

# Implementation of Amendment 64 Task Force

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

## Meeting Minutes

February 5, 2013

1:00 p.m. – 5:00 p.m.

### **ATTENDANCE:**

Task Force Members Present: Jack Finlaw, Barbara Brohl, Rep. Dan Pabon, Sen. Cheri Jahn, Rep. Dan Nordberg, Sen. Vicki Marble, Christian Sederberg, Craig Small, Sam Kamin, Ron Kammerzell, Dr. Christian Thurstone, Charles Garcia, Larry Abrahamson, Brian Connors, David Blake, Kevin Bommer, Eric Bergman, Tamara Ward, Mike Cerbo, Kristal Bernert

Task Force Members Excused: John Salazar (Mr. Ron Carleton attended on his behalf)  
James Davis (Chief John Jackson attended on his behalf)  
Meg Sanders (Mr. Norton Arbelaez attended on her behalf)  
Dr. Chris Urbina (Ms. Meg Hall attended on his behalf)  
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 1:03 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. Mr. Davis sent a proxy to the meeting, Chief Jackson. Ms. Sanders sent a proxy to the meeting, Mr. Arbelaez. Dr. Urbina sent a proxy to the meeting, Ms. Hall. Task Force member Mr. Zook was excused without proxy representation.

Co-Chairs Mr. Finlaw and Ms. Brohl briefly reviewed the meeting agenda and the documents that accompanied. The handouts were copies of the recommendations that were to be discussed during the meeting, which can also be found on the Department of Revenue website.

Federal Legal Issues: Mr. Kamin provided the Task Force with a presentation on the federal legal issues involved with marijuana regulation. This was an effort to better understand the relationship between states and the federal government on this issue. Mr. Kamin's presentation was his view of the law as it stands and offered no insights as to any potential outcome. The presentation consisted of a brief history of how marijuana has been regulated in the United States and its current federal status. This provided an interesting contrast for consideration, given the implications of Amendment 64. After the presentation, Mr. Kamin answered questions from members of the Task Force around various related constitutional

issues. Mr. Finlaw stated that there still has not been any guidance from the Department of Justice on what to expect moving forward. However, three cautions were stated: the federal government may look favorably on Colorado if a tight regulatory scheme is enacted; there needs to be assurance that marijuana grown/sold here, stays here; and there needs to be assurance that those under 21 years of age do not have access to marijuana.

Legislative Process: Co-Chairs Mr. Finlaw and Ms. Brohl reminded the Task Force that all work must be completed by February 28<sup>th</sup>. As a result, it was determined that an additional meeting needs to be held on February 25<sup>th</sup>, from 1-5 p.m. It is expected that the Task Force will produce upwards of 40-60 recommendations that will be compiled into the Final Report.

The next topic was what an ideal approach, with regard to legislation, should be for the Task Force. Remarks were then given by Rep. Pabon, Rep. Nordburg and Sen. Jahn about possible challenges moving forward. It was expressed that drafting and passing an omnibus bill would be the most ideal but conceded the fact that it might be difficult. On more controversial aspects, legislation may have to move through piecemeal. Mr. Finlaw reminded that Task Force that its job is to be a tool of assistance for the General Assembly and ultimately, they will take the lead on implementation.

Break was taken between 2:05 p.m. and 2:24 p.m.

Report of the Regulatory Framework Working Group: Working Group Co-Chairs Rep. Pabon and Mr. Kammerzell delivered the report with Task Force member Mr. Kamin. The Working Group stated that it had two recommendations for the Task Force's consideration.

The first recommendation from this group was #7 – Hybrid Framework. This recommendation would consist of a “hybrid” approach to the regulatory framework, which would include strict inventory control, surveillance requirements and seed-to-sale tracking. Under this regulatory model, vertical integration would not be required or prohibited. This option allowed for the integration of both vertical and open integration models, providing flexibility and additional specialization within the market. The group stated that part of its rationale was to build on existing legal structures that remain from the integration of medical marijuana. The group then answered various questions that arose from the other Task Force members. After discussion, the matter was moved to a vote for adoption as drafted. The Co-Chairs reminded Task Force members of the voting guidelines and assurances from proxy members that they have voting authority. Upon a vote, majority was not met. It was recommended that the provision be remanded back to the working group for further development.

After initial vote on the recommendation as drafted, it was moved that a vote be taken on the *concept*, that recommendation of a vertical integration structure be enacted with a sunset provision after two years. Upon a vote, majority was not met. Ms. Brohl subsequently reminded the Task Force members and the Working Group of the 90 day licensing requirement the state must abide by and a failure to do so allows for some locality autonomy. Based on neither motion on #7 – Hybrid Framework passing, the recommendation was remanded to the Working Group for further consideration.

The second recommendation from the regulatory Framework Working Group was #8 – Local Licensing. This recommendation allows for a state law adopted recognizing local authority to require a license for any marijuana establishment as a time, place, manner and number regulation. The law provides that a state license shall be issued conditionally and not operational until a local license is granted, in jurisdictions with a local licensing requirement. If a jurisdiction does not have such a requirement, the conditionally issued state license shall not become operational unless local authority affirmatively authorizes the activity for which the state license was issued. The recommendation was discussed among the Task Force members and the Working Group answered questions regarding the proposal. The recommendation was moved for a vote of adoption as drafted upon discussion concluding. The Task Force approved recommendation #8 by a unanimous vote.

Report of the Local Authority and Control Working Group: Working Group Co-Chairs Mr. Bommer and Mr. Bergman delivered the report of the group. It was reported that this Working Group had two recommendations for the consideration of the Task Force.

The first recommendation from this group was #9 – Local Funding Mechanisms. This recommendation speaks to adopting legislation that clarifies the availability and limitations of funding mechanisms for local jurisdictions licensing recreational marijuana businesses. Specifically, clarity is sought to understand: the meaning of operational fees in Section 5(f) and limitations; whether the State may raise fees to offset additional local costs; and whether the State’s 50% share provided to localities is limited to the \$5000/\$500 caps set forth in 5(a)(II) or would include 50% of all additional amounts that may be charged by the State if greater amounts are determined necessary. The Working Group Co-Chairs admitted that this recommendation will require additional dialogue with other Working Groups and will need to be rewritten. Mr. Finlaw took a moment to use this time as a teaching moment, reminding the Task Force that actual recommendations are needed moving forward. Recommendation #9 was remanded to the Working Group for further work.

The second recommendation from the Local Authority and Control Working group was #10 – Dual Licensing. The recommendation suggests adoption of a dual licensing system, similar to that of 12-43.3-301, which may allow localities to defer to State licensing standards in allowing for recreational marijuana businesses. This works to avoid dual license mandates and allows for localities, much like with medical marijuana, to ban, choose to adopt own additional standards, or defer to State-adopted standards. The Working Group Co-Chairs stated that there is not a one size fits all approach to the licensing procedure but this allowed for the best flexibility. Additionally, this was promoted as a great alignment with the earlier passed recommendation #8. After a brief discussion among the Task Force members, the recommendation was moved for a vote on adoption. The Task Force approved recommendation #10 by a unanimous vote.

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. The Working Group had two recommendations for adoption by the Task Force at large.

The first recommendation from this group was #11 – Maintain status quo for employers/employees. This recommendation suggests that employers be encouraged to review current drug free workplace policies,

including but not limited to hiring, sanctioning, termination and drug testing. This recommendation was in response to the plain language of Amendment 64 which intended to maintain the status quo in the employer and employee relationship. In introducing this recommendation, the Working Group also presented two dissenting opinions on this issue. Dissent #1 identified Amendment 64 as creating a lawful activity, which now should not be restricted. Dissent #2 was read and stated that Amendment 64 was self executing and it should be maintained in its plain language. Discussion among the Task Force members ensued around both dissenting views and the recommendation language as proposed. A motion was made and seconded to vote on the language of recommendation #11 as proposed. Upon vote, the Task Force approved the recommendation by majority: 20 For – 2 Opposed.

The second recommendation from the Tax/Funding and Civil Issues Working Group was #12 – Joint Resolution for Banking. This recommendation was brought to the Task Force's attention for the second time, after being remanded for edit at the January 22<sup>nd</sup> Task Force meeting. As drafted, the recommendation states that, the General Assembly consider any lawful alternatives to assist marijuana businesses efforts to access the banking system, if no substantive reply from the Federal Government is received by March 31, 2013. Alternatives include a Joint Resolution that would call on the Federal Government to take action by exempting marijuana businesses in states where legalized. Another is authorizing a commission by an independent policy institute with experience in banking laws and regulations to develop a proposal. Having edited the recommendation for form rather than substance, from the January 22<sup>nd</sup> meeting, it was motioned that a vote for adoption takes place. The Task Force adopted recommendation #12 by unanimous vote.

Report of the Criminal Law Issues Working Group: Working Group Co-Chair Mr. Connors delivered the report with Task Force members Rep. Nordberg, Mr. Abrahamson and Mr. Garcia. The Working Group brought two recommendations to the Task Force for consideration.

The first recommendation brought to the Task Force's attention was #13 – Support HB 13-1114. This recommendation suggests that the General Assembly enact House Bill 13-1114, Concerning the Penalties For Persons Who Drive While Under The Influence Of Alcohol Or Drugs. The Working Group stated that this suggestion represented, and served as an endorsement, of the work done by the Commission on Criminal & Juvenile Justice (CCJJ). Under the work done by the CCJJ, support of HB 13-1114 would bring a 5 nanogram presumption to DUID offenses. After presentation of the recommendation, subsequent discussion ensued among the Task Force members concerning the process of the CCJJ in forming their study. After a brief discussion, the recommendation was moved for vote. Upon vote, the Task Force approved the recommendation by majority: 18 For – 4 Opposed.

The second recommendation from this Working Group was #14 – Juvenile Possession. This recommendation sought to amend C.R.S. 18-13-122 Minor in Possession of Alcohol, to add C.R.S. 18-13-122.1 Minor in Possession of Marijuana. Additionally, this recommendation would amend C.R.S. 18-18-406(1) Possession of less than two ounces of marijuana. The result is to provide education and treatment for juveniles in possession of less than one ounce of marijuana, as a first offense, without the consequences of a conviction in municipal court. However, this speaks to those aged under 18 and does not address possession of small amounts of marijuana by those aged 18-20. The subsequent discussion concerning this recommendation was the possible effect of keeping this a criminal issue. In repealing the

criminal implication, a juvenile would only be subject to juvenile court on a civil summons. After discussion, it was moved that the Task Force vote on the adoption of this recommendation as drafted. The Task Force adopted recommendation #14 by unanimous vote.

Report of the Consumer Safety/Social Issues Working Group: Working Group Co-Chair Mr. Sederberg delivered the report with Task Force member Dr. Thurstone. The group at this time had no recommendations for the Task Force's consideration. However, the Working Group continues to make considerable progress and will have a number of recommendations at the next Task Force meeting.

Executive Report: At this time, Co-Chairs Mr. Finlaw and Ms. Brohl introduced recommendation #15 – Industrial Hemp. This recommendation was further read and explained by Mr. Carleton, and stated, that the General Assembly should adopt legislation during the 2013 session authorizing the cultivation, processing and sale of industrial hemp. The Commissioner of Agriculture would be authorized to establish regulatory requirements for registration and inspection. A final rule would be promulgated no later than December 31, 2013. It was identified that the legislature may in fact be currently moving on this issue as a free standing bill, with bi-partisan support. It was motioned that a vote for adoption be taken on this recommendation. The Task Force adopted recommendation #15 by unanimous vote.

The Task Force Co-Chairs took this time to remind everyone that the next meeting is scheduled for February 19<sup>th</sup>.

Public Comment: Co-Chairs Mr. Finlaw and Ms. Brohl opened up the meeting for public comment at 4:57 p.m. Twenty-one 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 5:36 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.

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 5:38 p.m.