

# Implementation of Amendment 64 Task Force

Ralph L. Carr Colorado Judicial Center  
1300 Broadway, First Floor  
Denver, CO 80203

## Meeting Minutes

January 22, 2013

1:00 p.m. – 5:00 p.m.

### **ATTENDANCE:**

Task Force Members Present: Jack Finlaw, Barbara Brohl, Rep. Dan Pabon, Sen. Cheri Jahn, Dr. Chris Urbina, Christian Sederberg, Meg Sanders, Craig Small, Sam Kamin, Ron Kammerzell, Charles Garcia, Larry Abrahamson, Brian Conners, David Blake, Kevin Bommer, Eric Bergman, Tamara Ward, Mike Cerbo

Task Force Members Excused: John Salazar (Mr. Ron Carleton attended on his behalf)  
Dr. Christian Thurstone (Ms. Mary Jo McGuire attended on his behalf)  
Sen. Vicki Marble (Ms. Laurie Marx attended on her behalf)  
Rep. Dan Nordberg  
James Davis  
Daniel Zook

Staff Members: Ro Silva, Brandon Friede, Lindsay Cox, Mia Tsuchimoto

### **CALL TO ORDER:**

Co-Chairs Mr. Finlaw and Ms. Brohl called the meeting to order at 1:09 p.m.

Welcome and Introductions: Mr. Finlaw and Ms. Brohl welcomed the Task Force and members of the public to the meeting. Task Force members were then asked to reintroduce themselves to one another and the public. Mr. Salazar sent a proxy to the meeting, Mr. Carleton. Dr. Thurstone sent a proxy to the meeting, Ms. McGuire. Sen. Marble sent a proxy to the meeting, Ms. Marx. Task Force members Rep. Nordberg, Mr. Davis and Mr. Zook were excused without proxy representation.

Co-Chairs Mr. Finlaw and Ms. Brohl briefly reviewed the meeting agenda. While highlighting the topics for discussion, the Task Force was reminded to start thinking about the Final Report that is to be created. The Task Force is to develop and give recommendations to the General Assembly, Governor and Attorney General for consideration by the end of February.

Setting Expectations on the Final Report and Key Timelines: Mr. Finlaw reviewed the expectations of the Task Force as the group works towards compiling information in creating the Final Report. The timelines for the Department of Revenue were discussed. By July 1<sup>st</sup>, the Department is to adopt all necessary regulations. On October 1<sup>st</sup>, the Department must begin accepting and processing license applications. The Task Force was reminded of the short time it has to work and that recommendations, not rules, is the

goal of the group. Mr. Finlaw then reviewed the structure of the Final Report that the Task Force will ultimately create.

The process in reaching a Final Report and the Task Force timeline for the next three weeks was discussed. The Task Force Working Groups have started to meet and will continue to do so throughout January and February as contemplated by the Executive Order. The Working Group Co-Chairs met and created a template that will be used to document their Working Group recommendations. All Working Group recommendations must be submitted to the Task Force Co-Chairs for recognition on the meeting agenda. The Working Group recommendations must be adopted by a majority vote of the Task Force.

Approval of the Guiding Principles: Co-Chairs Mr. Finlaw and Ms. Brohl next introduced the Guiding Principles, which will serve as guidance while creating the Final Report. The Guiding Principles were generated from a survey that was distributed to all Task Force members. The summary and statistics behind how each of the principles were ranked according to importance, was then presented.

After the Guiding Principles were introduced, the Task Force took up a proposal to modify an existing Principle. Initially, the modification read:

“Take action which is responsive to the will of the electorate in a way that is faithful to the plain language of the Colorado Constitution.”

Discussion ensued whether to adopt this language or not, keeping in mind that the goal is to tie recommendations to the plain meaning of Amendment 64 as opposed to interpreting the will of the electorate. After discussion, the modification was amended to read:

“Take action which is faithful to the text of Article 18, Section 16 of the Colorado Constitution.”

This modified Principle was motioned for adoption and approved by a unanimous vote of the present Task Force members.

The Task Force next took up a discussion on a suggestion to add a Principle to the Guiding Principles list. The suggested Principle read:

“Be responsible and thoughtful in creating regulation of the over 400 businesses and the patients that currently exist in the medical marijuana industry.”

Discussion ensued among the Task Force members, whether to add this Principle or not. The dialogue revolved around squaring this language with current medical marijuana regulations and to what extent this issue is actually covered by an existing Principle. Upon motion to add the suggested Principle, the Task Force rejected the motion on a vote of: 17 Opposed – 4 For.

The Task Force next took up whether to officially adopt the discussed list of Guiding Principles. Upon discussion, issue was raised with differing language among the principles. Specifically, concern rested

with language that defined which “relationships” will be impacted by these guiding principles. Upon motion, the guiding principle:

“Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors, that are clear and transparent.”

Was amended to read:

“Consider the impact of the regulatory scheme on other legal rules, including those regulating certain relationships, such as employers and employees, landlord and tenants, and familial, that are clear and transparent.”

Upon a vote to adopt this amended Principle, the Task Force rejected on a vote of: 15 Opposed – 6 For. The Task Force then moved to adopt the list of guiding principles, seeing no more proposed amendments. The Task Force unanimously adopted the Guiding Principles.

Overview of the Recommendation Structure: Discussion next centered on how recommendations that the Task Force ultimately will produce, will look. The idea is to compile all Working Group recommendations into a compatible format. The Task Force Co-Chairs discussed each of the 13 points on the recommendation structure list, explaining the rationale behind each of the points.

Report of the Tax/Funding and Civil Law Issues Working Group: Working Group Co-Chairs Mr. Blake and Sen. Jahn delivered the report with Task Force members Ms. Ward and Mr. Cerbo. After giving a positive report on the progress thus far, the Working Group had three recommendations for adoption by the Task Force at large.

Banking #1 consisted of a recommendation that the Governor, Attorney General, and groups representing state based financial institutions, the state marijuana industry and state business interests, jointly request that the President of the United States, the US Department of Treasury and other appropriate federal agencies modify federal regulations to ensure businesses engaged in the lawful cultivation and retail distribution of marijuana are able to access banking services, and provide guidance on their intention to enforce federal and regulatory criminal laws. Co-Chair Mr. Finlaw, although very complementary of the recommendation, instructed the Task Force not to combine multiple recommendations together in a single template. However, it was noted that the recommendations may be broken down at the time the Final Report is drafted, to which there was consensus among the Task Force members. After debate, it was motioned that the Task Force adopt the recommendation of Banking #1. The Task Force adopted the recommendation by unanimous vote.

Banking #2 consisted of a recommendation that the Governor of Colorado contact and attempt to create a bi-partisan consensus among other state governors to obtain a federal response to the letter regarding banking. After a brief discussion, it was motioned that the Task Force adopt the recommendation of Banking #2. The Task Force adopted the recommendation by unanimous vote.

Banking #3 consisted of a recommendation that the General Assembly take no action on any bills that may affect marijuana business banking until April 1, 2013, and if no federal response has been received by that date, the Task Force recommends that the General Assembly consider any other options while in session. Upon discussion, the recommendation was objected to in its current form, not on its substance. The recommendation should include practical tools for the General Assembly moving forward. It was determined that the recommendation be tabled until next meeting and was remanded to the Working Group for re-drafting and a re-vote.

Report of the Criminal Law Issues Working Group: Working Group Co-Chair Mr. Connors delivered the report with Task Force members Mr. Abrahamson and Mr. Garcia. The group continues to work steadfast in hashing out different issues in law enforcement. The Working Group brought two recommendations to the Task Force for consideration.

The first recommendation brought to the Task Force's attention, was the Task Force should not revisit the issue of presumptive THC level for adults as to the offense of Driving Under the Influence of Drugs (DUID). Upon discussion, it was stated that this may be an internal recommendation and not one from the Task Force to the General Assembly. Additionally, the General Assembly has introduced a measure related to this topic. With respect to both considerations, the Working Group is asked to go back and fully understand the Colorado Commission on Criminal and Juvenile Justice's (CCJJ) process, which was used as a basis for this recommendation. The recommendation was remanded to the Working Group for modification of the issue.

The second recommendation suggested that the Task Force not address the cultivation, processing, and sale of industrial hemp. Mr. Carleton in support of this recommendation, stated that members of the General Assembly are already looking into what regulation/legislation may look like on this issue. However, there may be a better idea how to act on this issue by the next Task Force meeting. The Task force moved to table this issue for consideration until the next Task Force meeting.

Report of the Consumer Safety/Social Issues Working Group: Working Group Co-Chairs Mr. Sederberg and Dr. Urbina delivered the report of the Working Group. The group has broken itself down into 5 different areas of specific focus, in an effort to get a deeper dive on issues: Advertising/Marketing; Packaging/Labeling; Health and Safety; Product Integrity; and Education. The group has also planned out its schedule until the end of February and will make those dates available every week. It is the intent of the Working Group to bring recommendations for consideration to the next meeting.

Report of the Regulatory Framework Working Group: Working Group Co-Chairs Rep. Pabon and Mr. Kammerzell delivered the report with Task Force members Ms. Sanders and Mr. Kamin. It was reported that the group has met three times up to this point, continuing to develop knowledge for the Working Groups, from both a regulatory and business standpoint. Among issues, the concept of vertical integration remains as a point of discussion. Further, it was acknowledged that reports and recommendations from fellow Working Groups remains helpful, as there has been a consistent overlap of issues. After discussing issues of Federal Preemption and concerns under the US Constitution, Mr. Kamin agreed to give a brief presentation on Federal Intervention triggers at the next Task Force meeting.

Report of the Local Authority and Control Working Group: Working Group Co-Chairs Mr. Bommer and Mr. Bergman delivered the report of the Working Group. The group had its first meeting on January 11<sup>th</sup>. The current list of issues provided a framework for the Working Group that facilitated the discussion. There is a strong consensus in developing a dual licensing process with the Regulatory Working Group, which would allow for the ability for localities to decide the right location for developing businesses. Other issues, which have been identified, may require a discussion with other Working Groups. The vertical integration system that the Regulatory Framework Working Group is discussing may provide some direction on local issues. The group looks forward in providing several recommendations for the Task Force at the next meeting.

Overlapping Issues:

Ms. Brohl then addressed the list of overlapping issues as identified by the Regulatory Framework and Criminal Law Working Groups. Discussion ensued as to whether the specific issue was in the scope of the Amendment 64 Task Force's purview, if it was already addressed by the text of Amendment 64, and which Working Group should take the lead on addressing it. Please see the Attachment at the end of the minutes for the results of that discussion.

Public Comment: Co-Chairs Mr. Finlaw and Ms. Brohl opened up the meeting for public comment at 4:50 p.m. Nineteen members of the public chose to address the Task Force during this time, covering a variety of topics of public concern. Having no other members of the public wishing to speak, Mr. Finlaw and Ms. Brohl closed public comment at 5:25 p.m.

**CLOSING:**

Closing remarks were given by Mr. Finlaw and Ms. Brohl, where members of the public and the Task Force were all thanked for their time. A reminder was given that all of the Task Force working documents and notices of the Working Group meetings and materials will be placed on the Department of Revenue website where they can be located. It was also mentioned that there is availability on the Department of Revenue website to submit comments to the Task Force.

Adjourn Implementation of Amendment 64 Task Force: Having no further business to come before the Task Force, Mr. Finlaw and Ms. Brohl adjourned the meeting at 5:29 p.m.

## Attachment

### Overlapping Issues for Discussion – Discussed on 1/22/13

Overlapping Issue	Raised by What Work Group	Assigned to Work Group (s)
The issue of financial banking is a component that should be addressed as part of the regulatory framework (we understand that this issue is being addressed by the tax/funding/civil law issues working group)	Regulatory Framework	<ul style="list-style-type: none"> <li>• Tax/Funding &amp; Civil Issues</li> </ul>
Licensing model impacts and how it impacts local authority (overlap with local authority working group).	Regulatory Framework	<ul style="list-style-type: none"> <li>• Regulatory Framework</li> <li>• Local Authority</li> </ul>
Understand and assess the environmental impact of the industry (we believe this is beyond our scope and should be considered by the consumer safety/social issues working group).	Regulatory Framework	<ul style="list-style-type: none"> <li>• Consumer Safety / Consumer Issues</li> </ul>
Will insurance companies determine if they will cover medical marijuana in their prescription policies (we believe this issue is beyond the scope of our working group...may fit with consumer safety/social issues working group).	Regulatory Framework	<ul style="list-style-type: none"> <li>• Outside the Scope of Amendment 64 Task Force</li> </ul>
What are the impacts of Amendment 64 on means-tested programs such as Medicaid (we believe this is beyond the scope of our working group...may fit with consumer safety/social issues working group).	Regulatory Framework	<ul style="list-style-type: none"> <li>• Outside the Scope of Amendment 64 Task Force</li> </ul>
What is the funding model for regulation and enforcement (we believe this is beyond the scope of our working group and is being addressed by the tax/funding/civil law issues working group).	Regulatory Framework	<ul style="list-style-type: none"> <li>• Tax/Funding &amp; Civil Issues</li> </ul>
How does the state regulate personal growth (we believe this is beyond the scope of our working group and may be more appropriately addressed by the criminal law issues working group).	Regulatory Framework	<ul style="list-style-type: none"> <li>• Criminal Law Issues</li> <li>• Local Authority</li> </ul>
There needs to be a definition for "growing openly or publicly" (we believe this is beyond the scope of our working group and is being addressed by the criminal law issues working group).	Regulatory Framework	<ul style="list-style-type: none"> <li>• Criminal Law Issues</li> </ul>
Can the state develop emergency funding for program implementation (we believe this is beyond the scope of our working group and is being addressed by the tax/funding/civil law issues working group).	Regulatory Framework	<ul style="list-style-type: none"> <li>• Tax/Funding &amp; Civil Issues</li> </ul>
Two issues which may be in direct conflict with Amendment 64 – discussion at the Task Force: <ul style="list-style-type: none"> <li>• Consider whether tracking mechanisms are needed for recreational purchasers and users.</li> <li>• What are the tracking mechanisms and are they</li> </ul>	Regulatory Framework	<ul style="list-style-type: none"> <li>• Addressed by Part 5b2c of Amendment 64 – Department <u>shall not</u> require tracking.</li> </ul>

relevant in the framework?		
Social Clubs	Criminal Law	<ul style="list-style-type: none"> <li>Local Authority with assistance from Criminal Law</li> </ul>
Use of vending machines	Criminal Law	<ul style="list-style-type: none"> <li>Regulatory Framework</li> </ul>
Home cultivation / residential grows / up to one ounce versus product from up to 6 plants	Criminal Law	<ul style="list-style-type: none"> <li>Criminal Law with assistance from Consumer Safety / Consumer Issues and Local Authority</li> </ul>
Craigslist-type advertising of marijuana for sale	Criminal Law	<ul style="list-style-type: none"> <li>Consumer Safety / Consumer Issues</li> </ul>
Child protection / child abuse issues – parental use of marijuana	Criminal Law	<ul style="list-style-type: none"> <li>Consumer Safety / Consumer Issues with assistance from Criminal Law</li> </ul>
Weighing of marijuana content in edibles, oils, concentrates, etc.	Criminal Law	<ul style="list-style-type: none"> <li>Consumer Safety / Consumer Issues</li> </ul>