



**AGENDA FOR THE  
ENGLEWOOD CITY COUNCIL  
STUDY SESSION  
MONDAY, SEPTEMBER 26, 2011  
Community Room  
(2<sup>nd</sup> Floor Englewood Civic Center)  
6:00 p.m.**

- I. **Medical Marijuana Residential Regulations**  
Financial and Administrative Services Director Frank Gryglewicz will discuss the medical marijuana residential regulations.
- II. **October 12 Public Forum Discussion**  
City Council will discuss the format for the public forum on parking and storage of recreational and off-road vehicles
- III. **Election of Mayor and Mayor Pro-Tem**  
Review of Council Policy for election of Mayor and Mayor Pro-Tem by secret ballot
- IV. **City Manager's Choice**
- V. **City Attorney's Choice**
- VI. **Council Member's Choice**

# Care-giver Section of CENTENNIAL Medical Marijuana Ordinance

## *Division 3*

### *Cultivation of Medical Marijuana Within Primary Residences*

#### **Sec. 6-6-210. General requirements.**

- (a) It shall be unlawful for any person to cultivate, produce, or process Medical Marijuana Plants within the City of Centennial unless such person is lawfully registered as a Patient or lawfully licensed as a Primary Care-giver and, provided that:
- (1) The cultivation, production, and processing occurs within the Primary Residence of the Patient or the Primary Care-giver; and
  - (2) The cultivation, production, and processing fully complies with all applicable provisions of Article XVIII, Section 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, the Colorado Medical Marijuana Program, this Article, and all applicable requirements of all City of Centennial ordinances, resolutions, and regulations including, but not limited to, the land development code, building and safety codes, and sales and use tax codes, as may be amended.
  - (3) Medical Marijuana is not cultivated, produced, or processed within a garage, whether attached or detached, or other structure designed or intended for the keeping or storage of vehicles, equipment, or goods; and
  - (4) Medical Marijuana is not cultivated, produced, or processed within any common area(s) of a multi-family or single-family attached residential property; and
  - (5) Medical Marijuana is not cultivated, produced, or processed in the yard, lot, or other area or structure located outside of the Primary Residence, including but not limited to outdoor gardens, ancillary or accessory buildings, greenhouses, sheds, or storage units; and
  - (6) Medical Marijuana is not produced or processed with the use of chemical(s) for the purposes of enhancing, concentrating, or extracting tetrahydrocannabinol (THC) from Medical Marijuana or Medical Marijuana Plants; and
  - (7) The area of a Primary Residence devoted to the cultivation, production, or processing of Medical Marijuana Plants, including the keeping, storage, and maintenance of all materials, supplies,

tools, equipment, and paraphernalia associated with the cultivation, production, and processing of Medical Marijuana Plants, does not exceed the following:

- a. Within a single-family detached dwelling unit, a maximum contiguous one hundred fifty (150) square foot area; or
  - b. Within any residential structure other than a single-family detached dwelling unit, a maximum contiguous one hundred (100) square foot area.
- (8) The cultivation, production, and processing is in compliance with all applicable Home Occupation and Home-Based Business regulations contained in the City's Land Development Code, including, but not limited to, restrictions on physical features, building character, and business operations. In the event of a conflict between the provisions of this Article and restrictions on Home Occupations or Home-Based Businesses as set forth in the City's Land Development Code, the more restrictive provision(s) shall govern.

**Sec. 6-6-220. Maximum number of Medical Marijuana Plants.**

- (a) It shall be unlawful for Patients or Primary Care-givers to cultivate, produce, possess, or process, or permit to be cultivated, produced, possessed, or processed more than the following maximum number of Medical Marijuana Plants within the Patient's or Primary Care-giver's Primary Residence:
  - (1) A Patient may cultivate, produce, possess, or process, or permit to be cultivated, produced, possessed, or processed within the Patient's Primary Residence, the *lesser* of either:
    - a. Six (6) Medical Marijuana Plants with three (3) or fewer being mature, flowering plants that are producing a useable form of marijuana for each Patient residing in the Primary Residence; or
    - b. The maximum number of Medical Marijuana Plants necessary to alleviate the Patient's or Patients' chronic or debilitating disease(s) or medical condition(s) as evidenced by the Patient's or Patients' Physician's written professional opinion or recommendation;

*but in no event* shall the maximum number of Medical Marijuana Plants within a Patient's Primary Residence exceed thirty (30)

Medical Marijuana Plants regardless of size or stage of growth or the number of Patients residing at the Primary Residence.

- (2) A Primary Care-giver may cultivate, produce, possess, or process, or permit to be cultivated, produced, possessed, or processed within the Care-giver's Primary Residence, the *lesser* of either:
  - a. Six (6) Medical Marijuana Plants with three (3) or fewer being mature, flowering plants that are producing a useable form of marijuana for each Patient of the Primary Care-giver; or
  - b. The aggregate maximum number of Medical Marijuana Plants necessary to alleviate the Primary Care-giver's Patients' chronic or debilitating disease(s) or medical condition(s) as evidenced by the Patients' Physicians' professional opinion(s);

*but in no event* shall the maximum number of Medical Marijuana Plants within a Primary Care-giver's Primary Residence exceed thirty (30) Medical Marijuana Plants regardless of size or stage of growth.

- (3) For a Primary Residence at which one (1) or more Primary Care-givers and/or one (1) or more Patients reside, each Primary Care-giver and each Patient may cultivate, produce, possess, or process, or permit to be cultivated, produced, possessed, or processed the maximum number of Medical Marijuana Plants provided in Section 6-6-220 (1)(a) or (b) or in Section 6-6-220 (2)(a) or (b), above, as applicable, provided that, *in no event*, shall the maximum number of Medical Marijuana Plants within the Primary Residence exceed thirty (30) Medical Marijuana Plants regardless of size or stage of growth and regardless of the total number of Care-givers and Patients residing within the Primary Residence.

**Sec. 6-6-230. Exterior impacts unlawful.**

- (a) It shall be unlawful for the cultivation, production, possession, or processing of Medical Marijuana Plants within a Primary Residence to be perceptible from the exterior of the Primary Residence by means including, but not limited to:
  - (1) Common visual observation, including any form of signage;

- (2) Odors, smells, fragrances, or other olfactory stimulus generated by the cultivation, production, possession, or processing of Medical Marijuana Plants; or
- (3) Light pollution, glare, or brightness of artificial illumination associated with the cultivation production, possession, or processing of Medical Marijuana Plants.

**Sec. 6-6-240. Special provisions for Primary Care-givers.**

- (a) The cultivation, production, or processing of Medical Marijuana and Medical Marijuana Plants by Primary Care-givers for Patients is a home occupation or a home-based business pursuant to the Centennial Land Development Code and the sale or distribution of Medical Marijuana to Patients is a taxable transaction in accordance with state and local law. Primary Care-givers shall therefore comply with other applicable provisions of the Centennial Municipal Code and, specifically, the business licensing and sales tax licensing and reporting requirements set forth in applicable provisions of the Centennial Sales and Use Tax Code.
- (b) A Primary Care-giver shall provide the registry identification card number of each of his or her Patients to employees and contractors of the City and to law enforcement agencies, upon inquiry in the course of their official duties while investigating compliance with the requirements of this Article.
- (c) To the extent required by law, documentation that evidences the name, address, or other information of a Patient or Primary Caregiver including, but not limited to, applications, permits, and correspondence, shall be maintained by the City as confidential. No person shall be permitted to gain access to such confidential documentation except for authorized employees and contractors of the City in the course of their official duties and authorized employees of state or local law enforcement agencies.

**Sec. 6-6-250. Private covenants not affected.**

This Article is not intended to impair and does not supersede or override provisions of any lawful privately imposed contracts, covenants, conditions, or restrictions that are more restrictive regarding the use of a Primary Residence for the cultivation, production, possession, and processing of Medical Marijuana or Medical Marijuana Plants. Nothing in this Article is intended to defer to or to permit privately imposed contracts, covenants, conditions, or restrictions that would authorize any activity or action prohibited or regulated by this Article. The City shall not enforce private covenants except to the extent specifically provided by law.

*Division 4*  
*Enforcement*

**Sec. 6-6-310. Penalties for violation.**

- (a) In addition to any other penalties that may exist under state, federal and local laws, any person charged with a violation of this Article, upon conviction or plea of *nolo contendere* thereof, shall be punished as follows:
- (1) For an offense involving the cultivation, production, possession, or processing of one (1) or more Medical Marijuana Plants in excess of the maximum number of Medical Marijuana Plants permitted by this Article, such fine shall be not less than seven-hundred fifty dollars (\$750.00) and not more than one thousand dollars (\$1,000.00) for each Medical Marijuana Plant cultivated, produced, possessed, or processed in excess of such maximum; or
  - (2) For any other violation of this Article not set forth in subparagraph (1) above, such fine shall be not less than five hundred dollars (\$500.00) and not more than one thousand dollars (\$1,000.00) for each offense.
- (b) Each person violating any provision of this Article shall be guilty of a separate offense for each and every day during any portion of which any violation of this Article is committed, continued, or permitted by such person.
- (c) The Centennial Municipal Court shall retain the discretion to suspend, reduce, or impose a lesser fine upon recommendation of the Municipal Court prosecutor pursuant to a mutually accepted plea agreement with the defendant.

**Sec. 6-6-320. Search warrants authorized.**

- (a) The City Council declares that a violation of this Article involves a serious threat to public safety or order within the meaning of Rule 241(a)(1) of the Colorado Municipal Court Rules of Procedure.
- (b) If the owner or occupant of the premises denies officials of the City's Code Compliance, Building Division, law enforcement agency, and/or other authorized official permission to inspect the residential structure, authorized law enforcement personnel may request the Centennial Municipal Court to issue a search warrant for the inspection of the premises pursuant to the procedure and standards as set forth in Rule 241 of the Colorado Municipal Court Rules of Procedure.

- (c) The Centennial Municipal Court may issue a search warrant authorizing officials of the City's Code Compliance, Building Division, law enforcement agency, and/or other authorized official to inspect a residential structure for the cultivation, production, possession, or processing of Medical Marijuana Plants in accordance with Rule 241(b) of the Colorado Municipal Court Rules of Procedure. Any search warrant issued pursuant to this Article shall fully comply with the applicable provisions of Rule 241 of the Colorado Municipal Court Rules of Procedure.
- (d) The Centennial Municipal Court may impose such conditions on a search warrant as may be necessary to protect the private property rights of the owner of the premises to be inspected or to otherwise ensure that the warrant complies with applicable law.
- (e) It shall be unlawful and a minor offense for any owner or occupant to deny officials of the City's Code Compliance, Building Division, law enforcement agency, and/or other authorized official access to the property owned or occupied by such owner or occupant if the authorized person presents a warrant issued pursuant to this Article.

**Sec. 6-6-330. Violations constitute nuisances.**

In addition to any other lawful method of enforcement which methods shall not be deemed exclusive, a violation of this Article is declared to be a public nuisance that may be abated as provided in Chapter 7, Article 1 of the Centennial Municipal Code.

**Sec. 6-6-340. Most stringent law or construction applies.**

Nothing in this Article is intended to supersede or modify applicable provisions of state law concerning the same subject. To the extent this Article is interpreted to authorize an action or activity otherwise prohibited by state law, such authorization shall mean such action or activity is not prohibited by local law. To the extent that a provision of state law is or becomes more stringent than a provision of this Article, the most stringent requirement or construction shall govern or apply.

**Section 3. Severability.** If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or applications of this Ordinance are not determined by the court to be inoperable. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion would be declared invalid or unconstitutional.

**Section 4. Repeal and Referendum.** Pursuant to the Centennial Home Rule Charter and Section 31-11-111, C.R.S., the City Council may, upon majority vote of a quorum present, vote to repeal this Ordinance or to refer this Ordinance, or any part thereof, to the electorate of the City of Centennial. Nothing in this Ordinance is intended to preclude or limit the City Council's legislative discretion.

**Section 5. Codification Amendments.** The codifier of the City's Municipal Code, Colorado Code Publishing, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Centennial Municipal Code.

**Section 6. Effective Date.** This Ordinance shall take effect thirty (30) days after publication following final passage.

**Section 7. Safety Clause.** The City Council hereby finds, determines, and declares that this Ordinance is promulgated pursuant to the City's home rule authority and under the general police power of the City of Centennial, 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 this Ordinance bears a rational relation to the proper legislative objective sought to be obtained.

**Section 8. No Acceptance of Applications.** The City Council directs the City Manager to take such steps as may be necessary to ensure that the administrative staff of the City of Centennial does not accept or process any application, in whatever form, for any medical marijuana business as described in this Ordinance pending and following the effective date of this Ordinance.

INTRODUCED, READ, AND ORDERED PUBLISHED BY THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD ON THE \_\_\_ DAY OF \_\_\_\_\_, 2011.

CITY OF CENTENNIAL

By: \_\_\_\_\_  
Cathy A. Noon, Mayor

Approved as to Form:

\_\_\_\_\_  
For City Attorney's Office

I hereby certify that the above Ordinance was introduced to the City Council of the City of Centennial at its meeting of \_\_\_\_\_, 2011 and ordered published one time by title only in *The Villager* newspaper on \_\_\_\_\_, 2011, and in full on the City web site in accordance with Section 2-1-110 of the Municipal Code.

SEAL

ATTEST:

By: \_\_\_\_\_  
City Clerk or Deputy City Clerk

FINALLY ADOPTED, PASSED, APPROVED WITH AMENDMENTS, IF ANY, AND ORDERED PUBLISHED BY TITLE ONLY, IN *THE VILLAGER* NEWSPAPER AND IN FULL ON THE CITY WEB SITE IN ACCORDANCE WITH SECTION 2-1-110 OF THE MUNICIPAL CODE BY THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS MEETING HELD ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2011, BY A VOTE OF \_\_\_\_ IN FAVOR AND \_\_\_\_ AGAINST.

CITY OF CENTENNIAL

By: \_\_\_\_\_  
Cathy A. Noon, Mayor

I hereby certify that the above Ordinance was finally adopted by the City Council of the City of Centennial at its meeting of \_\_\_\_\_, 2011, and ordered published by title only, one time by *The Villager* newspaper on \_\_\_\_\_, 2011 and in full on the City web site in accordance with Section 2-1-110 of the Municipal Code.

SEAL

ATTEST:

By: \_\_\_\_\_  
City Clerk or Deputy City Clerk

## Care-giver Section of AURORA Medical Marijuana Ordinance

### Sec. 22-573. Growing medical marijuana.

(d)

The cultivation, production, or possession of marijuana plants for medical use by a patient or primary caregiver as such terms are defined by Article XVIII, Section 14 of the Colorado Constitution, shall be allowed in residential structures subject to the following conditions:

(a)

Such cultivation, production, or possession of marijuana plants must be in full compliance with all applicable provisions of Article XVIII, Section 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, C.R.S. §§ 12-43-3-101 et seq., and the Medical Marijuana Program, C.R.S. § 25-1.5-106, and

(b)

Such marijuana plants are cultivated, produced, or possessed within a licensed patient's or registered caregiver's primary residence, as defined by paragraph (h) below; and

(c)

The cultivation, production, or possession of such marijuana plants must not be perceptible from the exterior of the primary residence, including but not limited to:

1.

Common visual observation, which would prohibit any form of signage;

2.

Unusual odors, smells, fragrances, or other olfactory stimulus;

3.

Light pollution, glare, or brightness that disturbs the repose of another;

4.

Undue vehicular or foot traffic, including excess parking within the residential zone; and

5.

Noise from fans in excess of Aurora City Code, section 146-1802.

(d)

Such marijuana plants shall not be grown or processed in the common areas of a multi-family or attached residential development; and

(e)

Such marijuana plants are used exclusively by a licensed patient for the patient's personal use and solely to address a debilitating medical condition; and

(f)

Such cultivation, production, or possession of marijuana plants shall be limited to the following space limitations within a primary residence:

1.

Within a single-family dwelling unit (Group R-3 as defined by the International Building Code, as adopted in chapter 22, section 22-131): A secure, defined, contiguous 150 square foot area within the primary residence of the licensed patient or registered caregiver.

2.

Within a multi-family dwelling unit (Group R-2 as defined by the International Building Code, as adopted in chapter 22, section 22-131): A secure, defined, contiguous 100 square foot area within the primary residence of the patient or registered caregiver.

(g)

Such cultivation, production, or possession of marijuana plants shall meet the requirements of all adopted City of Aurora Building and Life/Safety Codes.

(h)

For purposes of this section, "primary residence" means the place that a person, by custom and practice, makes his or her principle domicile and address and to which the person intends to return, following any temporary absence, such as vacation. Residence is evidenced by actual daily physical presence, use, and occupancy of the primary residence and the use of the residential address for domestic purposes, such as, but not limited to, slumber, preparation of and partaking of meals, regular mail delivery, vehicle and voter registration, or credit, water, and utility billing. A person shall have only one primary residence. A primary residence shall not include accessory buildings.

(i)

For purposes of this section, "a secure" area means an area within the primary residence accessible only to the patient or primary caregiver. Secure premises shall be locked or partitioned off to prevent access by children, visitors, casual passersby, vandals, or anyone not licensed and authorized to possess medical marijuana.

(j)

If a licensed patient or registered caregiver raises quantities of marijuana requiring more than the square footage limitations of paragraph (f) above, such patient or caregiver must be in full compliance with the Colorado Medical Marijuana Program as provided in C.R.S. § 25-15-106 (14); and

1.

Such patient or caregiver may grow medical marijuana for personal use and solely to address a debilitating medical condition within the "M-1", "M-2", or "M-3" Industrial Zoned Districts of the city.

2.

Such patient or caregiver must submit plans, obtain a building permit, and pass inspections to ensure that the M-1, M-2, OR M3 premises are in compliance with the City of Aurora's Building Code, Electrical Code, Fire Code, and all other relevant life/safety codes in order to obtain a certificate of occupancy from the City of Aurora's Building Division, and

3.

Such patient or caregiver must ensure that the M-1, M-2, or M-3 premises are secure, as defined in paragraph (l) above, however, within the industrial setting, so that no children, visitors, passersby, vandals, or anyone else not licensed to possess medical marijuana may

**ENGLEWOOD LIQUOR AND MEDICAL MARIJUANA LICENSING AUTHORITY**  
**Telephone Poll**  
**August 3, 2011**

**1. Consideration of Minutes**

- a) Results of the minutes of the telephone poll of July 20, 2011.

**Vote results:**

Ayes: Members Buchanan, Lay, Ostmeyer, VanDerLeest, Wilmoth  
Nays: None

The minutes were approved.

**2. Renewals**

- |                                    |   |
|------------------------------------|---|
| a) Broadway's<br>3978 S. Broadway  | Tavern Liquor License<br>Expires September 10, 2011             |
| b) Liquor Barn<br>4415 S. Broadway | Retail Liquor Store Liquor License<br>Expires September 9, 2011 |
| c) Smashburger<br>3299 S. Broadway | Hotel/Restaurant Liquor License<br>Expires September 22, 2011   |
| d) Twin Dragon<br>3021 S. Broadway | Hotel/Restaurant Liquor License<br>Expires September 28, 2011   |

**Vote results:**

Ayes: Members Buchanan, Lay, Ostmeyer, VanDerLeest, Wilmoth  
Nays: None

The renewals were approved.

**3. Change of Trade Name**

- a) Ruan Family Inc dba Hunan City Chinese Restaurant  
Changing to Ruan Family Inc dba Bistro King  
3542 S. Fox St.  
Hotel/Restaurant liquor license

**Vote results:**

Ayes: Members Buchanan, Lay, Ostmeyer, VanDerLeest, Wilmoth  
Nays: None

The Change of Trade Name was approved.

**4. Clerk's Choice**

- a) Medical Marijuana recommendations

As it appears that Registered Primary Care-Givers will be allowed in the City of Englewood and the Authority has concerns as to the safety of the citizens and visitors to the City, they believe that regulations should be enforced to protect the health, safety and welfare of the people. After reviewing the ordinances from various Colorado municipalities several times, the consensus from the Authority is to recommend a mimicking majority combination of the current ordinances from two major cities (Centennial and Aurora) regarding the Registered Primary Care-Giver details.

- 1) Add the Authority with those who are covered from any legal matter.  
*The City will comply with requirements imposed upon Colorado municipalities by Article XVIII, Section 14 of the Colorado Constitution, the Colorado Medical*

*Marijuana Code, and the Colorado Medical Marijuana Program to the extent such state laws are binding upon home rule municipalities. However, neither this Article nor its adoption, implementation, or enforcement shall be construed as an intent of the City, its elected officials, its employees or contractors or Authority members to violate Federal Law, including but not limited to, the Controlled Substances Act of 1970, as amended, nor shall such adoption, implementation or enforcement be construed as acquiescence or conspiracy by the City, its elected officials, appointed Authority members, contractors, or its employees to violate such Federal Law.*

The Authority is concerned that they be covered equal to staff, City Council and others making decisions regarding this topic.

- 2) Primary Care-givers must be registered with the State and possess registration identification (card). Copies of the State registration application and identification card should be filed with the City.

This information would be filed with the other documents pertaining to the "business".

- 3) Expand the definition section  
*Colorado Medical Marijuana Code: Sections 12-43.3-101, et seq., of the Colorado Revised Statutes, as may be amended. Colorado Medical Marijuana Program: that program defined by Section 25-1.5-106 (2)(d) of the Colorado Revised Statutes, as may be amended.*

*Contiguous: In terms of determining the area devoted to the cultivating, producing, possessing, or processing of Medical Marijuana and Medical Marijuana plants, means an interrupted expanse of space on the same floor or level of the primary residence that can be measured by framing the area with four (4) or more continuous and connected straight lines. The space within a single room which is defined by permanent perimeter walls is contiguous; the space within adjoining rooms divided by a permanent wall or permanent structure but accessible via a common doorway or connected by a common hallway is contiguous; however, non-adjacent spaces separated by two (2) or more permanent walls or separated by floors or levels of the building are not contiguous.*

*Lot: the real property around the primary residence and the buildings thereon that are commonly used for domestic and residential purposes.*

*Medical Marijuana business: any enterprise or activity, whether or not for profit, gain, or benefit that is undertaken for the purpose of cultivating, producing, possessing, storing, processing, dispensing, distributing, or selling Medical Marijuana, and without limiting the foregoing including specifically a Medical Marijuana Center, a Medical Marijuana Infused Products Manufacturer, or a Medical Marijuana Optional Premises Cultivation Operation. A Medical Marijuana business does not include the lawfully authorized activities undertaken by a Patient or Registered Primary Care-Giver in accordance Article 43.3 of Title 12 C.R.S.*

*Medical Marijuana Plants or "useable form of marijuana": marijuana plants, seedlings; or any part thereof in a living condition that are lawfully cultivated, produced, possessed, or processed pursuant to the provisions of Article XVIII, Section 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, the Colorado Medical Marijuana Program and other applicable laws or regulations governing the cultivation, production, possession or processing of Medical Marijuana.*

Medical Use: that use described and defined in Article XVIII, Section 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, and the Colorado Medical Marijuana Program.

Patient: a person who meets the definition of patient under Article XVIII, Section 14 (1)(d) of the Colorado Constitution and applicable law or regulation.

Physician: a doctor of medicine as defined in Article XVIII, Section 14 (1)(e) of the Colorado Constitution and meeting all requirements of Section 25-1.5-106, C.R.S.

Registered Primary Care-Giver: a person, other than the patient and the patient's physician, who is eighteen years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition. It is also as defined in Article XVIII, Section 14 (1)(f) of the Colorado Constitution or as may be more fully defined in any applicable Federal or State law or regulation.

Registry Identification Card: that document issued by the state health agency which identifies a patient authorized to engage in the medical use of marijuana and such patient's Registered Primary Care-Giver, if any has been designated.

State Health Agency: the public health related entity of state government designated by the governor who meets the definition under Article XVIII, Section 14 (1)(h) of the Colorado Constitution and applicable law or regulation.

Written documentation: a statement that meets the definition under Article XVIII, Section 14 (1)(j) of the Colorado Constitution and applicable law or regulation.

Any word or term used that is defined in Article XVIII, Section 14 (1)(f) of the Colorado Constitution or in the Colorado Medical Marijuana Code, shall have the same meaning that is ascribed to such word or term in the Colorado Constitution or in the Colorado Medical Marijuana Code.

The Authority would recommend that the definition section be expanded so that all have the same understanding.

- 4) Restrict structure limitations and have distance requirements  
*Such marijuana plants shall not be grown or processed in the common areas of a multi-family or attached residential development or a single-family attached residential property; AND*

*Medical Marijuana shall not be cultivated, produced or processed within a garage, whether attached or detached, or other structure designed or intended for the keeping or storage of vehicles, equipment or goods; AND*

*Such marijuana plants are used exclusively by a licensed patient for the patient's personal use and solely to address a debilitating medical condition; AND*

*Such cultivation, production, or possession of marijuana plants shall be limited to the following space limitations within a primary residence:*

(a) *Within a single-family dwelling unit: A secure, defined, contiguous one hundred fifty (150) square foot area within the primary residence of the licensed patient or Registered Primary Care-Giver.*

(b) *Within a multi-family dwelling unit: A secure, defined, contiguous one hundred (100) square foot area within the primary residence of the licensed patient or Registered Primary Care-Giver.*

(c) *Medical Marijuana shall not be cultivated, produced, or processed in the yard, lot or other areas or structure located outside of the primary residence, including but not limited to outdoor gardens, ancillary or accessory buildings, greenhouses, sheds, or storage units; AND*

(d) *The area of a primary residence devoted to the cultivation, production, or processing of Medical Marijuana plants, including the keeping, storage, and maintenance of all materials, supplies, tools, equipment, and paraphernalia associated with the cultivation, production, and processing of Medical Marijuana plants, does not exceed the following:*

(1) *Within a single-family detached dwelling unit, a maximum contiguous one hundred fifty (150) square foot area; OR*

(2) *Within any residential structure other than a single-family detached dwelling unit, a maximum contiguous one hundred (100) square foot area.*

*Such cultivation, production, or possession of marijuana plants shall meet the requirements of all adopted City of Englewood building and safety codes. Each primary residence shall be inspected by the Building and Safety Department and provide documentation of such inspection upon request by a designated official.*

5) *Add exterior perception limitations*

*The cultivation, production, or possession of such marijuana plants must not be perceptible from the exterior of the primary residence, including but not limited to:*

(a) *Common visual observation, which would prohibit any form of signage; OR*

(b) *Odors, smells, fragrances, or other olfactory stimulus generated by the cultivation, production, possession or processing of Medical Marijuana plants; OR*

(c) *Light pollution, glare, or brightness of artificial illumination associated with the cultivation, production, possession or processing of Medical Marijuana plants and that disturbs the repose of another; OR*

(d) *Undue vehicular or foot traffic, including excess parking within the residential zone; AND*

(e) *Noise from fans in excess of Englewood Municipal Code 2000, 6-2-5(F).*

6) *Identify Primary residence and secure areas*

*"Primary Residence" means the place that a person, by custom and practice, makes his or her principle domicile and address and to which the person intends to return, following any temporary absence, such as vacation. Residence is evidenced by actual daily physical presence, use, and occupancy of the primary residence and the use of the residential address for domestic purposes, such as but not limited to, slumber, preparation of and partaking of meals, regular mail delivery, vehicle and*

voter registration, or credit, water, and utility billing. It is a permanent location and cannot be operated from a moveable, mobile or transitory location. A person shall have only one primary residence. A primary residence shall not include accessory buildings.

A "secure" area means an area within the primary residence accessible only to the patient or Registered Primary Care-Giver. Secure premises shall be locked or partitioned off to prevent access by children, visitors, casual passersby, vandals, or anyone not licensed and authorized to possess Medical Marijuana.

7) Compliance with City zoning regulations

8) Compliance with all applicable home occupation and home based business regulations

*The cultivation, production, or processing of Medical Marijuana and Medical Marijuana plants by Registered Primary Care-Givers for patients is a home occupation or a home-based business pursuant to Title 16 of the Englewood Municipal Code 2000 and the sale or distribution of Medical Marijuana to patients is a taxable transaction in accordance with State and local law. Registered Primary Care-Givers shall therefore comply with all other applicable provisions of the Englewood Municipal Code 2000 and, specifically, the business licensing and sales tax licensing and reporting requirements set forth in the applicable provisions of the Englewood Municipal Code 2000.*

*The cultivation, production, and processing is in compliance with all applicable home occupation and home-based business regulations contained in the City's Chapter and Code, including but not limited to, restrictions on physical features, building character, and business operations. In the event of a conflict between the provision of this Article and restrictions on home occupations or home-based businesses, the more restrictive provision(s) shall govern.*

9) Restrictions on number of patients and plants

*It shall be unlawful for patients or Registered Primary Care-Givers to cultivate, produce, possess or process or permit to be cultivated, produced, possessed, or processed more than the following maximum number of Medical Marijuana plants within the patient's or Registered Primary Care-Giver's primary residence:*

(a) *A patient may cultivate, produce, possess, or process, or permit to be cultivated, produced, possessed, or processed within the patient's primary residence, the lesser of either:*

(1) *Six(6) Medical Marijuana plants with three (3) or fewer being mature, flowering plants that are producing a useable form of marijuana for each patient residing in the primary residence; OR*

(2) *The maximum number of Medical Marijuana plants necessary to alleviate the patient's (or patients') chronic debilitating disease(s) or medical condition(s) as evidenced by the patient's (or patients') physician's written professional opinion or recommendation;*

*But in no event shall the maximum number of Medical Marijuana plants within a patient's primary residence exceed thirty (30) Medical Marijuana plants regardless of size or stage of growth or the number of patients residing at the primary residence.*

(b) A Registered Primary Care-Giver may cultivate, produce, possess, or process or permit to be cultivated, produced, possessed, or processed within the Care-Giver's primary residence, the lesser of either:

(1) Six (6) Medical Marijuana plants with three (3) or fewer being mature, flowering plants that are producing a useable form of marijuana for each patient of the Registered Primary Care-Giver; or

(2) The aggregate maximum number of Medical Marijuana plants necessary to alleviate the Registered Primary Care-Giver's patients' chronic or debilitating disease(s) or medical condition(s) as evidenced by the patients' physicians' written medical professional opinion(s);

But in no event shall the maximum number of Medical Marijuana plants within a Registered Primary Care-Giver's primary exceed thirty (30) Medical Marijuana plants regardless of size or stage or growth.

(c) For a primary residence at which one (1) or more Registered Primary Care-Givers and/or one (1) or more patients reside, each Registered Primary Care-Giver and each patient may cultivate, produce, possess, or process, or permit to be cultivated, produced, possessed, or processed the maximum number of Medical Marijuana plants provided in 5-3D-5 (A)(14)(a)(1) OR (2) or 5-3D-5 (A)(14)(b)(1) OR (2), as applicable, provided that in no event shall the maximum number of Medical Marijuana plants within the primary residence exceed thirty (30) Medical Marijuana plants regardless of the size or stage of growth and regardless of the total number of Registered Primary Care-Givers and patients residing within the primary residence.

1.0) Records to be kept for compliance verification

The licensing requirements set forth in this EMC 2000, the Charter and in the Colorado Medical Marijuana Code shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other Federal, State or local law or regulations. For example, a licensed Medical Marijuana facility must also obtain State and City retail sales tax licenses and must comply with all building code and permit requirements.

A Registered Primary Care-Giver shall provide the registry identification card number of each of his/her patients to employees and contractors of the City, State or Federal and to law enforcement agencies, upon inquiry in the course of their official duties while investigating compliance with the requirements of this Article.

To the extent required by law, documentation that evidences the name, address, or other information of a patient or Registered Primary Care-Giver including but not limited to, applications; permits and correspondence, shall be maintained by the City as confidential. No person shall be permitted to gain access to such confidential documentation except for authorized employees and contractors of the City in the course of their official duties and authorized employees of the Federal, State or local law enforcement agencies.

Records should include, but are not limited to:

(a) The quantity of Medical Marijuana dispensed in each transaction;

- (b) *The type and source of Medical Marijuana dispensed;*
- (c) *The total amount paid by the patient for the transaction for all goods and services provided;*
- (d) *The patient's Medical Marijuana Identification Card Number, and any other identification information permitted by law;*
- (e) *Confirmation that the licensee confirmed the identity of the patient receiving the Medical Marijuana with a valid photo identification;*
- (f) *The date and time dispensed.*

These records may be requested at any time, by those enforcing the law or making decisions concerning in an official capacity.

11) List the licensees duties noting that these are recommendations and not limitations and that these duties may be modified

*It is the duty and obligation of each licensees to do the following:*

- (a) *Comply with all of the terms and conditions of the permit/license, and any special conditions on the permit/license imposed by the Authority;*
- (b) *Comply with all of the requirements of this ordinance;*
- (c) *Comply with all other applicable City ordinances;*
- (d) *Comply with all State laws and administrative regulations pertaining to the medical use of marijuana, including but not limited to: Amendment 20, Section 18-18-406.3 C.R.S.; and the administrative regulations issued by the Colorado Department of Public Health and Environment (5 CCR 1006-2 and as amended)*
- (e) *Comply with all applicable Federal laws, rules or regulations, other than a Federal law, rule or regulation concerning possession, sale or distribution of medical marijuana that conflicts with Amendment 20; and*
- (f) *Permit inspection of its records and operation by the City Clerk or her designee, Law Enforcement, and Building and Safety inspectors for the purpose of determining the licensee's compliance with the terms and conditions of the permit.*

The Authority believes that both the Registered Primary Care-Giver and the patient have certain responsibilities, as well as those involved with operations, cultivation or production.

*The City further tries to protect and balance the reasonable and lawful rights of Patients and Registered Primary Care-Givers with the protection of the health, peace, and morals of the people of the City through prevention and mitigation of deleterious and negative secondary effects that may occur or are likely to occur from the presence of Medical Marijuana in the City of Englewood, Colorado.*

These recommendations will be provided to City Council.

\* \* \* \* \*

/s/ Kerry Bush, MMC  
Deputy City Clerk

**21: Salaries.**

The monthly salaries of the Councilmen are hereby initially fixed in the following amounts until changed by ordinance, but shall not be increased during the current term of Councilmen enacting such ordinance:

Mayor: \$75.00.

Member of Council: \$50.00.

**22: Terms.**

Terms of Councilpersons shall begin at 8:00 P.M., on the day of the next regularly scheduled City Council meeting following the election. Seven Councilpersons shall be elected at the regular City election to be held on the first Tuesday after the first Monday in November, 1959. The candidate receiving the highest number of votes from District 1 and the candidate receiving the highest number of votes from District 3 shall hold office for four years, and the candidate receiving the highest number of votes from District 2 and the candidate receiving the highest number of votes from District 4 shall hold office for two years. The two candidates at large receiving the highest number of votes shall serve for four years, and the candidate at large receiving the third highest number of votes shall serve for two years. Thereafter, all candidates elected shall serve a term of four years, and a general municipal election shall be held at two-year intervals.

- (1) In order to broaden the opportunities for public service and to guard against excessive concentrations of power, no member of City Council shall serve more than three consecutive terms in such office. This limitation on the number of terms shall apply to a third term of office beginning on or after November 3, 2009. Any person who succeeds to the office of City Council member or is appointed or elected to fill a vacancy and who serves at least one-half of a term of office, shall be considered to have served a full term in that office for purposes of this subsection. Terms are considered consecutive unless they are at least four years apart.

(Amended 1-30-1990; 11-5-1991; 11-3-2009)

**23: Qualifications of Councilpersons.**

No person shall be eligible for the office of Councilperson unless at the time of the election the person is a citizen of the United States, at least twenty-five (25) years of age, shall have been for one year immediately preceding such election a registered elector of the City. Councilpersons elected by Districts shall also be residents and registered electors of their districts. No member of the Council shall hold any other public office or employment for which compensation is paid from any municipality. (Amended 3-24-1981; 11-5-1991)

**24: Presiding officer.**

After each general municipal election, the Council shall elect from their own number a Mayor who will be the presiding officer entitled to vote. He shall have no veto power and shall serve at the will of the Council. He shall be recognized as head of the City Government for all ceremonial purposes and shall execute and authenticate legal instruments requiring his signature as such official.

**25: Mayor Pro Tem.**

After each general municipal election, the Council shall elect a Mayor pro tem, who shall act as Mayor during the absence of the Mayor.

**26: Oath of office.**

Before entering upon the duties of his office, every Officer and City employee shall take, subscribe before, and file with the City Clerk, an oath or affirmation that he will support the Constitution of the United States, the Constitution of the State of Colorado, this Charter and ordinances of the City, and will faithfully perform the duties of the office.

**27: Council meetings.**

Council shall meet regularly at the City Hall, at least twice each month, at a day and hour to be fixed from time to time by the rules and procedures of each Council; however, Council may, upon appropriate prior published notice hold any regular or special meeting at such other appropri-

of Council, notice of the same cannot be given due to an inability to locate any member, a majority of the entire Council may waive notice of special Council meeting in writing or by affirmative ballot, and such waiver shall be specifically noted in the minutes of the meeting. Notice may be waived by the entire membership of Council in any case. (Code 1985, § 1-5-2-2)

### **1-5-2-3: Agenda.**

On the Thursday preceding each regular Council meeting, or at such other day as the City Manager, from time to time, shall determine, the City Manager shall provide to each member of City Council a written agenda of business to come before the next regular Council meeting, containing matters which, in his opinion, should be taken up by City Council. Any private individual who desires to appear before City Council may be scheduled to appear by advising the City Manager of such request not later than five o'clock (5:00) P.M. the Wednesday preceding the next regular meeting.

(Code 1985, § 1-5-2-3)

### **1-5-2-4: Quorum.**

Five (5) members of the Council shall constitute a quorum at any regular or special meeting thereof. In the absence of a quorum, the presiding officer shall, at the instance of any three (3) members present, compel the attendance of absent members.

(Code 1985, § 1-5-2-4)

### **1-5-2-5: Presiding Officer.\***

A. The presiding officer of the City Council shall be the Mayor, who shall be elected by the members of the Council at the first meeting following each general Municipal election.

B. The presiding officer shall preserve strict order and decorum at all regular and special meetings of the Council. The Mayor shall state every question coming before the Council, announce the decision of the Council on all subjects, and decide all questions of order, subject, however, to an appeal of the Council, in which event a

majority vote of the Council present and voting shall govern and conclusively determine such questions of order. The Mayor shall vote on all questions, his/her name being called last. The Mayor shall sign all ordinances adopted by the Council during his/her presence.

C. At the said first meeting following each general election, the Council shall elect a Mayor Pro Tem who shall act as Mayor during the absence of the Mayor. In the event of the absence of the Mayor, the Mayor Pro Tem, as presiding officer, shall sign ordinances as then adopted. In the event of the absence of both the Mayor and the Mayor Pro Tem, the presiding officer selected pursuant to the provisions of Section 1-5-2-7B of this chapter, shall sign ordinances as then adopted.

(Code 1985, § 1-5-2-5)

### **1-5-2-6: Attendance of Municipal Officers.**

The City Manager, City Clerk and City Attorney, or their designated representatives, shall attend all meetings of the Council unless excused by the Council.

(Code 1985, § 1-5-2-6)

### **1-5-2-7: Order of Business.†**

A. *General.* All meetings, except informal meetings, of the Council shall be open to the public.

\*City Charter Article III §§ 24, 25.

†§ 31-4-209 C.R.S. 1973.

- (4) Negotiations with employees or employee organizations;
- (5) Personnel issues.

Under executive session, no formal vote shall be taken on any matter under discussion.

## II. The Presiding Officer

### A. Mayor

The presiding officer of the City Council shall be the Mayor who shall be elected by secret ballot by the members of the City Council at the second meeting in November after each general municipal election. The presiding officer shall preserve strict order and decorum at all regular and special meetings of the City Council. He/she shall state every question coming before the City Council, announce the decision of the City Council on all subjects, and decide all questions of order, subject, however, to an appeal of the City Council, in which event a majority vote of those Council Members present and voting shall govern and conclusively determine such questions awarded. He/she shall vote on all questions, his/her name being called last, he/she shall sign all ordinances adopted by the City Council during his/her presence.

### B. Mayor Pro Tem

The Mayor Pro Tem shall be elected by secret ballot by the members of the City Council at the second meeting in November after each general municipal election. The Mayor Pro Tem shall serve as Mayor during the absence or disability of the Mayor and in case of a vacancy in the office of the Mayor pending a selection of a new successor.

### C. Chairman

The Mayor, or in his/her absence the Mayor Pro Tem, shall call the City Council to order.

In the absence of the Mayor and Mayor Pro Tem, the City Clerk or Deputy City Clerk shall call the City Council to order, whereupon a temporary chairman shall be elected by the members of the City Council. Such temporary chairman shall serve as presiding officer of the City Council until the arrival of the Mayor or the Mayor Pro Tem, at which time the temporary chairman shall immediately relinquish the chair upon the conclusion of the business immediately before the City Council.

## III. Roll Call

Before proceeding with the business of the City Council, the City Clerk or his/her deputy shall call the roll of the members; and the names of those present shall be entered in the minutes.

## IV. Quorum

Five (5) members of the City Council shall constitute a quorum at the regular or special meeting of the City Council. In the absence of the quorum, the presiding officer shall, at the instance of any three (3) members present, compel the attendance of absent members.

MEMORANDUM



TO: Mayor Woodward  
Englewood City Council Members

FROM: Dan Brotzman, City Attorney

DATE: November 17, 2009

REGARDING: Election of the Mayor by Secret Ballot.

Both the Englewood Home Rule Charter and the Rules of Order and Procedure for the Englewood City Council (originally adopted by resolution and amended and adopted later by ordinance), contain provisions for election of the Mayor. The provisions are similar but not identical. Section 24 of the Englewood Home Rule Charter is more general and does not contain the secret ballot language. The Rules of Order and Procedure contains a nearly identical provision for election of the Mayor but also contains secret ballot language. In 1991 the Colorado Sunshine Act was amended to provide for certain exceptions to the general rule of meetings being open to the public. One of the specifically identified exceptions identified in the Colorado Sunshine Act must be met for Council to have an Executive Session. Election of the Mayor does not meet any of the exceptions; therefore, the election of the Mayor may not be held in an Executive Session. Since the amendment to the Colorado Sunshine Act election of the Mayor of Englewood has not been held in Executive Session.

The Rules of Order and Procedure may be amended to eliminate the secret ballot provision by ordinance and will not require a vote of the citizens.

Study Sessions electing the Mayor were not recorded prior to August 8, 2001. In that electronic recordings had not previously been recorded under C.R.S. 24-6-402, future meetings were not required to be an electronically recorded. Nonetheless, in 2005 the Study Session discussing election of the Mayor was electronically recorded and will continue to be electronically recorded.

CC: Gary Sears ✓  
Lou Ellis ✓

DB/nf