



WESTMINSTER

Staff Report

TO: The Mayor and Members of the City Council

DATE: January 2, 2013

SUBJECT: Study Session Agenda for January 7, 2013

PREPARED BY: J. Brent McFall, City Manager

Please Note: Study Sessions and Post City Council meetings are open to the public, and individuals are welcome to attend and observe. However, these meetings are not intended to be interactive with the audience, as this time is set aside for City Council to receive information, make inquiries, and provide Staff with policy direction.

Looking ahead to next Monday night's Study Session, the following schedule has been prepared:

A light dinner will be served in the Council Family Room 6:00 P.M.

CITY COUNCIL REPORTS

1. Report from Mayor (5 minutes)
2. Reports from City Councillors (10 minutes)

PRESENTATIONS

1. 2005 COP Refunding (144th Ave. Interchange Projects)
2. Amendment 64 and Legalization of Recreational Marijuana
3. Draft Ordinance Amending Sections 1-10-1(A) and (C), W.M.C., Concerning Mayoral Elections

6:30 P.M.

EXECUTIVE SESSION

None at this time.

INFORMATION ONLY ITEMS

1. Focused Workweek Update

Additional items may come up between now and Monday night. City Council will be apprised of any changes to the Study Session meeting schedule.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER

Staff Report

City Council Study Session Meeting
January 7, 2013



SUBJECT: 2005 COP Refunding (144th Avenue Interchange Projects)

PREPARED BY: Tammy Hitchens, Finance Director
Robert Byerhof, Senior Financial Analyst

Recommended Board Action

Provide direction to staff regarding refinancing the 2005 144th Avenue Interchange Certificates of Participation (COPS) with the intent to reduce interest costs without extending the final maturity date.

Summary Statement

Current financial market conditions provides an opportunity to significantly reduce the City's future debt service costs by refunding the Certificates of Participation (COPS), which were issued in 2005 to fund the construction of the east half 144th Avenue Interchange under a lease purchase agreement between the City and the Westminster Building Authority. The proposed refinancing will convert the existing agreement into a stand-alone lease-leaseback agreement, which enhances the City's long-term financial flexibility.

Expenditure Required: Not to exceed \$12,500,000

Source of Funds: All fees are paid from the proceeds of the refinancing transaction

Policy Issue

Should the City refund the Certificates of Participation, Series 2005 (144th Avenue Interchange) in an amount not to exceed \$12,500,000?

Alternative

1. Do not refund the Certificates of Participation. This option is not recommended. The proposed refunding will save approximately \$463,000 in interest costs without extending the final maturity of the original issue.
2. Delay the refunding in hopes that the Federal Reserve Board (Fed) will reduce short-term rates, which may lead to further interest expense savings. This option is not recommended. While it is possible the Fed will reduce short-term rates, the impact would be in the short-term (two years and under) market. The risk to the City is that long-term rates will rise, due to inflation expectations. In this case, the total savings could be less than the anticipated \$463,000.

Background Information

The City of Westminster and the City of Thornton entered into an Intergovernmental Agreement to construct and finance the 144th Avenue and I-25 interchange. Construction of this interchange was integral to the North Huron Urban Renewal Area (URA) redevelopment project, anchored by the Orchard shopping center. In 2005, Certificates of Participation (COPS) were issued to construct the eastern half of the 144th Avenue Interchange under the Master Lease agreement between the City and the Westminster Building Authority. The COPS are an obligation of the City. The City issued the COPS to facilitate the construction of the eastern half of the interchange. The eastern half of the interchange is technically in Thornton. Thornton agreed to reimburse the City for Thornton's portion of the debt service. Their payment is limited to the revenue received through a revenue sharing agreement. If revenues transferred to Thornton per the terms of the IGA are insufficient to cover the debt service, Thornton is not obligated to pay for debt service out of any other funding source. The COPS are ultimately the City's responsibility and were issued under the City's credit rating.

To date, the tax revenue transferred to Thornton has covered the 2005 COP debt service. Since the agreement was signed, the City has transferred \$13,220,153 in sales tax revenues to Thornton per the revenue sharing agreement and Thornton has transferred \$0. Thornton has reimbursed the City \$8,689,841 due on debt service for a net gain of \$4,530,312 to Thornton. Thornton is fully current on its debt service repayments to the City and has the option to pay the entire outstanding principal due, currently at \$13,080,000, at any point in time without a prepayment penalty.

The intergovernmental agreements associated with this revenue sharing area are silent regarding a refinancing event of the COPS issued for the construction of the interchange. Thornton agreed to pay the amount per the debt schedule at the time of the original issuance and they have the option to repay the entire principal outstanding at their discretion without penalty. Staff believes that any savings resulting from a refinancing would benefit the City. Thornton could refinance their obligation to the City using whatever methodology they choose.

Staff along with the City's underwriter, Piper Jaffray, analyzed the financial benefit to refinancing the Certificates of Participation, Series 2005 (144th Avenue Interchange). Given current interest rate market conditions, it would be in the City's best financial interest to refund the 2005 COPS; thereby, lowering the overall interest rate, inclusive of all closing fees, and without extending the maturity date of the original issue.

The projected savings from the refunding is anticipated to reduce future interest costs by about \$463,000. On a present value basis, the savings equate to \$402,000 or 3.77% of the existing principal outstanding to be refinanced. The present value savings represents the amount of money saved in today's dollars to refinance the COPS. National guidelines suggest that to initiate a refunding issue the savings should at a minimum be three percent. Staff will evaluate market conditions prior to initiating refunding to assure 3% savings. Debt issuance costs are taken into consideration when calculating savings. They are paid at closing from the proceeds of the issue; therefore, the City incurs no out-of-pocket expenses.

Additionally, the City's bond counsel proposed a financing structure to remove the principal balance of the subject COPS from the existing Master Lease with the Westminster Building Authority. Under the Master Lease, which collateralizes all outstanding COP issues, the City collateralized a number of properties totaling over \$73,000,000 as security mortgaged until the debt is repaid. The result of this refinancing is a stand-alone lease agreement between the City and debt holders. The refinancing will remove approximately \$27,068,000 of the collateral pledged under the Master Lease of which approximately \$9,815,000 will be transferred to the new lease agreement. The difference of \$17,253,000 is unencumbered property for the City and may be available as collateral in the event it needed for financing capital improvement projects.

The proceeds of the sale of this new security will be appropriated in a separate City Council action, after the closing is held and the sales proceeds are received by the City. Although subject to change, the scheduled sale of the COPS is on January 23, 2013 with a closing on January 29, 2013.

Respectfully submitted,

J. Brent McFall
City Manager



Staff Report

City Council Study Session Meeting

January 7, 2013



SUBJECT: Amendment 64 and Legalization of Recreational Marijuana

PREPARED BY: Marty McCullough, City Attorney
Hilary Graham, Assistant City Attorney

Recommended City Council Action:

Discuss the local option within Amendment 64 to prohibit by ordinance the retail sale of recreational marijuana within the City and provide direction to Staff as to how to proceed. Also, amend the City's criminal code to recognize the rights conferred by Amendment 64, allowing people age 21 and older to use and possess limited amounts of marijuana.

Summary Statement

- Colorado voters approved Amendment 64 in the November 2012 election, creating a limited right for adults to possess, grow, and consume recreational marijuana.
- Amendment 64 also contains provisions for the licensing of commercial marijuana businesses, which will go into effect in late 2013 and from which the City can choose to opt out.
- If City Council chooses to prohibit retail sales of recreation marijuana within the City, it may do so by amending Title V, Chapter 10, of the Westminster Municipal Code (the "Code"), which already prohibits medical marijuana dispensaries and cultivation facilities.
- Changes to the Code's criminal provisions are required to recognize Amendment 64's right for adults to possess, grow, and consume limited amounts of recreational marijuana.
- An emergency ordinance amending the Code's criminal provisions is currently scheduled for Council consideration on January 28, 2013.
- Because of Amendment 64's conflict with federal law, there is uncertainty as to how statewide implementation of the amendment will proceed. Changes to state controlled substances statutes to accommodate the amendment will be forthcoming in the 2013 legislative session. As such, there may be a need for additional Code revisions in the near future.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issues

Should City Council exercise the local option to prohibit retail sale of recreational marijuana by adopting an ordinance?

Should City Council amend the criminal Code to recognize the rights conferred on adults by Amendment 64, which allow limited personal use of marijuana?

Alternatives

As to retail sales:

- Instead of adopting a prohibition against retail sales by ordinance, City Council could refer the question to voters to be decided at the 2014 general election (November).
- City Council could decide to permit retail sales within the City and, to that end, would need to adopt an appropriate licensing scheme. Additional Staff time would be required to analyze the impacts of allowing retail sales in the City, regarding both additional law enforcement and other Staff resources and potential fee and tax revenue. Staff believes, based on the experiences of other municipalities that permitted the commercialization of medical marijuana within their jurisdictions, that the resulting demand on police, code enforcement, legal, accounting and other limited resources would be significant. Notwithstanding the potential revenue, Staff believes that the commercialization of marijuana would not be consistent with City Council's Strategic Plan and the City's commitment to managing a sustainable workforce.

As to personal recreational use of marijuana, it is Staff's opinion that the Code must be amended to allow adults to consume, possess, and grow limited amounts of marijuana as permitted by Amendment 64. There is no acceptable alternative.

Background Information

In November 2012, the voters of the state of Colorado passed Amendment 64, which legalizes the possession and use of one ounce or less of marijuana by persons 21 years of age or older, and permits the limited growing of marijuana for personal use. A copy of Amendment 64 is attached here for your reference. Governor Hickenlooper formalized Amendment 64 into law on December 10, 2012, by executive order. Until Amendment 64's retail sales provisions come into play in late 2013, there is still no legal way to purchase marijuana for personal, non-medical use. However, the provisions legalizing limited possession, use and growing of marijuana by adults are mandatory, statewide, and are already in effect.

The Amendment also provides for the licensing and operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores to be located throughout the state pursuant to state and/or local regulations that are required to be enacted during 2013. Importantly, Amendment 64 allows local governments to prohibit, by ordinance or referendum, marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores.

Amendment 64 passed in the City with roughly 57% of votes in favor of the ballot measure. Because of how the ballot measure was worded, it is not possible to distinguish between support for

the Amendment's personal right to keep and use marijuana, and support for the Amendment's commercial component.

In 2009, in the wake of the proliferation of the medical marijuana industry, City Council passed an ordinance prohibiting medical marijuana dispensaries and cultivation facilities, as otherwise allowed by state law. These provisions are located in Title V, Chapter 10, of the Code. If there is support for a retail ban in the City, an ordinance could be prepared amending that chapter of the Code to also prohibit marijuana cultivation facilities, product manufacturing facilities, testing facilities, and retail marijuana stores that cultivate, produce, test, and sell marijuana for personal recreational use. Staff believes, based on the experiences of other municipalities that permitted the commercialization of medical marijuana within their jurisdictions, that the resulting demand on police, code enforcement, legal, accounting and other limited resources would be significant. Notwithstanding the potential revenue, Staff believes that the commercialization of marijuana would not be consistent with City Council's Strategic Plan and the City's commitment to managing a sustainable workforce. Staff is seeking Council's direction on how to proceed on this front. Additional Staff time would be required to analyze the impacts of allowing retail sales in the City, regarding both additional law enforcement and other Staff resources, and potential fee and tax revenue.

Separately, it is Staff's opinion that the City must recognize the right created by Amendment 64 for adults to legally possess, use, and grow limited amounts of marijuana. To that end, it is necessary to amend portions of the Code that are in conflict with Amendment 64. Appropriate revisions to several chapters within Title VI of the Code should be enacted by emergency ordinance to minimize the time in which the Code is out of compliance with state law. Police officers have been briefed on the topic and no enforcement action is being taken contrary to state law. An emergency ordinance is currently scheduled for City Council's consideration on January 28, 2013. There are a few other notable aspects of Amendment 64 and the proposed emergency ordinance, as follows:

- Amendment 64 allows property owners to prohibit possession and use of marijuana on their private property. Violation of a private property owner's rules against possession and use will be a new form of trespass in Title VI, Chapter 3.
- Because it is the property owner who must prohibit possession and use of marijuana on their property, the City's drug-free zones, established in Section 6-12-4 of the Code, will no longer be effective. Instead, the trespass provision discussed above will apply when marijuana is used or possessed on private property contrary to the owner's rules.
- The City as property owner may prohibit possession and use of marijuana on City property. The emergency ordinance incorporates such a prohibition as to all City property and creates a criminal penalty for its violation.
- Amendment 64 prohibits "open" or "public" consumption of marijuana but does not define those terms. To provide more clarity, the emergency ordinance will amend the Clean Indoor Air Act (Title VI, Chapter 13, of the Code) to prohibit marijuana smoking in every place that tobacco smoking is currently prohibited. Other types of open and public marijuana consumption will be prohibited by Title VI, Chapter 12.
- The City as an employer can still restrict the on and off duty use of marijuana by employees by continuing to enforce its drug testing and personnel policies.

The federal government has yet to formally weigh in on Amendment 64. It is unclear how Amendment 64's conflict with existing federal drug laws, which still treat marijuana as an illegal controlled substance, will play out. President Obama has made comments indicating that it will not be a federal priority to enforce federal marijuana prohibitions in states where voters have legalized it. Nonetheless, as a complex and novel issue, this topic will remain at the forefront. At a minimum, additional Code amendments will likely be needed after the General Assembly enacts statutory amendments in the next legislative session to implement Amendment 64.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment: Amendment 64

RECEIVED

#30-Final

JUN 03 2011

Colorado Secretary of State

Be it Enacted by the People of the State of Colorado

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

Section 16. Personal use and regulation of marijuana

(1) Purpose and findings.

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) "INDUSTRIAL HEMP" MEANS THE PLANT OF THE GENUS CANNABIS AND ANY PART OF SUCH PLANT, WHETHER GROWING OR NOT, WITH A DELTA-9 TETRAHYDROCANNABINOL CONCENTRATION THAT DOES NOT EXCEED THREE-TENTHS PERCENT ON A DRY WEIGHT BASIS.

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

(f) "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.

(g) "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.

(h) "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.

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

(j) "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.

(k) "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.

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

(m) "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.

(n) "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.

(o) "UNREASONABLY IMPRACTICABLE" MEANS THAT THE MEASURES NECESSARY TO COMPLY WITH THE REGULATIONS REQUIRE SUCH A HIGH INVESTMENT OF RISK, MONEY, TIME, OR ANY OTHER RESOURCE OR ASSET THAT THE OPERATION OF A MARIJUANA

ESTABLISHMENT IS NOT WORTHY OF BEING CARRIED OUT IN PRACTICE BY A REASONABLY PRUDENT BUSINESSPERSON.

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

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

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

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

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

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

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

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

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

(c) CULTIVATING, HARVESTING, PROCESSING, PACKAGING, TRANSPORTING, DISPLAYING, OR POSSESSING MARIJUANA; DELIVERY OR TRANSFER OF MARIJUANA TO A MARIJUANA TESTING FACILITY; SELLING MARIJUANA TO A MARIJUANA CULTIVATION FACILITY, A MARIJUANA PRODUCT MANUFACTURING FACILITY, OR A RETAIL MARIJUANA STORE; OR THE PURCHASE OF MARIJUANA FROM A MARIJUANA CULTIVATION FACILITY, IF THE PERSON CONDUCTING THE ACTIVITIES DESCRIBED IN THIS PARAGRAPH HAS OBTAINED A CURRENT, VALID LICENSE TO OPERATE A MARIJUANA CULTIVATION FACILITY OR IS ACTING

IN HIS OR HER CAPACITY AS AN OWNER, EMPLOYEE, OR AGENT OF A LICENSED MARIJUANA CULTIVATION FACILITY.

(d) PACKAGING, PROCESSING, TRANSPORTING, MANUFACTURING, DISPLAYING, OR POSSESSING MARIJUANA OR MARIJUANA PRODUCTS; DELIVERY OR TRANSFER OF MARIJUANA OR MARIJUANA PRODUCTS TO A MARIJUANA TESTING FACILITY; SELLING MARIJUANA OR MARIJUANA PRODUCTS TO A RETAIL MARIJUANA STORE OR A MARIJUANA PRODUCT MANUFACTURING FACILITY; THE PURCHASE OF MARIJUANA FROM A MARIJUANA CULTIVATION FACILITY; OR THE PURCHASE OF MARIJUANA OR MARIJUANA PRODUCTS FROM A MARIJUANA PRODUCT MANUFACTURING FACILITY, IF THE PERSON CONDUCTING THE ACTIVITIES DESCRIBED IN THIS PARAGRAPH HAS OBTAINED A CURRENT, VALID LICENSE TO OPERATE A MARIJUANA PRODUCT MANUFACTURING FACILITY OR IS ACTING IN HIS OR HER CAPACITY AS AN OWNER, EMPLOYEE, OR AGENT OF A LICENSED MARIJUANA PRODUCT MANUFACTURING FACILITY.

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

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

(5) Regulation of marijuana.

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

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

(II) A SCHEDULE OF APPLICATION, LICENSING AND RENEWAL FEES, PROVIDED, APPLICATION FEES SHALL NOT EXCEED FIVE THOUSAND DOLLARS, WITH THIS UPPER LIMIT ADJUSTED ANNUALLY FOR INFLATION, UNLESS THE DEPARTMENT DETERMINES A GREATER FEE IS NECESSARY TO CARRY OUT ITS RESPONSIBILITIES UNDER THIS SECTION, AND PROVIDED FURTHER, AN ENTITY THAT IS LICENSED UNDER THE COLORADO MEDICAL MARIJUANA CODE TO CULTIVATE OR SELL MARIJUANA OR TO MANUFACTURE MARIJUANA PRODUCTS AT THE TIME THIS SECTION TAKES EFFECT AND THAT CHOOSES TO APPLY FOR A SEPARATE MARIJUANA ESTABLISHMENT LICENSE SHALL NOT BE REQUIRED TO PAY AN APPLICATION FEE GREATER THAN FIVE HUNDRED DOLLARS TO APPLY FOR A LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION;

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

- (IV) SECURITY REQUIREMENTS FOR MARIJUANA ESTABLISHMENTS;
- (V) REQUIREMENTS TO PREVENT THE SALE OR DIVERSION OF MARIJUANA AND MARIJUANA PRODUCTS TO PERSONS UNDER THE AGE OF TWENTY-ONE;
- (VI) LABELING REQUIREMENTS FOR MARIJUANA AND MARIJUANA PRODUCTS SOLD OR DISTRIBUTED BY A MARIJUANA ESTABLISHMENT;
- (VII) HEALTH AND SAFETY REGULATIONS AND STANDARDS FOR THE MANUFACTURE OF MARIJUANA PRODUCTS AND THE CULTIVATION OF MARIJUANA;
- (VIII) RESTRICTIONS ON THE ADVERTISING AND DISPLAY OF MARIJUANA AND MARIJUANA PRODUCTS; AND
- (IX) CIVIL PENALTIES FOR THE FAILURE TO COMPLY WITH REGULATIONS MADE PURSUANT TO THIS SECTION.

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

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

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

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

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

(e) 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).

(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.

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

- (I) BEGIN ACCEPTING AND PROCESSING APPLICATIONS ON OCTOBER 1, 2013;
- (II) IMMEDIATELY FORWARD A COPY OF EACH APPLICATION AND HALF OF THE LICENSE APPLICATION FEE TO THE LOCALITY IN WHICH THE APPLICANT DESIRES TO OPERATE THE MARIJUANA ESTABLISHMENT;
- (III) ISSUE AN ANNUAL LICENSE TO THE APPLICANT BETWEEN FORTY-FIVE AND NINETY DAYS AFTER RECEIPT OF AN APPLICATION UNLESS THE DEPARTMENT FINDS THE APPLICANT IS NOT IN COMPLIANCE WITH REGULATIONS ENACTED PURSUANT TO PARAGRAPH (a) OR THE DEPARTMENT IS NOTIFIED BY THE RELEVANT LOCALITY THAT THE APPLICANT IS NOT IN COMPLIANCE WITH ORDINANCES AND REGULATIONS MADE PURSUANT TO PARAGRAPH (f) AND IN EFFECT AT THE TIME OF APPLICATION, PROVIDED, WHERE A LOCALITY HAS ENACTED A NUMERICAL LIMIT ON THE NUMBER OF MARIJUANA ESTABLISHMENTS AND A GREATER NUMBER OF APPLICANTS SEEK LICENSES, THE

DEPARTMENT SHALL SOLICIT AND CONSIDER INPUT FROM THE LOCALITY AS TO THE LOCALITY'S PREFERENCE OR PREFERENCES FOR LICENSURE; AND

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

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

(i) IF THE DEPARTMENT DOES NOT ADOPT REGULATIONS REQUIRED BY PARAGRAPH (a), AN APPLICANT MAY SUBMIT AN APPLICATION DIRECTLY TO A LOCALITY AFTER OCTOBER 1, 2013 AND THE LOCALITY MAY ISSUE AN ANNUAL LICENSE TO THE APPLICANT. A LOCALITY ISSUING A LICENSE TO AN APPLICANT SHALL DO SO WITHIN NINETY DAYS OF RECEIPT OF THE APPLICATION UNLESS IT FINDS AND NOTIFIES THE APPLICANT THAT THE APPLICANT IS NOT IN COMPLIANCE WITH ORDINANCES AND REGULATIONS MADE PURSUANT TO PARAGRAPH (f) IN EFFECT AT THE TIME OF APPLICATION AND SHALL NOTIFY THE DEPARTMENT IF AN ANNUAL LICENSE HAS BEEN ISSUED TO THE APPLICANT. A LICENSE ISSUED BY A LOCALITY IN ACCORDANCE WITH THIS PARAGRAPH SHALL HAVE THE SAME FORCE AND EFFECT AS A LICENSE ISSUED BY THE DEPARTMENT IN ACCORDANCE WITH PARAGRAPH (g) AND THE HOLDER OF SUCH LICENSE SHALL NOT BE SUBJECT TO REGULATION OR ENFORCEMENT BY THE DEPARTMENT DURING THE TERM OF THAT LICENSE. A SUBSEQUENT OR RENEWED LICENSE MAY BE ISSUED UNDER THIS PARAGRAPH ON AN ANNUAL BASIS IF THE DEPARTMENT HAS NOT ADOPTED REGULATIONS REQUIRED BY

PARAGRAPH (a) AT LEAST NINETY DAYS PRIOR TO THE DATE UPON WHICH SUCH SUBSEQUENT OR RENEWED LICENSE WOULD BE EFFECTIVE OR IF THE DEPARTMENT HAS ADOPTED REGULATIONS PURSUANT TO PARAGRAPH (a) BUT HAS NOT, AT LEAST NINETY DAYS AFTER THE ADOPTION OF SUCH REGULATIONS, ISSUED LICENSES PURSUANT TO PARAGRAPH (g).

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

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

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

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

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

(d) NOTHING IN THIS SECTION SHALL PROHIBIT A PERSON, EMPLOYER, SCHOOL, HOSPITAL, DETENTION FACILITY, CORPORATION OR ANY OTHER ENTITY WHO OCCUPIES, OWNS OR CONTROLS A PROPERTY FROM PROHIBITING OR OTHERWISE REGULATING THE POSSESSION, CONSUMPTION, USE, DISPLAY, TRANSFER, DISTRIBUTION, SALE, TRANSPORTATION, OR GROWING OF MARIJUANA ON OR IN THAT PROPERTY.

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

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

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

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

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

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

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

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

Proponent Representative 1

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Mailing Address: P.O. Box 40332, Denver, Colorado 80204
Phone: 303-861-0033
Fax: 303-861-0915
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Proponent Representative 2

Name: Brian Vicente
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Phone: 303-860-4501
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Staff Report

City Council Study Session Meeting
January 7, 2013



SUBJECT: Draft Ordinances Amending Sections 1-10-1(A) and (C), W.M.C., Concerning Mayoral Elections

PREPARED BY: Linda Yeager, City Clerk

Recommended City Council Action

Review two draft ordinances amending Sections 1-10-1(A) and (C), Westminster Municipal Code, concerning Mayoral elections and provide direction to staff.

Summary Statement

- Following voter approval of a November 1993 Charter Amendment providing for the direct election of the Mayor, legislation was enacted in March of 1995 to establish the term of office, the required percentage of votes to be elected Mayor, and “other procedures or requirements for electing the Mayor not inconsistent with the City Charter,” as allowed in the November 1993 ballot question.
- The legislation is reflected in Chapter 10, Title I, Westminster Municipal Code, and requires a run-off election between the two highest vote getters be held if a candidate for Mayor does not receive at least 40% of the votes cast; a term limit of two consecutive four-year elected terms; and that, if a seated City Councillor is elected Mayor, the balance of the Councillor’s unexpired term be filled by the candidate for City Councillor receiving the next highest number of votes after all other Council positions are filled in the election for the office of Councillor.
- As the November 2013 Biennial Municipal Election approaches, Staff and the Election Commission have heightened awareness of the potential for a Mayoral run-off election. A runoff election will need to be conducted by the City because of amendments to election laws enacted by the state and federal governments since the provisions for a run-off were adopted locally, which will involve substantial expense and effort.
- The attached draft ordinances were prepared at Council’s request. One removes the need for a run-off election and the 40% requirement by providing that the Mayor be elected by a majority of votes cast for the office of Mayor. The other draft deletes the manner by which the remaining term of a City Councillor elected to the office of Mayor would be filled and replaces it with language contained in Section 1-11-4, which conforms to Section 5.7 of the City Charter.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issues

1. Should the requirement in City Code for electing the Mayor by at least 40 % of the votes cast and the corresponding runoff requirements be replaced with a requirement for electing the Mayor by the largest percentage of votes cast for the Office of Mayor?
2. Should the unexpired term of a City Councillor elected to the office of Mayor be filled by appointment of a majority of City Council, as prescribed in Section 5.7 of the City Charter and Chapter 11 of Title I, rather than by the candidate with the next highest number of votes after all Councillor positions are filled in the election for City Councillor positions?

Alternatives

1. A range of alternatives exist with respect to the percentage of votes cast that a candidate for Mayor could need in order to be elected to office. Council could decide to increase, decrease or make that number a simple plurality of the votes cast. If the number is greater than a majority of the votes cast, the need for a run-off election should not be deleted from code provisions.
2. Council could determine no change to the current percentage or run-off election requirement is needed, but that the draft ordinance changing the manner to fill the unexpired term of a City Councillor elected to the office of Mayor should be considered to remedy the conflicts among Section 1-10-1(C), W.M.C., Section 5.7 of the City Charter, and Section 1-11-4, W.M.C.

Background Information

Since voter approval of the November 1993 Charter Amendment providing for direct election of the Mayor, there have been five Mayoral elections. In all but two of those elections, there were contests involving two or three candidates on the ballot, and the victor won by a margin in excess of 40% of the total votes cast. While there have been no run-off elections in Westminster's history, federal and state election laws have changed significantly in recent years and the Election Commission has begun the process of identifying issues and costs in a proactive approach to develop an election plan that can be implemented if a Mayoral run-off election has to be conducted following the November 2013 election.

The City will have to conduct a run-off election, if needed, as neither Adams County nor Jefferson County will conduct the election on our behalf because of equipment security regulations and their current inability to conduct special elections for other jurisdictions. The election will be held by mail ballot per Section 7-1-7(A), W.M.C. At the conclusion of the 2012 Presidential Election, there were 76,007 registered electors in Westminster. The cost of postage alone will be approximately \$34,000. It is estimated the total cost of a run-off election will approach \$100,000, as we will need to contract for ballot printing, preparation and mailing; counting equipment and programming; legal notices; and temporary staffing of election judges to receive, process and prepare returned ballots for counting. Detailed costs, the timing of a special election, as well as a mail ballot plan will be developed during the first quarter of 2013, knowing that the plan might have to be revised if the 2013 Legislative Session results in additional changes to the election law.

Staff Report – Draft Ordinances Amending Sections 1-10-1(A) and (C), W.M.C., Concerning
Mayoral Elections

January 7, 2013

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The second draft ordinance attached provides that if a Councillor with an unexpired term is elected Mayor, the unexpired term shall be filled in the manner set forth in Section 1-11-4, W.M.C., by appointment of a majority of City Council. This change would conform with Section 5.7 of the City Charter that: (a) Any vacancy which occurs in the Council shall be filled within thirty (30) days by a majority vote of the remaining members of the Council, said appointee to hold office for any balance of the unexpired term (Amended 11/7/2002).

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO.

SERIES OF 2013

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING SECTION 1-10-1 OF THE WESTMINSTER MUNICIPAL CODE CONCERNING ELECTION OF MAYOR

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 1-10-1, subsection (A), W.M.C., is hereby AMENDED as follows:

1-10-1: ELECTION AND TERM LIMITATION OF MAYOR: (2308 3064 3129)

(A) The Mayor shall be elected for a four- (4) year term by a vote of the electorate at a regular City election. To be elected, a candidate must receive ~~the largest percentage at least forty percent (40%)~~ of the votes cast for the office of Mayor. ~~If no candidate receives at least forty percent (40%), the two candidates with the highest number of votes for Mayor shall participate in a run-off election, which shall be held at the earliest possible date after the regular City election, and subject to the rules and procedures for municipal elections adopted by the City, as applicable. The successful candidate in the run-off election shall take office at the first regular Council meeting following the run-off election.~~ Until the newly elected Mayor takes office, the previous Mayor shall continue in office.

Section 2. Section 1-10-2, subsection (A), W.M.C., is hereby AMENDED as follows:

1-10-2: MAYOR PRO TEMPORE: (1699 2308)

(A) The City Council shall, at its first meeting following each regular City election, ~~or at the first regular meeting following a run-off election if applicable,~~ and after the newly elected Mayor and Councillors take office, elect one (1) Councillor to serve as Mayor Pro Tempore for a term of two (2) years expiring at the first City Council meeting following the next regular City election.

Section 3. This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this day of , 2013.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this day of , 2013.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO.

SERIES OF 2013

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING SECTION 1-10-1 OF THE WESTMINSTER MUNICIPAL CODE CONCERNING FILLING A COUNCIL VACANCY UPON MAYORAL ELECTION

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 1-10-1, subsection (C) W.M.C, is hereby AMENDED as follows:

1-10-1: ELECTION AND TERM LIMITATION OF MAYOR: (2308 3064 3129)

...

(C) Any Councillor may be a candidate for the office of Mayor, but no person may run for the office of Mayor and Councillor at the same election. If a Councillor with an unexpired term is elected Mayor, the unexpired term shall be filled in the manner prescribed by Section 1-11-4, W.M.C. ~~served by the candidate for Councillor who receives the next highest number of votes after all other Councillor positions are filled in the election for Councillor positions.~~

...

Section 2. This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this day of , 2013.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this day of , 2013.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office



WESTMINSTER

Staff Report

Information Only Staff Report
January 7, 2013



SUBJECT: Focused Workweek Update

PREPARED BY: Aric Otzelberger, Assistant to the City Manager

Summary Statement

This report is for City Council information only and no action is required by City Council.

August 2, 2012 marked the second anniversary of the City of Westminster's Focused Workweek schedule for several operations and facilities. When City Council approved moving to this schedule on a permanent basis in 2011, City Council requested an update assessing how the schedule functioned during 2012. This report is intended to fulfill this request.

From an operational perspective, it appears that the Focused Workweek is working well and, for the most part, adjustments have been made where appropriate. The City has realized several benefits from the Focused Workweek, including enhancements to customer service, reduced environmental impact for City operations, modest cost savings, productivity gains in certain areas and enhanced employee recruitment and retention ability. Staff continues to explore ways to make the Focused Workweek better for citizens, business and employees.

Background Information

On August 2, 2010, the City initiated a Focused Workweek trial for several operations and facilities. Under this schedule, business hours run from 7:00 am to 6:00 pm, Monday through Thursday with Friday closures. On May 16, 2011, Staff returned to City Council with a nine-month assessment of the Focused Workweek trial. As part of this assessment, Staff conducted surveys of citizens, contractors, City Council and Staff. Staff also looked at actual customer activity during the revised hours. Finally, Staff looked at impacts of the Focused Workweek schedule on energy usage, employee leave usage and other items. Based on the assessment, the City realized several benefits from the Focused Workweek trial, including enhancements to customer service, reduced environmental impact for City operations, modest cost savings, productivity gains in certain areas and enhanced employee recruitment and retention ability.

On May 23, 2011, City Council adopted a resolution to move business hours for City Hall, Municipal Court and several administrative offices to the Focused Workweek schedule on a permanent basis. The Focused Workweek change applied to 306 or 34% of City employees. Approximately 60% of City employees already worked a “focused” schedule before the Focused Workweek change. This included Staff in Police, Fire, Utilities Operations, Park Services, Utility Plants, and Fleet. Currently, approximately 94% of City employees work a “focused schedule.”

During review of the nine month assessment, City Council requested that Staff provide an update in the future after roughly another year of experience as to how the Focused Workweek schedule is working. To this end, Staff conducted a focus group meeting in fall of 2012 following the two year anniversary of the Focused Workweek schedule. The focus group consisted of division managers and supervisors across a wide variety of City operations. The purpose of this meeting was to have an open and honest discussion about the Focused Workweek with an eye towards making it better both externally and internally. A variety of experiences, successes, challenges and ideas were shared by focus group members.

From an operational perspective, it appears that the Focused Workweek is working well and, for the most part, adjustments have been made where appropriate. Many managers talked about improved efficiency and effectiveness due to the better alignment of staff schedules under the Focused Workweek (meeting scheduling, “knowing where everyone is,” predictability, consistency, etc.). However, there were concerns expressed in certain areas regarding the schedule’s “compression” factor and its impact on certain processes. To this end, there appears to be some opportunity for adjustments to these impacted processes. Staff agreed to examine their operations to see if there are opportunities to revise certain business processes to improve effectiveness and efficiency under the Focused Workweek. This will be an ongoing effort and Staff will communicate with City Council if process adjustments are proposed in the future.

Another primary discussion item consisted of schedule flexibility with employees. As was the case before the Focused Workweek, schedule flexibility varies by department, division and workgroup. There was a good discussion at the focus group meeting regarding parameters for flexibility and under what circumstances a regular “flex” might be appropriate. Of course, with an organization of this size, it is difficult and not the best management practice to institute a “one size fits all” approach to “flex” scheduling with employees. With this in mind, the City will continue its administrative policy where Department Heads and Division Managers will have the responsibility and discretion to work with employees on flexible work schedules based on operational needs. An employee’s job functions, responsibilities, work group impact and overall performance will be factored into decisions on regular flexible work schedules. The guiding light for consideration of “flex” schedule requests will be “does this help meet operational needs without having a negative impact on customer service and productivity?”

Information Only Staff Report – Focused Workweek Update

January 7, 2013

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The Focused Workweek schedule supports the City’s Strategic Plan Goals of “Financially Sustainable City Government Providing Exceptional Services” and “Beautiful and Environmentally Sensitive City.”

Respectfully submitted,

J. Brent McFall

City Manager