

Section 1. Authorization, Title and Purpose.

A new Chapter, entitled "Unlicensed Cannabis Activity", of the City of Binghamton Code, is hereby enacted pursuant to New York Cannabis Law Section 131 as provided herein.

Section 2. Legislative Finding.

The State of New York, through amendments to the New York Cannabis Law, has granted local governments increased powers to inspect properties and to regulate and pursue enforcement remedies against unlicensed cannabis activity. The City Council of the City of Binghamton finds that the City has experienced unlicensed cannabis activity that is difficult to police under existing regulations and finds that adopting this local law to empower local authorities to conduct regulatory inspections of properties suspected of unlicensed cannabis activities, and to pursue enforcement remedies against such activities is necessary to protect the public health, safety and welfare and to promote the public good.

Section 3. Amendment.

A new Chapter, entitled "Unlicensed Cannabis Activity", shall be created under the City of Binghamton Code, and thereunder the following new subsections shall be created as follows:

§ []-1 Legislative intent.

The purpose of this Chapter is to prohibit the unlicensed and unpermitted marketing and sale of cannabis and cannabis products, to adopt procedures for conducting regulatory inspections of premises suspected of such activities, and to authorize the commencement of enforcement mechanisms, and to seek remedies to halt such activities to protect the public health, safety, and welfare and to promote the public good.

§ []-2 Definitions.

For purposes of this Chapter, the following terms shall be defined as follows:

OCM: New York State Office of Cannabis Management.

Unlicensed activity: the marketing or sale of cannabis or cannabis products without being registered with OCM or possessing the requisite license or permit from OCM to conduct such marketing or sale of cannabis or cannabis products.

Terms not defined herein shall have the meanings set forth in the New York Cannabis Law.

§ []-3 Inspections Permitted.

A. The Police Department is hereby authorized to conduct regulatory inspections of any place of business located within the City, including any vehicle used for such business, that is

suspected of engaging in unlicensed activity or otherwise not being licensed or registered with OCM to engage in retail sales of cannabis or cannabis products.

- B. Scope of inspections. Regulatory inspections under this [Chapter] shall be limited to determining whether the premises is conducting activity for which a license from OCM is required. Any such regulatory inspection shall only occur during the operating hours of such place of business, with or without notice, and shall be conducted for the purpose of civil administrative enforcement with respect to whether the premises has a lawful OCM license. Nothing herein shall limit any enforcement action under any other applicable law when illegal activity is observed or occurs during such inspection.
- C. The Chief of Police, or his/her designee, is designated as the City's liaison to OCM and shall:
 - (1) ensure that updates to the OCM directory of licensees are immediately incorporated into the local inspection process, coordinate with OCM on efforts to inspect unlicensed businesses, and assist with related local enforcement efforts;
 - (2) send biweekly reports to OCM in a manner and format prescribed by OCM detailing recent enforcement efforts, including information regarding the number and location of inspections conducted, notices of violation issued, and orders to seal issued and executed, and the amount and nature of the cannabis, cannabis products, or products marketed as such seized; and
 - (3) serve as the primary contact for OCM in connection with its training program and the sharing of materials made available to cities with regard to the inspection and enforcement of unlicensed cannabis businesses.

§ []-4 Complaints

Any person may file a written complaint with the Police Department which alleges or asserts the existence of an unlicensed activity. The Police Department shall review and investigate written complaints. The process for responding to a complaint shall include such of the following steps as the Police Department may deem to be appropriate:

- A. conduct a regulatory inspection pursuant to § []-3 and documenting the results of such inspection;
- B. issue a notice of violation and order to cease the unlicensed activity, setting forth the nature of the unlawful conduct along with any fines or penalties for such conduct in amounts not to exceed the fines set forth in § []-14, and order any person who is unlawfully selling cannabis, cannabis product, or any product marketed or labeled as such without obtaining the appropriate registration, license, or permit therefor, or engaging in indirect retail sale, to cease such prohibited conduct, provided that any such notice of violation and order to cease unlicensed activity may only be issued against the business that is conducting the unlicensed activity or an individual owner of the business. Any notice of violation and order to cease unlicensed activity shall be served by delivery of the order to the owner of the business or

other person of suitable age or discretion in actual or apparent control of the premises at the time of the inspection and shall be posted at the building or premises that have been sealed, secured and closed. A copy of the order shall also be mailed to any address for the owner of the business at any address provided by the person to whom such order was delivered pursuant to this paragraph;

- C. seize any cannabis, cannabis product, or any product marketed or labeled as such, found in the possession of a person engaged in unlicensed activity and in their place of business, including a vehicle used for such business, maintain documentation of the chain of custody of such seized products, and ensure that such products are properly stored, catalogued, and safeguarded until such time as they may properly be destroyed by the City or transferred to another government entity;
- D. issue an order to seal the building or premises of any business engaged in unlicensed activity, when such activity is conducted, maintained, or permitted in such building or premises, occupied as a place of business subject to the following procedures:
 - (1) Chief of Police, or his/her designee, may issue an order to seal with an immediate effective date if such order is based upon a finding by the Chief or Police, or his/her designee, of an imminent threat to the public health, safety, and welfare, as defined in § []-5.
 - (2) Any order to seal shall be served by delivery of the order to the owner of the business or other person of suitable age or discretion in actual or apparent control of the premises at the time of the inspection and shall be posted at the building or premises that have been sealed, secured and closed. A copy of the order shall also be mailed via first class mail to any address for the owner of the business provided by the person to whom such order was delivered pursuant to this paragraph. The order shall remain in effect pending a hearing and final determination of a court, or until such order is vacated by the Chief of Police, or his/her designee. An order to seal shall explicitly state that a request for a hearing must be submitted in writing to Corporation Counsel within seven (7) days. Upon receiving such a request for a hearing, Corporation Counsel shall file a copy of the request with the City Court Clerk.
 - (3) The City Court shall then fix the date of such hearing no later than three (3) business days from the date such notice is received by the Court and provide notice to the parties of the date, time, and location of the hearing. Upon such date, the Court shall hear testimony and receive evidence presented by the parties. Within four (4) business days of the conclusion of the hearing, the Court shall make a determination as to: (i) whether the person upon which the order to seal was issued was engaged in unlicensed activity, (ii) if the person is found to have engaged in unlicensed activity, then whether such unlicensed activity presents an imminent threat to public health, safety and welfare as provided herein, and (iii) whether the unlicensed activity as described in this section is more than a de minimis part of the business activity on the premises or in the building to be sealed pursuant to the order.

However, when an order to seal has been issued upon a second or subsequent inspection in which unlicensed activity is confirmed to be continuing more than ten (10) calendar days after a notice of violation and order to cease unlicensed activity was previously issued, the Court need only determine: (i) whether the person upon which the order to seal was issued was engaged in unlicensed activity; (ii) whether a notice of violation and order to cease unlicensed activity had been issued eleven (11) or more days prior to the issuance of the order to seal; and (iii) whether the order to seal was issued in compliance with § []-4(D)(4). If the Court determines that an order to seal was not properly issued, the Court shall vacate such order. If the Court is satisfied that an order to seal was properly issued, the Court shall render a judgment affirming the issuance of an order to seal, and direct the closing of the building or premises by any police officer or peace officer to abate the unlicensed activity and shall direct any police officer or peace officer to post a copy of the judgment and a printed notice of such closing conforming to the requirements of this Chapter. The closing directed by the judgment shall be for such period as the Court may direct but in no event shall the closing be for a period of more than one year from the posting of the judgment provided for in this section. Failure of a party that requested a hearing to appear at the hearing will result in a default and order of sealing to remain in effect for such period as the Court may direct but in no event shall the order be in effect for a period of more than one year from the posting of the judgment unless otherwise vacated as provided for herein.

- (4) Upon a determination by the City Court that a person or place of business has engaged in unlicensed activity, the Chief of Police, or his/her designee, pursuant to New York Real Property Actions and Proceedings Law § 715-a, personally serve upon the owner or landlord of the premises, or upon their agent, a written notice requiring the owner or landlord to make an application for the removal of a commercial tenant so using or occupying the same for a violation of Article six of the Cannabis Law involving the unlicensed sale of cannabis or products marketed or labeled as such. The City may thereafter authorize the commencement of further legal proceedings pursuant to RPAPL § 715-a and seek an award of remedies provided thereunder.

§ []-5 Imminent Threat To Public Health, Safety, And Welfare.

Factors that determine an imminent threat to public health, safety, and welfare shall be limited to:

- A. documented sales to minors;
- B. unlicensed processing of cannabis products at the building or premises;
- C. orders to cease unlicensed activity issued following an inspection wherein the person engaged in the unlicensed activity engaged in violent, tumultuous, or other behaviors indicating expressed intent to not comply with the order to cease the unlicensed activity;
- D. documented presence of unlawful firearms at the building or premises;

- E. proximity of the building or premises to schools, houses of worship, or public youth facilities;
- F. presence of products deemed unsafe based on reports of illness or hospitalization; or
- G. sales of, or offers to sell, cannabis products not tested or labeled lawfully in accordance with the New York State Cannabis Law or OCM regulations.

§ []-6 Emergency Order to Seal.

Notwithstanding the factors listed in § []-5 and the restrictions set forth in § []- 6(b), the City may issue an order to seal with an immediate effective date upon a second or subsequent inspection in which unlicensed activity is confirmed to be continuing more than ten calendar days after a notice of violation and order to cease unlicensed activity was previously issued by the City, provided that the City has also provided notice that the premises may be subject to an order to seal if upon a subsequent inspection the Chief of Police, or his/her designee, finds that the violation has not been abated.

§ []-7 Issuance of Orders to Seal.

An order to seal may be issued by the City only if: (a) no part of the premises to be sealed is used in part as a residence and pursuant to local law or ordinance is zoned and lawfully occupied as a residence; and (b) the unlicensed activity as described in this section is more than a de minimis part of the business activity on the premises or in the building to be sealed pursuant to the order. In the event that an order to seal may not be issued pursuant to this subdivision, the Chief of Police, or his/her designee, shall issue a notice of violation and order to cease the unlicensed conduct, which shall constitute notice that such unlicensed activity must cease immediately.

§ []-8 De Minimis Factors.

In assessing whether unlicensed activity within a building or premises is more than de minimis, the City following factors shall be considered:

- A. the presence of signs or symbols, indoors or out, advertising the sale of cannabis or otherwise indicating that cannabis is sold on the premises;
- B. information shared in any advertisements or other marketing content in connection with the unlicensed business activity and any direct or indirect sales of cannabis or other conduct in violation of this Chapter;
- C. the volume of illicit cannabis products on site; and
- D. the variety of illicit cannabis products on site.

§ []-9 Enforcement of Orders to Seal.

Any police officer, peace officer with jurisdiction, or code enforcement officer may assist in the enforcement of an order to seal issued by the Chief of Police, or his/her designee, in accordance with the following procedures:

- A. The police officer serving and executing the order to seal shall forthwith make and return to the Chief of Police, or his/her designee, an inventory of personal property situated in and used in conducting, maintaining, or permitting the unlicensed activity within the scope of this Chapter and shall enter upon the building or premises for such purpose. Such inventory shall be taken in any manner which is deemed likely to evidence a true and accurate representation of the personal property subject to such inventory including, but not limited to photographing such personal property.
- B. The police officer serving and executing the order to seal shall enter the building or premises and, upon service of the order, command all persons present in the building or premises to vacate the premises forthwith. Upon the building or premises being vacated, the premises shall be securely locked and all keys delivered to the police officer serving the order who thereafter shall deliver the keys to the fee owner, lessor, or lessee of the building or premises involved. If the fee owner, lessor, or lessee is not at the building or premises when the order is being executed, the police officer shall securely padlock the premises and retain the keys until the fee owner, lessor, or lessee of the building is ascertained, in which event, the police officer shall deliver the keys to such fee owner, lessor, or lessee.
- C. Upon service and execution of the order to seal, the police officer shall post a copy thereof in a conspicuous place or upon one or more of the principal doors at entrances of such premises where the unlicensed activity is being conducted, maintained, or permitted. In addition, the police officer shall affix, in a conspicuous place or upon one or more of the principal doors at entrances of such premises, a printed notice that the premises have been closed by order of the City, and the name of the police officer posting the notice.
- D. Mutilation or removal of such a posted order or such a posted notice while it remains in force, in addition to any other punishment prescribed by law, shall be punishable, on conviction, by a fine of not more than five thousand dollars (\$5,000.00) or by a class **B** misdemeanor, or both, provided such order or notice contains therein a notice of such penalty, and shall be referred to the district attorney for enforcement. The City shall also adhere to the procedures in this subdivision when executing an order to seal issued in accordance with this section.

§ []-10 Duration of Orders to Seal.

Any order to seal issued pursuant to this section shall be effective for one year from the later of the posting of the order or the date of the judgment provided for in this Chapter. An order to seal shall be vacated by the Chief of Police, or his/her designee, if the respondent submits sufficient evidence to the Chief of Police, or his/her designee, by an affidavit and such other proof as may be submitted by the respondent that the unlicensed activity has been abated. An order vacating an order to seal shall include a provision authorizing the Chief of Police, or his/her designee, or any police officer assisted with the execution of the order to seal, to inspect the building or premises without notice for the purpose of ascertaining whether or not the unlicensed activity has

been abated. Any police officer, peace officer with jurisdiction, or code enforcement officer may, upon the request of the Chief of Police, or his/her designee, assist in the enforcement of an inspection provision of an order vacating an order to seal.

§ []-11 Notice of Orders to Seal.

The Chief of Police, or his/her designee, shall mail a copy, by certified mail, of any order to seal within five days following issuance of such order to the person in whose name the real estate affected by the order is recorded in the office of the county clerk, who shall be presumed to be the owner thereof. Such mailing shall constitute notice to the owner and shall be deemed to be complete upon such mailing by the office as provided above.

§ []-12 Vacating Orders to Seal.

If at any time a respondent vacates the building or premises subject to an order to seal issued by the Chief of Police, or his/her designee, or if the building owner provides sufficient proof thereof, any action or proceeding filed in accordance with these procedures relating to such building or premises shall be withdrawn by the Chief of Police, or his/her designee, and any order to seal shall be vacated.

§ []-13 Remedies.

The remedies provided for in this section are cumulative and not exclusive and the City may also request and recover penalties under any other applicable law.

§ []-14 Penalties.

Any person who engages in the unlawful sale of cannabis, cannabis product, or any product marketed or labeled as such, or in indirect retail sales, shall be subject to a civil penalty of not less than one hundred dollars (\$100.00) and not more than ten thousand dollars (\$10,000.00) for each day during which such violation continues, with a maximum penalty of no more than twenty-five thousand dollars (\$25,000.00). The penalty provided for herein may be recovered by an action or proceeding in a court of competent jurisdiction brought by the City to enforce the notice of violation provided for herein.

§ []-15 Other Civil Remedies.

In addition to, and not in limitation of any other remedies provided herein, the Mayor may direct Corporation Counsel to maintain an action or proceeding against any person in the name of the City in a court of competent jurisdiction to compel compliance with, or to permanently or preliminarily restrain by injunction the violation of, this Chapter or any other law or ordinance authorizing the use of the procedures of this Chapter, or any rule or regulation adopted pursuant thereto, including but not limited to the relief provided in Section 16-a of the New York Cannabis Law and Real Property and Proceedings Law § 715-a.

Section 4. Validity and Severability.

Should any word, section, clause, paragraph, sentence, part or provision of this local law be declared invalid by a court of competent jurisdiction, such determination shall not affect the validity of any other part hereof.

Section 5. Construction with State Law.

This Local Law is intended to comply with New York state law, including New York Cannabis Law and Real Property and Proceedings Law § 715-a, and shall be construed and applied in accordance with any applicable provisions of New York law. To the extent that any provisions of this Local Law are preempted by or conflict with state law, then the provisions of this Local Law shall not apply.

Section 6. Remainder.

Except as hereinabove amended, the remainder of the Code of the City of Binghamton shall remain in full force and effect.

Section 7. Effective Date.

This Local Law shall take effect the later of ten (10) days after its filing with the New York State Office of Cannabis Management, or upon its filing in the office of the New York State Secretary of State.