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PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT MEMORANDUM

TO: Mayor Frank Breslin and New Castle Town Council Members

FROM: David McConaughy, Town Attorney

RE: Colorado Amendment 64 - Marijuana

DATE: December 26, 2012

Colorado voters passed Amendment 64 to the Colorado Constitution which was signed into law by Governor Hickenlooper on December 10, 2012. Members of the Town Council have inquired what action, if any, should or can be immediately taken by the Town.

Marijuana remains illegal under federal law. The federal government has generally not enforced federal law with respect to most uses of medical marijuana. The federal government's approach towards general state legalization in Colorado and Washington remains to be determined. It is likely that Washington will provide an earlier test-case because its regulations are moving along faster than Colorado.

As background, the Town has previously enacted Ordinance 2011-1, which prohibited the operation of medical marijuana businesses including retail sales, growing operations, and infused-products manufacturing operations within Town limits. Individual possession and limited growing by licensed medical marijuana patients was not subject to the ban or otherwise regulated.

Amendment 64 allows local jurisdictions such as New Castle to enact bans on retail sales of marijuana. The legislature is in the process of drafting regulations regarding retail sales, with a deadline of July 1, 2013. Local licenses may be issued as of October 1, 2013. The state must begin issuing state licenses by January 1, 2014. It is possible that legal action by the federal government could delay or change these deadlines, but that remains unknown.

New Castle should consider and determine its position on retail sales within the town by **July 1, 2013**. There is no need for the Town to take any formal action prior to that deadline other than starting the process of an ordinance. To be effective by July 1, any ordinance should

be considered on first reading sometime in May. However, some local governments have gone ahead and enacted total bans now in order to clarify policy and deter anyone considering the pursuit of a marijuana business within the jurisdiction. A copy of a ban enacted by Douglas County is attached for reference. Other jurisdictions such as Basalt and Carbondale have enacted or are considering moratoriums on the issuance of any licenses until the regulations enacted by the State become clearer. While it does not appear that such moratoriums are required at this point, it is a potential step toward ensuring that no license applications are processed prior to the Town's taking a formal position on the issue. A copy of Carbondale's draft ordinance is attached.

Amendment 64 allows individuals to possess up to one ounce of marijuana and grow up to six plants each. (Licensed medical patients may possess up to two ounces.) This provision is effective now, and it should be assumed that some New Castle residents are already taking advantage of it. The extent to which the Town could regulate or limit private grows is open to debate. Some municipalities are enacting regulations pursuant to zoning powers or building code powers. A primary concern is the use of indoor grow-lamps which can create a fire hazard. To pass constitutional muster, any such regulations should probably be applied to all types of indoor horticultural operations because the fire hazard should be no different whether someone is growing marijuana or tomatoes.

If the Town Council is considering anything short of a total ban then it should take the opportunity over the coming months to consider appropriate zoning and licensing regulations for marijuana retail establishments. If they are going to be allowed at all then it probably makes sense to revisit the ban in Ordinance 2011-1 at the same time. The matter of regulations should be delegated to staff and the planning commission to make recommendations and to hold any required public hearings on the subject.

If the Town Council plans to enact a total ban then it can do so anytime between now and July 1, 2013.

Whether the Town is going to enact regulations or a ban, there may be some advantage to waiting several months in order to follow the lead of CML and other municipalities.

A complete copy of Amendment 64 and two helpful memos from CML are attached.



To: CML Membership
From: Rachel Allen, CML Staff Attorney
Kevin Bommer, CML Deputy Director
Date: November 7, 2012
Subject: Amendment 64 - Use and Regulation of Marijuana Passes

Colorado voters approve marijuana for consumers at least 21 years old

On November 6, 2012, Colorado voters passed Amendment 64 to Use and Regulation of Marijuana. Amendment 64 provides for persons 21-years-of-age or older to legally consume or possess 1 ounce or less of marijuana without a doctor's recommendation and tax marijuana similar to alcohol. Amendment 64 also creates the framework for a regulatory scheme for retail sales of marijuana.

This memo addresses issues of immediate consideration for Colorado's cities and towns. CML will continue to monitor and report on emerging issues and developments, such as workplace issues, rulemaking, and implementation. Please consult with your municipal attorney to address retail marijuana operations in your municipality.

Marijuana retail sales and home grows

Unless specifically prohibited (see below), special retail stores will be allowed to sell marijuana in a system of licensed establishments regulated the by state and local governments.

Amendment 64 also allows for people to grow up to six marijuana plants in their home or other enclosed, locked space. However, it is not clear at this time how this constitutional protection will interact with local land use powers, particularly any ordinances pertaining to home grows.

Amendment 64 does not change existing medical marijuana laws

Retail operations may be licensed as a medical marijuana center or retail marijuana establishment, not both. Medical marijuana centers choosing to convert to a retail marijuana operation will pay a reduced fee for the marijuana application, but otherwise, Amendment 64 has no impact on the existing medical marijuana regulatory scheme. Local governments may choose to prohibit or license retail marijuana or medical marijuana operations. How your municipality has addressed medical marijuana does not dictate how your municipality will or should address retail marijuana establishments.

Timeline for local prohibition or regulation

Amendment 64 tasks the Colorado Department of Revenue with issuing regulations for retail marijuana stores by July 1, 2013. Municipalities should opt whether to adopt 1) a prohibition or 2) local restrictions on the time, place, manner and number of retail marijuana operations in their jurisdiction before July 1, 2013.

Local governments may prohibit by council action at any time, but the first opportunity to refer a retail marijuana prohibition question to the ballot is the general election on November 4, 2014. Some municipalities may choose to issue a prohibition, moratorium, or regulations until the voters have the opportunity to be heard at the next general election.

Local licenses may be issued October 1, 2013

In the event that the Colorado Department of Revenue does not issue regulations by July 1, 2013, then cities and towns may choose to issue local licenses starting on October 1, 2013, but there is no requirement for local governments to issue retail marijuana licenses in the absence of a state licensing program.

CML will keep you informed

The League will monitor the Colorado Department of Revenue progress and keep municipalities abreast of developments. This is critical because if the Department of Revenue doesn't issue licenses by July 1, 2013, then municipalities that opt to issue local license will have 90 days to enact a regulation, licensing, and enforcement program.

CML will also keep our members informed on employee-employer issues, as it relates to the use and possession of marijuana in the workplace.

Finally, CML will investigate and report on the complex federal issues that are likely to arise as Amendment 64 is implemented in Colorado. Marijuana continues to be illegal under federal law, and it is possible that a lawsuit challenging the legality of Amendment 64 is forthcoming. That would set up a dynamic discussion of the 10th Amendment and the extent of state sovereignty on this issue.

For additional information, please go to www.cml.org, call (303) 831-6411 / (866) 578-0936 toll free or contact:

- Rachel Allen, CML staff attorney - rallen@cml.org
- Kevin Bommer, CML Deputy Director – kbommer@cml.org

Amendment 64
Use and Regulation of Marijuana

1 **Ballot Title:** Shall there be an amendment to the Colorado constitution
2 concerning marijuana, and, in connection therewith, providing for the regulation
3 of marijuana; permitting a person twenty-one years of age or older to consume or
4 possess limited amounts of marijuana; providing for the licensing of cultivation
5 facilities, product manufacturing facilities, testing facilities, and retail stores;
6 permitting local governments to regulate or prohibit such facilities; requiring the
7 general assembly to enact an excise tax to be levied upon wholesale sales of
8 marijuana; requiring that the first \$40 million in revenue raised annually by such
9 tax be credited to the public school capital construction assistance fund; and
10 requiring the general assembly to enact legislation governing the cultivation,
11 processing, and sale of industrial hemp?

12 **Text of Measure:**

13 *Be it Enacted by the People of the State of Colorado:*

14 Article XVIII of the constitution of the state of Colorado is amended BY THE
15 ADDITION OF A NEW SECTION to read:

16 **Section 16. Personal use and regulation of marijuana**

17 **(1) Purpose and findings.**

18 (a) IN THE INTEREST OF THE EFFICIENT USE OF LAW ENFORCEMENT
19 RESOURCES, ENHANCING REVENUE FOR PUBLIC PURPOSES, AND INDIVIDUAL
20 FREEDOM, THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT THE
21 USE OF MARIJUANA SHOULD BE LEGAL FOR PERSONS TWENTY-ONE YEARS OF AGE
22 OR OLDER AND TAXED IN A MANNER SIMILAR TO ALCOHOL.

23 (b) IN THE INTEREST OF THE HEALTH AND PUBLIC SAFETY OF OUR
24 CITIZENRY, THE PEOPLE OF THE STATE OF COLORADO FURTHER FIND AND DECLARE
25 THAT MARIJUANA SHOULD BE REGULATED IN A MANNER SIMILAR TO ALCOHOL SO
26 THAT:

27 (I) INDIVIDUALS WILL HAVE TO SHOW PROOF OF AGE BEFORE PURCHASING
28 MARIJUANA;

1 (II) SELLING, DISTRIBUTING, OR TRANSFERRING MARIJUANA TO MINORS
2 AND OTHER INDIVIDUALS UNDER THE AGE OF TWENTY-ONE SHALL REMAIN
3 ILLEGAL;

4 (III) DRIVING UNDER THE INFLUENCE OF MARIJUANA SHALL REMAIN
5 ILLEGAL;

6 (IV) LEGITIMATE, TAXPAYING BUSINESS PEOPLE, AND NOT CRIMINAL
7 ACTORS, WILL CONDUCT SALES OF MARIJUANA; AND

8 (V) MARIJUANA SOLD IN THIS STATE WILL BE LABELED AND SUBJECT TO
9 ADDITIONAL REGULATIONS TO ENSURE THAT CONSUMERS ARE INFORMED AND
10 PROTECTED.

11 (c) IN THE INTEREST OF ENACTING RATIONAL POLICIES FOR THE
12 TREATMENT OF ALL VARIATIONS OF THE CANNABIS PLANT, THE PEOPLE OF
13 COLORADO FURTHER FIND AND DECLARE THAT INDUSTRIAL HEMP SHOULD BE
14 REGULATED SEPARATELY FROM STRAINS OF CANNABIS WITH HIGHER DELTA-9
15 TETRAHYDROCANNABINOL (THC) CONCENTRATIONS.

16 (d) THE PEOPLE OF THE STATE OF COLORADO FURTHER FIND AND DECLARE
17 THAT IT IS NECESSARY TO ENSURE CONSISTENCY AND FAIRNESS IN THE
18 APPLICATION OF THIS SECTION THROUGHOUT THE STATE AND THAT, THEREFORE,
19 THE MATTERS ADDRESSED BY THIS SECTION ARE, EXCEPT AS SPECIFIED HEREIN,
20 MATTERS OF STATEWIDE CONCERN.

21 **(2) Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
22 REQUIRES,

23 (a) "COLORADO MEDICAL MARIJUANA CODE" MEANS ARTICLE 43.3 OF
24 TITLE 12, COLORADO REVISED STATUTES.

25 (b) "CONSUMER" MEANS A PERSON TWENTY-ONE YEARS OF AGE OR OLDER
26 WHO PURCHASES MARIJUANA OR MARIJUANA PRODUCTS FOR PERSONAL USE BY
27 PERSONS TWENTY-ONE YEARS OF AGE OR OLDER, BUT NOT FOR RESALE TO OTHERS.

28 (c) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE OR ITS
29 SUCCESSOR AGENCY.

30 (d) "INDUSTRIAL HEMP" MEANS THE PLANT OF THE GENUS CANNABIS AND
31 ANY PART OF SUCH PLANT, WHETHER GROWING OR NOT, WITH A DELTA-9

1 TETRAHYDROCANNABINOL CONCENTRATION THAT DOES NOT EXCEED THREE-
2 TENTHS PERCENT ON A DRY WEIGHT BASIS.

3 (e) "LOCALITY" MEANS A COUNTY, MUNICIPALITY, OR CITY AND COUNTY.

4 (f) "MARIJUANA" OR "MARIHUANA" MEANS ALL PARTS OF THE PLANT OF
5 THE GENUS CANNABIS WHETHER GROWING OR NOT, THE SEEDS THEREOF, THE RESIN
6 EXTRACTED FROM ANY PART OF THE PLANT, AND EVERY COMPOUND,
7 MANUFACTURE, SALT, DERIVATIVE, MIXTURE, OR PREPARATION OF THE PLANT, ITS
8 SEEDS, OR ITS RESIN, INCLUDING MARIHUANA CONCENTRATE. "MARIJUANA" OR
9 "MARIHUANA" DOES NOT INCLUDE INDUSTRIAL HEMP, NOR DOES IT INCLUDE FIBER
10 PRODUCED FROM THE STALKS, OIL, OR CAKE MADE FROM THE SEEDS OF THE PLANT,
11 STERILIZED SEED OF THE PLANT WHICH IS INCAPABLE OF GERMINATION, OR THE
12 WEIGHT OF ANY OTHER INGREDIENT COMBINED WITH MARIJUANA TO PREPARE
13 TOPICAL OR ORAL ADMINISTRATIONS, FOOD, DRINK, OR OTHER PRODUCT.

14 (g) "MARIJUANA ACCESSORIES" MEANS ANY EQUIPMENT, PRODUCTS, OR
15 MATERIALS OF ANY KIND WHICH ARE USED, INTENDED FOR USE, OR DESIGNED FOR
16 USE IN PLANTING, PROPAGATING, CULTIVATING, GROWING, HARVESTING,
17 COMPOSTING, MANUFACTURING, COMPOUNDING, CONVERTING, PRODUCING,
18 PROCESSING, PREPARING, TESTING, ANALYZING, PACKAGING, REPACKAGING,
19 STORING, VAPORIZING, OR CONTAINING MARIJUANA, OR FOR INGESTING, INHALING,
20 OR OTHERWISE INTRODUCING MARIJUANA INTO THE HUMAN BODY.

21 (h) "MARIJUANA CULTIVATION FACILITY" MEANS AN ENTITY LICENSED TO
22 CULTIVATE, PREPARE, AND PACKAGE MARIJUANA AND SELL MARIJUANA TO RETAIL
23 MARIJUANA STORES, TO MARIJUANA PRODUCT MANUFACTURING FACILITIES, AND
24 TO OTHER MARIJUANA CULTIVATION FACILITIES, BUT NOT TO CONSUMERS.

25 (i) "MARIJUANA ESTABLISHMENT" MEANS A MARIJUANA CULTIVATION
26 FACILITY, A MARIJUANA TESTING FACILITY, A MARIJUANA PRODUCT
27 MANUFACTURING FACILITY, OR A RETAIL MARIJUANA STORE.

28 (j) "MARIJUANA PRODUCT MANUFACTURING FACILITY" MEANS AN ENTITY
29 LICENSED TO PURCHASE MARIJUANA; MANUFACTURE, PREPARE, AND PACKAGE
30 MARIJUANA PRODUCTS; AND SELL MARIJUANA AND MARIJUANA PRODUCTS TO
31 OTHER MARIJUANA PRODUCT MANUFACTURING FACILITIES AND TO RETAIL
32 MARIJUANA STORES, BUT NOT TO CONSUMERS.

33 (k) "MARIJUANA PRODUCTS" MEANS CONCENTRATED MARIJUANA
34 PRODUCTS AND MARIJUANA PRODUCTS THAT ARE COMPRISED OF MARIJUANA AND

1 OTHER INGREDIENTS AND ARE INTENDED FOR USE OR CONSUMPTION, SUCH AS, BUT
2 NOT LIMITED TO, EDIBLE PRODUCTS, OINTMENTS, AND TINCTURES.

3 (l) "MARIJUANA TESTING FACILITY" MEANS AN ENTITY LICENSED TO
4 ANALYZE AND CERTIFY THE SAFETY AND POTENCY OF MARIJUANA.

5 (m) "MEDICAL MARIJUANA CENTER" MEANS AN ENTITY LICENSED BY A
6 STATE AGENCY TO SELL MARIJUANA AND MARIJUANA PRODUCTS PURSUANT TO
7 SECTION 14 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE.

8 (n) "RETAIL MARIJUANA STORE" MEANS AN ENTITY LICENSED TO
9 PURCHASE MARIJUANA FROM MARIJUANA CULTIVATION FACILITIES AND
10 MARIJUANA AND MARIJUANA PRODUCTS FROM MARIJUANA PRODUCT
11 MANUFACTURING FACILITIES AND TO SELL MARIJUANA AND MARIJUANA PRODUCTS
12 TO CONSUMERS.

13 (o) "UNREASONABLY IMPRACTICABLE" MEANS THAT THE MEASURES
14 NECESSARY TO COMPLY WITH THE REGULATIONS REQUIRE SUCH A HIGH
15 INVESTMENT OF RISK, MONEY, TIME, OR ANY OTHER RESOURCE OR ASSET THAT THE
16 OPERATION OF A MARIJUANA ESTABLISHMENT IS NOT WORTHY OF BEING CARRIED
17 OUT IN PRACTICE BY A REASONABLY PRUDENT BUSINESSPERSON.

18 **(3) Personal use of marijuana.** NOTWITHSTANDING ANY OTHER PROVISION OF
19 LAW, THE FOLLOWING ACTS ARE NOT UNLAWFUL AND SHALL NOT BE AN OFFENSE
20 UNDER COLORADO LAW OR THE LAW OF ANY LOCALITY WITHIN COLORADO OR BE
21 A BASIS FOR SEIZURE OR FORFEITURE OF ASSETS UNDER COLORADO LAW FOR
22 PERSONS TWENTY-ONE YEARS OF AGE OR OLDER:

23 (a) POSSESSING, USING, DISPLAYING, PURCHASING, OR TRANSPORTING
24 MARIJUANA ACCESSORIES OR ONE OUNCE OR LESS OF MARIJUANA.

25 (b) POSSESSING, GROWING, PROCESSING, OR TRANSPORTING NO MORE
26 THAN SIX MARIJUANA PLANTS, WITH THREE OR FEWER BEING MATURE, FLOWERING
27 PLANTS, AND POSSESSION OF THE MARIJUANA PRODUCED BY THE PLANTS ON THE
28 PREMISES WHERE THE PLANTS WERE GROWN, PROVIDED THAT THE GROWING TAKES
29 PLACE IN AN ENCLOSED, LOCKED SPACE, IS NOT CONDUCTED OPENLY OR PUBLICLY,
30 AND IS NOT MADE AVAILABLE FOR SALE.

31 (c) TRANSFER OF ONE OUNCE OR LESS OF MARIJUANA WITHOUT
32 REMUNERATION TO A PERSON WHO IS TWENTY-ONE YEARS OF AGE OR OLDER.

1 (d) CONSUMPTION OF MARIJUANA, PROVIDED THAT NOTHING IN THIS
2 SECTION SHALL PERMIT CONSUMPTION THAT IS CONDUCTED OPENLY AND PUBLICLY
3 OR IN A MANNER THAT ENDANGERS OTHERS.

4 (e) ASSISTING ANOTHER PERSON WHO IS TWENTY-ONE YEARS OF AGE OR
5 OLDER IN ANY OF THE ACTS DESCRIBED IN PARAGRAPHS (a) THROUGH (d) OF THIS
6 SUBSECTION.

7 **(4) Lawful operation of marijuana-related facilities.** NOTWITHSTANDING ANY
8 OTHER PROVISION OF LAW, THE FOLLOWING ACTS ARE NOT UNLAWFUL AND SHALL
9 NOT BE AN OFFENSE UNDER COLORADO LAW OR BE A BASIS FOR SEIZURE OR
10 FORFEITURE OF ASSETS UNDER COLORADO LAW FOR PERSONS TWENTY-ONE YEARS
11 OF AGE OR OLDER:

12 (a) MANUFACTURE, POSSESSION, OR PURCHASE OF MARIJUANA
13 ACCESSORIES OR THE SALE OF MARIJUANA ACCESSORIES TO A PERSON WHO IS
14 TWENTY-ONE YEARS OF AGE OR OLDER.

15 (b) POSSESSING, DISPLAYING, OR TRANSPORTING MARIJUANA OR
16 MARIJUANA PRODUCTS; PURCHASE OF MARIJUANA FROM A MARIJUANA
17 CULTIVATION FACILITY; PURCHASE OF MARIJUANA OR MARIJUANA PRODUCTS FROM
18 A MARIJUANA PRODUCT MANUFACTURING FACILITY; OR SALE OF MARIJUANA OR
19 MARIJUANA PRODUCTS TO CONSUMERS, IF THE PERSON CONDUCTING THE
20 ACTIVITIES DESCRIBED IN THIS PARAGRAPH HAS OBTAINED A CURRENT, VALID
21 LICENSE TO OPERATE A RETAIL MARIJUANA STORE OR IS ACTING IN HIS OR HER
22 CAPACITY AS AN OWNER, EMPLOYEE OR AGENT OF A LICENSED RETAIL MARIJUANA
23 STORE.

24 (c) CULTIVATING, HARVESTING, PROCESSING, PACKAGING, TRANSPORTING,
25 DISPLAYING, OR POSSESSING MARIJUANA; DELIVERY OR TRANSFER OF MARIJUANA
26 TO A MARIJUANA TESTING FACILITY; SELLING MARIJUANA TO A MARIJUANA
27 CULTIVATION FACILITY, A MARIJUANA PRODUCT MANUFACTURING FACILITY, OR
28 A RETAIL MARIJUANA STORE; OR THE PURCHASE OF MARIJUANA FROM A
29 MARIJUANA CULTIVATION FACILITY, IF THE PERSON CONDUCTING THE ACTIVITIES
30 DESCRIBED IN THIS PARAGRAPH HAS OBTAINED A CURRENT, VAILD LICENSE TO
31 OPERATE A MARIJUANA CULTIVATION FACILITY OR IS ACTING IN HIS OR HER
32 CAPACITY AS AN OWNER, EMPLOYEE, OR AGENT OF A LICENSED MARIJUANA
33 CULTIVATION FACILITY.

34 (d) PACKAGING, PROCESSING, TRANSPORTING, MANUFACTURING,
35 DISPLAYING, OR POSSESSING MARIJUANA OR MARIJUANA PRODUCTS; DELIVERY OR

1 TRANSFER OF MARIJUANA OR MARIJUANA PRODUCTS TO A MARIJUANA TESTING
2 FACILITY; SELLING MARIJUANA OR MARIJUANA PRODUCTS TO A RETAIL MARIJUANA
3 STORE OR A MARIJUANA PRODUCT MANUFACTURING FACILITY; THE PURCHASE OF
4 MARIJUANA FROM A MARIJUANA CULTIVATION FACILITY; OR THE PURCHASE OF
5 MARIJUANA OR MARIJUANA PRODUCTS FROM A MARIJUANA PRODUCT
6 MANUFACTURING FACILITY, IF THE PERSON CONDUCTING THE ACTIVITIES
7 DESCRIBED IN THIS PARAGRAPH HAS OBTAINED A CURRENT, VALID LICENSE TO
8 OPERATE A MARIJUANA PRODUCT MANUFACTURING FACILITY OR IS ACTING IN HIS
9 OR HER CAPACITY AS AN OWNER, EMPLOYEE, OR AGENT OF A LICENSED MARIJUANA
10 PRODUCT MANUFACTURING FACILITY.

11 (e) POSSESSING, CULTIVATING, PROCESSING, REPACKAGING, STORING,
12 TRANSPORTING, DISPLAYING, TRANSFERRING OR DELIVERING MARIJUANA OR
13 MARIJUANA PRODUCTS IF THE PERSON HAS OBTAINED A CURRENT, VALID LICENSE
14 TO OPERATE A MARIJUANA TESTING FACILITY OR IS ACTING IN HIS OR HER
15 CAPACITY AS AN OWNER, EMPLOYEE, OR AGENT OF A LICENSED MARIJUANA
16 TESTING FACILITY.

17 (f) LEASING OR OTHERWISE ALLOWING THE USE OF PROPERTY OWNED,
18 OCCUPIED OR CONTROLLED BY ANY PERSON, CORPORATION OR OTHER ENTITY FOR
19 ANY OF THE ACTIVITES CONDUCTED LAWFULLY IN ACCORDANCE WITH
20 PARAGRAPHS (a) THROUGH (e) OF THIS SUBSECTION.

21 **(5) Regulation of marijuana.**

22 (a) NOT LATER THAN JULY 1, 2013, THE DEPARTMENT SHALL ADOPT
23 REGULATIONS NECESSARY FOR IMPLEMENTATION OF THIS SECTION. SUCH
24 REGULATIONS SHALL NOT PROHIBIT THE OPERATION OF MARIJUANA
25 ESTABLISHMENTS, EITHER EXPRESSLY OR THROUGH REGULATIONS THAT MAKE
26 THEIR OPERATION UNREASONABLY IMPRACTICABLE. SUCH REGULATIONS SHALL
27 INCLUDE:

28 (I) PROCEDURES FOR THE ISSUANCE, RENEWAL, SUSPENSION, AND
29 REVOCATION OF A LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT, WITH
30 SUCH PROCEDURES SUBJECT TO ALL REQUIREMENTS OF ARTICLE 4 OF TITLE 24 OF
31 THE COLORADO ADMINISTRATIVE PROCEDURE ACT OR ANY SUCCESSOR
32 PROVISION;

33 (II) A SCHEDULE OF APPLICATION, LICENSING AND RENEWAL FEES,
34 PROVIDED, APPLICATION FEES SHALL NOT EXCEED FIVE THOUSAND DOLLARS, WITH
35 THIS UPPER LIMIT ADJUSTED ANNUALLY FOR INFLATION, UNLESS THE DEPARTMENT

1 DETERMINES A GREATER FEE IS NECESSARY TO CARRY OUT ITS RESPONSIBILITIES
2 UNDER THIS SECTION, AND PROVIDED FURTHER, AN ENTITY THAT IS LICENSED
3 UNDER THE COLORADO MEDICAL MARIJUANA CODE TO CULTIVATE OR SELL
4 MARIJUANA OR TO MANUFACTURE MARIJUANA PRODUCTS AT THE TIME THIS
5 SECTION TAKES EFFECT AND THAT CHOOSES TO APPLY FOR A SEPARATE
6 MARIJUANA ESTABLISHMENT LICENSE SHALL NOT BE REQUIRED TO PAY AN
7 APPLICATION FEE GREATER THAN FIVE HUNDRED DOLLARS TO APPLY FOR A
8 LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT IN ACCORDANCE WITH THE
9 PROVISIONS OF THIS SECTION;

10 (III) QUALIFICATIONS FOR LICENSURE THAT ARE DIRECTLY AND
11 DEMONSTRABLY RELATED TO THE OPERATION OF A MARIJUANA ESTABLISHMENT;

12 (IV) SECURITY REQUIREMENTS FOR MARIJUANA ESTABLISHMENTS;

13 (V) REQUIREMENTS TO PREVENT THE SALE OR DIVERSION OF MARIJUANA
14 AND MARIJUANA PRODUCTS TO PERSONS UNDER THE AGE OF TWENTY-ONE;

15 (VI) LABELING REQUIREMENTS FOR MARIJUANA AND MARIJUANA
16 PRODUCTS SOLD OR DISTRIBUTED BY A MARIJUANA ESTABLISHMENT;

17 (VII) HEALTH AND SAFETY REGULATIONS AND STANDARDS FOR THE
18 MANUFACTURE OF MARIJUANA PRODUCTS AND THE CULTIVATION OF MARIJUANA;

19 (VIII) RESTRICTIONS ON THE ADVERTISING AND DISPLAY OF MARIJUANA
20 AND MARIJUANA PRODUCTS; AND

21 (IX) CIVIL PENALTIES FOR THE FAILURE TO COMPLY WITH REGULATIONS
22 MADE PURSUANT TO THIS SECTION.

23 (b) IN ORDER TO ENSURE THE MOST SECURE, RELIABLE, AND ACCOUNTABLE
24 SYSTEM FOR THE PRODUCTION AND DISTRIBUTION OF MARIJUANA AND MARIJUANA
25 PRODUCTS IN ACCORDANCE WITH THIS SUBSECTION, IN ANY COMPETITIVE
26 APPLICATION PROCESS THE DEPARTMENT SHALL HAVE AS A PRIMARY
27 CONSIDERATION WHETHER AN APPLICANT:

28 (I) HAS PRIOR EXPERIENCE PRODUCING OR DISTRIBUTING MARIJUANA OR
29 MARIJUANA PRODUCTS PURSUANT TO SECTION 14 OF THIS ARTICLE AND THE
30 COLORADO MEDICAL MARIJUANA CODE IN THE LOCALITY IN WHICH THE
31 APPLICANT SEEKS TO OPERATE A MARIJUANA ESTABLISHMENT; AND

1 (II) HAS, DURING THE EXPERIENCE DESCRIBED IN SUBPARAGRAPH (I),
2 COMPLIED CONSISTANTLY WITH SECTION 14 OF THIS ARTICLE, THE PROVISIONS OF
3 THE COLORADO MEDICAL MARIJUANA CODE AND CONFORMING REGULATIONS.

4 (c) IN ORDER TO ENSURE THAT INDIVIDUAL PRIVACY IS PROTECTED,
5 NOTWITHSTANDING PARAGRAPH (a), THE DEPARTMENT SHALL NOT REQUIRE A
6 CONSUMER TO PROVIDE A RETAIL MARIJUANA STORE WITH PERSONAL
7 INFORMATION OTHER THAN GOVERNMENT-ISSUED IDENTIFICATION TO DETERMINE
8 THE CONSUMER'S AGE, AND A RETAIL MARIJUANA STORE SHALL NOT BE REQUIRED
9 TO ACQUIRE AND RECORD PERSONAL INFORMATION ABOUT CONSUMERS OTHER
10 THAN INFORMATION TYPICALLY ACQUIRED IN A FINANCIAL TRANSACTION
11 CONDUCTED AT A RETAIL LIQUOR STORE.

12 (d) THE GENERAL ASSEMBLY SHALL ENACT AN EXCISE TAX TO BE LEVIED
13 UPON MARIJUANA SOLD OR OTHERWISE TRANSFERRED BY A MARIJUANA
14 CULTIVATION FACILITY TO A MARIJUANA PRODUCT MANUFACTURING FACILITY OR
15 TO A RETAIL MARIJUANA STORE AT A RATE NOT TO EXCEED FIFTEEN PERCENT
16 PRIOR TO JANUARY 1, 2017 AND AT A RATE TO BE DETERMINED BY THE GENERAL
17 ASSEMBLY THEREAFTER, AND SHALL DIRECT THE DEPARTMENT TO ESTABLISH
18 PROCEDURES FOR THE COLLECTION OF ALL TAXES LEVIED. PROVIDED, THE FIRST
19 FORTY MILLION DOLLARS IN REVENUE RAISED ANNUALLY FROM ANY SUCH EXCISE
20 TAX SHALL BE CREDITED TO THE PUBLIC SCHOOL CAPITAL CONSTRUCTION
21 ASSISTANCE FUND CREATED BY ARTICLE 43.7 OF TITLE 22, C.R.S., OR ANY
22 SUCCESSOR FUND DEDICATED TO A SIMILAR PURPOSE. PROVIDED FURTHER, NO
23 SUCH EXCISE TAX SHALL BE LEVIED UPON MARIJUANA INTENDED FOR SALE AT
24 MEDICAL MARIJUANA CENTERS PURSUANT TO SECTION 14 OF THIS ARTICLE AND
25 THE COLORADO MEDICAL MARIJUANA CODE.

26 (e) NOT LATER THAN OCTOBER 1, 2013, EACH LOCALITY SHALL ENACT AN
27 ORDINANCE OR REGULATION SPECIFYING THE ENTITY WITHIN THE LOCALITY THAT
28 IS RESPONSIBLE FOR PROCESSING APPLICATIONS SUBMITTED FOR A LICENSE TO
29 OPERATE A MARIJUANA ESTABLISHMENT WITHIN THE BOUNDARIES OF THE
30 LOCALITY AND FOR THE ISSUANCE OF SUCH LICENSES SHOULD THE ISSUANCE BY
31 THE LOCALITY BECOME NECESSARY BECAUSE OF A FAILURE BY THE DEPARTMENT
32 TO ADOPT REGULATIONS PURSUANT TO PARAGRAPH (a) OR BECAUSE OF A FAILURE
33 BY THE DEPARTMENT TO PROCESS AND ISSUE LICENSES AS REQUIRED BY
34 PARAGRAPH (g).

35 (f) A LOCALITY MAY ENACT ORDINANCES OR REGULATIONS, NOT IN
36 CONFLICT WITH THIS SECTION OR WITH REGULATIONS OR LEGISLATION ENACTED
37 PURSUANT TO THIS SECTION, GOVERNING THE TIME, PLACE, MANNER AND NUMBER

1 OF MARIJUANA ESTABLISHMENT OPERATIONS; ESTABLISHING PROCEDURES FOR THE
2 ISSUANCE, SUSPENSION, AND REVOCATION OF A LICENSE ISSUED BY THE LOCALITY
3 IN ACCORDANCE WITH PARAGRAPH (h) OR (i), SUCH PROCEDURES TO BE SUBJECT
4 TO ALL REQUIREMENTS OF ARTICLE 4 OF TITLE 24 OF THE COLORADO
5 ADMINISTRATIVE PROCEDURE ACT OR ANY SUCCESSOR PROVISION; ESTABLISHING
6 A SCHEDULE OF ANNUAL OPERATING, LICENSING, AND APPLICATION FEES FOR
7 MARIJUANA ESTABLISHMENTS, PROVIDED, THE APPLICATION FEE SHALL ONLY BE
8 DUE IF AN APPLICATION IS SUBMITTED TO A LOCALITY IN ACCORDANCE WITH
9 PARAGRAPH (i) AND A LICENSING FEE SHALL ONLY BE DUE IF A LICENSE IS ISSUED
10 BY A LOCALITY IN ACCORDANCE WITH PARAGRAPH (h) OR (i); AND ESTABLISHING
11 CIVIL PENALTIES FOR VIOLATION OF AN ORDINANCE OR REGULATION GOVERNING
12 THE TIME, PLACE, AND MANNER OF A MARIJUANA ESTABLISHMENT THAT MAY
13 OPERATE IN SUCH LOCALITY. A LOCALITY MAY PROHIBIT THE OPERATION OF
14 MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING
15 FACILITIES, MARIJUANA TESTING FACILITIES, OR RETAIL MARIJUANA STORES
16 THROUGH THE ENACTMENT OF AN ORDINANCE OR THROUGH AN INITIATED OR
17 REFERRED MEASURE; PROVIDED, ANY INITIATED OR REFERRED MEASURE TO
18 PROHIBIT THE OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA
19 PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, OR
20 RETAIL MARIJUANA STORES MUST APPEAR ON A GENERAL ELECTION BALLOT
21 DURING AN EVEN NUMBERED YEAR.

22 (g) EACH APPLICATION FOR AN ANNUAL LICENSE TO OPERATE A
23 MARIJUANA ESTABLISHMENT SHALL BE SUBMITTED TO THE DEPARTMENT. THE
24 DEPARTMENT SHALL:

25 (I) BEGIN ACCEPTING AND PROCESSING APPLICATIONS ON OCTOBER 1, 2013;

26 (II) IMMEDIATELY FORWARD A COPY OF EACH APPLICATION AND HALF OF
27 THE LICENSE APPLICATION FEE TO THE LOCALITY IN WHICH THE APPLICANT DESIRES
28 TO OPERATE THE MARIJUANA ESTABLISHMENT;

29 (III) ISSUE AN ANNUAL LICENSE TO THE APPLICANT BETWEEN FORTY-FIVE
30 AND NINETY DAYS AFTER RECEIPT OF AN APPLICATION UNLESS THE DEPARTMENT
31 FINDS THE APPLICANT IS NOT IN COMPLIANCE WITH REGULATIONS ENACTED
32 PURSUANT TO PARAGRAPH (a) OR THE DEPARTMENT IS NOTIFIED BY THE RELEVANT
33 LOCALITY THAT THE APPLICANT IS NOT IN COMPLIANCE WITH ORDINANCES AND
34 REGULATIONS MADE PURSUANT TO PARAGRAPH (f) AND IN EFFECT AT THE TIME OF
35 APPLICATION, PROVIDED, WHERE A LOCALITY HAS ENACTED A NUMERICAL LIMIT
36 ON THE NUMBER OF MARIJUANA ESTABLISHMENTS AND A GREATER NUMBER OF
37 APPLICANTS SEEK LICENSES, THE DEPARTMENT SHALL SOLICIT AND CONSIDER

1 INPUT FROM THE LOCALITY AS TO THE LOCALITY'S PREFERENCE OR PREFERENCES
2 FOR LICENSURE; AND

3 (IV) UPON DENIAL OF AN APPLICATION, NOTIFY THE APPLICANT IN WRITING
4 OF THE SPECIFIC REASON FOR ITS DENIAL.

5 (h) IF THE DEPARTMENT DOES NOT ISSUE A LICENSE TO AN APPLICANT
6 WITHIN NINETY DAYS OF RECEIPT OF THE APPLICATION FILED IN ACCORDANCE WITH
7 PARAGRAPH (g) AND DOES NOT NOTIFY THE APPLICANT OF THE SPECIFIC REASON
8 FOR ITS DENIAL, IN WRITING AND WITHIN SUCH TIME PERIOD, OR IF THE
9 DEPARTMENT HAS ADOPTED REGULATIONS PURSUANT TO PARAGRAPH (a) AND HAS
10 ACCEPTED APPLICATIONS PURSUANT TO PARAGRAPH (g) BUT HAS NOT ISSUED ANY
11 LICENSES BY JANUARY 1, 2014, THE APPLICANT MAY RESUBMIT ITS APPLICATION
12 DIRECTLY TO THE LOCALITY, PURSUANT TO PARAGRAPH (e), AND THE LOCALITY
13 MAY ISSUE AN ANNUAL LICENSE TO THE APPLICANT. A LOCALITY ISSUING A
14 LICENSE TO AN APPLICANT SHALL DO SO WITHIN NINETY DAYS OF RECEIPT OF THE
15 RESUBMITTED APPLICATION UNLESS THE LOCALITY FINDS AND NOTIFIES THE
16 APPLICANT THAT THE APPLICANT IS NOT IN COMPLIANCE WITH ORDINANCES AND
17 REGULATIONS MADE PURSUANT TO PARAGRAPH (f) IN EFFECT AT THE TIME THE
18 APPLICATION IS RESUBMITTED AND THE LOCALITY SHALL NOTIFY THE DEPARTMENT
19 IF AN ANNUAL LICENSE HAS BEEN ISSUED TO THE APPLICANT. IF AN APPLICATION
20 IS SUBMITTED TO A LOCALITY UNDER THIS PARAGRAPH, THE DEPARTMENT SHALL
21 FORWARD TO THE LOCALITY THE APPLICATION FEE PAID BY THE APPLICANT TO THE
22 DEPARTMENT UPON REQUEST BY THE LOCALITY. A LICENSE ISSUED BY A LOCALITY
23 IN ACCORDANCE WITH THIS PARAGRAPH SHALL HAVE THE SAME FORCE AND EFFECT
24 AS A LICENSE ISSUED BY THE DEPARTMENT IN ACCORDANCE WITH PARAGRAPH (g)
25 AND THE HOLDER OF SUCH LICENSE SHALL NOT BE SUBJECT TO REGULATION OR
26 ENFORCEMENT BY THE DEPARTMENT DURING THE TERM OF THAT LICENSE.
27 A SUBSEQUENT OR RENEWED LICENSE MAY BE ISSUED UNDER THIS PARAGRAPH ON
28 AN ANNUAL BASIS ONLY UPON RESUBMISSION TO THE LOCALITY OF A NEW
29 APPLICATION SUBMITTED TO THE DEPARTMENT PURSUANT TO PARAGRAPH (g).
30 NOTHING IN THIS PARAGRAPH SHALL LIMIT SUCH RELIEF AS MAY BE AVAILABLE TO
31 AN AGGRIEVED PARTY UNDER SECTION 24-4-104, C.R.S., OF THE COLORADO
32 ADMINISTRATIVE PROCEDURE ACT OR ANY SUCCESSOR PROVISION.

33 (i) IF THE DEPARTMENT DOES NOT ADOPT REGULATIONS REQUIRED BY
34 PARAGRAPH (a), AN APPLICANT MAY SUBMIT AN APPLICATION DIRECTLY TO A
35 LOCALITY AFTER OCTOBER 1, 2013 AND THE LOCALITY MAY ISSUE AN ANNUAL
36 LICENSE TO THE APPLICANT. A LOCALITY ISSUING A LICENSE TO AN APPLICANT
37 SHALL DO SO WITHIN NINETY DAYS OF RECEIPT OF THE APPLICATION UNLESS IT
38 FINDS AND NOTIFIES THE APPLICANT THAT THE APPLICANT IS NOT IN COMPLIANCE

1 WITH ORDINANCES AND REGULATIONS MADE PURSUANT TO PARAGRAPH (f) IN
2 EFFECT AT THE TIME OF APPLICATION AND SHALL NOTIFY THE DEPARTMENT IF AN
3 ANNUAL LICENSE HAS BEEN ISSUED TO THE APPLICANT. A LICENSE ISSUED BY A
4 LOCALITY IN ACCORDANCE WITH THIS PARAGRAPH SHALL HAVE THE SAME FORCE
5 AND EFFECT AS A LICENSE ISSUED BY THE DEPARTMENT IN ACCORDANCE WITH
6 PARAGRAPH (g) AND THE HOLDER OF SUCH LICENSE SHALL NOT BE SUBJECT TO
7 REGULATION OR ENFORCEMENT BY THE DEPARTMENT DURING THE TERM OF THAT
8 LICENSE. A SUBSEQUENT OR RENEWED LICENSE MAY BE ISSUED UNDER THIS
9 PARAGRAPH ON AN ANNUAL BASIS IF THE DEPARTMENT HAS NOT ADOPTED
10 REGULATIONS REQUIRED BY PARAGRAPH (a) AT LEAST NINETY DAYS PRIOR TO THE
11 DATE UPON WHICH SUCH SUBSEQUENT OR RENEWED LICENSE WOULD BE EFFECTIVE
12 OR IF THE DEPARTMENT HAS ADOPTED REGULATIONS PURSUANT TO PARAGRAPH
13 (a) BUT HAS NOT, AT LEAST NINETY DAYS AFTER THE ADOPTION OF SUCH
14 REGULATIONS, ISSUED LICENSES PURSUANT TO PARAGRAPH (g).

15 (j) NOT LATER THAN JULY 1, 2014, THE GENERAL ASSEMBLY SHALL ENACT
16 LEGISLATION GOVERNING THE CULTIVATION, PROCESSING AND SALE OF
17 INDUSTRIAL HEMP.

18 **(6) Employers, driving, minors and control of property.**

19 (a) NOTHING IN THIS SECTION IS INTENDED TO REQUIRE AN EMPLOYER TO
20 PERMIT OR ACCOMMODATE THE USE, CONSUMPTION, POSSESSION, TRANSFER,
21 DISPLAY, TRANSPORTATION, SALE OR GROWING OF MARIJUANA IN THE WORKPLACE
22 OR TO AFFECT THE ABILITY OF EMPLOYERS TO HAVE POLICIES RESTRICTING THE
23 USE OF MARIJUANA BY EMPLOYEES.

24 (b) NOTHING IN THIS SECTION IS INTENDED TO ALLOW DRIVING UNDER THE
25 INFLUENCE OF MARIJUANA OR DRIVING WHILE IMPAIRED BY MARIJUANA OR TO
26 SUPERSEDE STATUTORY LAWS RELATED TO DRIVING UNDER THE INFLUENCE OF
27 MARIJUANA OR DRIVING WHILE IMPAIRED BY MARIJUANA, NOR SHALL THIS SECTION
28 PREVENT THE STATE FROM ENACTING AND IMPOSING PENALTIES FOR DRIVING
29 UNDER THE INFLUENCE OF OR WHILE IMPAIRED BY MARIJUANA.

30 (c) NOTHING IN THIS SECTION IS INTENDED TO PERMIT THE TRANSFER OF
31 MARIJUANA, WITH OR WITHOUT REMUNERATION, TO A PERSON UNDER THE AGE OF
32 TWENTY-ONE OR TO ALLOW A PERSON UNDER THE AGE OF TWENTY-ONE TO
33 PURCHASE, POSSESS, USE, TRANSPORT, GROW, OR CONSUME MARIJUANA.

34 (d) NOTHING IN THIS SECTION SHALL PROHIBIT A PERSON, EMPLOYER,
35 SCHOOL, HOSPITAL, DETENTION FACILITY, CORPORATION OR ANY OTHER ENTITY

1 WHO OCCUPIES, OWNS OR CONTROLS A PROPERTY FROM PROHIBITING OR
2 OTHERWISE REGULATING THE POSSESSION, CONSUMPTION, USE, DISPLAY,
3 TRANSFER, DISTRIBUTION, SALE, TRANSPORTATION, OR GROWING OF MARIJUANA
4 ON OR IN THAT PROPERTY.

5 **(7) Medical marijuana provisions unaffected.** NOTHING IN THIS SECTION SHALL
6 BE CONSTRUED:

7 (a) TO LIMIT ANY PRIVILEGES OR RIGHTS OF A MEDICAL MARIJUANA
8 PATIENT, PRIMARY CAREGIVER, OR LICENSED ENTITY AS PROVIDED IN SECTION 14
9 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE;

10 (b) TO PERMIT A MEDICAL MARIJUANA CENTER TO DISTRIBUTE MARIJUANA
11 TO A PERSON WHO IS NOT A MEDICAL MARIJUANA PATIENT;

12 (c) TO PERMIT A MEDICAL MARIJUANA CENTER TO PURCHASE MARIJUANA
13 OR MARIJUANA PRODUCTS IN A MANNER OR FROM A SOURCE NOT AUTHORIZED
14 UNDER THE COLORADO MEDICAL MARIJUANA CODE;

15 (d) TO PERMIT ANY MEDICAL MARIJUANA CENTER LICENSED PURSUANT TO
16 SECTION 14 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE TO
17 OPERATE ON THE SAME PREMISES AS A RETAIL MARIJUANA STORE; OR

18 (e) TO DISCHARGE THE DEPARTMENT, THE COLORADO BOARD OF HEALTH,
19 OR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT FROM
20 THEIR STATUTORY AND CONSTITUTIONAL DUTIES TO REGULATE MEDICAL
21 MARIJUANA PURSUANT TO SECTION 14 OF THIS ARTICLE AND THE COLORADO
22 MEDICAL MARIJUANA CODE.

23 **(8) Self-executing, severability, conflicting provisions.** ALL PROVISIONS OF
24 THIS SECTION ARE SELF-EXECUTING EXCEPT AS SPECIFIED HEREIN, ARE SEVERABLE,
25 AND, EXCEPT WHERE OTHERWISE INDICATED IN THE TEXT, SHALL SUPERSEDE
26 CONFLICTING STATE STATUTORY, LOCAL CHARTER, ORDINANCE, OR RESOLUTION,
27 AND OTHER STATE AND LOCAL PROVISIONS.

28 **(9) Effective date.** UNLESS OTHERWISE PROVIDED BY THIS SECTION, ALL
29 PROVISIONS OF THIS SECTION SHALL BECOME EFFECTIVE UPON OFFICIAL
30 DECLARATION OF THE VOTE HEREON BY PROCLAMATION OF THE GOVERNOR,
31 PURSUANT TO SECTION 1(4) OF ARTICLE V.

STATE OF COLORADO

DEPARTMENT OF REVENUE

State Capitol Annex
1375 Sherman Street, Room 409
Denver, Colorado 80261
Phone (303) 866-3091
Fax (303) 866-2400



John W. Hickenlooper
Governor

Barbara J. Brohl
Executive Director

November 7, 2012

Colorado voters have approved an amendment to the state constitution that makes the personal use, possession and limited home-growing of marijuana legal under Colorado law for adults 21 years of age and older and requires the state to establish a system in which marijuana is regulated and taxed similarly to alcohol.

The possession and use of marijuana remains a crime under federal law. Persons who use marijuana for recreational purposes will still be subject to criminal prosecution under federal law.

Because federal law generally preempts state law, Colorado's Department of Revenue will consult and work with the U.S. Department of Justice to understand the federal government's approach in light of potential conflicts with federal laws.

The Department of Revenue will take into consideration the federal government's intention to enforce federal marijuana prohibitions as the Department considers how to implement the regulatory and taxing system called for by the amendment.

Implementation Timeline:

- November 6, 2012 – General Election
- January 2013 – Legislative Session – Drafting of enabling legislation begins
- July 1, 2013 – Department shall adopt necessary regulations
- October 1, 2013 – Department shall begin accepting and processing license applications
- January 1, 2014 – Department must begin issuing licenses (90-day requirement)
- July 1, 2014 – Deadline for legislature to enact legislation concerning industrial hemp

Issues to Consider

Legal:

- The amendment directs the General Assembly to create a regulatory structure for sale of marijuana, which remains an illegal substance under federal law.
- The amendment limits the ability of lawmakers and regulators to adjust deadlines and fees.
- The amendment creates conflicts with existing employment, housing and other law and policies that ban the use of illegal drugs.
- Federal banking laws prohibit accepting proceeds from activities that are illegal, so the marijuana industry likely would be comprised of cash-only businesses.
- The amendment creates a complex, and potentially confusing regulatory structure, e.g., if a local authority issues the license, state regulations do not apply.

Financial:

- The amendment establishes an excise tax on marijuana and designates the first \$40 million collected to be used for constructing schools.
 - The tax must still be approved by a separate statewide vote.
- Application fees for a business to start selling marijuana may not exceed \$5,000 – far less than the application fee to start a medical marijuana business (range is \$7,500 to \$18,000 depending on the size of the operation), likely creating a funding gap from the outset.
- The proposed regulatory structure assumes that the Medical Marijuana Enforcement Division is fully staffed with 55 FTE. Current staffing is 15 FTE.
- Blue Book analysis assumes that Medical Marijuana Enforcement Division is fully funded at \$5.7 million per year = funding is closer to \$2.1 million annually.

Amendment 64 Requirements

GOVERNOR – Amendment becomes effective upon official declaration of the vote via Governor's Proclamation

LEGISLATURE – Statutory changes to be considered include:

1. Amend current statutes regarding possession, sale, distribution or transfer of marijuana.

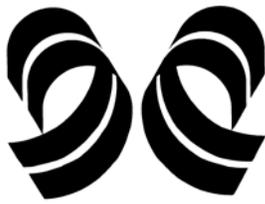
2. Driving laws. While no specific changes are required by the amendment because current language says “. . . one or more drugs, or a combination of alcohol and one or more drugs,” the General Assembly may want to review existing laws.
3. Revise possession of drug paraphernalia laws to exclude “marijuana accessories” for those 21 and older.
4. Revise possession of marijuana laws to exclude possession of less than one ounce for persons 21 years of age or older.
5. Revise marijuana cultivation laws.
6. Codify allowable acts relative to marijuana testing facilities, marijuana product manufacturing facilities, and retail facilities.
7. Codify marijuana consumption restrictions to be consistent with the amendment, e.g., it can't be open, public, or done in manner to endanger others.
8. Establish excise tax.
9. Enact legislation regarding industrial hemp cultivation, processing and sale by July 1, 2014.

DEPARTMENT OF REVENUE – Establish regulations by July 1, 2013 that include:

1. Procedures for issuing, renewing, suspending and revoking a license to operate a marijuana establishment.
2. A schedule of application, licensing and renewal fees.
3. Qualifications for a license that are related to operating a marijuana establishment.
4. Security requirements for marijuana establishments.
5. Requirements to prevent the sale of marijuana and marijuana products to persons under 21 years old.
6. Labeling requirements for marijuana and marijuana products.
7. Health and safety standards for the manufacture of marijuana products and the cultivation of marijuana.
8. Restrictions on advertising and display of marijuana and marijuana products.
9. Civil penalties for noncompliance with regulations.

LOCAL GOVERNMENTS

1. Ordinances and regulations are required by October 1, 2013.
2. Enact ordinance or regulation to identify office within local government to process marijuana licenses if the Department of Revenue does not adopt regulations or fails to process and issue licenses.
3. Can adopt ordinances or regulations governing time, place, manner and number of marijuana operations as long as they do not conflict with the amendment.
4. Can adopt ordinances or regulations establishing procedures for issuing, suspending and revoking a license to operate a marijuana establishment.
5. Can adopt ordinances or regulations establishing a schedule of annual operating, licensing and application fees for marijuana establishments.



DOUGLAS COUNTY SHERIFF'S OFFICE

AGENDA ITEM: 3 .

MEETING DATE: November 20, 2012

STAFF PERSON RESPONSIBLE: Lance J. Ingalls, County Attorney

DESCRIPTION: First Reading of Ordinance No. O-012-003, An Ordinance Prohibiting the Operation of Marijuana Cultivation Facilities, Marijuana Product Manufacturing Facilities, Marijuana Testing Facilities or Retail Marijuana Stores Within the Unincorporated Boundaries of Douglas County, State Of Colorado

SUMMARY: On November 6, 2012, the voters of Colorado approved the adoption of Amendment 64, *Personal Use and Regulation of Marijuana*. Consistent with the authority granted to a "Locality" under the provisions of Amendment 64, the Board of County Commissioners desires to adopt an ordinance prohibiting the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores within the unincorporated areas of Douglas County, Colorado.

BOARD ACTION RECOMMENDED: Motion adopting Ordinance No. O-012-003, An Ordinance Prohibiting the Operation of Marijuana Cultivation Facilities, Marijuana Product Manufacturing Facilities, Marijuana Testing Facilities or Retail Marijuana Stores Within the Unincorporated Boundaries of Douglas County, State Of Colorado, on First Reading.

APPROVED FOR AGENDA: Lance J. Ingalls, County Attorney

REVIEWED FOR FISCAL CONTENT: n/a

REVIEWED BY THE COUNTY MANAGER: Douglas J. DeBord, County Manager

ORDINANCE NO. O-012-003

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO**

**AN ORDINANCE PROHIBITING THE OPERATION OF MARIJUANA
CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING
FACILITIES, MARIJUANA TESTING FACILITIES OR RETAIL MARIJUANA
STORES WITHIN THE UNINCORPORATED BOUNDARIES OF DOUGLAS COUNTY,
STATE OF COLORADO**

WHEREAS, the Board of County Commissioners (“Board”) has the authority to exercise all County powers for the Unincorporated Areas of Douglas County pursuant to Section 30-11-103, C.R.S.; and

WHEREAS, on November 6, 2012, the voters of Colorado approved the adoption of Amendment 64, *Personal Use and Regulation of Marijuana*; and

WHEREAS, said Amendment 64 shall become effective upon official declaration of the vote hereon by proclamation of the Governor, pursuant to Section 1(4) of Article V, of the Colo. Constitution; and

WHEREAS, Amendment 64 will add a new Section 16 to Article XVIII of the Colo. Constitution; and

WHEREAS, Amendment 64 defines a “Locality” in part in section 2(e) of Section 16 to include a county; and

WHEREAS, part 5(f) of Section 16 provides the following:

(f) A LOCALITY MAY ENACT ORDINANCES OR REGULATIONS, NOT IN CONFLICT WITH THIS SECTION OR WITH REGULATIONS OR LEGISLATION ENACTED PURSUANT TO THIS SECTION, GOVERNING THE TIME, PLACE, MANNER AND NUMBER OF MARIJUANA ESTABLISHMENT OPERATIONS; ESTABLISHING PROCEDURES FOR THE ISSUANCE, SUSPENSION, AND REVOCATION OF A LICENSE ISSUED BY THE LOCALITY IN ACCORDANCE WITH PARAGRAPH (h) OR (i), SUCH PROCEDURES TO BE SUBJECT TO ALL REQUIREMENTS OF ARTICLE 4 OF TITLE 24 OF THE COLORADO ADMINISTRATIVE PROCEDURE ACT OR ANY SUCCESSOR PROVISION; ESTABLISHING A SCHEDULE OF ANNUAL OPERATING, LICENSING, AND APPLICATION FEES FOR MARIJUANA ESTABLISHMENTS, PROVIDED, THE APPLICATION FEE SHALL ONLY BE DUE IF AN APPLICATION IS SUBMITTED TO A LOCALITY IN ACCORDANCE WITH PARAGRAPH (i) AND A LICENSING FEE SHALL ONLY BE DUE IF A LICENSE IS ISSUED BY A LOCALITY IN ACCORDANCE WITH PARAGRAPH (h) OR (i); AND ESTABLISHING CIVIL PENALTIES FOR VIOLATION OF AN ORDINANCE OR REGULATION GOVERNING THE TIME, PLACE, AND MANNER OF A MARIJUANA ESTABLISHMENT THAT MAY OPERATE IN SUCH LOCALITY. A LOCALITY MAY PROHIBIT THE OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, OR RETAIL MARIJUANA STORES THROUGH THE ENACTMENT OF AN ORDINANCE OR THROUGH AN INITIATED OR REFERRED MEASURE;

PROVIDED, ANY INITIATED OR REFERRED MEASURE TO PROHIBIT THE OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, OR RETAIL MARIJUANA STORES MUST APPEAR ON A GENERAL ELECTION BALLOT DURING AN EVEN NUMBERED YEAR (underline added), and;

WHEREAS, at the November 6, 2012 election approximately 55% of Douglas County voters rejected the proposed adoption of Amendment 64; and

WHEREAS, consistent with the authority granted to the Board in Amendment 64 and the will of Douglas County voters, the Board desires to adopt this ordinance prohibiting the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores within the unincorporated areas of Douglas County, Colorado; now therefore,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS as follows:

Purpose. The purpose of this ordinance is to promote the general public welfare and safety throughout Douglas County, Colorado by prohibiting the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores.

Definitions. Unless otherwise specified or the context otherwise requires, any terms used herein shall have the same meanings as provided in Article XVIII, Section 16 of the Colo. Constitution. These definitions include, but are not limited to the following:

(1) "MARIJUANA" OR "MARIHUANA" MEANS 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, MIXTURE, 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 MARIJUANA TO PREPARE TOPICAL OR ORAL ADMINISTRATIONS, FOOD, DRINK, OR OTHER PRODUCT.

(2) "MARIJUANA ACCESSORIES" MEANS 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, PRODUCING, PROCESSING, PREPARING, TESTING, ANALYZING, PACKAGING, REPACKAGING, STORING, VAPORIZING, OR CONTAINING MARIJUANA, OR FOR INGESTING, INHALING, OR OTHERWISE INTRODUCING MARIJUANA INTO THE HUMAN BODY.

(3) "MARIJUANA CULTIVATION FACILITY" MEANS AN ENTITY LICENSED TO

CULTIVATE, PREPARE, AND PACKAGE MARIJUANA AND SELL MARIJUANA TO RETAIL MARIJUANA STORES, TO MARIJUANA PRODUCT MANUFACTURING FACILITIES, AND TO OTHER MARIJUANA CULTIVATION FACILITIES, BUT NOT TO CONSUMERS.

(4) "MARIJUANA ESTABLISHMENT" MEANS A MARIJUANA CULTIVATION FACILITY, A MARIJUANA TESTING FACILITY, A MARIJUANA PRODUCT MANUFACTURING FACILITY, OR A RETAIL MARIJUANA STORE.

(5) "MARIJUANA PRODUCT MANUFACTURING FACILITY" MEANS AN ENTITY LICENSED TO PURCHASE MARIJUANA; MANUFACTURE, PREPARE, AND PACKAGE MARIJUANA PRODUCTS; AND SELL MARIJUANA AND MARIJUANA PRODUCTS TO OTHER MARIJUANA PRODUCT MANUFACTURING FACILITIES AND TO RETAIL MARIJUANA STORES, BUT NOT TO CONSUMERS.

(6) "MARIJUANA PRODUCTS" MEANS CONCENTRATED MARIJUANA PRODUCTS AND MARIJUANA PRODUCTS THAT ARE COMPRISED OF MARIJUANA AND OTHER INGREDIENTS AND ARE INTENDED FOR USE OR CONSUMPTION, SUCH AS, BUT NOT LIMITED TO, EDIBLE PRODUCTS, OINTMENTS, AND TINCTURES.

(7) "MARIJUANA TESTING FACILITY" MEANS AN ENTITY LICENSED TO ANALYZE AND CERTIFY THE SAFETY AND POTENCY OF MARIJUANA.

(8) "MEDICAL MARIJUANA CENTER" MEANS AN ENTITY LICENSED BY A STATE AGENCY TO SELL MARIJUANA AND MARIJUANA PRODUCTS PURSUANT TO SECTION 14 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE.

(9) "RETAIL MARIJUANA STORE" MEANS AN ENTITY LICENSED TO PURCHASE MARIJUANA FROM MARIJUANA CULTIVATION FACILITIES AND MARIJUANA AND MARIJUANA PRODUCTS FROM MARIJUANA PRODUCT MANUFACTURING FACILITIES AND TO SELL MARIJUANA AND MARIJUANA PRODUCTS TO CONSUMERS.

Enforcement. This ordinance shall be enforced by the Douglas County Sheriff.

Violation. It shall be unlawful for any person to violate any provision of this ordinance.

Disposition of Fines and Forfeitures. Unless otherwise provided by law, all fines and penalties, and the surcharge thereon, for the violation of this ordinance shall be paid into the treasury of Douglas County. The fine for a first offense and for any subsequent offense shall be one thousand dollars (\$1000) per violation and each day shall be deemed a separate violation.

Surcharges. In addition to the fines and penalties prescribed in this ordinance, any person convicted of a violation of this ordinance shall be subject to the statutory surcharges of ten dollars (\$10.00) for the Victims and Witnesses Assistance and Law Enforcement Fund, and (\$15.00) for the Colorado Traumatic Brain Injury Trust Fund. These surcharges shall be

paid to the clerk of the court by each person convicted of violating this ordinance. The clerk shall transmit the moneys to the respective funds in accordance with C.R.S. § 30-15-402(2).

Scope. This ordinance shall apply within the unincorporated territory of Douglas County and to all other areas designated herein. This ordinance shall in no way limit application and enforcement of any statutes of the State of Colorado but shall be in addition thereto.

Severability. If any part or parts of this ordinance are for any reason held to be invalid, such provision shall not affect the validity of the remaining portions of this ordinance. The Board of County Commissioners hereby declares that it would have passed this ordinance and each part or parts hereof, irrespective of the fact that any one part or parts be declared invalid.

Repeal. All ordinances and/or resolutions or parts or ordinances and/or resolutions inconsistent with provisions of this ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this ordinance.

EFFECTIVE DATE.

In order to preserve the immediate health and safety of Douglas County and its residents, this ordinance shall take effect immediately upon its publication as provided in § 30-15-405, C.R.S.

INTRODUCED, READ AND ADOPTED ON FIRST READING on November 20, 2012, and ordered published in the DOUGLAS COUNTY NEWS-PRESS.

**THE BOARD OF COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO**

By: _____
Jack A. Hilbert, Chair

ATTEST:

Melissa Pelletier, Deputy Clerk to the Board

ADOPTED ON SECOND AND FINAL READING ON December ____, 2012, and ordered published by reference to title only in the DOUGLAS COUNTY NEWS-PRESS.

THE BOARD OF COMMISSIONERS

OF THE COUNTY OF DOUGLAS, COLORADO

By: _____
Jack A. Hilbert, Chair

ATTEST:

Deputy Clerk to the Board

CERTIFICATE

I hereby certify that the foregoing Ordinance No. O-012-003 was introduced, read and adopted on first reading at the regular meeting of the Board of County Commissions of the County of Douglas on November 20, 2012, and the same was published in full in the Douglas County News-Press, a newspaper of general circulation published in Douglas County, on November __, 2012, and thereafter was adopted on second and final reading at a regular public hearing of the Board of County Commissioners of the County of Douglas on December ____, 2012. Said ordinance was published by reference to title only on December ____, 2012. Said ordinance shall become effective as of January __, 2013.

Deputy Clerk

State of Colorado)
)ss.
County of Douglas)

Subscribed and sworn to before me this ____ day of _____, 2012, by
Melissa Pelletier, Deputy Clerk.

Notary Public

My commission expires:_____

CERTIFICATION

I, Melissa Pelletier, Douglas County Deputy Clerk, do hereby certify that the foregoing Ordinance No. O-012-003, entitled, **AN ORDINANCE PROHIBITING THE OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, OR RETAIL MARIJUANA STORES WITHIN THE INCORPORATED BOUNDARIES OF DOUGLAS COUNTY, STATE OF COLORADO**, is a true, correct and complete copy from the records in my office, that said ordinance was duly adopted by the Board of County Commissioners of Douglas County and is in full force and effect.

Deputy Clerk

ORDINANCE NO. 18
Series of 2012

**AN ORDINANCE IMPOSING A TEMPORARY
MORATORIUM REGARDING THE ESTABLISHMENT, EXPANSION, RELOCATION,
OR TRANSFER OF ANY MEDICAL OR RETAIL MARIJUANA FACILITY, OR THE
SUBMISSION, ACCEPTANCE, PROCESSING, OR APPROVAL OF LICENSES FOR
ANY EXISTING OR PROPOSED MEDICAL MARIJUANA FACILITIES**

WHEREAS, pursuant to Ordinance Nos. 3 and 10, Series of 2011, the Town of Carbondale (“Town”) adopted licensing and zoning regulations pertaining to medical marijuana facilities; and

WHEREAS, the Town has since approved two medical marijuana license applications (“Existing Licensed MMJ Facilities”), and has received completed initial medical marijuana license applications, and public hearings are underway, concerning two additional existing medical marijuana facilities (“Existing Pending MMJ Facilities”); and

WHEREAS, on November 6, 2012, Colorado voters passed Amendment 64 which provides for persons 21 years of age or older to legally consume or possess one ounce or less of marijuana without a doctor’s recommendation, and for retail marijuana sales to be taxed and licensed similar to alcohol; and

WHEREAS, medical and recreational marijuana possession and use remain contrary to federal law; it is unknown at present as to what the federal government may do in response to the passage of Amendment 64; and

WHEREAS, the passage of Amendment 64 does not change existing medical marijuana laws, but it remains unclear at present to what degree existing medical marijuana facilities will ultimately seek to convert into retail operations; and

WHEREAS, Amendment 64 further calls for the Colorado Department of Revenue to issues new regulations for retail marijuana stores by July 1, 2013; and

WHEREAS, Amendment 64 also allows for possible future local prohibition or regulation of retail marijuana businesses.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO:

1. A nine-month temporary moratorium (through August 1, 2013) is hereby imposed on the establishment, expansion, transfer or relocation of any medical marijuana facility (as defined by Ordinance No. 3, Series of 2011), and/or the establishment, expansion, transfer or relocation of any retail marijuana establishment (as defined by Amendment 64). This moratorium is intended to allow time for: resolution of any challenges to Amendment 64; for development of state and local regulations pertaining to retail marijuana zoning, cultivation, distribution, sale and/or consumption; and for consideration of whether or to what degree any existing medical marijuana facilities may convert into retail marijuana establishments.

2. The duration of the moratorium imposed by this ordinance is reasonable in length, extending only until one month after the current deadline in Amendment 64 for the Colorado Department of Revenue to promulgate regulations concerning retail marijuana. This moratorium may be shortened or extended by the Board of Trustees in its discretion should it find good cause to do so.

3. In imposing this moratorium, the Town does not intend to prohibit or restrict the continued operation of the two Existing Licensed MMJ Facilities, or the two Existing Pending MMJ Facilities, provided that there shall be no expansion, transfer, or relocation of the same throughout the duration of the moratorium prescribed herein. The deadlines for application for renewal of the license for any Existing Licensed MMJ Facility, and all pending licensing proceedings for Existing Pending MMJ Facilities, are hereby extended, continued or tolled, as applicable, until August 1, 2013, provided that such may be further extended by majority vote of the Board of Trustees in its discretion upon its own initiative or the request of any interested party.

4. Nothing in this ordinance shall affect or limit the ability of the Town to regulate Licensed MMJ Facilities or Pending MMJ Facilities according to state and local statutes and regulations related to the same, including the Town's existing zoning regulations pertaining to medical marijuana facilities.

5. The Town further determines that the adoption of this ordinance is in the best interests and necessary to protect the health, safety and welfare of the citizens of the Town of Carbondale. The Town also hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to the Article XX of the Colorado Constitution, the Home Rule Charter of the Town of Carbondale and the Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S., Section 31-15-401, C.R.S. (concerning municipal police powers), and Section 31-15-501 (concerning municipal power to regulate businesses).

6. Pursuant to Section 3-7 of the Home Rule Charter, and an affirmative vote of the Board of Trustees equal to a quorum plus one, the Town hereby designates this Ordinance as an **EMERGENCY ORDINANCE** due to the above-referenced timing concerning Amendment 64, potential challenges thereto, and the need for comprehensive new marijuana regulation. This Ordinance shall therefore take effect immediately but be posted and published as provided in Section 3-3g of the Home Rule Charter as soon as reasonably possible.

ADOPTED on November 27, 2012 by a vote of _____ to _____.

TOWN OF CARBONDALE, COLORADO
a Colorado home rule municipal corporation,

Stacey Patch Bernot, Mayor

ATTEST:

Cathy Derby, Town Clerk

POSTED: _____

PUBLISHED: _____