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**BR13-0736 REVISED DRAFT**

**PROPOSED AMENDMENTS TO CITY ORDINANCES  
CONCERNING THE POSSESSION AND CONSUMPTION OF MARIJUANA**

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

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

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

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

WHEREAS, Amendment 64 asserts that among its purposes is the intent to regulate marijuana in a manner similar to alcohol, and accordingly the City Council has

1 determined to entirely prohibit the possession of marijuana in locations such as parks  
2 where the possession of alcohol beverages are prohibited; and

3

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

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

8 **Sec. 38-175. Possession or consumption of marihuana marijuana.**

9

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

15

16 (b) It shall be unlawful for any person to openly and publicly ~~display or~~ consume  
17 one (1) ounce or less of ~~marihuana~~ marijuana. ~~If such person is under the age of~~  
18 ~~eighteen (18) years of age at the time of the offense, no jail sentence shall be~~  
19 ~~imposed and the fine may be supplanted by treatment as required by the court.~~  
20 Any person convicted for a violation of this subsection (b) shall be punished by a  
21 fine of up to one hundred dollars and up to twenty-four hours of useful public  
22 service. For purposes of this subsection (b):

23

24 (1) The term “openly” means occurring or existing in a  
25 manner that is unconcealed, undisguised, or obvious.

26 (2) The term “publicly” means:

27 (a) Occurring or existing in a public place; or

1                   (b) Occurring or existing in any outdoor location where  
2                   the consumption of marijuana is clearly observable  
3                   from a public place.

4                   (3) The term "public place" means a place to which the  
5                   public or a substantial number of the public have access,  
6                   and includes but is not limited to streets and highways,  
7                   transportation facilities, schools, places of amusement,  
8                   parks, playgrounds, and the common areas of public and  
9                   private buildings or facilities.

10

11                   (c) For the purposes of this section, section 38-175.5, and section 39-10,  
12                   the term "~~marihuana~~" or "marijuana" shall mean and include all parts of the  
13                   ~~plant cannabis sativa L., whether growing or not, the seeds thereof, the~~  
14                   ~~resin extracted from any part of such plant, and every compound,~~  
15                   ~~manufacture, salt, derivative, mixture, or preparation of such plant, its~~  
16                   ~~seeds, or its resins. It does not include fiber produced from the stalks, oil~~  
17                   ~~or cake made from the seeds of such plant, or the sterilized seed of such~~  
18                   ~~plant which is incapable of germination, if these items exist apart from any~~  
19                   ~~other item defined as "marihuana" in this section. "Marihuana" does not~~  
20                   ~~mean or include marihuana concentrate as defined in this section.~~ of the  
21                   genus cannabis whether growing or not, the seeds thereof, the resin  
22                   extracted from any part of the plant, and every compound, manufacture,  
23                   salt, derivative, mixture, or preparation of the plant, its seeds, or its resin,  
24                   including marijuana concentrate. "Marijuana" does not include industrial  
25                   hemp, nor does it include fiber produced from the stalks, oil, or cake made  
26                   from the seeds of the plant, sterilized seed of the plant which is incapable  
27                   of germination, or the weight of any other ingredient combined with  
28                   marijuana to prepare topical or oral administrations, food, drink, or other  
29                   product.

30

1           ~~(d) For the purposes of this section, the term "marihuana marijuana~~  
2           ~~concentrate" shall mean hashish, tetrahydrocannabinol, or any alkaloid,~~  
3           ~~salt, derivative, preparation, compound, or mixture, whether natural or~~  
4           ~~synthesized, of tetrahydrocannabinol.~~

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

10          **Sec. 39-10. Alcohol beverages and marijuana.**

11

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

15

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

20

21           (c) It shall be unlawful to consume, use, display, transfer, distribute, sell, or grow  
22           marijuana at or within any park, parkway, mountain park or other recreational  
23           facility. Any person convicted for a violation of this subsection (c) shall be  
24           punished by a fine of up to one hundred dollars and up to twenty-four hours of  
25           useful public service.

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

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**Sec. 38-175.5. Display of marijuana prohibited on municipal property in the Downtown Denver Business Improvement District.**

(a) It shall be unlawful to consume, use, display, transfer, distribute, sell, or grow marijuana upon any city-owned right-of-way or other city-owned property within the boundaries of the Downtown Denver Business Improvement District, including by way of example any street, alley, sidewalk, pedestrian or transit mall, park, plaza, or parking facility. Any person convicted for a violation of this section shall be punished by a fine of up to one hundred dollars and up to twenty-four hours of useful public service.

(b) For purposes of this section, the term “Downtown Denver Business Improvement District” shall mean that area of the city bounded by and including the following streets: starting at a point at the intersection of Grant Street and 20th Avenue, extending west along 20th Avenue to its intersection with 20th Street extending northwest along 20th Street to its intersection with Wewatta Street (or Wewatta Street extended), extending southwest along Wewatta Street (or Wewatta Street extended) to its intersection with Speer Boulevard, extending generally southeast along Speer Boulevard to its intersection with 12th Street, extending southeast along 12th street to its intersection with Colfax Avenue, extending generally east along Colfax Avenue to its intersection with the alley between Sherman and Grant streets, extending north along the alley between Sherman and Grant Streets to its intersection with 16th Avenue, extending east along 16h Avenue to its intersection with Grant Street, and extending north along Grant Street to the point of beginning.

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

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

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

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

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

1           ~~(1) Elect a chairperson and meet at least quarterly or more frequently as~~  
2           ~~necessary. These meetings shall be open to the public and citizens may~~  
3           ~~testify before the committee pursuant to rules established by the panel;~~  
4           ~~(2) By March 31, 2008, establish reporting criteria for the Denver Police~~  
5           ~~Department and city attorney's office to report marijuana arrests and~~  
6           ~~prosecutions; and~~  
7           ~~(3) Submit a comprehensive written report with recommendations to the~~  
8           ~~city council that will include, but not be limited to, information concerning~~  
9           ~~the public safety, public administration, public health and fiscal impacts of~~  
10           ~~paragraph A., above. This report shall be completed and presented at the~~  
11           ~~first meeting of the full city council occurring at least six (6) months after the~~  
12           ~~receipt of the third report provided by the Denver Police Department to the~~  
13           ~~marijuana review panel pursuant to subparagraph (d), below.~~

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

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28           ~~(e) Upon consideration of the report and recommendations submitted by the~~  
29           ~~marijuana policy review panel pursuant to subparagraph (c)(3), above, the city~~  
30           ~~council may modify, repeal or let stand this ordinance. Otherwise, the panel shall~~

1           ~~exist until private adult possession of marijuana is legal under Colorado Revised~~  
2           ~~Statutes and the Denver Revised Municipal Code.~~

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

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