



**Agenda for the  
Regular Meeting of the  
Englewood City Council  
Monday, April 4, 2011  
7:30 pm**

Englewood Civic Center - Council Chambers  
1000 Englewood Parkway  
Englewood, CO 80110

1. Call to Order.
2. Invocation.
3. Pledge of Allegiance.
4. Roll Call.
5. Consideration of Minutes of Previous Session.
  - a. Minutes from the Regular City Council Meeting of March 21, 2011.
6. Recognition of Scheduled Public Comment. (This is an opportunity for the public to address City Council. Council may ask questions for clarification, but there will not be any dialogue. Please limit your presentation to five minutes.)
7. Recognition of Unscheduled Public Comment. (This is an opportunity for the public to address City Council. Council may ask questions for clarification, but there will not be any dialogue. Please limit your presentation to three minutes. Time for unscheduled public comment may be limited to 45 minutes, and if limited, shall be continued to General Discussion.)

Council Response to Public Comment.
8. Communications, Proclamations, and Appointments.
  - a. Proclamation declaring Friday, April 16, 2011, as Arbor Day.

9. Consent Agenda Items.
  - a. Approval of Ordinances on First Reading
  - b. Approval of Ordinances on Second Reading.
    - i. Council Bill No. 17, authorizing an amendment to the Intergovernmental Subgrantee Agreement for the 2010 Arapahoe County Community Development Block Grant Program for the Energy Efficient Englewood Project.
    - ii. Council Bill No. 18, authorizing acceptance of a Hazardous Materials Emergency Planning Grant for preparedness training.
  - c. Resolutions and Motions.
10. Public Hearing Items. (No Public Hearing Scheduled)
11. Ordinances, Resolutions and Motions
  - a. Approval of Ordinances on First Reading.
    - i. Council Bill No. 19 – Recommendation by the Community Development and Finance and Administrative Services Departments to adopt a bill for an ordinance modifying sections of the Englewood Municipal Code pertaining to medical marijuana. Staff also requests that Council schedule a Public Hearing for April 18, 2011 to gather public input on the proposed amendments. **STAFF SOURCE: Alan White, Director of Community Development, Audra L. Kirk, Planner I, and Frank Gryglewicz, Director of Finance and Administrative Services.**
  - b. Approval of Ordinances on Second Reading.
  - c. Resolutions and Motions.
    - i. Recommendation by the Human Resources Department to approve a resolution setting the list of persons eligible for appointment as Hearing Officers for Disciplinary and Merit appeals. **STAFF SOURCE: Sue Eaton, Director of Human Resources.**
    - ii. Recommendation by the Human Resources Department to appoint, by motion, a hearing officer for a disciplinary appeal filed by former Police Officer Eric Zasada. **STAFF SOURCE: Sue Eaton, Director of Human Resources.**

12. General Discussion.
  - a. Mayor's Choice.
  - b. Council Members' Choice.
13. City Manager's Report.
14. City Attorney's Report.
15. Adjournment

The following minutes were transmitted to City Council in March, 2011.

- Alliance for Commerce in Englewood meeting of February 10, 2011.
- Code Enforcement Advisory Committee meeting of February 16, 2011.
- Englewood Housing Authority annual and regular meetings of January 5, 2011.
- Firefighters Pension Board meeting of August 12, 2010.
- Keep Englewood Beautiful meeting of January 11, 2011.
- Library Board meetings of December 14, 2010 and January 11, 2011.
- NonEmergency Employees Retirement Board meeting of November 9 and November 29, 2010.
- Planning and Zoning Commission meetings of February 23 and March 8, 2011.
- Police Officers Pension Board meeting of August 12, 2010.
- Old Hire Police Officers Pension Board and Old Hire Firefighters Pension Board joint special meeting of November 10, 2010.
- Transportation Advisory Committee meeting of March 10, 2011.
- Urban Renewal Authority meeting of January 12, 2011.



## PROCLAMATION

WHEREAS, in 1872 J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska; and

WHEREAS, Arbor Day is now observed throughout the United States and the world; and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife; and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products; and

WHEREAS, trees in the City of Englewood increase property values, enhance the economic vitality of business areas, and beautify our community; and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal; and

WHEREAS, the City of Englewood, Colorado has been recognized for 26 consecutive years as a Tree City USA by The National Arbor Day Foundation and desires to continue its tree-planting ways; and

WHEREAS, the State of Colorado will celebrate Arbor Day on April 16th, 2011;

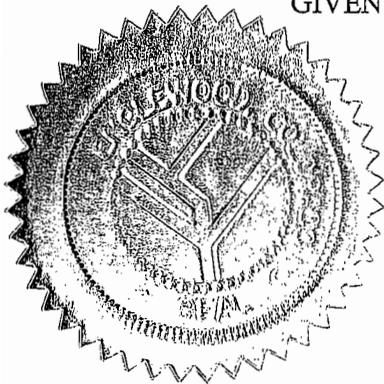
NOW THEREFORE, I, James K. Woodward, Mayor of the City of Englewood, Colorado, hereby recognize

### ARBOR DAY

in the City of Englewood, Colorado, and I urge all Englewood citizens to support efforts to care for our trees and woodlands and to support our City's efforts to protect our trees and woodlands.

Further, I urge all Englewood citizens to plant trees to gladden the hearts and promote the well being of present and future generations.

GIVEN under my hand and seal this 4th day of April, 2011.




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James K. Woodward, Mayor

## BY AUTHORITY

ORDINANCE NO. \_\_\_\_\_  
 SERIES OF 2011

COUNCIL BILL NO. 17  
 INTRODUCED BY COUNCIL  
 MEMBER McCASLIN

AN ORDINANCE AUTHORIZING AN "AMENDMENT NUMBER ONE TO THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AGREEMENT SUBGRANTEE: CITY OF ENGLEWOOD PROJECT NAME: ENERGY EFFICIENT ENGLEWOOD (E3) PROJECT NUMBER: ENHS 1012".

WHEREAS, the City Council of the City of Englewood approved the execution of an Intergovernmental Agreement between the City of Englewood and Arapahoe County by passage of Ordinance No. 22, Series of 2009, covering the City's participation in the Arapahoe County CDBG Entitlement Program for funding years 2010 through 2012; and

WHEREAS, the Englewood City Council passed Resolution 71, Series of 2009, supporting Housing and Community Development that authorized submitting an application for 2010 CDBG funding; and

WHEREAS, the Englewood City Council approved Ordinance No. 34, Series of 2010 approving and authorizing the intergovernmental subgrantee agreement for 2010 CDBG Energy Efficient Englewood Project which has been categorized as a housing rehabilitation activity; and

WHEREAS, the passage of this proposed ordinance authorizes Amendment No. 1, modifying the Energy Efficient Englewood (E3) project as follows:

1. Reallocates \$50,000 originally awarded to the Housing Rehabilitation and Handyman Project to the E3 project.
2. Increases the E3 project budget from \$77,500 to \$127,500.
3. Increases the number of households served from 9 to 14 homes.
4. Extends the E3 project completion date from April 30, 2011 to July 31, 2011.
5. Eliminates and omits the 20% match requirement from the homeowner.
6. Modifies the budget and performance standards to reflect this change.

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

Section 1. The City Council of the City of Englewood, Colorado, hereby approved Amendment Number One to the Community Development Block Name: Energy Efficient Englewood (E3) Project Number: ENHS 1012, attached hereto as Exhibit A, is hereby accepted and approved by the Englewood City Council.

Section 2. The Mayor is hereby authorized to sign said Amendment No. One for and on behalf of the City of Englewood, Colorado.

Introduced, read in full, and passed on first reading on the 21st day of March, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 25th day of March, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 23rd day of March, 2011 for thirty (30) days.

Read by title and passed on final reading on the 4th day of April, 2011.

Published by title in the City's official newspaper as Ordinance No. \_\_\_\_, Series of 2011, on the 8th day of April, 2011.

Published by title on the City's official website beginning on the 6th day of April, 2011 for thirty (30) days.

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James K. Woodward, Mayor

ATTEST:

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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 Ordinance passed on final reading and published by title as Ordinance No. \_\_\_\_, Series of 2011.

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Loucrishia A. Ellis

**AMENDMENT NUMBER ONE TO THE  
COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT**

**SUBGRANTEE: CITY OF ENGLEWOOD  
PROJECT NAME: ENERGY EFFICIENT ENGLEWOOD (E3)  
PROJECT NUMBER: ENHS 1012**

This First Amendment is made by and between the City of Englewood (SubGrantee) and the Board of County Commissioners of Arapahoe County, Colorado (County).

WHEREAS, the SubGrantee agreed to complete the project known as the Energy Efficient Englewood (E3) project and entered into a Community Development Block Grant Agreement (Agreement) with County, dated October 14, 2010; and

WHEREAS, the Subgrantee has requested funding from the Housing Rehabilitation & Handyman Project (ENHS 1013) be reallocated to the E3 project budget. The \$50,000 reallocation increases the E3 budget from \$77,500 to \$127,500; and

WHEREAS, the additional \$50,000 in funding will result in increasing the households served from 9 to 14; and

WHEREAS, the Subgrantee has requested a three month extension to complete the project, due to the increased funding. The extension will extend the completion date from April 30, 2011 to July 31, 2011; and

WHEREAS, the SAFE Act and HB 10-1141 have placed mortgage license requirements upon the SubGrantee that limit the SubGrantee's ability to secure interest in the properties of participating homeowners. Both parties agree that the 20% match requirement from the homeowner shall be eliminated and omitted from the agreement due to implications raised by the SAFE Act and HB 10-1141.

NOW, THEREFORE, for the mutual consideration of the parties, the receipt and sufficiency of which are hereby acknowledged, the County and SubGrantee agree that the project budget shall be amended to \$127,500. The number of households served will increase from 9 to 14. The County and SubGrantee further agree that the project budget attached to the original Agreement is considered null and void; and the budget attached hereto is now in effect under the terms of the Agreement. The County and SubGrantee further agree that the completion date shall be extended to July 31, 2011. The County and SubGrantee further agree that the 20% match requirement will be eliminated and shall be omitted from the SubGrantee Agreement

All other terms, conditions and sections of the original Community Development Block Grant Agreement not inconsistent with this Amendment are reaffirmed and incorporated herein by this reference.

In Witness Whereof, the Parties have caused this Amendment to be duly executed this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_\_.

SubGrantee: City of Englewood

\_\_\_\_\_  
Signature      James K. Woodward

\_\_\_\_\_  
Title      Mayor

Board of County Commissioners  
Arapahoe County, Colorado

\_\_\_\_\_  
Don Klemme on behalf of the Board of County Commissioners  
Pursuant to Resolution #-

## PROJECT BUDGET

<b>COLUMN A</b>	<b>COLUMN B</b>	<b>COLUMN C</b>	<b>COLUMN D</b>
<b>Project Activities (specify by line item)</b>	<b>Estimated Total Cost of Activity</b>	<b>CDBG Funds</b>	<b>Other Funds Committed</b>
Project administration, including personnel costs, Lead Based Paint testing costs, and Energy Audit costs	\$49,500	\$10,500	\$39,000
Grants for Energy Efficiency	\$135,000	\$117,000	\$18,000
<b>TOTAL:</b>	\$184,500	\$127,500	\$57,000

## BY AUTHORITY

ORDINANCE NO. \_\_\_\_\_  
 SERIES OF 2011

COUNCIL BILL NO. 18  
 INTRODUCED BY COUNCIL  
 MEMBER GILLIT

AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF A HAZARDOUS MATERIALS EMERGENCY PLANNING GRANT (HMEP) AWARDED TO THE CITY OF ENGLEWOOD, COLORADO BY THE STATE OF COLORADO DEPARTMENT OF LOCAL AFFAIRS.

WHEREAS, the Hazardous Materials Emergency Planning (HMEP) Grant is funded through the Federal Department of Transportation (US DOT) and administered by the Colorado Department of Local Affairs and exists to support hazardous materials planning and exercising activities; and

WHEREAS, the City of Englewood has three (3) transportation routes which have been designated as hazardous materials routes and there are numerous Tier II reporting facilities within the City; and

WHEREAS, any of these facilities or routes has the potential to create accidents or incidents involving hazardous materials; and

WHEREAS, having properly trained personnel to respond to and manage the incident will greatly improve the overall outcome of the incident; and

WHEREAS, the City of Englewood Fire Department sought and was also awarded an Hazardous Materials Emergency Planning Grant (HMEP) which supports the Englewood City Council goals of:

- *A safe, clean and attractive City* (this grant provides for the training and preparation of firefighters to respond to and protect the citizens of Englewood creating a safer community)
- *A progressive City that provides responsive and cost efficient services* (this grant provides for the total cost of training necessary to ensure hazmat personnel in the City are well prepared to respond to an incident at no cost to the City); and

WHEREAS, the amount of the HMEP Grant is \$8,320, which is the cost of conducting two classes and one exercise;

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 the acceptance of the Hazardous Materials Emergency Planning (HEMP) Grant which funds two hazmat training courses and one hazmat exercise, attached hereto as Attachment 1.

Section 2. The Mayor is hereby authorized to sign said Agreement for and on behalf of the City of Englewood, Colorado.

Introduced, read in full, and passed on first reading on the 21<sup>st</sup> day of March, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 25th day of March, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 23rd day of March, 2011 for thirty (30) days.

Read by title and passed on final reading on the 4<sup>th</sup> day of April, 2011.

Published by title in the City's official newspaper as Ordinance No. \_\_\_\_, Series of 2011, on the 8th day of April, 2011.

Published by title on the City's official website beginning on the 6th day of April, 2011 for thirty (30) days.

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James K. Woodward, Mayor

ATTEST:

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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 Ordinance passed on final reading and published by title as Ordinance No. \_\_\_\_, Series of 2011.

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Loucrishia A. Ellis

**AGREEMENT**

**Between the**

**STATE OF COLORADO  
DEPARTMENT OF LOCAL AFFAIRS**

**And the**

**CITY OF ENGLEWOOD**

**Summary**

Form of Financial Assistance:  Grant  Loan Award Amount: **\$8,320.00**

**Agreement Identification:**

Contract Encumbrance #: 11EM71H98 *(DOLA's primary identification # for this agreement)*  
Contract Management System #: \_\_\_\_\_ *(State of Colorado's primary identification # for this agreement)*

**Project Information:**

Project/Award Number: 11EM71H98  
Project Name: City of Englewood hazmat training  
Performance Period: Start Date: The Effective Date End Date: 9/30/2011  
Brief Description of Project / Assistance: The City of Englewood will be conducting a CAMEO hazmat training and tabletop exercise for the Fire Department.

**Program & Funding Information:**

Program Name: Hazardous Materials Emergency Preparedness (HMEP)  
Catalog of Federal Domestic Assistance (CFDA) Number (if federal funds): 20.703  
Funding Account Codes: 100/71H/F1TH/371H/5110 **\$8,320.00**

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**1. PARTIES**

This Agreement (hereinafter called “Grant”) is entered into by and between the CITY OF ENGLEWOOD(hereinafter called “Grantee”), and the STATE OF COLORADO acting by and through the Department of Local Affairs for the benefit of the Division of Emergency Management (hereinafter called the “State” or “DOLA”).

**2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.**

This Grant shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the “Effective Date”). The State shall not be liable to pay or reimburse Grantee for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to (*see checked option(s) below*):

- A.  The Effective Date.
- B.  The later to occur of the Effective Date or the date of a separate letter issued by the Department (“Release of Funds Letter”) notifying Grantee of the completion of a satisfactory environmental review and authorizing Grantee to obligate or use Grant Funds.
- C.  The Effective Date; provided, however, that all Project costs, if specifically authorized by the funding authority, incurred on or after \_\_\_\_\_, may be submitted for reimbursement as if incurred after the Effective Date.
- D.  insert date for authorized pre-agreement costs, as defined in §4 below and/or in **Exhibit B**, Statement of Project. Such costs may be submitted for reimbursement as if incurred after the Effective Date.
- E.  The Effective Date; provided, however, that the costs identified in the checked subsections below may be submitted for reimbursement as if incurred after the Effective Date (*see checked suboption(s) below*):
  - i.  All Project costs, if specifically authorized by the funding authority, incurred on or after insert federal grant's effective date; and

- ii.  Pre-award costs for insert purpose, if any, incurred on or after insert starting date allowed under the federal award for pre-award costs.
- F.  All or some of the costs or expenses incurred by Grantee prior to the Effective Date which have been or will be paid with non-federal funds may be included as a part of Grantee's non-federal match requirement, set forth herein and in **Exhibit B**, Statement of Project, if such costs or expenses are properly documented as eligible expenses in accordance with insert reference to proper documentation.

### 3. RECITALS

#### A. Authority, Appropriation, and Approval

Authority to enter into this Grant exists in CRS §24-32-2105 and funds have been budgeted, appropriated and otherwise made available pursuant to Please cite Statutory or other legal reference and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

#### B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Grant.

#### C. Purpose

The purpose of this grant agreement is described in **Exhibit B**.

#### D. References

All references in this Grant to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

### 4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

#### A. Evaluation

"Evaluation" means the process of examining Grantee's Work and rating it based on criteria established in §6 and **Exhibit B**.

#### B. Exhibits and Other Attachments

The following are attached hereto and incorporated by reference herein:

- i. Exhibit A (Applicable Laws)
- ii. Exhibit B (Statement of Project)
- iii. Exhibit C (Grant Application Package)
- iv. Exhibit D (FFATA Provisions)
- v. Form 1 (Grant Funding Change Letter)

#### C. Goods

"Goods" means tangible material acquired, produced, or delivered by Grantee either separately or in conjunction with the Services Grantee renders hereunder.

#### D. Grant

"Grant" means this agreement, its terms and conditions, attached exhibits, documents incorporated by reference, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

#### E. Grant Funds

"Grant Funds" means available funds payable by the State to Grantee pursuant to this Grant.

#### F. Party or Parties

"Party" means the State or Grantee and "Parties" means both the State and Grantee.

#### G. Pre-contract costs

"Pre-agreement costs", when applicable, means the costs incurred on or after the date as specified in §2 above, and the Effective Date of this Grant. Such costs shall have been detailed in Grantee's grant application and specifically authorized by the State and incorporated hereinto **Exhibit B**.

#### H. Project Budget

"Project Budget" means the budget for the Work described in **Exhibit B**.

**I. Program**

“Program” means the grant program, as specified on the first page, that provides the funding for this Grant.

**J. Review**

“Review” means examining Grantee’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in **§6** and **Exhibit B**

**K. Services**

“Services” means the required services to be performed by Grantee pursuant to this Grant.

**L. Sub-grantee**

“Sub-grantee” means third-parties, if any, engaged by Grantee to aid in performance of its obligations.

**M. Work**

“Work” means the tasks and activities Grantee is required to perform to fulfill its obligations under this Grant and **Exhibit B**, including the performance of the Services and delivery of the Goods.

**N. Work Product**

“Work Product” means the tangible or intangible results of Grantee’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

**5. TERM and EARLY TERMINATION.**

**A. Initial Term**

Unless otherwise permitted in **§2** above, the Parties respective performances under this Grant shall commence on the Effective Date. This Grant shall terminate on 9/30/2011 unless sooner terminated or further extended as specified elsewhere herein.

**B. Two Month Extension**

The State, at its sole discretion upon written notice to Grantee as provided in **§16**, may unilaterally extend the term of this Grant for a period not to exceed two months if the Parties are negotiating a replacement Grant (and not merely seeking a term extension) at or near the end of any initial term or any extension thereof. The provisions of this Grant in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two month extension. The two-month extension shall immediately terminate when and if a replacement Grant is approved and signed by the Colorado State Controller.

**6. STATEMENT OF PROJECT**

**A. Completion**

Grantee shall complete the Work and its other obligations as described herein and in **Exhibit B**. The State shall not be liable to compensate Grantee for any Work performed prior to the Effective Date or after the termination of this Grant.

**B. Goods and Services**

Grantee shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Grant Funds and shall not increase the maximum amount payable hereunder by the State.

**C. Employees**

All persons employed by Grantee or Sub-grantees shall be considered Grantee’s or Sub-grantees’ employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Grant.

**7. PAYMENTS TO GRANTEE**

The State shall, in accordance with the provisions of this **§7**, pay Grantee in the following amounts and using the methods set forth below:

**A. Maximum Amount**

The maximum amount payable under this Grant to Grantee by the State is **\$8,320.00**, as determined by the State from available funds. Grantee agrees to provide any additional funds required for the successful completion of the Work. Payments to Grantee are limited to the unpaid obligated balance of the Grant as set forth in **Exhibit B**.

**B. Payment**

**i. Advance, Interim and Final Payments**

Any advance payment allowed under this Grant or in **Exhibit B** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or such Exhibit. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State.

**ii. Interest**

The State shall not pay interest on Grantee invoices.

**iii. Available Funds-Contingency-Termination**

The State is prohibited by law from making fiscal commitments beyond the term of the State's current fiscal year. Therefore, Grantee's compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal funds are used with this Grant in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Grant shall be made only from available funds encumbered for this Grant and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not fully appropriated, or otherwise become unavailable for this Grant, the State may terminate it in whole or to the extent of funding reduction, without further liability, after providing notice to Grantee in accordance with §16.

**iv. Erroneous Payments**

At the State's sole discretion, payments made to Grantee in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Grantee, may be recovered from Grantee by deduction from subsequent payments under this Grant or other Grants, grants or agreements between the State and Grantee or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

**C. Use of Funds**

Grant Funds shall be used only for eligible costs identified herein and/or in **Exhibit B**.

**D. Matching Funds**

Grantee shall provide matching funds as provided in **Exhibit B**.

**8. REPORTING - NOTIFICATION**

Reports, Evaluations, and Reviews required under this §8 shall be in accordance with the procedures of and insuch form as prescribed by the State and in accordance with §19, if applicable.

**A. Performance, Progress, Personnel, and Funds**

Grantee shall submit a report to the State upon expiration or sooner termination of this Grant, containing an Evaluation and Review of Grantee's performance and the final status of Grantee's obligations hereunder. In addition, Grantee shall comply with all reporting requirements, if any, set forth in **Exhibit B**.

**B. Litigation Reporting**

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Grant or which may affect Grantee's ability to perform its obligations hereunder, Grantee shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of the Department of Local Affairs.

**C. Noncompliance**

Grantee's failure to provide reports and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds and/or termination as provided under this Grant.

**D. Subgrants**

Copies of any and all subgrants entered into by Grantee to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subgrants entered into by Grantee related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subgrants be governed by the laws of the State of Colorado.

## 9. GRANTEE RECORDS

Grantee shall make, keep, maintain and allow inspection and monitoring of the following records:

### A. Maintenance

Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records (the Record Retention Period) until the last to occur of the following: (i) a period of three years after the date this Grant is completed, terminated or final payment is made hereunder, whichever is later, or (ii) for such further period as may be necessary to resolve any pending matters, or (iii) if an audit is occurring, or Grantee has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved (the "Record Retention Period").

### B. Inspection

Grantee shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Grantee's records related to this Grant during the Record Retention Period for a period of three years following termination of this Grant or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Grantee's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Grant, including any extension. If the Work fails to conform to the requirements of this Grant, the State may require Grantee promptly to bring the Work into conformity with Grant requirements, at Grantee's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Grantee to take necessary action to ensure that future performance conforms to Grant requirements and exercise the remedies available under this Grant, at law or inequity in lieu of or in conjunction with such corrective measures.

### C. Monitoring

Grantee shall permit the State, the federal government, and other governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Grantee pursuant to the terms of this Grant using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Grantee's performance hereunder.

### D. Final Audit Report

Grantee shall provide a copy of its audit report to DOLA as specified in **Exhibit B**.

## 10. CONFIDENTIAL INFORMATION-STATE RECORDS

Grantee shall comply with the provisions on this §10 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals.

### A. Confidentiality

Grantee shall keep all State records and information confidential at all times and to comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Grantee shall be immediately forwarded to the State's principal representative.

### B. Notification

Grantee shall notify its agent, employees, Sub-grantees, and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

### C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Grantee or its agents in any way, except as authorized by this Grant or approved in writing by the State. Grantee

shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Grantee or its agents, except as permitted in this Grant or approved in writing by the State.

**D. Disclosure-Liability**

Disclosure of State records or other confidential information by Grantee for any reason may be cause for legal action by third parties against Grantee, the State or their respective agents. Grantee shall, to the extent permitted by law, indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Sub-grantees, or assignees pursuant to this §10.

**11. CONFLICTS OF INTEREST**

Grantee shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Grantee's obligations hereunder. Grantee acknowledges that with respect to this Grant, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations to the State hereunder. If a conflict or appearance exists, or if Grantee is uncertain whether a conflict or the appearance of a conflict of interest exists, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Grant.

**12. REPRESENTATIONS AND WARRANTIES**

Grantee makes the following specific representations and warranties, each of which was relied on by the State in entering into this Grant.

**A. Standard and Manner of Performance**

Grantee shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Grant.

**B. Legal Authority – Grantee and Grantee's Signatory**

Grantee warrants that it possesses the legal authority to enter into this Grant and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Grant, or any part thereof, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee's authority to enter into this Grant within 15 days of receiving such request.

**C. Licenses, Permits, Etc.**

Grantee represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. Grantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Grant, without reimbursement by the State or other adjustment in Grant Funds. Additionally, all employees and agents of Grantee performing Services under this Grant shall hold all required licenses or certifications, if any, to perform their responsibilities. Grantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Grantee to properly perform the terms of this Grant shall be deemed to be a material breach by Grantee and constitute grounds for termination of this Grant.

**13. INSURANCE**

Grantee and its Sub-grantees shall obtain and maintain insurance as specified in this section at all times during the term of this Grant: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Grantee and the State.

**A. Grantee**

**i. Public Entities**

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require each grant with sub-grantees that are public entities, providing Goods or Services hereunder, to include the insurance requirements necessary to meet Sub-grantee's liabilities under the GIA.

**ii. Non-Public Entities**

If Grantee is not a "public entity" within the meaning of the GIA, Grantee shall obtain and maintain during the term of this Grant insurance coverage and policies meeting the same requirements set forth in §13(B) with respect to sub-grantees that are not "public entities".

**B. Grantees and Sub-Grantees**

Grantee shall require each Grant with Sub-grantees, other than those that are public entities, providing Goods or Services in connection with this Grant, to include insurance requirements substantially similar to the following:

**i. Worker's Compensation**

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Grantee and Sub-grantee employees acting within the course and scope of their employment.

**ii. General Liability**

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket Grantual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, Sub-grantee shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Grantee a certificate or other document satisfactory to Grantee showing compliance with this provision.

**iii. Automobile Liability**

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

**iv. Additional Insured**

Grantee and the State shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction Grants require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

**v. Primacy of Coverage**

Coverage required of Grantee and Sub-grantees shall be primary over any insurance or self-insurance program carried by Grantee or the State.

**vi. Cancellation**

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Grantee and the State by certified mail.

**vii. Subrogation Waiver**

All insurance policies in any way related to this Grant and secured and maintained by Grantee or its Sub-grantees as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

**C. Certificates**

Grantee and all Sub-grantees shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Grant. No later than 15 days prior to the expiration date of any such coverage, Grantee and each Sub-grantee shall deliver to the State or Grantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other

time during the term of this Grant or any sub-grant, Grantee and each Sub-grantee shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

#### **14. BREACH**

##### **A. Defined**

In addition to any breaches specified in other sections of this Grant, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

##### **B. Notice and Cure Period**

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §16. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §15. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Grant in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

#### **15. REMEDIES**

If Grantee is in breach under any provision of this Grant, provided that a breach is not necessary under §15(B), the State shall have all of the remedies listed in this §15 in addition to all other remedies set forth in other sections of this Grant following the notice and cure period set forth in §14(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively. If the form of financial assistance is a loan, as specified in the table on page 1 of this Grant, and in the event of a termination of this Grant, such termination shall not extinguish Grantee's obligations under the Promissory Note and the Deed of Trust.

##### **A. Termination for Cause and/or Breach**

If Grantee fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Grant and in a timely manner, the State may notify Grantee of such non-performance in accordance with the provisions herein. If Grantee thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Grant or such part of this Grant as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. Grantee shall continue performance of this Grant to the extent not terminated, if any.

###### **i. Obligations and Rights**

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and sub-grants/contracts with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant's terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or sub-grants/contracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Grantee to the State and shall become the State's property.

###### **ii. Payments**

The State shall reimburse Grantee only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest and

the rights and obligations of the Parties shall be the same as if this Grant had been terminated in the public interest, as described herein.

**iii. Damages and Withholding**

Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services. Grantee shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

**B. Early Termination in the Public Interest**

The State is entering into this Grant for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Grant ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Grant in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Grant by the State for cause or breach by Grantee, which shall be governed by §15(A) or as otherwise specifically provided for herein.

**i. Method and Content**

The State shall notify Grantee of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Grant.

**ii. Obligations and Rights**

Upon receipt of a termination notice, Grantee shall be subject to and comply with the same obligations and rights set forth in §15(A)(i).

**iii. Payments**

If this Grant is terminated by the State pursuant to this §15(B), Grantee shall be paid an amount which bears the same ratio to the total reimbursement under this Grant as the Services satisfactorily performed bear to the total Services covered by this Grant, less payments previously made. Additionally, if this Grant is less than 60% completed, the State may reimburse Grantee for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Grant) incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

**C. Remedies Not Involving Termination**

The State, at its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

**i. Suspend Performance**

Suspend Grantee's performance with respect to all or any portion of this Grant pending necessary corrective action as specified by the State without entitling Grantee to an adjustment in price/cost or performance schedule. Grantee shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Grantee after the suspension of performance under this provision.

**ii. Withhold Payment**

Withhold payment to Grantee until corrections in Grantee's performance are satisfactorily made and completed.

**iii. Deny Payment**

Deny payment for those obligations not performed, that due to Grantee's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

**iv. Removal**

Demand removal of any of Grantee's employees, agents, or Sub-grantees whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the State's best interest.

**v. Intellectual Property**

If Grantee infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Grant, Grantee shall, at the State's option (a) obtain for the State or Grantee the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

**16. NOTICES and REPRESENTATIVES**

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

**A. State:**

Hans Kallam, Director  
Colorado Department of Local Affairs  
Division of Emergency Management  
9195 E. Mineral Ave., Ste. 200  
Centennial, CO 80112  
Email: \_\_\_\_\_

**B. Grantee:**

Kraig Stovall, Battalion Chief  
City of Englewood  
Arapahoe County LEPC  
3615 S. Elati St.  
Englewood, CO 80110  
Email: \_\_\_\_\_

**17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE**

This section  shall |  shall not apply to this Grant.

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Grantee in the performance of its obligations under this Grant shall be the exclusive property of the State and, all Work Product shall be delivered to the State by Grantee upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Grantee shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Grantee's obligations hereunder without the prior written consent of the State.

**18. GOVERNMENTAL IMMUNITY**

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act and the risk management statutes, CRS §24-30-1501, et seq., as amended.

## 19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Grant is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §19 applies.

Grantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Grants and inclusion of Grant performance information in a statewide Contract Management System. Grantee's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Grantee's performance shall be part of the normal Grant administration process and Grantee's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Grantee's obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Grantee's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Grant term. Grantee shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress. Should the final performance Evaluation and Review determine that Grantee demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Department of Local Affairs, and showing of good cause, may debar Grantee and prohibit Grantee from bidding on future Grants. Grantee may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Grantee, by the Executive Director, upon a showing of good cause.

## 20. RESTRICTION ON PUBLIC BENEFITS

This section  shall |  shall not apply to this Grant.

Grantee must confirm that any individual natural person eighteen years of age or older is lawfully present in the United States pursuant to CRS §24-76.5-101 et seq. when such individual applies for public benefits provided under this Grant by requiring the following:

### A. Identification:

The applicant shall produce one of the following personal identifications:

- i. A valid Colorado driver's license or a Colorado identification card, issued pursuant to article 2 of title 42, C.R.S.; or
- ii. A United States military card or a military dependent's identification card; or
- iii. A United States Coast Guard Merchant Mariner card; or
- iv. A Native American tribal document.

### B. Affidavit

The applicant shall execute an affidavit herein attached as **Form 2**, Affidavit of Legal Residency, stating:

- i. That they are United States citizen or legal permanent resident; or
- ii. That they are otherwise lawfully present in the United States pursuant to federal law.

## 21. GENERAL PROVISIONS

### A. Assignment and Subgrants

Grantee's rights and obligations hereunder are personal and may not be transferred, assigned or subgranted without the prior, written consent of the State. Any attempt at assignment, transfer, or subgranting without such consent shall be void. All assignments, subgrants, or sub-grantees approved by Grantee or the State are subject to all of the provisions hereof. Grantee shall be solely responsible for all aspects of subgranting arrangements and performance.

**B. Binding Effect**

Except as otherwise provided in §21(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

**C. Captions**

The captions and headings in this Grant are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

**D. Counterparts**

This Grant may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

**E. Entire Understanding**

This Grant represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

**F. Indemnification-General**

Grantee shall, to the extent permitted by law, indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Sub-grantees, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

**G. Jurisdiction and Venue**

All suits, actions, or proceedings related to this Grant shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

**H. List of Selected Applicable Laws**

Grantee at all times during the performance of this Grant shall comply with all applicable Federal and State laws and their implementing regulations, currently in existence and as hereafter amended, including without limitation those set forth on **Exhibit A**, Applicable Laws, attached hereto, which laws and regulations are incorporated herein and made part hereof. Grantee also shall require compliance with such laws and regulations by subgrantees under subgrants permitted by this Grant.

**I. Loan Forms**

If the form of financial assistance provided by the State is a loan, as specified in the table on page 1 above, Grantee shall execute a promissory note substantially equivalent to **Form** \_\_ and record a deed of trust substantially equivalent to Form 4 with the county the property resides.

**J. Modification**

**i. By the Parties**

Except as specifically provided in this Grant, modifications hereof shall not be effective unless agreed to in writing by the Parties in an amendment hereto, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATION OF CONTRACTS - TOOLS AND FORMS.

**ii. By Operation of Law**

This Grant is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Grant on the effective date of such change, as if fully set forth herein.

**iii. Grant Funding Change Letter**

The State may increase or decrease funds available under this Grant and modify selected other provisions of this agreement using a Grant Funding Change Letter substantially equivalent to **Form 1**. The provisions of the Grant Funding Change Letter shall become part of and be incorporated into the

original agreement. The Grant Funding Change Letter is not valid until it has been approved by the State Controller or designee.

**K. Order of Precedence**

**i. This Grant**

The provisions of this Grant shall govern the relationship of the State and Grantee. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- a) Colorado Special Provisions
- b) The provisions of the main body of this Grant
- c) Exhibit A
- d) Exhibit B

**ii. Loan Document**

This section shall apply if the form of financial assistance, as specified in the table on page 1 above, is a loan. In the event of conflicts or inconsistencies between this Grant and the Deed of Trust or the Promissory Note, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- a) Form 3, the Promissory Note
- b) This Grant

**L. Severability**

Provided this Grant can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

**M. Survival of Certain Grant Terms**

Notwithstanding anything herein to the contrary, provisions of this Grant requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Grantee fails to perform or comply as required.

**N. Taxes**

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Grantee shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing Grantee for them.

**O. Third Party Beneficiaries**

Enforcement of this Grant and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

**P. Waiver**

Waiver of any breach of a term, provision, or requirement of this Grant, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

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## COLORADO SPECIAL PROVISIONS

The Special Provisions apply to all Grants except where noted in *italics*.

**A. 1. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).**

This Grant shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

**B. 2. FUND AVAILABILITY. CRS §24-30-202(5.5).**

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

**C. 3. GOVERNMENTAL IMMUNITY.**

No term or condition of this Grant shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

**D. 4. INDEPENDENT CONTRACTOR**

Grantee shall perform its duties hereunder as an independent Grantee and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Grantee or any of its agents or employees. Unemployment insurance benefits shall be available to Grantee and its employees and agents only if such coverage is made available by Grantee or a third party. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Grant. Grantee shall not have authorization, express or implied, to bind the State to any Grant, liability or understanding, except as expressly set forth herein. Grantee shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

**E. 5. COMPLIANCE WITH LAW.**

Grantee shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

**F. 6. CHOICE OF LAW.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this grant. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Grant, to the extent capable of execution.

**G. 7. BINDING ARBITRATION PROHIBITED.**

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

**H. 8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.**

State or other public funds payable under this Grant shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Grant and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Grant, including, without limitation, immediate termination of this Grant and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**I. 9. EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Grant. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

**J. 10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.**

*[Not Applicable to intergovernmental agreements]* Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

**K. 11. PUBLIC GRANTS FOR SERVICES. CRS §8-17.5-101.**

*[Not Applicable to Agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Agreements, or information technology services or products and services]* Grantee certifies, warrants, and agrees that it does not knowingly employ or Grant with an illegal alien who shall perform work under this Grant and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Grant, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Grantee shall not knowingly employ or Grant with an illegal alien to perform work under this Grant or enter into a Grant with a Sub-grantee that fails to certify to Grantee that the Sub-grantee shall not knowingly employ or Grant with an illegal alien to perform work under this Grant. Grantee (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Grant is being performed, (b) shall notify the Sub-grantee and the Granting State agency within three days if Grantee has actual knowledge that a Sub-grantee is employing or Granting with an illegal alien for work under this Grant, (c) shall terminate the Subgrant if a Sub-grantee does not stop employing or Granting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Grantee participates in the State program, Grantee shall deliver to the Granting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Grantee fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the Granting State agency, institution of higher education or political subdivision may terminate this Grant for breach and, if so terminated, Grantee shall be liable for damages.

**L. 12. PUBLIC GRANTS WITH NATURAL PERSONS. CRS §24-76.5-101.**

Grantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Grant.

SPs Effective 1/1/09

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SIGNATURE PAGE

**THE PARTIES HERETO HAVE EXECUTED THIS GRANT**

**\* Persons signing for Grantee hereby swear and affirm that they are authorized to act on Grantee's behalf and acknowledge that the State is relying on their representations to that effect.**

<p style="text-align: center;"><b>GRANTEE CITY OF ENGLEWOOD</b></p> <p>By: <u>James K. Woodward</u> Printed Name of Authorized Individual</p> <p>Title: <u>Mayor</u> Official Title of Authorized Individual</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;"><b>STATE OF COLORADO John W. Hickenlooper, GOVERNOR DEPARTMENT OF LOCAL AFFAIRS</b></p> <p>By: _____ Reeves Brown, Executive Director</p> <p>Date: _____</p>
	<p style="text-align: center;"><b>PRE-APPROVED FORM CONTRACT REVIEWER</b></p> <p>By: _____ William F. Archambault, Jr., Finance and Administration Chief</p> <p>Date: _____</p>

**ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

**CRS §24-30-202 requires the State Controller to approve all State Grants. This Grant is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins performing prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.**

**STATE CONTROLLER  
David J. McDermott, CPA**

By: \_\_\_\_\_  
Barbara M. Casey,  
Controller Delegate

Date: \_\_\_\_\_

**EXHIBIT A – APPLICABLE LAWS**

Laws, regulations, and authoritative guidance incorporated into this Grant include, without limitation:

1. Age Discrimination Act of 1975, 42 U.S.C. Sections 6101, et seq.
2. Age Discrimination in Employment Act of 1967, 29 U.S.C. 621-634
3. Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101, et seq.
4. Equal Pay Act of 1963, 29 U.S.C. 206(d)
5. Immigration Reform and Control Act of 1986, 8 U.S.C. 1324b
6. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794
7. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d
8. Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e
9. Title IX of the Education Amendment of 1972, 20 U.S.C. 1681, et seq.
10. Section 24-34-301, et seq., Colorado Revised Statutes 1997, as amended
11. The applicable of the following:
  - 11.1. Cost Principals for State, Local and Indian Tribal Governments, 2 C.F.R. 225, (OMB Circular A-87);
  - 11.2. Cost Principals for Education Institutions, 2 C.F.R. 220, (OMB Circular A-21);
  - 11.3. Cost Principals for Non-Profit Organizations, 2 C.F.R. 230, (OMB Circular A-122), and
  - 11.4. Audits of States, Local Governments, and Non-Profit Organizations (OMB Circular A-133); and/or the Colorado Local Government Audit Law, 29-1-601, et seq, C.R.S., and State implementing rules and regulations.
  - 11.5. Immigration Status -Cooperation with Federal Officials, CRS 29-29-101, et seq.
  - 11.6. Davis-Bacon Act, 40 U.S.C. SS 276a to 276a-7.
  - 11.7. Copeland Act, 40 U.S.C. S 276c and 18 U.S.C. SS 874.
  - 11.8. Contract Work Hours and Safety Standards Act, 40 U.S.C. SS 327-333, regarding labor standards for federally assisted construction sub-awards.
  - 11.9. Wild and Scenic Rivers Act of 1968, 16 U.S.C. SS 1271 et. seq., related to protecting components or potential components of the national wild and scenic rivers system.
  - 11.10. National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470, Executive Order No. 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974, 16 U.S.C. 469a-1 et. seq.
  - 11.11. Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act), 42 U.S.C. 5121 et seq., as amended.
  - 11.12. National Flood Insurance Act of 1968, 42 U.S.C. 4001 et. seq.
  - 11.13. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 104.
  - 11.14. Department of Defense Authorization Act of 1986, Title 14, Part B, Section 1412, Public Law 99-145, 50 U.S.C. 1521.
  - 11.15. USA PATRIOT Act of 2001, (Pub. L. 107-56).
  - 11.16. Digital Television Transition and Public Safety Act of 2005, (Pub L. 109-171)
12. Federal Emergency Management Agency, Department of Homeland Security Regulations: All Applicable Portions of 44 CFR Chapter 1, with the following Parts specially noted and applicable to all grants of FEMA/DHS funds:
  - 12.1. Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 44 C.F.R. 13.
  - 12.2. Governmentwide Debarment and Suspension (Nonprocurement) and Requirements for Drug-Free Workplace, 44 C.F.R. 17.
  - 12.3. New Restrictions on Lobbying, 44 C.F.R. 18.
13. Privacy Act of 1974, 5 U.S.C. S 5529 and Regulations adopted thereunder (44 C.F.R. 6).
14. Prohibition against use of Federal Funds for Lobbying, 31 U.S.C. 1352
15. None of the funds made available through this agreement shall be used in contravention of the Federal buildings performance and reporting requirements of Executive Order No. 13123, part 3 of title V of the National Energy Conservation Policy Act, 42 U.S.C. 8251 et. Seq., or subtitle A of title I of the Energy Policy Act of 2005 (including the amendments made thereby).
16. None of the funds made available shall be used in contravention of section 303 of the Energy Policy Act of 1992, 42 U.S.C. 13212.
17. Buy American Act, 41 U.S.C. 10a et seq.
18. Federal Grant Guidance

**EXHIBIT B – STATEMENT OF PROJECT (SOP)**

**1. GENERAL DESCRIPTION OF THE PROJECT(S).**

**1.1. Project Description.** As detailed in Exhibit C, this project aims to further train and prepare the firefighters of Englewood to respond to a hazmat incident.

**1.2. Project expenses.** All expenses described in the approved grant application, Exhibit C, and categorized in the Budget Table §4.2 of this Exhibit B are eligible for reimbursement. The required 20% non-federal match need not be provided by the Grantee on a line-item by line-item basis, but must be 20% of the total overall expenditures, including any in-kind match.

**1.3. Identification of Subgrantee.** Arapahoe County Local Emergency Planning Committee

**2. DELIVERABLES:**

**2.1.** Grantee shall submit narrative and financial reports describing project progress and accomplishments, any delays in meeting the objectives and expenditures to date as described in §5 of this Exhibit B.

**2.2.** List additional grant deliverables. None.

**3. PERSONNEL:**

**3.1. Replacement.** Grantee shall immediately notify the Department if any key personnel specified in §3 of this Exhibit B cease to serve. Provided there is a good-faith reason for the change, if Grantee wishes to replace its key personnel, it shall notify the Department and seek its approval, which shall be at the Department's sole discretion, as the Department issued this Grant in part reliance on Grantee's representations regarding Key Personnel. Such notice shall specify why the change is necessary, who the proposed replacement is, what his/her qualifications are, and when the change will take effect. Anytime key personnel cease to serve, the Department, in its sole discretion, may direct Grantee to suspend work on the Project until such time as replacements are approved. All notices sent under this subsection shall be sent in accordance with §16 of the Grant.

**3.2. Responsible Administrator.** Grantee's performance hereunder shall be under the direct supervision of Mr. Kraig Stovall, Battalion Chief, an employee or agent of Grantee, who is hereby designated as the responsible administrator of this project.

**3.3. Other Key Personnel.** None

**4. FUNDING**

The State or Federal provided funds shall be limited to the amount(s) specified in §7 of the Grant and in the Federal and/or State funds and percentage(s) section of §4.2 of this Exhibit B, Project Budget.

**4.1. Matching Funds.**

**4.1.1.Requirement.** The following checked option shall apply

4.1.1.1.  Matching Funds are not required under this Grant.

4.1.1.2.  Grantee's required non-federal or state match contribution is detailed in §4.2 below. The match may:

4.1.1.2.1.  include in-kind match;

4.1.1.2.2.  not include in-kind match; or

4.1.1.2.3.  include no more than \_\_\_\_\_% in-kind match.

**4.1.2.General.** Grantee's required matching contribution, if any, need not be provided on a line-item by line-item basis, but must be at least the percentage of the total project expenditures specified in the Project Budget table.

**4.1.3.Documentation.** Documentation of expenditures for the non-federal match contribution is required in the same manner as the documentation for the grant funded expenditures.

**4.2. Project Budget**

<i>Project Activity/Line Item</i>	<i>Federal Share up to 80 %: \$8,320.00</i> <i>Matching Non-Federal Share 20 %: \$2,080.00</i>
	<b>Total for Category/Line Item Grant Funds and Grantee Matching Contribution</b>
<b>Supplies</b>	375.00
<b>Other</b>	10,025.00
<b>Total Budget</b>	<b>\$10,400.00</b>

**4.3. Project Budget Line Item Adjustments.** Grantee may (see checked option below):

- 4.3.1.  not adjust individual budget line amounts without approval of the State. Such approval shall be in the form of:
  - 4.3.1.1. a notice issued by the State in accordance with §16 of the Grant; or
  - 4.3.1.2. an amendment in accordance with the **Modification** subsection of the **General Provisions** of the Grant.
- 4.3.2.  adjust individual budget line amounts without the State’s approval if:
  - 4.3.2.1. there are no transfers to or between administration budget lines; and
  - 4.3.2.2. cumulative budgetary line item changes do not exceed the lesser of ten percent of the total budgeted amount or \$20,000

**4.4. Non-Supplanting of Grantee Funds.**

Grantee will ensure that the funds provided by this Grant are used to supplement and not supplant their funds budgeted for the purposes herein.

**5. PAYMENT:**

Payments shall be made in accordance with this section, the provisions of this Exhibit, and the provisions set forth in §7 of the Grant.

**5.1. Payment Schedule.** Grantee shall submit requests for reimbursement at least quarterly using the Department provided form or by letter with documentation attached if no form is required. One original signed reimbursement request is due on the same dates as the required financial reports. All requests shall be for eligible actual expenses incurred by Grantee, as described in §1 above. Requests will be accompanied by supporting documentation totaling at least the amount requested for reimbursement and any required non-federal match contribution. Documentation requirements are described in §6.6 below. If any financial or progress reports are delinquent at the time of a payment request, the Department may withhold such reimbursement until the required reports have been submitted. If the total reimbursable expenses reported for the year’s grant exceed the amount of the award, the excess expenses may be eligible for consideration for any reallocation additions made at the end of the federal grant period. If any grant end reallocation funding is available, eligibility for these funds will require timely report submittal, and strong performance demonstrated through the quarterly progress reports and through ongoing contact/monitoring.

**5.2. Payment Amount.** When non-federal match is required, such match must be documented with every payment request. Periodic payments will be made as requested at the same percentage of the documentation submitted as the Grant funded share of the budget up to any applicable quarterly or other pre-closeout maximums. Payment will not exceed the amount of cash expenditures documented. Excess match documented and submitted with one reimbursement request will be applied to subsequent requests as necessary to maximize the allowable reimbursement.

**5.3. Remittance Address.** If mailed, payments shall be remitted to the following address unless changed in accordance with §16 of the Grant:

City of Englewood  
Arapahoe County LEPC  
3615 S. Elati St.  
Englewood, CO 80110

**6. ADMINISTRATIVE REQUIREMENTS:**

**6.1. Accounting.** Grantee shall maintain properly segregated accounts of Grant funds, matching funds, and other funds associated with the Project and make those records available to the State upon request.

**6.2. Audit Report.** If an audit is performed on Grantee's records for any fiscal year covering a portion of the term of this Grant or any other grants/contracts with DOLA, Grantee shall submit an electronic copy of the final audit report, including a report in accordance with the Single Audit Act, to [dola.audit@state.co.us](mailto:dola.audit@state.co.us), or send the report to:

Department of Local Affairs  
Accounting & Financial Services  
1313 Sherman Street, Room 323  
Denver, CO 80203

**6.3. Monitoring.** The State shall monitor this Grant in accordance with §§9(B) and 9(C) of the Grant.

**6.4. Records.** Grantee shall maintain records in accordance with §9 of the Grant.

**6.5. Reporting.**

**6.5.1. Quarterly Financial Status and Progress Reports.** The project(s) approved in this Grant are to be completed on or before the termination date stated in §5(A) of the Grant Agreement. Grantee shall submit quarterly financial status and programmatic progress reports for each project identified in this agreement using the Standard Federal Financial Status Report (SF 425) and the Standard Federal Progress and Performance Narrative Report (SF-PPR), or other forms provided by the Department. One of each with original signatures shall be submitted in accordance with the schedule below:

Report Period	Due Date
January –March	April 20
April – June	July 20
July – September	October 20
October – December	January 20

**6.5.2. Final Reports.** Grantee shall submit a final financial status and progress report that provides final financial reconciliation and a final cumulative grant/project accomplishments report within 45 days of the end of the project/grant period. No obligations of funds can remain on the final report. The final reports may substitute for the quarterly reports for the final quarter of the grant period. If all projects are completed before the end of the grant period, the final report may be submitted at any time before its final due date. No further reports will be due after the Department has received, and sent notice of acceptance of the final grant report.

**6.6. Required Documentation.** Sufficient detail shall be provided with reimbursement requests to demonstrate that expenses are allowable and appropriate as detailed in the subsections below herein. Grantees must retain all procurement and payment documentation on site for inspection. This shall include, but not be limited to, purchase orders, receiving documents, invoices, vouchers, equipment/services identification, and time and effort reports.

**6.6.1. Equipment or tangible goods.** Requests for reimbursement for tangible personal property with a purchase price of less than \$5,000 per item should include the invoice number, description of item purchased (e.g. NOAA weather radios), and the location and number of items, or copies of the

paid invoices may be submitted. For equipment items with a purchase price of or exceeding \$5,000, and a useful life of more than one year, the Grantee must provide a copy of the paid invoice and include a unique identifying number. This number can be the manufacturer's serial number or, if the Grantee has its own existing inventory numbering system, that number may be used. The location of the equipment must also be provided. In addition to ongoing tracking requirements, Grantee shall ensure that tangible goods with per item cost of \$500 or more and equipment with per unit cost of \$5,000 or more are prominently marked as follows: "*Purchased with funds provided by the FEMA*"

- 6.6.2. **Services.** Grantees shall include contract/purchase order number(s) or employee names, the date(s) the services were provided, the nature of the services, and the hourly contract or salary rates, or monthly salary and any fringe benefits rates.
- 6.7. **Procurement.** Grantee shall ensure its procurement policies meet or exceed local, state, and federal requirements. Grantee should refer to local, state, and federal guidance prior to making decisions regarding competitive bids, sole source or other procurement issues. In addition:
  - 6.7.1. **Sole Source.** Any sole source transaction in excess of \$100,000 must be approved in advance by the Department.
  - 6.7.2. **Conduct.** Grantees shall ensure that: (a) All procurement transactions, whether negotiated or competitively bid, and without regard to dollar value, are conducted in a manner that provides maximum open and free competition; (b) Grantee must be alert to organizational conflicts of interest and/or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade; (c) Contractors who develop or draft specifications, requirements, statements of work, and/or Requests for Proposals (RFPs) for a proposed procurement must be excluded from bidding or submitting a proposal to compete for the award of such procurement; and (d) Any request for exemption of item a-c within this subsection must be submitted in writing to, and be approved by the authorized Grantee official.
  - 6.7.3. **Debarment.** Grantee shall verify that the Contractor is not debarred from participation in state and federal programs. Sub-grantees should review contractor debarment information on <http://www.epls.gov>.
  - 6.7.4. **Funding Disclosure.** When issuing requests for proposals, bid solicitations, and other published documents describing projects or programs funded in whole or in part with these grant funds, Grantee and Subgrantees shall: (a) state the percentage of the total cost of the program or project which will be financed with grant money; (b) state the grant program name and dollar amount of state or federal funds for the project or program; and (c) use the phrase "*This project was supported by the Colorado Department of Local Affairs, Division of Emergency Management.*"
  - 6.7.5. **Approved Purchases.** Grantee shall verify that all purchases are listed in §1.1 above. Equipment purchases, if any, shall be for items listed in the Approved Equipment List (A.E.L) for the grant period on the Responder Knowledge Base (RKB), at <https://www.rkb.us>
  - 6.7.6. **Assignment of Rights/Duties/Equipment.** Grantee shall ensure that no rights or duties exercised under this Grant, or equipment purchased with Grant Funds having a purchase value of \$5,000 or more are assigned without the prior written consent of the Department.
- 6.8. **Additional Administrative Requirements.** None.

## COUNCIL COMMUNICATION

<b>Date:</b> April 4, 2011	<b>Agenda Item:</b> 11 a i	<b>Subject:</b> Title 16: Unified Development Code Amendments Pertaining to Medical Marijuana Title 5: Amendments pertaining to Medical Marijuana
<b>Initiated By:</b> Community Development Department  Finance and Administrative Services Department		<b>Staff Source:</b> Alan White, Director Audra L. Kirk, Planner I Frank Gryglewicz, Director

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

On August 17, 2009 City Council approved Ordinance No. 34, establishing a temporary suspension or moratorium on medical marijuana primary care-givers until licensing and zoning regulations could be put into place. This moratorium was set to expire on February 17, 2010.

On October 5, 2009 City Council approved Ordinance No. 41. This ordinance amends Title 5 of the Englewood Municipal Code to include licensing for medical marijuana primary care-givers.

On January 4, 2010, City Council approved Ordinance No. 5, extending the temporary suspension or moratorium on the establishment of new medical marijuana dispensing and growing uses. This moratorium was set to expire on June 17, 2010.

On May 3, 2010 City Council approved Ordinance No. 14, extending the moratorium on the establishment of new medical marijuana dispensing and growing uses. This moratorium was set to expire on October 19, 2010.

On August 2, 2010 City Council approved Ordinance No. 30, extending the existing temporary suspension or moratorium on the establishment of new medical marijuana dispensing and growing uses. This moratorium expires on July 1, 2011.

On September 13, 2010 City Council discussed zoning and licensing requirements for medical marijuana uses. A consensus was reached to increase the State spacing requirements as follows:

1. Any medical marijuana center, optional premises cultivation operation, or infused product manufacturer is required to be located at least 2,000 feet from any school, residential child care facility, and drug and alcohol treatment facility;
2. Any medical marijuana center is required to be located at least 2,500 feet from any other medical marijuana center;
3. These distances will be applied to medical marijuana centers, optional premises, cultivation operations, or infused product manufacturers and schools, child care centers and alcohol and drug treatment centers whether located inside or outside the corporate limits of Englewood.

The spacing requirements between the various medical marijuana facilities will be included under the licensing requirements in Title 5 of the Englewood Municipal Code.

On February 28, 2011 Council held a Study Session for the purpose of staff presenting recommendations from the Planning and Zoning Commission concerning zoning for medical marijuana uses.

### **PREVIOUS PLANNING COMMISSION ACTION**

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. 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.

The Commission conducted a Public Hearing on October 20, 2009, where testimony was considered. During the Public Hearing, Commissioners did discuss appropriate zone districts, spacing, required permits, and conditions that would be suitable for medical marijuana. Although the Commission did agree on some of the issues at hand, the outcome of the Public Hearing was that a motion to recommend amendments to the UDC failed.

Subsequent to new regulations being adopted by the State Legislature, the Planning and Zoning Commission held a study session on September 14, 2010 to determine what zone districts would be appropriate for medical marijuana and its uses.

On October 19, 2010 the Planning and Zoning Commission held a study session to clarify the definitions that were adopted by the State of Colorado. This discussion was carried over to the November 16, 2010 meeting.

On January 19, 2011 the Planning and Zoning Commission held a study session to review and confirm the Commission's recommended changes to the UDC.

On March 8, 2011 the Planning and Zoning Commission held a public hearing on the proposed changes to Chapter 16 of the Englewood Municipal Code. The Planning and Zoning Commission approved recommendations for adoption of the proposed amendments to Title 16: Unified Development Code pertaining to medical marijuana centers, optional premises cultivation operations, and infused products manufacturing.

### **RECOMMENDED ACTION**

Staff recommends that Council consider, on first reading, a bill for an ordinance on proposed Englewood Municipal Code amendments related to medical marijuana centers, optional premises cultivation operations, and infused products manufacturing. Staff further requests that Council set Monday, April 18, 2011 as the date for a Public Hearing to consider testimony on the proposed amendments.

## **BACKGROUND**

In 2000, Colorado voters passed a constitutional amendment allowing the use of medical marijuana. Since that time there have been three businesses open in Englewood with the purpose of being medical marijuana primary care-givers. Prior to the opening of these businesses Englewood did not have any regulations regarding medical marijuana primary care-givers. City Council has approved a number of ordinances which established a temporary suspension or moratorium on the establishment of new medical marijuana dispensing and growing uses until licensing and zoning regulations could be put into place.

House Bill 10-1284 was approved by the State Legislature on May 6, 2010 and signed into law by the Governor. This House Bill created licensing requirements and definitions for medical marijuana center, optional premises cultivation operation and medical marijuana-infused product manufacturer. The new legislation requires State licenses for the uses and enables local jurisdictions to adopt local licensing requirements if they so choose. The legislation enables local jurisdictions to prohibit these uses in the jurisdiction by ordinance or election. The legislation establishes requirements for medical marijuana centers to be located 1,000 feet from schools, child care facilities, and drug and alcohol treatment facilities. Jurisdictions may adopt spacing requirements greater or lesser than these State requirements.

## **PROPOSED AMENDMENTS (Title 16)**

The following outlines the changes to Title 16: Unified Development Code recommended by the Planning and Zoning Commission:

### Use Classification:

Amend Table 16-5-1.1: *Table of Allowed Uses* to include medical marijuana as a Use Category under Commercial Uses.

Amend Table 16-5-1.1: *Table of Allowed Uses* to include medical marijuana center, medical marijuana optional premises cultivation operation and medical marijuana infused products manufacturer as a Use Types under the medical marijuana section and Use Category.

### Zone Districts:

The Commission determined that medical marijuana and its uses are 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, MO-1 and MO-2 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 determined that medical marijuana Centers are an appropriate permitted use in the M-2, MU-B-1, MU-B-2, I-1 and I-2 zone districts.

Optional premises cultivation operations and infused products manufacturers would be permitted in the M-2, MU-B-1 and MU-B-2 zone districts as accessory uses, provided that the center and cultivation operation and/or the infused products manufacturing uses combined did not occupy more than 5,000 square feet in these zone districts.

Medical marijuana centers, cultivation operations and infused product manufacturing uses would be allowed in I-1 and I-2 zone districts as permitted uses, with no restriction on size.

Use Specific Standards:

Add the following section and additional regulations under 16-5-2: Use Specific Standards:

13. Medical marijuana

- a. All medical marijuana Uses shall comply with State regulations and City of Englewood licensing requirements.
- b. Facilities in MU-B-1, MU-B-2 and M-2 zone districts: optional premises cultivation and infused product manufacturing uses are allowed only as accessory uses to a principal medical marijuana center provided the square footage of the total operation does not exceed five thousand (5,000) square feet.

Accessory Uses:

Add medical marijuana centers, medical marijuana-infused products manufacturers and optional premises cultivation operations to the prohibited list of home occupations under 16-5-4: Accessory Uses:

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

[(1) – (10) are not replicated here and remain in the code.]

(11) Medical marijuana centers.

(12) Medical marijuana-infused products manufacturers.

(13) Optional premises cultivation operation.

Definitions:

The Commission recommended using the same definitions as the State Legislation relating to medical marijuana. The Commission recommends amending Section 16-11-2 to include the following definitions:

*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 Center:* A person licensed to operate a business that sells medical marijuana to registered patients or primary caregivers as defined in Section 14 of Article XVIII of the State constitution, but is not a primary caregiver.

*Medical marijuana-infused products manufacturer:* A person licensed pursuant to operate a business as described in C.R.S. 12-43.3-404.

*Optional premises cultivation operation:* A person licensed to operate a business as described in C.R.S. 12-43.3-403.

The above recommendations are incorporated into the proposed ordinance, which is attached.

## **PROPOSED AMENDMENTS (Title 5)**

Establishing a Local Licensing Authority to grant or refuse medical marijuana licenses, adopting licensing requirements that match/align with Colorado State legislation, setting forth a distancing requirement of 2000 feet from specific uses and 2500 feet from other medical marijuana uses. We are tracking changes to State licensing requirements, so the City ordinances mirror the State Statutes, except for provisions that we are allowed to change: the distancing requirement and the size of the building.

## **FINANCIAL IMPACT**

Fees are yet to be determined. The estimated fees collected should cover staff time expended to license these establishments.

## **LIST OF ATTACHMENTS**

Planning and Zoning Staff Report: March 8, 2011  
Planning and Zoning Commission Minutes: March 8, 2011  
Findings of Fact: March 8, 2011  
Map showing Proposed Zone Areas for New Medical Marijuana Centers, Grow Operations, and Infused Product Manufacturers  
Bill for an Ordinance



# M E M O R A N D U M

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**TO:** Planning and Zoning Commission  
**THRU:** Alan White, Director, Community Development ✓  
Tricia Langon, Senior Planner ✓  
**FROM:** Audra L. Kirk, Planner ✓  
**DATE:** March 08, 2011  
**SUBJECT:** Case 2009-04 – Medical Marijuana Ordinance Amendments to  
Title 16: Unified Development Code

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**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 Centers, Optional Premises Cultivation Operation, and Infused Products Manufacturing.

**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.

Revised House Bill 10-1284 is approved on May 6, 2010. This Revised House Bill changed the definitions of medical marijuana. The definition for medical marijuana primary care-giver is replaced with medical marijuana center, optional premise cultivation operation and medical marijuana-infused product manufacturer.

On August 2, 2010 Englewood City Council approved through a second reading Ordinance No. 30. This ordinance extended the existing temporary suspension or moratorium on the establishment of new medical marijuana dispensing and growing uses.

In September 2010 Council approved a draft ordinance increasing the State spacing requirements as follows:

1. Any medical marijuana center, Optional Premises Cultivation Operation, or infused product manufacturer is required to be located at least 2,000 feet from any school, residential child care facility, and drug and alcohol treatment facility;
2. Any medical marijuana center is required to be located at least 2, 500 feet from any other medical marijuana center;
3. These distances will be applied to Medical Marijuana Centers, optional premises, cultivation operations, or infused product manufacturers and schools, child care centers and alcohol and drug treatment centers whether located inside or outside the corporate limits of Englewood.

The spacing requirements between the various medical marijuana facilities will be included under the licensing requirements in Title 5 of the Englewood Municipal Code.

### **PROPOSED CHANGES:**

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

#### **Use Classification:**

The Commission determined that medical marijuana center, medical marijuana Optional Premises Cultivation Operation and medical marijuana infused products manufacturer 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 as a use under Commercial Use Category.

Amend Table 16-5-1.1: Table of Allowed Uses to include Medical Marijuana Center, Medical Marijuana Optional Premises Cultivation Operation and Medical Marijuana Infused Products Manufacturer as a Use Type with the Commercial Use Category.

**Use Specific Standards:**

The Commission is recommending adding the following additional regulations under 16-5-2: Use Specific Standards:

- a. All Medical Marijuana Uses shall comply with State regulations and City of Englewood licensing requirements.
  
- b. Facilities in MU-B-1, MU-B-2 and M-2 zone districts: Optional Premises Cultivation and Infused Product Manufacturing uses are allowed only as accessory uses to a principal Medical Marijuana Center provided the square footage of the total operation does not exceed five thousand (5,000) square feet.

**Accessory Uses:**

The Commission is recommending adding Medical Marijuana Centers, Medical marijuana-Infused Products Manufacturers and Optional Premises Cultivation Operations to the prohibited list of home occupations under 16-5-4: Accessory Uses:

- 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 vehicle sales requiring a state dealer's license.

(11) Medical Marijuana Centers.

(12) Medical Marijuana-Infused Products Manufacturers.

(13) Optional Premises Cultivation Operation.

**Definitions:**

The Commission determined to use the same definitions as the State Constitution relating to Medical Marijuana.

Recommendation:

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

*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 Center:* A person licensed to operate a business that sells medical marijuana to registered patients or primary caregivers as defined in Section 14 of Article XVIII of the state constitution, but is not a primary caregiver.

*Medical Marijuana-Infused Products Manufacturer:* A person licensed pursuant to operate a business as described in C.R.S. 12-43.3-404.

*Optional Premises Cultivation Operation:* A person licensed to operate a business as described in C.R.S. 12-43.3-403.

**Zone Districts:**

The Commission determined that Medical Marijuana and its uses are 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, MO-1 and MO-2 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 did determine that Medical Marijuana Centers are an appropriate permitted use in the M-2, MU-B-1, MU-B-2, I-1 and I-2 zone districts.

Optional Premises Cultivation Operations and Infused Products Manufacturers would be permitted in the M-2, MU-B-1 and MU-B-2 zone districts as accessory uses, provided that

the center and cultivation operation and/or the Infused Products Manufacturing uses combined did not occupy more than 5,000 square feet in these zone districts.

Medical Marijuana Centers, cultivation operations and infused product manufacturing uses would be allowed in I-1 and I-2 zone districts as permitted uses.

**Recommendation:**

Prohibit Medical Marijuana uses 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, MO-1 and MO-2 zone districts. Allow Medical Marijuana Centers in the M-2, MU-B-1, MU-B-2 zone districts as permitted uses. Allow Optional Premises Cultivation Operations and Infused Products Manufacturers as accessory uses in the M-2, MU-B-1 and MU-B-2 zone districts. Allow Medical Marijuana Centers, Optional Premises Cultivation Operations and Infused Products Manufacturers as permitted uses in the I-1 and I-2 zone districts.

**PROPOSED AMENDMENTS:**

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

**ATTACHMENTS:**

EXHIBIT A: Proposed Amendments

EXHIBIT C: Ordinance 30, Series of 2010

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

**16-5-1: Table of Allowed Uses.**  
C. Table of Allowed Uses.

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	R	R	R	MU	MU	M	M	MU	MU	T	I		I	
<b>COMMERCIAL USES</b>																
Adult Use	All types as defined in Chapter 16-11													P		16-5-2.C.1
Agricultural Use	Greenhouse/nursery, raising of plants, flowers, or nursery stock															16-5-2.C.2
Animal Sales and Service	Animal shelter															
	Kennel/day care													L		
Assembly	Pet store (live animal sale)													P		
	Small animal veterinary hospital or clinic													L		
	Assembly hall or auditorium, hall rental for meetings or social occasions													P		

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						Additional Regulations						
		R 1 A	R 1 B	R 1 C	R 2 A	R 2 B	R 3 A	MU R 3 B	MU R 3 C	MU R 3 D	M 1	M 2	M 3		MU B 1	MU B 2	T S A	I 1	I 2	
	Membership organization (excluding adult use)																			
Dependent Care	Dependent care center (less than 24-hour care, any age)	C	C	C	C	C									P	P	C	P	P	16-5-2.C.7
Entertainment/ Amusement: Indoor	Amusement establishment																			
	Hookah Lounge																			
	Physical fitness center/spa																			
	Theater and performance/concert venue, not including adult entertainment																			
Entertainment/ Amusement: Outdoor	General outdoor recreation																			
Financial Institution	Check cashing facility																			

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

**TABLE 16-5-11: 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	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
Financial institution, with drive-through service	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	Restaurant, bar, tavern with or without outdoor operations																		
	Restaurant, with drive-through service																		
Take out and delivery only	Take out and delivery only																		
	Medical Marijuana Center																		



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						Additional Regulations					
		R 1 A	R 1 B C	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
	Mortuary																		
	Personal care																		
	Service: photography studio and photo lab, upholstery, printer, locksmith, tailor																		
	Tattoo and body-piercing establishment																		
	Temporary employment business																		
	Equipment rental																		
Retail Sales and Service (Repair and Rental)	Repair shop (not including auto)																		
	Antique store																		
	Art gallery																		
	Auction house																		
Retail Sales and Service (Sales)	Buy-back shop, second hand, thrift, consignment																		





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						Additional Regulations										
		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 R 3 D	M 1	M 2		M 3	MU B 1	MU B 2	MU B 3	MU B 4	T S A	I 1	I 2		
Visitor Accommodation	Parking area, surface (operable vehicles), principal use																							
Wholesale	Recreational vehicles and boats, sales or rental																							
Wholesale	Bed and breakfast																							
Wholesale	Hotel																							
Wholesale	Hotel, Extended Stay																							
Wholesale	Sales and distribution																							

[NOTE: 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

- a. All Medical Marijuana Uses shall comply with State regulations and City of Englewood licensing requirements.
- b. Facilities in MU-B-1, MU-B-2 and M-2 zone districts: Cultivation and Infused Product Manufacturing uses are allowed only as accessory uses to a principal Medical Marijuana Center provided the square footage of the total operation does not exceed five thousand (5,000) square feet.

**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.

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

- (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.

Title 16: Unified Development Code  
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- (7) Restaurants.
- (8) Towing business.
- (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 Centers.
- (12) Medical Marijuana-Infused Products manufacturers.
- (13) Optional Premises Cultivation Operation.

[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:* 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 Center:* A person licensed to operate a business that sells medical marijuana to registered patients or primary caregivers as defined in Section 14 of Article XVIII of the state constitution, but is not a primary caregiver.

*Medical Marijuana-Infused Products Manufacturer:* A person licensed pursuant to operate a business as described in C.R.S. 12-43.3-404.

*Optional Premises Cultivation Operation:* A person licensed to operate a business as described in C.R.S. 12-43.3-403.

BY AUTHORITY

ORDINANCE NO. 30  
SERIES OF 2010

COUNCIL BILL NO. 25  
INTRODUCED BY COUNCIL  
MEMBER JEFFERSON

AN ORDINANCE EXTENDING AN EXISTING TEMPORARY SUSPENSION OR MORATORIUM ON THE ESTABLISHMENT OF NEW MEDICAL MARIJUANA DISPENSING AND GROWING USES UNTIL JULY 1, 2011.

WHEREAS, it has been brought to Council's attention that the current Unified Development Code does not adequately define or limit medical marijuana dispensing and growing uses; and

WHEREAS, City Council has directed staff to review, create and revise, if necessary, provisions concerning medical marijuana dispensing and growing uses; and

WHEREAS, staff will need sufficient time to review and coordinate the provisions relating to medical marijuana dispensing and growing uses in the Code; and

WHEREAS, City Council deems it necessary to coordinate the review of the Unified Development code and finds it appropriate to prohibit the establishment of new medical marijuana dispensing and growing uses in the City until the review by the staff and City Council; and

WHEREAS, the moratorium passed August 17, 2009 and extended until October 19, 2010 stops the establishment of new businesses; and

WHEREAS, those uses already in business would not be affected; and

WHEREAS, in order for the City to comply with equal protection issues, the moratorium or temporary suspension must apply to all zone districts unless specific exemptions can be legitimately set forth due to a finding that a particular zone district should be excluded; and

WHEREAS, the revisions to the Unified Development Code and the updating of the uses allowed in all zone districts will help protect the public health, safety and welfare by preserving a safe, healthy, and sound environment within the City; and

WHEREAS, the citizens of Englewood and the City Council have determined that further revisions to the Unified Development Code are necessary to promote, coordinate, and implement a high quality plan to produce well balanced zoning in the City; and

WHEREAS, the current listing of uses is not meeting the above criteria; and

WHEREAS, the Colorado State Legislature has decided to also address this issue by the passage of House Bill 1284 of the 2010 Session and the City Council finds that the revisions to the City's Unified Development Code must be coordinated with the requirements of the Colorado Statutes as well as the Constitution; and

WHEREAS, the City Council finds that this extension of the existing moratorium or temporary suspension of the establishment of all new medical marijuana dispensing and growing uses is necessary to implement the revisions to the Unified Development Code consistent with the State Statutes;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, THAT AN EXISTING TEMPORARY SUSPENSION OR MORATORIUM ON THE ESTABLISHMENT OF NEW MARIJUANA DISPENSING AND GROWING USES UNTIL JULY 1, 2011.

Section 1. By reason of the fact that the Englewood Unified Development Code does not adequately define or limit medical marijuana dispensing and growing uses and for the immediate preservation of the public property, health, peace and safety.

Section 2. Said moratorium or temporary suspension shall be for any medical marijuana dispensing and growing uses within the City of Englewood not in operation by August 17, 2009.

Section 3. The City Council directs City staff to develop appropriate recommendations to Council, within the moratorium period, to be consistent with this Ordinance and to provide for an updating of the Unified Development Code relating to medical marijuana dispensing and growing uses.

Section 4. The City Council finds the provisions of this Ordinance are temporary in nature and are intended to be replaced by subsequent legislative enactment so that the moratorium or temporary suspension as specified in this ordinance shall terminate on July 1, 2011.

Introduced, read in full, and passed on first reading on the 19th day of July, 2010.

Published as a Bill for an Ordinance in the City's official newspaper on the 23<sup>rd</sup> day of July, 2010.

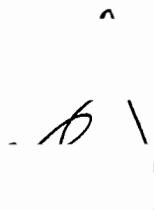
Published as a Bill for an Ordinance on the City's official website beginning on the 21st day of July, 2010 for thirty (30) days.

Read by title and passed on final reading on the 2<sup>nd</sup> day of August, 2010.

Published by title in the City's official newspaper as Ordinance No. 30, Series of 2010, on the 6<sup>th</sup> day of August, 2010.

Published by title on the City's official website beginning on the 4<sup>th</sup> day of August, 2010 for thirty (30) days.

  
A T T E S T .

 James K. Woodward, Mayor

 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 Ordinance passed on final reading and published by title as Ordinance No. 30, Series of 2010.



/ Loucrishia A. Ellis

**CITY OF ENGLEWOOD PLANNING AND ZONING COMMISSION  
REGULAR MEETING  
March 8, 2011**

**Minutes and audio are available at:  
<http://www.englewoodgov.org/Index.aspx?page=152>**

**I. CALL TO ORDER**



The regular meeting of the City Planning and Zoning Commission was called to order at 7:01 p.m. in the Council Chambers of the Englewood Civic Center, Chair Knoth presiding.

Present: Bleile, Roth, King, Welker, Knoth, Brick, Calonder  
Kinton (alternate)

Absent: Fish, Krieger

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

**II. APPROVAL OF MINUTES**

February 23, 2011



Welker moved:

Bleile seconded: TO APPROVE THE FEBRUARY 23, 2011 MINUTES

Chair Knoth asked if there were any modifications or corrections.

There were none.

AYES: Bleile, Roth, Welker, Knoth, King, Brick, Calonder

NAYS: None

ABSTAIN: None

ABSENT: Fish, Krieger

Motion carried.

**III. BRIAN EWERT, SUPERINTENDENT OF ENGLEWOOD PUBLIC SCHOOLS**



Mr. Ewert addressed the Commission regarding the proposed bond issue. He presented a PowerPoint slideshow. Key points included:

- Contract received and under review on Flood Middle School.

- Discussed the current economy and its impact on the school budget, decline in pupil count, safety issues and age and condition of current facilities.
- 70% of current students are qualified as living in poverty.
- Board approved a 5 – 10 year plan.
- District will apply for an \$8,000,000 grant to be matched by the District. Money to be used for renovation of Englewood Middle School.
- Discussed potential impact of a bond/mill levy increase to the local taxpayer.
- Viewed architect's drawing of what a combined middle and high school might look like.

#### IV. PUBLIC HEARING

CASE #2009-04 Medical Marijuana Amendments



Roth moved:

Bleile seconded: TO OPEN THE PUBLIC HEARING

AYES: Bleile, Roth, Welker, Knoth, King, Brick, Calonder

NAYS: None

ABSTAIN: None

ABSENT: Fish, Krieger

Motion carried.

Ms. Kirk, Englewood City Planner I, was sworn in. She distributed two different distancing maps; one dated November 2010 and the other dated March of 2011. She provided background information on Medical Marijuana and reviewed the proposed amendments.

Director White was sworn in. He stated the spacing requirements are proposed to be included in Title 5, which is where all the business and liquor licensing is. The State regulations are patterned after the liquor licensing.

There was no public in attendance to testify.

Welker moved:

Bleile seconded: TO CLOSE THE PUBLIC HEARING

AYES: Bleile, Roth, Welker, Knoth, King, Brick, Calonder

NAYS: None

ABSTAIN: None

ABSENT: Fish, Krieger

Motion carried.



Bleile moved:

Roth seconded: CASE #2009-04. AMENDMENTS TO TITLE 16: UNIFIED DEVELOPMENT CODE OF THE ENGLEWOOD MUNICIPAL CODE RELATED TO MEDICAL MARIJUANA BE RECOMMENDED AS PRESENTED FOR APPROVAL TO CITY COUNCIL WITH A FAVORABLE RECOMMENDATION FOR ADOPTION.



Conclusion:

- The Amendments provide for the health and welfare of persons who need medical marijuana for pain and other medical issues while at the same time looking after the safety and general welfare of the community at large by placing the medical marijuana centers strategically to avoid problems with sensitive areas in Englewood.
- The Amendments reflect the discussions the Planning and Zoning Commission has had over the past couple of years.
- The Amendments work for the community; medical marijuana uses are allowed with reasonable restrictions.
- Commission supports the more strict spacing requirements under Title 5.



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

Motion carried.

#### V. PUBLIC FORUM



There was no public present.

#### VI. DIRECTOR'S CHOICE



Director White had nothing further to report.

#### VII. STAFF'S CHOICE



Director White provided an update on future meetings:

March 22: Sign Code Study Session  
April 5: Medical District Phase II Study Session

He also provided an update on Kent Place and the sign code.

**VIII. ATTORNEY'S CHOICE**



Ms. Reid had nothing further to report.

**IX. COMMISSIONER'S CHOICE**



Mr. Roth noted there was an interesting article regarding billboards in the last issue of the *Planning Commissioners Journal*. He suggested all commissioners read the article.

Chair Knoth asked if food carts were allowed in the City. Ms. Kirk provided the regulations.

The Commissioners asked about Ms. Krieger as she has missed several meetings. They said their thoughts are with her.

Several Commissioners stated the new format of the minutes was more informative over the ones two weeks ago.

The meeting adjourned at 8:12 p.m.

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Barbara Krecklow, Recording Secretary

## CITY OF ENGLEWOOD PLANNING AND ZONING COMMISSION

IN THE MATTER OF CASE #2009-04,	)	
FINDINGS OF FACT, CONCLUSIONS	)	
AND RECOMMENDATIONS RELATING	)	FINDINGS OF FACT AND
TO THE UNIFIED DEVELOPMENT CODE	)	CONCLUSIONS OF THE
MEDICAL MARIJUANA AMENDMENTS	)	CITY PLANNING AND
	)	ZONING COMMISSION
	)	
INITIATED BY:	)	
Community Development Department	)	
1000 Englewood Parkway	)	
Englewood, CO 80110	)	

Commission Members Present: Bleile, Calonder, Brick, King, Knoth, Roth, Welker

Commission Members Absent: Fish, Krieger

This matter was heard before the City Planning and Zoning Commission on March 8, 2011 in the City Council Chambers of the Englewood Civic Center.

Testimony was received from staff. The Commission received notice of Public Hearing, the Staff Report, and a copy of the proposed amendments to Title 16 Unified Development Code which were incorporated into and made a part of the record of the Public Hearing.

After considering the statements of the witnesses, and reviewing the pertinent documents, the members of the City Planning and Zoning Commission made the following Findings and Conclusions.

### FINDINGS OF FACT

1. **THAT** the Public Hearing on the Unified Development Code Medical Marijuana Amendments was brought before the Planning Commission by the Department of Community Development, a department of the City of Englewood.
2. **THAT** notice of the Public Hearing was published in the Englewood Herald on February 18, 2011 and was on the Englewood web site from February 18, 2011 to March 8, 2011.
3. **THAT** the Staff report was made part of the record.

4. **THAT** in 2000 Colorado voters passed a constitutional amendment allowing the use of medical marijuana.
5. **THAT** on August 17, 2009 Englewood City Council approved Ordinance No. 34 establishing a moratorium on Medical Marijuana Primary Caregivers until licensing and zoning regulations could be put in place.
6. **THAT** on October 5, 2009 Englewood City Council approved through a second reading Ordinance No. 41 amending Title 5 of the Englewood Municipal Code to include licensing for Medical Marijuana Primary Caregivers.
7. **THAT** in September and October of 2009 the Planning and Zoning Commission held study sessions to begin discussions on Medical Marijuana and how to regulate it within Title 16 of the Englewood Municipal Code.
8. **THAT** on May 6, 2010 House Bill 10-1284 was approved by the State Legislature. This House Bill created new definitions of Medical Marijuana facilities to be licensed in the State: Medical Marijuana Center, Optional Premise Cultivation Operation and Medical Marijuana Infused Product Manufacturer.
9. **THAT** on August 2, 2010 Englewood City Council approved through a second reading Ordinance No. 30 which extended the existing temporary moratorium on the establishment of new medical marijuana dispensing and growing uses.
10. **THAT** spacing requirements between the medical marijuana facilities will be included under the licensing requirements in Title 5 of the Englewood Municipal Code.

### CONCLUSIONS

1. **THAT** the Public Hearing on the Unified Development Code Medical Marijuana Amendments was brought before the Planning Commission by the Department of Community Development, a department of the City of Englewood.
2. **THAT** notice of the Public Hearing was published in the Englewood Herald on February 18, 2011 and was on the Englewood web site from February 18, 2011 to March 8, 2011.
3. **THAT** in 2000 voters in the State voted to amend the Constitution to allow the use of medical marijuana.
4. **THAT** medical marijuana uses be prohibited 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, MO-1 and MO-2 zone districts.

5. **THAT** in 2010 the State passed legislation defining and enabling local jurisdictions to license and regulate medical marijuana centers, optional premises cultivation operations and infused product manufacturers.
5. **THAT** medical marijuana centers are an appropriate permitted use in the M-2, MU-B-1, MU-B-2 zone districts.
6. **THAT** Optional Premises Cultivation Operations and Infused Products Manufacturers be allowed as accessory uses to a principal Medical Marijuana Center in the M-2, MU-B-1 and MU-B-2 zone districts, provided that the Center and Cultivation Operation and/or Infused Products Manufacturing uses combined do not occupy more than 5,000 square feet.
7. **THAT** Medical Marijuana Centers, Optional Premises Cultivation Operations and Infused Products Manufacturers be allowed as permitted uses in the I-1 and I-2 zone districts.
8. **THAT** medical marijuana and its uses are prohibited as a home occupation.
9. **THAT** all medical marijuana uses shall comply with State regulations and City of Englewood licensing requirements.
10. **THAT** the City uses the same definitions as the State Constitution relating to Medical Marijuana:
  - a. **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.
  - b. **Medical Marijuana Center:** A person licensed to operate a business that sells medical marijuana to registered patients or primary caregivers as defined in Section 14 of Article XVIII of the State Constitution, but is not a primary caregiver.
  - c. **Medical Marijuana-Infused Products Manufacturer:** A person licensed pursuant to operate a business as described in C.R.S. 12-43.3-404.
  - d. **Optional Premises Cultivation Operation:** A person licensed to operate a business as described in C.R.S. 12-43.3-403.

11. **THAT** the amendments provide for the health and welfare of persons who need medical marijuana for pain and other medical issues while at the same time looking after the safety and general welfare of the community at large by placing the medical marijuana centers strategically to avoid problems with sensitive areas in Englewood.
12. **THAT** the amendments reflects the discussions the Planning and Zoning Commission has had over the past couple of years.
13. **THAT** the amendments work for the community; medical marijuana uses are allowed with reasonable restrictions.
14. **THAT** the Commission is in favor of the more strict spacing requirements.
15. **THAT** the previously discussed amendments be forwarded to City Council.

### **DECISION**

**THEREFORE**, it is the decision of the City Planning and Zoning Commission that Case #2009-04 Unified Development Code Medical Marijuana Amendments should be referred to the City Council with a favorable recommendation.

The decision was reached upon a vote on a motion made at the meeting of the City Planning and Zoning Commission on March 8, 2011, by Mr. Bleile, seconded by Mr. Roth, which motion states:

CASE #2009-04. AMENDMENTS TO TITLE 16: UNIFIED DEVELOPMENT CODE OF THE ENGLEWOOD MUNICIPAL CODE RELATED TO MEDICAL MARIJUANA BE RECOMMENDED AS PRESENTED FOR APPROVAL TO CITY COUNCIL WITH A FAVORABLE RECOMMENDATION FOR ADOPTION.

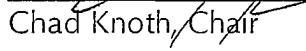
AYES: Bleile, Brick, Knoth, Roth, Welker, King, Calonder  
NAYS: None  
ABSTAIN: None  
ABSENT: Fish, Krieger

Motion carried.

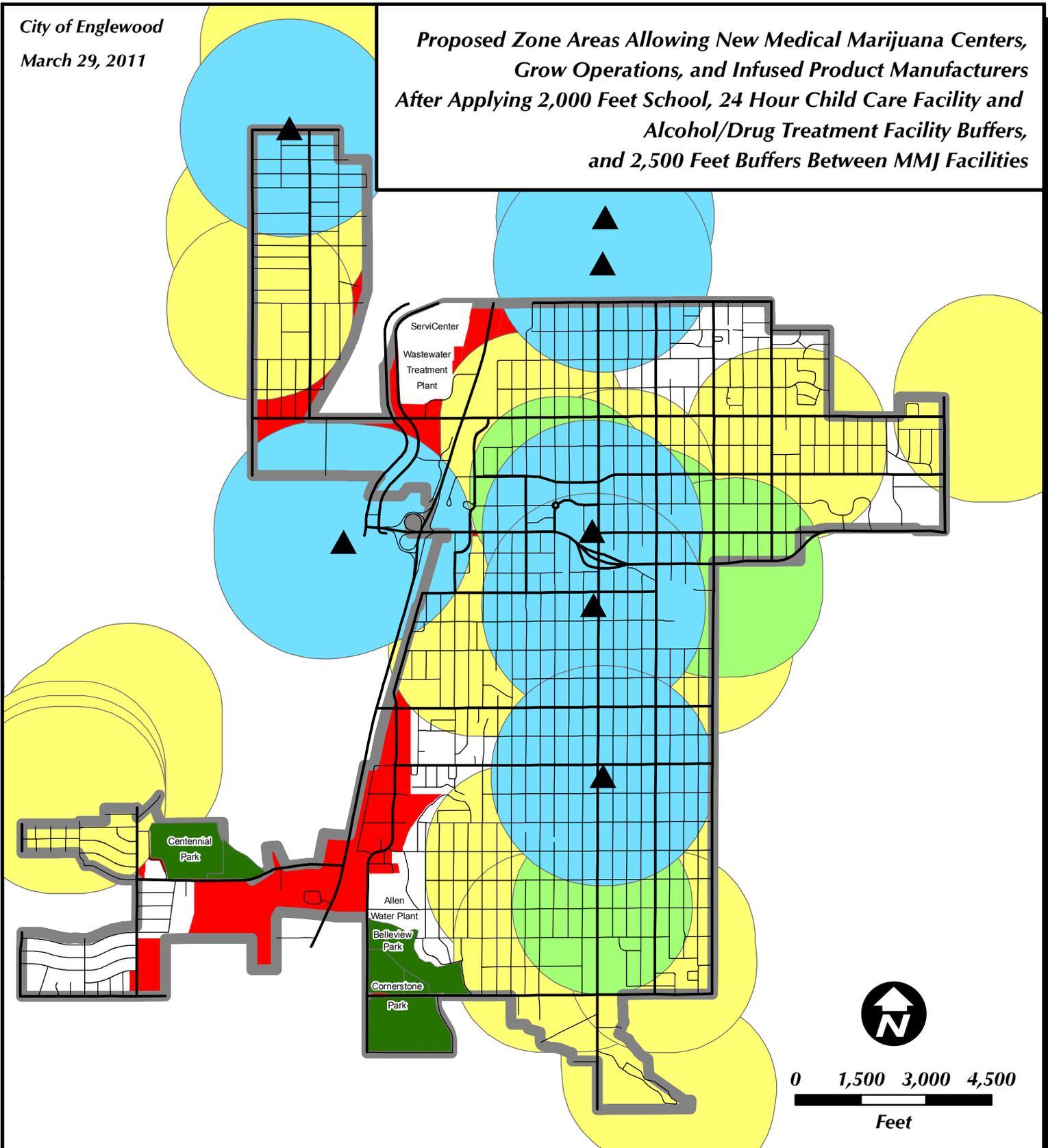
Findings of Fact  
CASE #2009-04  
March 8, 2011  
Page 5 of 5

These Findings and Conclusions are effective as of the meeting on March 8, 2011.

**BY ORDER OF THE CITY PLANNING & ZONING COMMISSION**

  
\_\_\_\_\_  
Chad Knoth, Chair

*Proposed Zone Areas Allowing New Medical Marijuana Centers,  
 Grow Operations, and Infused Product Manufacturers  
 After Applying 2,000 Feet School, 24 Hour Child Care Facility and  
 Alcohol/Drug Treatment Facility Buffers,  
 and 2,500 Feet Buffers Between MMJ Facilities*



- |  |                        |
|--|------------------------|
| ▲ Existing Medical Marijuana Facilities                                  | ■ Parks and Open Space |
| ■ Existing Marijuana Facility Property 2,500 Foot Buffer                 | — Arterial Streets     |
| ■ Alcohol and Drug Treatment Facility 2,000 Foot Buffer                  | — Collector Streets    |
| ■ School Property 2,000 Foot Buffer                                      | ▭ City Boundary        |
| ■ Potential Zone Areas (I, B, M.) Allowing New Medical Marijuana Centers |                        |

Note: Distances are approximate and are shown as a radius from property boundaries, not as direct pedestrian access.

BY AUTHORITY

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2011

COUNCIL BILL NO. 19  
INTRODUCED BY COUNCIL  
MEMBER \_\_\_\_\_

A BILL FOR

AN ORDINANCE MODIFYING TITLES 2, 5 AND 16, OF THE ENGLEWOOD MUNICIPAL CODE 2000 PERTAINING TO MEDICAL MARIJUANA.

WHEREAS, the City Council of the City of Englewood amended Title 5, by the addition of a new Chapter 22 pertaining to Licensing of Medical Marijuana Primary Care-Givers with the passage of Ordinance No. 41, Series 2009; and

WHEREAS, Council Bill No. 53, pertaining to amending Title 16, Chapters 5 and 11 of the Englewood Municipal Code, which pertains to the Unified Development Code and Medical Marijuana Primary Care-Giver use without violating the Colorado State Constitution or federal statutes, was read and passed on first reading in December, 2009; and

WHEREAS, the Englewood City Council established a Temporary Suspension or Moratorium on the establishment of new Medical Marijuana Dispensing and growing uses for a six month period by the passage of Ordinance No. 34, 2009; and

WHEREAS, the Englewood City Council extended the suspension or moratorium on the establishment of new Medical Marijuana Dispensing and Growing uses for a period of four months by the passage of Ordinance No. 5, 2010; and

WHEREAS, the Englewood City Council extended the existing temporary suspension or moratorium on the establishment of new Medical Marijuana Dispensing and Growing uses for a period of six months with the passage of Ordinance No. 14, 2010; and

WHEREAS, the Colorado State Legislature passed state legislation pertaining to Medical Marijuana by passage of House Bill 10-1284 [signed by Governor on June 7, 2010]; and

WHEREAS, this Ordinance does not regulate medical marijuana patients or medical marijuana care-givers;

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:

**16-5-1: Table of Allowed Uses.**

*C. Table of Allowed Uses.*

**[EDITOR'S NOTE:** The recommended changes are only effective in the Commercial portion of the table. The **Residential Uses** and **Public/Institutional Uses** portions of Table 16-5-1.1 Table of Allowed Uses contain no changes and are therefore not included here]

		TABLE 16-5-1.1: TABLE OF ALLOWED USES													
		Residential				Non-Residential									
Use Category	Use Type	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
<b>COMMERCIAL USES</b>															
Adult Use	All types as defined in Chapter 16-11													P	16-5-2.C.1
Agricultural Use	Greenhouse/nursery, raising of plants, flowers, or nursery stock													P	16-5-2.C.2
Animal Sales and Service	Animal shelter													P	P
	Kennel/day care											L		P	P
	Pet store (live animal sale)								P	P	P	P	P	P	P

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  
 Additional Regulations

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 O 1	M 1	M 2	M U B 1	M U B 2		T S A	I 1
Assembly	Small animal veterinary hospital or clinic															
	Assembly hall or auditorium, hall rental for meetings or social occasions										L	P	C	P		
Dependent Care	Membership organization (excluding adult use)															
	Dependent care center (less than 24-hour care, any age)	C	C	C	C	C	P	P	P	P	P	P	C	P		16-5-2.C.7











**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 3 A	M U R 3 B	M U R 3 A	M U R 3 B	M U R 3 A	M 1	M 2		M U B 1	M U B 2	T S A	I 1	I 2
Service (Sales)	Art gallery																		
	Auction house																		
	Buy-back shop, second hand, thrift, consignment																		
	Convenience store																		
	Grocery/specialty food store																		
	Internet sales location																		
	Liquor store																		
	Pawnbroker																		

16-5-2.C.10









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

**16-5-2. Use Specific Standards.**

**C. Commercial Uses**

**13. – Medical Marijuana.**

- a. All Medical Marijuana Uses shall comply with State regulations and City of Englewood Licensing requirements.
- b. Facilities in MU-B-1, MU-B-2, and M-2 zone districts: Cultivation and Infused Product Manufacturing uses are allowed only as accessory uses to a principal Medical Marijuana Center provided the square footage of the total operation does not exceed five thousand (5,000) square feet.

**Section 3.** 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; in order to match/align with the Colorado state legislation the following definitions:

*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 Center:* means a person licensed pursuant to Article 43.3-104 of Title 12 C.R.S. to operate a business as described in Article 43.3 of Title 12 C.R.S. that sells Medical Marijuana to registered patients or primary Care-Givers as defined in Section 14 of Article XVIII of the State Constitution, but is not a primary Care-Giver.

*Medical Marijuana-Infused Products Manufacturer:* means a person licensed pursuant to Article 43.3 of title 12 C.R.S. to operate a business as described in Article 43.3 of Title 12 C.R.S.

*Medical Marijuana Optional Premises Cultivation Operation:* means a person licensed pursuant to Article 43.3 of Title 12 C.R.S. to operate a business as described in Article 43.3 of Title 12 C.R.S.

**Section 4.** The City Council of the City of Englewood, Colorado hereby authorizes amending Title 16, Chapter 5, Section 4(C), by the addition of three new Subsections (11), (12), and (13) to the Englewood Municipal Code 2000 to read as follows:

**16-5-4: - Accessory Uses.**

- 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 (1½) horsepower, and no single unit over three-fourths (¾) 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 Centers.
  - (12) Medical Marijuana-Infused Products manufacturers.
  - (13) Optional Premises Cultivation Operation.

**Section 5. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 2, Chapter 6, Section 1 “Licensing Authority Established” of the Englewood Municipal Code 2000 to read as follows:**

Chapter 6

**LOCAL LIQUOR AND MEDICAL MARIJUANA LICENSING AUTHORITY.**

**2-6-1: Licensing Authority Established.**

- A.** There is hereby established a Local Licensing Authority, which shall have and is vested with the authority to grant or refuse licenses for the sale at retail of malt, vinous or spirituous liquors and fermented malt beverages, as provided by law, to suspend or

revoke such licenses for cause in the manner provided by law. Such authority shall have all the powers of the Local Licensing Authority as set forth in Articles 46, 47 and 48 of Title 12, C.R.S. 1973.

See Title 5, Chapter 3, Article A of this Municipal Code for the organization, powers, functions and duties of the Local Licensing Authority.

B. There is hereby established a Local Licensing Authority to issue only the following Medical Marijuana Licenses upon payment of a fee and compliance with all Local Licensing requirements to be determined by the Local Licensing Authority as set forth in Article 43.3 of Title 12 C.R.S.:

1. A Medical Marijuana Center License;
2. A Medical Marijuana Optional Premises Cultivation Operation License;
3. A Medical Marijuana-Infused Products Manufacturer License.

**Section 6.** **The City Council of the City of Englewood, Colorado hereby authorizes repealing Title 5, Section 22, of the Englewood Municipal Code 2000 in its entirety.**

**~~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 7.** The City Council of the City of Englewood, Colorado hereby authorizes amending Title 5, Chapter 3, of the Englewood Municipal Code 2000 creating a new Chapter 3D to read as follows:

**5-3D-1: Purpose.**

- A. The Englewood City Council hereby declares that this Chapter shall be deemed an exercise of the police powers of the City for the protection of the economic and social welfare and the health, peace, and morals of the people of the City.
- B. The City further declares that it is unlawful to cultivate, manufacture, distribute, or sell medical marijuana, except in compliance with the terms, conditions, limitations, and restrictions in Section 14 of Article XVIII of the State Constitution and/or when acting as a primary care-giver in compliance with the terms, conditions, limitations, and restrictions of Section 25-1.5-106 C.R.S.

**5-3D-2: Powers and Duties of the Local Licensing Authority.**

- A. The Local Licensing Authority shall grant or refuse local licenses for the cultivation, manufacture, distribution, and sale of Medical Marijuana as provided by law; suspend, fine, restrict, or revoke such licenses upon a violation of this Title, or a rule promulgated pursuant to this Title; and may impose any penalty authorized by this Title or any rule promulgated pursuant to this Title. The Local Licensing Authority may take action with respect to a registration or a license pursuant to this Title, and in accordance with the procedures established pursuant to this Title.
- B. The Local Licensing Authority shall promulgate such rules and make such special rulings and findings as necessary for the proper regulation and control of the cultivation, manufacture, distribution, and sale of Medical Marijuana and for the enforcement of this Chapter.
- C. The Local Licensing Authority hereby adopts the minimum licensing requirements of Article 43.3 of Title 12 C.R.S. when issuing a License.
- D. In addition to all other standards applicable to the issuance of licenses under this Code, the Local Licensing Authority hereby adopts additional standards for the issuance of Medical Marijuana Center, Medical Marijuana Optional Premises Cultivation Operation, or Medical Marijuana- Infused Products Manufacturer Licenses consistent with the intent of Article 43.3 of Title 12 C.R.S. and this Code as follows:
  - 1. Distance restrictions between premises for which Local Licenses are issued:
    - (a) If the building in which Medical Marijuana is to be cultivated, manufactured or sold is located within two thousand feet (2,000') of a school, an alcohol or drug treatment facility, or the principal campus of a college, university, seminary, or a residential child care facility or within two thousand five hundred feet (2,500') of an existing licensed Medical Marijuana Center, Medical Marijuana-Infused Products Manufacturer or Medical Marijuana Optional Premises Cultivation Operation. The provisions of this Section shall not affect the renewal or re-issuance of a license once

granted or apply to licensed premises located or to be located on land owned by a municipality; nor shall the provisions of the Section apply to existing licensed premises on land owned by the State, or apply to a license in effect and actively doing business before said principal campus was constructed.

(b) The distances referred to in this Title are to be computed by direct measurement from the nearest property line of the land used for a school or campus to the nearest portion of the building in which Medical Marijuana is to be sold, using a route of direct pedestrian access.

2. Reasonable restrictions on the size of an applicant's Licensed Premises:  
(No further restrictions proposed at this time.)
3. Any other requirements necessary to ensure the control of the premises and the ease of enforcement of the terms and conditions of the License.  
(No further restrictions proposed at this time.)

### **5-3D-3: Definitions.**

Good Cause: for purposes of refusing or denying a license renewal, reinstatement, or initial license issuance means:

1. The licensee or applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of Article 43.3 of Title 12 C.R.S., and rules promulgated pursuant to this Title, or any supplemental local law, rules, or regulations;
2. The licensee or applicant has failed to comply with any special terms or conditions that were placed on its license pursuant to an order of the State or Local Licensing Authority;
3. The licensed premises have been operated in a manner that adversely affects the public health, welfare or the safety of the immediate neighborhood in which the establishment is located.

License: means to grant a license or registration pursuant to this Title.

Licensed Premises: means the premises specified in an application for a license under this Title, which are owned or in possession of the licensee and within which the licensee is authorized to cultivate, manufacture, distribute, or sell Medical Marijuana in accordance with the provisions of Article 43.3 of Title 12 C.R.S.

Licensee: means a person licensed or registered pursuant to Article 43.3 of Title 12 C.R.S. and this Title.

Local Licensing Authority: means the Englewood Local Liquor and Medical Marijuana Licensing Authority.

Local Licensing Official: means the Director of Finance and Administrative Services or designee.

Location: means a particular parcel of land that may be identified by an address or other descriptive means.

Medical Marijuana: means Marijuana that is grown and sold pursuant to the provisions of Article 43.3 of Title 12 C.R.S. and for a purpose authorized by Section 14 of Article XVIII of the State Constitution.

Medical Marijuana Center: means a person licensed pursuant to Article 43.3 of Title 12 C.R.S. to operate a business as described in Article 43.3 of Title 12 C.R.S. that sells medical marijuana to registered patients or primary caregivers as defined in Section 14 of Article XVIII of the State Constitution, but is not a primary caregiver.

Medical Marijuana-Infused Product: means a product infused with Medical Marijuana that is intended for use or consumption other than by smoking, including but not limited to edible products, ointments, and tinctures. These products, when manufactured or sold by a licensed Medical Marijuana Center or a Medical Marijuana-Infused Product Manufacturer, shall not be considered a food or drug for the purposes of the “Colorado Food and Drug Act”, Part 4 of Article 5 of Title 25, C.R.S.

Medical Marijuana-Infused Product Manufacturer: A person licensed pursuant to Article 43.3 of Title 12 C.R.S. to operate a business as described in Article 43.3 of Title 12 C.R.S.

Medical Marijuana Optional Premises Cultivation Operation: means the premises specified in an application for a Medical Marijuana Center License with related growing facilities in Colorado for which the Licensee is authorized to grow and cultivate Marijuana for a purpose authorized by Section 14 of Article XVIII of the State Constitution.

Person: means a natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof.

Premises: means a distinct and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

School: means a public or private preschool or a public or private elementary, middle, junior high, or high school.

Smoking: means the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco or Medical Marijuana as defined by Article 43.3 of Title 12 C.R.S.

State Licensing Authority: means the Authority created for the purpose of regulating and controlling the Licensing of the cultivation, manufacture, distribution, and sale of Medical Marijuana in this State, pursuant to Article 43.3 of Title 12 C.R.S.

In addition to the definitions set forth in Section 14(1) of Article XVIII of the State Constitution, as used in Article 43.3 of Title 12 C.R.S., unless the context otherwise requires, “Primary Care-Giver” means a natural person, other than the patient or the patient’s physician, who is eighteen years of age or older and has significant responsibility for managing the well-being of the patient who has a debilitating medical condition.

#### **5-3D-4: Applications – Licenses.**

A. An application for a License shall be filed with the Local Licensing Authority on forms provided by the State and Local Licensing Authority. The application shall contain such

information as the State and Local Licensing Authority may require. Each application shall be verified by the oath or affirmation of the persons prescribed by the State and Local Licensing Authority.

- B. An applicant shall file at the time of application for a Local License plans and specifications for the interior of the building if the building to be occupied is in existence at the time. If the building is not in existence, the applicant shall file a plot plan and a detailed sketch for the interior and submit an architect's drawing of the building to be constructed. In its discretion, the Local or State Licensing Authority may impose additional requirements necessary for the approval of the application.

**5-3D-5: Public Hearing Notice – Posting and Publication.**

- A. Upon receipt of an application for a Local License, except an application for renewal or for transfer of ownership, a Local Licensing Authority may schedule a public hearing upon the application, to be held not less than thirty (30) days after the date of the application. If the Local Licensing Authority schedules a hearing for a Medical Marijuana Center Application, it shall post and publish public notice thereof not less than ten (10) days prior to the hearing. The Local Licensing Authority shall give public notice by the posting by applicant of a sign in a conspicuous place on the Medical Marijuana Center premises for which application has been made and by publication in a newspaper of general circulation or the City's official website in the City in which the Medical Marijuana Center Premises are located.
- B. Public notice given by posting shall include a sign of suitable material, not less than twenty-two inches (22") wide and twenty-six inches (26") high, composed of letters not less than one inch in height and stating the type of License applied for, the date of the application, the date of the hearing, the name and address of the applicant, and such other information as may be required to fully apprise the public of the nature of the application. The sign shall contain the names and addresses of the officers, directors, or manager of the facility to be licensed.
- C. Public notice given by publication shall contain the same information as that required for signs.
- D. If the building in which Medical Marijuana is to be sold is in existence at the time of the application, a sign posted as required in this Section shall be placed so as to be conspicuous and plainly visible to the general public. If the building is not constructed at the time of the application, the applicant shall post a sign at the premises upon which the building is to be constructed in such a manner that the notice shall be conspicuous and plainly visible to the general public.
- E. 1. A Local Licensing Authority, the Local Licensing Official, or a License Applicant with Local Licensing Authority approval, may request that the State Licensing Authority conduct a concurrent review of a new License Application prior to the Local Licensing Authority's final approval of the License Application. Local Licensing Authorities who permit a concurrent review will continue to independently review the Applicant's License Application.
2. When conducting a concurrent application review, the State Licensing Authority may advise the Local Licensing Official and the Local Licensing Authority of any items

that it finds that could result in the denial of the License Application. Upon correction of the noted discrepancies, if the correction is permitted by the State Licensing Authority, the State Licensing Authority shall notify the Local Licensing Authority of its conditional approval of the License Application subject to the final approval by the Local Licensing Authority. The State Licensing Authority shall then issue the Applicant's State License upon receiving evidence of final approval by the Local Licensing Authority.

3. All applications submitted for concurrent review shall be accompanied by all applicable State and Local License and Application Fees. Any applications that are later denied or withdrawn may allow for a refund of License Fees only. All Application Fees provided by an applicant shall be retained by the respective Licensing Authority.

#### **5-3D-6: Results of Investigation – Decision of Authorities.**

- A. Not less than five (5) days prior to the date of the public hearing authorized in Section 5-3D-5 EMC, the Local Licensing Official shall make known the findings, based on its investigation, in writing to the applicant and other parties of interest. The Local Licensing Authority has authority to refuse to issue a License provided for in this Section for good cause, subject to judicial review.
- B. Before entering a decision approving or denying the application for a Local License, the Local Licensing Authority may consider, except where this Code specifically provides otherwise, the facts and evidence adduced as a result of its investigation, as well as any other facts pertinent to the type of license for which application has been made, including the number, type, and availability of Medical Marijuana outlets located in or near the premises under consideration, and any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed.
- C. Within thirty (30) days after the public hearing or completion of the application investigation, the Local Licensing Authority shall issue its decision approving or denying an application for local licensure. The decision shall be in writing and shall state the reasons for the decision. The Local Licensing Authority shall send a copy of the decision by certified mail to the applicant at the address shown in the application.
- D. After approval of an application, the Local Licensing Official shall not issue a local license until the building in which the business to be conducted is ready for occupancy with such furniture, fixtures, and equipment in place as are necessary to comply with the applicable provisions of this Title and State Statute, and then only after the Local Licensing Official has inspected the premises to determine that the applicant has complied with the Architect's Drawing and the Plot Plan and detailed sketch for the interior of the building submitted with the application.
- E. After approval of an application for Local Licensure, the Local Licensing Official shall notify the State Licensing Authority of such approval, who shall investigate and either approve or disapprove the application for State Licensure.

#### **5-3D-7: Medical Marijuana License Bond.**

- A. Before the Local Licensing Official issues a Local License to an applicant, the applicant shall procure and file with the City Licensing Authority evidence of a good and sufficient bond in the amount of five thousand dollars (\$5,000.00) with corporate surety thereon duly licensed to do business with the City, and conditioned that the applicant shall report and pay all sales and use taxes due to the City, or for which the State is the collector or collecting agent, in a timely manner, as provided by law.
- B. A corporate surety shall not be required to make payments to the City claiming under such bond until a final determination of failure to pay taxes due to the City has been made by the City Licensing Authority or a Court of competent jurisdiction.
- C. All bonds required pursuant to this Section shall be renewed at such time as the Bondholder's License is renewed. The renewal may be accomplished through a continuation certificate issued by the surety.

**5-3D-8: Denial of Application.**

- A. The Local Licensing Authority shall deny a Local License if the premises on which the applicant proposes to conduct its business do not meet the requirements of this Title or for reasons set forth in this Chapter.
- B. If the Local Licensing Authority denies a Local License, the Applicant shall be entitled to a hearing pursuant to this Title. The Local Licensing Authority shall provide written notice of the grounds for denial of the Local License of the applicant.

**5-3D-9: Persons Prohibited as Licensees.**

The Local Licensing Authority hereby adopts the provisions and restrictions set forth in 12-43.4-307 C.R.S.

**5-3D-10: Restrictions for Applications for New Licenses.**

- A. The Local Licensing Authority shall not receive or act upon an application for the issuance of a State or Local License pursuant to this Title.
  - 1. If the application for a State or Local License concerns a particular location that is the same as or within one thousand feet (1,000') of a location for which, within the two (2) years immediately preceding the date of the application, the State or a Local Licensing Authority denied an application for the same class of license due to the nature of the use or other concern related to the location;
  - 2. Until it is established that the applicant is, or will be, entitled to possession of the premises for which application is made under a lease, rental agreement, or other arrangement for possession of the premises or by virtue of ownership of the premises;
  - 3. For a location in an area where the cultivation, manufacture, and sale of Medical Marijuana as contemplated is not permitted under the applicable zoning laws.
  - 4. a. If the building in which Medical Marijuana is to be cultivated, manufactured or sold, it located within two thousand feet (2,000') of a school, an alcohol or drug treatment facility, or the principal campus of a college, university, seminary, or a

residential child care facility or within two thousand five hundred feet (2,500') of an existing licensed Medical Marijuana Center, Medical Marijuana-Infused Products Manufacturer or Medical Marijuana Optional Premises Cultivation Operation. The provisions of this Section shall not affect the renewal or re-issuance of a license once granted or apply to licensed premises located or to be located on land owned by a municipality; nor shall the provisions of the Section apply to existing licensed premises on land owned by the State, or apply to a license in effect and actively doing business before said principal campus was constructed.

- b. In addition to the requirements of Section 12-43.3-303 (2) C.R.S., the Local Licensing Authority shall consider the evidence and make a specific finding of fact as to whether the building in which the Medical Marijuana is to be sold is located within any distance restrictions established by or pursuant to this Paragraph 4.
- c. The distances referred to in this Title are to be computed by direct measurement from the nearest property line of the land used for a school or campus to the nearest portion of the building in which Medical Marijuana is to be sold, using a route of direct pedestrian access.

#### **5-3D-11. Transfer of Ownership.**

- A. A State or Local License granted under the provisions of this Title shall not be transferable except as provided in this Section, but this Section shall not prevent a change of location as provided in Section 12-43.3-310(13) C.R.S.
- B. For a transfer of ownership, a License Holder shall apply to the State and Local Licensing Authorities on forms prepared and furnished by the State Licensing Authority. In determining whether to permit a Transfer of Ownership, the Local Licensing Authority shall consider only the requirements of this Title, any rules promulgated by the State or Local Licensing Authority, and any other local restrictions. The Local Licensing Authority may hold a hearing on the Application for the Transfer of Ownership. The Local Licensing Authority shall not hold a hearing until the Local Licensing Authority has posted a notice of hearing in the manner described in Section 12-43.3-302(2) C.R.S. on the Licensed Medical Marijuana Center premises for a period of ten (10) days and has provided notice of the hearing to the applicant at least ten (10) days prior to the hearing. Any transfer of ownership hearing by the Local Licensing Authority shall be held in compliance with the requirements specified in Section 12-43.3-302 C.R.S.

#### **5-3D-12: Licensing in General.**

The Local Licensing Authority adopts the provisions and restrictions set forth in 12-43.3-310 C.R.S. and Title 5 Chapter 1 EMC.

#### **5-3D-13: Licensing Renewal.**

- A. Ninety (90) days prior to the expiration date of an existing License, the State Licensing Authority shall notify the Licensee of the expiration date by First Class Mail at the Licensee's address of record with the State Licensing Authority. A Licensee shall apply for the renewal of an existing License to the Local Licensing Authority not less than forty-five (45) days and to the State Licensing Authority not less than thirty (30) days prior to

the date of expiration. A Local Licensing Authority shall not accept an application for renewal of a License after the date of expiration, except as provided in Subsection B, of this Section. The State Licensing Authority may extend the expiration date of the License and accept a Late Application for Renewal of a License provided that the applicant has filed a timely renewal application with the Local Licensing Authority. All renewals filed with the Local Licensing Authority and subsequently approved by the Local Licensing Authority shall next be processed by the State Licensing Authority. The State or the Local Licensing Authority, in its discretion, subject to the requirements of this Title and based upon reasonable grounds, may waive the forty-five (45) day or thirty (30) day time requirement set forth in this Title. The Local Licensing Authority may hold a hearing on the application for renewal only if the Licensee has had complaints filed against it; and has a history of violations; or there are allegations against the Licensee that would constitute good cause. The Local Licensing Authority shall not hold a renewal hearing provided for by this Title for a Medical Marijuana Center until it has posted a notice on the Licensed Medical Marijuana Center premises in the manner described in Section 12-43.3-302(2) C.R.S. for a period of ten (10) days and provided notice to the Applicant at least ten (10) days prior to the hearing. The Local Licensing Authority may refuse to renew any License for good cause, subject to Judicial Review.

- B.
1. Notwithstanding the provisions of Subsection A of this Section, a Licensee whose License had been expired for not more than ninety (90) days may file a Late Renewal Application upon the payment of A Nonrefundable Late Application Fee of Five Hundred Dollars (\$500.00) to the Local Licensing Authority. A Licensee who files a Late Renewal Application and pays the requisite fees may continue to operate until both the State and Local Licensing Authorities have taken final action to approve or deny the Licensee's Late Renewal Application unless the State or Local License Authority summarily suspends the License pursuant to Article 4 of Title 24, C.R.S., this Title, and rules promulgated pursuant to this Title.
  2. The State and Local Licensing Authorities may not accept a Late Renewal Application more than ninety (90) days after the expiration of a Licensee's Permanent Annual License. A Licensee whose Permanent Annual License has been expired for more than ninety (90) days shall not cultivate, manufacture, distribute, or sell any Medical Marijuana until all required Licenses have been obtained.
  3. Notwithstanding the amount specified for the Late Application Fee, the State and Local Licensing Authority by rule or as otherwise provided by law may reduce the amount of the fee if necessary.

#### **5-3D-14: Inactive Licenses.**

The State or Local Licensing Authority, in its discretion, may revoke or elect not to renew any License if it determines that the Licensed Premises have been inactive, without good cause, for at least one (1) year.

#### **5-3D-15: Unlawful Financial Assistance.**

- A. The State and Local Licensing Authority, by rule and regulation, shall require a complete disclosure of all persons having a direct or indirect financial interest, and the extent of such interest, in each License issued under this Article.

- B. A person shall not have an unreported financial interest in a License pursuant to this Title unless that person has undergone a fingerprint-based criminal history record check as provided for by the State and Local Licensing Authority in its rules; except that this Subsection B shall not apply to banks, savings and loan associations, or industrial banks supervised and regulated by an agency of the State or Federal Government, or the FHA-approved mortgagees, or to stockholders, directors or officers thereof.
- C. This Section is intended to prohibit and prevent the control of the outlets for the sale of Medical Marijuana by a person or party other than the persons Licensed pursuant to the provisions of this Title.

#### **5-3D-16: Fees**

Every Medical Marijuana Center, Medical Marijuana-Infused Products Manufacturer, Medical Marijuana Optional Premises Cultivation Operation shall pay a fee. This fee is imposed to offset the cost of administering this License. This fee shall be determined by the City Council and set by Resolution.

#### **5-3D-17: Disciplinary Actions: Suspension – Revocation – Fines.**

- A. In addition to any other sanctions prescribed by, the State Licensing Authority or the Local Licensing Authority has the power, on its own motion or on complaint, after investigation and opportunity for a Public Hearing at which the Licensee shall be afforded an opportunity to be heard; to suspend or revoke a License issued by the respective authority for a violation by the Licensee or by any of the agents or employees of the Licensee of the provisions of this Title, or any other terms, conditions, or provisions of the License issued by the State or Local Licensing Authority. The State Licensing Authority or a Local Licensing Authority has the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of a Hearing.
- B. The State or Local Licensing Authority shall provide notice of suspension, revocation, fine, or other sanction, as well as the required Notice of the Hearing pursuant to this Title, by mailing the same in writing to the Licensee at the address contained in the License. Except in the case of a Summary Suspension, a suspension shall not be for a longer period than six (6) months. If a License is suspended or revoked, a part of the fees paid therefore shall not be returned to the Licensee. Any License or Permit may be summarily suspended by the issuing Licensing Authority without Notice pending any prosecution, investigation, or Public Hearing pursuant to the terms of Section 24-4-104(4), C.R.S. or this Title. Nothing in this Section shall prevent the Summary Suspension of a License pursuant to Section 24-4-104(4), C.R.S. Each patient registered with a Medical Marijuana Center that has had its License Summarily Suspended may immediately transfer his or her Primary Center to another Licensed Medical Marijuana Center.
- C. 1. Whenever a decision of the State Licensing Authority or the Local Licensing Authority suspending a License for fourteen (14) days or less becomes final, the Licensee may, before the operative date of the suspension, petition for permission to pay a fine in lieu of having the License suspended for all or part of the suspension period. Upon the receipt of the petition, the State or Local Licensing Authority may, in its sole

discretion, stay the proposed suspension and cause any investigation to be made which it deems desirable and may, in its sole-discretion, grant the petition if the State or Local Licensing Authority is satisfied that:

- a. The public welfare and morals would not be impaired by permitting the Licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes;
  - b. The books and records of the Licensee are kept in such a manner that the loss of sales that the Licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy; and
  - c. The Licensee has not had his or her License suspended or revoked, nor had any suspension stayed by payment of a fine, during the two (2) years immediately preceding the date of the Motion or Complaint that resulted in a final decision to suspend the License.
2. The fine accepted shall be not less than five hundred dollars (\$500.00) nor more than one hundred thousand dollars (\$100,000.00).
  3. Payment of a fine shall be in the form of cash or in the form of a certified check or cashier's check made payable to the State or Local Licensing Authority, whichever is appropriate.

D Upon payment of the fine, the State or Local Licensing Authority shall enter its further order permanently staying the imposition of the suspension. If the fine is paid to a Local Licensing Authority, the governing body of the Authority shall cause the moneys to be paid into the General Fund of the Local Licensing Authority. Fines paid to the State Licensing Authority shall be transmitted to the State Treasurer who shall credit the same to the Medical Marijuana License Cash Fund created in Section 12-43.3-501 C.R.S.

E. In connection with a petition, the Authority of the State or Local Licensing Authority is limited to the granting of such stays as are necessary for the Authority to complete its investigation and make its findings and if the Authority makes such findings, to the granting of an Order permanently staying the imposition of the entire suspension or the portion of the suspension not otherwise conditionally stayed.

F. If the State or Local Licensing Authority does not make the findings required in this Section and does not order the suspension permanently stayed, the suspension shall go into effect on the operative date finally set by the State or Local Licensing Authority.

G. Each Local Licensing Authority shall report all actions taken to impose fines, suspensions, and revocations to the State Licensing Authority in a manner required by the State Licensing Authority. No later than January 15 of each year, the State Licensing Authority shall compile a report of the preceding year's actions in which fines, suspensions, or revocations were imposed by Local Licensing Authorities and by the State Licensing Authority. The State Licensing Authority shall file one copy of the report with the Chief Clerk of the House of Representatives, one copy with the Secretary of the Senate; and six copies in the Joint Legislative Library.

#### **5-3D-18: Inspection of Books and Records – Inspection Procedures.**

- A. Each Licensee shall keep a complete set of all records necessary to show fully the business transactions of the Licensee, all of which shall be open at all times during business hours for the inspection and examination by the State or Local Licensing Authority or its duly authorized representatives. The State or Local Licensing Authority may require any Licensee to furnish such information as it considers necessary for the proper administration of this Title and may require an audit to be made of the books of account and records on such occasions as it may consider necessary by an auditor to be selected by the State or Local Licensing Authority who shall likewise have access to all books and records of the Licensee, and the expense thereof shall be paid by the Licensee.
- B. The Licensed Premises, including any places of storage where Medical Marijuana is grown, stored, cultivated, sold, or dispensed shall be subject to inspection by the State or Local Licensing Authorities and their investigators, during all business hours and other times of apparent activity, for the purpose of inspection or investigation. For examination of any inventory or books and records required to be kept by the Licensees, access shall be required during business hours. Where any part of the Licensed Premises consists of a locked area, upon demand to the Licensee, such area shall be made available for inspection without delay, and, upon request by authorized representatives of the State or Local Licensing Authority, the Licensee shall open the area for inspection.
- C. Each Licensee shall retain all books and records necessary to show fully the business transactions of the Licensee for a period of the current tax year and the three (3) immediately prior tax years.

#### Section 8. Grandfather Clause.

The currently licensed medical marijuana facilities located at 4332 S. Broadway, Englewood, CO; 11 W. Hampden Ave., L100 and L200, Englewood, CO; and 3751 S. Broadway, Englewood, CO 80113 which were legally in existence as a business location prior to the effective date of Ordinance No. 34, Series of 2009, and are listed by the State as meeting the deadline for application shall be grandfathered and shall be considered to be:

1. A legal Medical Marijuana Center used for the purposes of Title 16 EMC.
2. A Legal nonconforming size under Title 16 EMC. if, on the effective date of this ordinance, it can show that the square footage of the existing licensed use exceeds the maximum square footage limit in this ordinance. This showing must be by a detailed drawing of the currently licensed premises acceptable to the City Manager or designee.

Once a Medical Marijuana use has been found to be grandfathered it shall be subject to all other requirements of the Title 16-9-1 et.seq.

Section 9. 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 10. 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 11. 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 12. 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 13. 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 4th day of April, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 8th day of April, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 6th day of April, 2011 for thirty (30) days.

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James K. Woodward, Mayor

ATTEST:

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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 \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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Loucrishia A. Ellis

## COUNCIL COMMUNICATION

<b>Date:</b> April 4, 2011	<b>Agenda Item:</b> 11 c i	<b>Subject:</b> A Resolution Appointing Hearing Officers
<b>Initiated By:</b> Human Resources Department		<b>Staff Source:</b> Sue Eaton, Director of Human Resources

### PREVIOUS COUNCIL ACTION

The Englewood City Council passed Resolution No. 83, Series of 2009 appointing a panel of qualified Hearing Officers to hear Disciplinary and Merit Appeals. The panel, once established, may be re-appointed by the Council on an annual basis.

### RECOMMENDED ACTION

Staff recommends the Englewood City Council re-appoint, by resolution, Hearing Officers Cohen and DiFalco from the list approved in 2009 to hear Merit and Disciplinary appeals. Staff further recommends adding the appointment of Hearing Officer Winograd to the list.

### LIST OF ATTACHMENTS

Resumes of Panel of Hearing Officers  
Resolution

RESUMÉ  
OF  
**RONALD J. COHEN**  
2325 West 72nd Avenue  
Denver, Colorado 80221  
303-427-7584

**Qualifications:**

Juris Doctor Degree  
University of Denver  
June, 1968

Admitted by Colorado Supreme Court  
October, 1968

Admitted by United States District Court  
October, 1968

Admitted by United States Court of Appeals  
March, 1971

Admitted by United States Supreme Court  
March, 1972

**General Legal Experience:**

Staff Attorney  
Denver Legal Aid Society - 1969

Associate Attorney  
Berger, Rothstein & Gehler  
Attorneys at Law  
Commerce City, CO - 1970-1972

Partner  
Gehler & Cohen  
Attorneys at Law  
Commerce City, CO - 1972-1982

Sole Practitioner  
Ronald Cohen, Attorney at Law  
Denver, CO - 1982 to present.

**Municipal and Governmental Legal Experience:**

Assistant County Attorney  
Adams County, CO - 1970-1972

Assistant City Attorney and Prosecuting Attorney  
Commerce City, CO - 1970-1982

Prosecuting Attorney  
Northglenn, CO - 1970-1972

Assistant City Attorney and Prosecuting Attorney  
Brighton, CO - 1972-1982

City Attorney  
Lafayette, CO 1975-1990

**Personnel Hearing Officer:**

Northglenn, CO  
Blackhawk, CO  
Parker, CO  
Elizabeth, CO  
Littleton, CO  
Englewood, CO

**Judicial Experience:**

Presiding Judge  
Northglenn, CO - 1982 to present

Presiding Judge  
Federal Heights, CO - 1982-1990

Presiding Judge  
Commerce City, CO - 1987 to 2002

Presiding Judge  
Lochbuie, CO - 1999 to 2002

Presiding Judge  
Hudson, CO - 2001 to present

Administrative Law Judge  
Adams County, CO - 1988 to 1994

## AMERICAN ARBITRATION ASSOCIATION RESUME FORM

Centrestone Business Park, 8010 South County Road 5, Suite 206 • Windsor, CO 80528-9004

• Telephone: (970) 530-2121 • Facsimile: (970) 530-2122 •

### NAME:

John P. DiFalco

### CURRENT EMPLOYER/TITLE:

Self-employed - Arbitrator/Mediator  
DiFalco Corporation - President

### OCCUPATION:

Attorney, Arbitrator

### EXPERIENCE:

Over 35 years of experience as a civil trial lawyer specializing in government, administrative, and business contract law including significant experience in the practice of arbitration, mediation, and other forms of alternative dispute resolution. As a municipal attorney, participated in the construction management of major projects including performing arts center; senior center; recreation facilities; airport improvements; and wastewater, transportation, and waterways. Familiar with disputes relating to differing site conditions; design defects; change orders; surety bonds; and municipal, state, and federal contract law. Possesses considerable government experience, including negotiations with federal and state government agencies in connection with the construction of public buildings, wastewater and water treatment facilities, transit systems, and airports. Adjunct Professor Law at Regis University in Denver, Colorado. Arbitrator since 1980. As panelist for the American Arbitration Association and the Federal Mediation and Conciliation Service, has engaged in the practice of labor, commercial, and construction arbitration, mediation, and other alternative dispute resolution. Clients include numerous public and private entities throughout the nation. Experience in mediating or arbitrating cases involving arbitrability, contract interpretation, delays, design defects, product liability, remedies, and many other issues.

### ISSUES:

Arbitrability, benefits, contract interpretation, discharge, discipline, discrimination, external law, grievance procedure, job assignments, job classification, pay, seniority, subcontracting out, tenure issues (higher education), timeliness.

### INDUSTRIES:

Entertainment, government (federal, state and local), grocery, higher education, meat packing, mining, oil and gas, postal, professional sports, public utilities, retail, schools, steel, telephone, transportation.

## **WORK HISTORY:**

President, DiFalco Corporation, 1980-present; Owner, John P. DiFalco & Associates, P.C., 1987-2003; City Attorney, City of Greeley, CO, 1980-1987; Chief Negotiator/Labor Relations Attorney, City/County of Denver, 1977-1980; Hearing Examiner, U.S. Postal Service, 1972-1977; Attorney & Labor Relations Specialist, U.S. Postal Service, 1972-1977, Attorney, Real Estate and Procurement; General Counsel, U.S. Postal Service.

## **EDUCATION:**

Ohio State University (BA-1965; JD-1968); University of Northern Colorado (MA-1986).

## **PROFESSIONAL ASSOCIATIONS:**

American Bar Association (Committee on Public Employee Bargaining); Colorado Bar Association (Labor Law Section); Federal Bar Association (Committees on Public Sector Labor Relations, Arbitration Committee, and Office Management Committee); Industrial Relations Research Association; Phi Delta Phi International Legal Fraternity; International Platform Association; National Academy of Arbitrators.

## **PROFESSIONAL LICENSES:**

Admitted to the Bar: Ohio, 1968; Colorado, 1972; District of Columbia, 1987; U.S. District Court, District of Colorado; U.S. Court of Appeals: Tenth and Federal (1986) Circuits; U.S. Supreme Court (1972).

## **PUBLICATIONS AND SPEAKING ENGAGEMENTS:**

“The New Ethics Regulations - Confusing and Likely to Be Changed”, POSTMASTERS ADVOCATE, March 1991; “Sexual Harassment Revisited”, POSTMASTERS ADVOCATE, May/June 1989; “Supreme Court Permits Office Searches of Public Employees”, POSTMASTERS ADVOCATE, December 1987; “Twenty Rules for Effective Meaningful Bargaining”, POSTMASTERS ADVOCATE, August 1987; “Children as Negotiators: Is Theirs an Acquired or Inherited Trait?”, POSTMASTERS ADVOCATE, June 1987; “The Law and Policy on Sexual Harassment”, NATIONAL LEAGUE OF CITIES, 1984; “Collective Bargaining”, NEW ENGLAND MUNICIPALITIES, 1982; reprinted, NIMLO LAW DOCKET, 1983 and WASHINGTON ASSOCIATION OF CITIES, 1983; “Negotiation Impasse Planning”, OKLAHOMA MUNICIPALITIES, 1981; “Municipal Strike Planning”, COLORADO MUNICIPALITIES, 1980; SUPERVISOR’S GUIDE TO DISCIPLINE, 1979, revised 1985; “Management Negotiators: A New Breed”, NATION’S CITIES, May 1978; “Rights of Criminals While Incarcerated”, OHIO STATE UNIVERSITY LAW JOURNAL, 1978; DISCIPLINE AND GRIEVANCE HANDLING, 1973, revised 1986.

## **ALTERNATIVE DISPUTE RESOLUTION TRAINING:**

Basic AAA Arbitrator Training, Denver, CO; AAA Advanced Arbitrator Training, New York, NY; Labor Arbitrator II, Phoenix, AZ; Advanced Arbitrator Training, Phoenix, AZ.

**LOCALE:** Fort Collins, CO/Denver, CO/Loveland, CO

Contact American Arbitration Association  
6795 N. Palm Avenue  
2nd Floor  
Fresno, CA 93704  
telephone: 877-528-0880 facsimile: 559-490-1919

**Daniel M. Winograd, Esq.**

**Current Employer-Title** El Paso County Court - Magistrate

**Occupation** Magistrate, Arbitrator.

**Experience** Attorney since 1973. Has served as an arbitrator in public and private sector labor and employment cases since 1976. Member of the American Arbitration Association Labor Panel since 1977.

**Issues** Absenteeism, arbitrability, bargaining unit work, conduct (off-duty/personal), contract interpretation (miscellaneous issues), contracting out, discipline (discharge/non-discharge), discrimination, drug/alcohol offenses, holidays (leave), job classification/performance/posting/bidding, jurisdictional dispute, layoff/bumping/recall, management rights, past practices, pay issues, safety/health conditions, seniority, sexual harassment, subcontracting out, tenure/reappointment, union security, vacation.

**Industries** Air traffic control, bakery, beverage, brewing, coal, construction, dairy, electrical generation and transmission utilities, federal sector, government (state and county), manufacturing, meat packing, mining, newspaper, nuclear energy, oil refining, printing, public schools, public transportation, retail grocery, trucking, public sector (police/firefighters, education).

**Permanent Arbitrator** Federal Aviation Administration & National Air Traffic Controller Association; Federal Aviation Administration & Professional Air Safety Specialists; Kaiser-Hill Co., LLC & United Steelworkers of American.

**Work History** Attorney, Sole Practitioner, 1984-present, 1978-79; Partner, Makepeace & Winograd, 1979-84; Arbitrator Intern, Alex Elson & Aaron S. Wolff, 1972-78; Attorney, Elson, Lassers & Wolff, 1973-78.

**Education** Colorado College (BA, Political Science-1970); University of Chicago (JD-1973).

*Daniel M. Winograd, Esq.*  
127503

**Professional Associations** National Academy of Arbitrators; Illinois Bar Association; Colorado Bar Association.

**Professional Licenses** Admitted to the Bar: Illinois, 1973; U.S. District Court: Northern District of Illinois, 1973; District of Colorado; U.S. Court of Appeals: Seventh (1973) and Tenth Circuits; U.S. Supreme Court, 1978.

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**Alternative Dispute Resolution Training** AAA Labor Arbitrator II Training, Boulder, 10/03.

**Compensation** \$900.00 Per Day  
Rate is charged for each day of hearing, travel, research and writing time. Per-diem cancellation fee if within 60 days of scheduled date. \$550.00 per day for expedited cases. Also maintains Chicago Office. Non-refundable travel expenses (eg. airline fees) will be charged for any hearing cancelled after the expense is incurred. Will charge expenses such as airfare, lodging, and meal expenses at actual cost. Copies will be billed at \$0.15 per page and mileage will be billed at \$0.31 per mile from the nearest office - Colorado Springs, CO or Chicago, IL.

**Locale** Colorado Springs, CO

*Daniel M. Winograd, Esq.*  
127503

RESOLUTION NO. \_\_\_\_\_  
SERIES OF 2011

A RESOLUTION SETTING THE LIST OF PERSONS ELIGIBLE FOR APPOINTMENT AS HEARING OFFICERS FOR DISCIPLINARY AND MERIT APPEALS.

WHEREAS, Section 138:3 of the Englewood Home Rule Charter provides that in matters of disciplinary and merit appeals, the City Council would appoint hearing officers to hold hearings and make findings and determinations; and

WHEREAS, the passage of this Resolution will provide a list of persons for appointment as hearing officers by City Council for 2011.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, THAT:

Section 1. The City Council of the City of Englewood, Colorado, hereby approves the following persons for appointment as hearing officers for disciplinary and merit appeals by the City of Englewood:

Ronald J. Cohen  
John P. DiFalco  
Daniel M. Winograd

ADOPTED AND APPROVED this 4th day of April, 2011.

ATTEST:

\_\_\_\_\_  
James K. Woodward, Mayor

\_\_\_\_\_  
Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk for the City of Englewood, Colorado, hereby certify the above is a true copy of Resolution No. \_\_\_\_\_, Series of 2011.

\_\_\_\_\_  
Loucrishia A. Ellis, City Clerk

## COUNCIL COMMUNICATION

<b>Date:</b> April 4, 2011	<b>Agenda Item:</b> 11 c ii	<b>Subject:</b> A Motion Appointing a Hearing Officer
<b>Initiated By:</b> Human Resources Department		<b>Staff Source:</b> Sue Eaton, Director of Human Resources

### RECOMMENDED ACTION

The staff recommends the Englewood City Council appoint, by motion, a hearing officer for a disciplinary appeal filed by former Police Officer Eric Zasada.

### BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Per the City of Englewood Administrative Policy Manual, Human Resources Policy No. 24, when a request for a hearing before a Hearing Officer in connection with a disciplinary appeal is filed with the City Clerk, the City Council will appoint a Hearing Officer from the panel appointed to hear the appeal.

### LIST OF ATTACHMENTS

Appeal Request  
Resumes of Potential Hearing Officers



## MEMORANDUM

**TO:** Mayor Woodward and City Council Members

**FROM:** Loucrishia A. Ellis, City Clerk

**DATE:** March 14, 2011

**SUBJECT:** Disciplinary Appeal – Officer Eric Zasada

In accordance with the City of Englewood Administrative Policy Manual - Policy No. 24, I am notifying you that I have received a Complaint for Appeal of Disciplinary Action and Request for Hearing.

A copy of the request, dated March 11, 2011, is attached.

cc: Gary Sears, City Manager  
Dan Brotzman, City Attorney  
Sue Eaton, Director of Human Resources  
Tom Vandermee, Police Chief  
Frank Grylewicz, Director of Finance and Administrative Services

**Lou Ellis**

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**From:** Sally Larson  
**Sent:** Friday, March 11, 2011 4:23 PM  
**To:** Gary Sears; Tom Vandermee; Lou Ellis  
**Cc:** Brian Reynolds  
**Subject:** Complaint for Appeal of Disciplinary Action and Request for Hearing re Officer Eric Zasada  
**Attachments:** Complaint for Appeal of Disciplinary Action and Request for Hearing re Eric Zasada.pdf

Please find attached to this e-mail the above-referenced Complaint and Request along with Exhibit A to that Complaint and Request. Please let me know if you are unable to open or view the attached document, and please acknowledge receipt of same. Thank you.

Sally Larson

Paralegal

Bruno, Colin, Jewell & Lowe, P.C.

1999 Broadway, Suite 3100

Denver, CO 80202

Phone: 303-831-1099

Fax: 303-831-1088

HEARING OFFICER, CITY OF ENGLEWOOD, COLORADO

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**COMPLAINT FOR APPEAL OF DISCIPLINARY ACTION  
AND REQUEST FOR HEARING**

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In Re The Matter of:

OFFICER ERIC ZASADA, member of the classified service of the Englewood Police Department, Department of Safety Services, City of Englewood,

Appellant.

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Appellant Eric Zasada, a member of the Classified Service of the Englewood Police Department, by his attorney Brian R. Reynolds of the law firm Bruno, Colin, Jewell & Lowe, P.C., and pursuant to City of Englewood Administrative Policy No. 24, hereby submits this Complaint for Appeal and Request for Hearing to review the Notice of Termination dated March 4, 2010 [sic], as follows:

**NATURE OF DISPUTE**

1. Appellant was a full-time, permanent, classified employee of the City of Englewood and was a member of the Classified Service of the Englewood Police Department.

2. Respondent Police Chief Tom Vandermee is the duly appointed, authorized, and empowered Chief of the Englewood Police Department and appointing authority and was acting in such capacity in the issuance on March 4, 2011 of a Notice of Termination, received by Appellant on that same date by personal service.

3. Respondent Gary Sears is the duly appointed, authorized and empowered City Manager of the City of Englewood and is the designated Respondent with the burden of proof in connection with the within matter pursuant to City of Englewood Administrative Policy No. 24.

4. Pursuant to the above Notice of Termination, Respondent sustained four specifications against Appellant, including:

Englewood Police Department Code of Conduct

3.1.4.3	Insubordination	Class A Violation
3.1.4.5	Unbecoming Conduct	Class A Violation
3.1.4.38	Truthfulness	Class A Violation
3.1.4.39	Harassment/Discrimination	Class A Violation

City of Englewood Administrative Policy Manual

Policy #6 Equal Employment Opportunity/Harassment

Policy #25 Corrective and Disciplinary Action

Section E Violation of reasonable official order  
Section K False statements  
Section L Conduct that reflects unfavorably on Department  
Section V Discourtesy

A true and correct copy of the Notice of Termination is attached and incorporated as **Exhibit A**.

5. On March 4, 2011, a pre-disciplinary meeting was held before Respondent Chief Vandermee in connection with the subject allegations and the investigation of the underlying incident. At the pre-disciplinary meeting, Chief Vandermee issued the Notice of Termination. *Chief Vandermee stated that he had prepared the Notice of Termination the week preceding the pre-disciplinary meeting.*

6. The subject Notice of Termination is not supported by a preponderance of the evidence, is unlawful, and constitutes an arbitrary and capricious abuse of discretion on behalf of the Respondent Chief of Police and/or Respondent City Manager, for the following reasons:

a. The discipline of termination was unfounded and unsupported in those facts elicited as the result of the internal investigation and in the pre-disciplinary hearing in this matter. The facts, together with the mitigating circumstances related to the subject incident, demonstrate that none of the offenses specified are present. As such, there exists no just or reasonable cause for disciplinary action against the Appellant, and the termination is in violation of City of Englewood Administrative Policies concerning administration of discipline.

b. The discipline of termination constitutes a penalty disproportionate to the seriousness of the offense alleged and the circumstances related to the situation; is inappropriate, improper and excessive so as to be punitive rather than corrective in nature; and therefore violates the City's policy of corrective discipline and/or remedial training in lieu of discipline.

c. The discipline of termination is disproportionate in comparison to similar violations by other members of the Englewood Police Department under similar circumstances, and therefore denies to the Appellant his rights of equal protection under the law and/or substantive due process in violation of the Constitutions of the United States and of Colorado, and further represents a violation of any provision and/or policy

of the City of Englewood and/or the Englewood Police Department regarding equal and fair treatment of their employees.

d. The discipline of termination totally fails to consider and evaluate the prior service of the Appellant as a member of the Classified Service of the Englewood Police Department, and his past record of conduct.

e. The discipline of termination violates generally accepted standards of proper police administration and was imposed upon the Appellant for purposes other than administrative control of the Englewood Department of Safety Services.

f. Appellant's actions were in conformance with his training, lawful, justified, and done in good faith in performance of his duties as an Englewood Police Officer and further, in compliance with the rules, procedures and policies of the City of Englewood and/or the Englewood Police Department as based on the facts then known to him.

g. City Administrative Policy Manual - Policy #25(L) is unconstitutionally vague and over-broad and/or ambiguous such that Respondents failed to provide adequate notice to Appellant of prohibited conduct and, therefore, the disciplinary action imposed against him on the basis of alleged violation of such policy denied him due process of law and the subject order of suspension should be vacated and/or dismissed.

#### **ATTEMPTS TAKEN TO RESOLVE APPEAL**

7. Appellant began at Step V of the Complaint Resolution Process, which is the first step for appeal of discipline. Appellant has not yet taken any other action to resolve this appeal.

#### **REQUESTED REMEDY**

8. Appellant respectfully requests that pursuant to and in accordance with Englewood Administrative Policy No. 24 a fair and impartial hearing officer be appointed by the City Council and that he be afforded a review *de novo* and full evidentiary hearing in connection with the subject Notice of Termination. Appellant further requests that the hearing officer find that none of the offenses specified by the Notice of Termination are present; that the subject discipline was taken without just and reasonable cause; that the Notice of Termination be revoked and the discipline be vacated; and that he be awarded back pay, seniority, and all other benefits of his employment position and such additional different relief as the hearing officer may deem proper.





CITY OF ENGLEWOOD  
POLICE DEPARTMENT

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MEMORANDUM

TO: Officer Eric Zasada  
FROM: Chief of Police Thomas E. Vandermee  
DATE: March 4, 2010  
SUBJECT: Notice of Termination

On November 29, 2010, an Internal Affairs Investigation was initiated against you when it was discovered that you had submitted an unusually high amount of overtime. The overtime was submitted as compensation for investigative activities you asserted occurred on your days off and after hours. Included in that investigation was an allegation that you had interfered with the training of a recruit police officer despite orders you had received not to do so.

That investigation is completed and after reviewing that investigation I have concluded that the allegations of insubordination and untruthfulness are sustained. The investigation shows that on several occasions you completely disregarded the directions given to you by various supervisors. Specifically, you interfered with the training of a recruit police officer after being ordered not to do so by Commander Watson and Sergeant Martin. You also submitted at least seven overtime slips after a meeting you had with your supervisors at South Metro Drug Task Force in September of 2010 during which you were specifically ordered not to conduct any overtime without prior approval. You also received specific directions at that meeting that you were not to conduct surveillances alone. The element of untruthfulness stems from the fact that there is absolutely no corroborating documentation or evidence to support your claims that you engaged in police related duties on those dates for which you submitted requests for overtime compensation.

During the course of the investigation misconduct not based on the original allegation was also discovered. Inappropriate photographs of a sexually explicit nature of a female Englewood Police Department employee were discovered on your issued government cell phone. You admitted during the investigation that you took the photographs and manipulated them to display that employee in various stages of undress. This is a clear violation of both City and Department Policies.

An additional act of insubordination was committed by you when you disregarded orders given to you by Sergeant Martin and Commander Watson to surrender your issued fraudulent identification card to Sergeant Martin following your transfer from your undercover assignment.

EXHIBIT

tabbles  
A

Your conduct in the above described situations constitutes violations of the following sections of the Englewood Police Department Code of Conduct:

3.1.4.3	Insubordination	Class A Violation
3.1.4.5	Unbecoming Conduct	Class A Violation
3.1.4.38	Truthfulness	Class A Violation
3.1.4.39	Harassment/Discrimination	Class A Violation

Your conduct also violated the following portions of the City of Englewood Administrative Policy Manual:

Policy # 6	Equal Employment Opportunity/Harassment
Policy # 25	Corrective and Disciplinary Action

Section E Violation of any reasonable or official order, refusal to carry out lawful and reasonable directions given by a proper supervisor, or other acts of insubordination (including, but not limited to refusal to do assigned work).

Section K Knowingly giving false statements to supervisors, other officials, or the public.

Section L Any conduct, on or off duty, which reflects unfavorably on the City as an employer.

Section V Discourteous, offensive, or abusive conduct or language toward other employees, supervisors, or the public.

Acting in aggravation of this matter is your sustained Class A violation of Conduct Unbecoming that was contained in Internal Affairs Investigation 06-12. At that time you were suspended from duty for two days.

In that the four violations that have been sustained against you are of a Class A category and each of those violations by themselves are grounds for termination and you have previously been suspended from duty for a Class A violation it is my decision that you be terminated from employment with the City of Englewood Police Department.

Your rights as an employee to appeal this decision may be found in the City Administrative Policy Manual, Policy #24, a copy of which is attached to this notice of suspension.

---

Thomas E. Vandermeec  
Chief of Police

03-04-11  
Date

RESUMÉ  
OF  
RONALD J. COHEN  
2325 West 72nd Avenue  
Denver, Colorado 80221  
303-427-7584

**Qualifications:**

Juris Doctor Degree  
University of Denver  
June, 1968

Admitted by Colorado Supreme Court  
October, 1968

Admitted by United States District Court  
October, 1968

Admitted by United States Court of Appeals  
March, 1971

Admitted by United States Supreme Court  
March, 1972

**General Legal Experience:**

Staff Attorney  
Denver Legal Aid Society - 1969

Associate Attorney  
Berger, Rothstein & Gehler  
Attorneys at Law  
Commerce City, CO - 1970-1972

Partner  
Gehler & Cohen  
Attorneys at Law  
Commerce City, CO - 1972-1982

Sole Practitioner  
Ronald Cohen, Attorney at Law  
Denver, CO - 1982 to present.

**Municipal and Governmental Legal Experience:**

Assistant County Attorney  
Adams County, CO - 1970-1972

Assistant City Attorney and Prosecuting Attorney  
Commerce City, CO - 1970-1982

Prosecuting Attorney  
Northglenn, CO - 1970-1972

Assistant City Attorney and Prosecuting Attorney  
Brighton, CO - 1972-1982

City Attorney  
Lafayette, CO 1975-1990

**Personnel Hearing Officer:**

Northglenn, CO  
Blackhawk, CO  
Parker, CO  
Elizabeth, CO  
Littleton, CO  
Englewood, CO

**Judicial Experience:**

Presiding Judge  
Northglenn, CO - 1982 to present

Presiding Judge  
Federal Heights, CO - 1982-1990

Presiding Judge  
Commerce City, CO - 1987 to 2002

Presiding Judge  
Lochbuie, CO - 1999 to 2002

Presiding Judge  
Hudson, CO - 2001 to present

Administrative Law Judge  
Adams County, CO - 1988 to 1994

## AMERICAN ARBITRATION ASSOCIATION RESUME FORM

Centrestone Business Park, 8010 South County Road 5, Suite 206 • Windsor, CO 80528-9004

• Telephone: (970) 530-2121 • Facsimile: (970) 530-2122 •

### NAME:

John P. DiFalco

### CURRENT EMPLOYER/TITLE:

Self-employed - Arbitrator/Mediator  
DiFalco Corporation - President

### OCCUPATION:

Attorney, Arbitrator

### EXPERIENCE:

Over 35 years of experience as a civil trial lawyer specializing in government, administrative, and business contract law including significant experience in the practice of arbitration, mediation, and other forms of alternative dispute resolution. As a municipal attorney, participated in the construction management of major projects including performing arts center; senior center; recreation facilities; airport improvements; and wastewater, transportation, and waterways. Familiar with disputes relating to differing site conditions; design defects; change orders; surety bonds; and municipal, state, and federal contract law. Possesses considerable government experience, including negotiations with federal and state government agencies in connection with the construction of public buildings, wastewater and water treatment facilities, transit systems, and airports. Adjunct Professor Law at Regis University in Denver, Colorado. Arbitrator since 1980. As panelist for the American Arbitration Association and the Federal Mediation and Conciliation Service, has engaged in the practice of labor, commercial, and construction arbitration, mediation, and other alternative dispute resolution. Clients include numerous public and private entities throughout the nation. Experience in mediating or arbitrating cases involving arbitrability, contract interpretation, delays, design defects, product liability, remedies, and many other issues.

### ISSUES:

Arbitrability, benefits, contract interpretation, discharge, discipline, discrimination, external law, grievance procedure, job assignments, job classification, pay, seniority, subcontracting out, tenure issues (higher education), timeliness.

### INDUSTRIES:

Entertainment, government (federal, state and local), grocery, higher education, meat packing, mining, oil and gas, postal, professional sports, public utilities, retail, schools, steel, telephone, transportation.

## **WORK HISTORY:**

President, DiFalco Corporation, 1980-present; Owner, John P. DiFalco & Associates, P.C., 1987-2003; City Attorney, City of Greeley, CO, 1980-1987; Chief Negotiator/Labor Relations Attorney, City/County of Denver, 1977-1980; Hearing Examiner, U.S. Postal Service, 1972-1977; Attorney & Labor Relations Specialist, U.S. Postal Service, 1972-1977, Attorney, Real Estate and Procurement; General Counsel, U.S. Postal Service.

## **EDUCATION:**

Ohio State University (BA-1965; JD-1968); University of Northern Colorado (MA-1986).

## **PROFESSIONAL ASSOCIATIONS:**

American Bar Association (Committee on Public Employee Bargaining); Colorado Bar Association (Labor Law Section); Federal Bar Association (Committees on Public Sector Labor Relations, Arbitration Committee, and Office Management Committee); Industrial Relations Research Association; Phi Delta Phi International Legal Fraternity; International Platform Association; National Academy of Arbitrators.

## **PROFESSIONAL LICENSES:**

Admitted to the Bar: Ohio, 1968; Colorado, 1972; District of Columbia, 1987; U.S. District Court, District of Colorado; U.S. Court of Appeals: Tenth and Federal (1986) Circuits; U.S. Supreme Court (1972).

## **PUBLICATIONS AND SPEAKING ENGAGEMENTS:**

“The New Ethics Regulations - Confusing and Likely to Be Changed”, POSTMASTERS ADVOCATE, March 1991; “Sexual Harassment Revisited”, POSTMASTERS ADVOCATE, May/June 1989; “Supreme Court Permits Office Searches of Public Employees”, POSTMASTERS ADVOCATE, December 1987; “Twenty Rules for Effective Meaningful Bargaining”, POSTMASTERS ADVOCATE, August 1987; “Children as Negotiators: Is Theirs an Acquired or Inherited Trait?”, POSTMASTERS ADVOCATE, June 1987; “The Law and Policy on Sexual Harassment”, NATIONAL LEAGUE OF CITIES, 1984; “Collective Bargaining”, NEW ENGLAND MUNICIPALITIES, 1982; reprinted, NIMLO LAW DOCKET, 1983 and WASHINGTON ASSOCIATION OF CITIES, 1983; “Negotiation Impasse Planning”, OKLAHOMA MUNICIPALITIES, 1981; “Municipal Strike Planning”, COLORADO MUNICIPALITIES, 1980; SUPERVISOR’S GUIDE TO DISCIPLINE, 1979, revised 1985; “Management Negotiators: A New Breed”, NATION’S CITIES, May 1978; “Rights of Criminals While Incarcerated”, OHIO STATE UNIVERSITY LAW JOURNAL, 1978; DISCIPLINE AND GRIEVANCE HANDLING, 1973, revised 1986.

## **ALTERNATIVE DISPUTE RESOLUTION TRAINING:**

Basic AAA Arbitrator Training, Denver, CO; AAA Advanced Arbitrator Training, New York, NY; Labor Arbitrator II, Phoenix, AZ; Advanced Arbitrator Training, Phoenix, AZ.

**LOCALE:** Fort Collins, CO/Denver, CO/Loveland, CO

**Contact American Arbitration Association**  
6795 N. Palm Avenue  
2nd Floor  
Fresno, CA 93704  
telephone: 877-528-0880 facsimile: 559-490-1919

**Daniel M. Winograd, Esq.**

**Current Employer-Title** El Paso County Court - Magistrate

**Occupation** Magistrate, Arbitrator

**Experience** Attorney since 1973. Has served as an arbitrator in public and private sector labor and employment cases since 1976. Member of the American Arbitration Association Labor Panel since 1977.

**Issues** Absenteeism, arbitrability, bargaining unit work, conduct (off-duty/personal), contract interpretation (miscellaneous issues), contracting out, discipline (discharge/non-discharge), discrimination, drug/alcohol offenses, holidays (leave), job classification/performance/posting/bidding, jurisdictional dispute, layoff/bumping/recall, management rights, past practices, pay issues, safety/health conditions, seniority, sexual harassment, subcontracting out, tenure/reappointment, union security, vacation.

**Industries** Air traffic control, bakery, beverage, brewing, coal, construction, dairy, electrical generation and transmission utilities, federal sector, government (state and county), manufacturing, meat packing, mining, newspaper, nuclear energy, oil refining, printing, public schools, public transportation, retail grocery, trucking, public sector (police/firefighters, education).

**Permanent Arbitrator** Federal Aviation Administration & National Air Traffic Controller Association; Federal Aviation Administration & Professional Air Safety Specialists; Kaiser-Hill Co., LLC & United Steelworkers of American.

**Work History** Attorney, Sole Practitioner, 1984-present, 1978-79; Partner, Makepeace & Winograd, 1979-84; Arbitrator Intern, Alex Elson & Aaron S. Wolff, 1972-78; Attorney, Elson, Lassers & Wolff, 1973-78.

**Education** Colorado College (BA, Political Science-1970); University of Chicago (JD-1973).

*Daniel M. Winograd, Esq.*  
127503

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**Locale** Colorado Springs, CO

*Daniel M. Winograd, Esq.*  
127503