
CITY TREASURER
CITY OF WHEAT RIDGE, COLORADO

GENERAL BUSINESS AND TAX LICENSE, NO. 14162.1
NOTICE AND ORDER OF PERMANENT REVOCATION: BREAK THE STIGMA FITNESS

**FINDINGS AND DECISION FROM MAY 17, 2018 PUBLIC HEARING
REGARDING THE CITY OF WHEAT RIDGE'S REVOCATION OF THE BUSINESS
AND TAX LICENSE OF BREAK THE STIGMA FITNESS**

THIS MATTER comes before the Wheat Ridge City Treasurer (the "Treasurer") upon Break the Stigma Fitness' (BTSF) request for a hearing. On March 29, 2018, pursuant to sections 11-31 (1), (3), and (4) of the Wheat Ridge Code of Laws (the "Code"), the Treasurer issued to BTSF his Order of Immediate Suspension and Notice of Grounds for Revocation of the Business License ("Adverse Action Order"). BTSF timely requested a hearing pursuant to Code Section 11-32(a). Now, after conducting the required public hearing and being fully advised in the matter, the Treasurer now enters the following Findings and Decision.

FINDINGS

1. In August 2017, on behalf of BTSF, Jennessa Lea sought and obtained a Business and Tax License from the City of Wheat Ridge (City). *See* Exhibits 1 and 2. BTSF's business address is 9690 W. 38th Avenue, Wheat Ridge, CO 80033. *Id.*
2. The Treasurer has jurisdiction to hear this case because BTSF operated as a City licensed business within the City of Wheat Ridge.
3. Ms. Lea is the owner and operator of BTSF ("Licensee"). *See* Exhibits 1, pp. 3-4. Ms. Lea operates BTSF out of the basement of her personal residence. *Id.*
4. Section 11-31 of the Code sets forth the bases upon which the Treasurer may suspend, conditionally suspend or revoke a business license.
5. Section 11-32 of the Code sets forth the procedure to be followed whenever the Treasurer cancels, suspends or revokes a business license.
6. In serving the Adverse Action Order, the Treasurer satisfied notice requirements set forth in section 11-32(a) of the Code. On its face, the Treasurer's Adverse Action Order clearly stated the grounds for the adverse action and the Treasurer caused it to be delivered to the Licensee by certified mail and personal service. *See* Exhibit 7.

7. The Treasurer satisfied the public hearing requirement set forth by 11-32(b) of the Code. Pursuant to Ms. Lea's written request, a hearing regarding BTSF's Business and Tax License occurred on May 17, 2018 and took place in the in the City Council's Chambers.
8. At the May 17, 2018 hearing, the Licensee appeared before the Treasurer and presented argument and evidence. Ms. Lea appeared on her own behalf and called two witnesses, herself and Philip Archbold. The Treasurer also permitted Ms. Lea to cross-examine the City's witness.
9. The Treasurer accepted from Ms. Lea five exhibits and admitted four of these exhibits into the record.
 - A. The Treasurer denied Ms. Lea's exhibit A. Exhibit A is a notification of a license denial dated September 7, 2017 and sent from the City to Jamie Lynn Thomas. The Treasurer found exhibit A to be irrelevant because the document did not pertain to BTSF or the Licensee.
 - B. The Treasurer admitted Ms. Lea's exhibit B. Exhibit B is notification of the issuance from the City to the "420 Games" of a General Business and Tax license dated September 9, 2017.
 - C. The Treasurer admitted Ms. Lea's exhibit C. Exhibit C is notification from the City of the issuance of a home occupation business to BTSF dated August 22, 2017.
 - D. The Treasurer admitted Ms. Lea's exhibit D. Exhibit D is a "Break the Stigma Fitness IN KIND "GOLD BUDS" SPONSORSHIP CONTRACT" (Contract). The Contract is an agreement between BTSF and Lightshade, a Marijuana dispensary, whereby Lightshade provided Marijuana to BTSF in exchange for advertising from BTSF.
 - E. The Treasurer admitted Ms. Lea's exhibit D. Exhibit D is a letter from Jane M. Schmitz to the City dated May 5, 2018.
10. The City called as a witness Donald Edens. Mr. Edens is an Accountant in the City's Tax Division.
11. The Treasurer accepted from the City seven exhibits and admitted all of them into the record.
 1. BTSF's Business and Tax License Application dated August 17, 2017.
 2. BTSF's Current Business and Tax License (License No. 14162.1)
 3. Screenshot from BTSF's web-site taken on March 23, 2018 that outlines BTSF's policy regarding the "gifting" of Marijuana to its exercise class participants.
 4. Screenshots from BTSF's web-site taken on March 23, 2018 that depict BTSF exercise class participants using Marijuana at the BTSF yoga studio.
 - 6.E. Video: Fox 31/Channel 2 News titled "Exercise and cannabis combine at Wheat Ridge gym" (<http://kdvr.com/2018/03/13/exercise-and-cannabis-combine-in-wheat-ridge-gym/>) that depicts BTSF exercise class participants using Marijuana at the yoga studio.
 7. Fully Executed and Served Order for Immediate Suspension and Notice of Grounds for Revocation of Business License dated March 29, 2018.

8. Screenshot of FAQ from BTSF's www.eventbrite.com exercise class registration page.
12. On August 17, 2017, on behalf of BTSF, Jennessa Lea submitted to the City's Tax Division a Business and Tax License Application and Home Occupation Supplement to the Application (collectively, "Business License Application"). *See* Exhibit 1.
13. The Business License Application twice required Ms. Lea to describe BTSF's business activities. On the Business and Tax License Application, Ms. Lea categorized BTSF's business activity as "Personal Service" and described the goods sold and services provided by BTSF as "fitness classes, fitness clothing, art." *See* Exhibit 1, p. 2, nos. 59 and 60.
14. Because BTSF operated out of Ms. Lea's personal residence, Ms. Lea also completed a Home Occupation Supplement to the Application. *See* Exhibit 1, pp. 3-4. On the Home Occupation Supplement to the Application, Ms. Lea described BTSF as a "fitness facility – yoga, boot camp workouts." *See* Exhibit 1, p. 3, no. 3.
15. Both components of the Business License Application required Ms. Lea, "under penalty of perjury," to affirm by her signature that the information she provided on the Business License Application is "true and correct to the best of my knowledge and belief." *See* Exhibit 1, pp. 3 and 4.
16. On August 17, 2017, Ms. Lea signed both components of the Business License Application. *See* Exhibit 1, pp. 3 and 4.
17. On its face, the Business License Application submitted by Ms. Lea to the City makes no mention of Marijuana. *See* Exhibit 1.
18. Mr. Edens testified that he discussed the Business License Application with Ms. Lea on August 17, 2017. Mr. Edens further testified that during his August 17, 2017 discussions with Ms. Lea, she indicated to him that BTSF would not make Marijuana available to exercise class participants or permit it to be consumed on the premises.
19. Mr. Edens further testified that before recommending BTSF's Business License Application for approval, on August 17, 2017 he researched BTSF's web presence and found information attributable to BTSF that confirmed Ms. Lea's statement that BTSF would not make Marijuana available to exercise class participants or permit its consumption at the business. *See* Exhibit 8.
20. According to Mr. Edens, based on the understanding that BTSF would not make Marijuana available to exercise class participants or permit its consumption on the licensed premises, he recommended BTSF's Business License Application for approval.
21. The City issued BTSF a business license in August 2017. The City renewed BTSF's license in December 2017 for the 2018 calendar year. *See* Exhibit 2.
22. Mr. Edens testified that his understanding of BTSF's business model changed after watching a Fox News story about BTSF. Fox News televised a news story about BTSF on March 13, 2018. *See* Exhibit 6.E. The Fox News story featured the Licensee and depicted BTSF making Marijuana available to exercise class participants and permitting the consumption of it at the business' exercise studio. *Id.*

23. The fact of BTSF making Marijuana available to exercise class participants and permitting the consumption of Marijuana at the business' exercise studio is not in dispute. Ms. Lea's own witness, Philip Archbold, also testified that he attended two of BTSF's yoga classes in March 2018. Mr. Archbold testified that BTSF made Marijuana available to class participants at the yoga classes he attended. Mr. Archbold also testified that class participants consumed Marijuana before and after the yoga classes in BTSF's yoga studio.
24. In addition to the Fox News story's depiction of these facts, BTSF's web-site also contains numerous references to BTSF practice of making Marijuana available to exercise class participants and permitting the consumption of it at the exercise studio. *See Exhibits 3 and 4.*
25. BTSF has not obtained a license pursuant to Division 1, Article XII or XIII, Chapter 11 of the Code to operate as a medical Marijuana or retail Marijuana establishment.

DECISION

26. Section 11-31 (3) of the Code provides that a business license may be suspended or revoked by the Treasurer pursuant to Section 11-32 "[w]hen it appears the license was obtained by fraud or misrepresentation or false statements within the application for such license."
27. Here, BTSF's Business License Application made no mention of Marijuana. Instead, on the Business and Tax License Application, Ms. Lea categorized BTSF's business activity as "Personal Service" and described the goods sold and services provided by BTSF as "fitness classes, fitness clothing, art" and described it as a "fitness facility – yoga, boot camp workouts." *See Exhibits 1, p. 2, response nos. 59 and 60 and p. 3, response no. 3.* I also find that when Ms. Lea's discussed BTSF with D. Edens as she submitted BTSF's Business License Application to him on August 17, 2017, Ms. Lea omitted any mention of making Marijuana available or permitting its use at the exercise studio.
28. As such, based on the preponderance of evidence, I find that BTSF violated Section 11-31 (3) of the Code. BTSF's omission of any mention of the availability or use of Marijuana at the yoga studio by class participants is fatal to its business and tax license.
29. Section 11-31 (1) of the Code provides that a business license may be suspended or revoked by the Treasurer pursuant to Section 11-32 "[w]hen any activity conducted pursuant to such license violates a city ordinance."
30. I find that Section 11-404 of the Code is applicable to this case. The relevant sections of Chapter 11 provide the following guidance:

Sec. 11-404: ...

(d) No person may operate a business within the city concerning the sale, use, consumption, manufacture, possession, storage or testing of marijuana unless specifically authorized pursuant to the provisions of this article or article XII of this chapter.

(e) No marijuana clubs may operate or obtain a business license to operate within the city.

Sec. 11-401: ...

Marijuana means all parts of the plant of the genus *cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or its resin, including marijuana concentrate but shall not include industrial hemp, the fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

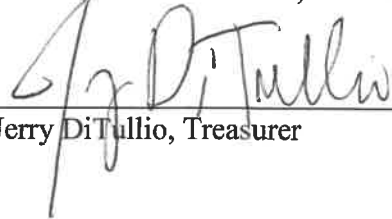
Marijuana clubs means establishments other than private residences, medical marijuana establishments or retail marijuana establishments that allow the public, members or guests to consume marijuana, medical marijuana-infused products or retail marijuana products on-site.

31. I find that BTSF violated section 11-31 (1) of the Code because BTSF violated Sections 11-404(d) and (e) of the Code. Based on the preponderance of evidence, I find that BTSF violated sections 11-404(d) and (e) of the Code because it made Marijuana available to and permitted exercise class participants to consume Marijuana at the exercise studio before and after exercise classes from, on or about, March 13, 2018 through March 28, 2018.
32. In making Marijuana available to exercise class participants or permitting it to be consumed on the premises, BTSF violated Section 11-404(d) of the Code because it operated in the City as a business concerning the “use” or “consumption” of Marijuana and was not authorized to do so pursuant to Division 1, Article XII or XIII, Chapter 11 of the Code.
33. In making Marijuana available to exercise class participants or permitting it to be consumed on the premises, BTSF violated Section 11-404(e). Pursuant to the Business and Tax License BTSF obtained from the City, Ms. Lea licensed the exercise studio located in the basement of her house as a business that served the general public. Therefore, the exercise studio located in the basement of her house no longer fit the definition of a “private residence.”
34. Section 11-31 (4) of the Code provides that a business license may be suspended or revoked by the Treasurer pursuant to Section 11-32 “[w]hen the business or activity being conducted under the license is a different business or activity than the business or activity for which the license was originally granted or duly amended.” An exercise studio that makes Marijuana available to class participants and permits its use at the licensed premises is much different than an exercise studio that does not. Therefore, based on the preponderance of evidence, I find that BTSF violated Section 11-31 (4) of the Code. Again, BTSF’s omission of any mention of the availability or use of Marijuana at the exercise studio by class participants is fatal to its business and tax license.

THEREFORE, based upon the foregoing Findings, the Treasurer hereby this Decision and Order to permanently revoke BTSF's Business and Tax License for the business operated at 9690 W. 38th Avenue, Wheat Ridge, CO 80033.

DONE this 30th day of May 2018.

CITY OF WHEAT RIDGE, COLORADO



Jerry DiTullio, Treasurer

ATTEST:



Janelle Shaver, City Clerk

CERTIFICATE OF MAILING

The undersigned hereby certifies that a copy of this **FINDINGS AND DECISION FROM MAY 17, 2018 PUBLIC HEARING REGARDING THE CITY OF WHEAT RIDGE'S REVOCATION OF THE BUSINESS AND TAX LICENSE OF BREAK THE STIGMA FITNESS** was placed in the United States mail, certified, return receipt requested, to the address of the Licensee as reflected in the records of the City Treasurer as follows:

Break The Stigma Fitness
9690 West 38th Avenue
Wheat Ridge, CO 80033

Given this 30th day of May, 2018.

By: Donald Edens
Donald Edens, Accountant, City of Wheat Ridge