Energy Reporting, Renewable
Energy Requirements, and Energy Impact Offset Fees

BRC Section that is the subject of this Rule: Sections 6-14-8(i), 6-14-9(g), 6-16-8(i), and 6-16-9(g), B.R.C. 1981.

1. This Rule incorporates the guidance, requirements, rules and regulations shown in **Attachment A**.
2. The attached Rules apply to Title 6, Chapter 14, "Medical Marijuana," and Chapter 16, "Recreational Marijuana," B.R.C. 1981.
3. To the extent only of any conflict, this Rule supersedes any conflicting Rules or parts of Rules.

ATTACHMENT A

Rule Regarding Marijuana Licensees' Energy Reporting, Renewable Energy Requirements and Energy Impact Offset Fund

I. Definitions

The terms used in these rules have the following meanings unless the context clearly indicates otherwise:

“Community Solar Garden” means a form of distributed generation that involves solar array with multiple subscribers who may purchase a portion of the power produced and receive a credit on their electric bill.

“Electricity” means a form of energy resulting from the existence of charged particles (such as electrons or protons), either statically as an accumulation of charge or dynamically as a current, measured in kilowatt hours (kWhs) provided by the local utility.

“Electricity offset” means a unit of energy from a renewable source that counteracts a unit of site used fossil fuel-based electricity.

“Energy” means electricity, natural gas, steam, hot or chilled water, heating oil, or other product for use in a building, or renewable on-site electricity generation, for purposes of providing heating, cooling, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities.

“Energy Impact Offset Fee(s)” (“EIOFs”) means the fee for medical and recreational marijuana cultivation businesses approved by the City Council and included in Chapter 4-20, B.R.C. 1981. EIOFs are paid into the Energy Impact Offset Fund, which has been approved by City Council as a renewable energy offset option pursuant to Sections 6-14-8(i) and 6-16-8(i), B.R.C. 1981. The city will use the EIOFs in the Energy Impact Offset Fund to offset the marijuana industry’s greenhouse gas emissions impact.

“ENERGY STAR Portfolio Manager” means the Internet-based free tool developed and maintained by the U.S. Environmental Protection Agency to track and assess the relative energy performance of buildings nationwide.

“Program website” means the website <https://bouldercolorado.gov/planning/boulder-marijuana-facility-energy-requirements> maintained by the city for the implementation of these requirements.

“Renewable energy” means energy that is produced from renewable resources that are naturally replenished on a human timescale such as, sunlight, wind, rain, tides, waves, and geothermal heat.

II. Renewable Energy Requirements (Sections 6-14-8 (i) and 6-16-8 (i), B.R.C. 1981)

A. *Compliance.* To comply with renewable energy requirements, medical and recreational marijuana cultivation licensees must complete the *City of Boulder Marijuana Facility 100% Electricity Offset Selection Form* on the program’s website under the “*Offset your facility’s electricity use*” tab. Compliance with renewable energy requirements may be achieved through one or a combination of the offset options, including a verified subscription to a Community Solar Garden, renewable energy generated onsite, or an

equivalent subject to approval by the city, including the Energy Impact Offset Fund and approved energy efficiency measures. All electricity use is tracked by using the energy reporting tool per the reporting requirements. See Section III, below. For required offset option documentation, see the program's website. Option selection is subject to quality control audits.

B. *EIOFs*. The following information applies to the city's EIOFs, invoicing, and payment processes.

1. EIOFs. The city manages and sets the EIOFs.
 - a. Licensees will be notified of any EIOF change no less than 30 days in advance of the start of the billing period.
 - b. The EIOF amount will be collected based on total electricity (kWhs) consumed at the licensed facility, less the kWhs from any on-site renewable energy or Community Solar Garden subscription.
2. EIOF Invoice Process. The city will bill for electricity offsets for a six-month period in arrears, twice a year. See the program's website for submission dates to ensure compliance.
3. EIOF Payment Process. Licensees are responsible to remit EIOF payments as instructed on the invoice and program's website.
4. EIOF Payment Obligation: A business entity holding multiple marijuana licenses is responsible for all EIOF invoice payments associated with each of the business entity's valid licenses.

C. *EIOF Invoice Corrections*. Any requests for invoice corrections to prior payments and/or credit through a city program must be submitted through a written request. See the instructions on the program's website. Formal approval or rejection of the request will be provided in writing by the city. If an EIOF invoice was issued and paid, then errors were identified, it is the licensee's obligation to submit documentation as proof to the city that the invoice amount should be corrected. The city will evaluate and correct the EIOF amount and fee discrepancies will be credited to the next EIOF invoice.

D. *EIOF Fee Balances in the Case of License Transfer or Surrender*

1. Licenses with EIOFs Due. Licensees shall pay all EIOFs prior to the transfer or surrender of the license. The city will pro-rate the EIOF that has not yet been billed and provide the licensee with a final invoice.
2. Transfers: If a license with an approved EIOF credit or partial credit is being transferred, the EIOF credit will stay with the license and transfer to the new owner.
3. Surrenders. If the license is being surrendered, any EIOF credit will be applied to the last invoice that will be issued before the surrender of the license is approved. Any remaining balance of a credit is surrendered with the license.

III. Reporting of Energy Use and Compliance with Renewable Energy Requirements (B.R.C. 6-14-9 (g) and B.R.C. 6-16-9 (g))

A. *Information Submittal.* To comply with reporting requirements, medical and recreational marijuana cultivation licensees must register their facility with the free, on-line energy reporting tool, ENERGY STAR Portfolio Manager (“ESPM”). The city uses the ESPM reporting tool to track each licensed facility’s electricity use. Each facility’s ESPM account will track its monthly electricity use in kWhs. All other descriptive information required by ESPM account registration shall be included. Submittals are subject to quality control reviews. Licensees are responsible for accurate and timely reporting. All electricity use shall be entered in ESPM by the deadline posted on the program website.

ESPM account required information is as follows:

1. Property address, including suite or unit;
2. Primary use type;
3. Floor area;
4. All utility meters that supply electricity to the cultivation facility;
5. Monthly electricity consumption in kilowatt hours (kWh);
6. Solar energy generation onsite (if applicable).

B. *Information Shared with the City.* Licensees shall share their facility’s registered ESPM account with the city. Instructions on registering and “sharing” the ESPM’s functions are on program’s website’s *How to Guide*.

C. *Information Maintained for Compliance.* Licensees shall maintain documentation that is proof of monthly electricity use data from the facility. The documentation includes, but not limited to, monthly utility bills, on-site solar project installation plans and permits and solar electricity generation information listed on utility bills and all Community Solar Garden contracts and verification of annual generation. This information shall be maintained as proof of electricity use for accuracy and audit purposes for a period of three years.

D. *Information Transfer of ESPM Accounts:* If a license is being transferred, it is the existing licensee’s responsibility to transfer the ESMP registered account to the new owner. The new owner shall have access to the historical electricity use from the facility’s ESMP account. Instructions on ESPM account transfers are on the program’s website.