

**AGENDA FOR THE  
ENGLEWOOD CITY COUNCIL  
EXECUTIVE SESSION/STUDY SESSION  
MONDAY, MARCH 18, 2013**

- I. **Executive Session**  
At 5:30 p.m. in the City Council Conference Room, City Council will discuss a real estate matter (Littleton Capital Partners) pursuant to C.R.S. 24-6-402-4(a).
- II. **RTD Representative**  
At 6:00 p.m. in the Community Room, RTD Representative Jeff Walker will be present to discuss areas of concern and interest.
- III. **Marijuana Ordinance**  
City Attorney Dan Brotzman, Police Chief John Collins, Financial & Administrative Service Frank Gryglewicz and Community Development Director Alan White will discuss with City Council the regulations of marijuana after the passage of Amendment 64.
- IV. **Board and Commission Appreciation Event Discussion**  
City Council will continue the conversation concerning the Board and Commission Appreciation Event.
- V. **City Manager's Choice**
  - A. Denver Water Board Projects on Broadway, south of Quincy.
- VI. **City Attorney's Choice**



MEMORANDUM

TO: Mayor  
City Council Members

FROM: Dan Brotzman, City Attorney

DATE: March 11, 2013

REGARDING: Marijuana Working Group.

Amendment 64 changed Colorado law regarding the regulation and sale of marijuana. The Constitutional Amendment sets a deadline for the completion of regulations by the State Department of Revenue for July 1, 2013. The Governor's Task Force recently forwarded recommendations to the Legislature. The City of Englewood established a moratorium to evaluate the State regulations. The moratorium on the sale, manufacture and cultivation of Marijuana was found to be necessary for the City to evaluate the effect of the Amendment and any State regulations on the City's existing marijuana regulations. During the moratorium, City Council directed City staff to continue to develop appropriate recommendations consistent with the Constitutional Amendment and State regulations.

- Currently we are waiting for the State to proceed under Amendment 64. The language on Amendment 64 appears to make City licensing conditional upon what the State does.

Not later than October 1, 2013, each locality shall enact an ordinance or regulation specifying the entity within the locality that is responsible for processing applications submitted for a license to operate a Marijuana establishment within the boundaries of the locality and for the issuance of such licenses should the issuance by the locality become necessary because of a failure by the Department to adopt regulations pursuant to Paragraph (a) or because of a failure by the Department to process and issue licenses as required by Paragraph (g).

- The Marijuana definition has been modified to match the new Constitutional language.
- The Police Department has requested a prohibition as to minors, which is permitted by Amendment 64.
- Language under the Code has been modified as to the number of plants allowed to match the new Constitutional language.

- Amendment 64 provides that growing of Marijuana shall take place in an enclosed, locked, space and is not conducted openly and publicly. Restrictions on cultivating Marijuana have been modified accordingly. Council will need to consider whether the current prohibitions conform to the Constitutional standard.
- The Police Department has requested that the current provisions concerning Marijuana regarding motor vehicles be maintained. Said provisions are based upon similar alcohol open container prohibitions.
- The penalty provision of 1-4-1 EMC will still apply. Redundant language has been eliminated to avoid confusion.
- Amendment 64 specifically prohibits consumption that is conducted openly or publicly or in a manner that endangers others.
  - The State has added marijuana to the prohibitions of the Colorado Clean Indoor Air Act 25-14-206 C.R.S. Englewood Police officers may issue tickets under the State law. The Colorado Clean Indoor Air Act authorizes municipalities to enact similar regulations.
    - The draft Ordinance follows the restrictions under 25-14-204 C.R.S. and exceptions under 25-14-205 C.R.S. Certain amendments have been made considering the Englewood Municipal Code.
    - Automobiles have been removed from the exceptions as Englewood is addressing motor vehicles with the open container language.
    - The restrictive dates of the Cigar Bar Statute have been removed as recreational marijuana sales were previously illegal. The exception allowing a Marijuana Bar would permit liquor sales at a Marijuana Bar if certain sales thresholds are met and a State and Englewood Colorado license is obtained.
    - The exception concerning Retail Recreational Marijuana Stores follows the Colorado Clean Indoor Act but contradicts the current Medical Marijuana prohibition of smoking in a retail establishment.
  - The draft Ordinance has optional language [ ] prohibiting marijuana use in the same manner as Englewood's restriction on open containers of intoxicating liquor EMC 5-3C-3.
  - The choice between the Colorado Clean Indoor Air Act vs. open containers is a policy decision for Council but enforcement and practical implications need to be considered. The easiest way to look at this is to use a cigarette vs. an open can of beer. Determining where each is prohibited and then determining which best addresses marijuana. For example, drinking beer in a park is prohibited, smoking is not. Smoking a cigarette more than 15 feet from the entrance while

waiting for a concert is allowed but drinking a beer in that same line would not. Having a beer in a bar is allowed, smoking is not. How should a marijuana cigarette or a marijuana infused brownie be treated?

- Marijuana Accessories have been exempted from Drug Paraphernalia as required by the language of Amendment 64.

Prior to drafting language and proceeding to the Planning and Zoning Commission, Staff is requesting direction concerning an overall ban on the sale of recreational marijuana. If a ban is not adopted the following items must be addressed in Title 16 (Unified Development Code)

- Marijuana Establishments
  - Marijuana cultivation facility
  - Marijuana product manufacturing facility
  - Retail marijuana stores
  - Marijuana Bar
  - Marijuana testing facilities
  - Hemp
- Rental property for individual/joint marijuana growing facilities.

CC: John Collins, Chief of Police  
Frank Gryglewicz, FAS Director  
Kerry Bush, Deputy City Clerk  
Alan White, CD Director  
Nancy Reid, Deputy City Attorney  
Dugan Comer, Assistant City Attorney

Attachment

DB/nf

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 5, Business and License Regulations Chapter 22, of the Englewood Municipal Code 2000, *Reserved*, to read as follows:

**No action is being recommended at this time as the ballot language of Amendment 64 reads:**

**Not later than October 1, 2013, each locality shall enact an ordinance or regulation specifying the entity within the locality that is responsible for processing applications submitted for a license to operate a Marijuana establishment within the boundaries of the locality and for the issuance of such licenses should the issuance by the locality become necessary because of a failure by the Department to adopt regulations pursuant to Paragraph (a) or because of a failure by the Department to process and issue licenses as required by Paragraph (g).**

Section 2. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 7, Chapter 6D, Section 12, of the Englewood Municipal Code 2000, entitled *Possession of Marijuana Prohibited*, to read as follows:

**7-6D-12: Possession of Marijuana Prohibited.**

*A. Definitions.*

Any word or term used that is defined in Article XVIII, Sections 14, (1)(f) or 16 of the Colorado Constitution; in § 25-1.5-101 et seq. C.R.S. or in the Colorado Medical Marijuana Code, § 12-43.3-101 et seq. C.R.S. shall have the same meaning that is ascribed to such word or term in those Constitutional provisions or C.R.S. sections unless the definition is amended by this section.

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

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

All parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, or preparation of the plant, its seeds, or its resin, including marihuana concentrate. "Marijuana" or "Marihuana" does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marihuana to prepare topical or oral administrations, food, drink or other product.

*Marijuana Accessories:* Any equipment, products, or materials of any kind which are used intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, production, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introduction marijuana into the human body.

*Medical Marijuana*: means Marijuana that is grown and sold pursuant to the provisions of § 106 of Article 1.5 of Title 12 C.R.S.; Article 43.3 of Title 12 C.R.S. and for a purpose authorized by Section 14 of Article XVIII of the State Constitution.

*Passenger area*: means the area designed to seat the driver and passengers while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in his or her seating position, including, but not limited to, the glove compartment.

B. It is unlawful for any person to possess one ounce or less of Marijuana, except in accordance with Sections 14, and 16 of Article XVIII of the Colorado Constitution.

1. It shall be unlawful for anyone under twenty-one (21) years of age to possess one ounce or less of Marijuana.

(a) Exception – Medical Marijuana as authorized by EMC 5-3D-1

2. It shall be unlawful to assist another person who is not twenty-one (21) years of age to obtain or consume Marijuana;

(a) Exception – Medical Marijuana as authorized by EMC 5-3D-1.

DC. Restrictions on locations for cultivating Marijuana.

1. Growing of Marijuana shall take place in an enclosed, locked space and shall not be conducted openly or publicly.

12. It shall be unlawful to cultivate Marijuana in an outdoor area or an accessory structure including but not limited to outdoor gardens, greenhouses, sheds or storage units;

23. It shall be unlawful to cultivate Marijuana within a garage, whether attached or detached, or other structure designed or intended for the keeping or storage of vehicles, equipment or goods;

34. It shall be unlawful to permit Marijuana plants to be perceptible from the exterior of any structure, including but not limited to:

(a) Common visual observation of Marijuana.

(b) Odors, smells, fragrances, or other olfactory stimulus generated by the cultivation, production, possession or processing of Marijuana plants that disturbs the repose of another.

(c) Light pollution, glare, or brightness of artificial illumination associated with the cultivation, of Marijuana plants that disturbs the repose of another.

(d) Noise from fans in excess of the limits set in Section 6-2-5(F) EMC, as amended.

45. It shall be unlawful to cultivate ~~Medical~~ Marijuana in the common areas of residential property;

DC. It shall be unlawful to cultivate or permit to be cultivated, more than the following maximum number of ~~Medical~~ Marijuana plants:

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 premises; 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.~~

E. *Concerning Marijuana in Motor Vehicles:*

1. A person while in the passenger area of a motor vehicle that is on a public street, highway or public right-of-way may not ~~have~~ use or consume Marijuana in his or her possession.
2. The provisions of this Section (E) shall not apply to:
  - (a) Passengers, other than the driver or a front seat passenger, located in the passenger area of a motor vehicle designed, maintained or used primarily for the transportation of persons for compensation.
  - (b) Marijuana ~~possession~~ use or consumption by a passenger, other than the driver or front seat passenger, in the living quarters of a house coach, house trailer, motor home, as defined in C.R.S. §42-1-102(57), or trailer coach, as defined in C.R.S. §42-1-102(106)(a).
  - (c) The use or possession of Marijuana in the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.
  - (d) The possession of Marijuana in an area not normally occupied by the driver or a passenger in a motor vehicle that is not equipped with a trunk.

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

Restrictions on the Consumption of Marijuana that is conducted Openly and Publicly or in a manner that endangers others.

1. Definitions.

Auditorium: The part of a public building where an audience gathers to attend a performance, and includes any corridors, hallways, or lobbies adjacent thereto.

Bar: Any indoor area that is operated and licensed under article 47 of title 12, C.R.S., primarily for the sale and service of alcohol beverages for on-premises consumption and where the service of food is secondary to the consumption of such beverages.

Employee: Any person who:

Performs any type of work for benefit of another in consideration of direct or indirect wages or profit; or

Provides uncompensated work or services to a business or nonprofit entity.

Employee includes every person described in this subsection, regardless of whether such person is referred to as an employee, contractor, independent contractor, or volunteer or by any other designation or title.

*Employer:* Any person, partnership, association, corporation, or nonprofit entity that employs one or more persons. "Employer" includes, without limitation, the legislative, executive, and judicial branches of state government; any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, special district, authority, commission, or agency; or any other separate corporate instrumentality or unit of state or local government.

*Entryway:* The outside of the front or main doorway leading into a building or facility that is not exempted under §25-14-205 C.R.S. Also includes the area of public or private property within a specified radius outside of the doorway. The specified radius shall be fifteen feet (15').

*Environmental tobacco smoke (ETS), or Secondhand Smoke:* The complex mixture formed from the escaping smoke of a burning tobacco product, also known as "sidestream smoke", and smoke exhaled by the smoker.

*Food service establishment:* Any indoor area or portion thereof in which the principal business is the sale of food for on-premises consumption. The term includes, without limitation, restaurants, cafeterias, coffee shops, diners, sandwich shops, and short-order cafes.

*Indoor area:* Any enclosed area or portion thereof. The opening of windows or doors, or the temporary removal of wall panels, does not convert an indoor area into an outdoor area.

*Marijuana Bar:* A bar that generates at least five percent or more of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of marijuana products

*Place of employment:* Any indoor area or portion thereof under the control of an employer in which employees of the employer perform services for, or on behalf of, the employer.

*Public building:* Any building owned or operated by:

The state, including the legislative, executive, and judicial branches of state government;

Any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, a special district, an authority, a commission, or an agency; or

Any other separate corporate instrumentality or unit of state or local government.

*Public meeting:* Any meeting open to the public pursuant to part 4 of article 6 of title 24, C.R.S., or any other law of this state.

*Smoke-free work area:* An indoor area in a place of employment where smoking is prohibited.

*Smoking:* The burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains marijuana as defined by §12-43.3-104 (7), C.R.S.

*Work area:* means an area in a place of employment where one or more employees are routinely assigned and perform services for or on behalf of their employer.

2. General Marijuana smoking restrictions.

a. In order to reduce the levels of exposure to environmental Marijuana smoke, smoking shall not be permitted and no person shall smoke Marijuana in any indoor area, including, but not limited to:

- i. Public meeting places;
- ii. Elevators;
- iii. Government-owned or -operated means of mass transportation, including, but not limited to buses, vans, and trains;
- iv. Gymnasiums;
- v. Jury waiting and deliberation rooms;
- vi. Courtrooms;
- vii. Child day care facilities;
- viii. Health care facilities including hospitals, health care clinics, doctor's offices, and other health care related facilities;
- ix. (a) Any place of employment that is not exempted.  
(b) In the case of employers who own facilities otherwise exempted, each such employer shall provide a smoke-free work area for each employee requesting not to have to breathe environmental Marijuana smoke. Every employee shall have a right to work in an area free of environmental Marijuana smoke.
- x. Food service establishments;
- xi. Bars;

- xii. Limited gaming facilities and any other facilities in which any gaming or gambling activity is conducted;
- xiii. Indoor sports arenas;
- xiv. Restrooms, lobbies, hallways, and other common areas in public and private buildings, condominiums, and other multiple-unit residential facilities;
- xv. Restrooms, lobbies, hallways, and other common areas in hotels and motels, and in at least seventy-five percent of the sleeping quarters within a hotel or motel that are rented to guests;
- xvi. Bowling alleys;
- xvii. Billiard or pool halls;
- xviii. Facilities in which games of chance are conducted;
- xix. (a) The common areas of retirement facilities, publicly owned housing facilities, and, except as specified in §25-14-205(1)(k) C.R.S., nursing homes, but not including any resident's private residential quarters or areas of assisted living facilities specified in §25-14-205(1)(k) C.R.S.
- xx. Public buildings;
- xxi. Auditoria;
- xxii. Theaters;
- xiii. Museums;
- xiv. Libraries;

3. Exceptions to smoking restrictions.

(a) This part 2 shall not apply to:

- (i) Private homes and, private residences; except when such home, residence, or vehicle is being used for child care or day care or if a private vehicle is being used for the public transportation of children or as part of health care or day care transportation;
- (ii) Limousines under private hire;

- (iii) A hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed twenty-five percent;
- (iv) Any Retail Recreation Marijuana Store;
- (v) A Marijuana Bar;
- (vi) The outdoor area of any business;
- (vii) A place of employment that is not open to the public and that is under the control of an employer that employs three or fewer employees;

It shall be unlawful for any person to use or consume Marijuana in any public place

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

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

1. *Drug paraphernalia* means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the laws of this State. Drug paraphernalia includes, but is not limited to:
  - a. Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances under circumstances in violation of the laws of this State;
  - b. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
  - c. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;

- d. Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;
- e. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
- f. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances; or
- g. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:
  - (1) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
  - (2) Water pipes;
  - (3) Carburetion tubes and devices;
  - (4) Smoking and carburetion masks;
  - (5) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;
  - (6) Miniature cocaine spoons and cocaine vials;
  - (7) Chamber pipes;
  - (8) Carburetor pipes;
  - (9) Electric pipes;
  - (10) Air-driven pipes;
  - (11) Chillums;
  - (12) Bongs; or
  - (13) Ice pipes or chillers.

2. Drug Paraphernalia shall not mean or include Marijuana Accessories as defined by Article XXIII of the State Constitution.

B. *Determination; Considerations.*

- 1. In determining whether an object is drug paraphernalia, a court, in its discretion, may consider, in addition to all other relevant factors, the following:
  - a. Statements by an owner or by anyone in control of the object concerning its use;

- b. The proximity of the object to controlled substances;
  - c. The existence of any residue of controlled substances on the object;
  - d. Direct or circumstantial evidence of the knowledge of an owner, or of anyone in control of the object, or evidence that such person reasonably should know, that it will be delivered to persons who he/she knows or reasonably should know, could use the object to facilitate a violation of this Section;
  - e. Instructions, oral or written, provided with the object concerning its use;
  - f. Descriptive materials accompanying the object which explain or depict its use;
  - g. National or local advertising concerning its use;
  - h. The manner in which the object is displayed for sale;
  - i. Whether the owner, or anyone in control of the object, is a supplier of like or related items to the community for legal purposes, such as an authorized distributor or dealer of tobacco or Marijuana products;
  - j. The existence and scope of legal uses for the object in the community;
  - k. Expert testimony concerning its use.
- C. *Possession of Drug Paraphernalia.* A person commits possession of drug paraphernalia if he/she possesses drug paraphernalia and knows or reasonably should know that the drug paraphernalia could be used under circumstances in violation of this Code, except in accordance with Section 14 of Article XVIII of the Colorado Constitution.
- D. *Manufacture, Sale or Delivery of Drug Paraphernalia; Penalty.* Any person who sells or delivers, possesses with intent to sell or deliver, or manufactures with intent to sell or deliver equipment, products, or materials knowing, or under circumstances where one reasonably should know, that such equipment, products or materials could be used as drug paraphernalia commits a violation of this Section, except in accordance with Section 14 of Article XVIII of the Colorado Constitution.
- E. *Advertisement of Drug Paraphernalia; Penalty.* Any person who places an advertisement in any newspaper, magazine, handbill, or other publication and who intends thereby to promote the sale in this City of equipment, products, or materials designed and intended for use as drug paraphernalia commits a violation of this Code, except in accordance with Section 14 of Article XVIII of the Colorado Constitution.
- F. *Defenses.* The common law defense known as the procuring agent defense is not a defense to any crime in this Section.

Section 4. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 16, of the Englewood Municipal Code 2000, *Unified Development Code*, to read as follows:

**Prior to drafting language and proceeding to the Planning and Zoning Commission, Staff is requesting direction concerning an overall ban on the sale of recreational marijuana. If a ban is not adopted the following items must be addressed in Title 16 (Unified Development Code)**

**The newly adopted Amendment 64 uses needs to be coordinated with the Chapter 16 Table of Allowed Uses.**

**Marijuana Establishments**

- Marijuana cultivation facility**
- Marijuana product manufacturing facility**
- Retail marijuana stores**
- Marijuana testing facilities**
- Hemp**

**Rental property for individual joint/marijuana growing facilities.**



# Memorandum

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City Manager's Office

TO: Mayor Penn and Members of City Council  
THROUGH: City Manager Gary Sears  
FROM: Deputy City Manager Mike Flaherty  
DATE: March 13, 2013  
SUBJECT: Board and Commission Appreciation Event

As discussed with staff, Mayor Penn and City Council have recommended changing the board and commission appreciation event from the Pirates Cove venue to a Monday night event in the Community Room with refreshments (non-alcoholic). As a token of appreciation, City Council could give each board and commission member either 1 ticket to an Englewood Arts event in Hampden Hall for the 2013-2014 season or 2 passes to Pirates Cove. City Council will reimburse Englewood Arts and Pirates Cove \$5.00 for each ticket used.

Mayor Penn suggested having the appreciation event on either Monday, June 24<sup>th</sup> or July 8<sup>th</sup> to allow the Pirates Cove attendees an opportunity to attend prior to their closure at the end of August, 2013.