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TOWN OF ERIE
MEMORANDUM

TO: LUCAS WORKMAN, ECONOMIC DEVELOPMENT SPECIALIST

FROM: KENDRA L. CARBERRY, TOWN ATTORNEY *WC*
ELIZABETH G. LEBUHN, ESQ.

DATE: FEBRUARY 24, 2021

RE: VARIOUS MARIJUANA ISSUES

This memorandum addresses specific questions the Town of Erie recently posed regarding marijuana regulations, local authority and compliance with state-level regulations, and sales tax receipt on marijuana delivery.

1. What authority does the Town have to regulate the type, potency, or quantity of marijuana products sold in dispensaries?

A local licensing authority, as designated by "municipal, county, or city and county charter, ordinance, or resolution, or the governing body of a municipality" may impose separate local licensing requirements related to time, place, and manner for regulated marijuana businesses, as long as such restrictions are adopted by ordinance or resolution. C.R.S. §§ 44-10-104(3); 44-10-301(2)(a)(I). This includes, without limitation: distance restrictions between premises for which local licenses are issued; reasonable restrictions on the size of an applicant's licensed premises; and any other requirements necessary to ensure the control of the premises and the ease of enforcement of the terms and conditions of the license. C.R.S. § 44-1-301(2)(a)(II). The local requirements can be more restrictive than state requirements. C.R.S. §§ 44-10-313(1)(a)-(b).

The state licensing authority must provide a local licensing authority with a copy of a retail marijuana business application within 7 days of receipt, at which point the local authority can determine if the application meets the local restrictions. C.R.S. § 44-10-301(3).

2. What state level regulations must the Town follow?

The state promulgates both mandatory and permissive rules. C.R.S. § 44-10-203. The Town must comply with any mandatory rules, and cannot issue a license in contradiction of any state-level restrictions. *Id.*; C.R.S. § 44-10-311(1).

A new license may not be issued for a medical marijuana dispensary within 1,000 of a location where another application was denied within the past two years "due to the nature of the use or other concern related to the location," and this is mandatory. C.R.S. § 44-10-311(1)(a). The applicant must have a lease or other agreement for the premises named in the application and the existing zoning must permit the cultivation, manufacture, or sale of medical marijuana. C.R.S. §§ 44-10-311(1)(b)-(c).

There are additional distance requirements surrounding schools, alcohol or drug treatment facilities, child care facilities, and higher education institutions. C.R.S. § 44-10-311(1)(d). The Town has the option of using these distance requirements, varying the distance requirements, or eliminating one or more types of schools, campuses, or facilities from the application of a distance restriction. *Id.*

Other than licensing rules, there are state-level requirements for both medical and recreational dispensaries that the Town cannot change. This includes the minimum age to purchase (18 years for medical and 21 years for retail). 1 CCR § 212-3-615(E)(3)(d). For medical marijuana, unless a recommending physician prescribes otherwise, there is a limit of 2 ounces or 6 immature plants to a patient or caregiver at one time. C.R.S. §§ 44-10-501(3)(b)-(c). For retail marijuana stores, there is a 1 ounce limit, but this excludes nonedible, non-psychoactive retail marijuana products such as topical ointments and lotions. C.R.S. § 44-1-601(3)(a)(I).

Finally, all marijuana dispensaries must comply with all applicable state laws, including the Outdoor Advertising Act. C.R.S. § 41-1-401, *et seq.* Municipalities are permitted to enact local ordinances regulating signs and advertising in addition to any permissive state-level rules on mass-marketing campaigns made in partnership with the department of public health and environment. C.R.S. § 44-10-203(3)(a); see 1 CCR § 212-3-735. Further, there can be no marijuana advertisements that specifically target individuals under the age of 18 for medical and under the age of 21 for retail. 1 CCR § 212-3-740.

3. Who receives the sales tax revenue from marijuana delivery?

Marijuana delivery permits are separate from a general license to operate as either a medical or retail dispensary. 1 CCR § 212-3-615. Where a medical marijuana dispensary has a delivery permit, it must charge a \$1.00 surcharge on every delivery and remit the surcharge to the municipality where the licensed medical marijuana store is located. C.R.S. § 44-10-501(11)(c). Medical marijuana is subject to the 2.9% state sales tax, but retail marijuana is exempt from the state sales tax. Marijuana Taxes, Colorado General Assembly Legislative Council Staff,

<https://leg.colorado.gov/agencies/legislative-council-staff/marijuana-taxes%C2%A0>. Retail marijuana is subject to both a 15% sales and excise tax, and local governments receive 10% of the 15% retail marijuana sales tax. Retail Sales Tax, Marijuana Tax Information for Local Governments, <https://tax.colorado.gov/marijuana-tax-information-for-local-governments>. This is divided proportionally among local governments, depending on the amount of retail marijuana sales taxes collected in each municipality. *Id.*

Any retail sale (marijuana or otherwise) made in Colorado is subject to Colorado taxation, and when delivery is involved, sourcing of the sale becomes relevant. *See* Sourcing Sales, <https://tax.colorado.gov/sales-tax-guide>. If the property or service is delivered to the purchaser at a location other than the seller's business location – *i.e.*, marijuana delivery – then the sale is sourced to the location the purchaser receives the purchased property or first uses the purchased service. *Id.* If the purchaser buys the property or service as a gift to a third party, the same principle applies and wherever the intended party takes possession will be the location to which the sale is sourced. *Id.* Thus, if a marijuana dispensary delivers a product to an address in the Town, the sales tax is paid to the Town. In both scenarios, the dispensary remits a \$1.00 surcharge to the municipality where the dispensary is located.

Please feel free to contact us with additional questions or issues.