



**AGENDA FOR THE
ENGLEWOOD CITY COUNCIL
STUDY SESSION
MONDAY, MARCH 22, 2010
COMMUNITY ROOM
6:00 P.M.**

- I. **Financial Report**
Financial and Administrative Services Director Frank Gryglewicz will discuss the February, 2010, Financial Report.
- II. **Medical Marijuana – 6:20 p.m.**
City Council will discuss medical marijuana in the City.
- III. **Sign Code – Mural Enforceability – 7:10 p.m.**
Community Development Director Alan White and Assistant City Attorney Nancy Reid will discuss the Sign Code – mural enforceability.
- IV. **City Manager's Choice**
- V. **City Attorney's Choice**

MEMORANDUM

To: Mayor Woodward and City Council
From: Frank Gryglewicz, Director of Finance and Administrative Services
Date: March 1, 2010
Subject: February 2010 Financial Report and Updated 2009 Financial Report

Summary of the Updated 2009 General Fund Financial Report

Please note all numbers in this report are subject to change until the audited financial report is complete.

REVENUES:

- Through December 2009, the City of Englewood collected **\$36,066,888 or \$2,512,630 (6.5 percent) less** than 2008.
- The City collected \$24,687 less in property tax and \$39,827 less in specific ownership tax this year than last year.
- **2009 sales and use revenue was \$20,226,659 or \$2,393,108 (10.6 percent) less than December 2008.** Use tax was up more than normal last year due to the 2009 receipts of use tax from 2008 audits.
- Cigarette tax collections were down \$43,295 compared to last year.
- Franchise fee collections were down \$135,603 from last year.
- Licenses and permit collections were \$83,081 less than 2008.
- Intergovernmental revenues were \$240,987 more than the prior year.
- Charges for services were \$289,211 less than last year.
- Recreation revenues decreased \$49,160 from 2008.
- Fines and forfeitures were \$178,578 more than last year.
- Investment income was \$290,326 less than last year.
- Miscellaneous revenues were \$417,040 more than last year.

OUTSIDE CITY:

- Outside City sales and use taxes were down \$1,587,497 or 19.8 percent compared to last year.
- At this time potential refunds total approximately \$900,000 for claims submitted to Englewood but not completed; the balance of the account to cover intercity claims is \$1,000,000.

CITY CENTER ENGLEWOOD (CCE):

- Sales and use tax revenues collected in 2009 were \$2,145,546 (7.2 percent) less than the \$2,312,523 collected in 2008.

EXPENDITURES:

- Expenditures through December were \$38,997,977 or \$17,222 less than the 39,015,198 expended in 2008. Please note expenditures may change next month due to year end adjustments.
- The City refunded \$329,330 in sales and use tax claims through December 2009.

RESERVES:

- The reserves for 2009 were budgeted at \$4,207,771 or 10.78 percent of budgeted revenues.
- The unaudited unreserved/undesignated fund balance for 2009 is \$4,383,776 or 12.1 percent of unaudited revenues.

TRANSFERS:

- Net transfers-in of \$663,282 were made in 2009.

REVENUES OVER/UNDER EXPENDITURES:

- Unaudited expenditures through December exceeded revenues by \$2,931,089.

PUBLIC IMPROVEMENT FUND (PIF):

- The PIF has collected \$3,242,687 in revenues and spent \$2,794,813 year-to-date. Estimated year-end fund balance is \$330,690.

General Fund Comparative Revenue, Expenditure & Fund Balance Report

as of December 31, 2009

Percentage of Year Completed = 100%

Fund Balance January 1	\$ 10,362,859	\$ 11,102,763	\$ 11,102,763	\$ 9,374,427	\$ 9,374,427	\$ 7,143,304	\$ 7,143,304			
Revenues	2009				2008			2007		
	Budget	Dec-09	% Budget	YE Estimate	Dec-08	Dec-08	% YTD	Dec-07	Dec-07	% YTD
Property Tax	2,993,000	2,971,303	99.28%	2,971,303	2,995,990	2,995,990	100.00%	2,623,118	2,623,118	100.00%
Specific Ownership Tax	350,000	276,415	78.98%	276,415	316,242	316,242	100.00%	341,423	341,423	100.00%
Sales & Use Taxes	23,632,500	20,224,659	85.58%	20,224,659	22,617,767	22,617,767	100.00%	22,753,820	22,753,820	100.00%
Cigarette Tax	250,000	218,448	87.38%	218,448	261,743	261,743	100.00%	278,785	278,785	100.00%
Franchise Fees	2,620,851	2,452,611	93.58%	2,452,611	2,588,214	2,588,214	100.00%	2,356,385	2,356,385	100.00%
Hotel/Motel Tax	8,713	9,141	104.91%	9,141	10,078	10,078	100.00%	9,722	9,722	100.00%
Licenses & Permits	577,100	588,303	101.94%	588,303	671,384	671,384	100.00%	1,168,977	1,168,977	100.00%
Intergovernmental Revenue	1,003,462	1,333,688	132.91%	1,333,688	1,092,701	1,092,701	100.00%	1,118,916	1,118,916	100.00%
Charges for Services	3,216,286	3,163,735	98.37%	3,163,735	3,452,946	3,452,946	100.00%	3,067,997	3,067,997	100.00%
Recreation	2,334,265	2,315,598	99.20%	2,315,598	2,364,758	2,364,758	100.00%	2,235,938	2,235,938	100.00%
Fines & Forfeitures	1,389,150	1,639,678	118.03%	1,639,678	1,461,100	1,461,100	100.00%	1,445,641	1,445,641	100.00%
Interest	372,611	229,999	61.73%	229,999	520,325	520,325	100.00%	411,517	411,517	100.00%
Miscellaneous	302,783	643,310	212.47%	643,310	226,270	226,270	100.00%	199,165	199,165	100.00%
Total Revenues	39,050,721	36,066,888	92.36%	36,066,888	38,579,518	38,579,518	100.00%	38,011,404	38,011,404	100.00%
Expenditures										
Legislation	379,853	346,045	91.10%	346,045	350,254	350,254	100.00%	323,964	323,964	100.00%
City Attorney	799,937	678,038	84.76%	678,038	698,563	698,563	100.00%	694,359	694,359	100.00%
Court	1,026,917	914,493	89.05%	914,493	915,303	915,303	100.00%	890,152	890,152	100.00%
City Manager	707,145	674,170	95.34%	674,170	674,323	674,323	100.00%	673,949	673,949	100.00%
Human Resources	560,898	456,275	81.35%	456,275	579,137	579,137	100.00%	557,855	557,855	100.00%
Financial Services	1,764,772	1,575,924	89.30%	1,575,924	1,626,571	1,626,571	100.00%	1,568,074	1,568,074	100.00%
Information Technology	1,448,147	1,360,237	93.93%	1,360,237	1,280,156	1,280,156	100.00%	1,254,364	1,254,364	100.00%
Public Works	5,523,010	5,152,891	93.30%	5,152,891	5,189,173	5,189,173	100.00%	5,421,775	5,421,775	100.00%
Fire Department	7,487,169	7,320,268	97.77%	7,320,268	7,215,443	7,215,443	100.00%	6,840,649	6,840,649	100.00%
Police Department	10,538,437	10,183,891	96.64%	10,183,891	9,974,925	9,974,925	100.00%	9,656,710	9,656,710	100.00%
Community Development	1,639,615	1,366,437	83.34%	1,366,437	1,464,725	1,464,725	100.00%	1,412,444	1,412,444	100.00%
Library	1,398,558	1,275,554	91.20%	1,275,554	1,261,112	1,261,112	100.00%	1,259,526	1,259,526	100.00%
Recreation	6,117,008	5,727,968	93.64%	5,727,968	5,916,449	5,916,449	100.00%	5,566,093	5,566,093	100.00%
Debt Service	1,993,682	1,805,208	90.55%	1,805,208	1,809,306	1,809,306	100.00%	1,869,762	1,869,762	100.00%
Contingency	60,000	160,578	267.63%	160,578	59,759	59,759	100.00%	130,925	130,925	100.00%
Total Expenditures	41,445,148	38,997,977	94.10%	38,997,977	39,015,199	39,015,199	100.00%	38,120,601	38,120,601	100.00%
Excess revenues over (under) expenditures	(2,394,427)	(2,931,089)	122.41%	(2,931,089)	(435,681)	(435,681)		(109,197)	(109,197)	
Net transfers in (out)	1,481,717	663,282	44.76%	663,282	2,164,017	2,164,017	100.00%	2,340,320	2,340,320	100.00%
Total Fund Balance	\$ 9,450,149	\$ 8,834,956	93.49%	\$ 8,834,956	\$ 11,102,763	\$ 11,102,763	100.00%	\$ 9,374,427	\$ 9,374,427	100.00%

Fund Balance Analysis					
Total Fund Balance	\$ 9,450,149	\$ 8,834,956	\$ 11,102,763	\$ 9,374,427	
Reserves/designations:					
-Emergencies (TABOR)	1,290,000	1,280,000	1,280,000	1,290,000	
-LTAR	3,913,178	3,131,980	3,485,143	1,986,000	
-Museum of Outdoor Arts	39,200	39,200	80,800	124,800	
Unreserved/undesignated Fund Balance	\$ 4,207,771	\$ 4,383,776	\$ 6,256,820	\$ 5,973,627	
Potential reserves/designations	-	-	-	-	
Estimated unres/undesignated Fund Balance	\$ 4,207,771	\$ 4,383,776	\$ 6,256,820	\$ 5,973,627	
As a percentage of projected revenues	11.67%	12.15%	16.22%	15.72%	
As a percentage of budgeted revenues	10.78%	11.23%			
Target	3,905,072	5,857,608			

Summary of February 2010 General Fund Financial Report

Please note the numbers in this report regarding 2009 are unaudited and subject to change until the audited financial report is complete.

REVENUES:

- Through February 2010, the City of Englewood collected **\$5,612,080 or \$529,429 (8.6 percent) less** than last year (See chart attached to the full report for detail on changes in revenue in past year).
- The City collected \$51,162 in property and \$28,798 in specific ownership tax through February.
- **Year-to-date sales and use revenue were \$3,873,843 or \$469,004 (10.8 percent) less than February 2009** (In January 2009, the City of Englewood received \$201,000 from use tax audits completed in 2008. This skews the percentage difference between 2010 and 2009. If the audit proceeds are removed from 2009, the City is down \$268,004 or 6.5 percent for the year.)
- Cigarette tax collections were down \$4,610 compared to last year.
- Franchise fee collections were \$11,182 more than last year.
- Licenses and permit collections were \$7,553 more than 2009.
- Intergovernmental revenues were \$59,186 more than the prior year.
- Charges for services increased \$16,850 more than last year.
- Recreation revenues decreased \$14,808 from 2009.
- Fines and forfeitures were \$17,044 less than last year.
- Investment income was \$12,664 more than last year.
- Miscellaneous revenues were \$146,771 less than last year.

OUTSIDE CITY:

- Outside City sales and use taxes were down \$101,349 or 7 percent compared to last year.
- At this time potential refunds total approximately \$900,000 for claims submitted to Englewood but not completed; the balance of the account to cover intercity claims is \$1,000,000.

CITY CENTER ENGLEWOOD (CCE):

- Sales and use tax revenues collected in February 2010 were \$395,502 (4.6 percent) less than the \$414,645 collected in 2009.

EXPENDITURES:

- Expenditures through February were \$4,665,460 or \$41,133 (.9 percent) less than the \$4,706,593 expended through February 2009.
- The City refunded \$74,921 in sales and use tax claims through February.

RESERVES:

- The reserves for 2010 are budgeted at \$3,878,895 or 10.7 percent of budgeted revenues.
- The unreserved/undesignated fund balance for 2010 is *estimated* at \$4,183,434 or 10.86 percent of unaudited revenues.

TRANSFERS:

- Net transfers-in of \$1,864,433 were made in 2010.

REVENUES OVER/UNDER EXPENDITURES:

- Revenues exceeded expenditures through February by \$946,620 through February 2010.

PUBLIC IMPROVEMENT FUND (PIF):

- The PIF has collected \$129,541 in revenues and spent \$1,536,248 year-to-date. Estimated year-end fund balance is \$155,997.

City of Englewood, Colorado

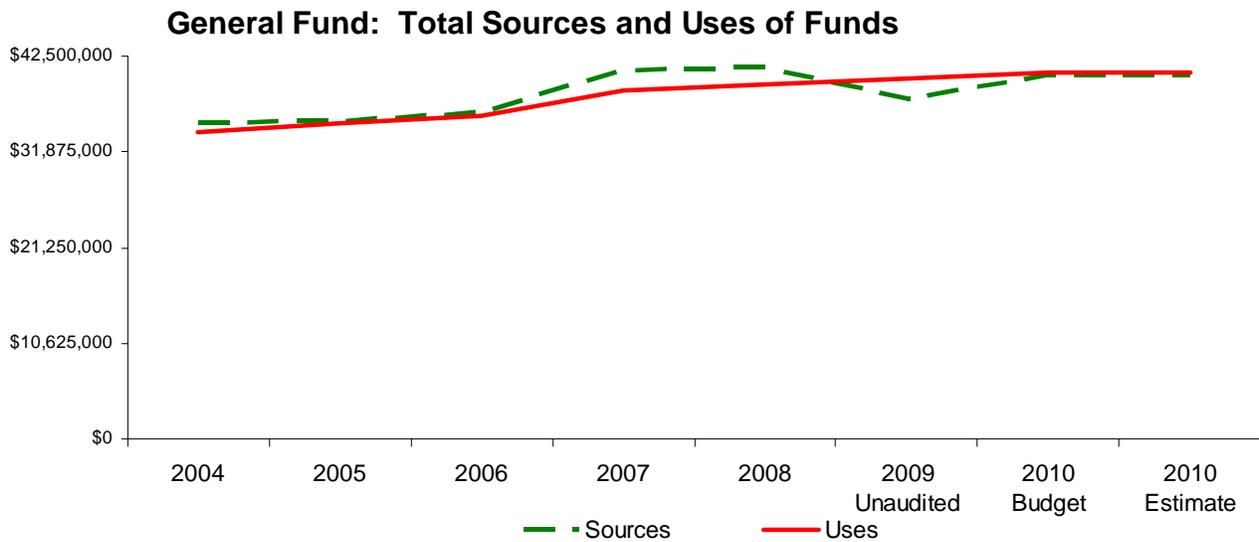
February 2010 Financial Report

GENERAL FUND OVERVIEW AND ANALYSIS

The General Fund accounts for the major “governmental” activities of the City. These activities include “direct” services to the public such as police, fire, public works, parks and recreation, and library services. General government also provides services by the offices of city manager and city attorney; the departments of information technology, finance and administrative services, community development, human resources, municipal court and legislation. Debt service, lease payments, and other contractual payments are also commitments of the General Fund.

General Fund Surplus and Deficits

The line graph below depicts the history of sources and uses of funds from 2004 to 2010 Estimate. As illustrated, both surpluses and deficits have occurred in the past. The gap has narrowed over the past few years by reducing expenditures, freezing positions, negotiating lower-cost health benefits, increased revenue collections. Continued efforts will be required to balance revenues and expenditures, especially with persistent upward pressure on expenditures due to increases in the cost of energy, wages and benefits.

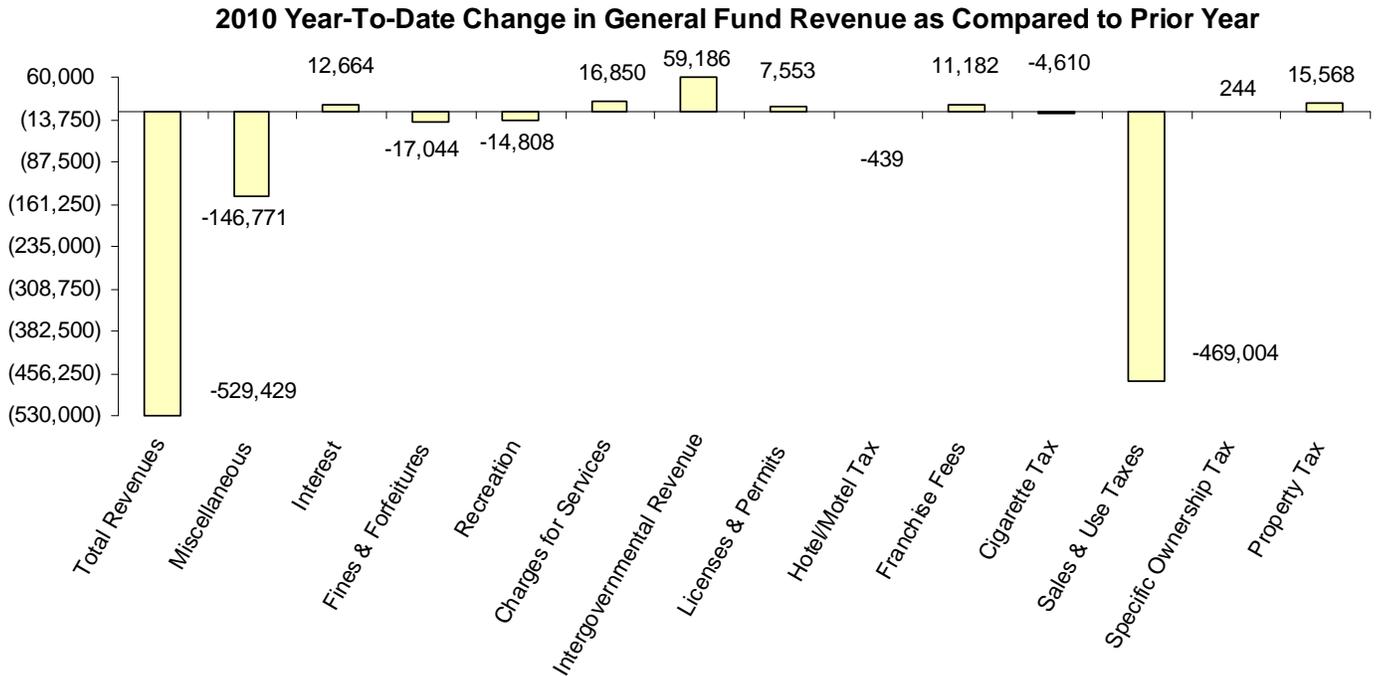


The table below summarizes General Fund Year-To-Date (YTD) Revenues, Expenditures, Sales & Use Tax Revenue and Outside City Sales & Use Tax Revenue for the month ended February 28, 2010. Comparative figures for years 2009 and 2008 are presented as well. The table also highlights the dollar and percentage changes between those periods.

	2010	2010 vs 2009 Increase (Decrease)		2009	2009 vs 2008 Increase (Decrease)		2008
General Fund							
Year-To-Date Revenues	\$ 5,612,080	\$ (529,429)	(8.62%)	\$ 6,141,509	\$ (205,785)	(3.24%)	\$ 6,347,294
Year-To-Date Expenditures	4,665,460	\$ (41,133)	(.87%)	4,706,593	\$ 154,047	3.38%	4,552,546
Net Revenues (Expenditures)	\$ 946,620	\$ (488,296)		\$ 1,434,916	\$ (359,832)		\$ 1,794,748
Estimated Unreserved/ Undesignated Fund Balance	\$ 4,183,434	\$ (20,936)	(.50%)	\$ 4,204,370	\$ (2,052,450)	(32.80%)	\$ 6,256,820
Sales & Use Tax Revenue YTD	\$ 3,873,843	\$ (469,004)	(10.80%)	\$ 4,342,847	\$ (206,013)	(4.53%)	\$ 4,548,860
Outside City Sales & Use Tax YTD	\$ 1,413,195	\$ (100,078)	(6.61%)	\$ 1,513,273	\$ (345,541)	(18.59%)	\$ 1,858,814

General Fund Revenues

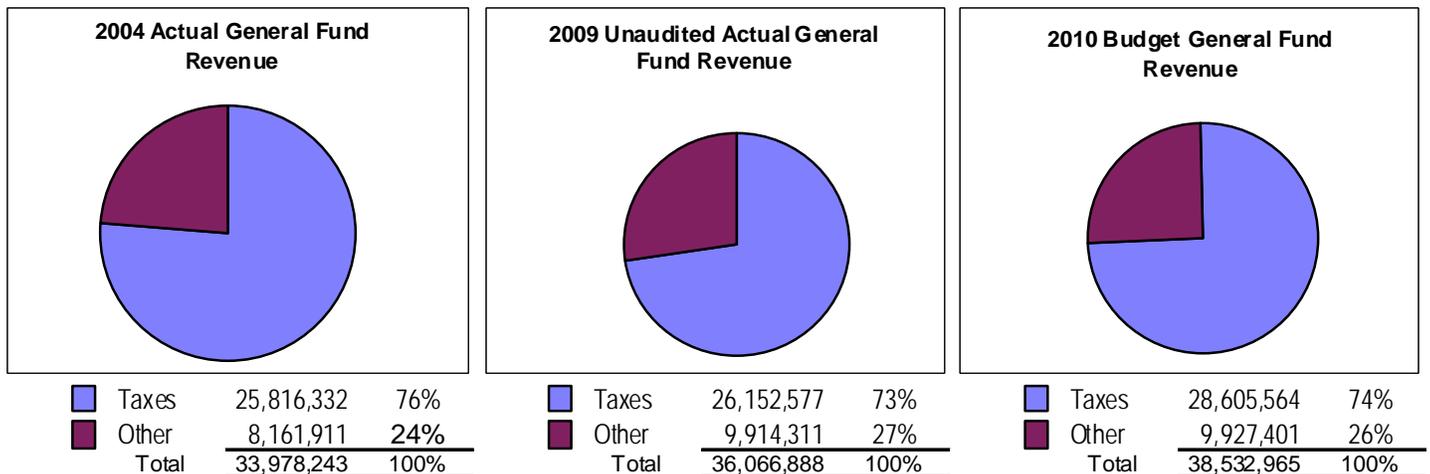
The City of Englewood's total budgeted revenue is \$38,532,965. Total revenues collected through February 2010 were \$5,612,080 or \$529,429 (8.6 percent) less than was collected in 2009. The chart below illustrates changes in General Fund revenues this year compared to last year.



General Fund Taxes

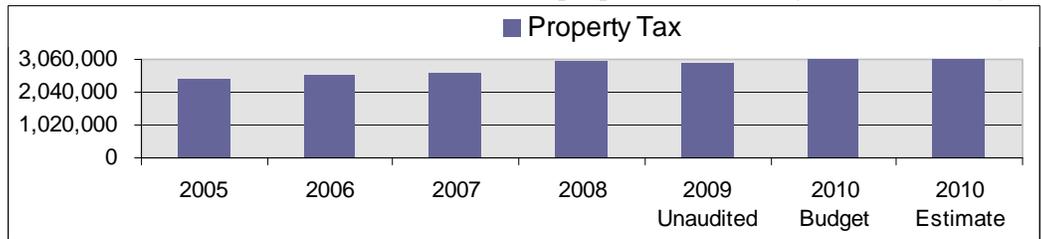
The General Fund obtains most of its revenue from taxes. In 2009 total revenues were \$36,066,888 of which \$26,152,577 (72.5 percent) came from tax collections. Taxes include property, sales and use, specific ownership, cigarette, utilities, franchise fees, and hotel/motel. The following pie charts illustrate the contribution of taxes to total revenue for 2004 and unaudited 2009 and budgeted 2010. Taxes as a percentage of total revenue have declined slightly as other fees and charges have been increased to help offset rising costs and relatively flat tax revenues.

General Fund Revenues Taxes vs. Other



Property taxes: These taxes are collected based on the assessed value of all the properties in the City and the mill levy assessed against the property.

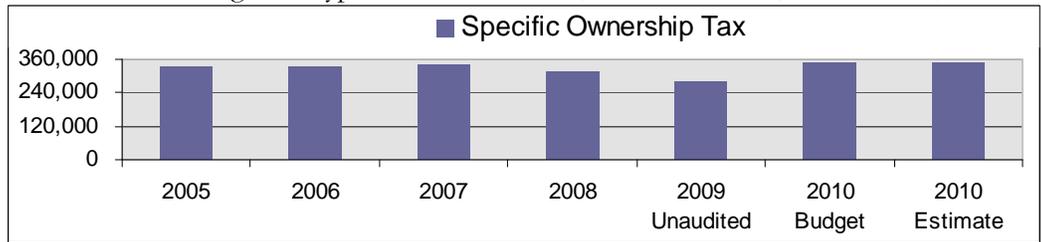
The City's total 2009 mill levy collected in 2010 is 7.911 mills. The 2009 mill levy for general operations collected in 2010 is 5.880 mills. A voter approved additional mill of 2.031 mills is



levied for principal and interest payments on the City's general obligation debt (parks and recreation projects). Property tax collections grew from \$2,493,832 in 2005 to \$2,971,303 in 2009. This was an increase of \$477,471 or 19.1 percent. In 2009 the City collected \$2,971,303 or 11.4 percent of 2009 total taxes and 8.2 percent of total revenues from property taxes. The City budgeted \$3,046,000 for 2010; collected \$51,162 through February 2010.

Specific ownership: These taxes are based on the age and type of motor vehicles, wheeled trailers, semi-trailers, etc.

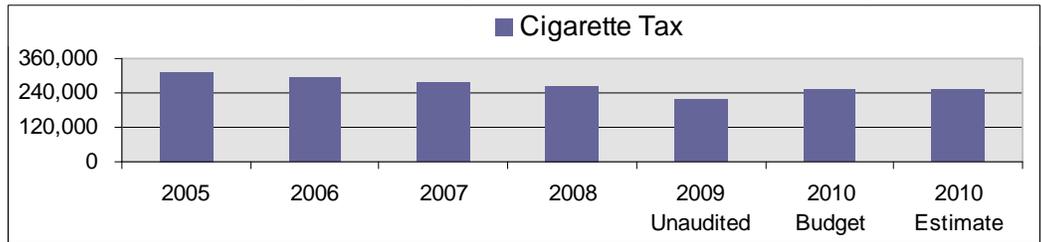
These taxes are collected by the County Treasurer and remitted to the City on the fifteenth day of the following month. The City collected \$334,768 in 2005 and \$276,415 in 2009 which is a decrease of \$57,827 or 17.4



percent. The City collected \$276,415 in 2009 which is less than one percent of total revenues and one percent of total taxes. The City budgeted \$350,000 for 2010 and collected \$28,798 through February 2010.

Cigarette Taxes: The State of Colorado levies a \$.20 per pack tax on cigarettes. The State distributes 46 percent of the gross tax to cities and towns

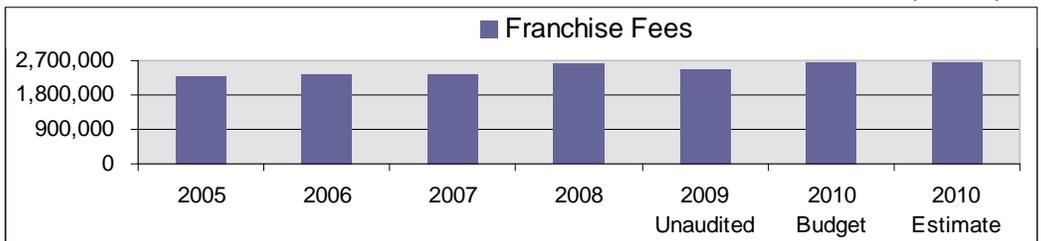
based on the pro rata share of state sales tax collections in the previous year. These taxes have fallen *significantly* in the past and continue to fall after the 2009 federal tax increase of approximately \$.62 per pack



went into effect. This increase will fund the State Children's Health Insurance Program (SCHIP). In 2005 the City collected \$313,731, but in 2009 the City collected \$218,448, which is a *decrease* of \$95,283 or 30.4 percent. These taxes accounted for one percent of total taxes and less than one percent of total revenues in 2009. The City budgeted \$250,000 for the year and collected \$32,752 through February 2010, which is \$4,610 or 12.3 percent less than the \$37,362 collected through February 2009.

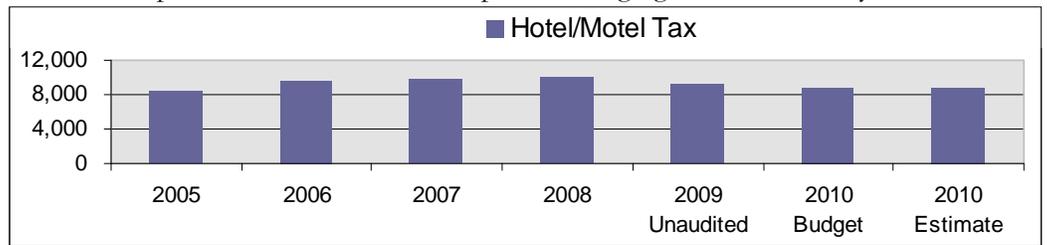
Franchise Fees: The City collects a number of taxes on various utilities. This includes franchise tax on water, sewer, and public services, as well as occupational taxes on

telephone services. The City collected \$2,294,972 in 2005 and \$2,452,611 in 2009, an increase of \$157,639 or 6.9 percent. These taxes



accounted for 9.4 percent of taxes and 6.8 percent of total revenues in 2009. The City budgeted \$2,650,851 for the year; collections through February totaled \$290,384 compared to \$279,202 collected during the same period last year.

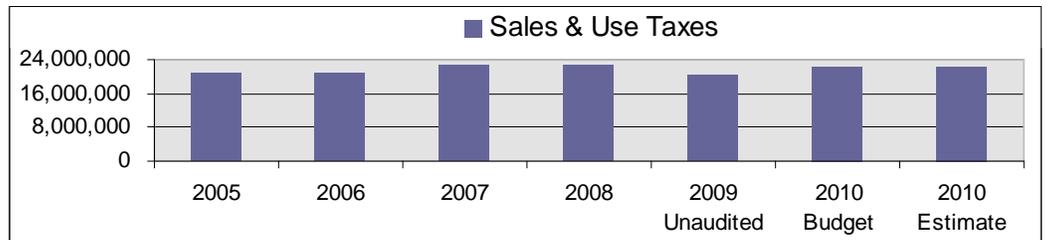
Hotel/Motel Tax: This tax is levied at two percent of the rental fee or price of lodging for under 30 days duration. The City budgeted \$8,713 for the year and has collected \$1,170 through February 2010.



Sales and Use Taxes Analysis

Sales and use taxes are the most important (and volatile) revenue sources for the City. Sales and use taxes generated 77.4 percent of all taxes and 56.4 percent of total revenues collected in 2009.

In 2005, this tax generated \$20,886,855 for the City of Englewood; in 2009 the City collected \$20,226,902, a decrease of 3.2 percent. This tax is levied on the sale price of taxable goods. Sales tax is calculated by multiplying the sales price of taxable goods times the sales tax rate of 3.5 percent. Vendors receive a .25 percent fee for collecting and remitting the taxes to the City by the due date. Taxes for the current month are due to the City by the twentieth day of the following month. The City budgeted \$22,300,000 for 2010. Sales and Use Tax revenue through February 2010 was \$3,873,843 while revenue year-to-date for February 2009 was \$4,342,847 a decrease of \$469,004 or 10.8 percent.

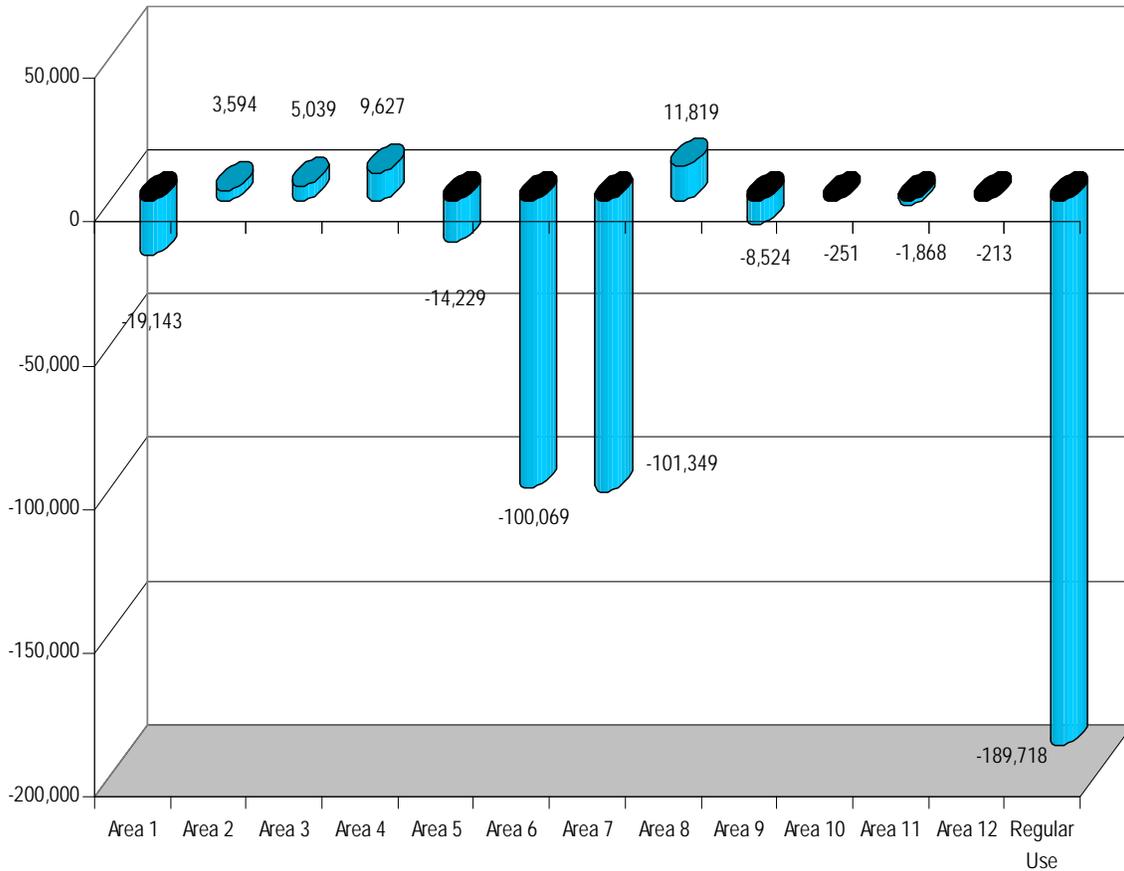


In January 2009, the City of Englewood received \$201,000 from use tax audits completed in 2008. This skews the percentage difference between 2010 and 2009. If the audit proceeds are removed from 2009, the City is down \$268,004 or 6.5 percent for the year.

Collections for February 2010 were \$1,369,094 while collections for February 2009 and February 2008 were \$1,473,617 and \$1,625,757 respectively. February 2010 collections were \$104,523 or 7.1 percent less than February 2009 collections. This revenue source tends to ebb and flow with the economy, growing during economic expansions and contracting during downturns. It is important to analyze which sales tax geographic areas of the City are growing or declining.

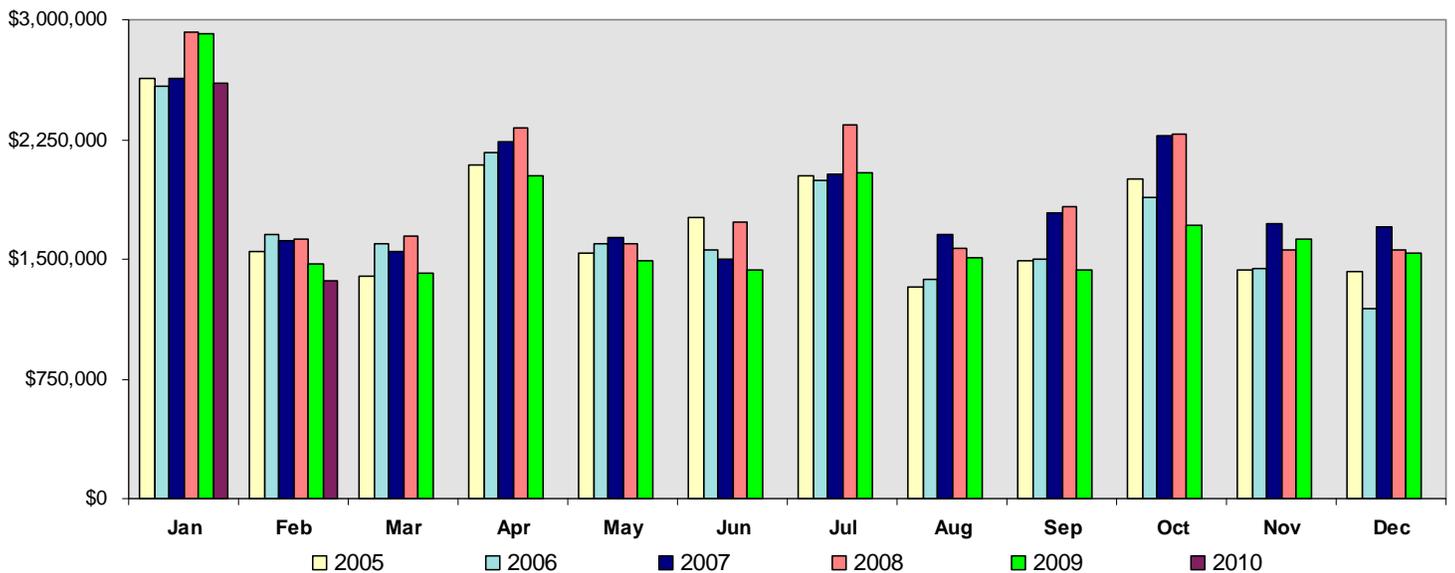
The following chart, "Change in Sales/Use Tax Collections by Area 2010 vs. 2009" indicates that most of the decrease in sales tax collections is due to Outside City (Area 7) and Public Utilities (Area 8) sales. Regular use tax was up last year due to the 2009 receipt of a 2008 audit. Economic improvement, judged strictly by sales tax collections, appears to be in decline in most of the geographic areas compared to the same period last year.

Change in Sales/Use Tax Collections by Area 2010 vs 2009



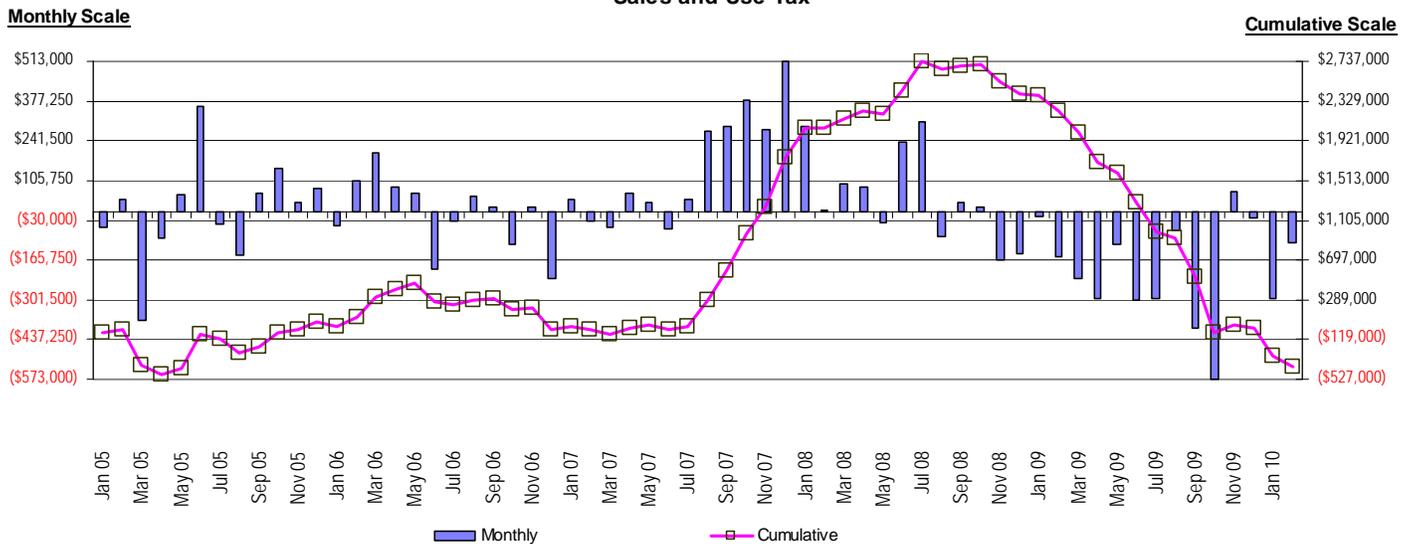
The bar graph below shows a comparison of monthly sales tax collections (cash basis) for 2005 through 2010.

2005-2010 YTD Sales/Use Tax Collections by Month - Cash Basis



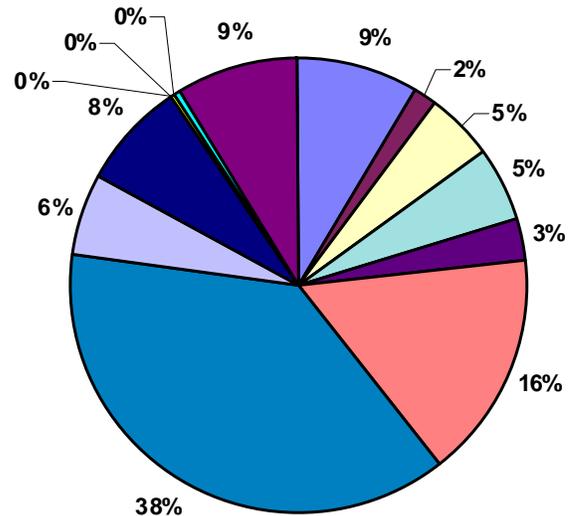
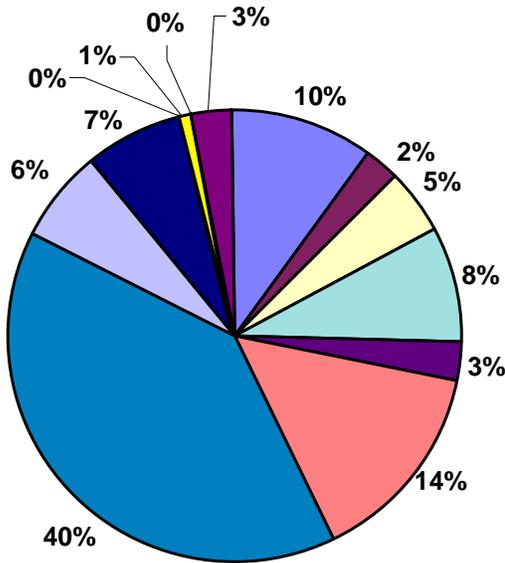
The next chart illustrates sales tax collections (cash basis) by month and cumulative for the years presented.

2005 - 2010 Monthly Change Sales and Use Tax



Sales tax collections are reported by various geographic areas as illustrated in the following pie charts. These illustrate the changing collection patterns for 2004 and 2009.

Geographic Sales Tax Collection Areas



2004 Actual Cash Receipts by Area

Area 1	10%	Area 8	6%
Area 2	2%	Area 9	7%
Area 3	5%	Area 10	0%
Area 4	8%	Area 11	1%
Area 5	3%	Area 12	0%
Area 6	14%	Regular Use	3%
Area 7	40%		

2009 Unaudited Actual Cash Receipts by Area

Area 1	9%	Area 8	6%
Area 2	2%	Area 9	8%
Area 3	5%	Area 10	0%
Area 4	5%	Area 11	0%
Area 5	3%	Area 12	0%
Area 6	16%	Regular Use	9%
Area 7	38%		

A brief description and analysis of the significant geographic areas follows:

Area 1: This geographic area accounts for the sales tax collections from CityCenter Englewood. CityCenter Englewood had collections of \$395,502 year-to-date 2010, in 2009, the City collected \$414,645.

Area 7: This geographic area records the outside city sales tax collections (Outside City). Outside City has been the geographic area responsible for much of the sales tax growth (and decline) in past years. Outside City collections have decreased 6.7 percent from the same period last year. The chart below illustrates this area’s contribution to total sales and use taxes (cash basis) as well as total revenues since 2005 for collections through the month of February. The importance of Outside City declined as a percentage of sales and use tax collections until this year; as a percentage of total revenues it continues to decline in importance, but continues to have a significant impact on the City’s General Fund as illustrated by the following:

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Total Sales and Use Taxes	4,243,402	4,251,336	4,548,816	4,381,873	3,850,928
Outside City Collections	1,609,675	1,515,413	1,858,814	1,513,273	1,411,923
Percentage of Total	37.9%	35.6%	33.3%	42.4%	39.3%
Total General Fund Revenues	5,840,148	5,974,452	6,347,294	6,141,509	5,612,080
Outside City Collections	1,609,675	1,515,413	1,858,814	1,513,273	1,411,923
Percentage of Revenues	27.6%	25.4%	29.3%	24.6%	25.2%

The City records the proceeds of some returns from Outside City into an unearned revenue (liability) account. The criteria staff uses to decide if proceeds should be placed in the unearned account is if a reasonable probability exists for another municipality to claim the revenue. This account currently has a balance of \$1,000,000 to cover intercity claims. The City paid \$74,921 in refunds including intercity sales/use tax claims through February 2009 compared to \$0.00 in February 2008. At this time potential refunds total approximately \$900,000 for claims submitted to Englewood but not completed.

Area 8: This geographic area consists of collections from public utilities. Collections through February were up \$11,819 or 3.5 percent over last year. Weather conditions, energy usage conservation, and rising energy prices play an important role in revenue collections. Collections could increase or decrease if the remainder of the year is significantly hotter/colder than normal.

Other Sales Tax Related Information

Finance and Administrative Services Department collected \$30,558 in sales and use tax audit revenues and general collections of balances on account through the month of February; this compares to \$280,756 collected in 2009 and \$172,401 collected in 2008.

Of the 67 sales tax accounts reviewed in the various geographic areas, 33 (49 percent) showed improved collections and 34 (51 percent) showed reduced collections this year compared to the same period last year.

The Department issued 65 new sales tax licenses through February 2010; 53 and 80 were issued through February 2009 and 2008 respectively.

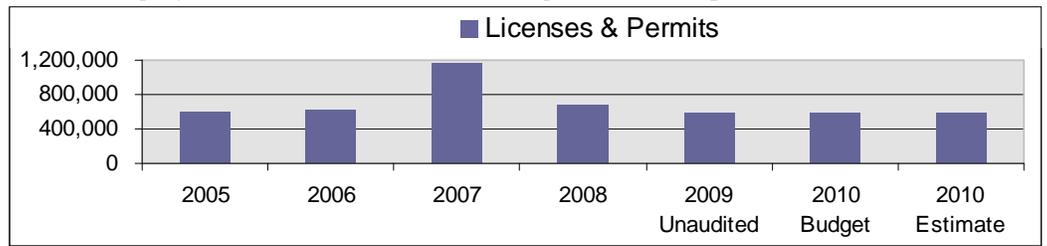
City records indicate that year-to-date 109 businesses closed (63 of them were outside the physical limits of Englewood) and 65 opened (41 of them were outside the physical limits of Englewood).

General Fund Other Revenue

Other revenues accounted for \$9,914,311 or 27.5 percent of the total revenues for 2009; the City budgeted \$9,927,401 for 2010.

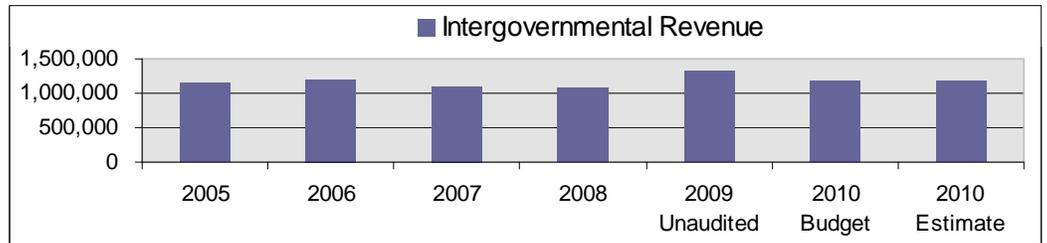
Additional significant revenue sources are listed on the next couple of pages.

Licenses and Permits: This revenue category includes business and building licenses and permits. This revenue source generated \$588,403 during 2009 or six percent of total revenue and 1.6 percent of total other revenue. This revenue source totaled \$609,971 in 2005 and decreased to \$588,403 in 2009, a 3.5 percent decrease.



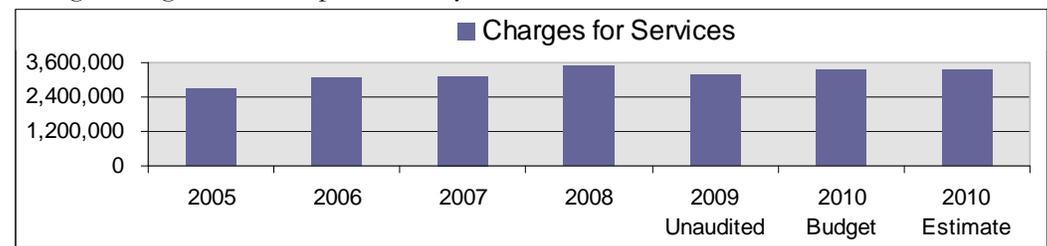
The City budgeted \$573,300 for 2010 or 5.7 percent of budgeted total other revenues (\$9,927,401) and year-to-date the City collected \$88,619 or \$7,553 (9.3 percent) more than the \$81,066 collected in February 2009.

Intergovernmental Revenues: This revenue source includes state and federal shared revenues including payments in lieu of taxes. These revenues are budgeted at \$1,198,327 for 2010, this is 12 percent of total other revenue. This revenue source totaled \$1,156,221 in 2005 and the City collected \$1,333,688 in 2009, a 15.3 percent increase.

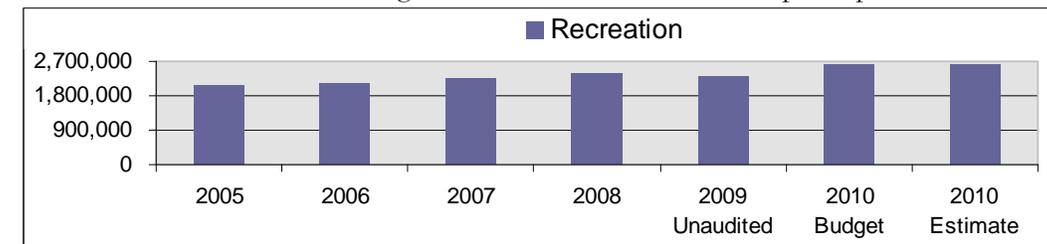


The City collected \$145,108 through February 2010 this is \$59,186 (68.9 percent) more than the \$85,186 collected in same period in 2009.

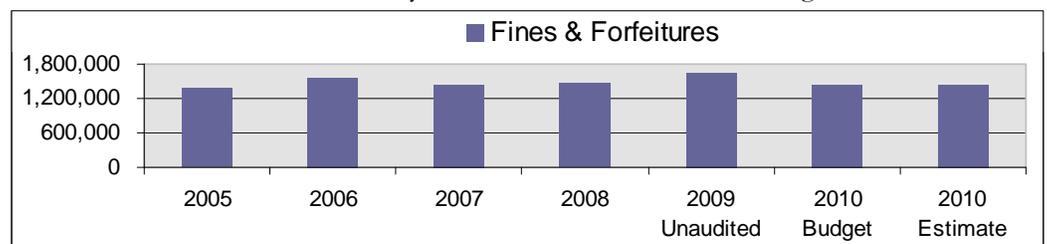
Charges for Services: This includes general government, public safety, fees for the administration of the utilities funds, court costs, highway and street and other charges. This revenue source is budgeted at \$3,318,587 for 2010 or 32 percent of total other revenue. This revenue source totaled \$2,750,211 in 2005 and increased to \$3,163,735 in 2009, a 15 percent increase. Total collected year-to-date was \$518,533 or \$16,850 (3.4 percent) more than the \$501,683 collected year-to-date in 2009.



Recreation: This category of revenue includes the fees and charges collected from customers to participate in the various programs offered by the Parks and Recreation Department. This revenue source is budgeted at \$2,625,194 for 2010 or 26.4 percent of total other revenue. This revenue source totaled \$2,060,758 in 2005 and increased to \$2,315,598 in 2009, a 12.4 percent increase. Total collections through February 2010 were \$221,605 compared to \$236,413 collected in 2009.



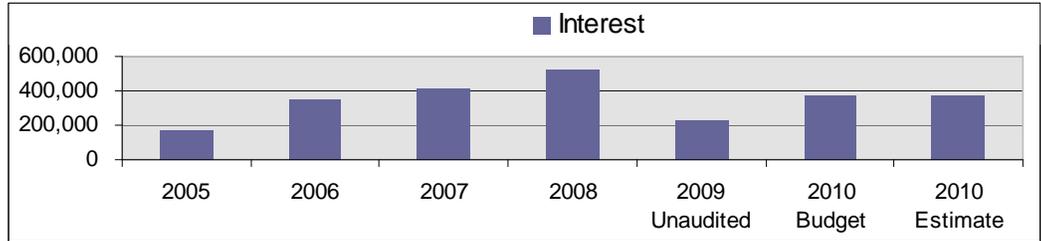
Fines and Forfeitures: This revenue source includes court, library, and other fines. The 2010 budget for this source is \$1,426,801 or 14.7 percent of total other revenue. This revenue source totaled \$1,386,842 in 2005 and increased to \$1,639,678 in 2009, an 18.2 percent increase. Total collected year-to-date



was \$254,919 or \$17,044 (6.3 percent) less than the \$271,963 collected in the same time period last year.

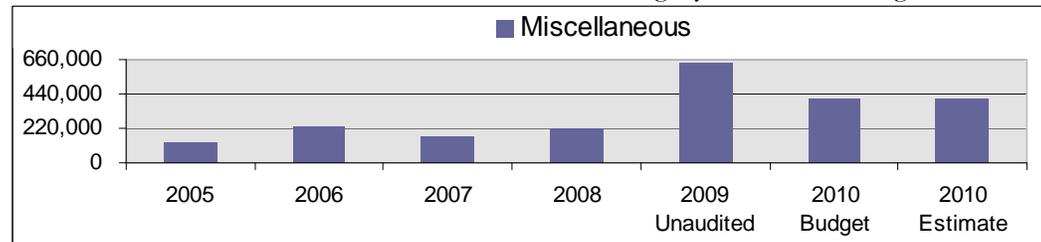
Interest: This is the amount earned on the City's cash investments. The 2010 budget for this source is \$372,611 or 3.8 percent of total other revenue.

This revenue source totaled \$168,370 in 2005 and increased to \$229,999 in 2009, a (36.6 percent) increase. The City earned \$51,902 through February 2010; the City earned \$39,238 through February 2009.



Miscellaneous: This source includes all revenues that do not fit in another revenue category. The 2010 budget for this source is \$412,581 or 4.2 percent of total other revenue.

This revenue source totaled \$131,849 in 2005 and increased to \$643,310 in 2009, a 388 percent increase. Total collected year-to-date is \$53,285 (73.4 percent) less compared to the \$200,056 collected last year during the same period.



General Fund Expenditures

Outcome Based Budgeting

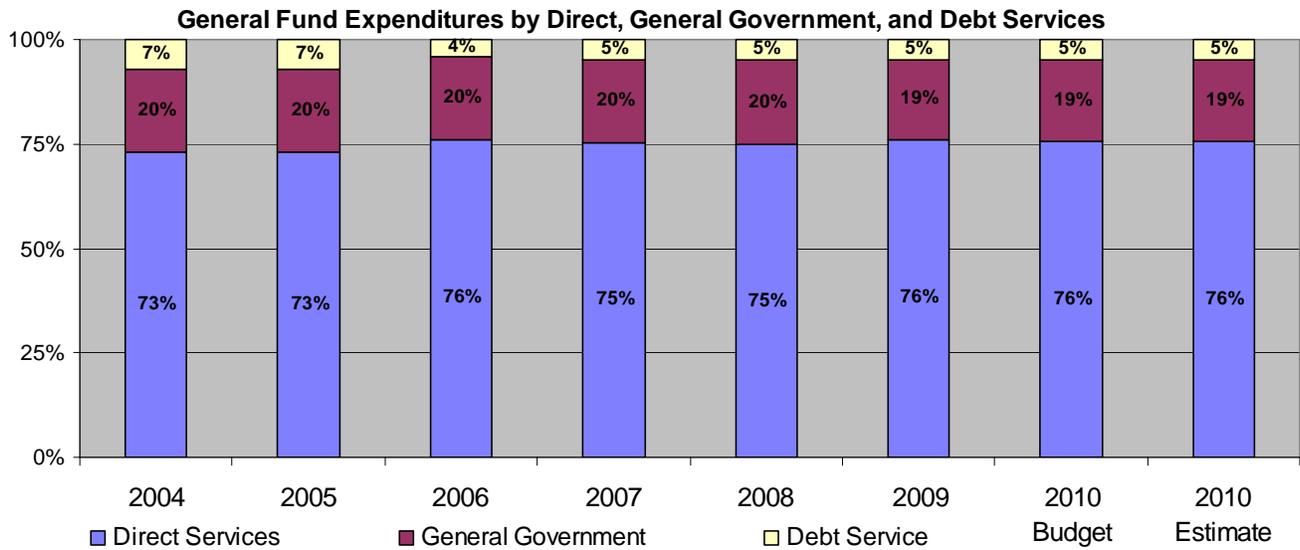
In 2006 the City adopted an outcome based budgeting philosophy. City Council and Staff outlined five outcomes to reflect, more appropriately, the desired result of the services delivered to the citizens of Englewood. The five outcomes identified are intended to depict Englewood as:

- ▶ A City that provides and maintains quality infrastructure,
- ▶ A safe, clean, healthy, and attractive City,
- ▶ A progressive City that provides responsive and cost efficient services,
- ▶ A City that is business friendly and economically diverse, and
- ▶ A City that provides diverse cultural, recreational, and entertainment opportunities.

Outcome based budgeting is an additional tool the City Council and staff use to better develop ways to serve our citizens. This type of budgeting is a new concept and is refined and reviewed on an on-going basis to help us better focus our resources in meeting the objectives of our citizens.

The City budgeted total expenditures at \$40,616,941 for 2010, this compares to \$38,994,557 and \$39,015,199 expended in 2009 and 2008 respectively. Budgeted expenditures for 2010 general government totals \$8,387,284 or 20.2 percent of the total. Direct government expenditures are budgeted at \$31,064,182 or 75.0 percent of the total. Debt service payments are \$1,993,682 or 4.8 percent of the total. Total expenditures through February were \$4,665,460 compared to \$4,706,460 in 2009 and \$4,552,546 in 2008. *The City Manager has requested all departments hold their 2010 spending at or below 2009 expenditure amounts.*

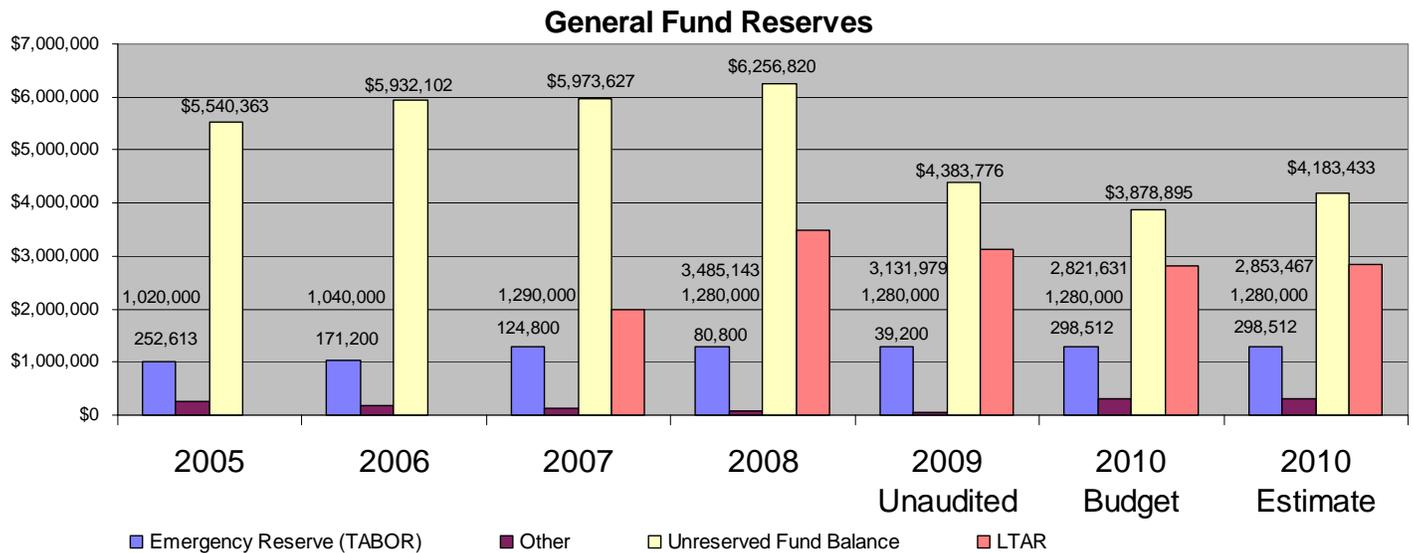
The chart below illustrates the breakdown of expenditures into debt service, general and direct government.

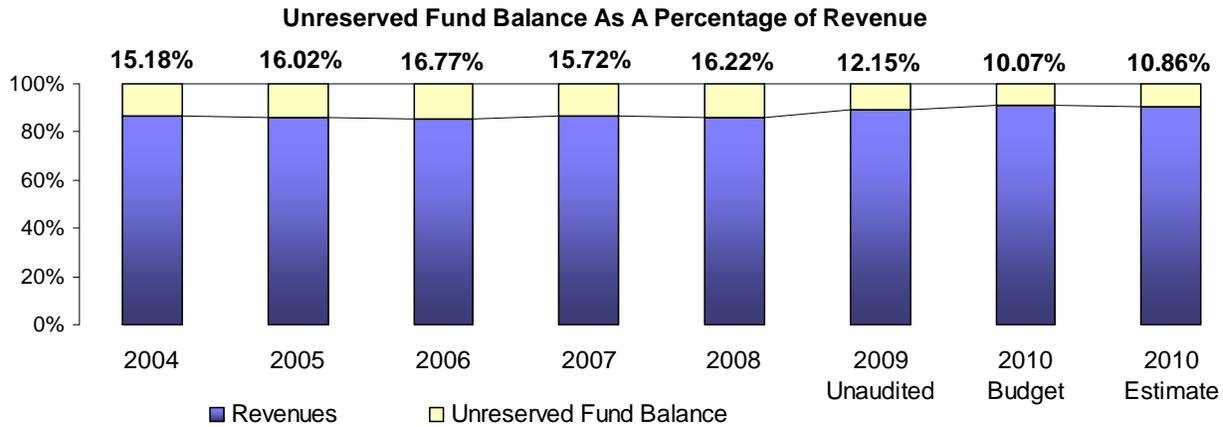


General Fund Reserves

Reserves are those funds the City sets aside for a “rainy day”. The intent is to smooth over unexpected revenue declines and expenditure increases. The fund is normally built up when revenues exceed expenditures. In the past, excess reserves have been transferred out to other funds, usually for capital projects identified in the Multiple Year Capital Plan (MYCP). The reserve balance is not adequate to provide for a transfer from the General Fund to the capital projects funds.

Long Term Asset Reserve (LTAR) At the 2008 Budget workshop held on February 22, 2007, City Council discussed and directed staff to establish a General Fund reserve account to accumulate funds from the sale, lease, or earnings from long-term assets. It was also determined that these funds should be used in a careful, judicious and strategic manner. The funds restricted in this account can only be expended if the funds are appropriated in the annual budget or by supplemental appropriation. The balance in the account is \$3,131,979 at the end of 2009.





The City ended 2009 with an unreserved/undesignated general fund balance of \$4,383,776 or 12.1 percent of revenues. The 2010 estimate shows an unaudited ending fund balance of \$4,183,433 or 10.9 percent of budgeted revenues. The \$4,183,433 would allow the City to operate for approximately 37.6 days (using average daily estimated expenditures) if all other revenues and financing sources ceased. It is more important now than ever to maintain reserves to help the City make up for revenue shortfalls and unexpected expenditure increases given that the one-time transfers made to the General Fund to help maintain reserves are no longer available.

PUBLIC IMPROVEMENT FUND OVERVIEW

The Public Improvement Fund (PIF) accounts for the City’s “public-use” capital projects (e.g. roads, bridges, pavement, etc.). The PIF funding is from the collection of vehicle and building use taxes, intergovernmental revenues, interest income, and other miscellaneous sources.

Provided for your information is the table below that illustrates the PIF Year-To-Date (YTD) revenues and expenditures for the years 2008 through 2010. The dollar and percentage change between each year is also provided. The Estimated Ending Fund Balance is included in order to account for the remaining PIF appropriation in addition to the remaining annual revenue anticipated for the fund.

	2010	2010 vs 2009 Increase (Decrease)	2009	2009 vs 2008 Increase (Decrease)	2008
Public Improvement Fund (PIF)					
YTD Revenues	\$ 129,541	\$ (205,727) (61.36%)	\$ 335,268	\$ (83,796) (20.00%)	\$ 419,064
YTD Expenditures	1,536,248	\$ (859,156) (35.87%)	2,395,404	\$ (653,294) (21.43%)	3,048,698
Net Revenues (Expenditures)	\$ (1,406,707)	\$ 653,429	\$ (2,060,136)	\$ 569,498	\$ (2,629,634)
Beginning PIF Fund Balance	\$ 1,515,399		\$ 1,067,525		\$ 3,359,169
Ending PIF Fund Balance Before Remaining Annual Revenue and Appropriation	\$ 108,692		\$ (992,611)		\$ 729,535
Plus: Remaining Annual Revenue	1,542,914		3,113,379		4,360,835
Less: Remaining Annual Appropriation	(1,495,609)		(1,869,382)		(4,017,378)
Estimated Ending Fund Balance	\$ 155,997		\$ 251,386		\$ 1,072,992
Unappropriated Fund Balance as of December 31,			\$ 330,690		\$ 21,117

The three main funding sources for the PIF are Vehicle Use Tax, Building Use Tax and Arapahoe County Road and Bridge Tax.

	2010	2010	2010 Vs 2009			2009	2009 Vs 2008		2008
	Estimate	Adopted Budget	YTD Actual	\$	%	YTD Actual	\$	%	YTD Actual
Vehicle Use Tax	\$ 1,000,000	\$ 1,000,000	\$ 59,188	\$ (32,480)	-35%	\$ 91,668	\$ (13,167)	-13%	\$ 104,835
Building Use Tax	\$ 400,000	\$ 400,000	\$ 64,997	\$ 40,482	165%	\$ 24,515	\$ (258,196)	-91%	\$ 282,710
Arapahoe County Road and Bridge Tax	\$ 200,000	\$ 200,000	\$ -	\$ -	---	\$ -	\$ -	---	\$ -

Vehicle Use Tax is based on the valuation of new vehicles purchased by City of Englewood residents. This tax is collected and remitted by Arapahoe County at the time the vehicle is registered. **Building Use Tax** is based on the valuation of building permits issued by the City of Englewood. We will monitor these revenue sources to determine if the 2010 estimate needs to be revised. **Arapahoe County Road and Bridge Tax** is restricted to the construction and maintenance of streets and bridges. This tax is based on a mill levy established by Arapahoe County multiplied by the City's assessed valuation multiplied by 50%.

2010 Year-To-Date City Funds At-A-Glance

(Please refer to "Funds Glossary" for a Brief Description of Funds and Fund Types)

	Beginning Balance	Revenues	Expenditures	Other Sources (Uses)	Reserved Balance	Ending Balance
Governmental Fund Types (Fund Balance)						
General Fund	8,834,957	5,612,081	4,665,477	(1,186,147)	4,411,979	4,183,434
Special Revenue Funds						
Conservation Trust	851,312	4,711	69,815	(674,628)	-	111,580
Open Space	1,236,741	5,320	23,889	(1,043,886)	-	174,286
Donors	115,917	13,016	11,316	-	-	117,617
Community Development	-	(67)	29,062	29,129	-	-
Malley Center Trust	287,432	2,747	-	-	-	290,179
Parks & Recreation Trust	455,943	2,577	3,095	-	-	455,426
Debt Service Fund						
General Obligation Bond	58,665	18,040	177	-	-	76,529
Capital Projects Funds						
PIF	1,515,399	129,541	41,386	(1,447,556)	-	155,997
MYCP	941,009	5,127	52,164	(827,497)	-	66,475
Proprietary Fund Types (Funds Available Balance)						
Enterprise Funds						
Water	6,575,398	721,947	1,053,255	-	-	6,244,090
Sewer	8,476,269	2,402,644	1,989,628	-	1,000,000	7,889,285
Stormwater Drainage	852,252	87,373	45,719	-	137,818	756,087
Golf Course	1,209,146	57,391	112,756	-	293,500	860,280
Concrete Utility	246,706	113,502	40,508	-	-	319,700
Housing Rehabilitation	272,970	19,374	9,465	-	-	282,880
Internal Service Funds						
Central Services	200,630	55,564	38,704	-	-	217,489
ServiCenter	825,982	346,541	268,935	(200,000)	-	703,588
CERF	832,458	123,884	-	(446,477)	-	509,865
Employee Benefits	376,106	695,191	1,119,678	-	107,429	(155,811)
Risk Management	1,384,702	21,867	432,529	(450,000)	-	974,040

CLOSING

The Finance and Administrative Services Department staff works closely with the City Manager's Office and the various departments to help identify revenue and expenditure threats, trends and opportunities as well as strategies to balance revenues and expenditures. I will continue to provide Council with monthly reports. It is important to frequently monitor the financial condition of the City so City staff and Council can work together to take action, if necessary, to maintain service levels, employees, and fiscal health of the City.

I plan to discuss this report with Council at an upcoming study session. If you have any questions regarding this report, I can be reached at **303.762.2401**.

FUNDS GLOSSARY

Capital Equipment Replacement Fund (CERF) – Accounts for the accumulation of funds for the scheduled replacement of City-owned equipment and vehicles.

Capital Projects Funds account for financial resources to be used for the acquisition and/or construction of major capital facilities (other than those financed by proprietary funds).

Central Services Fund – Accounts for the financing of printing services and for maintaining an inventory of frequently used or essential office supplies provided by Central Services to other departments of the City on a cost reimbursement basis.

Community Development Fund – Accounts for grant funds of the Brownfields Pilot Grants Program administered by the United States Environmental Protection Agency and the Art Shuttle Program administered by the Regional Transportation District (RTD).

Concrete Utility Fund – Accounts for revenues and expenses associated with maintaining the City's sidewalks, curbs and gutters.

Conservation Trust Fund – Accounts for the acquisition of parks and open space land not previously owned by the City and for improvements to existing park and recreation facilities. Financing is provided primarily from State Lottery funds.

Debt Service Funds account for the accumulation of resources and payment of general obligation bond principal and interest from governmental resources and special assessment bond and loan principal and interest from special assessment levies when the government is obligated in some manner for payment.

Donors' Fund – Accounts for funds donated to the City for various specified activities.

Employee Benefits Fund – Accounts for the administration of providing City employee benefit programs: medical, dental, life, and disability insurance.

Enterprise Funds account for operations that: (a) are financed and operated in a manner similar to private business enterprises where the intent of the governing body is that the costs (expenses, including depreciation) of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges, or (b) where the City Council has decided that periodic determination of revenue earned, expenses incurred and/or net income is appropriate for capital maintenance, public policy, management controls, accountability or other purposes.

Fund is a grouping of related accounts that is used to maintain control over resources that have been segregated for specific activities or objectives. The City, like other state and local governments, uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements.

General Obligation Bond Fund – Accounts for the accumulation of monies for payment of General Obligation Bond principal and interest.

FUNDS GLOSSARY

Golf Course Fund – Accounts for revenues and expenses associated with the operations of the Englewood Municipal Golf Course.

Governmental Funds distinguish functions of the City that are principally supported by taxes and intergovernmental revenues (governmental activities) from other functions that are intended to recover all or a significant portion of their costs through user fees and charges (business-type activities). These funds focus on the near-term *inflows and outflows of spendable resources*, as well as on balances of spendable resources available at the end of the year.

Housing Rehabilitation Fund – Accounts for revenues and expenses associated with the City’s housing rehabilitation program.

Internal Service Funds are used to account for the financing of goods or services provided by one department or agency to other departments or agencies of the City on a cost-reimbursement basis.

MOA – Museum of Outdoor Arts

Malley Center Trust Fund – Accounts for a trust established by Elsie Malley to be used for the benefit of the Malley Senior Recreation Center.

Multi-Year Capital Projects Fund (MYCP) - Accounts for the acquisition and/or construction of major capital improvements and facilities. Financing is provided primarily with transfers from other City Funds.

Parks and Recreation Trust Fund – Accounts for a trust established by the City, financed primarily by donations, to be used exclusively for specific park and recreation projects.

Proprietary Funds account for operations that are financed and operated in a manner similar to private business enterprises. It is the intent that the cost of providing such goods or services will be recovered through user charges.

Public Improvement Fund (PIF) – Accounts for the acquisition and/or construction of major capital improvements and facilities. Financing is provided primarily from building and vehicle use taxes.

Risk Management Fund – Accounts for the administration of maintaining property and liability and workers’ compensation insurance.

ServiCenter Fund – Accounts for the financing of automotive repairs and services provided by the ServiCenter to other departments of the City, or to other governmental units, on a cost reimbursement basis.

Sewer Fund – Accounts for revenues and expenses associated with providing wastewater services to the City of Englewood residents and some county residents.

Special Assessment Funds account for and pay special assessment bond principal and interest and/or inter-fund loan principal and interest: Following are funds to account for special assessments: **Paving District No. 35, Paving District No. 38, and Concrete Replacement District 1995.**

Special Revenue Funds account for the proceeds of specific revenue sources that are legally restricted to expenditure for specified purposes.

Storm Drainage Fund – Accounts for revenues and expenses associated with maintaining the City’s storm drainage system.

Water Fund – Accounts for revenues and expenses associated with providing water services to City of Englewood residents.

General Fund Comparative Revenue, Expenditure & Fund Balance Report

as of February 28, 2010

Percentage of Year Completed = 17%

Fund Balance January 1	\$ 8,518,581	\$ 8,834,956	\$ 8,834,956	\$ 11,102,763	\$ 11,102,763	\$ 9,374,427	\$ 9,374,427			
Revenues	2010				2009			2008		
	Budget	Feb-10	% Budget	YE Estimate	Dec-09	Feb-09	% YTD	Dec-08	Feb-08	% YTD
Property Tax	3,046,000	51,162	1.68%	3,046,000	2,971,303	35,594	1.20%	2,995,990	64,795	2.16%
Specific Ownership Tax	350,000	28,798	8.23%	350,000	276,415	28,554	10.33%	316,242	32,836	10.38%
Sales & Use Taxes	22,300,000	3,873,843	17.37%	22,300,000	20,224,659	4,342,847	21.47%	22,617,767	4,548,860	20.11%
Cigarette Tax	250,000	32,752	13.10%	250,000	218,448	37,362	17.10%	261,743	46,040	17.59%
Franchise Fees	2,650,851	290,384	10.95%	2,650,851	2,452,611	279,202	11.38%	2,588,214	291,452	11.26%
Hotel/Motel Tax	8,713	1,170	13.43%	8,713	9,141	1,609	17.60%	10,078	1,725	17.12%
Licenses & Permits	573,300	88,619	15.46%	573,300	588,303	81,066	13.78%	671,384	88,759	13.22%
Intergovernmental Revenue	1,198,327	145,108	12.11%	1,198,327	1,333,688	85,922	6.44%	1,092,701	97,623	8.93%
Charges for Services	3,318,587	518,533	15.63%	3,318,587	3,163,735	501,683	15.86%	3,452,946	476,475	13.80%
Recreation	2,625,194	221,605	8.44%	2,625,194	2,315,598	236,413	10.21%	2,364,758	238,224	10.07%
Fines & Forfeitures	1,426,801	254,919	17.87%	1,426,801	1,639,678	271,963	16.59%	1,461,100	246,957	16.90%
Interest	372,611	51,902	13.93%	372,611	229,999	39,238	17.06%	520,325	183,458	35.26%
Miscellaneous	412,581	53,285	12.92%	412,581	643,310	200,056	31.10%	226,270	30,090	13.30%
Total Revenues	38,532,965	5,612,080	14.56%	38,532,965	36,066,888	6,141,509	17.03%	38,579,518	6,347,294	16.45%
Expenditures										
Legislation	359,314	57,079	15.89%	359,314	346,045	72,950	21.08%	350,254	62,504	17.85%
City Attorney	767,546	100,549	13.10%	767,546	678,038	81,066	11.95%	698,563	86,124	12.33%
Court	1,005,723	106,604	10.60%	1,005,723	914,493	116,687	12.76%	915,303	116,815	12.76%
City Manager	668,633	115,815	17.32%	668,633	674,170	128,378	19.04%	674,323	131,960	19.57%
Human Resources	504,898	43,504	8.62%	504,898	456,275	51,351	11.25%	579,137	63,244	10.92%
Financial Services	1,684,000	175,080	10.40%	1,684,000	1,575,924	183,080	11.62%	1,626,571	194,788	11.98%
Information Technology	1,342,948	151,243	11.26%	1,342,948	1,360,237	146,510	10.77%	1,280,156	141,777	11.07%
Public Works	5,497,881	670,048	12.19%	5,497,881	5,152,891	642,659	12.47%	5,189,173	655,834	12.64%
Fire Department	7,407,551	873,957	11.80%	7,407,551	7,320,268	856,527	11.70%	7,215,443	842,663	11.68%
Police Department	10,469,333	1,339,644	12.80%	10,469,333	10,183,891	1,328,551	13.05%	9,974,925	1,330,845	13.34%
Community Development	1,457,667	138,313	9.49%	1,457,667	1,366,437	168,023	12.30%	1,464,725	152,981	10.44%
Library	1,352,221	225,785	16.70%	1,352,221	1,275,554	226,669	17.77%	1,261,112	201,541	15.98%
Recreation	6,034,770	546,346	9.05%	6,034,770	5,727,968	579,061	10.11%	5,916,449	568,970	9.62%
Debt Service	2,004,456	120,893	6.03%	2,004,456	1,805,208	120,893	6.70%	1,809,306	2,500	0.14%
Contingency	60,000	600	1.00%	60,000	160,578	4,198	2.61%	59,759	-	0.00%
Total Expenditures	40,616,941	4,665,460	11.49%	40,616,941	38,997,977	4,706,593	12.07%	39,015,199	4,552,546	11.67%
Excess revenues over (under) expenditures	(2,083,976)	946,620	-45.42%	(2,083,976)	(2,931,089)	1,434,916		(435,681)	1,794,748	
Net transfers in (out)	1,844,433	1,864,433	101.08%	1,844,433	663,282	663,282	100.00%	2,164,017	2,164,017	100.00%
Total Fund Balance	\$ 8,279,038	\$ 11,646,009	140.67%	\$ 8,615,413	\$ 8,834,956	\$ 13,200,961	149.42%	\$ 11,102,763	\$ 13,333,192	120.09%

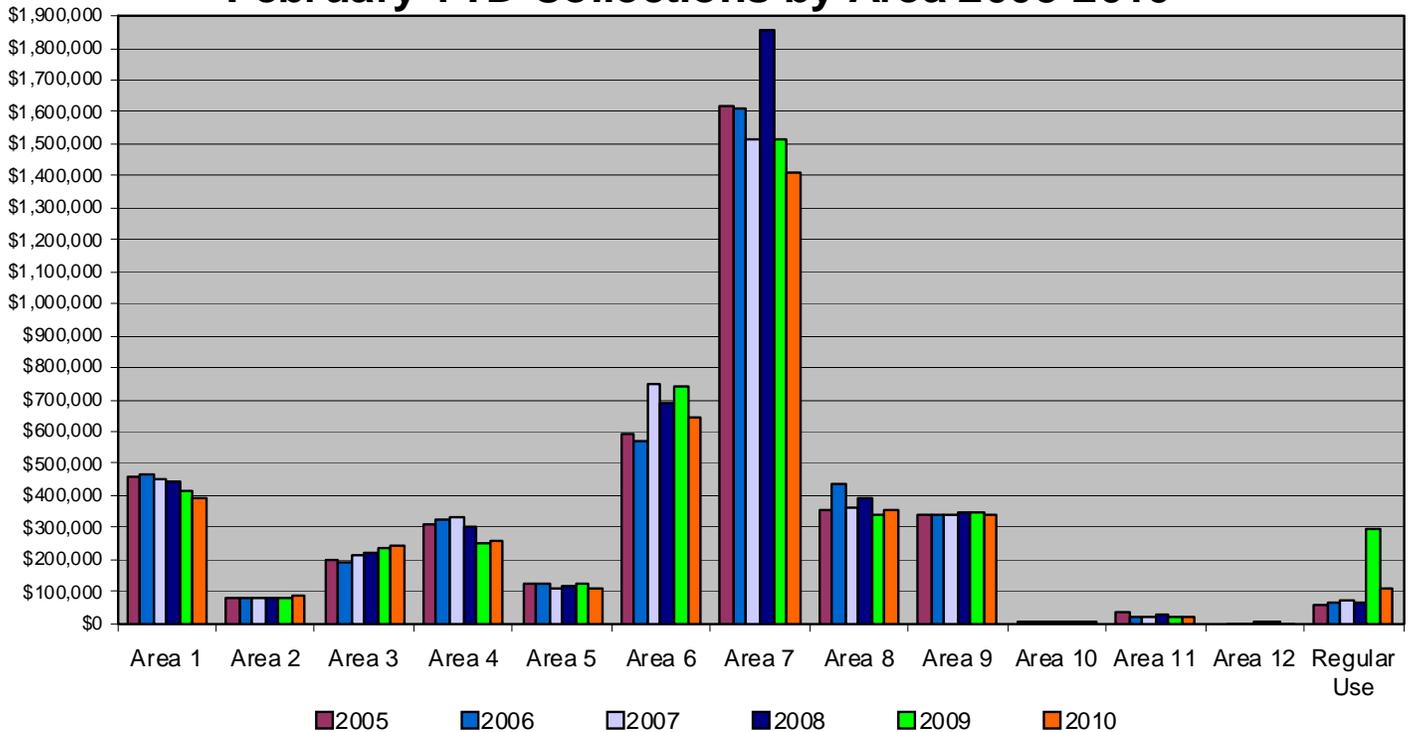
Fund Balance Analysis				
Total Fund Balance	\$ 8,279,038	\$ 8,615,413	\$ 8,834,956	\$ 11,102,763
Reserves/designations:				
-Emergencies (TABOR)	1,280,000	1,280,000	1,280,000	1,280,000
-LTAR	2,821,631	2,853,467	3,131,980	3,485,143
-COPS Grant (2010)				
-MOA (2009 and 2008)	298,512	298,512	39,200	80,800
Unreserved/undesignated Fund Balance	\$ 3,878,895	\$ 4,183,434	\$ 4,383,776	\$ 6,256,820
Potential reserves/designations	-	-	-	-
Estimated unres/undesig Fund Balance	\$ 3,878,895	\$ 4,183,434	\$ 4,383,776	\$ 6,256,820
As a percentage of projected revenues	10.07%	10.86%	12.15%	16.22%
As a percentage of budgeted revenues	10.07%	10.86%		
Target	3,853,297	-	5,779,945	

**Sales & Use Tax Collections Year-to-Date Comparison
for the month of February 2010**

Cash Basis

	2005	% Change	2006	% Change	2007	% Change	2008	% Change	2009	% Change	2010	% Change
Area 1	461,517	3.14%	466,819	1.15%	452,495	-3.07%	444,451	-1.78%	414,645	-8.36%	395,502	-4.62%
Area 2	80,546	-16.41%	82,156	2.00%	81,240	-1.11%	79,073	-2.67%	81,351	0.14%	84,944	4.42%
Area 3	198,698	-10.33%	194,514	-2.11%	213,813	9.92%	222,140	3.89%	239,646	12.08%	244,685	2.10%
Area 4	311,286	-8.34%	325,101	4.44%	333,365	2.54%	302,300	-9.32%	246,995	-25.91%	256,622	3.90%
Area 5	123,142	6.71%	126,317	2.58%	107,891	-14.59%	117,650	9.04%	122,545	13.58%	108,316	-11.61%
Area 6	596,462	-1.73%	568,266	-4.73%	747,460	31.53%	689,255	-7.79%	744,704	-0.37%	644,635	-13.44%
Area 7	1,621,410	7.81%	1,609,675	-0.72%	1,515,413	-5.86%	1,858,814	22.66%	1,513,273	-0.14%	1,411,923	-6.70%
Area 8	358,125	1.60%	434,142	21.23%	361,463	-16.74%	390,303	7.98%	342,173	-5.34%	353,992	3.45%
Area 9	337,872	2.78%	338,272	0.12%	339,894	0.48%	351,339	3.37%	348,363	2.49%	339,839	-2.45%
Area 10	3,453	-22.80%	5,022	45.44%	5,017	-0.10%	3,323	-33.77%	3,129	-37.63%	2,878	-8.01%
Area 11	33,978	-4.94%	24,108	-29.05%	22,784	-5.49%	25,094	10.14%	24,523	7.63%	22,655	-7.62%
Area 12	176	-65.63%	1,607	813.07%	1,477	-8.09%	2,284	54.61%	2,154	45.81%	1,941	-9.88%
Regular Use	61,618	-57.47%	67,403	9.39%	69,024	2.40%	62,791	-9.03%	298,374	332.28%	108,657	-63.58%
Total	4,188,283	-0.23%	4,243,402	1.32%	4,251,336	0.19%	4,548,816	7.00%	4,381,873	3.07%	3,976,590	-9.25%
Refunds	25,508	49.82%	3,154	-87.63%	41,280	1208.76%	44,336	7.40%	468	-98.94%	74,921	15914.21%
Audit & Collections Revenue*	112,356	392.48%	61,363	-45.39%	119,034	93.98%	172,401	44.83%	280,756	62.85%	30,558	-89.12%
*included Above	---	---	---	---	---	---	---	---	---	---	---	---
Unearned Sales Tax	700,000	-29.18%	650,000	-7.14%	650,000	0.00%	650,000	0.00%	1,000,000	53.85%	1,000,000	0.00%
Building Use	93,921	0.00%	456,464	386.01%	500,236	9.59%	282,710	-43.48%	24,514	-91.33%	51,565	110.35%
Vehicle Use	221,217	0.00%	212,765	-3.82%	225,930	6.19%	219,298	-2.94%	175,252	-20.08%	146,625	-16.34%

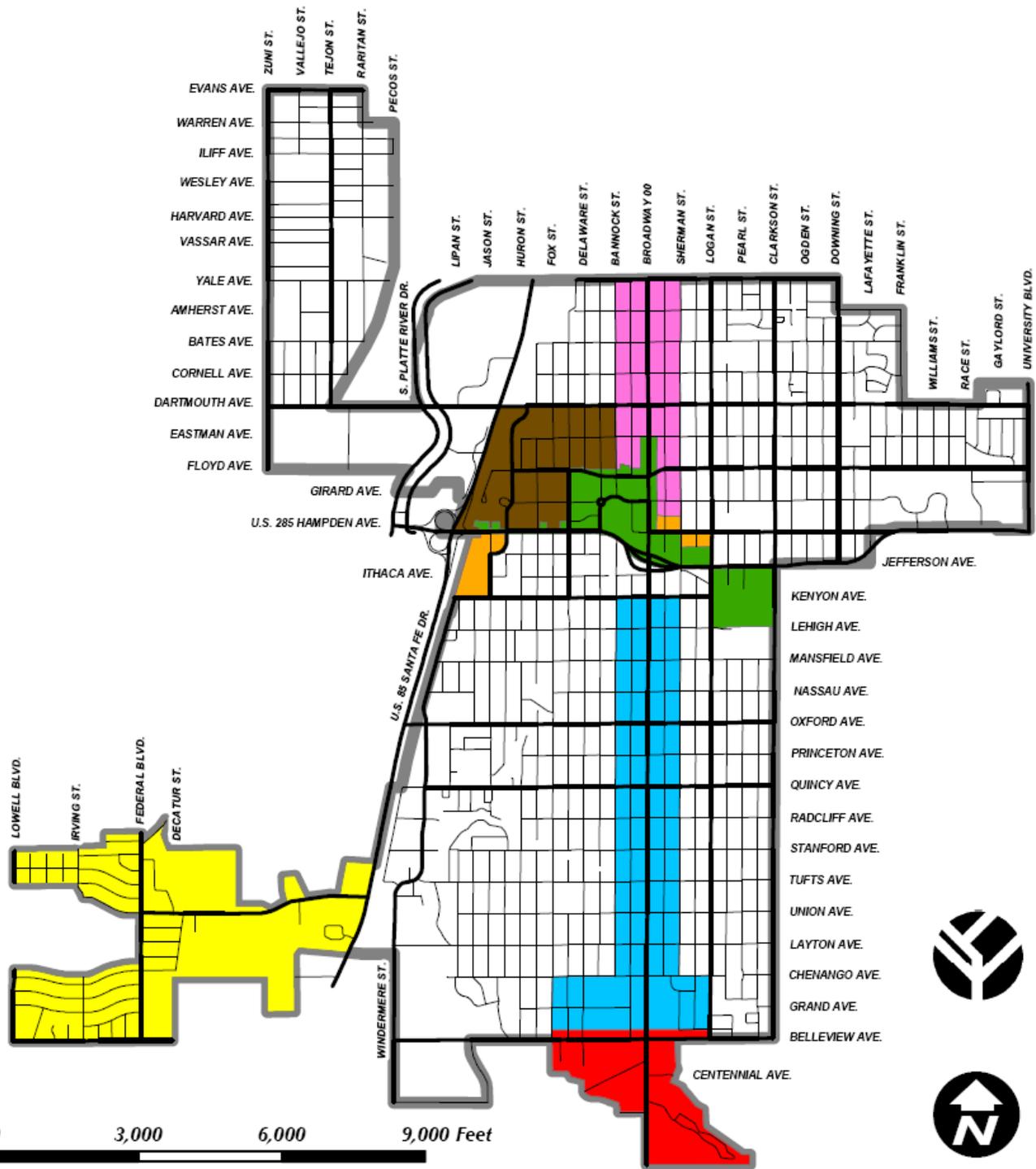
February YTD Collections by Area 2005-2010



Area Descriptions

Area 1 - CityCenter (Formerly Cinderella City)
 Area 2 - S of Yale, N of Kenyon between Bannock & Sherman (excludes EURA 1)
 Area 3 - S of Kenyon, N of Chenango between Bannock & Sherman and S of Chenango, N of Bellewood between Logan & Delaware
 Area 4 - Brookridge Shopping Center (Between Fox and Sherman and North side of Belleview and to the Southern City Limits)
 Area 5 - Centennial Area W of Santa Fe

Area 6 - All other City locations
 Area 7 - Outside City limits
 Area 8 - Public Utilities (Xcel Energy, Qwest)
 Area 9 - Downtown & Englewood Pkwy
 Area 10 - Downtown & Englewood Pkwy Use Tax Only
 Area 11 - S of 285, N of Kenyon between Jason and Santa Fe
 Area 12 - S of 285, N of Kenyon between Jason and Santa Fe Use Tax Only



City of Englewood, Colorado: Sales Tax Areas

- Area 1
- Area 5
- Arterials and Collectors
- Area 2
- Area 9 and 10
- Local Streets
- Area 3
- Area 11 and 12
- Englewood City Limits
- Area 4

Areas Not Depicted on Map:
 Area 6 - Other City Locations Area 7 - Outside City Limits Area 8 - Public Utilities

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BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2009/2010

COUNCIL BILL NO. 53
INTRODUCED BY COUNCIL
MEMBER JEFFERSON

AN ORDINANCE AMENDING TITLE 16, CHAPTERS 5 AND 11, OF THE ENGLEWOOD MUNICIPAL CODE 2000, PERTAINING TO THE UNIFIED DEVELOPMENT CODE AND MEDICAL MARIJUANA PRIMARY CARE-GIVER.

WHEREAS, in 2000 Colorado voters passed a Constitutional Amendment concerning medical marijuana; and

WHEREAS, the purpose of this Ordinance is to provide for zoning of a Medical Marijuana Primary Care-Giver use without violating the State Constitution or federal statutes; and

WHEREAS, dispensaries, growers and nurseries are not defined in Article XVIII of the Colorado State Constitution; and

WHEREAS, this Ordinance uses the language and definitions from the Colorado Constitution; and

WHEREAS, this Ordinance will not restrict the transportation of marijuana for a medical use, as defined in the Colorado Constitution because zoning ordinances are established in relation to the location of a zoned use; and

WHEREAS, this Ordinance addresses the Medical Marijuana Primary Care-Giver as a zoning use not the actual consumption of marijuana for any purpose; and

WHEREAS, on August 17, 2009 Englewood City Council approved Ordinance No. 34, Series of 2009, an Emergency Ordinance establishing a temporary suspension or moratorium on operations by Medical Marijuana Primary Care-Givers; and

WHEREAS, the passage of Ordinance No. 34, Series of 2009 grandfathered in any medical marijuana dispensing and growing uses (Medical Marijuana Primary Care-Givers) which had already been established by August 17, 2009; and

WHEREAS, on October 5, 2009 Englewood City Council approved Ordinance No. 41, Series of 2009, amending Title 5 of the Englewood Municipal Code to include licensing for Medical Marijuana Primary Care-Givers; and

WHEREAS, in Roadmap Englewood: 2003 Englewood Comprehensive Plan, Goal 1 of Section 7 states "Provide an economically viable environment that builds and maintains a diverse base of businesses"; and

WHEREAS, the Public Hearing on the Medical Marijuana Primary Care-Giver Amendments to Title 16 of the Unified Development Code was brought before the Planning and Zoning Commission by the Department of Community Development; and

WHEREAS, the Unified Development Code identifies three (3) types of “allowed” uses that are differentiated by the type of review performed by the City. A “Permitted Use” is allowed as a use-by-right provided all Code requirements are met. A “Conditional Use” requires a Conditional Use Permit with review by the Development Review Team and approval by the Planning and Zoning Commission. An “Accessory Use” such as home occupations which are incidental and subordinate to the principal use in a zone district; and

WHEREAS, the Amendment would establish Medical Marijuana Primary Care-Giver as a permitted use in the MU-B-1 and MU-B-2 zone districts with a 2,500 foot distancing requirement between care-giver locations and a 500 foot distancing requirement from licensed child care, education and religious uses; and

WHEREAS, the Amendment would establish Medical Marijuana Primary Care-Giver as a conditional use in the M-1, M-2 and MO-2 districts, with a 500 foot distancing requirement from licensed child care, education and religious use;

WHEREAS, the distances in this Ordinance were established by input from the Planning and Zoning Commission based on the distancing requirements for other business uses such as temporary employment uses, pawnbroker and auto pawnbroker uses to avoid a concentration of similar businesses in the downtown area; and

WHEREAS, the Planning and Zoning Commission passed a motion requiring that all distancing requirements shall apply to facilities within the City of Englewood and across the City of Englewood’s boundaries; and

WHEREAS, Medical Marijuana Care-Giver is not a proper accessory use as home occupation and it is prohibited in the residential districts which allow home occupations R-1-B, R-1-C, R-2-A, R-2-B, MU-R-3-A, MU-R-3-B and also in R-1-A, in that no home occupations are allowed in that district and thus completely prohibits such a use in all residential zone districts; and

WHEREAS, the Planning and Zoning Commission prohibited Medical Marijuana Primary Care-Givers in the industrial districts because they felt that the use was safer for the public in the commercial and medical districts; and

WHEREAS, this Ordinance reiterated the language from Colorado Constitution requiring that medical marijuana use shall not be in plain view of, or in a place open to the general public; and

WHEREAS, this Ordinance prohibits consumption on site although not prohibited by the Colorado Constitution; and

WHEREAS, those Medical Marijuana Primary Care-Givers operations established before August 17, 2009, shall be grandfathered; and

WHEREAS, time limitations on operation hours were not included because “blue laws” are illegal; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 16, Chapter 5, Section 1(C), entitled "*Table of Allowed Uses*", of the Englewood Municipal Code 2000, to read as follows:

TABLE 16-5-1.1: TABLE OF ALLOWED USES
P = PERMITTED USE C = CONDITIONAL USE A = ACCESSORY USE T = TEMPORARY USE L = LIMITED USE
C-A = ACCESSORY USE APPROVED CONDITIONALLY L-A = ACCESSORY USE APPROVED WITH LIMITED USE PROCEDURE

Use Category	Use Type	Residential							Non-Residential					Additional Regulations											
		R 1 A	R 1 B	R 1 C	R 2 A	R 2 B	M U R 3 A	M U R 3 B	M 1	M 2	M U B 1	M U B 2	T S A		I 1	I 2									
Assembly	Pet store (live animal sale)																								
	Small animal veterinary hospital or clinic																								
	Assembly hall or auditorium, hall rental for meetings or social occasions																								
	Membership organization (excluding adult use)																								

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Use Category	Use Type	Residential										Non-Residential					Additional Regulations
		R 1 A	R 1 B	R 1 C	R 2 A	R 2 B	M U R 3 A	M U R 3 B	M U R 3 M O 1	M 1	M 2	M U B 1	M U B 2	T S A	I 1	I 2	
Dependent Care	Dependent care center (less than 24-hour care, any age)	C	C	C	C	C	P	P	P	P	P	P	P	C			16-5-2.C.7
Entertainment/Amusement: Indoor	Amusement establishment													C	C	C	
	Hookah Lounge														P	P	
	Physical fitness center/spa														P	P	
Entertainment/Amusement: Outdoor	Theater and performance/concert venue, not including adult entertainment															P	
	General outdoor recreation															C	

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Use Category	Use Type	Residential								Non-Residential				Additional Regulations		
		R 1 A	R 1 B	R 1 C	R 2 A	R 2 B	M U R 3 A	M U R 3 B	M 1	M 2	M U B 1	M U B 2	T S A		I 1	I 2
Financial Institution	Check cashing facility															
	Financial institution, with drive-through service															
	Financial institution, without drive-through service															
Food and Beverage Service	Brewpub															
	Caterer															
	Microbrewery															
	Restaurant, bar, tavern with or without outdoor operations															

TABLE 16-5-1.1: TABLE OF ALLOWED USES
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Use Category	Use Type	Residential								Non-Residential						Additional Regulations	
		R 1 A	R 1 B	R 1 C	R 2 A	R 2 B	M U R 3 A	M U R 3 B	M U R 3 C	M 1	M 2	M U B 1	M U B 2	T S A	I 1		I 2
Retail Sales and Service (Personal Service)	Crematorium																C
	Dry cleaner, drop-off site only										P	P	P	P	P	P	P
	Instructional service										P		P	P	P	P	
	Massage therapy									P	P	P	P	P	P	P	
	Mortuary										P		P				
	Personal care											P	P	P	P	P	P
	Service: photography studio and photo lab, upholstery, printer, locksmith, tailor											P	P	P	P	P	P

TABLE 16-5-1.1: TABLE OF ALLOWED USES

**P = PERMITTED USE C = CONDITIONAL USE A = ACCESSORY USE T = TEMPORARY USE L = LIMITED USE
 C-A = ACCESSORY USE APPROVED CONDITIONALLY L-A = ACCESSORY USE APPROVED WITH LIMITED USE PROCEDURE**

Use Category	Use Type	Residential							Non-Residential					Additional Regulations				
		R 1 A	R 1 B	R 1 C	R 2 A	R 2 B	R 2 C	M U R 3 A	M U R 3 B	M U R 3 C	M 1	M 2	M U B 1		M U B 2	T S A	I 1	I 2
Tattoo and body-piercing establishment																		
Temporary employment business																		
Equipment rental																		
Repair shop (not including auto)																		
Antique store																		
Art gallery																		
Auction house																		
Buy-back shop, second hand, thrift, consignment																		

[EDITOR'S NOTE: The recommended changes are only effective in the Commercial portion of the table. The **Manufacturing/Industrial Uses, Accessory Uses, Temporary Uses, and Uses Not Mentioned** portions of Table 16-5-1.1 Table of Allowed Uses contain no changes and are therefore not included here]

Section 2. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 16, Chapter 5, Section 2(C), of the Englewood Municipal Code 2000, by the addition of a new Subsection 13, entitled “Medical Marijuana Primary Care-Giver” to read as follows:

16-5-2: Use-Specific Standards.

C. Commercial Uses.

13. Medical Marijuana Primary Care-Giver.

- a. A Medical Marijuana Primary Care-Giver shall comply with State and City regulations, and City of Englewood licensing requirements.
- b. All Medical Marijuana use shall not be in plain view of, or in a place open to the general public.
- c. A Medical Marijuana Primary Care-Giver operation shall not include areas for consumption.
- d. Distance Limitations.
 - (1) MU-B-1 and MU-B-2 districts: No Medical Marijuana Primary Care-Giver shall be located:
 - (a) within five hundred feet (500’) of a licensed child care facility;
 - (b) within five hundred feet (500’) of any educational institution either private or public;
 - (c) within five hundred feet (500’) of any church or religious institution.
 - (d) within two-thousand, five hundred feet (2,500’) of any other Medical Marijuana Primary Care-Giver operation except where this distance overlaps M-1, M-2 and MO-2.
 - (2) M-1, M-2 and MO-2 districts: In addition to compliance with Section 16-2-12 EMC, “Conditional Use Permits”, no Medical Marijuana Primary Care-Giver shall be located:
 - (a) within five hundred feet (500’) of a licensed child care facility;
 - (b) within five hundred feet (500’) of any educational institution either private or public;
 - (c) within five hundred feet (500’) of any church or religious institution.
 - (3) Measurement of Distance. With respect to the distancing requirements in this subsection between a business premises for which Medical Marijuana Primary Care-Giver use is proposed and another restricted use, the distance shall be

measured by following a straight line from the nearest point of the property line of the premises of the proposed Medical Marijuana Primary Care-Giver use to the nearest point of the property line of the specific use listed.

Section 3. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 16, Chapter 5, Section 4(C)(1)(f) entitled “Accessory Uses Permitted”, of the Englewood Municipal Code 2000, by the addition of a new Subsection (1 1), and Section 4D(2) entitled “Prohibited Accessory Uses” by the addition of a new Subsection (d), to read as follows:

16-5-4: Accessory Uses.

A. General Provisions.

1. Purpose. This Section authorizes the establishment of accessory uses that are incidental and customarily subordinate to principal uses. The City's intent in adopting this Section is to allow a broad range of accessory uses, so long as such uses are located on the same site as the principal use, and so long as they comply with the performance criteria set forth in this Section in order to reduce potentially adverse impacts on surrounding properties.
2. Approval of Accessory Uses. A permitted accessory use may be approved in conjunction with approval of the principal use.
3. Compliance with Code Requirements. All accessory uses, shall be subject to the general, dimensional, operational, and use-specific regulations set forth in this Section. In the case of any conflict between the accessory uses and standards of this Section and any other requirement of this Title, the standards of this Section shall control.
4. General Conditions. All accessory uses shall comply with the following general conditions:
 - a. Be clearly incidental and customarily found in connection with the principal use; and
 - b. Be conducted and/or located on the same lot as the principal use; and
 - c. Be operated and maintained under the same ownership, or by lessees or concessionaires thereof, and on the same lot as the permitted principal use.
5. Accessory Structures. For regulations applicable to accessory structures, see Sections 16-6-1.H and 16-6-1.I EMC.

B. General Development and Operational Standards. The following general standards shall apply to all accessory uses in all zoning districts, unless otherwise specified in this Title:

1. Time of Establishment. No accessory use shall be established or allowed on the subject parcel until all required permits and approvals for the principal use or activity have been obtained.

2. Temporary Accessory Uses. Temporary accessory uses shall be governed by the standards and Temporary Use Permit procedures set forth in Sections 16-2-14 and 16-5-5 EMC.

C. *Accessory Uses Permitted.* Table 16-5-1.1 includes accessory uses and shows in which zoning district a specific accessory use is permitted. If an accessory use is not listed in Table 16-5-1.1, but satisfies all the general standards set forth in subsection 16-5-4.B EMC, the City Manager or designee may allow its establishment according to the procedures and criteria in Section 16-5-1.B EMC, "Unlisted Uses." In addition, all unlisted accessory uses shall be subject to compliance with the general, dimensional, and operational standards set forth in this Section 16-5-4 EMC.

1. Home Occupation. Occupations customarily incidental to the principal use as a residence may be allowed when conducted in the same dwelling, provided the following standards are met:
 - a. Districts Allowed. Home occupations are allowed in the following districts: R-1-B, R-1-C, R-2-A, R-2-B, MU-R-3-A, and MU-R-3-B. Only one (1) home occupation shall be permitted per dwelling unit. Home occupations may be permitted accessory to principal residential uses located in nonresidential districts (e.g., in a manufactured home park located in an industrial district) provided the home occupation complies with all requirements of residential district home occupations herein.
 - b. Where Allowed on Site. The home occupation shall be operated entirely within the dwelling unit and only by the person or persons maintaining a dwelling unit therein. The home occupation shall not have a separate outside entrance. The home occupation shall not be conducted in a detached accessory structure.
 - c. Registration. All home occupations shall register with the City.
 - d. Sales.
 - (1) On the Premises. The sale on the premises of items that have been made, grown, or prepared on the premises shall be permitted. The sale on the premises of any item that has not been made, grown, or prepared on the premises shall be prohibited.
 - (2) Off the Premises. Sales off the premises of such items as personal or household goods such as those products offered by Avon, Amway, Fuller Brush, Watkins, etc., shall be permitted.
 - e. Operational Requirements.
 - (1) No assistants or employees that are not residents of the principal dwelling unit shall be employed in the home occupation.
 - (2) The hours and manner of such uses and the noise created thereby shall not interfere with the peace, quiet, or dignity of the neighborhood and adjoining properties.

- (3) Incidental storage shall be allowed for items made on the premises and/or sold off the premises consistent with this Section.
 - (4) The home occupation, including storage of materials, equipment, inventory, and/or supplies, shall not utilize more than three hundred (300) square feet; provided, however, that this does not apply to permitted home care accessory uses.
 - (5) The use of electric motors shall be limited in power, with a total limitation of one and one-half (1 1/2) horsepower, and no single unit over three-fourths (3/4) horsepower.
- f. Prohibited Uses. In no event shall any home occupation include the following business or commercial activities:
- (1) Animal hospital or kennel, animal daycare, breeders, except licensed canine and feline breeders.
 - (2) Asphalt paving business.
 - (3) Barbers, hairdressers, cosmetologists, beauticians or any activity involving the skin, hair or nails.
 - (4) Body, mechanical repair, or modification of motor vehicles.
 - (5) The sale, storage, manufacture, or assembly of guns, knives or other weapons or ammunition.
 - (6) Dump trucks.
 - (7) Restaurants.
 - (8) Towing business.
 - (9) Processes involving the dispensing, use, or recycling of hazardous or flammable substances and materials.
 - (10) Automotive vehicles sales requiring a state dealer's license.
 - (11) Medical Marijuana Primary Care-Giver.

2. Parking Area, Surface.

- a. *Parking Area, Surface (R-2-B District Only).* When an R-2-B district abuts or is adjacent to a MU-B-2 district, the portion of the lot adjacent to the business district may be used as a parking area by any commercial establishment to a depth of twenty-five feet (25') if the following conditions are met:
 - (1) The parking area must be screened from the residential portion of the lot by a six foot (6') opaque fence. Side yard fences must also be provided to screen adjacent property. These fences shall also be six feet (6') in height except that, within ten

feet (10') of the rear property line, the fences cannot exceed thirty inches (30") in height or be less than fifty percent (50%) open.

- (2) The paved parking area must be of hard surface to prevent the movement of dirt and debris from the parking area onto the public right-of-way.
 - (3) Parking stops or other devices allowing snowfall maintenance must be placed in the parking area to prevent damage to the fence by vehicles.
 - (4) Provisions must be made for the collection of trash as per City ordinance.
 - (5) The final design of the parking area must be approved by the City Manager or designee.
 - (6) No storage of vehicles is permitted and the lot is to be used solely for the parking of employees or customers.
 - (7) No vehicles in excess of seven thousand (7,000) pounds may be parked in the parking area.
 - (8) The minimum width of the parking area shall be fifty feet (50').
 - (9) The City Manager or designee may deny the use of any lot as a parking area if the above provisions are not met or if conditions are unsafe. The ruling may be appealed to the Board.
- b. **Parking Area, Surface (TSA District Only).** Surface parking areas, noncommercial and accessory to a principal use, are allowed subject to the following additional conditions:
- (1) **General.** Such surface parking area shall be maintained as long as the principal permitted use is maintained, or until alternative parking is provided for such principal use.
 - (2) **Location.**
 - (a) An accessory surface parking area may be located within six hundred feet (600') of the lot containing the principal use, either within the TSA district or within a zone district that permits noncommercial parking lots, subject to a City-approved alternative parking plan and pursuant to the Station Area Standards and Guidelines, as applicable.
 - (b) Accessory surface parking lots are prohibited within the transit station subarea.
- c. **Remote Parking Areas.** Pursuant to Section 16-6-4 EMC, required parking may be provided as an accessory use within four hundred feet (400') of the principal use, either within the same district or within a district that permits noncommercial parking lots. Such parking lots must be maintained as long as the principal permitted use is maintained, or alternate parking provided. Approval of an alternative parking plan is required (administrative process), pursuant to Section 16-6-4.D EMC. Such lots shall

be paved, shall require a building permit, and shall be subject to the landscaping requirements of Section 16-6-7.M EMC.

3. Satellite Dish Antenna.

- a. Small Satellite Dish Antennas. Satellite dish antennas of one (1) meter or less in diameter are permitted accessory uses in all residential and nonresidential zoning districts. Such dishes shall not be located within the public right-of-way.
- b. Large Satellite Dish Antennas.
 - (1) Satellite dish antennas measuring one (1) meter or more are permitted accessory uses in all zoning districts. Any roof-mounted dishes shall submit an engineer's certificate to the City. Such dishes shall not be located within the public right-of-way.
 - (2) As applied only to large satellite dish antennas accessory to a principal residential use, to the maximum extent feasible, but only where there is no substantial impairment to acceptable signal quality, such antennas shall:
 - (a) Be located in the rear yard of the residential use; and
 - (b) Be screened from view from adjacent public rights-of-way; and
 - (c) Be of a color harmonious with their surroundings. There shall be no advertising in words or pictures, other than the manufacturer's name in small letters.

4. Service Unit or Facility. Service units or facilities shall be allowed as accessory uses in the MU-R-3-B district. Such uses include, but are not limited to, barber or beauty shops, gift shops, coffee shops, and dining facilities for the convenience of the tenants. Such uses shall comply with underlying zone district requirements, including the dimensional requirements set forth in Section 16-6-1 EMC.

5. Swimming Pool. Swimming pools are allowed as accessory uses in all districts. See Title 8 EMC.

6. Wholesale Sales and Distribution. Wholesale sales and distribution shall be allowed as an accessory use in MU-B-1 and MU-B-2 districts provided the principal use maintains an active retail license and is open to the public for retail trade.

D. Prohibited Accessory Uses.

- 1. Prohibited in All Zoning Districts. The following activities shall not be regarded as accessory to a principal use on any site and are prohibited in all zoning districts:
 - a. Use of Travel Trailer or Recreational Vehicle (RV) as a Residence. The use of a travel trailer as a residence, permanent or temporary, with the exception of a trailer approved as a temporary use for security under Section 16-5-5 EMC, shall be prohibited in all zoning districts.

- b. Use of Motor Vehicle or Trailer for Sales, Service, Storage, or Other Business. The use of any motor vehicle, trailer, mini-mobile storage container, or shipping container as a structure in which, out of which, or from which any goods are sold or stored, any services performed, or other businesses conducted, shall be prohibited in all zoning districts. However, this subsection shall not prohibit the following:
 - (1) The sale of goods or merchandise at a City-approved or sponsored event; or
 - (2) Use of a motor vehicle, trailer, or shipping or storage container in connection with an approved recycling operation; or
 - (3) Use of a trailer or shipping or storage container in conjunction with construction authorized by a valid building permit; or
 - (4) Use of a trailer, shipping, or storage container for the temporary loading and unloading of goods, provided that no individual trailer or container is in place longer than forty-eight (48) hours.
- 2. Prohibited in Residential Zoning Districts. The following activities shall not be regarded as accessory to a residential principal use and are prohibited in all residential (R) districts:
 - a. Automotive Repair. Automotive repair, including engine, body, or other repair or repainting of more than one (1) vehicle at any one time owned by a person not residing at that address, regardless of whether compensation was paid for the service.
 - b. Outdoor Storage of Inoperative Vehicles. The outdoor storage of inoperable vehicles shall comply with Title 15 EMC.
 - c. Parking of Commercial Vehicles.
 - (1) In no event shall more than one (1) commercial vehicle be stored on property in any residential zone district, whether in a private garage or carport, in an off-street parking space, or in an open-space area. The size of such commercial vehicles shall not exceed vehicle weight of six thousand (6,000) pounds (60 c.w.t.).
 - (2) For the purpose of this Section, a road tractor or truck tractor shall not be deemed a commercial vehicle, and no road tractor or truck tractor shall be parked or stored in any residential zone district.
 - (3) No commercial vehicle shall be stored on public property or in the public right-of-way.
 - d. Medical Marijuana Primary Care-Giver.

Section 4. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 16, Chapter 11 Section 2(B), “*Definition of Words, Terms, and Phrases*” of the Englewood Municipal Code 2000 by inserting in alphabetical order to read as follows:

16-11-2(B): Definition of Words, Terms and Phrases.

Medical Marijuana Primary Care-Giver: A person, as defined in the Colorado Constitution Article XVIII, Section 14, who is listed by a Medical Marijuana Patient as a Primary Care-Giver on the State Medical Marijuana registry.

Useable Form of Marijuana: Means the seeds, leaves, buds, and flowers of the plant (genus) cannabis and any mixture or preparation thereof; which are appropriate for medical use as defined in the Colorado Constitution Article XVIII, Section 14.

Section 5. Medical Marijuana Care-Givers currently legally in existence in any zone district as of the effective date of this Ordinance shall be grandfathered and shall be considered a legal non-conforming use for purposes of the Zoning Ordinance and must be registered with the City as such.

Section 6. Safety Clauses. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Englewood, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 7. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance or its application to other persons or circumstances.

Section 8. Inconsistent Ordinances. All other Ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 9. Effect of repeal or modification. The repeal or modification of any provision of the Code of the City of Englewood by this Ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purposes of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 10. Penalty. The Penalty Provision of Section 1-4-1 EMC shall apply to each and every violation of this Ordinance.

Introduced, read in full, and passed on first reading on the 7th day of December, 2009.

Published as a Bill for an Ordinance in the City’s official newspaper on the 11th day of December, 2009.

Published as a Bill for an Ordinance on the City's official website beginning on the 9th day of December, 2009 for thirty (30) days.

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 7th day of December, 2009.

Loucrishia A. Ellis

MEMORANDUM



TO: Mayor Woodward
Englewood City Council Member
Gary Sears

FROM: Dan Brotzman, City Attorney

DATE: February 26, 2010

REGARDING: Medical Marijuana Study Session of March 22nd, 2010.

At the March 22nd Study Session we will be attaching the Zoning Ordinance that passed on 1st reading as well as the Ordinance concerning licensing that was adopted by Council on December 7, 2009. Community Development will provide diagrams showing distancing under the current proposal and other alternatives that were identified by the Planning and Commission. I know that there are other significant materials out there, Gary and Mike went to a Managers meeting with presentations on medical marijuana, the Mayor and Gary attended CML legislative meetings on medical marijuana, I know that the Chief's of Police and Sheriff's are actively participating on lobbying on this issue, Joe is attending the CML Policy Committee which will also have materials concerning this issue. Council members have individually been discussing this with the Chamber, ACE, BID, businesses acting as care-givers in Englewood and representatives from the South Metro Task Force. We will include the most recent drafts of the State legislation, but if you could forward any other material that you feel should be discussed to Sue Bradshaw that would be beneficial.

The Current status of City of Englewood legislation is as follows:

1. Ordinance No. 42, Series of 2009 – recognizes the affirmative defense provided by the Colorado Constitution for criminal prosecution.
2. Ordinance No. 41, Series of 2009 - Licensing primary care-givers.
 - Provides a criminal background check and prohibits felons.
 - Time limitations on operation hours were not included because “blue laws” are illegal.
 - Security issues as to store fronts and transportation were not addressed.
 - Prohibition as to consumption on the premises was not addressed.
3. C. B. 53 – 1st Reading 12/7/2009 – Amending the Unified Development Code.
 - The purpose of this Ordinance is to provide for zoning of a medical marijuana primary care-giver use without violating the State Constitution or federal statutes. The Ordinance uses the language and definitions from the Colorado Constitution; however a slight modification was made to allow delivery to patients. Conceptually the care-giver is responsible from seed through product to patient care.

- The Amendment would establish medical marijuana primary care-giver as a permitted use in the MU-B-1 and MU-B-2 zone districts with a 2,500 foot distancing requirement between care-giver locations and a 500 foot distancing requirement from licensed child care, education and religious uses.
- The Amendment would establish medical marijuana primary care-giver as a conditional use in the M-1, M-2 and MO-2 districts, with a 500 foot distancing requirement from licensed child care, education and religious use.
- The distances in this Ordinance were established by input from the Planning and Zoning Commission based on the distancing requirements for other business uses such as temporary employment uses, pawnbroker and auto pawnbroker uses to avoid a concentration of similar businesses in the downtown area.
- The Planning and Zoning Commission passed a motion requiring that all distancing requirements shall apply to facilities within the City of Englewood and across the City of Englewood's boundaries. [Further research is being done to make sure this was accomplished.]
- Medical marijuana care-giver was found not a proper accessory use as home occupation and it is prohibited in the residential districts which allow home occupations R-1-B, R-1-C, R-2-A, R-2-B, MU-R-3-A, MU-R-3-B and also in R-1-A, in that no home occupations are allowed in that district and thus completely prohibits such a use in all residential zone districts.
- The Planning and Zoning Commission prohibited medical marijuana primary care-givers in the industrial districts because they felt that the use was safer for the public in the commercial and medical districts.
- Signage is not specifically addressed in this Ordinance but will be considered in the revisions to the Sign Code.
- The Ordinance reiterated the language from Colorado Constitution requiring that medical marijuana use shall not be in plain view of, or in a place open to the general public and further prohibits consumption on site although not prohibited by the Colorado Constitution. [Council may wish to transfer this restriction to licensing and further consider grandfather issues.]
- Those medical marijuana primary care-givers operations established before August 17, 2009, will be grandfathered.

If Council has any further questions please forward them as short terms to through City Manager's Office so that they can be coordinated and forwarded into the packet for the March 22nd meeting. Again, the only decision at the Study Session will be to return this matter to the Planning and Zoning Commission or proceed to a Public Hearing before City Council.

CC: Mike Flaherty
 Sue Carlton Smith
 Tom Vandermee
 Frank Gryglewicz
 Alan White
 Nancy Reid
 Tricia Langon

BY AUTHORITY

ORDINANCE NO. 42
SERIES OF 2009

COUNCIL BILL NO. 43
INTRODUCED BY COUNCIL
MEMBER WILSON

AN ORDINANCE AMENDING TITLE 7, CHAPTER 6D, SECTION 12, OF THE ENGLEWOOD MUNICIPAL CODE 2000, ENTITLED POSSESSION OF MARIJUANA PROHIBITED WHICH PERTAINS TO ENFORCEMENT.

WHEREAS, the Colorado Constitution has been amended relative to possession of marijuana/drug paraphernalia which legalizes medical use of marijuana and paraphernalia for persons suffering from debilitating medical conditions; and

WHEREAS, the passage of this Ordinance will amend the Englewood Municipal Code to align it with the Colorado Constitution relative to possession of marijuana/drug paraphernalia for medical use;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood, Colorado hereby authorized amending Title 7, Chapter 6D, Section 12, of the Englewood Municipal Code 2000, entitled "Possession of Marijuana Prohibited" to read as follows:

7-6D-12: Possession of ~~Marihuana~~ Marijuana Prohibited.

A. Definitions:

Consumption or Use of ~~Marihuana~~ Marijuana: Shall be deemed possession thereof.

Marihuana or Marijuana: All parts of the plant cannabis sativa L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin. It does not include fiber produced from the stalks, oil or cake made from the seeds of the plant, or sterilized seed of the plant which is incapable of germination, if these items exist apart from any other item defined as "~~marihuana~~ marijuana" herein. "~~Marihuana~~ marijuana" does not include ~~marihuana~~ marijuana concentrate as defined above.

~~Marihuana~~ Marijuana Concentrate: Hashish, tetrahydrocannabinols, or any alkaloid, salt, derivative, preparation, compound or mixture, whether natural or synthesized, of tetrahydrocannabinols.

B. It is unlawful for any person to possess one ounce or less of ~~marihuana~~ marijuana, except in accordance with Section 14 of Article XVIII of the Colorado Constitution.

C. The maximum punishment that can be imposed for violation of this Section is as is set forth in Section 1-4-1 of this Code. However, in imposing punishment on minors for violation of this Section, the Court is limited to the restrictions of subsection 1-4-1B of this Code.

7-6D-12-1: Drug Paraphernalia.

A. *Definitions.* As used in this Section, unless the context otherwise requires:

1. *Drug paraphernalia* means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the laws of this State. Drug paraphernalia includes, but is not limited to:
 - a. Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances under circumstances in violation of the laws of this State;
 - b. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
 - c. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;
 - d. Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;
 - e. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
 - f. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances; or
 - g. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:
 - (1) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - (2) Water pipes;
 - (3) Carburetion tubes and devices;
 - (4) Smoking and carburetion masks;

- (5) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;
- (6) Miniature cocaine spoons and cocaine vials;
- (7) Chamber pipes;
- (8) Carburetor pipes;
- (9) Electric pipes;
- (10) Air-driven pipes;
- (11) Chillums;
- (12) Bongs; or
- (13) Ice pipes or chillers.

B. Determination; Considerations.

1. In determining whether an object is drug paraphernalia, a court, in its discretion, may consider, in addition to all other relevant factors, the following:
 - a. Statements by an owner or by anyone in control of the object concerning its use;
 - b. The proximity of the object to controlled substances;
 - c. The existence of any residue of controlled substances on the object;
 - d. Direct or circumstantial evidence of the knowledge of an owner, or of anyone in control of the object, or evidence that such person reasonably should know, that it will be delivered to persons who he/she knows or reasonably should know, could use the object to facilitate a violation of this Section;
 - e. Instructions, oral or written, provided with the object concerning its use;
 - f. Descriptive materials accompanying the object which explain or depict its use;
 - g. National or local advertising concerning its use;
 - h. The manner in which the object is displayed for sale;
 - i. Whether the owner, or anyone in control of the object, is a supplier of like or related items to the community for legal purposes, such as an authorized distributor or dealer of tobacco products;
 - j. The existence and scope of legal uses for the object in the community;
 - k. Expert testimony concerning its use.

- C. Possession of Drug Paraphernalia. A person commits possession of drug paraphernalia if he/she possesses drug paraphernalia and knows or reasonably should know that the drug paraphernalia could be used under circumstances in violation of this Code, except in accordance with Section 14 of Article XVIII of the Colorado Constitution.
- D. Manufacture, Sale or Delivery of Drug Paraphernalia; Penalty. Any person who sells or delivers, possesses with intent to sell or deliver, or manufactures with intent to sell or deliver equipment, products, or materials knowing, or under circumstances where one reasonably should know, that such equipment, products or materials could be used as drug paraphernalia commits a violation of this Section, except in accordance with Section 14 of Article XVIII of the Colorado Constitution.
- E. Advertisement of Drug Paraphernalia; Penalty. Any person who places an advertisement in any newspaper, magazine, handbill, or other publication and who intends thereby to promote the sale in this City of equipment, products, or materials designed and intended for use as drug paraphernalia commits a violation of this Code, except in accordance with Section 14 of Article XVIII of the Colorado Constitution.
- F. Defenses. The common law defense known as the procuring agent defense is not a defense to any crime in this Section.

Section 2. Safety Clauses. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Englewood, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 3. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance or its application to other persons or circumstances.

Section 4. Inconsistent Ordinances. All other Ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 5. Effect of repeal or modification. The repeal or modification of any provision of the Code of the City of Englewood by this Ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purposes of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 6. Penalty. The Penalty Provision of Section 1-4-1 EMC shall apply to each and every violation of this Ordinance.

Introduced, read in full, and passed on first reading on the 21st day of September, 2009.

Published as a Bill for an Ordinance in the City's official newspaper on the 25th day of September, 2009.

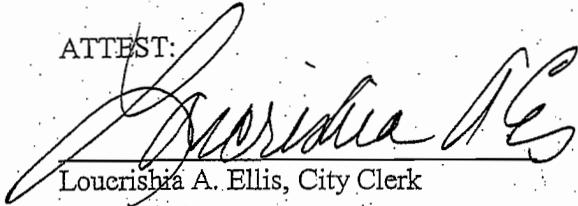
Published as a Bill for an Ordinance on the City's official website beginning on the 23rd day of September, 2009 for thirty (30) days.

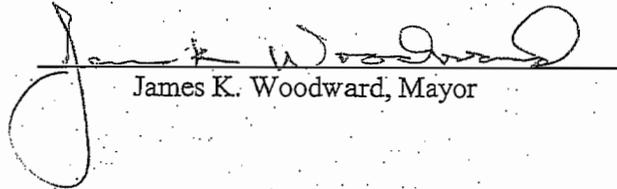
Read by title and passed on final reading on the 5th day of October, 2009.

Published by title in the City's official newspaper as Ordinance No. ~~42~~, Series of 2009, on the 9th day of October, 2009.

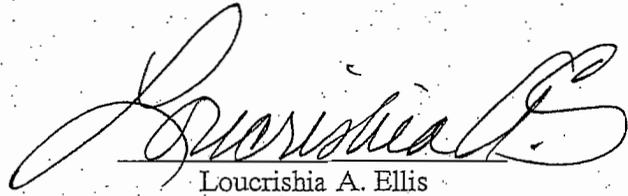
Published by title on the City's official website beginning on the 7th day of October, 2009 for thirty (30) days.

ATTEST:


Loucrishia A. Ellis, City Clerk


James K. Woodward, Mayor

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by title as Ordinance No. ~~42~~, Series of 2009.


Loucrishia A. Ellis

BY AUTHORITY

ORDINANCE NO. 41
SERIES OF 2009

COUNCIL BILL NO. 42
INTRODUCED BY COUNCIL
MEMBER OAKLEY

AN ORDINANCE AMENDING TITLE 5, OF THE ENGLEWOOD MUNICIPAL CODE 2000, BY THE ADDITION OF A NEW CHAPTER 22, PERTAINING TO MEDICAL MARIJUANA PRIMARY CARE-GIVERS.

WHEREAS, the Colorado State Constitution was amended pertaining to Medical Marijuana patients and Primary Care-Givers; and

WHEREAS, the passage of this Ordinance will amend the Englewood Municipal Code Title 5, with the addition of a new Chapter 22, pertaining to the licensing of Medical Marijuana Primary Care-Givers in the City of Englewood, Colorado; and

WHEREAS, the new Title 5, Chapter 22 follows the Colorado State Constitution regarding care-giver as it pertains to medical marijuana; and

WHEREAS, Chapter 22 covers the license adding language regarding transfer of license, background investigations, recordkeeping, but other than that it follows the Colorado State Constitution;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood, Colorado hereby authorized amending Title 5, of the Englewood Municipal Code 2000, by the addition of an new Chapter 22, entitled "Medical Marijuana Primary Care-Givers" to read as follows:

5-22-1: DEFINITIONS:

As used in this Section, the following terms shall have the meanings indicated:

Medical Marijuana: All parts of the plant (genus) cannabis used in the treatment of debilitating medical conditions as defined in the Colorado Constitution Article XVIII, Section 14.

Medical Marijuana Patient: A Patient as defined in the Colorado Constitution Article XVIII, Section 14, who is registered as a Medical Marijuana Patient with the State of Colorado.

Medical Marijuana Primary Care-Giver: A person, as defined in the Colorado Constitution Article XVIII, Section 14, who is listed by a Medical Marijuana Patient as a Primary Care-Giver on the State Medical Marijuana registry.

Medical Marijuana Registry Card: A registration card issued to a Patient, as defined in the Colorado Constitution Article XVIII, Section 14, by the Colorado Department of Public Health and Environment which also identifies the Patient and the Patient's Primary Care-Giver.

Medical Marijuana Use: The acquisition, possession, production, use or transportation of marijuana or paraphernalia related to the administration of such medical marijuana to address a Patient's debilitating medical condition as defined in the Colorado Constitution Article XVIII, Section 14.

Usable Form of Marijuana: The seeds, leaves, buds, and flowers of the plant (genus) cannabis, and any mixture or preparation thereof, which are appropriate for medical use as defined in the Colorado Constitution Article XVIII, Section 14.

5-22-2: LICENSE REQUIRED: It shall be unlawful for any Medical Marijuana Primary Care-Giver, as defined to acquire, possess, produce, use, transport, offer, dispense, or grow Medical Marijuana or marijuana paraphernalia or to sell the above without first obtaining a license from the City of Englewood.

5-22-3: APPLICATION FOR LICENSE: A Medical Marijuana license shall be issued in accordance with Chapter 1 of this Title to a State of Colorado registered Primary Care-Giver.

5-22-4: SPECIAL LICENSE REQUIREMENTS: In addition to all other provisions of this Title, the following special requirements apply to this license:

- A. Only a person authorized by the Colorado Constitution Article XVIII, Section 14 or by Rules of the Colorado Department of Public Health and Environment may be licensed.
- B. LICENSE NOT TRANSFERABLE: A License issued pursuant to this Chapter shall not be transferred to another person.
- C. BACKGROUND INVESTIGATION: Applicants will be subject to a criminal background investigation as part of the application process. The application will be rejected if the criminal background check discloses any felony convictions.
- D. A licensed Medical Marijuana Primary Care-Giver shall have copies of all required State of Colorado registrations available.
- E. Failure of an applicant to meet the prescribed standards and qualifications of this Chapter shall constitute grounds for revocation, suspension, or non-renewal of the license.

5-22-5: REQUIRED ACTS:

- A. Medical Marijuana Primary Care-Givers shall comply with all applicable State laws and regulations relating to the use, sale or possession of Medical Marijuana or marijuana paraphernalia.
- B. Medical Marijuana Primary Care-Givers shall keep accurate records of their inventory, sales, and other records as required by the Licensing Officer.
- C. Medical Marijuana Primary Care-Givers shall keep records of all transactions for at least three (3) years.
- D. Licensed Medical Marijuana Primary Care-Givers shall only make sales to persons with a valid Medical Marijuana Patient Registry Card issued by the Colorado Department of Public Health and Environment.

E. Licensed Medical Marijuana Primary Care-Givers shall possess a copy of a valid Medical Marijuana Patient Registry Card issued by the Colorado Department of Public Health and Environment for all sales.

5-22-6: PROHIBITED ACTS:

A. No Medical Marijuana Primary Care-Giver shall sell or otherwise provide marijuana to anyone other than persons with a valid Medical Marijuana Registry Card issued by the Colorado Department of Health and Environment to registered Patients.

Section 2. Safety Clauses. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Englewood, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 3. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance or its application to other persons or circumstances.

Section 4. Inconsistent Ordinances. All other Ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 5. Effect of repeal or modification. The repeal or modification of any provision of the Code of the City of Englewood by this Ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purposes of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 6. Penalty. The Penalty Provision of Section 1-4-1 EMC shall apply to each and every violation of this Ordinance.

Introduced, read in full, amended and passed as amended on first reading on the 21st day of September, 2009.

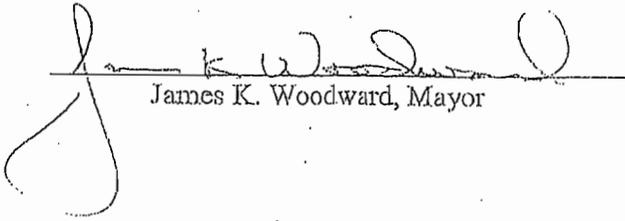
Published as an amended Bill for an Ordinance in the City's official newspaper on the 25th day of September, 2009.

Published as an amended Bill for an Ordinance on the City's official website beginning on the 23rd day of September, 2009 for thirty (30) days.

Read by title and passed as amended on final reading on the 5th day of October, 2009.

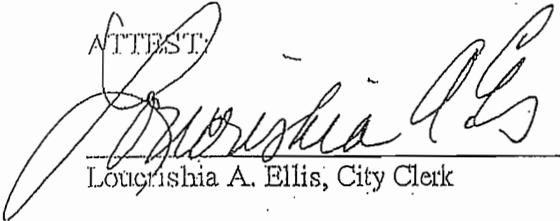
Published by title as amended in the City's official newspaper as Ordinance No. 41, Series of 2009, on the 9th day of October, 2009.

Published as amended by title on the City's official website beginning on the 7th day of October, 2009 for thirty (30) days.



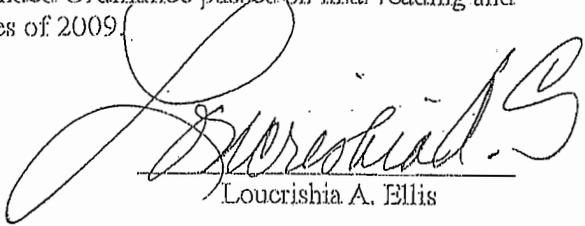
James K. Woodward, Mayor

ATTEST



Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the amended Ordinance passed on final reading and published by title as Ordinance No. 41, Series of 2009.



Loucrishia A. Ellis

MEMORANDUM

TO: Dan Brotzman, City Attorney

FROM: Nancy Reid, Assistant City Attorney



DATE: February 24, 2010

REGARDING: Amendments to the Title 16 – Medical Marijuana - distancing primary care-giver locations from other Medical Marijuana primary care-giver and other specific facilities.

Attached are the Englewood Planning and Zoning Commission Agenda and Minutes of October 20, 1009 which pertain to the Medical Marijuana Hearing.

Attachment

NNR/nf



City of Englewood

CITY OF ENGLEWOOD PLANNING AND ZONING COMMISSION

Tuesday October 20, 2009

ENGLEWOOD CITY COUNCIL CHAMBERS

SECOND FLOOR – CIVIC CENTER

REGULAR MEETING

7:00 P. M.

1. Call to Order
2. Approval of Minutes:
 - October 6, 2009
3. Public Hearing
Case #2009-04

Amendments to Title 16 Related to Medical Marijuana: Staff will introduce recommended changes to Title 16 regarding Medical Marijuana Primary Care-Giver.

4. DRCOG – 2009 Denver Regional Natural Hazard Mitigation Plan
 - Harold Stitt
5. Public Forum
6. Director's Choice
7. Staff's Choice
8. Attorney's Choice
9. Commissioner's Choice
10. Adjourn

Please note: If you have a disability and need auxiliary aids or services, please notify the City of Englewood at 303-762-2370 at least 48 hours in advance of when the services are needed. Thank you.

**CITY OF ENGLEWOOD PLANNING AND ZONING COMMISSION
REGULAR MEETING
October 6, 2009**

I. CALL TO ORDER



The regular meeting of the City Planning and Zoning Commission was called to order at 7:05 p.m. in the Community Development Conference Room of the Englewood Civic Center, Chair Bleile presiding.

Present: Bleile, Roth, King, Welker, Krieger (entered 7:13), Knoth, Fish, Calonder
Kinton (alternate) (entered 7:20)

Absent: Brick

Staff: Alan White, Director Community Development
Audra Kirk, Planner I
Nancy Reid, Assistant City Attorney

II. APPROVAL OF MINUTES

September 9, 2009



Welker moved:

Knoth seconded: TO APPROVE THE SEPTEMBER 9, 2009 MINUTES

Chair Bleile asked if there were any modifications or corrections.

There were none.

AYES: Roth, Welker, Knoth, Fish

NAYS: None

ABSTAIN: Calonder, King, Bleile

ABSENT: Brick, Krieger

Motion carried.

III. AMENDMENT TO TITLE 16 RELATED TO MEDICAL MARIJUANA



Ms. Reid distributed the State's definition for "Primary Care-Giver" and gave a brief background on medical marijuana.

The Commission discussed at length where to allow a Medical Marijuana Primary Care-Giver and under what conditions.

Ms. Kirk reviewed what was discussed at the September 9th meeting. She distributed copies of emails from John Brick and Don Roth and a copy of the new Ordinance for licensing a care-giver in Englewood. She noted at the last meeting the Commission did not feel the use was appropriate residential districts.

Ms. Kirk asked the Commission to open their packet to page 3 of the Table of Allowed Uses to review the proposed changes.

Chair Bleile went around the table and asked each Commissioner what zone districts they would like to see facilities allowed.

Ms. Kirk was asked how time consuming it would be if the use was a conditional use, which requires a public hearing. How many applications do you foresee? She stated the Commission could spend quite a bit of time in public hearings. Mr. Knoth said there are over 200 applications right now in the metro area and several opening on Broadway north of Evans in the next month.

Chair Bleile said he agreed facilities should be placed in areas of heavy law enforcement traffic and heavy foot traffic, not in the industrial area.

Ms. Kirk reviewed the requirements for a conditional use.

Chair Bleile asked for another round of discussion as to whether the Commission would prefer a facility be located in both the medical district and industrial district or one or the other.

Discussion continued on regulating the store front and allowable signage. Ms. Kirk said the City cannot dictate what is placed on their sign, but signs would have to adhere to the City's sign code.

After discussion it was decided not to allow a care-giver in the I-1 and I-2 zone districts.

Ms. Kirk next discussed whether or not distancing requirements are needed. She asked the Commissioners to turn to page 9 of her report to discuss each of the proposed amendments. The Commission asked Ms. Reid to look into limiting hours of business. Several Commissioners did not want the product visible from the sidewalk or public right-of-way. Ms. Reid will look into the State Statute wording regarding areas for consumption.

Distancing requirements was discussed next.

Calonder moved:

Bleile seconded: TO ALLOW A MEDICAL MARIJUANA PRIMARY CARE-GIVER IN THE M-1 ZONE DISTRICT ONLY WITH DISTANCING REQUIREMENTS

AYES: Bleile, Calonder
NAYS: Roth, Knoth, Welker, Fish, King, Krieger
ABSTAIN: None
ABSENT: Brick

Motion failed.

Welker moved:

Calonder seconded: TO ALLOW A MEDICAL MARIJUANA PRIMARY CARE-GIVER IN THE M-1, M-2 AND MO-2 ZONE DISTRICTS AS A CONDITIONAL USE AND PERMITTED IN THE MU-B-1 AND MU-B-2 ZONE DISTRICTS

AYES: Fish, Welker, Krieger, Knoth
NAYS: Roth, Calonder, King, Bleile
ABSTAIN: None
ABSENT: Brick

Motion failed.

Calonder moved:

Welker seconded: TO ALLOW A MEDICAL MARIJUANA PRIMARY CARE-GIVER IN THE M-1, M-2 AND MO-2 ZONE DISTRICTS AS A CONDITIONAL USE

AYES: Calonder, King, Bleile
NAYS: Roth, Fish, Welker, Krieger, Knoth
ABSTAIN: None
ABSENT: Brick

Motion failed.

Krieger moved:

Calonder seconded: TO ALLOW A MEDICAL MARIJUANA PRIMARY CARE-GIVER IN THE M-1, M-2 AND MO-2 ZONE DISTRICTS AS A PERMITTED USE

AYES: Krieger, Calonder
NAYS: Roth, King, Bleile, Fish, Welker, Knoth
ABSTAIN: None
ABSENT: Brick

Motion failed.

Welker moved:

King seconded: TO ALLOW A MEDICAL MARIJUANA PRIMARY CARE-GIVER IN THE M-1, M-2 AND MO-2, MU-B-1 AND MU-B-2 ZONE DISTRICTS AS A CONDITIONAL USE

AYES: Roth, King
NAYS: Fish, Welker, Krieger, Calonder, Knoth, Bleile
ABSTAIN: None
ABSENT: Brick

Motion failed.

Welker moved:

Fish seconded: TO ALLOW A MEDICAL MARIJUANA PRIMARY CARE-GIVER IN THE M-1, M-2 AND MO-2 ZONE DISTRICTS AS A CONDITIONAL USE AND AS A PERMITTED USE IN MU-B-1 AND MU-B-2 WITH DISTANCING REQUIREMENTS.

AYES: Welker, Fish, Krieger, Calonder, King
NAYS: Roth, Knoth, Bleile
ABSTAIN: None
ABSENT: Brick

Motion carried.

Welker moved:

Krieger seconded: TO ALLOW A MEDICAL MARIJUANA PRIMARY CARE-GIVER IN THE M-1, M-2 AND MO-2, MU-B-1 AND MU-B-2 ZONE DISTRICTS AS A PERMITTED USE WITH DISTANCING REQUIREMENTS AS FOLLOWS:

1. WITHIN 500 FEET OF A LICENSED CHILD CARE FACILITY;
2. WITHIN 500 FEET OF ANY EDUCATIONAL INSTITUTION EITHER PRIVATE OR PUBLIC;
3. WITHIN 500 FEET OF ANY CHURCH OR RELIGIOUS INSTITUTION; AND
4. WITHIN 2,500 FEET OF A LIKE BUSINESS.

AYES: None
NAYS: Roth, Knoth, Bleile, Welker, Fish, Krieger, Calonder, King
ABSTAIN: None
ABSENT: Brick

Motion failed.

Welker moved:

Krieger seconded: TO ALLOW A MEDICAL MARIJUANA PRIMARY CARE-GIVER IN THE M-1, M-2 AND MO-2, MU-B-1 AND MU-B-2 ZONE DISTRICTS AS A PERMITTED USE WITH DISTANCING REQUIREMENTS AS FOLLOWS:

1. WITHIN 500 FEET OF A LICENSED CHILD CARE FACILITY;
2. WITHIN 500 FEET OF ANY EDUCATIONAL INSTITUTION EITHER PRIVATE OR PUBLIC;
3. WITHIN 500 FEET OF ANY CHURCH OR RELIGIOUS INSTITUTION; AND
4. WITHIN 1,250 FEET OF A LIKE BUSINESS.

AYES: Welker, Krieger, Roth
NAYS: Fish, Calonder, Knoth, King, Bleile
ABSTAIN: None
ABSENT: Brick

Motion failed.

Mr. Welker amended his original motion that passed:

Welker moved:

Krieger seconded: TO ALLOW A MEDICAL MARIJUANA PRIMARY CARE-GIVER AS A CONDITIONAL USE IN THE M-1, M-2 AND MO-2 ZONE DISTRICTS AND AS A PERMITTED USE IN THE MU-B-1 AND MU-B-2 ZONE DISTRICTS WITH DISTANCING REQUIREMENTS. NO MEDICAL MARIJUANA PRIMARY CARE-GIVER SHALL BE LOCATED:

1. WITHIN 500 FEET OF A LICENSED CHILD CARE FACILITY IN M-1, M-2, MO-2, MU-B-1 AND MU-B-2 ZONE DISTRICTS;
2. WITHIN 500 FEET OF ANY EDUCATIONAL INSTITUTION EITHER PRIVATE OR PUBLIC IN M-1, M-2, MO-2, MU-B-1 AND MU-B-2 ZONE DISTRICTS;
3. WITHIN 500 FEET OF ANY CHURCH OR RELIGIOUS INSTITUTION IN M-1, M-2, MO-2, MU-B-1 AND MU-B-2 ZONE DISTRICTS; AND
4. WITHIN 500 FEET OF A LIKE BUSINESS IN THE M-1, M-2 AND MO-2 ZONE DISTRICTS AND 2,500 FEET OF A LIKE BUSINESS IN THE MU-B-1 AND MU-B-2 ZONE DISTRICTS ONLY.

AYES: Welker, Fish, Krieger, Roth, Knoth

NAYS: Calonder, King, Bleile
ABSTAIN: None
ABSENT: Brick

Motion carried.

IV. PUBLIC FORUM

 There was no public present.

V. DIRECTOR'S CHOICE

 Director White informed the Commission that on October 5, 2009 City Council recommended the City Manager establish a temporary suspension or moratorium on the enforcement of select provisions of the Englewood Municipal Code 2000, the Sign Code, pertaining to banners and portable signs for a period of four months. City Council recommended the Alliance for Commerce Board make sign code revision recommendations to the Planning and Zoning Commission.

VI. STAFF'S CHOICE

 Ms. Kirk had nothing further to report.

VII. ATTORNEY'S CHOICE

 Ms. Reid stated the Colorado Court of Appeals ruled the Headed West murals can stay. City Council will discuss whether or not to appeal the ruling.

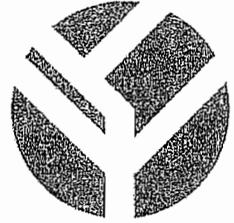
VIII. COMMISSIONER'S CHOICE

 Several Commissioners commented on tonight's discussion and vote.

The meeting adjourned at 9:30 p.m.

Barbara Krecklow, Recording Secretary

MEMORANDUM



TO: Englewood Planning and Zoning Commission
FROM: Nancy Reid, Assistant City Attorney *Reid*
DATE: October 15, 2009

REGARDING: Drafting of Medical Marijuana Primary Care-Giver Zoning.

The proposed ordinance language is stilted and doesn't flow as well as staff would wish or as it would if the City created a new definition such as: "Medical Marijuana Primary Care-Giving Operations" – which fits in much better with zoning uses and terms. However, because the City must tread a fine line between following the Constitutional Amendment regarding Medical Marijuana and the Criminal Status relating to Marijuana, we are suggesting using the Constitutional definitions.

CC: Alan White
Tricia Langon
Audra Kirk

NNR/nf



M E M O R A N D U M

TO: Planning and Zoning Commission
THRU: Alan White, Director, Community Development *AW*
Tricia Langon, Senior Planner
FROM: Audra L. Kirk, Planner *alk*
DATE: October 20, 2009
SUBJECT: Case 2009-04 – Medical Marijuana Ordinance Amendments to
Title 16: Unified Development Code

RECOMMENDATION:

Staff requests that the Planning and Zoning Commission review, take public testimony, and forward to City Council a recommendation for adoption of proposed amendments to Title 16: Unified Development Code (UDC) pertaining to Medical Marijuana Primary Care-giver.

PROCEDURE:

Pursuant to 16-2-1.B.4 of the Englewood Municipal Code, the Commission is authorized to review and make recommendations to City Council regarding updates to Title 16: Unified Development Code. Amendments to Title 16 are necessary so that the Code remains "relevant in light of the Comprehensive Plan and current development trends and planning concerns".

BACKGROUND:

In 2000, Colorado voters passed a constitutional amendment allowing the use of medical marijuana. On August 17, 2009 Englewood City Council approved Ordinance No. 34. This emergency ordinance established a temporary suspension or moratorium on Medical Marijuana Primary Care-givers until licensing and zoning regulations could be put into place.

On October 5, 2009 Englewood City Council approved through a second reading Ordinance No. 41. This ordinance amends Title 5 of the Englewood Municipal Code to include licensing for Medical Marijuana Primary Care-givers.

On September 9, 2009 the Englewood Planning and Zoning Commission held a study session to begin discussion on Medical Marijuana and how to regulate it within Title 16 of the Englewood Municipal Code, the Unified Development Code. This discussion carried over to the October 6, 2009 Planning and Zoning meeting. During these

discussions the Commission discussed what zone districts would be appropriate for Medical Marijuana Primary Care-givers as well as required permits, and conditions that would be suitable for this use.

Through numerous discussions Community Development Staff and Staff from the City Attorney's office determined that an additional definition beyond those outlined in the State Statute pertaining to Medical Marijuana was recommended for this ordinance. Zoning regulates land use, how a property is used or activity on a property; zoning historically does not regulate people or professions. For example the UDC does not regulate doctors, but does regulate where they can practice, i.e. office use.

The following outlines the recommended changes to Title 16: Unified Development Code.

Use Classification:

The Commission determined that Medical Marijuana Primary Care-giver should be added as a Commercial Use in Table 16-5-1.1: *Table of Allowed Uses*.

Recommendation:

Amend Table 16-5-1.1: *Table of Allowed Uses* to include Medical Marijuana Primary Care-giver under the Medical/Scientific Services of the Commercial.

Definitions:

The Commission determined to use the same definition as the State Constitution relating to Medical Marijuana, Medical Marijuana Use and Medical Marijuana Primary Care-giver.

Recommendation:

Amend 16-11-2 to include the following definitions:

Medical Marijuana Primary Care-giver: A person, other than the patient and the patient's physician, who is eighteen years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition as defined in the Colorado Constitution Article XVIII, Section 14.

Zone Districts:

The Commission determined that Medical Marijuana Primary Care-giver is not an appropriate use in the R-1-A, R-1-B, R-1-C, R-2-B, R-2-C, MU-R-3-A, MU-R-3-B and the MO-1 zone districts. These districts are made up primarily of residential households. It was also determined that the use would be a prohibited use as a home occupation. The Commission also determined that the industrial districts were not appropriate zone districts. The consensus of the Commission was that the industrial districts did not have the high commercial traffic of the recommended districts and therefore would not be a

zone district that would be as visible to the public as in the medical and business districts.

The Commission did determine that a Medical Marijuana Primary Care-giver is an appropriate use in M-1, M-2 and MO-2 Medical zone districts with a Conditional Use Permit and as a permitted use in the MU-B-1 and MU-B-2 Zone Districts.

Recommendation:

Prohibit Medical Marijuana Primary Care-givers in the R-1-A, R-1-B, R-1-C, R-2-B, R-2-C, MU-R-3-A, MU-R-3-B and MO-1 zone districts. Allow the use in M-1, M-2 and MO-2 (mixed use medical), as a Conditional Use with distancing requirements, and in the MU-B-1 and MU-B-2 (business), as a permitted use with distancing requirements.

Approval Procedure:

The UDC identifies three types of "allowed" uses that are differentiated by the type of review performed by the City. A "Permitted Use" is allowed as a use-by-right provided all Code requirements are met. A "Conditional Use" requires a Conditional Use Permit with review by the DRT and approval by the Planning and Zoning Commission. Commission approval requires a public hearing which includes public notice by posting of the property and publication in the City designated official newspaper and/or the City's website. The Commission reviews the permit application for compliance with criteria (See EXHIBIT B: 16-2-16 EMC) and may impose additional requirements of approval specific to the application. The Conditional Use Permit is the one review process that offers the opportunity for community input in a public review. The Conditional Use Permit also requires an annual review for compliance with any requirements for approval.

Recommendation:

Require that all new Medical Marijuana Primary Care-givers in the M-1, M-2 and the MO-2 be reviewed under the Conditional Use Permit (16-2-12 EMC) process. Further that the use be allowed as a use by right in the MU-B-1 and MU-B-2 zone districts with distancing requirements.

Use-Specific Standards:

Use-specific standards are zoning compliance requirements that form the basis of review criteria for a particular use.

Recommendation:

Add section 16-5-2.C.13 to Chapter 16 that establishes use specific standards for Medical Marijuana Primary Care-giver as follows:

1. The use shall apply for and receive a Conditional Use Permit in the M-1, M-2 and MO-2 zone districts.
(Allows for community input in a public hearing and requires an annual review for compliance)
2. The use shall not be located within 500 feet of a licensed child care facility.

3. The use shall not be located within 500 feet of any educational institution either private or public.
4. The use shall not be located within 500 feet of any church or religious institution.
5. The use shall not be located within 2,500 feet of another like use if in the MU-B-1 or MU-B-2 zone districts.
6. The use shall have a City Sales Tax license.
7. The use shall comply with all applicable City codes.
(Allows for review for compliance with all applicable City codes)

PROPOSED AMENDMENTS:

The above recommendations are incorporated into the attached proposed amendments as shown in Exhibit A.

ATTACHMENTS:

- EXHIBIT A: Proposed Amendments
- EXHIBIT B: 16-2-12: Conditional Use Permits
- EXHIBIT C: Ordinance 41, Series of 2009

Title 16: Unified Development Code
Proposed Medical Marijuana Amendments – 2009

TABLE 16-5-1.1: TABLE OF ALLOWED USES

P = PERMITTED USE C = CONDITIONAL USE A = ACCESSORY USE T = TEMPORARY USE L = LIMITED USE
C-A = ACCESSORY USE APPROVED CONDITIONALLY L-A = ACCESSORY USE APPROVED WITH LIMITED USE PROCEDURE

Use Category	Use Type	Residential										Non-Residential							
		R 1 A	R 1 B	R 1 C	R 2 A	R 2 B	R 2 C	MU R 3 A	MU R 3 B	MU R 3 C	M 1	M 2	M 3	MU B 1	MU B 2	T S A	I 1	I 2	
Automotive service and repair, not including body or fender work Automotive service station (gasoline facility) Car wash, auto detailing Commercial storage of operable vehicles Fuel dispensing Parking facility, structure (operable vehicles), principal use Parking area, surface (operable vehicles), principal use	Automotive service and repair, not including body or fender work																		
	Automotive service station (gasoline facility)																		
	Car wash, auto detailing																		
	Commercial storage of operable vehicles																		
	Fuel dispensing																		
	Parking facility, structure (operable vehicles), principal use																		
	Parking area, surface (operable vehicles), principal use																		

Title 16: Unified Development Code
Proposed Medical Marijuana Amendments - 2009

TABLE 16-5-1.1: TABLE OF ALLOWED USES

P = PERMITTED USE C = CONDITIONAL USE A = ACCESSORY USE T = TEMPORARY USE L = LIMITED USE
C-A = ACCESSORY USE APPROVED CONDITIONALLY L-A = ACCESSORY USE APPROVED WITH LIMITED USE PROCEDURE

Use Category	Residential						Non-Residential										
	R 1 A	R 1 B	R 1 C	R 2 A	R 2 B	R 2 C	MU R 3 A	MU R 3 B	MU R 3 C	MU 1	M 2	MU B 1	MU B 2	T S A	T 1	T 2	Additional Regulations
Recreational vehicles and boats, sales or rental																	
Visitor Accommodation										P				P			
										P				P			
Wholesale																	

[NOTE: The recommended changes are only affected in the Commercial portion of the table. The remainder of Table 16-5-1.1 Table of Allowed Uses contains no changes and is therefore not included here]

16-5-2: Use-Specific Standards

C. Commercial Uses

13. Medical Marijuana Primary Caregiver

- a. A Medical Marijuana Primary Care-giver shall comply with State and City regulations, including City of Englewood licensing requirements.
- b. A Medical Marijuana Primary Care-giver may open no earlier than 8 A.M. and shall close no later than 12 A.M. the same day.
- c. All Medical Marijuana shall be kept indoors and not visible from the sidewalk or public right of way.
- d. A Medical Marijuana Primary Care-giver shall not include areas for consumption, and in addition shall comply with State Statute 25-14-205 General Smoking Restrictions.
- e. Distance Limitations.
 1. MU-B-1 and MU-B-2:
No Medical Marijuana Primary Care-giver operation shall be located:
 - (a) within five hundred feet (500') of a licensed child care facility;
 - (b) within five hundred feet (500') of any educational institution either private or public;
 - (c) within five hundred feet (500') of any church or religious institution
 - (d) within two-thousand, five hundred feet (2,500') of any other Medical Marijuana Primary Care-giver use;
 2. M-1, M-2 and MO-2:
In addition to compliance with Section 16-2-12 EMC, "Condition Use Permits", no Medical Marijuana Primary Care-giver use operation shall be located:
 - (a) within five hundred feet (500') of a licensed child care facility;
 - (b) within five hundred feet (500') feet of any educational institution either private or public;
 - (c) within five hundred feet (500') feet of any church or religious institution;

Title 16: Unified Development Code
Proposed Medical Marijuana Amendments – 2009

3. Measurement of Distance. With respect to the distancing requirements in this subsection between a location for which a Medical Marijuana Primary Care-giver operation is proposed and another use the distance shall be measured by following a straight line from the nearest point of the property line of the location of the proposed Medical Marijuana Primary Care-giver use to the nearest point of the property line of the specific use listed.

Measurements based on one inch (1") to one hundred feet (100') Arapahoe County Assessor maps shall be deemed acceptable for this purpose.

16-5-4: Accessory Uses.

1. Home Occupation. Occupations customarily incidental to the principal use as a residence may be allowed when conducted in the same dwelling, provided the following standards are met:
 - a. Districts Allowed. Home occupations are allowed in the following districts: R-1-B, R-1-C, R-2-A, R-2-B, MU-R-3-A, and MU-R-3-B. Only one (1) home occupation shall be permitted per dwelling unit. Home occupations may be permitted accessory to principal residential uses located in nonresidential districts (e.g., in a manufactured home park located in an industrial district) provided the home occupation complies with all requirements of residential district home occupations herein.
 - b. Where Allowed on Site. The home occupation shall be operated entirely within the dwelling unit and only by the person or persons maintaining a dwelling unit therein. The home occupation shall not have a separate outside entrance. The home occupation shall not be conducted in a detached accessory structure.
 - c. *Registration.* All home occupations shall register with the City.
 - d. *Sales.*
 - (1) On the Premises. The sale on the premises of items that have been made, grown, or prepared on the premises shall be permitted. The sale on the premises of any item that has not been made, grown, or prepared on the premises shall be prohibited.
 - (2) Off the Premises. Sales off the premises of such items as personal or household goods such as those products offered by Avon, Amway, Fuller Brush, Watkins, etc., shall be permitted.
 - e. *Operational Requirements.*

Title 16: Unified Development Code
Proposed Medical Marijuana Amendments - 2009

e. *Operational Requirements.*

- (1) No assistants or employees that are not residents of the principal dwelling unit shall be employed in the home occupation.
- (2) The hours and manner of such uses and the noise created thereby shall not interfere with the peace, quiet, or dignity of the neighborhood and adjoining properties.
- (3) Incidental storage shall be allowed for items made on the premises and/or sold off the premises consistent with this Section.
- (4) The home occupation, including storage of materials, equipment, inventory, and/or supplies, shall not utilize more than three hundred (300) square feet; provided, however, that this does not apply to permitted home care accessory uses.
- (5) The use of electric motors shall be limited in power, with a total limitation of one and one-half (1 1/2) horsepower, and no single unit over three-fourths (3/4) horsepower.

f. *Prohibited Uses.* In no event shall any home occupation include the following business or commercial activities:

- (1) Animal hospital or kennel, animal daycare, breeders, except licensed canine and feline breeders.
- (2) Asphalt paving business.
- (3) Barbers, hairdressers, cosmetologists, beauticians or any activity involving the skin, hair or nails.
- (4) Body, mechanical repair, or modification of motor vehicles.
- (5) The sale, storage, manufacture, or assembly of guns, knives or other weapons or ammunition.
- (6) Dump trucks.
- (7) Restaurants.
- (8) Towing business.

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Proposed Medical Marijuana Amendments – 2009

- (9) Processes involving the dispensing, use, or recycling of hazardous or flammable substances and materials.
- (10) Automotive vehicle sales requiring a state dealer's license.
- (11) Medical Marijuana Primary Care-giver.

[NOTE: The recommended changes affect only the Home Occupation section of Accessory Uses and is therefore the entire section is not included here]

16-11-2: Definition of Words, Terms, and Phrases.

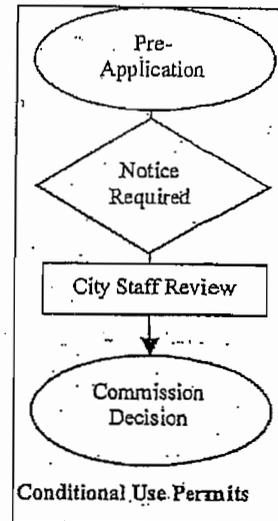
B. Definition of Words, Terms, and Phrases.

Medical Marijuana Primary Care-giver: A person, as defined in the Colorado Constitution Article XVIII, Section 14, who is listed by a Medical Marijuana Patient as a Primary Care-Giver on the State Medical Marijuana registry and for a Medical Marijuana Patient as provided and defined in the Colorado Constitution Article XVIII, Section 14.

16-2-12: Conditional Use Permits.

There are some principal and accessory uses that raise issues of compatibility with their surrounding neighborhoods, but which could be compatible if subject to certain conditions and safeguards through the conditional use permit process. The Commission has been given authority to approve conditional use permits, after notice and public hearing, in those cases where Table 16-5-1.1, "Table of Allowed Uses," shows that a conditional use (marked as a "C" in the applicable table cell) may be available in a specific zone district.

- A. *Initiation.* An application for a conditional use permit may be initiated by those parties identified in Section 16-2-3.A. EMC, or by any other party who can demonstrate a substantial, continuing interest in the property covered by the conditional use application.
- B. *Notice.* The City shall require that notice of required public hearings be given in accordance with Section 16-2-3.G EMC.
- C. *City Review.* The City Manager or designee shall review the proposed conditional use permit, and may refer the application to any department or agency for its review and comments, and shall prepare a report of its recommendations for review by the Commission. A copy of the report shall be furnished to the applicant.



- D. *Commission Decision.* The Commission shall review the proposed conditional use permit application and the recommendation of City staff, and shall hold a public hearing on the application. Following such hearing, the Commission shall make written findings either approving, conditionally approving, or denying the conditional use. The decision on whether to approve or deny an application for a conditional use permit shall be in writing, based upon substantial evidence presented at the public hearing. A copy the decision of the Commission shall be provided to the applicant.
- E. *Criteria.* Conditional uses shall only be approved if they promote the health, safety, and general welfare of the community, and are consistent with the Comprehensive Plan. In addition, before approving a conditional use permit, the Commission shall make written findings that the conditional use will implement the purposes of this Title and will meet the following requirements:
 - 1. The use must be permitted as a conditional use in the zone district in which it is proposed to be located.
 - 2. Taking into consideration any proposed mitigation measures, conditional use shall not create significant adverse impacts on either the existing development in the surrounding neighborhood or on any future development permitted by this Title. Significant adverse impacts include but are not limited to:
 - a. Significant increases in traffic generation and parking beyond what would be generated by a use-by-right;

- b. Building heights or bulk that are significantly larger or more massive than those on nearby properties;
 - c. Lack of screening of parking, loading, traffic circulation, or outdoor activities; garbage collection facilities and storage;
 - d. Significant intrusions of noise, light, dust, or glare onto nearby properties;
 - e. Significant increases in burdens on housing, schools, public utilities, or governmental services beyond those that would be generated by a use-by-right; or
 - f. Hours of operation that begin significantly earlier or end significantly later than those on nearby properties.
3. The number of off-street parking spaces shall not be less than the requirements of Section 16-6-4 EMC.
 4. The conditional use shall meet all other applicable provisions of the Englewood Municipal Code.
 5. If the application is for a conditional use telecommunications tower or antenna, it shall also conform with any additional standards and requirements for such uses specified in Chapter 16-7 EMC, "Telecommunications".

F. *After Approval.*

1. All approved plans for the conditional use, including all modifications or conditions on such use, shall be recorded with the Arapahoe County Clerk and Recorder. All expenses of recording shall be borne by the applicant and shall be paid prior to recording.
2. Any person or persons using property under a conditional use permit shall operate such use in compliance with all terms of the approval of that conditional use permit. All stipulations submitted as part of the conditional use application and all conditions imposed by the Commission shall be maintained in perpetuity with the conditional use.
3. The City shall review all building permits that have been issued for the conditional use and shall examine the construction that has taken place on the site to ensure conformance with the approved conditional use.

G. *Annual Review for Compliance.* The City Manager or designee shall review all approved conditional uses on an annual basis for compliance with all terms of approval of the conditional use permit.

1. If the conditional use is found to be in compliance with the terms of the conditional use permit, the permit shall be renewed for one (1) year.
2. If the conditional use is no longer operating, the conditional use permit shall be voided and notice shall be recorded with the office of the Arapahoe County Clerk and Recorder.
3. If the conditional use is found not to be in compliance with the terms of the conditional use permit, the conditional use shall be in violation of this Title and subject to enforcement pursuant to Chapter 16-10 EMC, "Enforcement and Penalties".

H. *Appeals.* Appeals of the Commission decisions on a conditional use application shall be made to the Council.

(Ord. 04-5)

16-2-13: Limited Use Permits.

Administrative review is required for specified principal uses that, while generally appropriate in the zoning district, may have the potential for limited impacts on adjacent properties or on the character of

BY AUTHORITY

ORDINANCE NO. 41
SERIES OF 2009

COUNCIL BILL NO. 42
INTRODUCED BY COUNCIL
MEMBER OAKLEY

AN ORDINANCE AMENDING TITLE 5, OF THE ENGLEWOOD MUNICIPAL CODE 2000, BY THE ADDITION OF A NEW CHAPTER 22, PERTAINING TO MEDICAL MARIJUANA PRIMARY CARE-GIVERS.

WHEREAS, the Colorado State Constitution was amended pertaining to Medical Marijuana patients and Primary Care-Givers; and

WHEREAS, the passage of this Ordinance will amend the Englewood Municipal Code Title 5, with the addition of a new Chapter 22, pertaining to the licensing of Medical Marijuana Primary Care-Givers in the City of Englewood, Colorado; and

WHEREAS, the new Title 5, Chapter 22 follows the Colorado State Constitution regarding care-giver as it pertains to medical marijuana; and

WHEREAS, Chapter 22 covers the license adding language regarding transfer of license, background investigations, recordkeeping, but other than that it follows the Colorado State Constitution;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood, Colorado hereby authorized amending Title 5, of the Englewood Municipal Code 2000, by the addition of an new Chapter 22, entitled "Medical Marijuana Primary Care-Givers" to read as follows:

5-22-1: DEFINITIONS:

As used in this Section, the following terms shall have the meanings indicated:

Medical Marijuana: All parts of the plant (genus) cannabis used in the treatment of debilitating medical conditions as defined in the Colorado Constitution Article XVIII, Section 14.

Medical Marijuana Patient: A Patient as defined in the Colorado Constitution Article XVIII, Section 14, who is registered as a Medical Marijuana Patient with the State of Colorado.

Medical Marijuana Primary Care-Giver: A person, as defined in the Colorado Constitution Article XVIII, Section 14, who is listed by a Medical Marijuana Patient as a Primary Care-Giver on the State Medical Marijuana registry.

Medical Marijuana Registry Card: A registration card issued to a Patient, as defined in the Colorado Constitution Article XVIII, Section 14; by the Colorado Department of Public Health and Environment which also identifies the Patient and the Patient's Primary Care-Giver.

Medical Marijuana Use: The acquisition, possession, production, use or transportation of marijuana or paraphernalia related to the administration of such medical marijuana to address a Patient's debilitating medical condition as defined in the Colorado Constitution Article XVIII, Section 14.

Usable Form of Marijuana: The seeds, leaves, buds, and flowers of the plant (genus) cannabis and any mixture or preparation thereof, which are appropriate for medical use as defined in the Colorado Constitution Article XVIII, Section 14.

5-22-2: LICENSE REQUIRED: It shall be unlawful for any Medical Marijuana Primary Care-Giver, as defined, to acquire, possess, produce, use, transport, offer, dispense, or grow Medical Marijuana or marijuana paraphernalia or to sell the above without first obtaining a license from the City of Englewood.

5-22-3: APPLICATION FOR LICENSE: A Medical Marijuana license shall be issued in accordance with Chapter 1 of this Title to a State of Colorado registered Primary Care-Giver.

5-22-4: SPECIAL LICENSE REQUIREMENTS: In addition to all other provisions of this Title, the following special requirements apply to this license:

- A. Only a person authorized by the Colorado Constitution Article XVIII, Section 14 or by Rules of the Colorado Department of Public Health and Environment may be licensed.
- B. LICENSE NOT TRANSFERABLE: A License issued pursuant to this Chapter shall not be transferred to another person.
- C. BACKGROUND INVESTIGATION: Applicants will be subject to a criminal background investigation as part of the application process. The application will be rejected if the criminal background check discloses any felony convictions.
- D. A licensed Medical Marijuana Primary Care-Giver shall have copies of all required State of Colorado registrations available:
- E. Failure of an applicant to meet the prescribed standards and qualifications of this Chapter shall constitute grounds for revocation, suspension, or non-renewal of the license.

5-22-5: REQUIRED ACTS:

- A. Medical Marijuana Primary Care-Givers shall comply with all applicable State laws and regulations relating to the use, sale or possession of Medical Marijuana or marijuana paraphernalia.
- B. Medical Marijuana Primary Care-Givers shall keep accurate records of their inventory, sales, and other records as required by the Licensing Officer.
- C. Medical Marijuana Primary Care-Givers shall keep records of all transactions for at least three (3) years.
- D. Licensed Medical Marijuana Primary Care-Givers shall only make sales to persons with a valid Medical Marijuana Patient Registry Card issued by the Colorado Department of Public Health and Environment.

E. Licensed Medical Marijuana Primary Care-Givers shall possess a copy of a valid Medical Marijuana Patient Registry Card issued by the Colorado Department of Public Health and Environment for all sales.

5-22-6: PROHIBITED ACTS:

A. No Medical Marijuana Primary Care-Giver shall sell or otherwise provide marijuana to anyone other than persons with a valid Medical Marijuana Registry Card issued by the Colorado Department of Health and Environment to registered Patients.

Section 2. Safety Clauses. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Englewood, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 3. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance or its application to other persons or circumstances.

Section 4. Inconsistent Ordinances. All other Ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 5. Effect of repeal or modification. The repeal or modification of any provision of the Code of the City of Englewood by this Ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purposes of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 6. Penalty. The Penalty Provision of Section 1-4-1 EMC shall apply to each and every violation of this Ordinance.

Introduced, read in full, amended and passed as amended on first reading on the 21st day of September, 2009.

Published as an amended Bill for an Ordinance in the City's official newspaper on the 25th day of September, 2009.

Published as an amended Bill for an Ordinance on the City's official website beginning on the 23rd day of September, 2009 for thirty (30) days.

Read by title and passed as amended on final reading on the 5th day of October, 2009.

Published by title as amended in the City's official newspaper as Ordinance No. ____, Series of 2009, on the 9th day of October, 2009.

Published as amended by title on the City's official website beginning on the 7th day of October, 2009 for thirty (30) days.

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the amended Ordinance passed on final reading and published by title as Ordinance No. ____, Series of 2009.

Loucrishia A. Ellis

**CITY OF ENGLEWOOD PLANNING AND ZONING COMMISSION
REGULAR MEETING
October 20, 2009**

I. CALL TO ORDER



The regular meeting of the City Planning and Zoning Commission was called to order at 7:00 p.m. in the Council Chambers of the Englewood Civic Center, Chair Bleile presiding.

Present: Bleile, Roth, King, Welker, Krieger, Knoth, Fish, Calonder

Absent: Brick, Kinton (alternate)

Staff: Alan White, Community Development Director
Audra Kirk, Planner I
Nancy Reid, Assistant City Attorney

II. APPROVAL OF MINUTES

October 6, 2009



Knoth moved:

Krieger seconded: TO APPROVE THE OCTOBER 6, 2009 MINUTES

Chair Bleile asked if there were any modifications or corrections.

Mr. Welker noted on page 2, first paragraph, last sentence the word "in" be added before the word residential.

Mr. Knoth and Ms. Krieger accepted Mr. Welker's friendly amendment.

AYES: Bleile, Roth, Welker, Krieger, Knoth, Fish, King, Calonder

NAYS: None

ABSTAIN: None

ABSENT: Brick

Motion carried.

III. PUBLIC HEARING

Case #2009-04, Amendments to Title 16 Related to Medical Marijuana



Roth moved:

Krieger seconded: TO OPEN THE PUBLIC HEARING ON CASE #2009-04

AYES: Bleile, Roth, Welker, Krieger, Knoth, Fish, King, Calonder
NAYS: None
ABSTAIN: None
ABSENT: Brick

Motion carried.

 Ms. Kirk, Planner, was sworn in. She stated the case before the Commission is Case #2009-04, proposed changes to Title 16 Related to Medical Marijuana. Already submitted for the record are the Staff Report and proof of publication that the hearing was published in the *Englewood Herald* on October 2, 2009 and on the City of Englewood website from September 23, 2009 to October 20, 2009.

In 2000 Colorado voters passed a constitutional amendment allowing the use of medical marijuana. On August 17, 2009 Englewood City Council approved Ordinance No. 34, an emergency ordinance establishing a temporary suspension or moratorium on Medical Marijuana Primary Care-givers until licensing and zoning regulations could be put into place. On October 5, 2009 City Council approved through a second reading Ordinance No. 41. This Ordinance amends Title 5 of the Englewood Municipal Code to include licensing for Medical Marijuana Primary Care-givers.

On September 9, 2009 Englewood Planning and Zoning Commission began discussion on Medical Marijuana and how to regulate it within Title 16 of the Englewood Municipal Code - the Unified Development Code. The discussion carried over to the October 6, 2009 Planning and Zoning Commission meeting. During these discussions the Commission discussed appropriate zone districts, required permits and conditions that would be suitable for Medical Marijuana Primary Care-givers.

Also discussed at the Planning and Zoning Commission meetings were Use Classification, Definitions, Zone Districts, Approval Procedures, Use Specific Standards and distancing. The Commission recommended the use be added as a Commercial Use in Table 16-5-1.1 Table of Allowed Uses. The Commission determined to use the same definition as the State Constitution relating to Medical Marijuana, Medical Marijuana Use, and Medical Marijuana Primary Care-giver. The Commission determined that Medical Marijuana Primary Care-giver is not an appropriate use in the R-1-A, R-1-B, R-1-C, R-2-A, R-2-B, MU-R-3-A, MU-R-3-B and MO-1 zone districts. These districts are primarily residential districts. The Commission also determined that the use would be prohibited as a home occupation. It was also determined that the industrial districts were not an appropriate district due to the lack of high traffic found in commercial districts that would make the area more visible to the public. It was determined that a Medical Marijuana Primary Care-giver would be an appropriate use in the M-1, M-2 and MO-2 medical districts with a conditional use permit and as a permitted use in the MU-B-1 and MU-B-2 zone districts with distancing requirements.

After discussion the Commission recommendation was:

Prohibit Medical Marijuana Primary Care-givers in the R-1-A, R-1-B, R-1-C, R-2-A, R-2-B, MU-R-3-A, MU-R-3-B and MO-1 zone districts. Allow the use in M-1, M-2 and MO-2 (mixed use medical) as a Conditional Use with distancing requirements and in MU-B-1 and MU-B-2 (business) as a permitted use with distancing requirements.

The Unified Development Code identifies three types of "allowed" uses that are differentiated by the type of review performed by the City. A "Permitted Use" is allowed as a use-by-right provided all Code requirements are met. A "Conditional Use" requires a Conditional Use Permit with review by the Development Review Team and approval by the Planning and Zoning Commission. Commission approval requires a public hearing which includes public notice by posting of the property and publication in the designated official newspaper and/or the City's website. The Commission reviews the permit application for compliance with criteria and may impose additional requirements of approval specific to the application. The Conditional Use Permit is the one review process that offers the opportunity for community input in a public review. The Conditional Use Permit also requires an annual review for compliance with any requirements for approval. The third type of use is a "Limited Use". The limited use does require additional review, however can be done administratively.

Use-specific standards are zoning compliance requirements that form the basis of review criteria and recommendations for a particular use.

Commission recommendation:

Add Section 16-5-2.C.13 to Chapter 16 that establishes use specific standards for Medical Marijuana Primary Care-giver as follows:

1. The use shall apply for and receive a Conditional Use Permit in the M-1, M-2 and MO-2 zone districts.
2. The use shall not be located within 500 feet of a licensed child care facility.
3. The use shall not be located within 500 feet of any educational institution either private or public.
4. The use shall not be located within 500 feet of any church or religious institution.
5. The use shall not be located within 2,500 feet of another like use if in the MU-B-1 or MU-B-2 zone districts.
6. The use shall have a City Sales Tax license.
7. The use shall comply with all applicable City Codes. (Allows for review for compliance with all applicable City Codes)

Ms. Kirk referenced the distancing map that was distributed at the start of the meeting. The map shows the locations of the existing Medical Marijuana Primary Care-givers. She noted

each large blue circle has a diameter of 5,000 feet; 2,500 feet of each side, which is the required distance in the MU-B-1 and MU-B-2 zone districts.

Ms. Kirk noted portions of the 2,500 foot buffer extend into the M-1 and M-2 zone districts. The Commission must determine if the distancing buffer from the MU-B-1 and MU-B-2 zone districts end at the zone district or extend into the M-1 and M-2 zone districts.

That concluded Ms. Kirk's presentation and she offered to answer any questions the Commission might have.

Mr. Welker asked if there is a Medical Marijuana Primary Care-giver just across Englewood's borders, does that facility preclude a new one inside Englewood's City limits within the 2,500 feet.

Ms. Kirk said Staff would only regulate what is inside Englewood's boundaries. Staff would have no way of knowing what is happening outside Englewood's borders. Director White noted the Commission could make that a recommendation and part of the applicant's application would be to address where other like businesses in the area are located.

Chair Bleile asked if there were any other questions for Ms. Kirk. There were none.

Chair Bleile noted for the record that no one in the audience wished to address the Commission.



Welker moved:

Calonder seconded: TO CLOSE THE PUBLIC HEARING ON CASE #2009-04

AYES: Bleile, Roth, Welker, Krieger, Knoth, Fish, King, Calonder

NAYS: None

ABSTAIN: None

ABSENT: Brick

Motion carried.



Krieger moved:

Fish seconded: CASE #2009-04 AMENDMENTS TO TITLE 16 UNIFIED DEVELOPMENT CODE RELATED TO MEDICAL MARIJUANA PRIMARY CARE-GIVER AMENDMENTS BE RECOMMENDED FOR APPROVAL TO CITY COUNCIL WITH A FAVORABLE RECOMMENDATION FOR ADOPTION.

Discussion ensued regarding distancing requirements. Mr. Welker noted he did not believe distancing requirements have ever applied to businesses outside Englewood's boundaries, but felt if there was a school on Denver or Littleton's boundary it should be considered. Mr. Fish asked if that type of distancing applies to any other businesses in the City. Ms. Kirk said it did not. Mr. Fish said of the entities that the City does have distancing requirements for does the City apply that kind of a rule to them. Ms. Kirk said no. Discussion ensued. Mr. Welker asked Assistant City Attorney Reid if there would be issues if the City regulates based upon a like business in another jurisdiction, but within Englewood's distancing requirements. Ms. Reid said that has never been done and she would have to do some research and present her findings to City Council. Mr. Fish said if the City does go down that path, the issue of who provides the information needs to be determined. He stated he is hesitant to go that way because of legal issues; we are not sure how to do it and it has a variety of complex issues surrounding it.

Mr. King said these are complex legal issues; the State's Attorney General doesn't even know how to regulate Medical Marijuana. He stated he doesn't necessarily have a problem with Medical Marijuana in general, but he does have a problem with the conflicts between the Federal and State laws and that are no defined regulations from the State Attorney General, leaving it all up to the cities and towns on how to deal with this issue. Ms. Krieger stated the Commission is not dealing with the same issues at the State's Attorney General. The Commission is dealing only with zoning issues; where do we want to allow something that the State has said is legal. Discussion ensued. Mr. King stated the Commission could always relax the regulations at a later date. He felt the regulations need to be tighter rather than looser to begin with.

Ms. Krieger said she's probably in the minority, but after looking at the distancing map she feels that the 2,500 foot distancing requirement is too great. Mr. Fish agreed. He said there are some members of the Commission who have clearly stated that they want none of these facilities or uses inside the City, but to set up rule structures that say you can have it, but not really, is a poor way of going. If the Commission does not want them at all, then let's write the rules clear and simple. Let's not write distancing so it precludes them being in the City.

Ms. Krieger said she would feel more comfortable if the distancing requirement was reduced to 1,250 feet.

Mr. Welker said there are three issues to resolve tonight and the Commission may have to make motions on them independently.

Mr. Roth said looking at the distancing map there is room for approximately 7 or so facilities outside of the medical district. One of his concerns is that in several of the allowable areas it is doubtful a facility would locate there, such as in Cornerstone Park. The Commission did not suggest a distancing requirement for parks. Ms. Krieger said there are many neighborhood parks that blanket the City.

Mr. Fish suggested the Commission work on one issue at a time.



Fish moved:

Welker seconded: THE 2,500 FOOT DISTANCING REQUIREMENT BETWEEN LIKE BUSINESSES IN THE MU-B-1 AND MU-B-2 ZONE DISTRICTS NOT AFFECT PLACEMENT OF LIKE BUSINESSES IN THE M-1, M-2 AND MO-2 ZONE DISTRICTS.

Discussion ensued.

AYES: Bleile, Roth, Welker, Krieger, Knoth, Fish, King, Calonder
NAYS: None
ABSTAIN: None
ABSENT: Brick

Motion carried.



Welker moved:

Krieger seconded: REDUCE THE 2,500 FOOT DISTANCING REQUIREMENT FROM LIKE BUSINESSES TO 1,250 FEET.

Mr. Roth felt reducing the distancing requirement to 1,250 feet would allow for too many facilities for the Englewood population service area of 60,000 people. Mr. Fish stated he felt that was reasonable. Mr. Knoth said he felt the Commission was being anti-business placing any restrictions on something that is legal by the State Statutes. Mr. Roth quoted from an article in *Westword* that said Denver is the wild wild west of the medical marijuana business. We have precedence of being anti-business when those businesses do not reflect the values of the citizens. Ms. Krieger said she did not know how helping sick people is not reflecting the values of the citizens. Mr. Roth said one of the existing Englewood businesses is advertising in *Westword* as a medical lounge. Ms. Krieger said she understands the abuses of medical marijuana. Mr. Roth said the use is ripe for abuse; we need to place controls on it and it is harder to tighten controls rather than loosen them. Ms. Krieger agreed. Mr. King asked how the City is hurting the people by not allowing 20, 30, 80 or 100 facilities. He said he believes the three existing facilities could service the whole population base. Mr. Fish asked what he was basing that on. Ms. Krieger said from a business standpoint the City doesn't tell clothing stores we don't want you. When the City put restrictions on the car dealers several years ago we lost several of the good dealers and they were very angry with us. Ms. Krieger said she believes Medical Marijuana needs to be kept under control, but doesn't think limiting it to whoever got here first is the way to go. Mr. Knoth said he believes the free market will dictate how many will open. Mr. King said again his concerns aren't with Medical Marijuana, it's with the image issue and until there

are clearly defined legal guidelines, what happens when this all blows up and we have to deal with the mess? It may or may not, but the State Attorney General doesn't even know how to handle it. Discussion ensued. Mr. Welker said he would rather have large shops that are visible rather than many small ones. Mr. Fish said he believes the City's rules will have an impact on how many can open.

Chair Bleile called for a vote.

AYES: Krieger, Knoth
NAYS: Fish, Bleile, Roth, Welker, King, Calonder
ABSTAIN: None
ABSENT: Brick

Motion failed.

Welker moved:

Calonder seconded: *ALL DISTANCING REQUIREMENTS IN ALL ZONE DISTRICTS SHALL APPLY TO FACILITIES WITHIN THE CITY OF ENGLEWOOD AND/OR ACROSS THE CITY OF ENGLEWOOD'S BOUNDARIES.*

Ms. Krieger said historically the City has not taken into consideration what happens outside of the City's borders. She did not believe it is a good idea. Mr. Knoth said that motion could knock out every area in the medical district. Ms. Krieger agreed. Mr. Welker said not necessarily so because in that area the use would be a Conditional Use with no distancing requirements. Ms. Krieger said by potentially eliminating the rest of the areas all we are doing is forcing any applicant who wants to apply for the use in the medical district to see how many they can fit in there and that we will let them. Mr. Welker said he would just like to consider the motion. Chair Bleile said he feels it is a good sense of community.

Chair Bleile called for a vote.

AYES: Roth, Welker, King, Calonder, Bleile
NAYS: Fish, Krieger, Knoth
ABSTAIN: None
ABSENT: Brick

Motion carried.

Mr. Fish asked what the purpose was of having Conditional and Permitted uses in the two areas. Mr. Welker said so that they might have closer spacing in some areas. Ms. Krieger said she voted for a Conditional Use in the medical area because there is a lot of residential there. The Conditional Use also allows for public input. Mr. Roth felt the distancing requirements helps simplify the process.

Mr. Roth asked Director White if he felt not having a distancing requirement from a park would be an issue, especially near Bellevue Park. Director White said he did not.

Chair Bleile stated for the record he was disappointed that there wasn't more public in attendance. He said he thought this particular issue, from a community perspective, would bring some passionate people forward to comment either way, especially considering the records of prior City Council meetings and the comments that were raised. He said he understands business requirements, as somebody who has had a small business in the past and is all for small businesses. He doesn't feel restrictions should be placed on businesses all the way from the Federal government down to local communities, but at the same time we do establish Planning and Zoning committees to make sure or to have a voice as to what we want to see and what kind of value our community has. He does not want a sign with a marijuana plant on it at each end of Broadway saying "come to Englewood, we sell pot". He noted some time ago the City Council went after an established business in Englewood with a sign of someone smoking pot. We were against a sign with somebody smoking pot, but we're for the act of smoking pot. Mr. Fish noted smoking is not the issue; the City currently has a smoking ordinance in place. Chair Bleile doesn't care if people want to participate in the use of medical marijuana in the privacy of their own home, but this issue does not fit into what his vision of Englewood would be from a roadmap perspective.

Ms. Krieger said the guidelines the Commission is proposing has severely limited people from coming to Englewood for medical marijuana. From her perspective she doesn't know what the difference is between medical marijuana and all the liquor stores we have.

Mr. Welker said by recommending the City do allow Medical Marijuana Care-givers in certain places he doesn't believe we're saying that we don't want business. We've acknowledged it, but we are also saying we have a community standard and we want some limits.

Mr. Knoth said medical marijuana is something that is recommended by a Doctor and there are hundreds of facilities around the metro area. He said he feels Englewood is losing sales tax. Chair Bleile asked if it is o.k. to sell your morals out for a dollar. Ms. Krieger said she doesn't know how this is selling your morals out. It's the difference between seeing it as medicinal marijuana and seeing it as teenage kids trying to get high. Some Commissioner's questioned the fact the City is losing sales tax dollars.



The original motion shall be amended to include:

1. *The 2,500 Foot Distancing requirement between like businesses in the MU-B-1 and MU-B-2 Zone Districts not affect placement of like businesses in the M-1, M-2 and MO-2 Zone Districts.*

2. *All distancing requirements in all Zone Districts shall apply to facilities within the City of Englewood and/or across the City of Englewood's boundaries.*

Mr. Fish voted no because there are too many flaws in the process and it hasn't been thought out well enough, not that we haven't given our best. There are too many implications of things going wrong.

Ms. Krieger voted no because it's too restrictive.

Mr. Roth voted yes because based on what he has read in the Comp Plan, Section 7, this does allow for more than the three facilities we currently have. Goal 1 of Section 7 states "To provide an economic reliable environment that builds and maintains a diverse base of businesses". We are allowing a new type of business. It also maintains the diverse base because it limits where they can go and also the number. This is probably the most effective approach the Commission could come up with.

Mr. Knoth voted no because he believes that the City is cutting itself off of sales tax.

Mr. King voted yes even though he feels it is not restrictive enough. He said he's not trying to be anti-business; he is a business owner himself, but is concerned over the legal issues. He would rather see some other community work out the issues.

Chair Bleile voted no because the use should be restricted to the medical district only.

AYES: Roth, Welker, King, Calonder
NAYS: Fish, Krieger, Knoth, Bleile
ABSTAIN: None
ABSENT: Brick

Motion failed.

IV. DRCOG – 2009 DENVER REGIONAL NATURAL HAZARD MITIGATION PLAN



Discussion was tabled.

V. PUBLIC FORUM



Mr. Randy Miller addressed the Commission. He stated he is a lifetime resident of Englewood. He said he and a friend have done a lot of research in regards to opening a dispensary in Englewood. He said he has a printout from the Department of Public Health that clarifies a lot of the facts. It says over 800 physicians have signed for patients in Colorado. He said he is very pro-business and wants to do everything by the book. He said

it sounded like to him that the Commission is trying to make it as hard as possible for people like us to open a business.

VI. DIRECTOR'S CHOICE



Director White provided an update on future meetings:

November 3 – Study Session, murals and sign code amendments
November 17 – Study Session, murals and sign code amendments
December 8 – Review of 2009 priorities
December 22 – Meeting canceled

VII. STAFF'S CHOICE



Ms. Kirk had nothing further to report.

VIII. ATTORNEY'S CHOICE



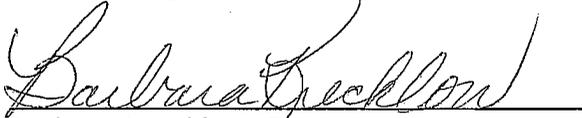
Ms. Reid had nothing further to report.

IX. COMMISSIONER'S CHOICE



The Commissioners had nothing further to report.

The meeting adjourned at 8:25 p.m.


Barbara Krecklow, Recording Secretary

Nancy Fritz

From: Dan Brotzman
Sent: Wednesday, March 10, 2010 10:49 AM
To: Gary Sears; Alan White; Tom Vandermee
Cc: Nancy Fritz
Subject: FW: Update on HB 1284

Attachments: image001.jpg



image001.jpg (5
KB)

-----Original Message-----

From: Dugan Comer
Sent: Wednesday, March 10, 2010 10:34 AM
To: Dan Brotzman; Nancy Reid
Subject: FW: Update on HB 1284

Dugan Comer
Assistant City Attorney - Prosecution
City of Englewood
1000 Englewood Parkway
Englewood, CO 80110
303-762-2325

-----Original Message-----

From: CML Municipal Attorneys Listserv [mailto:ATTYLIST@LIST.CML.ORG] On Behalf Of Rachel Allen
Sent: Wednesday, March 10, 2010 8:15 AM
To: ATTYLIST@LIST.CML.ORG
Subject: [ATTYLIST] Update on HB 1284

CML Legislative Advocates Mark Radtke and Kevin Bommer were at a meeting yesterday that included Rep. Massey, Rep. Claire Levy (Boulder), Rep. Beth McCann (Denver), Sen. Chris Romer, CCI, Dept. of Revenue, some dispensary advocates, and the governor's chief legal counsel. While some of the discussion was around whether or not to license grow operations separately, we spent a good portion of the time talking about the licensing process.

Rep. Levy, while not convinced that the dual licensing scheme was totally necessary, is softening the position she took initially that it was duplicative and unnecessary. Her concerns are mostly that she thinks we can do all of the siting and approval through land use/zoning hearings and that we didn't need to have public hearings. We agreed that a hearing requirement may not be necessary and that we would suggest some modifications to the language.

There was also some discussion about the local option in the bill, as it is written in the strike-below amendment, L.002. Mark has done yeoman work in getting many of our members and law enforcement to coalesce behind our position that voters should be able to determine locally (by referendum or initiative) if medical marijuana centers should be prohibited. Rep. Levy herself stated that while there was no guarantee for dispensaries in Amendment 20, the legislature could authorize them extraterritorially. We agree, for the most part, and state that local voters shouldn't be denied the right to vote on that which they clearly were not asked in the 2000 election.

Whether or not on-premises consumption should be allowed was a hot topic. The dispensary

advocates were suggesting that limiting to vapor-inhaled and edible products might help with concerns of neighboring businesses or residences (if applicable). Mark and Kevin didn't say anything, but we believe we can limit or ban on-site consumption through our ability to place additional restrictions on dispensaries.

Finally, there was discussion about whether or not "good moral character" should be a consideration of the state licensing authority in determining whether or not to issue a state license. We think that local licensing authorities are not specifically authorized to consider good moral character, but there is also nothing that prohibits a local governing body from specifying additional items for consideration in determining whether or not issue a license. Since all decisions are subject to a Rule 106 proceeding, we think there is accountability, as well.

Mark and Kevin will be coordinating with CCI, law enforcement, our members, the sponsor and Rep. Levy on other potential issues brought up during the hearing and ensuring to the best of our ability that maximum flexibility and local control remains in the legislation. Our goal is to be able to support the bill to give us credibility as it moves forward.

If you have additional questions or concerns, please contact Mark Radtke mradtke@cml.org, Kevin Bommer kbommer@cml.org or Rachel Allen rallen@cml.org.

The State of Our Cities & Towns

CML released a report and video outlining how Colorado municipalities are serving their residents and leading the way out of the recession.
View the report and video online at www.cml.org.

MEMORANDUM

TO: Dan Brotzman, City Attorney

FROM: Nancy Reid, Assistant City Attorney



DATE: February 24, 2010

REGARDING: Amendments to the Title 16 – Medical Marijuana - distancing primary care-giver locations from other Medical Marijuana primary care-giver and other specific facilities.

Council Bill No. 53, Series of 2009 which went on first reading December 7, 2009 addressed this issue in 16-5-2(C)(13), which provided for specific distancing from certain locations. Specifically, in the MU-B-1 and MU-B-2 Districts no Medical Marijuana Primary Care-giver (C)(9), location is allowed within five hundred feet (500') of: (1) a licensed child care facility, (2) an educational institution either private or public, or (3) a church or religious institution and also a distance of twenty-five hundred feet (2,500') from any other Medical Marijuana Primary Care-Giver operation. It further provided that in the Medical Districts M-1, M-2 and MO-2, Medical Marijuana Primary Care-Giver location shall require a Conditional Use Permit and the distancing shall also be five hundred feet (500') from: (1) the licensed child care facility, (2) educational institution either private or public, and (3) a church or religious institution; because it was a Conditional Use Permit and a small zone district, no reference was made to the distancing from other Medical Marijuana Primary type Care-Giver operations because the issue of the concentration of like uses will be addressed in the Conditional Use process.

This new Section 16-5-2(C)(13) which went on 1st reading December 7, 2009 did not specifically set out whether the distancing applied only to facilities within the City of Englewood or across the City of Englewood boundaries to take into consideration primary care-giver locations and child care, educational, and religious facilities in other jurisdictions. A review of the Englewood Planning and Zoning Commission's Hearing shows that there was a motion which was passed at the Hearing which made all distancing requirements apply facilities both within the City of Englewood and across the City of Englewood boundaries. Therefore, the City would take into consideration those facilities whether they were within or outside the City's boundaries. Should the City Council wish to clarify the distancing issue and require that the distancing be measured both within the City and across City boundaries see the attached, suggested amended distancing section.

The language for a suggested motion would be: "Amend Section 16-5-2(C)(13)(d) with the addition of a new Subsection (1), to read: All distance limitations shall apply to all Medical Marijuana Primary Care-Giver facilities and licensed childcare, education, church or religious institution or facilities whether they are located within the City of Englewood or outside the City of Englewood's boundaries. In addition there should be a renumbering of the remaining subsections under Subsection (d)(1)."

See attached draft showing language in Section 2, if such an amendment is made to the Council Bill currently before the Council.

Also attached is a Map showing buffer areas when school, etc. facilities are located within the City.

NNR/nf

AMENDED DISTANCING SECTION – PRIOR TO 2ND READING

Section 2. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 16, Chapter 5, Section 2(C), of the Englewood Municipal Code 2000, by the addition of a new Subsection 13, entitled “Medical Marijuana Primary Care-Giver” to read as follows:

16-5-2: Use-Specific Standards.*C. Commercial Uses.*13. Medical Marijuana Primary Care-Giver.

- a. A Medical Marijuana Primary Care-Giver shall comply with State and City regulations, and City of Englewood licensing requirements.
- b. All Medical Marijuana use shall not be in plain view of, or in a place open to the general public.
- c. A Medical Marijuana Primary Care-Giver operation shall not include areas for consumption.
- d. Distance Limitations.
 - (1) All distance limitations shall apply to all Medical Marijuana Primary Care-Giver facilities and licensed childcare, education, church or religious institution or facilities whether they are located within the City of Englewood or outside the City of Englewood’s boundaries.
 - (2) MU-B-1 and MU-B-2 districts: No Medical Marijuana Primary Care-Giver shall be located;
 - (a) within five hundred feet (500’) of a licensed child care facility;
 - (b) within five hundred feet (500’) of any educational institution either private or public;
 - (c) within five hundred feet (500’) of any church or religious institution.
 - (d) within two-thousand, five hundred feet (2,500’) of any other Medical Marijuana Primary Care-Giver operation except where this distance overlaps M-1, M-2 and MO-2.
 - (3) M-1, M-2 and MO-2 districts: In addition to compliance with Section 16-2-12 EMC, “Conditional Use Permits”, no Medical Marijuana Primary Care-Giver shall be located;
 - (a) within five hundred feet (500’) of a licensed child care facility;

- (b) within five hundred feet (500') of any educational institution either private or public;
- (c) within five hundred feet (500') of any church or religious institution.
- (4) Measurement of Distance. With respect to the distancing requirements in this subsection between a business premises for which Medical Marijuana Primary Care-Giver use is proposed and another restricted use, the distance shall be measured by following a straight line from the nearest point of the property line of the premises of the proposed Medical Marijuana Primary Care-Giver use to the nearest point of the property line of the specific use listed.

Section 3. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 16, Chapter 5, Section 4(C)(1)(f) entitled "Accessory Uses Permitted", of the Englewood Municipal Code 2000, by the addition of a new Subsection (11), and Section 4D(2) entitled "Prohibited Accessory Uses" by the addition of a new Subsection (d), to read as follows:

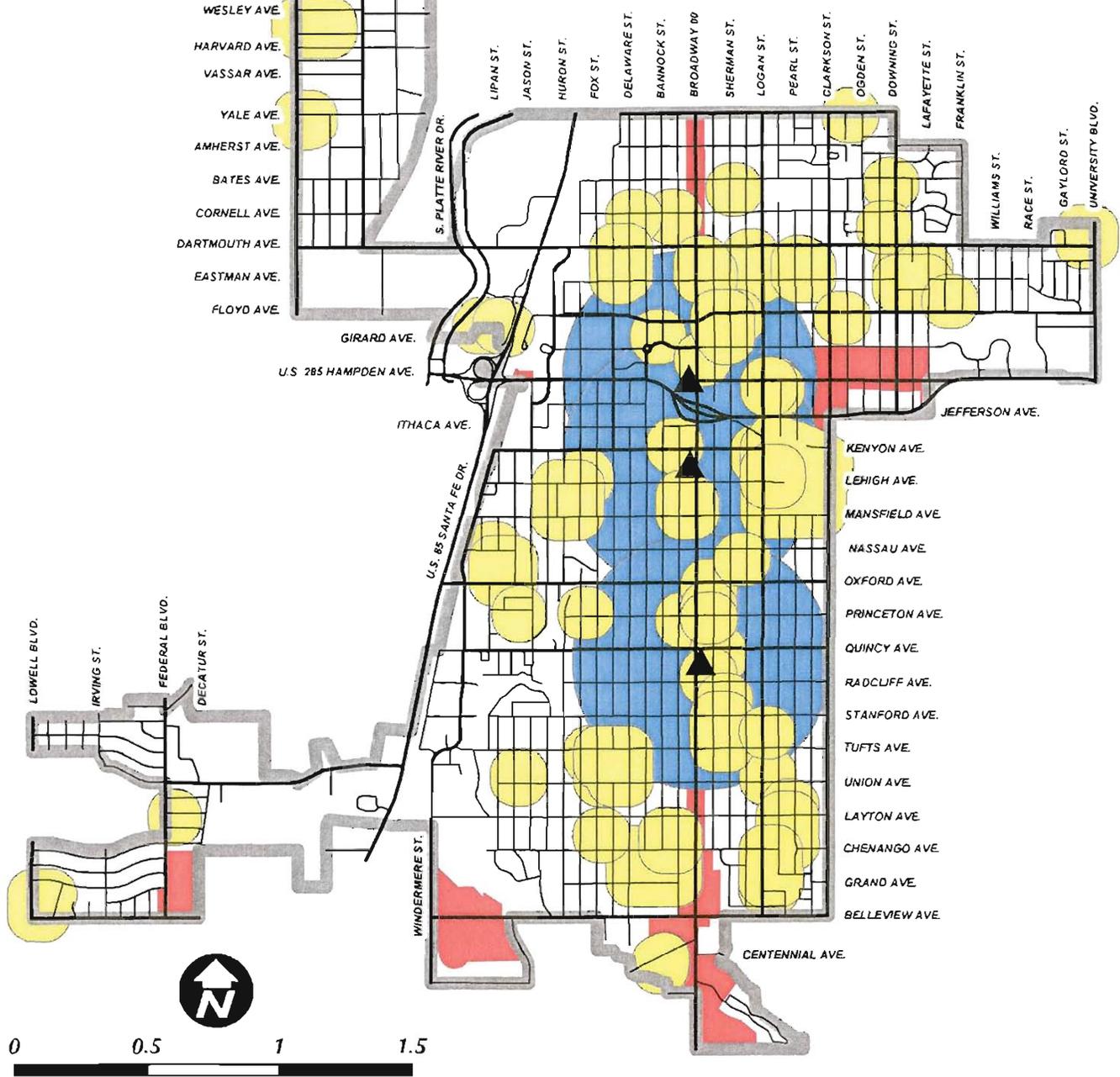
16-5-4: Accessory Uses.

A. General Provisions.

1. Purpose. This Section authorizes the establishment of accessory uses that are incidental and customarily subordinate to principal uses. The City's intent in adopting this Section is to allow a broad range of accessory uses, so long as such uses are located on the same site as the principal use, and so long as they comply with the performance criteria set forth in this Section in order to reduce potentially adverse impacts on surrounding properties.
2. Approval of Accessory Uses. A permitted accessory use may be approved in conjunction with approval of the principal use.
3. Compliance with Code Requirements. All accessory uses, shall be subject to the general, dimensional, operational, and use-specific regulations set forth in this Section. In the case of any conflict between the accessory uses and standards of this Section and any other requirement of this Title, the standards of this Section shall control.
4. General Conditions. All accessory uses shall comply with the following general conditions:
 - a. Be clearly incidental and customarily found in connection with the principal use; and
 - b. Be conducted and/or located on the same lot as the principal use; and
 - c. Be operated and maintained under the same ownership, or by lessees or concessionaires thereof, and on the same lot as the permitted principal use.
5. Accessory Structures. For regulations applicable to accessory structures, see Sections 16-6-1.H and 16-6-1.I EMC.

Proposed Zone Areas Allowing Medical Marijuana Primary Care Givers After Applying School, Child Care, Church and Existing Medical Marijuana Primary Care Giver Buffers

October, 2009



- ▲ Existing Medical Marijuana Primary Care Giver
- School, Child Care, and Church Property 500 Foot Buffer
- Existing Marijuana Primary Care Giver Property 2,500 Foot Buffer
- Resulting Zone Areas Allowing Medical Marijuana Primary Care Givers
- Arterial Streets
- Collector Streets
- City Boundary

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Status Sheet

Current through March 17, 2010

This is not an official record of action taken by the Colorado General Assembly. It is intended for informational purposes only.

Status SB10-109**ROMER & ... Medical Marijuana Dr Patient Relations**

01/20/2010 Introduced In Senate - Assigned to Health and Human Services
 01/20/2010 Introduced In Senate - Assigned to Health and Human Services + Appropriations
 01/27/2010 Senate Committee on Health and Human Services Refer Amended to Appropriations
 01/29/2010 Senate Committee on Appropriations Refer Unamended to Senate Committee of th
 01/29/2010 Senate Second Reading Special Order - Passed with Amendments
 02/01/2010 Senate Third Reading Passed
 02/02/2010 Introduced In House - Assigned to Judiciary
 02/02/2010 Introduced In House - Assigned to Judiciary + Appropriations
 02/04/2010 House Committee on Judiciary Refer Amended to Appropriations
 02/12/2010 House Committee on Appropriations Refer Amended to House Committee of the W
 02/12/2010 House Second Reading Laid Over to 02/26/2010
 02/26/2010 House Second Reading Laid Over Daily
 03/01/2010 House Second Reading Passed with Amendments
 03/02/2010 House Third Reading Laid Over Daily
 03/03/2010 House Third Reading Passed with Amendments
 03/18/2010 Senate Considered House Amendments - Result was to Laid Over Daily

* Indicates unofficial action

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 10-0353.03 Michael Dohr

SENATE BILL 10-109

SENATE SPONSORSHIP

Romer and Spence, Boyd, Bacon, Hodge, Hudak, Johnston, Tapia, Tochtrop

HOUSE SPONSORSHIP

Massey and McCann, Rice, Frangas, McFadyen

Senate Committees
Health and Human Services
Appropriations

House Committees
Judiciary
Appropriations

A BILL FOR AN ACT

101 **CONCERNING REGULATION OF THE PHYSICIAN-PATIENT RELATIONSHIP**
102 **FOR MEDICAL MARIJUANA PATIENTS, AND MAKING**
103 **APPROPRIATIONS IN CONNECTION THEREWITH.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Under the bill, the department of public health and environment (department) will promulgate new rules related to standards for issuing registry identification cards, documentation for physicians who prescribe medical marijuana, and sanctions for physicians who violate the bill.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Am ended 3rd Reading
March 3, 2010

HOUSE
Am ended 2nd Reading
March 1, 2010

SENATE
3rd Reading Unamended
February 1, 2010

SENATE
Am ended 2nd Reading
January 29, 2010

A physician who certifies that a patient can use medical marijuana shall certify certain information to the department and maintain a separate record-keeping system for his or her medical marijuana patients. A physician who certifies that a patient can use medical marijuana shall not receive remuneration from or offer it to a primary caregiver, distributor, or any other provider of medical marijuana.

The bill creates a medical marijuana review board (board) that will consider requests by nonveteran patients under 21 years of age who want to be registered medical marijuana patients. For a patient who is under 21 years of age to become a registered medical marijuana patient, a majority of the board must determine that the patient has a debilitating medical condition and could benefit from the use of medical marijuana.

The bill adds the medical marijuana program to the list of statutes that involve medical records.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 25-1.5-106, Colorado Revised Statutes, is amended
3 to read:

4 **25-1.5-106. Medical marijuana program - powers and duties**
5 **of state health agency - medical review board - repeal.**

6 (1) **Definitions.** IN ADDITION TO THE DEFINITIONS SET FORTH IN SECTION
7 14 (1) OF ARTICLE XVIII OF THE STATE CONSTITUTION, AS USED IN THIS
8 SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 (a) "BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP", FOR PURPOSES
10 OF THE MEDICAL MARIJUANA PROGRAM, MEANS:

11 (I) A PHYSICIAN AND A PATIENT HAVE A TREATMENT OR
12 COUNSELING RELATIONSHIP, IN THE COURSE OF WHICH THE PHYSICIAN HAS
13 COMPLETED A FULL ASSESSMENT OF THE PATIENT'S MEDICAL HISTORY AND
14 CURRENT MEDICAL CONDITION, INCLUDING A PERSONAL PHYSICAL
15 EXAMINATION;

16 (II) THE PHYSICIAN HAS CONSULTED WITH THE PATIENT WITH
17 RESPECT TO THE PATIENT'S DEBILITATING MEDICAL CONDITION BEFORE

1 THE PATIENT APPLIES FOR A REGISTRY IDENTIFICATION CARD; AND

2 (III) THE PHYSICIAN IS AVAILABLE TO OR OFFERS TO PROVIDE
3 FOLLOW-UP CARE AND TREATMENT TO THE PATIENT, INCLUDING BUT NOT
4 LIMITED TO PATIENT EXAMINATIONS, TO DETERMINE THE EFFICACY OF THE
5 USE OF MEDICAL MARIJUANA AS A TREATMENT OF THE PATIENT'S
6 DEBILITATING MEDICAL CONDITION.

7 (b) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF
8 THE STATE HEALTH AGENCY.

9 (c) "IN GOOD STANDING", WITH RESPECT TO A PHYSICIAN'S
10 LICENSE, MEANS:

11 (I) THE PHYSICIAN HOLDS A DOCTOR OF MEDICINE OR DOCTOR OF
12 OSTEOPATHIC MEDICINE DEGREE FROM AN ACCREDITED MEDICAL SCHOOL;

13 (II) THE PHYSICIAN HOLDS A VALID, UNRESTRICTED LICENSE TO
14 PRACTICE MEDICINE IN COLORADO; AND

15 (III) THE PHYSICIAN HAS A VALID AND UNRESTRICTED UNITED
16 STATES DEPARTMENT OF JUSTICE FEDERAL DRUG ENFORCEMENT
17 ADMINISTRATION CONTROLLED SUBSTANCES REGISTRATION.

18 (d) "MEDICAL MARIJUANA PROGRAM" MEANS THE PROGRAM
19 ESTABLISHED BY SECTION 14 OF ARTICLE XVIII OF THE STATE
20 CONSTITUTION AND THIS SECTION.

21 (e) "REGISTRY IDENTIFICATION CARD" MEANS THE
22 NONTRANSFERABLE CONFIDENTIAL REGISTRY IDENTIFICATION CARD
23 ISSUED BY THE STATE HEALTH AGENCY TO PATIENTS AND PRIMARY
24 CAREGIVERS PURSUANT TO THIS SECTION.

25 (f) "STATE HEALTH AGENCY" MEANS THE PUBLIC HEALTH RELATED
26 ENTITY OF STATE GOVERNMENT DESIGNATED BY THE GOVERNOR BY
27 EXECUTIVE ORDER PURSUANT TO SECTION 14 OF ARTICLE XVIII OF THE

1 STATE CONSTITUTION.

2 (†) (2) **Rulemaking.** The department STATE HEALTH AGENCY
3 shall, pursuant to section 14 of article XVIII of the state constitution,
4 promulgate rules of administration concerning the implementation of the
5 medical marijuana program ~~established by such section and that~~
6 specifically govern the following:

7 (a) The establishment and maintenance of a confidential registry
8 of patients who have applied for and are entitled to receive a registry
9 identification card. THE CONFIDENTIAL REGISTRY OF PATIENTS MAY
10 BE USED TO DETERMINE WHETHER A PHYSICIAN SHOULD BE REFERRED TO
11 THE COLORADO BOARD OF MEDICAL EXAMINERS FOR A SUSPECTED
12 VIOLATION OF SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION,
13 PARAGRAPH (a), (b), OR (c) OF SUBSECTION (3) OF THIS SECTION, OR THE
14 RULES PROMULGATED BY THE STATE HEALTH AGENCY PURSUANT TO THIS
15 SUBSECTION (2).

16 (b) The development by the department STATE HEALTH AGENCY
17 of an application form and THE PROCESS FOR making ~~such~~ THE form
18 available to residents of this state seeking to be listed on the confidential
19 registry of patients who are entitled to receive a registry identification
20 card;

21 (c) The verification by the department STATE HEALTH AGENCY of
22 medical information concerning patients who have applied for a
23 ~~confidential~~ registry IDENTIFICATION card OR FOR RENEWAL OF A
24 REGISTRY IDENTIFICATION CARD;

25 (d) THE DEVELOPMENT BY THE STATE HEALTH AGENCY OF A FORM
26 THAT CONSTITUTES "WRITTEN DOCUMENTATION" AS DEFINED AND USED
27 IN SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, WHICH

1 FORM A PHYSICIAN SHALL USE WHEN MAKING A MEDICAL MARIJUANA
2 RECOMMENDATION FOR A PATIENT;

3 ~~(d)~~ (e) The CONDITIONS FOR issuance AND RENEWAL, and THE
4 form, of ~~confidential~~ THE registry identification cards ISSUED TO
5 PATIENTS, INCLUDING BUT NOT LIMITED TO STANDARDS FOR ENSURING
6 THAT THE STATE HEALTH AGENCY ISSUES A REGISTRY IDENTIFICATION
7 CARD TO A PATIENT ONLY IF HE OR SHE HAS A BONA FIDE
8 PHYSICIAN-PATIENT RELATIONSHIP WITH A PHYSICIAN IN GOOD STANDING
9 AND LICENSED TO PRACTICE MEDICINE IN THE STATE OF COLORADO;

10 ~~(e)~~ (f) Communications with law enforcement officials about
11 ~~confidential~~ registry identification cards that have been suspended where
12 WHEN a patient is no longer diagnosed as having a debilitating medical
13 condition; and

14 ~~(f)~~ (g) The manner in which the ~~department~~ STATE HEALTH
15 AGENCY may consider adding debilitating medical conditions to the list
16 of debilitating medical conditions contained in section 14 of article XVIII
17 of the state constitution.

18 (3) **Physicians.** A PHYSICIAN WHO CERTIFIES A DEBILITATING
19 MEDICAL CONDITION FOR AN APPLICANT TO THE MEDICAL MARIJUANA
20 PROGRAM SHALL COMPLY WITH ALL OF THE FOLLOWING REQUIREMENTS:

21 (a) THE PHYSICIAN SHALL HAVE A VALID, UNRESTRICTED
22 COLORADO LICENSE TO PRACTICE MEDICINE, WHICH LICENSE IS IN GOOD
23 STANDING.

24 (b) AFTER A PHYSICIAN, WHO HAS A BONA FIDE
25 PHYSICIAN-PATIENT RELATIONSHIP WITH THE PATIENT APPLYING FOR THE
26 MEDICAL MARIJUANA PROGRAM, DETERMINES, FOR THE PURPOSES OF
27 MAKING A RECOMMENDATION, THAT THE PATIENT HAS A DEBILITATING

1 CONDITION AND THAT THE PATIENT MAY BENEFIT FROM THE USE OF
2 MEDICAL MARIJUANA, THE PHYSICIAN SHALL CERTIFY TO THE STATE
3 HEALTH AGENCY THAT THE PATIENT HAS A DEBILITATING MEDICAL
4 CONDITION AND THAT THE PATIENT MAY BENEFIT FROM THE USE OF
5 MEDICAL MARIJUANA. IF THE PHYSICIAN CERTIFIES THAT THE PATIENT
6 WOULD BENEFIT FROM THE USE OF MEDICAL MARIJUANA BASED ON A
7 CHRONIC OR DEBILITATING DISEASE OR MEDICAL CONDITION, THE
8 PHYSICIAN SHALL SPECIFY THE CHRONIC OR DEBILITATING DISEASE OR
9 MEDICAL CONDITION AND, IF KNOWN, THE CAUSE OR SOURCE OF THE
10 CHRONIC OR DEBILITATING DISEASE OR MEDICAL CONDITION.

11 (c) THE PHYSICIAN SHALL MAINTAIN A RECORD-KEEPING
12 SYSTEM FOR ALL PATIENTS FOR WHOM THE PHYSICIAN HAS RECOMMENDED
13 THE MEDICAL USE OF MARIJUANA, AND, PURSUANT TO AN INVESTIGATION
14 INITIATED PURSUANT TO SECTION 12-36-118, C.R.S., THE PHYSICIAN
15 SHALL PRODUCE SUCH MEDICAL RECORDS TO THE COLORADO STATE
16 BOARD OF MEDICAL EXAMINERS AFTER REDACTING ANY PATIENT OR
17 PRIMARY CAREGIVER IDENTIFYING INFORMATION.

18 (d) A PHYSICIAN SHALL NOT:

19 (I) ACCEPT, SOLICIT, OR OFFER ANY FORM OF PECUNIARY
20 REMUNERATION FROM OR TO A PRIMARY CAREGIVER, DISTRIBUTOR, OR
21 ANY OTHER PROVIDER OF MEDICAL MARIJUANA;

22 (II) OFFER A DISCOUNT OR ANY OTHER THING OF VALUE TO A
23 PATIENT WHO USES OR AGREES TO USE A PARTICULAR PRIMARY
24 CAREGIVER, DISTRIBUTOR, OR OTHER PROVIDER OF MEDICAL MARIJUANA
25 TO PROCURE MEDICAL MARIJUANA;

26 (III) EXAMINE A PATIENT FOR PURPOSES OF DIAGNOSING A
27 DEBILITATING MEDICAL CONDITION AT A LOCATION WHERE MEDICAL

1 MARIJUANA IS SOLD OR DISTRIBUTED; OR

2 (IV) HOLD AN ECONOMIC INTEREST IN AN ENTERPRISE THAT
3 PROVIDES OR DISTRIBUTES MEDICAL MARIJUANA IF THE PHYSICIAN
4 CERTIFIES THE DEBILITATING MEDICAL CONDITION OF A PATIENT FOR
5 PARTICIPATION IN THE MEDICAL MARIJUANA PROGRAM.

6

7 (4) **Enforcement.** (a) IF THE STATE HEALTH AGENCY HAS
8 REASONABLE CAUSE TO BELIEVE THAT A PHYSICIAN HAS VIOLATED
9 SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, PARAGRAPH
10 (a), (b), OR (c) OF SUBSECTION (3) OF THIS SECTION, OR THE RULES
11 PROMULGATED BY THE STATE HEALTH AGENCY PURSUANT TO SUBSECTION
12 (2) OF THIS SECTION, THE STATE HEALTH AGENCY MAY REFER THE MATTER
13 TO THE STATE BOARD OF MEDICAL EXAMINERS CREATED IN SECTION
14 12-36-103, C.R.S., FOR AN INVESTIGATION AND DETERMINATION.

15 (b) IF THE STATE HEALTH AGENCY HAS REASONABLE CAUSE TO
16 BELIEVE THAT A PHYSICIAN HAS VIOLATED PARAGRAPH (d) OF SUBSECTION
17 (3) OF THIS SECTION, THE STATE HEALTH AGENCY SHALL CONDUCT A
18 HEARING PURSUANT TO SECTION 24-4-104, C.R.S., TO DETERMINE
19 WHETHER A VIOLATION HAS OCCURRED.

20 (c) UPON A FINDING OF UNPROFESSIONAL CONDUCT PURSUANT TO
21 SECTION 12-36-117 (1) (mm), C.R.S., BY THE STATE BOARD OF MEDICAL
22 EXAMINERS OR A FINDING OF A VIOLATION OF PARAGRAPH (d) OF
23 SUBSECTION (3) OF THIS SECTION BY THE STATE HEALTH AGENCY, THE
24 STATE HEALTH AGENCY SHALL RESTRICT A PHYSICIAN'S AUTHORITY TO
25 RECOMMEND THE USE OF MEDICAL MARIJUANA, WHICH RESTRICTIONS MAY
26 INCLUDE THE REVOCATION OR SUSPENSION OF A PHYSICIAN'S PRIVILEGE TO
27 RECOMMEND MEDICAL MARIJUANA. THE RESTRICTION SHALL BE IN

1 ADDITION TO ANY SANCTION IMPOSED BY THE STATE BOARD OF MEDICAL
2 EXAMINERS.

3 (d) WHEN THE STATE HEALTH AGENCY HAS OBJECTIVE AND
4 REASONABLE GROUNDS TO BELIEVE AND FINDS, UPON A FULL
5 INVESTIGATION, THAT A PHYSICIAN HAS DELIBERATELY AND WILLFULLY
6 VIOLATED SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION OR
7 THIS SECTION AND THAT THE PUBLIC HEALTH, SAFETY, OR WELFARE
8 IMPERATIVELY REQUIRES EMERGENCY ACTION, AND THE STATE HEALTH
9 AGENCY INCORPORATES THOSE FINDINGS INTO AN ORDER, THE STATE
10 HEALTH AGENCY MAY SUMMARILY SUSPEND THE PHYSICIAN'S AUTHORITY
11 TO RECOMMEND THE USE OF MEDICAL MARIJUANA PENDING THE
12 PROCEEDINGS SET FORTH IN PARAGRAPHS (a) AND (b) OF THIS SUBSECTION
13 (5). A HEARING ON THE ORDER OF SUMMARY SUSPENSION SHALL BE HELD
14 NO LATER THAN THIRTY DAYS AFTER THE ISSUANCE OF THE ORDER OF
15 SUMMARY SUSPENSION, UNLESS A LONGER TIME IS AGREED TO BY THE
16 PARTIES, AND AN INITIAL DECISION IN ACCORDANCE WITH SECTION
17 24-4-105 (14), C.R.S., SHALL BE RENDERED NO LATER THAN THIRTY DAYS
18 AFTER THE CONCLUSION OF THE HEARING CONCERNING THE ORDER OF
19 SUMMARY SUSPENSION.

20 (5) **Renewal of patient identification card upon criminal**
21 **conviction.** ANY PATIENT WHO IS CONVICTED OF A CRIMINAL OFFENSE
22 UNDER ARTICLE 18 OF TITLE 18, C.R.S., SENTENCED OR ORDERED BY A
23 COURT TO DRUG OR SUBSTANCE ABUSE TREATMENT, OR SENTENCED TO
24 THE DIVISION OF YOUTH CORRECTIONS, SHALL BE SUBJECT TO IMMEDIATE
25 RENEWAL OF HIS OR HER PATIENT REGISTRY IDENTIFICATION CARD, AND
26 THE PATIENT SHALL APPLY FOR THE RENEWAL BASED UPON A
27 RECOMMENDATION FROM A PHYSICIAN WITH WHOM THE PATIENT HAS A

1 BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP.

2 (6) A PARENT WHO SUBMITS A MEDICAL MARIJUANA REGISTRY
3 APPLICATION FOR HIS OR HER CHILD SHALL HAVE HIS OR HER SIGNATURE
4 NOTARIZED ON THE APPLICATION.

5 ~~(2)~~ (7) The ~~department~~ STATE HEALTH AGENCY may collect fees
6 from patients who, pursuant to section 14 of article XVIII of the state
7 constitution, apply to the medical marijuana program established by such
8 section for a marijuana registry identification CARD for the purpose of
9 offsetting the ~~department's~~ STATE HEALTH AGENCY'S direct and indirect
10 costs of administering the program. The amount of ~~such~~ THE fees shall
11 be set by rule of the ~~state board of health~~ STATE HEALTH AGENCY. All
12 fees collected by the ~~department~~ STATE HEALTH AGENCY through the
13 medical marijuana program shall be transferred to the state treasurer who
14 shall credit the same to the medical marijuana program cash fund, which
15 fund is hereby created.

16 ~~(3)~~ (8) **Cash fund.** (a) The medical marijuana program cash
17 fund shall be subject to annual appropriation by the general assembly to
18 the ~~department~~ STATE HEALTH AGENCY for the purpose of establishing,
19 operating, and maintaining the medical marijuana program. ~~established~~
20 by section 14 of article XVIII of the state constitution. ~~§§~~ All
21 moneys credited to the medical marijuana program cash fund and all
22 interest derived from the deposit of such moneys that are not expended
23 during the fiscal year shall be retained in the fund for future use and shall
24 not be credited or transferred to the general fund or any other fund.

25 (b) Notwithstanding any provision of paragraph (a) of this
26 subsection ~~(3)~~ (8) to the contrary, on April 20, 2009, the state treasurer
27 shall deduct two hundred fifty-eight thousand seven hundred thirty-five

1 dollars from the medical marijuana program cash fund and transfer such
2 sum to the general fund.

3 —
4 —

5 **SECTION 2.** 25-1-1202 (1), Colorado Revised Statutes, is
6 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

7 **25-1-1202. Index of statutory sections regarding medical**
8 **record confidentiality and health information.** (1) Statutory
9 provisions concerning policies, procedures, and references to the release,
10 sharing, and use of medical records and health information include the
11 following:

12 (vv.5) SECTION 25-1.5-106, CONCERNING THE MEDICAL
13 MARIJUANA PROGRAM;

14 **SECTION 3.** 12-36-117 (1), Colorado Revised Statutes, is
15 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

16 **12-36-117. Unprofessional conduct - repeal.**

17 (1) "Unprofessional conduct" as used in this article means:

18 (mm) FAILURE TO COMPLY WITH THE REQUIREMENTS OF SECTION
19 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, SECTION 25-1.5-106,
20 C.R.S., OR THE RULES PROMULGATED BY THE STATE HEALTH AGENCY
21 PURSUANT TO SECTION 25-1.5-106 (2), C.R.S.

22 **SECTION 4.** 12-36-118 (5) (g), Colorado Revised Statutes, is
23 amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

24 **12-36-118. Disciplinary action by board - immunity.**

25 (5) (g) (X) IN ALL CASES INVOLVING ALLEGED VIOLATIONS OF SECTION
26 12-36-117(1)(mm), THE BOARD SHALL PROMPTLY NOTIFY THE EXECUTIVE
27 DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT OF

1 ITS FINDINGS, INCLUDING WHETHER IT FOUND THAT THE PHYSICIAN
2 VIOLATED SECTION 12-36-117(1)(mm) AND ANY RESTRICTIONS IT PLACED
3 ON THE PHYSICIAN WITH RESPECT TO RECOMMENDING THE USE OF
4 MEDICAL MARIJUANA.

5 **SECTION 5. Appropriation.** (1) In addition to any other
6 appropriation, there is hereby appropriated, out of any moneys in the
7 medical marijuana program cash fund created in section 25-1.5-106 (8),
8 Colorado Revised Statutes, not otherwise appropriated, to the department
9 of public health and environment, for the fiscal year beginning July 1,
10 2010, the sum of eight hundred fifteen thousand two hundred twenty-four
11 dollars (\$815,224) cash funds and 2.1 FTE, or so much thereof as may be
12 necessary, for the implementation of this act. Of said appropriation,
13 ninety-nine thousand eight hundred seventy-nine dollars (\$99,879) shall
14 be allocated to the administration and support division and seven hundred
15 fifteen thousand three hundred forty-five dollars (\$715,345) and 2.1 FTE
16 shall be allocated to the center for health and environmental information.

17 (2) In addition to any other appropriation, there is hereby
18 appropriated to the department of regulatory agencies, for the fiscal year
19 beginning July 1, 2010, the sum of five hundred ninety-three thousand
20 three hundred thirty-three dollars (\$593,333) and 1.2 FTE, for the
21 investigation and prosecution of physicians referred to the board of
22 medical examiners pursuant to section 25-1.5-106 (5), Colorado Revised
23 Statutes, or so much thereof as may be necessary for the implementation
24 of this act. Said appropriation shall be from reappropriated funds
25 received from the department of public health and environment out of the
26 appropriation made in subsection (1) of this section to the center for
27 health and environmental information. Of said appropriation, five

1 hundred twelve thousand five hundred eighty-four dollars (\$512,584)
2 shall be allocated to the executive director's office and eighty thousand
3 seven hundred forty-nine dollars (\$80,749) and 1.2 FTE shall be allocated
4 to the division of registrations.

5 (3) In addition to any other appropriation, there is hereby
6 appropriated to the department of law, for the fiscal year beginning July
7 1, 2010, the sum of six hundred twelve thousand four hundred sixty-three
8 dollars (\$612,463) and 5.2 FTE, or so much thereof as may be necessary,
9 for the provision of legal services to the department of public health and
10 environment and the department of regulatory agencies related to the
11 implementation of this act. Of said appropriation, ninety-nine thousand
12 eight hundred seventy-nine dollars (\$99,879) shall be from reappropriated
13 funds received from the department of public health and environment out
14 of the appropriation made in subsection (1) of this section to the
15 administration and support division and five hundred twelve thousand
16 five hundred eighty-four dollars (\$512,584) shall be from reappropriated
17 funds received from the department of regulatory agencies out of the
18 appropriation made in subsection (2) of this section to the executive
19 director's office.

20 **SECTION 6. Safety clause.** The general assembly hereby finds,
21 determines, and declares that this act is necessary for the immediate
22 preservation of the public peace, health, and safety.

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0773.02 Michael Dohr

HOUSE BILL 10-1284

HOUSE SPONSORSHIP

Massey and Summers, McCann, Rice

SENATE SPONSORSHIP

Romer and Spence,

House Committees
Judiciary

Senate Committees

2/22/2010

A BILL FOR AN ACT

101 CONCERNING REGULATION OF MEDICAL MARIJUANA.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills/summaries>.)

Section 1. The bill creates the medical marijuana licensing authority (state licensing authority) in the department of revenue. The state licensing authority grants, refuses, or renews a medical marijuana center license after the licensee has received local approval. The state licensing authority also administers aspects of medical marijuana licensure, including rulemaking. Many of the functions and duties of the state licensing authority are similar to those held by the state licensing

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

authority for alcoholic beverages.

Section 2. Under the bill, the department of public health and environment (department) will promulgate new rules related to standards for issuing registry identification cards, documentation for physicians who prescribe medical marijuana, and sanctions for physicians who violate the bill.

A physician who certifies that a patient can use medical marijuana shall certify certain information to the department and maintain a record-keeping system for his or her medical marijuana patients. A physician who certifies that a patient can use medical marijuana shall not receive remuneration from or offer it to a primary caregiver, distributor, or any other provider of medical marijuana.

The bill requires patients under 21 years of age who want to be registered medical marijuana patients to receive recommendations from 2 doctors.

A primary caregiver may serve no more than 5 patients on the registry at one time, unless the department allows more patients due to exceptional circumstances.

A patient who is permitted to use medical marijuana must have in his or her possession a registry identification card at all times when in possession of medical marijuana.

The bill lists various places and situations in which the patient or primary caregiver may not use or possess medical marijuana. A physician who certifies that a patient can use medical marijuana may not receive remuneration from a primary caregiver related to medical marijuana or from a medical marijuana center.

The bill imposes a one-year moratorium on the opening of new medical marijuana centers, but allows current medical marijuana centers to operate for a year before becoming licensed.

Section 3. The bill provides an exception to the adulterated food offenses for medical marijuana centers that manufacture or sell food that contains medical marijuana if the food is labeled as containing medical marijuana and the label specifies the amount of medical marijuana.

Sections 4, 5, and 6 make conforming amendments.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Title 12, Colorado Revised Statutes, is amended BY

3 THE ADDITION OF A NEW ARTICLE to read:

4 **ARTICLE 43.3**

5 **Medical Marijuana**

1 PART 1

2 MEDICAL MARIJUANA LICENSING AUTHORITY

3 **12-43.3-101. State licensing authority - creation.** (1) FOR THE
4 PURPOSE OF REGULATING AND CONTROLLING THE LICENSING OF THE
5 CULTIVATION, DISTRIBUTION, AND SALE OF MEDICAL MARIJUANA IN THIS
6 STATE, THERE IS HEREBY CREATED THE MEDICAL MARIJUANA LICENSING
7 AUTHORITY, WHICH SHALL BE THE EXECUTIVE DIRECTOR OF THE
8 DEPARTMENT OF REVENUE, REFERRED TO IN THIS ARTICLE AS THE
9 "DEPARTMENT", OR THE DEPUTY DIRECTOR OF THE DEPARTMENT IF THE
10 EXECUTIVE DIRECTOR SO DESIGNATES.

11 (2) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT SHALL BE THE
12 CHIEF ADMINISTRATIVE OFFICER OF THE MEDICAL MARIJUANA LICENSING
13 AUTHORITY AND MAY EMPLOY, PURSUANT TO SECTION 13 OF ARTICLE XII
14 OF THE STATE CONSTITUTION, SUCH CLERKS AND INSPECTORS AS THE
15 EXECUTIVE DIRECTOR MAY DETERMINE TO BE NECESSARY.

16 **12-43.3-102. Duties of state licensing authority - rules.**

17 (1) THE MEDICAL MARIJUANA LICENSING AUTHORITY SHALL:

18 (a) AFTER A MEDICAL MARIJUANA CENTER HAS OBTAINED LOCAL
19 APPROVAL, GRANT, REFUSE, OR RENEW A MEDICAL MARIJUANA CENTER
20 LICENSE FOR THE CULTIVATION, DISTRIBUTION, AND SALE OF MEDICAL
21 MARIJUANA AS PROVIDED BY LAW AND SUSPEND OR REVOKE THE LICENSE
22 UPON A VIOLATION OF THIS ARTICLE OR ANY RULE ADOPTED PURSUANT TO
23 THIS ARTICLE;

24 (b) PROMULGATE GENERAL RULES AND MAKE SPECIAL RULINGS
25 AND FINDINGS AS NECESSARY FOR THE PROPER REGULATION AND CONTROL
26 OF THE CULTIVATION, DISTRIBUTION, AND SALE OF MEDICAL MARIJUANA
27 AND FOR THE ENFORCEMENT OF THIS ARTICLE;

1 (c) HEAR AND DETERMINE AT A PUBLIC HEARING ALL COMPLAINTS
2 AGAINST A MEDICAL MARIJUANA CENTER AND ADMINISTER OATHS AND
3 ISSUE SUBPOENAS TO REQUIRE THE PRESENCE OF PERSONS AND
4 PRODUCTION OF PAPERS, BOOKS, AND RECORDS NECESSARY TO THE
5 DETERMINATION OF ANY HEARING SO HELD;

6 (d) KEEP COMPLETE RECORDS OF ALL ACTS AND TRANSACTIONS OF
7 THE MEDICAL MARIJUANA LICENSING AUTHORITY, ALL OF WHICH RECORDS
8 SHALL BE AVAILABLE FOR INSPECTION BY THE DEPARTMENT AND LAW
9 ENFORCEMENT AGENCIES AND WHICH RECORDS, EXCEPT CONFIDENTIAL
10 REPORTS OBTAINED FROM THE MEDICAL MARIJUANA CENTER LICENSEE
11 SHOWING THE SALES VOLUME OR QUANTITY OF MEDICAL MARIJUANA
12 SOLD, SHALL BE OPEN FOR INSPECTION BY THE PUBLIC;

13 (e) PREPARE AND TRANSMIT ANNUALLY, IN THE FORM AND
14 MANNER PRESCRIBED BY THE HEADS OF THE PRINCIPAL DEPARTMENTS
15 PURSUANT TO SECTION 24-1-136, C.R.S., A REPORT ACCOUNTING TO THE
16 GOVERNOR FOR THE EFFICIENT DISCHARGE OF ALL RESPONSIBILITIES
17 ASSIGNED BY LAW OR DIRECTIVE TO THE MEDICAL MARIJUANA LICENSING
18 AUTHORITY;

19 (f) DETERMINE THE AMOUNT OF THE STATE LICENSE FEE; AND

20 (g) MAKE A REQUEST BY JANUARY 1, 2012, TO THE FEDERAL DRUG
21 ENFORCEMENT ADMINISTRATION TO CONSIDER RESCHEDULING, FOR
22 PHARMACEUTICAL PURPOSES, MARIJUANA FROM A SCHEDULE I
23 CONTROLLED SUBSTANCE TO A SCHEDULE II CONTROLLED SUBSTANCE.

24 (2) (a) RULES PROMULGATED PURSUANT TO THIS ARTICLE SHALL
25 ADDRESS, BUT NEED NOT BE LIMITED TO, THE FOLLOWING SUBJECTS
26 RELATED TO MEDICAL MARIJUANA:

27 (I) COMPLIANCE WITH, ENFORCEMENT OF, OR VIOLATION OF ANY

- 1 PROVISION OF THIS ARTICLE OR ANY RULE PROMULGATED PURSUANT TO
2 THIS ARTICLE INCLUDING PROCEDURES AND GROUNDS FOR SUSPENDING OR
3 REVOKING THE LICENSE OF A MEDICAL MARIJUANA CENTER;
- 4 (II) SPECIFICATION OF THE DUTIES OF THE OFFICERS AND
5 EMPLOYEES OF THE MEDICAL MARIJUANA LICENSING AUTHORITY;
- 6 (III) INSTRUCTIONS FOR LOCAL LICENSING AUTHORITIES AND LAW
7 ENFORCEMENT OFFICERS;
- 8 (IV) ALL FORMS NECESSARY OR CONVENIENT FOR THE
9 ADMINISTRATION OF THIS ARTICLE;
- 10 (V) MISREPRESENTATION, UNFAIR PRACTICES, AND UNFAIR
11 COMPETITION;
- 12 (VI) DEVELOPMENT OF INDIVIDUAL IDENTIFICATION CARDS FOR
13 OWNERS, OFFICERS, AND EMPLOYEES OF ENTITIES LICENSED PURSUANT TO
14 THIS ARTICLE, INCLUDING A FINGERPRINT-BASED CRIMINAL HISTORY
15 RECORD CHECK OR A NAME-BASED CRIMINAL HISTORY RECORD CHECK IF
16 THE APPLICANT'S FINGERPRINTS ARE UNCLASSIFIABLE PRIOR TO ISSUING
17 THE CARD;
- 18 (VII) REGULATION OF STORAGE, WAREHOUSES, AND
19 TRANSPORTATION;
- 20 (VIII) HEALTH AND SANITARY REQUIREMENTS;
- 21 (IX) PRACTICES DESIGNED TO AVOID AN UNDUE INCREASE IN THE
22 CONSUMPTION OF MEDICAL MARIJUANA;
- 23 (X) THE FORM AND CONTENT OF THE LICENSE, IDENTIFICATION
24 CARD, AND RENEWAL APPLICATIONS;
- 25 (XI) RECORD-KEEPING AND AUDIT REQUIREMENTS FOR MEDICAL
26 MARIJUANA CENTERS;
- 27 (XII) SECURITY REQUIREMENTS FOR MEDICAL MARIJUANA

1 CENTERS THAT AT A MINIMUM INCLUDE LIGHTING AND ALARMS;
2 (XIII) STATE LICENSING PROCEDURES, INCLUDING RENEWALS, THE
3 FORM AND CONTENT OF LICENSING APPLICATIONS AND LICENSES, AND
4 LICENSING FEES;
5 (XIV) THE REPORTING AND TRANSMITTAL OF MONTHLY SALES TAX
6 PAYMENTS BY MEDICAL MARIJUANA CENTERS;
7 (XV) UNLAWFUL FINANCIAL ARRANGEMENTS BETWEEN LICENSED
8 MEDICAL MARIJUANA CENTERS;
9 (XVI) AUTHORIZATION FOR THE DEPARTMENT TO HAVE ACCESS TO
10 LICENSING INFORMATION TO ENSURE INCOME TAX PAYMENT;
11 (XVII) WHAT CONSTITUTES GOOD MORAL CHARACTER PURSUANT
12 TO SECTION 12-43.3-301 (1) (a) (I);
13 (XVIII) THE SIZE, DIMENSIONS, AND ACCEPTABLE COLORS FOR A
14 MEDICAL MARIJUANA CENTER SIGN AUTHORIZED PURSUANT TO SECTION
15 12-43.3-305 (5); AND
16 (XIX) SUCH OTHER MATTERS AS ARE NECESSARY FOR THE FAIR,
17 IMPARTIAL, STRINGENT, AND COMPREHENSIVE ADMINISTRATION OF THIS
18 ARTICLE.
19 (b) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED AS
20 DELEGATING TO THE MEDICAL MARIJUANA LICENSING AUTHORITY THE
21 AUTHORITY TO FIX PRICES;
22 (c) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO LIMIT A
23 LAW ENFORCEMENT AGENCY'S ABILITY TO INVESTIGATE UNLAWFUL
24 ACTIVITY IN RELATION TO A MEDICAL MARIJUANA CENTER.
25 (3) IN ANY HEARING HELD BY THE MEDICAL MARIJUANA LICENSING
26 AUTHORITY PURSUANT TO THIS ARTICLE, A PERSON MAY NOT REFUSE,
27 UPON REQUEST OF THE MEDICAL MARIJUANA LICENSING AUTHORITY, TO

1 TESTIFY OR PROVIDE OTHER INFORMATION ON THE GROUNDS OF
2 SELF-INCRIMINATION; BUT THE TESTIMONY OR OTHER INFORMATION
3 PRODUCED IN THE HEARING AND ANY INFORMATION DIRECTLY OR
4 INDIRECTLY DERIVED FROM THE TESTIMONY OR OTHER INFORMATION MAY
5 NOT BE USED AGAINST THE PERSON IN ANY CRIMINAL PROSECUTION BASED
6 ON A VIOLATION OF THIS ARTICLE EXCEPT A PROSECUTION FOR PERJURY IN
7 THE FIRST DEGREE COMMITTED IN SO TESTIFYING. CONTINUED REFUSAL
8 TO TESTIFY OR PROVIDE OTHER INFORMATION SHALL CONSTITUTE
9 GROUNDS FOR SUSPENSION OR REVOCATION OF A MEDICAL MARIJUANA
10 CENTER LICENSE GRANTED PURSUANT TO THIS ARTICLE.

11 **12-43.3-103. License.** (1) FOR THE PURPOSE OF REGULATING THE
12 CULTIVATION, SALE, AND DISTRIBUTION OF MEDICAL MARIJUANA, THE
13 MEDICAL MARIJUANA LICENSING AUTHORITY IN ITS DISCRETION, UPON
14 APPLICATION IN THE PRESCRIBED FORM MADE TO IT, MAY ISSUE AND
15 GRANT TO THE APPLICANT A MEDICAL MARIJUANA CENTER LICENSE,
16 SUBJECT TO THE PROVISIONS AND RESTRICTIONS PROVIDED BY THIS
17 ARTICLE.

18 (2) ALL LICENSES GRANTED PURSUANT TO THIS ARTICLE SHALL BE
19 VALID FOR A PERIOD OF TWO YEARS FROM THE DATE OF ISSUANCE UNLESS
20 REVOKED OR SUSPENDED PURSUANT TO SECTION 12-43.3-401.

21 **12-43.3-104. Medical marijuana center license cash fund.** ALL
22 MONEYS COLLECTED PURSUANT TO THIS ARTICLE SHALL BE TRANSMITTED
23 TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE MEDICAL
24 MARIJUANA CENTER LICENSE CASH FUND, WHICH FUND IS HEREBY
25 CREATED AND REFERRED TO IN THIS SECTION AS THE "FUND". THE
26 MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY
27 THE GENERAL ASSEMBLY TO THE DEPARTMENT FOR THE DIRECT AND

1 INDIRECT COSTS ASSOCIATED WITH IMPLEMENTING THIS ARTICLE. ANY
2 MONEYS IN THE FUND NOT EXPENDED FOR THE PURPOSE OF THIS ARTICLE
3 MAY BE INVESTED BY THE STATE TREASURER AS PROVIDED BY LAW. ALL
4 INTEREST AND INCOME DERIVED FROM THE INVESTMENT AND DEPOSIT OF
5 MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. ANY
6 UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE FUND AT
7 THE END OF A FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT
8 BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANOTHER FUND.

9 PART 2

10 STATE AND LOCAL LICENSING PROCESS

11 **12-43.3-201. Local authority - applications.** PRIOR TO
12 SUBMITTING AN APPLICATION TO THE MEDICAL MARIJUANA LICENSING
13 AUTHORITY FOR A LICENSE DESCRIBED IN SECTION 12-43.3-103, AN
14 APPLICANT SHALL FILE AN APPLICATION FOR APPROVAL WITH THE
15 APPROPRIATE LOCAL LICENSING AUTHORITY, INCLUDING A FEE
16 DETERMINED BY THE LOCAL LICENSING AUTHORITY, ON FORMS PROVIDED
17 BY THE MEDICAL MARIJUANA LICENSING AUTHORITY AND CONTAINING
18 SUCH INFORMATION AS THE MEDICAL MARIJUANA LICENSING AUTHORITY
19 MAY REQUIRE. EACH APPLICATION SHALL BE VERIFIED BY THE OATH OR
20 AFFIRMATION OF SUCH PERSONS AS ARE PRESCRIBED BY THE MEDICAL
21 MARIJUANA LICENSING AUTHORITY.

22 **12-43.3-202. Public notice - posting and publication - public**
23 **hearing.** (1) UPON RECEIPT OF AN APPLICATION, EXCEPT AN APPLICATION
24 FOR RENEWAL OR FOR TRANSFER OF OWNERSHIP, A LOCAL LICENSING
25 AUTHORITY SHALL SCHEDULE A PUBLIC HEARING ON THE APPLICATION NOT
26 LESS THAN THIRTY DAYS AFTER THE FILING DATE OF THE APPLICATION AND
27 SHALL POST AND PUBLISH THE PUBLIC NOTICE THEREOF NOT LESS THAN

1 TENDAYS PRIOR TO THE HEARING. PUBLIC NOTICE SHALL BE GIVEN BY THE
2 APPLICANT POSTING A SIGN IN A CONSPICUOUS PLACE ON THE PREMISES
3 FOR WHICH APPLICATION HAS BEEN MADE AND BY PUBLICATION IN A
4 NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY IN WHICH THE
5 PREMISES ARE LOCATED.

6 (2) NOTICE GIVEN BY POSTING SHALL INCLUDE A SIGN OF SUITABLE
7 MATERIAL, NOT LESS THAN TWENTY-TWO INCHES WIDE AND TWENTY-SIX
8 INCHES HIGH, COMPOSED OF LETTERS NOT LESS THAN ONE INCH IN HEIGHT
9 AND STATING THE TYPE OF LICENSE APPLIED FOR, THE DATE OF THE
10 APPLICATION, THE DATE OF THE HEARING, AND THE NAME AND ADDRESS
11 OF THE APPLICANT, AND SUCH OTHER INFORMATION AS MAY BE REQUIRED
12 TO FULLY APPRISE THE PUBLIC OF THE NATURE OF THE APPLICATION. IF
13 THE APPLICANT IS A PARTNERSHIP, THE SIGN SHALL CONTAIN THE NAMES
14 AND ADDRESSES OF ALL PARTNERS, AND IF THE APPLICANT IS A
15 CORPORATION, AN ASSOCIATION, OR ANOTHER ORGANIZATION, THE SIGN
16 SHALL CONTAIN THE NAMES AND ADDRESSES OF THE PRESIDENT,
17 VICE-PRESIDENT, SECRETARY, AND MANAGER OR OTHER MANAGING
18 OFFICERS.

19 (3) NOTICE GIVEN BY PUBLICATION SHALL CONTAIN THE SAME
20 INFORMATION AS THAT REQUIRED FOR SIGNS.

21 (4) IF THE BUILDING IN WHICH THE MEDICAL MARIJUANA IS TO BE
22 SOLD IS IN EXISTENCE AT THE TIME OF THE APPLICATION, ANY SIGN POSTED
23 AS REQUIRED IN SUBSECTIONS (1) AND (2) OF THIS SECTION SHALL BE
24 PLACED SO AS TO BE CONSPICUOUS AND PLAINLY VISIBLE TO THE GENERAL
25 PUBLIC. IF THE BUILDING IS NOT CONSTRUCTED AT THE TIME OF THE
26 APPLICATION, THE APPLICANT SHALL POST THE NOTICE ON THE PREMISES
27 UPON WHICH THE BUILDING IS TO BE CONSTRUCTED IN SUCH A MANNER

1 THAT THE NOTICE SHALL BE CONSPICUOUS AND PLAINLY VISIBLE TO THE
2 GENERAL PUBLIC.

3 (5) (a) AT THE PUBLIC HEARING HELD PURSUANT TO THIS SECTION,
4 EACH PARTY IN INTEREST SHALL BE ALLOWED TO PRESENT EVIDENCE AND
5 TO CROSS-EXAMINE WITNESSES.

6 (b) AS USED IN THIS SUBSECTION (5) AND IN SECTION 12-43.3-203,
7 "PARTY IN INTEREST" MEANS ANY OF THE FOLLOWING:

8 (I) THE APPLICANT;

9 (II) AN ADULT RESIDENT OF THE NEIGHBORHOOD UNDER
10 CONSIDERATION WHO DOES NOT REPRESENT A GROUP IDENTIFIED IN
11 SUBPARAGRAPH (V) OF THIS PARAGRAPH (b);

12 (III) THE OWNER OR MANAGER OF A BUSINESS LOCATED IN THE
13 NEIGHBORHOOD UNDER CONSIDERATION;

14 (IV) THE PRINCIPAL OR REPRESENTATIVE OF A SCHOOL OR DAY
15 CARE CENTER LOCATED WITHIN THE NEIGHBORHOOD AND WITHIN ONE
16 THOUSAND FEET OF THE PREMISES FOR WHICH A MEDICAL MARIJUANA
17 CENTER LICENSE IS UNDER CONSIDERATION;

18 (V) ONE REPRESENTATIVE OF AN ORGANIZED NEIGHBORHOOD
19 GROUP THAT ENCOMPASSES PART OR ALL OF THE NEIGHBORHOOD UNDER
20 CONSIDERATION FROM PRESENTING EVIDENCE SUBJECT TO THIS SECTION.
21 THE REPRESENTATIVE SHALL RESIDE WITHIN THE NEIGHBORHOOD GROUP'S
22 GEOGRAPHIC BOUNDARIES AND SHALL BE A MEMBER OF THE
23 NEIGHBORHOOD GROUP.

24 (VI) A REPRESENTATIVE OF A LOCAL LAW ENFORCEMENT AGENCY.

25 (c) THE LOCAL LICENSING AUTHORITY, IN ITS DISCRETION, MAY
26 LIMIT THE PRESENTATION OF EVIDENCE AND CROSS-EXAMINATION SO AS
27 TO PREVENT REPETITIVE AND CUMULATIVE EVIDENCE OR EXAMINATION.

1 **12-43.3-203. Results of local investigation - decision of**

2 **authorities.** (1) NOT LESS THAN FIVE DAYS PRIOR TO THE DATE OF THE
3 HEARING REQUIRED IN SECTION 12-43.3-202, THE LOCAL LICENSING
4 AUTHORITY SHALL MAKE KNOWN ITS FINDINGS, BASED ON THE
5 INFORMATION IN THE APPLICATION, IN WRITING TO THE APPLICANT AND A
6 PARTY IN INTEREST. THE LOCAL LICENSING AUTHORITY HAS AUTHORITY
7 TO REFUSE TO ISSUE AN APPROVAL FOR GOOD CAUSE, SUBJECT TO JUDICIAL
8 REVIEW.

9 (2) (a) BEFORE ENTERING A DECISION APPROVING OR DENYING AN
10 APPLICATION, THE LOCAL LICENSING AUTHORITY SHALL CONSIDER, EXCEPT
11 WHERE THIS ARTICLE SPECIFICALLY PROVIDES OTHERWISE:

12 (I) THE FACTS AND EVIDENCE ADDUCED AS A RESULT OF ITS
13 INVESTIGATION, AS WELL AS ANY OTHER FACTS;

14 (II) THE REASONABLE REQUIREMENTS OF THE NEIGHBORHOOD FOR
15 THE TYPE OF LICENSE FOR WHICH APPLICATION HAS BEEN MADE;

16 (III) THE DESIRES OF THE ADULT INHABITANTS OF THE
17 NEIGHBORHOOD;

18 (IV) THE NUMBER, TYPE, AND AVAILABILITY OF MEDICAL
19 MARIJUANA OUTLETS LOCATED IN OR NEAR THE NEIGHBORHOOD UNDER
20 CONSIDERATION; AND

21 (V) ANY OTHER PERTINENT MATTERS AFFECTING THE
22 QUALIFICATIONS OF THE APPLICANT FOR THE CONDUCT OF THE TYPE OF
23 BUSINESS PROPOSED.

24 (b) THE LOCAL LICENSING AUTHORITY MAY, BUT IS NOT REQUIRED
25 TO, CONSIDER THE REASONABLE REQUIREMENTS OF THE NEIGHBORHOOD
26 IN CONSIDERING THE CONVERSION OR TRANSFER OF A LICENSE.

27 (3) A DECISION OF THE LOCAL LICENSING AUTHORITY APPROVING

1 OR DENYING AN APPLICATION SHALL BE RELEASED IN WRITING STATING
2 THE REASONS FOR THE DECISION WITHIN THIRTY DAYS AFTER THE DATE OF
3 THE PUBLIC HEARING; EXCEPT THAT A LOCAL LICENSING AUTHORITY MAY
4 DELAY APPROVING AN APPLICATION IF NECESSARY UNDER THE PROVISIONS
5 OF SUBSECTION (4) OF THIS SECTION. THE LOCAL LICENSING AUTHORITY
6 SHALL SEND A COPY OF THE DECISION BY CERTIFIED MAIL TO THE
7 APPLICANT AT THE ADDRESS SHOWN IN THE APPLICATION. A DECISION
8 APPROVING A MEDICAL MARIJUANA CENTER LICENSE MAY INCLUDE A LIMIT
9 ON THE NUMBER OF PATIENTS THE CENTER MAY SERVE IN ORDER TO MEET
10 THE NEEDS AND NECESSITIES OF THE NEIGHBORHOOD.

11 (4) A LOCAL LICENSING AUTHORITY SHALL NOT APPROVE AN
12 APPLICATION UNTIL THE BUILDING IN WHICH THE BUSINESS IS TO BE
13 CONDUCTED IS READY FOR OCCUPANCY WITH THE FURNITURE, FIXTURES,
14 AND EQUIPMENT IN PLACE AS NECESSARY TO COMPLY WITH THE
15 APPLICABLE PROVISIONS OF THIS ARTICLE, AND THEN ONLY AFTER
16 INSPECTION OF THE PREMISES HAS BEEN MADE BY THE LOCAL LICENSING
17 AUTHORITY TO DETERMINE THAT THE APPLICANT HAS COMPLIED WITH THE
18 ARCHITECT'S DRAWING AND THE PLOT PLAN AND DETAILED SKETCH FOR
19 THE INTERIOR OF THE BUILDING SUBMITTED WITH THE APPLICATION.

20 (5) AFTER APPROVAL OF AN APPLICATION, THE LOCAL LICENSING
21 AUTHORITY SHALL NOTIFY THE MEDICAL MARIJUANA LICENSING
22 AUTHORITY OF THE APPROVAL, AND THE MEDICAL MARIJUANA AUTHORITY
23 SHALL INVESTIGATE AND EITHER APPROVE OR DISAPPROVE THE
24 APPLICATION FOR A STATE LICENSE.

25 **12-43.3-204. Medical marijuana licensing authority**
26 **consideration of a license application.** (1) THE MEDICAL MARIJUANA
27 LICENSING AUTHORITY SHALL DENY A MEDICAL MARIJUANA CENTER

1 LICENSE IF:

2 (a) THE APPLICANT HAS NOT PAID THE STATE OR LOCAL LICENSING
3 FEE;

4 (b) THE PREMISES ON WHICH THE APPLICANT PROPOSES TO
5 CONDUCT ITS BUSINESS DO NOT MEET THE REQUIREMENTS OF THIS
6 ARTICLE;

7 (c) THE CHARACTER OF THE APPLICANT IS SUCH THAT VIOLATIONS
8 OF THIS ARTICLE WOULD BE LIKELY TO RESULT IF A LICENSE WERE
9 GRANTED; OR

10 (d) THE MEDICAL MARIJUANA LICENSING AUTHORITY DETERMINES
11 THE LICENSES ALREADY GRANTED FOR THE PARTICULAR LOCALITY ARE
12 ADEQUATE FOR THE REASONABLE NEEDS OF THE COMMUNITY BASED ON
13 THE TESTIMONY AND EVIDENCE OF THE MEDICAL NEEDS AND NECESSITY
14 OF THE POTENTIAL CUSTOMERS FOR THE APPROVAL OF THE LICENSE AT THE
15 PROPOSED LOCATION FOR THE SALE OF THE MEDICAL MARIJUANA.

16 (2) THE MEDICAL MARIJUANA LICENSING AUTHORITY SHALL NOT
17 DENY A MEDICAL MARIJUANA CENTER LICENSE EXCEPT UPON CONCLUSION
18 OF A HEARING CONDUCTED AFTER FIFTEEN DAYS' NOTICE TO THE
19 APPLICANT AND TO THE LOCAL LICENSING AUTHORITY. THE NOTICE SHALL
20 BE IN WRITING AND SHALL STATE THE GROUNDS UPON WHICH THE
21 APPLICATION MAY BE REFUSED. IF THE APPLICANT DOES NOT RESPOND TO
22 THE NOTICE WITHIN FIFTEEN DAYS AFTER THE DATE OF THE NOTICE, THE
23 MEDICAL MARIJUANA LICENSING AUTHORITY SHALL DENY THE
24 APPLICATION FOR A LICENSE. THE MEDICAL MARIJUANA LICENSING
25 AUTHORITY SHALL CONDUCT THE HEARING IN ACCORDANCE WITH THE
26 PROVISIONS OF SECTION 24-4-105, C.R.S., AND ANY JUDICIAL REVIEW OF
27 THE MEDICAL MARIJUANA LICENSING AUTHORITY'S DECISION SHALL BE

1 PURSUANT TO SECTION 24-4-106, C.R.S.

2 PART 3

3 LICENSE PROVISIONS

4 **12-43.3-301. Persons prohibited as licensees.** (1) (a) A
5 MEDICAL MARIJUANA CENTER LICENSE ISSUED PURSUANT TO THIS ARTICLE
6 SHALL NOT BE ISSUED TO OR HELD BY:

7 (I) A PERSON WHO IS NOT OF GOOD MORAL CHARACTER. THE
8 APPLICANT FOR A MEDICAL MARIJUANA CENTER LICENSE SHALL PRESENT
9 TESTIMONY AND OPINION EVIDENCE AS WELL AS PETITIONS AND
10 DOCUMENTATION AT THE HEARING HELD PURSUANT TO SECTION
11 12-43.3-202 TO PROVE THAT THE APPLICANT IS QUALIFIED TO HOLD A
12 LICENSE BASED UPON SATISFACTORY PROOF OF GOOD MORAL CHARACTER
13 AS WELL AS THE TESTIMONY OF BUSINESS PERSONS AND NEIGHBORS FROM
14 INSIDE THE DESIGNATED NEIGHBORHOOD OF THE RELEVANT AREA UNDER
15 CONSIDERATION, AS DETERMINED BY THE LOCAL LICENSING AUTHORITY.

16 (II) A NATURAL PERSON UNDER TWENTY-ONE YEARS OF AGE;

17 (III) A LICENSED PHYSICIAN;

18 (IV) A PEACE OFFICER, AS DEFINED IN SECTION 16-2.5-101, C.R.S.,
19 OR A FAMILY MEMBER OF A PEACE OFFICER;

20 (V) A PERSON WHO IS DELINQUENT IN FILING ANY TAX RETURNS
21 WITH A TAXING AGENCY; PAYING ANY TAXES, INTEREST, OR PENALTIES;
22 PAYING ANY JUDGMENTS DUE TO A GOVERNMENT AGENCY; REPAYING
23 GOVERNMENT-INSURED STUDENT LOANS; OR PAYING CHILD SUPPORT;

24 (VI) A PERSON WHO HAS BEEN CONVICTED OF ANY FELONY OR OF
25 A MISDEMEANOR PURSUANT TO PART 4 OF ARTICLE 18 OF TITLE 18, C.R.S.;

26 OR

27 (VII) A PERSON WHO EMPLOYEES A PERSON AT THE MEDICAL

1 MARIJUANA CENTER WHO HAS NOT PASSED A CRIMINAL HISTORY RECORD
2 CHECK.

3 (b) IN MAKING A DETERMINATION AS TO CHARACTER OR WHEN
4 CONSIDERING THE CONVICTION OF A CRIME, THE MEDICAL MARIJUANA OR
5 LOCAL LICENSING AUTHORITY SHALL BE GOVERNED BY THE PROVISIONS OF
6 SECTION 24-5-101, C.R.S.

7 (2) AT THE TIME OF FILING AN APPLICATION FOR ISSUANCE OR
8 RENEWAL OF A MEDICAL MARIJUANA CENTER LICENSE, AN APPLICANT
9 SHALL SUBMIT A SET OF HIS OR HER FINGERPRINTS AND FILE PERSONAL
10 HISTORY INFORMATION CONCERNING THE APPLICANT'S QUALIFICATIONS
11 FOR A LICENSE ON FORMS PREPARED BY THE MEDICAL MARIJUANA
12 LICENSING AUTHORITY. THE MEDICAL MARIJUANA LICENSING AUTHORITY
13 SHALL SUBMIT THE FINGERPRINTS TO THE COLORADO BUREAU OF
14 INVESTIGATION FOR THE PURPOSE OF CONDUCTING FINGERPRINT-BASED
15 CRIMINAL HISTORY RECORD CHECKS. THE COLORADO BUREAU OF
16 INVESTIGATION SHALL FORWARD THE FINGERPRINTS TO THE FEDERAL
17 BUREAU OF INVESTIGATION FOR THE PURPOSE OF CONDUCTING
18 FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECKS. THE MEDICAL
19 MARIJUANA LICENSING AUTHORITY MAY ACQUIRE A NAME-BASED
20 CRIMINAL HISTORY RECORD CHECK FOR AN APPLICANT OR A LICENSE
21 HOLDER WHO HAS TWICE SUBMITTED TO A FINGERPRINT-BASED CRIMINAL
22 HISTORY RECORD CHECK AND WHOSE FINGERPRINTS ARE UNCLASSIFIABLE.
23 AN APPLICANT WHO HAS PREVIOUSLY SUBMITTED FINGERPRINTS FOR
24 MEDICAL MARIJUANA LICENSING PURPOSES MAY REQUEST THAT THE
25 FINGERPRINTS ON FILE BE USED. THE MEDICAL MARIJUANA LICENSING
26 AUTHORITY SHALL USE THE INFORMATION RESULTING FROM THE
27 FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK TO INVESTIGATE

1 AND DETERMINE WHETHER AN APPLICANT IS QUALIFIED TO HOLD A
2 LICENSE PURSUANT TO THIS ARTICLE. THE MEDICAL MARIJUANA
3 LICENSING AUTHORITY MAY VERIFY ANY OF THE INFORMATION AN
4 APPLICANT IS REQUIRED TO SUBMIT.

5 (3) THE LOCAL LICENSING AUTHORITY SHALL MAKE THE FINDINGS
6 OF THE INFORMATION ON THE APPLICATION KNOWN FIVE DAYS PRIOR TO
7 THE HEARING CONDUCTED PURSUANT TO SECTION 12-43.3-202.

8 **12-43.3-302. Location restrictions.** (1) A MEDICAL MARIJUANA
9 CENTER OPERATION SHALL ESTABLISH LEGAL CONTROL OF ITS PHYSICAL
10 LOCATION. THE PHYSICAL LOCATION SHALL MEET ALL APPLICABLE LOCAL
11 AND STATE ZONING LAWS.

12 (2) A MEDICAL MARIJUANA CENTER OPERATION SHALL NOT BE
13 LOCATED WITHIN ONE THOUSAND FEET OF THE PERIMETER OF A PUBLIC OR
14 PRIVATE ELEMENTARY OR SECONDARY SCHOOL, PRESCHOOL, OR DAY CARE
15 CENTER THAT EXISTED AT THE LOCATION PRIOR TO THE ESTABLISHMENT
16 OF THE OPERATION; EXCEPT THAT THE LOCAL LICENSING AUTHORITY MAY
17 ISSUE A VARIANCE.

18 **12-43.3-303. Transfer of ownership and temporary permits.**

19 (1) (a) A MEDICAL MARIJUANA CENTER LICENSE GRANTED UNDER THE
20 PROVISIONS OF THIS ARTICLE SHALL NOT BE TRANSFERABLE EXCEPT AS
21 PROVIDED IN THIS SUBSECTION (1).

22 (b) WHEN A MEDICAL MARIJUANA CENTER LICENSE HAS BEEN
23 ISSUED TO A HUSBAND AND WIFE, OR TO GENERAL OR LIMITED PARTNERS,
24 THE DEATH OF A SPOUSE OR PARTNER SHALL NOT REQUIRE THE SURVIVING
25 SPOUSE OR PARTNER TO OBTAIN A NEW LICENSE. ALL RIGHTS AND
26 PRIVILEGES GRANTED UNDER THE ORIGINAL LICENSE SHALL CONTINUE IN
27 FULL FORCE AND EFFECT AS TO THE SURVIVING SPOUSE OR PARTNERS FOR

1 THE BALANCE OF THE LICENSE PERIOD.

2 (c) FOR ANY OTHER TRANSFER OF OWNERSHIP, A MEDICAL
3 MARIJUANA CENTER LICENSEE SHALL APPLY TO THE MEDICAL MARIJUANA
4 AND LOCAL LICENSING AUTHORITIES ON FORMS PREPARED AND FURNISHED
5 BY THE MEDICAL MARIJUANA LICENSING AUTHORITY. IN DETERMINING
6 WHETHER TO PERMIT A TRANSFER OF OWNERSHIP, THE MEDICAL
7 MARIJUANA AND LOCAL LICENSING AUTHORITIES SHALL CONSIDER ONLY
8 THE REQUIREMENTS OF SECTION 12-43.3-204. THE LOCAL LICENSING
9 AUTHORITY MAY HOLD A HEARING ON THE APPLICATION FOR TRANSFER OF
10 OWNERSHIP. THE LOCAL LICENSING AUTHORITY SHALL NOT HOLD A
11 HEARING PROVIDED FOR BY THIS PARAGRAPH (c) UNTIL IT HAS
12 CONSPICUOUSLY POSTED A NOTICE OF HEARING ON THE LICENSED
13 PREMISES FOR A PERIOD OF TEN DAYS AND PROVIDED NOTICE OF THE
14 HEARING TO THE APPLICANT AT LEAST TEN DAYS PRIOR TO THE HEARING.
15 ANY TRANSFER OF OWNERSHIP HEARING BY THE MEDICAL MARIJUANA
16 LICENSING AUTHORITY SHALL BE HELD PURSUANT TO SECTION 12-43.3-204
17 (2).

18 (2) NOTWITHSTANDING ANY PROVISIONS OF THIS ARTICLE TO THE
19 CONTRARY, A LOCAL LICENSING AUTHORITY SHALL HAVE DISCRETIONARY
20 AUTHORITY TO ISSUE A TEMPORARY PERMIT TO A TRANSFEREE OF A
21 MEDICAL MARIJUANA CENTER LICENSE APPLICATION APPROVED BY THE
22 LOCAL LICENSING AUTHORITY PURSUANT TO THIS ARTICLE. A TEMPORARY
23 PERMIT SHALL AUTHORIZE A TRANSFEREE TO CONTINUE SELLING MEDICAL
24 MARIJUANA AS PERMITTED UNDER THE PERMANENT LICENSE DURING THE
25 PERIOD IN WHICH AN APPLICATION TO TRANSFER THE OWNERSHIP OF THE
26 LICENSE IS PENDING.

27 (3) A TEMPORARY PERMIT SHALL AUTHORIZE A TRANSFEREE TO

1 CONDUCT BUSINESS, SELL, AND CULTIVATE MEDICAL MARIJUANA IN
2 ACCORDANCE WITH THE MEDICAL MARIJUANA CENTER LICENSE OF THE
3 TRANSFEROR SUBJECT TO COMPLIANCE WITH ALL OF THE FOLLOWING
4 CONDITIONS:

5 (a) THE PREMISES WHERE MEDICAL MARIJUANA IS SOLD OR
6 CULTIVATED SHALL HAVE BEEN PREVIOUSLY LICENSED BY THE MEDICAL
7 MARIJUANA AND LOCAL LICENSING AUTHORITIES, AND THE MEDICAL
8 MARIJUANA CENTER LICENSE SHALL HAVE BEEN VALID AT THE TIME THE
9 APPLICANT FILED THE APPLICATION FOR TRANSFER OF OWNERSHIP WITH
10 THE LOCAL LICENSING AUTHORITY THAT HAS JURISDICTION TO APPROVE
11 AN APPLICATION FOR A TEMPORARY PERMIT.

12 (b) THE APPLICANT HAS FILED WITH THE LOCAL LICENSING
13 AUTHORITY ON FORMS PROVIDED BY THE MEDICAL MARIJUANA LICENSING
14 AUTHORITY AN APPLICATION FOR THE TEMPORARY PERMIT. THE
15 APPLICATION SHALL INCLUDE, BUT NEED NOT BE LIMITED TO, THE
16 FOLLOWING INFORMATION:

17 (I) THE NAME AND ADDRESS OF THE APPLICANT;

18 (II) THE APPLICANT'S FINANCIAL INTEREST IN THE PROPOSED
19 TRANSFER;

20 (III) THE PREMISES FOR WHICH THE TEMPORARY PERMIT IS
21 SOUGHT;

22 (IV) SUCH OTHER INFORMATION AS THE LOCAL LICENSING
23 AUTHORITY MAY REQUIRE; AND

24 (V) A STATEMENT THAT ALL ACCOUNTS FOR MEDICAL MARIJUANA
25 SOLD TO THE APPLICANT ARE PAID.

26 (c) THE APPLICANT SHALL FILE THE APPLICATION FOR A
27 TEMPORARY PERMIT NO LATER THAN THIRTY DAYS AFTER THE FILING OF

1 THE APPLICATION FOR TRANSFER OF OWNERSHIP AND SHALL INCLUDE WITH
2 THE APPLICATION PAYMENT OF A TEMPORARY PERMIT FEE NOT TO EXCEED
3 ONE HUNDRED DOLLARS.

4 (d) WHEN APPLYING TO THE LOCAL LICENSING AUTHORITY FOR A
5 TEMPORARY PERMIT, THE APPLICANT SHALL PROVIDE TO THE MEDICAL
6 MARIJUANA LICENSING AUTHORITY, BY FACSIMILE OR OTHERWISE, A COPY
7 OF THE STATEMENT MADE PURSUANT TO SUBPARAGRAPH (V) OF
8 PARAGRAPH (b) OF THIS SUBSECTION (3). THE STATEMENT IS A PUBLIC
9 RECORD AND SHALL BE OPEN TO INSPECTION BY THE PUBLIC.

10 (4) A LOCAL LICENSING AUTHORITY SHALL ISSUE OR DENY A
11 TEMPORARY PERMIT WITHIN FIVE WORKING DAYS AFTER RECEIVING THE
12 APPLICATION. A TEMPORARY PERMIT ISSUED PURSUANT TO THIS SECTION
13 SHALL BE VALID UNTIL SUCH TIME AS THE APPLICATION TO TRANSFER
14 OWNERSHIP OF THE MEDICAL MARIJUANA CENTER LICENSE TO THE
15 APPLICANT IS GRANTED OR DENIED OR FOR ONE HUNDRED TWENTY DAYS,
16 WHICHEVER OCCURS FIRST; EXCEPT THAT, IF THE APPLICATION TO
17 TRANSFER THE LICENSE HAS NOT BEEN GRANTED OR DENIED WITHIN THE
18 ONE-HUNDRED-TWENTY-DAY PERIOD AND THE TRANSFEREE
19 DEMONSTRATES GOOD CAUSE, THE LOCAL LICENSING AUTHORITY MAY, IN
20 ITS DISCRETION, EXTEND THE VALIDITY OF THE TEMPORARY PERMIT FOR
21 AN ADDITIONAL PERIOD NOT TO EXCEED SIXTY DAYS.

22 (5) A LOCAL LICENSING AUTHORITY SHALL ISSUE A TEMPORARY
23 PERMIT IN THE EVENT OF A TRANSFER OF POSSESSION OF THE LICENSED
24 PREMISES BY OPERATION OF LAW, A PETITION IN BANKRUPTCY PURSUANT
25 TO FEDERAL BANKRUPTCY LAW, THE APPOINTMENT OF A RECEIVER, A
26 FORECLOSURE ACTION BY A SECURED PARTY, OR A COURT ORDER
27 DISPOSSESSING THE PRIOR MEDICAL MARIJUANA CENTER LICENSEE OF ALL

1 RIGHTS OF POSSESSION PURSUANT TO ARTICLE 40 OF TITLE 13, C.R.S.

2 (6) A LOCAL LICENSING AUTHORITY MAY CANCEL, REVOKE, OR
3 SUMMARILY SUSPEND A TEMPORARY PERMIT IF IT DETERMINES THERE IS
4 PROBABLE CAUSE TO BELIEVE THAT THE TRANSFEREE HAS VIOLATED ANY
5 PROVISION OF THIS ARTICLE OR HAS VIOLATED ANY RULE ADOPTED BY THE
6 MEDICAL MARIJUANA OR LOCAL LICENSING AUTHORITY OR HAS FAILED TO
7 TRUTHFULLY DISCLOSE THOSE MATTERS REQUIRED PURSUANT TO THE
8 APPLICATION FORMS REQUIRED BY THE MEDICAL MARIJUANA LICENSING
9 AUTHORITY.

10 **12-43.3-304. General license provisions.** (1) THIS ARTICLE
11 DOES NOT PROHIBIT A POLITICAL SUBDIVISION OF THIS STATE FROM
12 LIMITING THE NUMBER OF MEDICAL MARIJUANA CENTERS THAT MAY
13 OPERATE IN THE POLITICAL SUBDIVISION OR FROM ENACTING REASONABLE
14 ZONING REGULATIONS APPLICABLE TO MEDICAL MARIJUANA CENTERS
15 BASED ON LOCAL GOVERNMENT ZONING, HEALTH, AND SAFETY LAWS FOR
16 THE DISTRIBUTION OF MEDICAL MARIJUANA.

17 (2) A MEDICAL MARIJUANA CENTER SHALL NOTIFY THE MEDICAL
18 MARIJUANA LICENSING AUTHORITY IN WRITING WITHIN TEN DAYS AFTER
19 AN OFFICER OR EMPLOYEE CEASES TO WORK AT OR OTHERWISE BE
20 ASSOCIATED WITH THE CENTER. THE OFFICER OR EMPLOYEE SHALL
21 SURRENDER HIS OR HER IDENTIFICATION CARD TO THE MEDICAL
22 MARIJUANA LICENSING AUTHORITY.

23 (3) A MEDICAL MARIJUANA CENTER SHALL NOTIFY THE MEDICAL
24 MARIJUANA LICENSING AUTHORITY IN WRITING OF THE NAME, ADDRESS,
25 AND DATE OF BIRTH OF AN OFFICER OR EMPLOYEE BEFORE THE NEW
26 OFFICER OR EMPLOYEE BEGINS WORKING AT OR IS ASSOCIATED WITH THE
27 CENTER OPERATION. THE OFFICER OR EMPLOYEE SHALL PASS A CRIMINAL

1 HISTORY RECORD CHECK AND OBTAIN THE IDENTIFICATION PRIOR TO BEING
2 ASSOCIATED WITH OR WORKING AT THE MEDICAL MARIJUANA CENTER.

3 (4) A MEDICAL MARIJUANA CENTER SHALL NOT ACQUIRE, POSSESS,
4 CULTIVATE, DELIVER, TRANSFER, TRANSPORT, SUPPLY, OR DISPENSE
5 MARIJUANA FOR ANY PURPOSE EXCEPT TO ASSIST PATIENTS, AS DEFINED
6 BY SECTION 14 (1) (d) OF ARTICLE XVIII OF THE STATE CONSTITUTION.

7 (5) ALL OPERATORS OF A MEDICAL MARIJUANA CENTER SHALL BE
8 RESIDENTS OF COLORADO.

9 **12-43.3-305. Medical marijuana center requirements.** (1) A
10 MEDICAL MARIJUANA CENTER SHALL BE A COLORADO NONPROFIT
11 CORPORATION, BUT NEED NOT BE DESIGNATED AS A NONPROFIT
12 CORPORATION BY THE FEDERAL GOVERNMENT.

13 (2) A MEDICAL MARIJUANA CENTER MAY OPERATE ONLY BETWEEN
14 THE HOURS OF 8 A.M. AND 7 P.M., MONDAY THROUGH SUNDAY. A
15 MEDICAL MARIJUANA CENTER SHALL NOT PERMIT SMOKING OR
16 CONSUMPTION OF MEDICAL MARIJUANA ON ITS PREMISES.

17 (3) (a) A MEDICAL MARIJUANA CENTER MAY POSSESS NO MORE
18 THAN SIX MEDICAL MARIJUANA PLANTS AND TWO OUNCES OF MEDICAL
19 MARIJUANA FOR EACH PATIENT WHO HAS REGISTERED THE CENTER AS HIS
20 OR HER PRIMARY CENTER PURSUANT TO SECTION 25-1.5-106 (10) (e),
21 C.R.S.; EXCEPT THAT A MEDICAL MARIJUANA CENTER MAY HAVE A TOTAL
22 OF NO MORE THAN THREE THOUSAND MEDICAL MARIJUANA PLANTS AND
23 NO MORE THAN ONE THOUSAND OUNCES OF MEDICAL MARIJUANA IN ITS
24 INVENTORY AT ANY ONE TIME.

25 (b) A MEDICAL MARIJUANA CENTER MAY CULTIVATE ITS OWN
26 MEDICAL MARIJUANA OR PURCHASE IT FROM ANOTHER LICENSED MEDICAL
27 MARIJUANA CENTER IN COLORADO. A MEDICAL MARIJUANA CENTER MAY

1 NOT PURCHASE MEDICAL MARIJUANA FROM A SOURCE OTHER THAN A
2 LICENSED COLORADO MEDICAL MARIJUANA CENTER AND THE CENTER MAY
3 PURCHASE MEDICAL MARIJUANA ONLY IN AN AMOUNT THAT IS TEN
4 PERCENT OR LESS OF THE CENTER'S TOTAL INVENTORY OF MEDICAL
5 MARIJUANA. A MEDICAL MARIJUANA CENTER MAY SELL NO MORE THAN
6 TEN PERCENT OF ITS INVENTORY TO OTHER LICENSED MEDICAL MARIJUANA
7 CENTERS. A MEDICAL MARIJUANA CENTER SHALL ONLY PURCHASE OR
8 SELL MEDICAL MARIJUANA THAT IS CULTIVATED IN COLORADO.

9 (c) A MEDICAL MARIJUANA CENTER SHALL KEEP RECORDS
10 NECESSARY TO ENSURE ITS COMPLIANCE WITH THIS SUBSECTION (3).

11 (4) A MEDICAL MARIJUANA CENTER SHALL ALLOW REASONABLE
12 INSPECTION OF ITS PREMISES BY THE MEDICAL MARIJUANA LICENSING
13 AUTHORITY, INCLUDING DURING REASONABLE BUSINESS HOURS.

14 (5) A MEDICAL MARIJUANA CENTER MAY ONLY DISPLAY ONE
15 IDENTIFICATION SIGN AT ITS LOCATION. THE SIGN MAY NOT CONTAIN THE
16 NAME OR LOGO OF THE CENTER LOCATION AND SHALL CONFORM TO THE
17 RULES PROMULGATED BY THE MEDICAL MARIJUANA AUTHORITY PURSUANT
18 TO SECTION 12-43.3-102 (2) (a) (XVIII).

19 (6) A MEDICAL MARIJUANA CENTER THAT ADVERTISES ITS
20 SERVICES SHALL NOT:

21 (a) USE DEPICTIONS OF ANY PART OF THE MARIJUANA PLANT, THE
22 WHOLE PLANT, MARIJUANA LEAVES, OR PARAPHERNALIA IN THE
23 ADVERTISING;

24 (b) USE A LOGO OR ANY FORM OF BRANDING IN THE ADVERTISING;

25 OR

26 (c) PROVIDE ANY PRICING FOR ITS PRODUCTS IN THE ADVERTISING.

27 (7) A VIOLATION OF ANY OF SUBSECTIONS (1) TO (6) OF THIS

1 SECTION IS GROUNDS FOR SUSPENSION OR REVOCATION OF A MEDICAL
2 MARIJUANA CENTER LICENSE.

3 PART 4

4 DISCIPLINARY ACTIONS

5 **12-43.3-401. Suspension - revocation - fines.** (1) IN ADDITION
6 TO ANY OTHER PENALTIES PRESCRIBED BY THIS ARTICLE, THE MEDICAL
7 MARIJUANA LICENSING AUTHORITY HAS THE POWER, ON ITS OWN MOTION
8 OR ON COMPLAINT, AFTER INVESTIGATION AND PUBLIC HEARING AT WHICH
9 THE MEDICAL MARIJUANA CENTER LICENSEE SHALL BE AFFORDED AN
10 OPPORTUNITY TO BE HEARD, TO SUSPEND OR REVOKE A MEDICAL
11 MARIJUANA CENTER LICENSE ISSUED BY THE AUTHORITY. THE MEDICAL
12 MARIJUANA AUTHORITY MAY SUSPEND OR REVOKE A LICENSE FOR ANY
13 VIOLATION BY THE LICENSEE OR BY A PRINCIPAL OFFICER, A BOARD
14 MEMBER, AN AGENT, OR AN EMPLOYEE OF THE LICENSEE OF THE
15 PROVISIONS OF THIS ARTICLE OR ANY OF THE RULES AUTHORIZED
16 PURSUANT TO THIS ARTICLE OR OF ANY OF THE TERMS, CONDITIONS, OR
17 PROVISIONS OF THE LICENSE ISSUED BY THE AUTHORITY. THE MEDICAL
18 MARIJUANA LICENSING AUTHORITY HAS THE POWER TO ADMINISTER OATHS
19 AND ISSUE SUBPOENAS TO REQUIRE THE PRESENCE OF PERSONS AND THE
20 PRODUCTION OF PAPERS, BOOKS, AND RECORDS NECESSARY TO THE
21 DETERMINATION OF ANY HEARING THAT THE LICENSING AUTHORITY IS
22 AUTHORIZED TO CONDUCT.

23 (2) THE MEDICAL MARIJUANA LICENSING AUTHORITY SHALL
24 PROVIDE NOTICE OF SUSPENSION OR REVOCATION, AS WELL AS ANY
25 REQUIRED NOTICE OF A HEARING, BY MAILING THE SAME IN WRITING TO
26 THE MEDICAL MARIJUANA CENTER LICENSEE AT THE ADDRESS CONTAINED
27 IN THE MEDICAL MARIJUANA CENTER LICENSE. A SUSPENSION SHALL NOT

1 BE FOR A LONGER PERIOD THAN SIX MONTHS. IF A LICENSE IS SUSPENDED
2 OR REVOKED, NO PART OF THE FEES PAID FOR THE LICENSE SHALL BE
3 RETURNED TO THE LICENSEE. THE MEDICAL MARIJUANA LICENSING
4 AUTHORITY MAY SUMMARILY SUSPEND A LICENSE WITHOUT NOTICE
5 PENDING ANY PROSECUTION, INVESTIGATION, OR PUBLIC HEARING.
6 NOTHING IN THIS SECTION SHALL PREVENT THE SUMMARY SUSPENSION OF
7 A LICENSE FOR A TEMPORARY PERIOD OF NOT MORE THAN FIFTEEN DAYS.

8 (3) (a) WHENEVER A DECISION OF THE MEDICAL MARIJUANA
9 LICENSING AUTHORITY SUSPENDING A MEDICAL MARIJUANA CENTER
10 LICENSE FOR FOURTEEN DAYS OR LESS BECOMES FINAL, WHETHER BY
11 FAILURE OF THE LICENSEE TO APPEAL THE DECISION OR BY EXHAUSTION OF
12 ALL APPEALS AND JUDICIAL REVIEW, THE LICENSEE MAY, BEFORE THE
13 OPERATIVE DATE OF THE SUSPENSION, PETITION FOR PERMISSION TO PAY
14 A FINE IN LIEU OF HAVING THE LICENSE SUSPENDED FOR ALL OR PART OF
15 THE SUSPENSION PERIOD. UPON THE RECEIPT OF THE PETITION, THE
16 MEDICAL MARIJUANA LICENSING AUTHORITY MAY, IN ITS SOLE
17 DISCRETION, STAY THE PROPOSED SUSPENSION AND CAUSE ANY
18 INVESTIGATION TO BE MADE THAT IT DEEMS DESIRABLE AND MAY, IN ITS
19 SOLE DISCRETION, GRANT THE PETITION IF IT IS SATISFIED:

20 (I) THAT THE PUBLIC WELFARE AND MORALS WOULD NOT BE
21 IMPAIRED BY PERMITTING THE MEDICAL MARIJUANA CENTER LICENSEE TO
22 OPERATE DURING THE PERIOD SET FOR SUSPENSION AND THAT THE
23 PAYMENT OF THE FINE WILL ACHIEVE THE DESIRED DISCIPLINARY
24 PURPOSES;

25 (II) THAT THE BOOKS AND RECORDS OF THE MEDICAL MARIJUANA
26 CENTER LICENSEE ARE KEPT IN SUCH A MANNER THAT THE LOSS OF SALES
27 THAT THE LICENSEE WOULD HAVE SUFFERED HAD THE SUSPENSION GONE

1 INTO EFFECT CAN BE DETERMINED WITH REASONABLE ACCURACY
2 THEREFROM; AND

3 (III) THAT THE MEDICAL MARIJUANA CENTER LICENSEE HAS NOT
4 HAD HIS OR HER MEDICAL MARIJUANA CENTER LICENSE SUSPENDED OR
5 REVOKED, NOR HAD ANY SUSPENSION STAYED BY PAYMENT OF A FINE,
6 DURING THE TWO YEARS IMMEDIATELY PRECEDING THE DATE OF THE
7 MOTION OR COMPLAINT THAT HAS RESULTED IN A FINAL DECISION TO
8 SUSPEND THE LICENSE.

9 (b) THE FINE ACCEPTED SHALL BE NOT LESS THAN FIVE HUNDRED
10 DOLLARS NOR MORE THAN ONE HUNDRED THOUSAND DOLLARS.

11 (c) PAYMENT OF A FINE PURSUANT TO THE PROVISIONS OF THIS
12 SUBSECTION (3) SHALL BE IN THE FORM OF CASH OR IN THE FORM OF A
13 CERTIFIED CHECK OR CASHIER'S CHECK MADE PAYABLE TO THE MEDICAL
14 MARIJUANA LICENSING AUTHORITY.

15 (4) UPON PAYMENT OF A FINE PURSUANT TO SUBSECTION (3) OF
16 THIS SECTION, THE MEDICAL MARIJUANA LICENSING AUTHORITY SHALL
17 ENTER ITS FURTHER ORDER PERMANENTLY STAYING THE IMPOSITION OF
18 THE SUSPENSION. FINES PAID TO THE MEDICAL MARIJUANA LICENSING
19 AUTHORITY PURSUANT TO SUBSECTION (3) OF THIS SECTION SHALL BE
20 TRANSMITTED TO THE STATE TREASURER WHO SHALL CREDIT THE SAME TO
21 THE STATE GENERAL FUND.

22 (5) IN CONNECTION WITH ANY PETITION PURSUANT TO SUBSECTION
23 (3) OF THIS SECTION, THE MEDICAL MARIJUANA LICENSING AUTHORITY IS
24 LIMITED TO THE GRANTING OF SUCH STAYS AS ARE NECESSARY FOR IT TO
25 COMPLETE ITS INVESTIGATION AND MAKE ITS FINDINGS AND, IF IT MAKES
26 SUCH FINDINGS, TO THE GRANTING OF AN ORDER PERMANENTLY STAYING
27 THE IMPOSITION OF THE ENTIRE SUSPENSION OR THAT PORTION OF THE

1 SUSPENSION NOT OTHERWISE CONDITIONALLY STAYED.

2 (6) IF THE MEDICAL MARIJUANA LICENSING AUTHORITY DOES NOT
3 MAKE THE FINDINGS REQUIRED IN PARAGRAPH (a) OF SUBSECTION (3) OF
4 THIS SECTION AND DOES NOT ORDER THE SUSPENSION PERMANENTLY
5 STAYED, THE SUSPENSION SHALL GO INTO EFFECT ON THE OPERATIVE DATE
6 FINALLY SET BY THE MEDICAL MARIJUANA LICENSING AUTHORITY.

7 (7) NO LATER THAN JANUARY 15 OF EACH YEAR, THE MEDICAL
8 MARIJUANA LICENSING AUTHORITY SHALL COMPILE A REPORT OF THE
9 PRECEDING YEAR'S ACTIONS IN WHICH FINES, SUSPENSIONS, OR
10 REVOCATIONS WERE IMPOSED BY THE MEDICAL MARIJUANA LICENSING
11 AUTHORITY. THE MEDICAL MARIJUANA LICENSING AUTHORITY SHALL FILE
12 ONE COPY OF SAID REPORT WITH THE CHIEF CLERK OF THE HOUSE OF
13 REPRESENTATIVES, ONE COPY WITH THE SECRETARY OF THE SENATE, AND
14 SIX COPIES IN THE JOINT LEGISLATIVE LIBRARY.

15 PART 5

16 JUDICIAL REVIEW

17 **12-43.3-501. Judicial review.** A PERSON APPLYING TO THE COURT
18 FOR A REVIEW OF THE MEDICAL MARIJUANA LICENSING AUTHORITY'S
19 DECISION DENYING THE ISSUANCE OR RENEWAL OF A LICENSE OR A LOCAL
20 LICENSING AUTHORITY'S DECISION GRANTING OR DENYING APPROVAL
21 SHALL APPLY FOR REVIEW WITHIN THIRTY DAYS AFTER THE DATE OF THE
22 DECISION BY THE LOCAL LICENSING AUTHORITY OR, IN THE CASE OF A
23 REVIEW OF A DECISION BY THE MEDICAL MARIJUANA LICENSING
24 AUTHORITY, WITHIN THIRTY DAYS AFTER THE DATE OF THE DECISION BY
25 THE MEDICAL MARIJUANA LICENSING AUTHORITY. THE PERSON APPLYING
26 FOR REVIEW SHALL BE REQUIRED TO PAY THE COST OF PREPARING A
27 TRANSCRIPT OF PROCEEDINGS BEFORE THE LICENSING AUTHORITY IF HE OR

1 SHE REQUESTS A TRANSCRIPT OR IF THE LICENSING AUTHORITY FURNISHES
2 A TRANSCRIPT PURSUANT TO COURT ORDER.

3 **SECTION 2.** 25-1.5-106, Colorado Revised Statutes, is amended
4 to read:

5 **25-1.5-106. Medical marijuana program - powers and duties**
6 **of the state health agency. (1) Legislative declaration. (a) THE**
7 GENERAL ASSEMBLY HEREBY DECLARES THAT IT IS NECESSARY TO
8 IMPLEMENT RULES TO ENSURE THAT PATIENTS SUFFERING FROM
9 LEGITIMATE DEBILITATING MEDICAL CONDITIONS ARE ABLE TO SAFELY
10 GAIN ACCESS TO MEDICAL MARIJUANA AND TO ENSURE THAT THESE
11 PATIENTS:

12 (I) ARE NOT SUBJECT TO CRIMINAL PROSECUTION FOR THEIR USE
13 OF MEDICAL MARIJUANA IN ACCORDANCE WITH SECTION 14 OF ARTICLE
14 XVIII OF THE STATE CONSTITUTION, THIS SECTION, AND THE RULES OF THE
15 STATE HEALTH AGENCY; AND

16 (II) ARE ABLE TO ESTABLISH AN AFFIRMATIVE DEFENSE TO THEIR
17 USE OF MEDICAL MARIJUANA IN ACCORDANCE WITH SECTION 14 OF
18 ARTICLE XVIII OF THE STATE CONSTITUTION, THIS SECTION, AND THE
19 RULES OF THE STATE HEALTH AGENCY.

20 (b) THE GENERAL ASSEMBLY HEREBY DECLARES THAT IT IS
21 NECESSARY TO IMPLEMENT RULES TO PREVENT PERSONS WHO DO NOT
22 SUFFER FROM LEGITIMATE DEBILITATING MEDICAL CONDITIONS FROM
23 USING SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION AS A
24 MEANS TO SELL, ACQUIRE, POSSESS, PRODUCE, USE, OR TRANSPORT
25 MARIJUANA IN VIOLATION OF STATE AND FEDERAL LAWS.

26 (2) **Definitions.** IN ADDITION TO THE DEFINITIONS SET FORTH IN
27 SECTION 14 (1) OF ARTICLE XVIII OF THE STATE CONSTITUTION, AS USED

1 IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

2 (a) "BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP", FOR PURPOSES
3 OF THE MEDICAL MARIJUANA PROGRAM, MEANS:

4 (I) A PHYSICIAN AND A PATIENT HAVE A TREATMENT OR
5 COUNSELING RELATIONSHIP, IN THE COURSE OF WHICH THE PHYSICIAN HAS
6 COMPLETED A FULL ASSESSMENT OF THE PATIENT'S MEDICAL HISTORY AND
7 CURRENT MEDICAL CONDITION, INCLUDING A PERSONAL PHYSICAL
8 EXAMINATION;

9 (II) THE PHYSICIAN HAS CONSULTED WITH THE PATIENT WITH
10 RESPECT TO THE PATIENT'S DEBILITATING MEDICAL CONDITION BEFORE
11 THE PATIENT APPLIES FOR A REGISTRY IDENTIFICATION CARD; AND

12 (III) THE PHYSICIAN IS AVAILABLE TO OR OFFERS TO PROVIDE
13 FOLLOW-UP CARE AND TREATMENT TO THE PATIENT, INCLUDING BUT NOT
14 LIMITED TO PATIENT EXAMINATIONS, TO DETERMINE THE EFFICACY OF THE
15 USE OF MEDICAL MARIJUANA AS A TREATMENT OF THE PATIENT'S
16 DEBILITATING MEDICAL CONDITION.

17 (b) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF
18 THE STATE HEALTH AGENCY.

19 (c) "IN GOOD STANDING", WITH RESPECT TO A PHYSICIAN'S
20 LICENSE, MEANS:

21 (I) THE PHYSICIAN HOLDS A DOCTOR OF MEDICINE OR DOCTOR OF
22 OSTEOPATHIC MEDICINE DEGREE FROM AN ACCREDITED MEDICAL SCHOOL;

23 (II) THE PHYSICIAN HOLDS A VALID, UNRESTRICTED LICENSE TO
24 PRACTICE MEDICINE IN COLORADO; AND

25 (III) THE PHYSICIAN HAS A VALID AND UNRESTRICTED UNITED
26 STATES DEPARTMENT OF JUSTICE FEDERAL DRUG ENFORCEMENT
27 ADMINISTRATION CONTROLLED SUBSTANCES REGISTRATION.

1 (d) "MEDICAL MARIJUANA PROGRAM" MEANS THE PROGRAM
2 ESTABLISHED BY SECTION 14 OF ARTICLE XVIII OF THE STATE
3 CONSTITUTION AND THIS SECTION.

4 (e) "PRIMARY CAREGIVER" MEANS A NATURAL PERSON, OTHER
5 THAN THE PATIENT OR THE PATIENT'S PHYSICIAN, WHO IS EIGHTEEN YEARS
6 OF AGE OR OLDER AND HAS SIGNIFICANT RESPONSIBILITY FOR MANAGING
7 THE WELL-BEING OF A PATIENT WHO HAS A DEBILITATING MEDICAL
8 CONDITION.

9 (f) "REGISTRY IDENTIFICATION CARD" MEANS THE
10 NONTRANSFERABLE CONFIDENTIAL REGISTRY IDENTIFICATION CARD
11 ISSUED BY THE STATE HEALTH AGENCY TO PATIENTS AND PRIMARY
12 CAREGIVERS PURSUANT TO THIS SECTION.

13 (g) "STATE HEALTH AGENCY" MEANS THE PUBLIC HEALTH RELATED
14 ENTITY OF STATE GOVERNMENT DESIGNATED BY THE GOVERNOR BY
15 EXECUTIVE ORDER PURSUANT TO SECTION 14 OF ARTICLE XVIII OF THE
16 STATE CONSTITUTION.

17 ~~(f)~~ (3) **Rule-making.** (a) The ~~department~~ STATE HEALTH AGENCY
18 shall, pursuant to section 14 of article XVIII of the state constitution,
19 promulgate rules of administration concerning the implementation of the
20 medical marijuana program ~~established by such section and that~~
21 specifically govern the following:

22 (a) (I) The establishment and maintenance of a confidential
23 registry of patients who have applied for and are entitled to receive a
24 registry identification card. THE CONFIDENTIAL REGISTRY OF PATIENTS
25 MAY BE USED TO DETERMINE WHETHER A PHYSICIAN SHOULD BE REFERRED
26 TO THE COLORADO STATE BOARD OF MEDICAL EXAMINERS FOR A
27 SUSPECTED VIOLATION OF SECTION 14 OF ARTICLE XVIII OF THE STATE

1 CONSTITUTION, PARAGRAPH (a), (b), OR (c) OF SUBSECTION (4) OF THIS
2 SECTION, OR THE RULES PROMULGATED BY THE STATE HEALTH AGENCY
3 PURSUANT TO THIS SUBSECTION (3).

4 ~~(b)~~ (II) The development by the ~~department~~ STATE HEALTH
5 AGENCY of an application form and THE PROCESS FOR making ~~such~~ THE
6 form available to residents of this state seeking to be listed on the
7 confidential registry of patients who are entitled to receive a registry
8 identification card;

9 ~~(c)~~ (III) The verification by the ~~department~~ STATE HEALTH AGENCY
10 of medical information concerning patients who have applied for a
11 ~~confidential~~ registry IDENTIFICATION card OR FOR RENEWAL OF A
12 REGISTRY IDENTIFICATION CARD;

13 (IV) THE DEVELOPMENT BY THE STATE HEALTH AGENCY OF A
14 FORM THAT CONSTITUTES "WRITTEN DOCUMENTATION" AS DEFINED AND
15 USED IN SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION,
16 WHICH FORM A PHYSICIAN SHALL USE WHEN MAKING A MEDICAL
17 MARIJUANA RECOMMENDATION FOR A PATIENT;

18 ~~(d)~~ (V) The CONDITIONS FOR issuance AND RENEWAL, and THE
19 form, of ~~confidential~~ THE registry identification cards ISSUED TO
20 PATIENTS, INCLUDING BUT NOT LIMITED TO STANDARDS FOR ENSURING
21 THAT THE STATE HEALTH AGENCY ISSUES A REGISTRY IDENTIFICATION
22 CARD TO A PATIENT ONLY IF HE OR SHE HAS A BONA FIDE
23 PHYSICIAN-PATIENT RELATIONSHIP WITH A PHYSICIAN IN GOOD STANDING
24 AND LICENSED TO PRACTICE MEDICINE IN THE STATE OF COLORADO;

25 ~~(e)~~ (VI) Communications with law enforcement officials about
26 ~~confidential~~ registry identification cards that have been suspended ~~where~~
27 WHEN a patient is no longer diagnosed as having a debilitating medical

1 condition; and

2 (f) (VII) The manner in which the ~~department~~ STATE HEALTH
3 AGENCY may consider adding debilitating medical conditions to the list
4 of debilitating medical conditions contained in section 14 of article XVIII
5 of the state constitution.

6 (b) THE STATE HEALTH AGENCY MAY PROMULGATE RULES
7 REGARDING THE FOLLOWING:

8 (I) WHAT CONSTITUTES "SIGNIFICANT RESPONSIBILITY FOR
9 MANAGING THE WELL-BEING OF A PATIENT"; EXCEPT THAT THE ACT OF
10 SUPPLYING MEDICAL MARIJUANA OR MARIJUANA PARAPHERNALIA, BY
11 ITSELF, IS INSUFFICIENT TO CONSTITUTE "SIGNIFICANT RESPONSIBILITY FOR
12 MANAGING THE WELL-BEING OF A PATIENT";

13 (II) THE DEVELOPMENT OF A FORM FOR A PRIMARY CAREGIVER TO
14 USE IN APPLYING TO THE REGISTRY, WHICH FORM SHALL REQUIRE, AT A
15 MINIMUM, THAT THE APPLICANT PROVIDE HIS OR HER FULL NAME, HOME
16 ADDRESS, DATE OF BIRTH, AND LIST OF CRIMINAL CONVICTIONS, IF ANY,
17 AND AN ATTESTATION THAT THE APPLICANT HAS A SIGNIFICANT
18 RESPONSIBILITY FOR MANAGING THE WELL-BEING OF THE PATIENT FOR
19 WHOM HE OR SHE IS DESIGNATED AS THE PRIMARY CAREGIVER AND THAT
20 HE OR SHE UNDERSTANDS AND WILL ABIDE BY SECTION 14 OF ARTICLE
21 XVIII OF THE STATE CONSTITUTION, THIS SECTION, AND THE RULES
22 PROMULGATED BY THE STATE HEALTH AGENCY PURSUANT TO THIS
23 SECTION;

24 (III) THE DEVELOPMENT OF A FORM THAT CONSTITUTES "WRITTEN
25 DOCUMENTATION", AS DEFINED AND USED IN SECTION 14 OF ARTICLE
26 XVIII OF THE STATE CONSTITUTION, WHICH FORM A PHYSICIAN SHALL USE
27 WHEN MAKING A MEDICAL MARIJUANA RECOMMENDATION FOR A PATIENT;

1 AND

2 (IV) THE GROUNDS AND PROCEDURE FOR A PATIENT TO CHANGE
3 HIS OR HER DESIGNATED PRIMARY CAREGIVER.

4 (c) ON THE EFFECTIVE DATE OF THE RULES PROMULGATED
5 PURSUANT TO THIS SUBSECTION (3), THE MEDICAL MARIJUANA PROGRAM
6 RULES ADOPTED BY THE STATE BOARD OF HEALTH ARE REPEALED.

7 (4) **Physicians.** A PHYSICIAN WHO CERTIFIES A DEBILITATING
8 MEDICAL CONDITION FOR AN APPLICANT TO THE MEDICAL MARIJUANA
9 PROGRAM SHALL COMPLY WITH ALL OF THE FOLLOWING REQUIREMENTS:

10 (a) THE PHYSICIAN SHALL HAVE A VALID, UNRESTRICTED
11 COLORADO LICENSE TO PRACTICE MEDICINE, WHICH LICENSE IS IN GOOD
12 STANDING.

13 (b) THE PHYSICIAN MAY CERTIFY TO THE STATE HEALTH AGENCY
14 THAT A PATIENT HAS A DEBILITATING MEDICAL CONDITION AND THAT THE
15 PATIENT MAY BENEFIT FROM THE USE OF MEDICAL MARIJUANA ONLY IF THE
16 PHYSICIAN HAS A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP WITH THE
17 PATIENT APPLYING FOR THE MEDICAL MARIJUANA PROGRAM.

18 (c) THE PHYSICIAN SHALL MAINTAIN A RECORD-KEEPING SYSTEM
19 FOR ALL PATIENTS FOR WHOM THE PHYSICIAN HAS RECOMMENDED THE
20 MEDICAL USE OF MARIJUANA, AND, PURSUANT TO AN INVESTIGATION
21 INITIATED PURSUANT TO SECTION 12-36-118, C.R.S., THE PHYSICIAN
22 SHALL PRODUCE SUCH MEDICAL RECORDS TO THE COLORADO STATE
23 BOARD OF MEDICAL EXAMINERS AFTER REDACTING ANY PATIENT OR
24 PRIMARY CAREGIVER IDENTIFYING INFORMATION.

25 (d) A PHYSICIAN SHALL NOT:

26 (I) ACCEPT, SOLICIT, OR OFFER ANY FORM OF PECUNIARY
27 REMUNERATION FROM OR TO A PRIMARY CAREGIVER, DISTRIBUTOR, OR

1 ANY OTHER PROVIDER OF MEDICAL MARIJUANA;

2 (II) OFFER A DISCOUNT OR ANY OTHER THING OF VALUE TO A
3 PATIENT WHO USES OR AGREES TO USE A PARTICULAR PRIMARY
4 CAREGIVER, DISTRIBUTOR, OR OTHER PROVIDER OF MEDICAL MARIJUANA
5 TO PROCURE MEDICAL MARIJUANA;

6 (III) EXAMINE A PATIENT FOR PURPOSES OF DIAGNOSING A
7 DEBILITATING MEDICAL CONDITION AT A LOCATION WHERE MEDICAL
8 MARIJUANA IS SOLD OR DISTRIBUTED; OR

9 (IV) HOLD AN ECONOMIC INTEREST IN AN ENTERPRISE THAT
10 PROVIDES OR DISTRIBUTES MEDICAL MARIJUANA IF THE PHYSICIAN
11 CERTIFIES THE DEBILITATING MEDICAL CONDITION OF A PATIENT FOR
12 PARTICIPATION IN THE MEDICAL MARIJUANA PROGRAM.

13 (5) **Patients age eighteen to twenty-one years.** A PATIENT WHO
14 IS BETWEEN EIGHTEEN AND TWENTY-ONE YEARS OF AGE, UNLESS THE
15 PATIENT IS LEGALLY EMANCIPATED, WHO APPLIES TO BE PLACED ON THE
16 CONFIDENTIAL REGISTRY OF MEDICAL MARIJUANA PATIENTS SHALL
17 PROVIDE DOCUMENTATION OF MEDICAL MARIJUANA USE
18 RECOMMENDATIONS FROM TWO SEPARATE PHYSICIANS WHO ADVISED THE
19 PATIENT AT SEPARATE APPOINTMENTS. THE DOCUMENTATION SHALL
20 PROVIDE THAT THE PHYSICIANS DIAGNOSED THE PATIENT WITH A
21 DEBILITATING MEDICAL CONDITION AND ADVISED THE PATIENT THAT THE
22 PATIENT MIGHT BENEFIT FROM THE MEDICAL USE OF MARIJUANA IN
23 CONNECTION WITH THE DEBILITATING MEDICAL CONDITION.

24 (6) **Enforcement.** (a) IF THE STATE HEALTH AGENCY HAS
25 REASONABLE CAUSE TO BELIEVE THAT A PHYSICIAN HAS VIOLATED
26 SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, PARAGRAPH
27 (a), (b), OR (c) OF SUBSECTION (4) OF THIS SECTION, OR THE RULES

1 PROMULGATED BY THE STATE HEALTH AGENCY PURSUANT TO SUBSECTION
2 (3) OF THIS SECTION, THE STATE HEALTH AGENCY MAY REFER THE MATTER
3 TO THE COLORADO STATE BOARD OF MEDICAL EXAMINERS CREATED IN
4 SECTION 12-36-103, C.R.S., FOR AN INVESTIGATION AND DETERMINATION.

5 (b) IF THE STATE HEALTH AGENCY HAS REASONABLE CAUSE TO
6 BELIEVE THAT A PHYSICIAN HAS VIOLATED PARAGRAPH (d) OF SUBSECTION
7 (4) OF THIS SECTION, THE STATE HEALTH AGENCY SHALL CONDUCT A
8 HEARING PURSUANT TO SECTION 24-4-104, C.R.S., TO DETERMINE
9 WHETHER A VIOLATION HAS OCCURRED.

10 (c) UPON A FINDING OF UNPROFESSIONAL CONDUCT PURSUANT TO
11 SECTION 12-36-117 (1) (mm), C.R.S., BY THE COLORADO STATE BOARD
12 OF MEDICAL EXAMINERS OR A FINDING OF A VIOLATION OF PARAGRAPH (d)
13 OF SUBSECTION (4) OF THIS SECTION BY THE STATE HEALTH AGENCY, THE
14 STATE HEALTH AGENCY SHALL RESTRICT A PHYSICIAN'S AUTHORITY TO
15 RECOMMEND THE USE OF MEDICAL MARIJUANA, WHICH RESTRICTION MAY
16 INCLUDE THE REVOCATION OR SUSPENSION OF A PHYSICIAN'S PRIVILEGE TO
17 RECOMMEND MEDICAL MARIJUANA. THE RESTRICTION SHALL BE IN
18 ADDITION TO ANY SANCTION IMPOSED BY THE COLORADO STATE BOARD
19 OF MEDICAL EXAMINERS.

20 (d) WHEN THE STATE HEALTH AGENCY HAS OBJECTIVE AND
21 REASONABLE GROUNDS TO BELIEVE AND FINDS, UPON A FULL
22 INVESTIGATION, THAT A PHYSICIAN HAS BEEN GUILTY OF DELIBERATE AND
23 WILLFUL VIOLATION OF SECTION 14 OF ARTICLE XVIII OF THE STATE
24 CONSTITUTION, OF THIS SECTION, OR OF THE RULES PROMULGATED BY THE
25 STATE HEALTH AGENCY PURSUANT TO SUBSECTION (3) OF THIS SECTION,
26 OR THAT THE PUBLIC HEALTH, SAFETY, OR WELFARE IMPERATIVELY
27 REQUIRES EMERGENCY ACTION, AND THE EXECUTIVE DIRECTOR

1 INCORPORATES THOSE FINDINGS INTO HIS OR HER ORDER, THE EXECUTIVE
2 DIRECTOR MAY ORDER THAT THE STATE HEALTH AGENCY SUMMARILY
3 SUSPEND A PHYSICIAN'S AUTHORITY TO RECOMMEND THE USE OF MEDICAL
4 MARIJUANA PENDING THE PROCEEDINGS SET FORTH IN PARAGRAPH (a) OR
5 (b) OF THIS SUBSECTION (6), WHICH SHALL BE PROPERLY INSTITUTED AND
6 DETERMINED. FOR PURPOSES OF THIS PARAGRAPH (d), "FULL
7 INVESTIGATION" MEANS A REASONABLE ASCERTAINMENT OF THE
8 UNDERLYING FACTS ON WHICH THE ACTION IS BASED.

9 (7) **Renewal of patient identification card upon criminal**
10 **conviction.** A PATIENT WHO IS CONVICTED OF A CRIMINAL OFFENSE
11 UNDER ARTICLE 18 OF TITLE 18, C.R.S., SENTENCED OR ORDERED BY A
12 COURT TO DRUG OR SUBSTANCE ABUSE TREATMENT, OR SENTENCED TO
13 THE DIVISION OF YOUTH CORRECTIONS, SHALL BE SUBJECT TO IMMEDIATE
14 RENEWAL OF HIS OR HER PATIENT REGISTRY IDENTIFICATION CARD, AND
15 THE PATIENT SHALL APPLY FOR THE RENEWAL BASED UPON A
16 RECOMMENDATION OF A COURT-APPOINTED PHYSICIAN.

17 (8) A PARENT WHO SUBMITS A MEDICAL MARIJUANA REGISTRY
18 APPLICATION FOR HIS OR HER CHILD SHALL HAVE HIS OR HER SIGNATURE
19 NOTARIZED ON THE APPLICATION.

20 (9) **Primary caregivers.** (a) A PRIMARY CAREGIVER MAY NOT
21 DELEGATE TO ANY OTHER PERSON HIS OR HER AUTHORITY TO PROVIDE
22 MEDICAL MARIJUANA TO A PATIENT NOR MAY A PRIMARY CAREGIVER
23 ENGAGE OTHERS TO ASSIST IN PROVIDING MEDICAL MARIJUANA TO A
24 PATIENT.

25 (b) TWO OR MORE PRIMARY CAREGIVERS MAY NOT JOIN TOGETHER
26 FOR THE PURPOSE OF CULTIVATING MEDICAL MARIJUANA.

27 (c) ONLY A MEDICAL MARIJUANA CENTER OR A PRIMARY

1 CAREGIVER FOR HIS OR HER PATIENTS OR A PATIENT FOR HIMSELF OR
2 HERSELF MAY CULTIVATE OR PROVIDE MARIJUANA AND ONLY FOR
3 MEDICAL USE; EXCEPT THAT, IF A PRIMARY CAREGIVER IS PROVIDING
4 MEDICAL MARIJUANA TO A PATIENT, THE PATIENT MAY NOT CULTIVATE
5 AND PROVIDE HIS OR HER OWN MEDICAL MARIJUANA.

6 (d) A PRIMARY CAREGIVER SHALL PROVIDE TO A LAW
7 ENFORCEMENT AGENCY, UPON INQUIRY, THE REGISTRY IDENTIFICATION
8 CARD NUMBER OF EACH OF HIS OR HER PATIENTS. THE STATE HEALTH
9 AGENCY SHALL MAINTAIN A REGISTRY OF THIS INFORMATION AND MAKE
10 IT AVAILABLE TWENTY-FOUR HOURS PER DAY AND SEVEN DAYS A WEEK TO
11 LAW ENFORCEMENT FOR VERIFICATION PURPOSES. UPON INQUIRY BY A
12 LAW ENFORCEMENT OFFICER AS TO AN INDIVIDUAL'S STATUS AS A PATIENT
13 OR PRIMARY CAREGIVER, THE STATE HEALTH AGENCY SHALL CHECK THE
14 REGISTRY. IF THE INDIVIDUAL IS NOT REGISTERED AS A PATIENT OR
15 PRIMARY CAREGIVER, THE STATE HEALTH AGENCY MAY PROVIDE THAT
16 RESPONSE TO LAW ENFORCEMENT. IF THE PERSON IS A REGISTERED
17 PATIENT OR PRIMARY CAREGIVER, THE STATE HEALTH AGENCY MAY NOT
18 RELEASE INFORMATION UNLESS CONSISTENT WITH SECTION 14 OF ARTICLE
19 XVIII OF THE STATE CONSTITUTION. THE STATE HEALTH AGENCY MAY
20 PROMULGATE RULES TO PROVIDE FOR THE EFFICIENT ADMINISTRATION OF
21 THIS PARAGRAPH (d).

22 (10) **Patient - primary caregiver relationship.** (a) A PERSON
23 SHALL BE LISTED AS A PRIMARY CAREGIVER FOR NO MORE THAN FIVE
24 PATIENTS ON THE MEDICAL MARIJUANA PROGRAM REGISTRY AT ANY GIVEN
25 TIME; EXCEPT THAT THE STATE HEALTH AGENCY MAY ALLOW A PRIMARY
26 CAREGIVER TO SERVE MORE THAN FIVE PATIENTS IN EXCEPTIONAL
27 CIRCUMSTANCES. IN DETERMINING WHETHER EXCEPTIONAL

1 CIRCUMSTANCES EXIST THE STATE HEALTH AGENCY MAY CONSIDER THE
2 PROXIMITY OF MEDICAL MARIJUANA CENTERS TO THE PATIENT.

3 (b) A PATIENT SHALL HAVE ONLY ONE PRIMARY CAREGIVER AT
4 ANY GIVEN TIME.

5 (c) A PATIENT WHO HAS DESIGNATED A PRIMARY CAREGIVER FOR
6 HIMSELF OR HERSELF MAY NOT BE DESIGNATED AS A PRIMARY CAREGIVER
7 FOR ANOTHER PATIENT.

8 (d) (I) THE STATE HEALTH AGENCY SHALL MAINTAIN A SECURE
9 AND CONFIDENTIAL REGISTRY OF AVAILABLE PRIMARY CAREGIVERS FOR
10 THOSE PATIENTS WHO ARE UNABLE TO SECURE THE SERVICES OF A
11 PRIMARY CAREGIVER.

12 (II) AN EXISTING PRIMARY CAREGIVER MAY INDICATE AT THE TIME
13 OF REGISTRATION WHETHER HE OR SHE WOULD BE WILLING TO HANDLE
14 ADDITIONAL PATIENTS AND WAIVE CONFIDENTIALITY TO ALLOW RELEASE
15 OF HIS OR HER CONTACT INFORMATION TO PHYSICIANS OR REGISTERED
16 PATIENTS ONLY.

17 (III) AN INDIVIDUAL WHO IS NOT REGISTERED BUT IS WILLING TO
18 PROVIDE PRIMARY CAREGIVING SERVICES MAY SUBMIT HIS OR HER
19 CONTACT INFORMATION TO BE PLACED ON THE PRIMARY CAREGIVER
20 REGISTRY AFTER HE OR SHE HAS PASSED A CRIMINAL HISTORY RECORD
21 CHECK.

22 (IV) A PATIENT-PRIMARY CAREGIVER ARRANGEMENT SECURED
23 PURSUANT TO THIS PARAGRAPH (d) SHALL BE STRICTLY BETWEEN THE
24 PATIENT AND THE POTENTIAL PRIMARY CAREGIVER. THE STATE HEALTH
25 AGENCY, BY PROVIDING THE INFORMATION REQUIRED BY THIS PARAGRAPH
26 (d), SHALL NOT ENDORSE OR VOUCH FOR A PRIMARY CAREGIVER EXCEPT
27 TO THE EXTENT OF CONFIRMING THAT THE PRIMARY CAREGIVER PASSED A

1 CRIMINAL HISTORY RECORD CHECK. IN ORDER TO PASS THE CRIMINAL
2 HISTORY RECORD CHECK, THE PRIMARY CAREGIVER SHALL NOT HAVE BEEN
3 CONVICTED OF A FELONY OR A MISDEMEANOR PURSUANT TO PART 4 OF
4 ARTICLE 18 OF TITLE 18, C.R.S., WITHIN THE FIVE YEARS PRECEDING THE
5 CRIMINAL HISTORY RECORD CHECK.

6 (V) THE STATE HEALTH AGENCY MAY MAKE AN EXCEPTION, BASED
7 ON A REQUEST FROM A PATIENT, TO THE STATUTE LIMITING PRIMARY
8 CAREGIVERS TO FIVE PATIENTS. IF THE EXECUTIVE DIRECTOR MAKES AN
9 EXCEPTION TO THE LIMIT, THE STATE HEALTH AGENCY SHALL NOTE THE
10 EXCEPTION ON THE PRIMARY CAREGIVER'S RECORD IN THE REGISTRY.

11 (e) AT THE TIME A PATIENT APPLIES FOR INCLUSION ON THE
12 CONFIDENTIAL REGISTRY, THE PATIENT SHALL INDICATE WHETHER THE
13 PATIENT INTENDS TO CULTIVATE HIS OR HER OWN MEDICAL MARIJUANA OR
14 INTENDS TO OBTAIN IT FROM EITHER A PRIMARY CAREGIVER OR A
15 LICENSED MEDICAL MARIJUANA CENTER. IF THE PATIENT ELECTS TO USE
16 A LICENSED MEDICAL MARIJUANA CENTER, THE PATIENT SHALL REGISTER
17 THE PRIMARY CENTER HE OR SHE INTENDS TO USE.

18 (11) **Registry identification card required - denial - revocation**
19 **- renewal.** (a) TO BE CONSIDERED IN COMPLIANCE WITH THE PROVISIONS
20 OF SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, THIS
21 SECTION, AND THE RULES OF THE STATE HEALTH AGENCY, A PATIENT OR
22 PRIMARY CAREGIVER SHALL HAVE HIS OR HER REGISTRY IDENTIFICATION
23 CARD IN HIS OR HER POSSESSION AT ALL TIMES THAT HE OR SHE IS IN
24 POSSESSION OF ANY FORM OF MEDICAL MARIJUANA AND PRODUCE THE
25 SAME UPON REQUEST OF A LAW ENFORCEMENT OFFICER TO DEMONSTRATE
26 THAT THE PATIENT OR PRIMARY CAREGIVER IS NOT IN VIOLATION OF THE
27 LAW; EXCEPT THAT, IF MORE THAN THIRTY-FIVE DAYS HAVE PASSED SINCE

1 THE DATE THE PATIENT OR PRIMARY CAREGIVER FILED HIS OR HER
2 MEDICAL MARIJUANA PROGRAM APPLICATION AND THE STATE HEALTH
3 AGENCY HAS NOT YET ISSUED OR DENIED A REGISTRY IDENTIFICATION
4 CARD, A COPY OF THE PATIENT'S OR PRIMARY CAREGIVER'S APPLICATION
5 ALONG WITH PROOF OF THE DATE OF SUBMISSION SHALL BE IN THE
6 PATIENT'S OR PRIMARY CAREGIVER'S POSSESSION AT ALL TIMES THAT HE
7 OR SHE IS IN POSSESSION OF ANY FORM OF MEDICAL MARIJUANA UNTIL THE
8 STATE HEALTH AGENCY ISSUES OR DENIES THE REGISTRY IDENTIFICATION
9 CARD. A PERSON WHO VIOLATES SECTION 14 OF ARTICLE XVIII OF THE
10 STATE CONSTITUTION, THIS SECTION, OR THE RULES PROMULGATED BY THE
11 STATE HEALTH AGENCY MAY BE SUBJECT TO CRIMINAL PROSECUTION FOR
12 VIOLATIONS OF SECTION 18-18-406, C.R.S.

13 (b) THE EXECUTIVE DIRECTOR MAY DENY A PATIENT'S OR PRIMARY
14 CAREGIVER'S APPLICATION FOR A REGISTRY IDENTIFICATION CARD OR
15 REVOKE THE CARD IF THE EXECUTIVE DIRECTOR, IN ACCORDANCE WITH
16 ARTICLE 4 OF TITLE 24, C.R.S., DETERMINES THAT THE PHYSICIAN WHO
17 DIAGNOSED THE PATIENT'S DEBILITATING MEDICAL CONDITION, THE
18 PATIENT, OR THE PRIMARY CAREGIVER VIOLATED SECTION 14 OF ARTICLE
19 XVIII OF THE STATE CONSTITUTION, THIS SECTION, OR THE RULES
20 PROMULGATED BY THE STATE HEALTH AGENCY PURSUANT TO THIS
21 SECTION.

22 (c) A PATIENT OR PRIMARY CAREGIVER REGISTRY IDENTIFICATION
23 CARD SHALL BE VALID FOR ONE YEAR AND SHALL CONTAIN A UNIQUE
24 IDENTIFICATION NUMBER. IT SHALL BE THE RESPONSIBILITY OF THE
25 PATIENT OR PRIMARY CAREGIVER TO APPLY TO RENEW HIS OR HER
26 REGISTRY IDENTIFICATION CARD PRIOR TO THE DATE ON WHICH THE CARD
27 EXPIRES. THE EXECUTIVE DIRECTOR SHALL DEVELOP A FORM FOR A

1 PATIENT OR PRIMARY CAREGIVER TO USE IN RENEWING HIS OR HER
2 REGISTRY IDENTIFICATION CARD.

3 (12) **Use of medical marijuana.** (a) THE USE OF MEDICAL
4 MARIJUANA IS ALLOWED UNDER STATE LAW TO THE EXTENT THAT IT IS
5 CARRIED OUT IN ACCORDANCE WITH THE PROVISIONS OF SECTION 14 OF
6 ARTICLE XVIII OF THE STATE CONSTITUTION, THIS SECTION, AND THE
7 RULES OF THE STATE HEALTH AGENCY.

8 (b) A PATIENT OR PRIMARY CAREGIVER SHALL NOT:

9 (I) ENGAGE IN THE MEDICAL USE OF MARIJUANA IN A WAY THAT
10 ENDANGERS THE HEALTH AND WELL-BEING OF A PERSON;

11 (II) ENGAGE IN THE MEDICAL USE OF MARIJUANA IN PLAIN VIEW OF
12 OR IN A PLACE OPEN TO THE GENERAL PUBLIC;

13 (III) UNDERTAKE ANY TASK WHILE UNDER THE INFLUENCE OF
14 MEDICAL MARIJUANA, WHEN DOING SO WOULD CONSTITUTE NEGLIGENCE
15 OR PROFESSIONAL MALPRACTICE;

16 (IV) POSSESS MEDICAL MARIJUANA, OR OTHERWISE ENGAGE IN THE
17 USE OF MEDICAL MARIJUANA:

18 (A) IN A SCHOOL BUS; OR

19 (B) ON THE GROUNDS OF OR WITHIN ONE THOUSAND FEET OF THE
20 PERIMETER OF A DAY CARE, A PRESCHOOL, OR A PUBLIC OR PRIVATE
21 ELEMENTARY OR SECONDARY SCHOOL;

22 (V) ENGAGE IN THE USE OF MEDICAL MARIJUANA WHILE:

23 (A) IN A CORRECTIONAL FACILITY OR A COMMUNITY CORRECTIONS
24 FACILITY;

25 (B) SUBJECT TO A SENTENCE TO INCARCERATION OR ON
26 PROBATION OR PAROLE, UNLESS OTHERWISE PROVIDED BY COURT ORDER;

27 OR

1 (C) IN A VEHICLE, AIRCRAFT, OR MOTORBOAT;

2 (VI) OPERATE, NAVIGATE, OR BE IN ACTUAL PHYSICAL CONTROL
3 OF ANY VEHICLE, AIRCRAFT, OR MOTORBOAT WHILE UNDER THE
4 INFLUENCE OF MEDICAL MARIJUANA; OR

5 (VII) USE MEDICAL MARIJUANA IF THE PERSON DOES NOT HAVE A
6 DEBILITATING MEDICAL CONDITION AS DIAGNOSED BY THE PERSON'S
7 PHYSICIAN IN THE COURSE OF A BONA FIDE PHYSICIAN-PATIENT
8 RELATIONSHIP AND FOR WHICH THE PHYSICIAN HAS RECOMMENDED THE
9 USE OF MEDICAL MARIJUANA.

10 (c) A PERSON SHALL NOT ESTABLISH A BUSINESS TO PERMIT
11 PATIENTS TO CONGREGATE AND SMOKE OR OTHERWISE CONSUME MEDICAL
12 MARIJUANA.

13 (13) **Limit on cultivation of medical marijuana.** ONLY
14 REGISTERED PATIENTS, LICENSED PRIMARY CAREGIVERS, AND LICENSED
15 MEDICAL MARIJUANA CENTERS MAY CULTIVATE MEDICAL MARIJUANA.

16 (14) **Affirmative defense.** IF A PATIENT OR PRIMARY CAREGIVER
17 RAISES AN AFFIRMATIVE DEFENSE AS PROVIDED IN SECTION 14 (4) (b) OF
18 ARTICLE XVIII OF THE STATE CONSTITUTION, THE PATIENT'S PHYSICIAN
19 MUST ALSO CERTIFY THE SPECIFIC AMOUNTS IN EXCESS OF TWO OUNCES
20 THAT ARE NECESSARY TO ADDRESS THE PATIENT'S DEBILITATING MEDICAL
21 CONDITION AND WHY SUCH AMOUNTS ARE NECESSARY. A PATIENT WHO
22 ASSERTS THIS AFFIRMATIVE DEFENSE SHALL WAIVE CONFIDENTIALITY
23 PRIVILEGES.

24 (2) (15) **Fees.** The ~~department~~ STATE HEALTH AGENCY may
25 collect fees from patients who, pursuant to section 14 of article XVIII of
26 the state constitution, apply to the medical marijuana program established
27 ~~by such section~~ for a marijuana registry identification CARD for the

1 purpose of offsetting the ~~department's~~ STATE HEALTH AGENCY'S direct and
2 indirect costs of administering the program, AND THE COLORADO STATE
3 BOARD OF MEDICAL EXAMINERS' DIRECT AND INDIRECT COSTS ASSOCIATED
4 WITH INVESTIGATING AND PROSECUTING REFERRALS OF PHYSICIANS FROM
5 THE STATE HEALTH AGENCY IN RELATION TO THE MEDICAL MARIJUANA
6 PROGRAM. The amount of ~~such~~ THE fees shall be set by rule of the ~~state~~
7 ~~board of health~~ STATE HEALTH AGENCY. THE STATE HEALTH AGENCY
8 SHALL PROMULGATE RULES THAT ALLOW A PATIENT TO CLAIM INDIGENCE
9 AS IT RELATES TO PAYING THE FEE APPROVED PURSUANT TO THIS
10 SUBSECTION (15) AND THAT ESTABLISH THE STANDARD FOR INDIGENCE,
11 THE PROCESS THE STATE HEALTH AGENCY SHALL USE TO DETERMINE
12 WHETHER A PERSON WHO CLAIMS INDIGENCE MEETS THE STANDARD FOR
13 INDIGENCE, AND THE PROCESS TO WAIVE THE FEE APPROVED PURSUANT TO
14 THIS SUBSECTION (15) IF THE STATE HEALTH AGENCY DETERMINES THAT
15 THE PATIENT MEETS THE STANDARD FOR INDIGENCE. All fees collected by
16 the ~~department~~ STATE HEALTH AGENCY through the medical marijuana
17 program shall be transferred to the state treasurer who shall credit the
18 same to the medical marijuana program cash fund, which fund is hereby
19 created.

20 ~~(3)~~ (16) **Cash fund.** (a) The medical marijuana program cash
21 fund shall be subject to annual appropriation by the general assembly to
22 the ~~department~~ STATE HEALTH AGENCY for the purpose of establishing,
23 operating, and maintaining the medical marijuana program. ~~established~~
24 ~~by section 14 of article XVIII of the state constitution.~~ THE STATE
25 HEALTH AGENCY SHALL TRANSFER FROM THE MEDICAL MARIJUANA
26 PROGRAM CASH FUND TO THE DEPARTMENT OF REGULATORY AGENCIES,
27 FOR THE BENEFIT OF THE COLORADO STATE BOARD OF MEDICAL

1 EXAMINERS, MONEYS TO PAY THE DIRECT AND INDIRECT COSTS
2 ASSOCIATED WITH INVESTIGATING AND PROSECUTING REFERRALS OF
3 PHYSICIANS FROM THE STATE HEALTH AGENCY IN RELATION TO THE
4 MEDICAL MARIJUANA PROGRAM. All moneys credited to the medical
5 marijuana program cash fund and all interest derived from the deposit of
6 such moneys that are not expended during the fiscal year shall be retained
7 in the fund for future use and shall not be credited or transferred to the
8 general fund or any other fund.

9 (b) Notwithstanding any provision of paragraph (a) of this
10 subsection (3) (16) to the contrary, on April 20, 2009, the state treasurer
11 shall deduct two hundred fifty-eight thousand seven hundred thirty-five
12 dollars from the medical marijuana program cash fund and transfer such
13 sum to the general fund.

14 (17) (a) AS OF THE EFFECTIVE DATE OF SECTION 2 OF HOUSE BILL
15 10-____, ENACTED IN 2010, A PERSON SHALL NOT OPEN A MEDICAL
16 MARIJUANA CENTER UNTIL THE CENTER HAS BEEN LICENSED PURSUANT TO
17 ARTICLE 43.3 OF TITLE 12, C.R.S.

18 (b) AS OF THE EFFECTIVE DATE OF SECTION 2 OF HOUSE BILL
19 10-____, ENACTED IN 2010, A PERSON WHO OPERATES A MEDICAL
20 MARIJUANA CENTER MAY OPERATE THAT CENTER UNTIL JULY 1, 2011.
21 AFTER JULY 1, 2011, THE PERSON SHALL APPLY FOR LICENSURE OF THE
22 MEDICAL MARIJUANA CENTER PURSUANT TO ARTICLE 43.3 OF TITLE 12,
23 C.R.S., AND MAY CONTINUE OPERATING THE MEDICAL MARIJUANA CENTER
24 ON AND AFTER JULY 1, 2011, ONLY IF THE CENTER IS LICENSED.

25 **SECTION 3.** 25-5-403, Colorado Revised Statutes, is amended
26 BY THE ADDITION OF A NEW SUBSECTION to read:

27 **25-5-403. Offenses.** (3) THE PROVISIONS OF THIS SECTION SHALL

1 NOT APPLY TO A MEDICAL MARIJUANA CENTER LICENSED PURSUANT TO
2 ARTICLE 43.3 OF TITLE 12, C.R.S., THAT MANUFACTURES OR SELLS A FOOD
3 PRODUCT THAT CONTAINS MEDICAL MARIJUANA SO LONG AS THE FOOD
4 PRODUCT IS LABELED AS CONTAINING MEDICAL MARIJUANA AND THE
5 LABEL SPECIFIES THE AMOUNT OF MEDICAL MARIJUANA CONTAINED IN THE
6 FOOD PRODUCT.

7 **SECTION 4.** 25-1-1202 (1), Colorado Revised Statutes, is
8 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

9 **25-1-1202. Index of statutory sections regarding medical**
10 **record confidentiality and health information.** (1) Statutory
11 provisions concerning policies, procedures, and references to the release,
12 sharing, and use of medical records and health information include the
13 following:

14 (vv.5) SECTION 25-1.5-106, CONCERNING THE MEDICAL
15 MARIJUANA PROGRAM;

16 **SECTION 5.** 12-36-117 (1), Colorado Revised Statutes, is
17 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

18 **12-36-117. Unprofessional conduct - repeal.**

19 (1) "Unprofessional conduct" as used in this article means:

20 (mm) FAILURE TO COMPLY WITH THE REQUIREMENTS OF SECTION
21 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, SECTION 25-1.5-106,
22 C.R.S., OR THE RULES PROMULGATED BY THE STATE HEALTH AGENCY
23 PURSUANT TO SECTION 25-1.5-106 (3), C.R.S.

24 **SECTION 6.** 12-36-118 (5) (g), Colorado Revised Statutes, is
25 amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

26 **12-36-118. Disciplinary action by board - immunity.**

27 (5) (g) (X) IN ALL CASES INVOLVING ALLEGED VIOLATIONS OF SECTION

1 12-36-117 (1) (mm), THE BOARD SHALL PROMPTLY NOTIFY THE
2 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND
3 ENVIRONMENT OF ITS FINDINGS, INCLUDING WHETHER IT FOUND THAT THE
4 PHYSICIAN VIOLATED SECTION 12-36-117 (1) (mm) AND ANY
5 RESTRICTIONS IT PLACED ON THE PHYSICIAN WITH RESPECT TO
6 RECOMMENDING THE USE OF MEDICAL MARIJUANA.

7 **SECTION 7.** 24-75-402 (5), Colorado Revised Statutes, is
8 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

9 **24-75-402. Cash funds - limit on uncommitted reserves -**
10 **reduction in amount of fees - exclusions.** (5) Notwithstanding any
11 provision of this section to the contrary, the following cash funds are
12 excluded from the limitations specified in this section:

13 (z) THE MEDICAL MARIJUANA CENTER LICENSE CASH FUND
14 CREATED IN SECTION 12-43.3-104, C.R.S.

15 **SECTION 8. Specified effective date.** Section 1 of this act shall
16 take effect July 1, 2011, and the remainder of this act shall take effect
17 upon passage.

18 **SECTION 9. Safety clause.** The general assembly hereby finds,
19 determines, and declares that this act is necessary for the immediate
20 preservation of the public peace, health, and safety.

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0902.01 Michael Dohr

HOUSE BILL 10-1352

HOUSE SPONSORSHIP

Waller, Pace, Court, Gardner B., Gerou, Kagan, King S., Levy, Looper, Massey, May, McCann, Miklosi, Nikkel, Roberts, Ryden, Stephens

SENATE SPONSORSHIP

Steadman and Mitchell, Carroll M., Hudak, Morse, Newell, Penry, White

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING CHANGES TO CRIMES INVOLVING CONTROLLED
102 SUBSTANCES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill changes the classification, scope, definitions, and other specific provisions of certain drug-related crimes and the crime of fraud and deceit. The bill also includes conforming amendments and an effective date.

Section 1 makes legislative findings and declarations.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Section 2 lowers the penalty for unlawful use of a controlled substance.

Sections 3 and 4 separate the crime of possession of a controlled substance, other than marijuana, from the crime of manufacturing, dispensing, selling, distributing, or possessing with intent to manufacture, dispense, sell, or distribute a controlled substance, and change the penalties.

Section 5 makes changes to marijuana offenses and penalties.

Section 6 amends the special offender designations for certain drug crimes as follows:

! Increases the amount of a schedule I or II controlled substance necessary to designate as a special offender a person who commits unlawful introduction, distribution, or importation into the state; and

! Clarifies the conditions under which possession of a firearm in the commission of a drug offense designates an offender as a special offender.

Section 7 lowers the penalty for fraud and deceit in connection with controlled substances from a class 5 to a class 6 felony.

Section 8 directs the general assembly to appropriate a portion of the cost savings generated by the bill to the drug offender treatment fund.

Section 9 requires the division of criminal justice in the department of public safety to analyze annually and report the fiscal savings generated by the bill.

Sections 10 through 23 make conforming amendments.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 18-18-401, Colorado Revised Statutes, is amended
3 to read:

4 **18-18-401. Legislative declaration.** (1) The general assembly
5 hereby finds, determines, and declares that: ~~the strict control of controlled~~
6 ~~substances in this state is necessary for the immediate and future~~
7 ~~preservation of the public peace, health, and safety.~~

8 (a) THE REGULATION OF CONTROLLED SUBSTANCES IN THIS STATE
9 IS IMPORTANT AND NECESSARY FOR THE PRESERVATION OF PUBLIC SAFETY
10 AND PUBLIC HEALTH;

11 (b) SUCCESSFUL, COMMUNITY-BASED SUBSTANCE ABUSE

1 TREATMENT AND EDUCATION PROGRAMS, IN CONJUNCTION WITH MENTAL
2 HEALTH TREATMENT AS NECESSARY, PROVIDE EFFECTIVE TOOLS IN THE
3 EFFORT TO REDUCE DRUG USAGE AND CRIMINAL BEHAVIOR IN
4 COMMUNITIES. THERAPEUTIC INTERVENTION AND ONGOING
5 INDIVIDUALIZED TREATMENT PLANS PREPARED THROUGH THE USE OF
6 MEANINGFUL AND PROVEN ASSESSMENT TOOLS AND EVALUATIONS OFFER
7 A POTENTIAL ALTERNATIVE TO INCARCERATION IN APPROPRIATE
8 CIRCUMSTANCES AND SHOULD BE UTILIZED ACCORDINGLY.

9 (c) SAVINGS RECOGNIZED FROM REDUCTIONS IN INCARCERATION
10 RATES SHOULD BE DEDICATED TOWARD FUNDING COMMUNITY-BASED
11 TREATMENT OPTIONS AND OTHER MECHANISMS THAT ARE ACCESSIBLE TO
12 ALL OF THE STATE'S COUNTIES FOR THE IMPLEMENTATION AND
13 CONTINUATION OF SUCH PROGRAMS.

14 **SECTION 2.** 18-18-404 (1) (a), (2), and (3), Colorado Revised
15 Statutes, are amended to read:

16 **18-18-404. Unlawful use of a controlled substance.**

17 (1) (a) Except as is otherwise provided for offenses concerning
18 ~~marihuana~~ MARIJUANA and ~~marihuana~~ MARIJUANA concentrate in sections
19 18-18-406 and 18-18-406.5, any person who uses any controlled
20 substance, except when it is dispensed by or under the direction of a
21 person licensed or authorized by law to prescribe, administer, or dispense
22 ~~such~~ THE controlled substance for bona fide medical needs, commits A
23 CLASS 2 MISDEMEANOR.

24 ~~(f) A class 6 felony, if the controlled substance is listed in~~
25 ~~schedule I or II of part 2 of this article;~~

26 ~~(H) A class 1 misdemeanor if the controlled substance is listed in~~
27 ~~schedule III, IV, or V of part 2 of this article.~~

1 ~~(2) When any person is found guilty of a violation of subsection~~
2 ~~(1) of this section, after trial or upon a plea of guilty or no contest,~~
3 ~~the court shall conduct an investigation to determine whether or not the~~
4 ~~defendant is:~~

- 5 ~~(a) Addicted to a controlled substance;~~
6 ~~(b) In need of treatment for the use of a controlled substance; or~~
7 ~~(c) Dependent on a controlled substance.~~

8 ~~(3) If the court determines that the defendant is addicted to, a~~
9 ~~person in need of treatment for, or dependent upon a controlled substance,~~
10 ~~the court may declare the defendant a person in need of treatment, and the~~
11 ~~court, without imposing sentence and with the consent of such person,~~
12 ~~shall suspend further proceedings, shall order the person to participate in~~
13 ~~a treatment program, and shall order such other reasonable conditions for~~
14 ~~such person as it may require for such period, not to exceed four years, as~~
15 ~~the court may prescribe. Upon any violation of a condition of the~~
16 ~~treatment order, the court may impose sentence and proceed as otherwise~~
17 ~~provided by law. The court, in its discretion, may dismiss the~~
18 ~~proceedings against such person and discharge him or her from treatment~~
19 ~~before the expiration of the period prescribed for the treatment. If, during~~
20 ~~the period of this treatment, such person does not violate any of the~~
21 ~~conditions set forth by the court, the court, upon the expiration of such~~
22 ~~period, shall discharge such person and dismiss any further proceedings~~
23 ~~against him or her. Such discharge and dismissal shall not be termed a~~
24 ~~conviction for the purposes of disqualification or disapproval imposed by~~
25 ~~law upon conviction of a crime, including the penalties prescribed by law~~
26 ~~for second or subsequent convictions or for any other purpose.~~

27 **SECTION 3.** 18-18-405 (1) (a), the introductory portion to

1 18-18-405 (2) (a), 18-18-405 (2) (a) (I) (A), (2.3) (a), (2.5) (a), and (2.5)
2 (b), the introductory portion to 18-18-405 (3) (a), and 18-18-405 (5),
3 Colorado Revised Statutes, are amended to read:

4 **18-18-405. Unlawful distribution, manufacturing, dispensing,**
5 **or sale.** (1) (a) Except as authorized by part 3 of article 22 of title 12,
6 C.R.S., or by part 2 or 3 of this article, it is unlawful for any person
7 knowingly to manufacture, dispense, sell, OR distribute, possess; or to
8 possess with intent to manufacture, dispense, sell, or distribute, a
9 controlled substance; or induce, attempt to induce, or conspire with one
10 or more other persons, to manufacture, dispense, sell, distribute, possess;
11 or possess with intent to manufacture, dispense, sell, or distribute, a
12 controlled substance; or possess one or more chemicals or supplies or
13 equipment with intent to manufacture a controlled substance.

14 (2) (a) Except as is otherwise provided ~~in subsection (2.3) of this~~
15 ~~section for possession offenses not including possession with the intent~~
16 ~~to distribute involving one gram or less of any material, compound,~~
17 ~~mixture, or preparation that contains any quantity of a schedule I through~~
18 ~~IV controlled substance, and for offenses concerning marijuana~~
19 MARIJUANA and ~~marihuana~~ MARIJUANA concentrate in section 18-18-406
20 and for offenses involving minors in section 18-18-407 (1) (g), any
21 person who violates any of the provisions of subsection (1) of this
22 section:

23 (I) In the case of a controlled substance listed in schedule I or II
24 of part 2 of this article, commits:

25 (A) A class 3 felony; ~~except that a person commits a class 4 felony~~
26 ~~if such violation is based on the possession of a controlled substance~~
27 ~~listed in schedule II unless otherwise provided in paragraph (a) of~~

1 ~~subsection (3) of this section; or~~

2 ~~(2.3) (a) Any person who commits the offense of possession in~~
3 ~~violation of the provisions of subsection (1) of this section by possessing~~
4 ~~any material, compound, mixture, or preparation, weighing one gram or~~
5 ~~less that contains any quantity of a controlled substance listed in~~
6 ~~schedules I through IV of part 2 of this article commits:~~

7 ~~(I) A class 6 felony; or~~

8 ~~(II) A class 4 felony, if the violation is committed subsequent to~~
9 ~~any prior conviction under subparagraph (I), (II), or (III) of paragraph (a)~~
10 ~~of subsection (2) of this section or under this subsection (2.3).~~

11 (2.5) (a) Notwithstanding the provisions of subparagraph (III) of
12 paragraph (a) of subsection (2) of this section, a person who violates the
13 provisions of subsection (1) of this section with regard to flunitrazepam
14 OR KETAMINE commits a class 3 felony; except that the person commits
15 a class 2 felony if the violation is committed subsequent to a prior
16 conviction in this or any other state, the United States, or any territory
17 subject to the jurisdiction of the United States of a violation involving
18 flunitrazepam OR KETAMINE or to which subparagraph (I) of paragraph (a)
19 of subsection (2) of this section applies or would apply if convicted in this
20 state.

21 (b) Any person convicted of violating the provisions of subsection
22 (1) of this section with regard to flunitrazepam OR KETAMINE shall be
23 subject to the mandatory sentencing provisions of subsection (3) of this
24 section.

25 (3) (a) Unless a greater sentence is required pursuant to the
26 provisions of another statute, any person convicted pursuant to
27 subparagraph (I) of paragraph (a) of subsection (2) of this section for

1 knowingly manufacturing, dispensing, selling, distributing, ~~possessing,~~
2 or possessing with intent to manufacture, dispense, sell, or distribute, or
3 inducing, attempting to induce, or conspiring with one or more other
4 persons, to manufacture, dispense, sell, distribute, ~~possess,~~ or possess
5 with intent to manufacture, dispense, sell, or distribute an amount that is
6 or has been represented to be:

7 (5) When a person commits unlawful distribution, manufacture,
8 dispensing, sale, or possession with intent to manufacture, dispense, sell,
9 or distribute any schedule I or schedule II controlled substance, as listed
10 in section 18-18-203 or 18-18-204, ~~or~~ flunitrazepam, OR KETAMINE,
11 pursuant to subsection (1) of this section, twice or more within a period
12 of six months, without having been placed in jeopardy for the prior
13 offense or offenses, and the aggregate amount of the schedule I or
14 schedule II controlled substance, ~~or~~ flunitrazepam, OR KETAMINE involved
15 equals or exceeds twenty-five grams, the defendant shall be sentenced
16 pursuant to the mandatory sentencing requirements specified in
17 subsection (3) of this section.

18 **SECTION 4.** Part 4 of article 18 of title 18, Colorado Revised
19 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW
20 SECTIONS to read:

21 **18-18-403.5. Unlawful possession of a controlled substance.**

22 (1) EXCEPT AS PROVIDED IN SUBSECTION (4) OF THIS SECTION, A PERSON
23 WHO COMMITS THE OFFENSE OF UNLAWFUL POSSESSION OF A CONTROLLED
24 SUBSTANCE BY KNOWINGLY POSSESSING ANY MATERIAL, COMPOUND,
25 MIXTURE, OR PREPARATION WEIGHING FOUR GRAMS OR LESS THAT
26 CONTAINS ANY QUANTITY OF A CONTROLLED SUBSTANCE LISTED IN
27 SCHEDULE I OR II OF PART 2 OF THIS ARTICLE OR BY POSSESSING FOUR

1 GRAMS OR LESS OF FLUNITRAZEPAM OR KETAMINE COMMITS A CLASS 6
2 FELONY.

3 (2) A PERSON WHO COMMITS THE OFFENSE OF UNLAWFUL
4 POSSESSION OF A CONTROLLED SUBSTANCE BY KNOWINGLY POSSESSING A
5 MATERIAL, COMPOUND, MIXTURE, OR PREPARATION WEIGHING MORE THAN
6 FOUR GRAMS THAT CONTAINS ANY QUANTITY OF A CONTROLLED
7 SUBSTANCE LISTED IN SCHEDULE I OR II OF PART 2 OF THIS ARTICLE OR BY
8 KNOWINGLY POSSESSING MORE THAN FOUR GRAMS OF FLUNITRAZEPAM OR
9 KETAMINE COMMITS A CLASS 4 FELONY.

10 (3) A PERSON WHO COMMITS THE OFFENSE OF UNLAWFUL
11 POSSESSION OF A CONTROLLED SUBSTANCE BY KNOWINGLY POSSESSING
12 ANY AMOUNT OF A MATERIAL, COMPOUND, MIXTURE, OR PREPARATION
13 THAT CONTAINS ANY QUANTITY OF A CONTROLLED SUBSTANCE LISTED IN
14 SCHEDULE III, IV, OR V OF PART 2 OF THIS ARTICLE COMMITS A CLASS 1
15 MISDEMEANOR.

16 (4) (a) A PERSON WHO COMMITS THE OFFENSE OF UNLAWFUL
17 POSSESSION OF A CONTROLLED SUBSTANCE BY KNOWINGLY POSSESSING
18 TWO GRAMS OR LESS OF METHAMPHETAMINE COMMITS A CLASS 6 FELONY.

19 (b) A PERSON WHO COMMITS THE OFFENSE OF UNLAWFUL
20 POSSESSION OF A CONTROLLED SUBSTANCE BY KNOWINGLY POSSESSING
21 MORE THAN TWO GRAMS OF METHAMPHETAMINE COMMITS A CLASS 4
22 FELONY.

23 **18-18-405.5. Sale of controlled substance to a minor.**

24 (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE
25 CONTRARY, A PERSON COMMITS SALE OF A CONTROLLED SUBSTANCE TO A
26 MINOR IF A PERSON EIGHTEEN YEARS OF AGE OR OLDER SELLS, DISPENSES,
27 OR DISTRIBUTES A CONTROLLED SUBSTANCE OTHER THAN MARIJUANA TO

1 A PERSON UNDER EIGHTEEN YEARS OF AGE AND THE PERSON WHO SELLS,
2 DISTRIBUTES, OR DISPENSES IS AT LEAST TWO YEARS OLDER THAN THE
3 PERSON UNDER EIGHTEEN YEARS OF AGE.

4 (2) SALE OF A CONTROLLED SUBSTANCE TO A MINOR IS A CLASS 3
5 FELONY, AND, UNLESS A GREATER SENTENCE IS REQUIRED PURSUANT TO
6 THE PROVISIONS OF ANOTHER STATUTE, THE COURT SHALL BE REQUIRED
7 TO SENTENCE THE DEFENDANT TO THE DEPARTMENT OF CORRECTIONS FOR
8 A TERM THAT IS AT LEAST THE MINIMUM TERM OF YEARS IN THE
9 PRESUMPTIVE RANGE BUT NO MORE THAN THE MAXIMUM TERM
10 AUTHORIZED FOR THE PUNISHMENT OF A CLASS 3 FELONY.

11 **SECTION 5.** 18-18-406 (1), (3), (4), (5), (6), (7), and (8),
12 Colorado Revised Statutes, are amended, and the said 18-18-406 is
13 further amended BY THE ADDITION OF THE FOLLOWING NEW
14 SUBSECTIONS, to read:

15 **18-18-406. Offenses relating to marijuana and marijuana**
16 **concentrate.** (1) Any person who possesses ~~not more than one ounce~~
17 TWO OUNCES OR LESS of ~~marihuana~~ MARIJUANA commits a class 2 petty
18 offense and, upon conviction thereof, shall be punished by a fine of not
19 more than one hundred dollars.

20 (3) (a) (I) Any person who openly and publicly displays,
21 consumes, or uses ~~not more than one ounce~~ TWO OUNCES OR LESS of
22 ~~marihuana~~ MARIJUANA commits a class 2 petty offense and, upon
23 conviction thereof, shall be punished, at a minimum, by a fine of not less
24 than one hundred dollars or, at a maximum, by a fine of not more than
25 one hundred dollars and, notwithstanding the provisions of section
26 18-1.3-503, by fifteen days in the county jail.

27 (II) Open and public display, consumption, or use of more than

1 ~~one ounce~~ TWO OUNCES of ~~marihuana~~ MARIJUANA or any amount of
2 ~~marihuana~~ MARIJUANA concentrate shall be deemed possession thereof,
3 and violations shall be punished as provided for in subsection (4) OR (4.5)
4 of this section.

5 (b) Except as is otherwise provided for in paragraph (a) of this
6 subsection (3), consumption or use of ~~marihuana~~ MARIJUANA or
7 ~~marihuana~~ MARIJUANA concentrate shall be deemed possession thereof,
8 and violations shall be punished as provided for in subsections (1), (2),
9 ~~and~~ (4), AND (4.5) of this section.

10 (4) (a) Any person who possesses more than ~~one ounce~~ TWO
11 OUNCES of ~~marihuana~~ MARIJUANA but ~~less than eight~~ NO MORE THAN SIX
12 ounces of ~~marihuana~~ MARIJUANA commits:

13 (I) A ~~class 1~~ CLASS 2 misdemeanor. ~~or~~

14 (II) A ~~class 5 felony, if the violation is committed subsequent to~~
15 ~~a prior conviction in this or any other state, the United States, or any~~
16 ~~territory subject to the jurisdiction of the United States of a violation to~~
17 ~~which this subsection (4) applies or would apply if convicted in this state.~~

18 (b) Any person who possesses ~~eight~~ MORE THAN SIX ounces ~~or~~
19 ~~more of marihuana or any amount of marihuana concentrate~~ MARIJUANA
20 BUT NO MORE THAN TWELVE OUNCES OF MARIJUANA OR THREE OUNCES OR
21 LESS OF MARIJUANA CONCENTRATE commits:

22 (I) A ~~class 5 felony, or~~ CLASS 1 MISDEMEANOR.

23 (II) A ~~class 4 felony, if the violation is committed subsequent to~~
24 ~~a prior conviction in this or any other state, the United States, or any~~
25 ~~territory subject to the jurisdiction of the United States of a violation to~~
26 ~~which this subsection (4) applies or would apply if convicted in this state.~~

27 (c) ANY PERSON WHO POSSESSES MORE THAN TWELVE OUNCES OF

1 MARIJUANA OR MORE THAN THREE OUNCES OF MARIJUANA CONCENTRATE
2 COMMITS A CLASS 6 FELONY.

3 (5) Transferring or dispensing ~~not more than one ounce~~ TWO
4 OUNCES OR LESS of ~~marihuana~~ MARIJUANA from one person to another for
5 no consideration ~~shall be deemed possession~~ IS A CLASS 2 PETTY OFFENSE
6 and SHALL not BE DEEMED dispensing or sale thereof.

7 (6) (a) (I) ~~The court may utilize treatment, probation, and deferred~~
8 ~~prosecution or deferred sentencing for any person who violates subsection~~
9 ~~(4) of this section.~~ A PERSON SHALL NOT KNOWINGLY PROCESS OR
10 MANUFACTURE ANY MARIJUANA OR MARIJUANA CONCENTRATE OR
11 KNOWINGLY ALLOW TO BE PROCESSED OR MANUFACTURED ON LAND
12 OWNED, OCCUPIED, OR CONTROLLED BY HIM OR HER ANY MARIJUANA OR
13 MARIJUANA CONCENTRATE EXCEPT AS AUTHORIZED PURSUANT TO PART 3
14 OF ARTICLE 22 OF TITLE 12, C.R.S.

15 (II) ANY PERSON WHO VIOLATES THE PROVISIONS OF
16 SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) COMMITS:

17 (A) A CLASS 4 FELONY; OR

18 (B) A CLASS 3 FELONY IF THE VIOLATION IS COMMITTED
19 SUBSEQUENT TO A PRIOR CONVICTION IN THIS OR ANY OTHER STATE, THE
20 UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE
21 UNITED STATES OF A VIOLATION TO WHICH SUBPARAGRAPH (I) OF THIS
22 PARAGRAPH (a) APPLIES OR WOULD APPLY IF COMMITTED IN THIS STATE.

23 (b) (I) EXCEPT AS IS OTHERWISE PROVIDED IN SUBSECTION (7) OF
24 THIS SECTION AND EXCEPT AS AUTHORIZED BY PART 3 OF ARTICLE 22 OF
25 TITLE 12, C.R.S., OR BY PART 2 OR 3 OF THIS ARTICLE, IT IS UNLAWFUL FOR
26 ANY PERSON KNOWINGLY TO DISPENSE, SELL, DISTRIBUTE, OR POSSESS
27 WITH INTENT TO MANUFACTURE, DISPENSE, SELL, OR DISTRIBUTE

1 MARIJUANA OR MARIJUANA CONCENTRATE; OR ATTEMPT, INDUCE,
2 ATTEMPT TO INDUCE, OR CONSPIRE WITH ONE OR MORE OTHER PERSONS,
3 TO DISPENSE, SELL, DISTRIBUTE, OR POSSESS WITH INTENT TO
4 MANUFACTURE, DISPENSE, SELL, OR DISTRIBUTE MARIJUANA OR
5 MARIJUANA CONCENTRATE.

6 (II) AS USED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b),
7 "DISPENSE" DOES NOT INCLUDE LABELING, AS DEFINED IN SECTION
8 12-22-102 (16), C.R.S.

9 (III) ANY PERSON WHO VIOLATES ANY OF THE PROVISIONS OF
10 SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) COMMITS:

11 (A) A CLASS 5 FELONY IF THE AMOUNT OF MARIJUANA IS LESS
12 THAN FIVE POUNDS OR THE AMOUNT OF MARIJUANA CONCENTRATE IS LESS
13 THAN ONE POUND;

14 (B) A CLASS 4 FELONY IF THE AMOUNT OF MARIJUANA IS AT LEAST
15 FIVE POUNDS BUT NOT MORE THAN ONE HUNDRED POUNDS OR THE
16 AMOUNT OF MARIJUANA CONCENTRATE IS AT LEAST ONE POUND BUT NOT
17 MORE THAN ONE HUNDRED POUNDS;

18 (C) A CLASS 3 FELONY IF THE AMOUNT OF MARIJUANA OR
19 MARIJUANA CONCENTRATE IS MORE THAN ONE HUNDRED POUNDS; OR

20 (D) A CLASS 3 FELONY IF THE VIOLATION IS COMMITTED
21 SUBSEQUENT TO ANY PRIOR CONVICTION IN THIS OR ANY OTHER STATE,
22 THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION
23 OF THE UNITED STATES OF A VIOLATION TO WHICH SUBPARAGRAPH (I) OF
24 THIS PARAGRAPH (b) APPLIES OR WOULD APPLY IF COMMITTED IN THIS
25 STATE.

26 (7) (a) Any provision of this article to the contrary
27 notwithstanding, any person eighteen years of age or older who transfers

1 or dispenses more than ~~one ounce~~ TWO OUNCES BUT LESS THAN FIVE
2 POUNDS of ~~marihuana~~ MARIJUANA for consideration to any person under
3 eighteen years of age but at least fifteen years of age or any amount of
4 ~~marihuana~~ MARIJUANA concentrate, with or without consideration, to
5 another person under eighteen years of age commits a class 4 felony and,
6 in addition to the punishment prescribed in section 18-1.3-401, shall be
7 punished by a fine of not more than five thousand dollars. For offenses
8 committed on or after July 1, 1985, the fine shall be in an amount within
9 the presumptive range set out in section 18-1.3-401 (1) (a) (III).

10 (b) Any person eighteen years of age or older who transfers or
11 dispenses any amount of ~~marihuana~~ MARIJUANA OR MARIJUANA
12 CONCENTRATE, with or without consideration, to any person under ~~the age~~
13 ~~of fifteen years~~ OF AGE commits a ~~class 4~~ CLASS 3 felony, ~~and, in addition~~
14 ~~to the punishment provided in section 18-1.3-401, shall be punished by~~
15 ~~a fine of not more than five thousand dollars~~ AND THE COURT SHALL BE
16 REQUIRED TO SENTENCE THE DEFENDANT TO THE DEPARTMENT OF
17 CORRECTIONS FOR A TERM THAT IS AT LEAST THE MINIMUM IN THE
18 PRESUMPTIVE RANGE BUT NO MORE THAN THE MAXIMUM TERM
19 AUTHORIZED FOR THE PUNISHMENT OF A CLASS 3 FELONY. For offenses
20 committed on or after July 1, 1985, the fine shall be in an amount within
21 the presumptive range set out in section 18-1.3-401 (1) (a) (III).

22 (c) Any person commits a class 3 felony, if the violation is
23 committed subsequent to a prior conviction in this or any other state, the
24 United States, or any territory subject to the jurisdiction of the United
25 States of a violation to which PARAGRAPH (a) OF this subsection (7)
26 applies or would apply if convicted in this state, and, in addition to the
27 punishment provided in section 18-1.3-401, the court shall sentence the

1 defendant to the department of corrections for at least the minimum term
2 in the presumptive range. For offenses committed on or after July 1,
3 1985, the fine shall be in an amount within the presumptive range set out
4 in section 18-1.3-401 (1) (a) (III).

5 (7.3) MANUFACTURING, SELLING, DISPENSING, TRANSFERRING, OR
6 DISTRIBUTING FIVE OR MORE POUNDS OF MARIJUANA OR ANY AMOUNT OF
7 MARIJUANA CONCENTRATE TO A PERSON FIFTEEN YEARS OF AGE OR OLDER
8 IS A CLASS 4 FELONY.

9 (7.5) EXCEPT FOR A PERSON WHO LAWFULLY CULTIVATES MEDICAL
10 MARIJUANA PURSUANT TO THE AUTHORITY GRANTED IN SECTION 14 OF
11 ARTICLE XVIII OF THE STATE CONSTITUTION, A PERSON SHALL NOT
12 KNOWINGLY CULTIVATE, GROW, OR PRODUCE A MARIJUANA PLANT OR
13 KNOWINGLY ALLOW A MARIJUANA PLANT TO BE CULTIVATED, GROWN, OR
14 PRODUCED ON LAND THAT THE PERSON OWNS, OCCUPIES, OR CONTROLS.
15 A PERSON WHO VIOLATES THE PROVISIONS OF THIS SUBSECTION (7.5)
16 COMMITS:

17 (a) A CLASS 1 MISDEMEANOR, IF THE OFFENSE INVOLVES SIX OR
18 FEWER PLANTS; OR

19 (b) A CLASS 5 FELONY IF THE OFFENSE INVOLVES MORE THAN SIX
20 BUT FEWER THAN THIRTY PLANTS; OR

21 (c) A CLASS 4 FELONY IF THE OFFENSE INVOLVES THIRTY OR MORE
22 PLANTS.

23 ~~(8) (a) (f) No person knowingly shall cultivate, grow, produce,~~
24 ~~process, or manufacture any marihuana or marihuana concentrate or~~
25 ~~knowingly allow to be cultivated, grown, produced, processed, or~~
26 ~~manufactured on land owned, occupied, or controlled by him any~~
27 ~~marihuana or marihuana concentrate except as authorized pursuant to part~~

1 ~~3 of article 22 of title 12, C.R.S.~~

2 ~~(H) Any person who violates the provisions of subparagraph (I)~~
3 ~~of this paragraph (a) commits:~~

4 ~~(A) A class 4 felony; or~~

5 ~~(B) A class 3 felony, if the violation is committed subsequent to~~
6 ~~a prior conviction in this or any other state, the United States, or any~~
7 ~~territory subject to the jurisdiction of the United States of a violation to~~
8 ~~which this subsection (8) applies or would apply if convicted in this state:~~

9 ~~(b) (I) Except as is otherwise provided in subsection (7) of this~~
10 ~~section and except as authorized by part 3 of article 22 of title 12, C.R.S.,~~
11 ~~or by part 2 or 3 of this article, it is unlawful for any person knowingly to~~
12 ~~manufacture, dispense, sell, distribute, or possess with intent to~~
13 ~~manufacture, dispense, sell, or distribute marihuana or marihuana~~
14 ~~concentrate; or attempt, induce, attempt to induce, or conspire with one~~
15 ~~or more other persons, to manufacture, dispense, sell, distribute, or~~
16 ~~possess with intent to manufacture, dispense, sell, or distribute marihuana~~
17 ~~or marihuana concentrate:~~

18 ~~(H) As used in subparagraph (I) of this paragraph (b), "dispense"~~
19 ~~does not include labeling, as defined in section 12-22-102 (16), C.R.S:~~

20 ~~(H) Any person who violates any of the provisions of~~
21 ~~subparagraph (I) of this paragraph (b) commits:~~

22 ~~(A) A class 4 felony; or~~

23 ~~(B) A class 3 felony, if the violation is committed subsequent to~~
24 ~~any prior conviction in this or any other state, the United States, or any~~
25 ~~territory subject to the jurisdiction of the United States of a violation to~~
26 ~~which this subsection (8) applies or would apply if convicted in this state:~~

27 **SECTION 6.** 18-18-407 (1) (d), (1) (e), and (1) (f), Colorado

1 Revised Statutes, are amended to read:

2 **18-18-407. Special offender.** (1) Upon a felony conviction
3 under this part 4, the presence of any one or more of the following
4 extraordinary aggravating circumstances designating the defendant a
5 special offender shall require the court to sentence the defendant to the
6 department of corrections for a term of at least the minimum term of years
7 within the presumptive range for a class 2 felony but not more than twice
8 the maximum term of years within the presumptive range for a class 2
9 felony:

10 (d) The defendant unlawfully introduced, distributed, or imported
11 into the state of Colorado MORE THAN FOUR GRAMS OF any schedule I or
12 II controlled substance ~~contained~~ LISTED in part 2 of this article OR MORE
13 THAN TWO GRAMS OF METHAMPHETAMINE;

14 (e) The defendant unlawfully sold, dispensed, distributed,
15 possessed, or imported into the state of Colorado a quantity in excess of
16 one hundred pounds of ~~marihuana~~ MARIJUANA or ~~marihuana~~ MARIJUANA
17 concentrate;

18 (f) (I) The defendant used, displayed, OR possessed ~~or had~~
19 ~~available for use~~ ON HIS OR HER PERSON OR WITHIN HIS OR HER IMMEDIATE
20 REACH, a deadly weapon as defined in section 18-1-901 (3) (e) AT THE
21 TIME OF THE COMMISSION OF A VIOLATION OF THIS PART 4; OR

22 (II) THE DEFENDANT OR A CONFEDERATE OF THE DEFENDANT
23 POSSESSED A FIREARM, AS DEFINED IN SECTION 18-1-901 (3) (h), TO WHICH
24 THE DEFENDANT OR CONFEDERATE HAD ACCESS IN A MANNER THAT POSED
25 A RISK TO OTHERS OR IN A VEHICLE THE DEFENDANT WAS OCCUPYING
26 DURING THE COMMISSION OF A VIOLATION OF THIS PART 4;

27 **SECTION 7.** 18-18-415 (2), Colorado Revised Statutes, is

1 amended to read:

2 **18-18-415. Fraud and deceit.** (2) Any person who violates any
3 provision of this section commits:

4 (a) A ~~class 5~~ CLASS 6 felony and shall be punished as provided in
5 section 18-1.3-401. ~~or~~

6 (b) ~~A class 4 felony, if the violation is committed subsequent to~~
7 ~~a prior conviction for a violation to which this subsection (2) applies and~~
8 ~~shall be punished as provided in section 18-1.3-401.~~

9 **SECTION 8.** 18-19-103 (5.5), Colorado Revised Statutes, is
10 amended to read:

11 **18-19-103. Source of revenues - allocation of moneys - drug**
12 **offender treatment fund - creation.** (5.5) (a) There is hereby created
13 in the state treasury a drug offender treatment fund, REFERRED TO IN THIS
14 SUBSECTION (5.5) AS THE "FUND", that shall consist of moneys
15 appropriated thereto. In addition, the fund may accept gifts, grants, and
16 donations. All interest derived from the deposit and investment of
17 moneys in the fund shall be credited to the fund. Any moneys not
18 appropriated by the general assembly shall remain in the ~~drug offender~~
19 ~~treatment~~ fund and shall not be transferred or revert to the general fund
20 of the state at the end of any fiscal year. All moneys in the fund shall be
21 subject to annual appropriation by the general assembly to the judicial
22 department for allocation to the interagency task force on treatment for
23 costs associated with community-based substance abuse treatment. EACH
24 FISCAL YEAR, THE GENERAL ASSEMBLY SHALL APPROPRIATE TO THE FUND
25 A PORTION OF THE SAVINGS GENERATED BY SENATE BILL 10-___,
26 ENACTED IN 2010. THE APPROPRIATION SHALL BE MADE AFTER
27 CONSIDERATION OF THE DIVISION OF CRIMINAL JUSTICE'S ANNUAL REPORT

1 REQUIRED PURSUANT TO SECTION 24-33.5-503 (1) (u), C.R.S.

2 (b) Notwithstanding any provision of paragraph (a) of this
3 subsection (5.5) to the contrary, on April 20, 2009, the state treasurer
4 shall deduct three hundred fifty thousand dollars from the ~~drug-offender~~
5 ~~treatment~~ fund and transfer such sum to the general fund.

6 **SECTION 9.** 24-33.5-503 (1), Colorado Revised Statutes, is
7 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

8 **24-33.5-503. Duties of division.** (1) The division has the
9 following duties:

10 (u) TO ANALYZE THE AMOUNT OF FISCAL SAVINGS THAT SENATE
11 BILL 10-___, ENACTED IN 2010, HAS GENERATED OVER THE PREVIOUS
12 FISCAL YEAR. BEGINNING JANUARY 15, 2011, THE DIVISION SHALL REPORT
13 THE ANALYSIS ANNUALLY TO THE JOINT BUDGET COMMITTEE.

14 **SECTION 10.** 12-22-303 (18), Colorado Revised Statutes, is
15 amended to read:

16 **12-22-303. Definitions.** As used in this part 3, unless the context
17 otherwise requires:

18 (18) ~~"Marihuana concentrate"~~ "MARIJUANA CONCENTRATE" means
19 hashish, tetrahydrocannabinols, or any alkaloid, salt, derivative,
20 preparation, compound, or mixture, whether natural or synthesized, of
21 tetrahydrocannabinols.

22 **SECTION 11.** 12-22-304 (7), Colorado Revised Statutes, is
23 amended to read:

24 **12-22-304. License required - controlled substances - repeal.**

25 (7) No license shall be issued under this part 3 to a researcher,
26 manufacturer, or distributor of ~~marihuana~~ MARIJUANA or ~~marihuana~~
27 MARIJUANA concentrate.

1 **SECTION 12.** 16-13-303 (1) (c) (II), Colorado Revised Statutes,
2 is amended to read:

3 **16-13-303. Class 1 public nuisance.** (1) Every building or part
4 of a building including the ground upon which it is situate and all fixtures
5 and contents thereof, every vehicle, and any real property shall be deemed
6 a class 1 public nuisance when:

7 (c) (II) Used for unlawful possession of any controlled substance,
8 as defined in section 18-18-102 (5), C.R.S., except for possession of less
9 than ~~eight~~ SIXTEEN ounces of ~~marihuana~~ MARIJUANA;

10 **SECTION 13.** 16-13-503 (2), Colorado Revised Statutes, is
11 amended to read:

12 **16-13-503. Subject acts.** (2) Mere possession of less than ~~eight~~
13 SIXTEEN ounces of ~~marihuana~~ MARIJUANA shall not be an act subject to
14 the provisions of this part 5.

15 **SECTION 14.** 18-1.3-201 (2) (c), Colorado Revised Statutes, is
16 amended to read:

17 **18-1.3-201. Application for probation.** (2) (c) Notwithstanding
18 the provisions of paragraph (a) of this subsection (2) and subsection (4)
19 of this section, an offender convicted of a violation of ~~section 18-18-405~~
20 ~~(2.3)~~ SECTION 18-18-403.5 may be eligible for probation upon
21 recommendation of the district attorney.

22 **SECTION 15.** 18-8-203 (1), Colorado Revised Statutes, is
23 amended to read:

24 **18-8-203. Introducing contraband in the first degree.** (1) A
25 person commits introducing contraband in the first degree if he or she
26 knowingly and unlawfully:

27 (a) Introduces or attempts to introduce a dangerous instrument, as

1 defined in subsection (4) of this section; malt, vinous, or spirituous liquor,
2 as defined in section 12-47-103, C.R.S., fermented malt beverage, as
3 defined in section 12-46-103, C.R.S., controlled substance, as defined in
4 section ~~12-22-303 (7), C.R.S.~~ 18-18-102 (5), or ~~marihuana~~ MARIJUANA or
5 ~~marihuana~~ MARIJUANA concentrate, as defined in section 12-22-303 (17)
6 and (18), C.R.S., into a detention facility or at any location where an
7 inmate is or is likely to be located, while ~~such~~ THE inmate is in the
8 custody and under the jurisdiction of a political subdivision of the state
9 of Colorado or the department of corrections, but not on parole; or

10 (b) Being a person confined in a detention facility, makes any
11 dangerous instrument, controlled substance, ~~marihuana~~ MARIJUANA or
12 ~~marihuana~~ MARIJUANA concentrate, or alcohol.

13 **SECTION 16.** 18-18-102 (5), (18), and (19), Colorado Revised
14 Statutes, are amended to read:

15 **18-18-102. Definitions.** As used in this article:

16 (5) "Controlled substance" means a drug, substance, or immediate
17 precursor included in schedules I through V of part 2 of this article,
18 including cocaine, ~~marihuana~~ MARIJUANA, and ~~marihuana~~ MARIJUANA
19 concentrate.

20 (18) ~~"Marihuana"~~ or "Marijuana" means all parts of the plant
21 cannabis sativa L., whether growing or not, the seeds thereof, the resin
22 extracted from any part of the plant, and every compound, manufacture,
23 salt, derivative, mixture, or preparation of the plant, its seeds, or its resin.
24 It does not include fiber produced from the stalks, oil or cake made from
25 the seeds of the plant, or sterilized seed of the plant which is incapable of
26 germination if these items exist apart from any other item defined as
27 ~~"marihuana"~~ "MARIJUANA" in this subsection (18). ~~"Marihuana"~~

1 "MARIJUANA" does not include ~~marihuana~~ MARIJUANA concentrate as
2 defined in subsection (19) of this section.

3 (19) ~~"Marihuana concentrate"~~ "MARIJUANA CONCENTRATE" means
4 hashish, tetrahydrocannabinols, or any alkaloid, salt, derivative,
5 preparation, compound, or mixture, whether natural or synthesized, of
6 tetrahydrocannabinols.

7 **SECTION 17.** 18-18-406.5 (1) and (2), Colorado Revised
8 Statutes, are amended to read:

9 **18-18-406.5. Unlawful use of marijuana in a detention facility.**

10 (1) Any person confined in any detention facility in this state who
11 possesses or uses up to eight ounces of ~~marihuana~~ MARIJUANA commits
12 a class 6 felony; except that, if the person commits a second or
13 subsequent violation where both the initial and subsequent violations
14 involved more than one ounce of ~~marihuana~~ MARIJUANA, the person
15 commits a class 5 felony.

16 (2) Any person confined in any detention facility in this state who
17 possesses or uses eight ounces or more of ~~marihuana~~ MARIJUANA shall be
18 subject to the provisions of section 18-18-406 (4) (b).

19 **SECTION 18. Repeal.** 18-18-408, Colorado Revised Statutes,
20 is repealed.

21 **SECTION 19.** 18-18-414 (1) (d), Colorado Revised Statutes, is
22 amended to read:

23 **18-18-414. Unlawful acts - licenses - penalties.** (1) Except as
24 otherwise provided in this article or in article 22 of title 12, C.R.S., the
25 following acts are unlawful:

26 (d) The dispensing of any ~~marihuana~~ MARIJUANA or ~~marihuana~~
27 MARIJUANA concentrate;

1 (a) Concerning any juvenile ten years of age or older who has
2 violated:

3 (I) Any federal or state law, except nonfelony state traffic, game
4 and fish, and parks and recreation laws or ~~regulations~~ RULES, the offenses
5 specified in section 18-13-121, C.R.S., concerning tobacco products, the
6 offense specified in section 18-13-122, C.R.S., concerning the illegal
7 possession or consumption of ethyl alcohol by an underage person, and
8 the offenses specified in section 18-18-406 (1) and (3), C.R.S.,
9 concerning ~~marihuana~~ MARIJUANA and ~~marihuana~~ MARIJUANA
10 concentrate;

11 **SECTION 22.** 25-5-415 (1) (1), Colorado Revised Statutes, is
12 amended to read:

13 **25-5-415. Misbranding.** (1) A drug or device shall be deemed
14 to be misbranded:

15 (I) If it is for use by man and contains any quantity of the narcotic
16 or hypnotic substance alpha eucaine, barbituric acid, betaeucaine, bromal,
17 cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, ~~marihuana~~
18 MARIJUANA, morphine, opium, paraldehyde, peyote, or sulphonmethane,
19 or any chemical derivative of such substance, which derivative, after
20 investigation, has been found to be and designated as habit-forming by
21 ~~regulations~~ RULES issued by the department or pursuant to the federal act,
22 unless its label bears the name and quantity or proportion of ~~such~~ THE
23 substance or derivative and in juxtaposition therewith the statement
24 "Warning - May be habit-forming";

25 **SECTION 23.** 26-6-108 (2) (c.5), Colorado Revised Statutes, is
26 amended to read:

27 **26-6-108. Denial of license - suspension - revocation -**

1 **probation - refusal to renew license - fines.** (2) The department may
2 deny an application, or suspend, revoke, or make probationary the license
3 of any facility regulated and licensed under this part 1 or assess a fine
4 against the licensee pursuant to section 26-6-114 should the licensee, an
5 affiliate of the licensee, a person employed by the licensee, or a person
6 who resides with the licensee at the facility:

7 (c.5) Be convicted of unlawful use of a controlled substance as
8 specified in section 18-18-404, C.R.S., unlawful distribution,
9 manufacturing, dispensing, sale, or possession of a controlled substance
10 as specified in section 18-18-403.5, 18-18-405, OR 18-18-405.5, C.R.S.,
11 or unlawful offenses relating to ~~marihuana~~ MARIJUANA or ~~marihuana~~
12 MARIJUANA concentrate as specified in section 18-18-406, C.R.S.; or

13 **SECTION 24. Act subject to petition - effective date -**
14 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
15 following the expiration of the ninety-day period after final adjournment
16 of the general assembly (August 11, 2010, if adjournment sine die is on
17 May 12, 2010); except that, if a referendum petition is filed pursuant to
18 section 1 (3) of article V of the state constitution against this act or an
19 item, section, or part of this act within such period, then the act, item,
20 section, or part shall not take effect unless approved by the people at the
21 general election to be held in November 2010 and shall take effect on the
22 date of the official declaration of the vote thereon by the governor.

23 (2) The provisions of this act shall apply to offenses committed on
24 or after the applicable effective date of this act.

MEMORANDUM



TO: Mayor Woodward
Englewood City Council Members

FROM: Nancy Reid, Assistant City Attorney *Reid*

DATE: March 16, 2010

The issue before the City at this time is the painting of a new mural on a building on the south side of Hampden Avenue and whether the current Sign Code provisions prohibiting murals in this area are enforceable. After the Mahaney (Headed West) case, Community Development has presented revisions to the Sign Code to the Planning and Zoning Commission. It is anticipated their recommendation on this issue will come before Council in late summer.

The Englewood Sign Code currently has a special provision for the commercial area along Broadway which allows special exceptions and more creative signs. 16-6-13 (K) EMC. When the Court of Appeals overruled the District Court in the Headed West case, it found that the discretion given to the City Manager as to the special exceptions resulted in an unconstitutional prior restraint on First Amendment free speech, making the City's restrictions on the Headed West mural unconstitutional. The Court of Appeals found that the murals constituted protected First Amendment speech and that all municipal ordinances apply restraints upon such speech are unconstitutional. The Court of Appeals felt that the special review procedure did not pass a strict scrutiny standard as required when government regulations establish prior restraint on free speech. The proposed modifications to the Sign Code will address that procedural issue.

Since the Court found the City Manager's discretion was unconstitutional, it did not express an opinion or make a ruling regarding whether murals are exempt from either permitting or regulations under the Sign Code as "Works of Art." Mahaney argued that murals are not subject to the Sign Code or the Code is not content neutral and was therefore a violation of the Constitution. A "Work of Art" is defined in the Code, 16-11-2 EMC. The City's position has been that a "Work of Art" is a sign and subject to the code but it has special status under the Code. Most signs require a permit. Under §16-6-13(E), there are some signs that do not require a permit, a Work of Art is one such sign, whether that Work of Art be a sculpture, a painting, or other types, as defined.

The City's defense in the Headed West case was that the City was regulating only number, size and types of material, not regulating content. However, the continuing argument against that is that art has a special status under the United States and Colorado State Constitutions and therefore these restrictions which the Code imposes on "art" are also unconstitutional.

The new mural is not in the Broadway Sign Code Area. All murals are specifically prohibited in the remainder of the City, including this area of West Hampden Avenue (Highway 285) 16-6-13(G)(2)(d) EMC. Therefore the issue of managerial discretion does not arise. However, what still has not been determined by a Court is whether or not a mural is a Work of Art, by definition, and therefore requiring a more stringent review as a restriction on protected First Amendment speech. The issue of whether the City's Code is "content neutral" is unresolved.

The continuation of the Work of Art exception and associated risks was going to be discussed at the presentation this summer. The new mural brings before City Council the question of whether Council wishes to proceed with enforcement of the existing Sign Code at the present time.

NNR/nf



PARKING
IN BACK

Heedy
GLASS GALLERY

