

1 **PROPOSED AMENDMENTS TO CITY ORDINANCES**

2 **CONCERNING THE POSSESSION AND CONSUMPTION OF MARIJUANA**

3
4 ***[Note on penalties and sentencing:*** *The proposed code sections below do not contain any*
5 *special provisions for penalties and sentencing. Thus, each of these sections would be*
6 *governed by the general penalty clause set forth in the D.R.M.C., i.e. up to \$999 in fines or a*
7 *year in jail. If anyone would intend to impose any sort of unique or mandatory sentencing*
8 *scheme in relation to any of these offenses, then additional language would need to be added.]*

9
10 WHEREAS, when Denver voters approved an initiated city ordinance on November 1,
11 2005 decriminalizing the possession of less than one ounce of marijuana by persons 21 years
12 of age or older under city laws, the ballot title and the measure itself indicated that the intent
13 was to allow only the “private adult use and possession of marijuana;” and

14 WHEREAS, when Denver voters approved an initiated city ordinance on November 6,
15 2007 to make “adult personal use” of marijuana the city’s “lowest law enforcement” priority, the
16 measure defined the term “adult personal use” to include only situations where “the marijuana is
17 not used or displayed in public” and the ballot title emphasized to the voters that the measure
18 again applied only to the “private use and possession of marijuana;” and

19 WHEREAS, when Denver and Colorado voters approved an initiated constitutional
20 amendment known as Amendment 64 on November 6, 2012 decriminalizing the possession of
21 less than one ounce of marijuana by persons 21 years of age or older, the measure provided,
22 “nothing in this section shall permit consumption that is conducted openly and publicly;” and

23 WHEREAS, Amendment 64 also states, “Nothing in this section shall prohibit . . . any . . .
24 entity who occupies, owns or controls property from prohibiting or otherwise regulating the
25 possession, consumption, display, transfer, distribution, sale, transportation, or growing of
26 marijuana on or in that property;” and

27 WHEREAS, although state and city laws currently prohibit the public consumption of
28 marijuana, the City Council has determined a need to better define and clarify the
29 circumstances under which the consumption of marijuana should be considered to be “open and
30 public” and thus unlawful.

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NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. Subsection 38-175, D.R.M.C. shall be amended by adding the language underlined, to read as follows:

Sec. 38-175. Possession or consumption of ~~marihuana~~ marijuana.

(a) It shall be unlawful for any person under the age of twenty-one (21) to possess one (1) ounce or less of ~~marihuana~~. If such person is under the age of eighteen (18) years of age at the time of the offense, no jail sentence shall be imposed and any fine imposed may be supplanted by treatment as required by the court.

(b) It shall be unlawful for any person to openly and publicly display or consume one (1) ounce or less of ~~marihuana~~ marijuana. If such person is under the age of eighteen (18) years of age at the time of the offense, no jail sentence shall be imposed and the fine may be supplanted by treatment as required by the court.

For purposes of this subsection (b):

(1) The term “openly” means occurring or existing in a manner that is unconcealed, undisguised, or obvious, and is observable or perceptible through sight or smell to the public or to persons on neighboring properties.

(2) The term “publicly” means:

1 a. Occurring or existing in a public place as defined by
2 C.R.S. § 18-1-901¹; or

3 b. Occurring or existing in a place or location to which
4 members of the public have access; or

5 c. Occurring or existing in a place, location or in such
6 a manner that members of the public or persons on
7 neighboring properties may observe or perceive it by sight or
8 smell, including but not limited to vehicles on public streets
9 or highways.

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11 (c) For the purposes of this section and section 38-175.5 the term
12 "~~marihuana~~" or "marijuana" shall mean and include all parts of the plant
13 cannabis sativa L., whether growing or not, the seeds thereof, the resin
14 extracted from any part of such plant, and every compound, manufacture,
15 salt, derivative, mixture, or preparation of such plant, its seeds, or its
16 resins. It does not include fiber produced from the stalks, oil or cake made
17 from the seeds of such plant, or the sterilized seed of such plant which is
18 incapable of germination, if these items exist apart from any other item
19 defined as "~~marihuana~~ marijuana" in this section. "~~Marihuana~~ Marijuana"
20 does not mean or include ~~marihuana~~ marijuana concentrate as defined in
21 this section.

22
23 (d) For the purposes of this section, the term "~~marihuana~~ marijuana
24 concentrate" shall mean hashish, tetrahydrocannabinol, or any alkaloid,
25 salt, derivative, preparation, compound, or mixture, whether natural or
26 synthesized, of tetrahydrocannabinol.

¹ Under the Colorado Criminal Code, the term "public place" is currently defined to mean: "a place to which the public or a substantial number of the public has access, and includes but is not limited to highways, transportation facilities, schools, places of amusement, parks, playgrounds, and the common areas of public and private buildings or facilities."

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Section 2. Section 39-10, D.R.M.C. shall be amended by adding the language underlined, to read as follows:

Sec. 39-10. Alcohol beverages and marijuana.

(a) It shall be unlawful, without legal authorization, to sell, serve, possess or consume alcohol beverages at or within any park, parkway, mountain park or other recreational facility.

(b) It shall be unlawful, without legal authorization, for any person to possess or consume alcohol beverages or 3.2 beer within fifty (50) feet of any roadway, playground, recreation center, or swimming pool at or within any park, parkway, mountain park or other recreational facility.

(c) It shall be unlawful to possess, consume, use, display, transfer, distribute, sell, transport, or grow marijuana at or within any park, parkway, mountain park or other recreational facility.

Section 3. Division 3 of Article II of Chapter 38, D.R.M.C. shall be amended by the addition of a new section 38-175.5, to read as follows.

Sec. 38-175.5. Marijuana prohibited on the 16th Street Pedestrian and Transit Mall.

1 (a) It shall be unlawful to possess, consume, use, display, transfer, distribute,
2 sell, transport, or grow marijuana on the 16th Street Pedestrian and Transit
3 Mall.

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5 (b) For the purposes of this section, the 16th Street Pedestrian and Transit Mall
6 shall mean the portion of 16th Street and an area north and south of 16th
7 Street within fifty (50) feet of 16th Street between the west curb line of
8 Broadway, which is twenty (20) feet east of the west property line of
9 Broadway, and the southeasterly curb line of Wewatta Street, which is sixteen
10 (16) feet west of the east right-of-way line of Wewatta Street.

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12 (c) It shall not be an offense under this section for a person to possess marijuana
13 or marijuana products purchased at a medical marijuana center or retail
14 marijuana store which is located directly on the 16th Street Pedestrian and
15 Transit Mall and the person is immediately exiting from the center or store.

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18 **Section 4.** Section 38-176 shall be repealed by deleting the language stricken to
19 read as follows:

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21 **~~Sec. 38-176. Enforcement priority—Marijuana.~~**

22 ~~(a) The Denver Police Department and the city attorney's office shall make the~~
23 ~~investigation, arrest and prosecution of marijuana offenses, where the marijuana~~
24 ~~was intended for adult personal use, the city's lowest law enforcement priority.~~

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26 ~~(b) "Adult personal use" is defined as the possession of less than one ounce of~~
27 ~~marijuana by an adult at least twenty-one (21) years of age, where the marijuana~~
28 ~~is not used or displayed in public. The sale of marijuana for remuneration is not~~
29 ~~included in the definition of personal use and is subject to prosecution under~~
30 ~~existing state laws.~~

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2 ~~(c) On or before December 31, 2007, the mayor of the City of Denver shall~~
3 ~~appoint an eleven (11) member marijuana policy review panel to assess and~~
4 ~~report on the effects of this section. The panel shall consist of one (1) at-large~~
5 ~~member of the Denver City Council; two (2) residents of the City of Denver, as~~
6 ~~selected by the petitioner committee that initiated this ordinance; one (1)~~
7 ~~drug/alcohol abuse prevention counselor; one (1) member of the Denver Metro~~
8 ~~Domestic Violence Fatality Review Committee who is not also a member of law~~
9 ~~enforcement; one (1) representative of the Denver Police Department; three (3)~~
10 ~~criminal defense attorneys, one (1) of whom shall be a public defender; one (1)~~
11 ~~representative of the Denver County District Attorney's Office; and one (1)~~
12 ~~representative of the Denver City Attorney's Office. The mayor shall appoint~~
13 ~~members to vacancies on the marijuana policy review panel as necessary.~~
14 ~~Members shall serve terms in accordance with the bylaws established by the~~
15 ~~panel at its first meeting. The primary purpose of this panel shall be to ensure~~
16 ~~that the ordinance described in this section is implemented to the greatest extent~~
17 ~~possible. The marijuana policy review panel shall:~~

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19 ~~(1) Elect a chairperson and meet at least quarterly or more frequently as~~
20 ~~necessary. These meetings shall be open to the public and citizens may~~
21 ~~testify before the committee pursuant to rules established by the panel;~~

22 ~~(2) By March 31, 2008, establish reporting criteria for the Denver Police~~
23 ~~Department and city attorney's office to report marijuana arrests and~~
24 ~~prosecutions; and~~

25 ~~(3) Submit a comprehensive written report with recommendations to the~~
26 ~~city council that will include, but not be limited to, information concerning~~
27 ~~the public safety, public administration, public health and fiscal impacts of~~
28 ~~paragraph A., above. This report shall be completed and presented at the~~
29 ~~first meeting of the full city council occurring at least six (6) months after the~~
30 ~~receipt of the third report provided by the Denver Police Department to the~~
31 ~~marijuana review panel pursuant to subparagraph (d), below.~~

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~~(d) The Denver Police Department shall report all marijuana arrests, including any citations issued for marijuana use or possession, and the city attorney's office shall report all marijuana prosecutions, including those undertaken in Denver by the Denver County District Attorney's Office for arrests made in Denver, to the marijuana policy review panel on a semi-annual basis in compliance with the criteria established by the panel pursuant to subparagraph (c)(2), above. In addition, the Denver Police Department shall report, according to the same semi-annual schedule, all arrests and citations for alcohol-related offenses and for offenses in which alcohol was cited as a contributing factor. The report in this paragraph shall cover the January 1 through June 30 and July 1 through December 31 time periods, and shall be issued no later than forty-five (45) days after the end of each period.~~

~~(e) Upon consideration of the report and recommendations submitted by the marijuana policy review panel pursuant to subparagraph (c)(3), above, the city council may modify, repeal or let stand this ordinance. Otherwise, the panel shall exist until private adult possession of marijuana is legal under Colorado Revised Statutes and the Denver Revised Municipal Code.~~

~~(f) Severability of provisions. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of this section or the application of the terms and provisions to other persons or circumstances shall not be affected.~~