

October 14, 2013

Dear Amendment 64 Committee Chair Charlie Brown and Committee Members,

I am writing to the Amendment 64 Committee on behalf of my organization's medical marijuana patient-members who reside in the City of Denver. Under consideration by the Committee is BR13-0736, which, among other things, would significantly and harmfully expand the definition of openly using marijuana under Sec. 38-175 of the Denver Municipal Code. The penalty for violations include "up to \$999 in fines or a year in jail." Passage of this law would mean that medical marijuana patients in Denver could be criminally prosecuted and sent to jail for using marijuana for medical purposes in their own residence in accordance with the rights guaranteed to them by Article XVIII of the Colorado Constitution. Moreover, the goals of the proposed ordinance could be achieved by less restrictive and already existing means. Because of this fact, we respectfully request the Committee to reject BR13-0736 in its entirety.

The citizens of Colorado voted to guarantee access and use of marijuana for therapeutic purposes when Amendment 20 was passed in 2001. Amendment 20 already put into law *reasonable* restrictions on where patients may use their medicine on their own property.<sup>1</sup> The limitations in Amendment 20 are completely consistent with the Denver Municipal Code on air quality nuisance.<sup>2</sup> While the proponent's fact sheet for BR13-0736 makes that claim that the ordinance clarifies issues with public use, the reality is that the proposed law would confuse the existing test for nuisance odors set forth in Section 4-10 of the Denver Municipal Code.<sup>3</sup> Because BR13-0736 would expanded "public" use to include use on private property in Denver if it is "unconcealed, undisguised, or obvious, and is observable or perceptible through sight or smell to the public or to persons on neighboring properties," it imposes a vague standard, meaning one could be in violation of BR13-0736 without creating an actual legally defined nuisance. Section 4-10 of the Denver Municipal Code already imposes a clear test for what constitutes an odor nuisance. Passage of BR13-0736 would mean that medical marijuana patients could be sent to jail for up to year without any finding of odorous nuisance simply for following

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- 1 Patients may not use marijuana for medical purposes "in a way that endangers the health or well-being of any person" or "in plain view of, or in a place open to, the general public." CO CONST Art. 18, § 14(i)(5).
  - 2 "It shall be an unlawful nuisance for any person to cause or permit the emission of odorous air contaminants from any source so as to result in detectable odors that leave the premises upon which they originated and interfere with the reasonable and comfortable use and enjoyment of property." (emphasis added). Denver, Colo. Municipal Code § 4-10(b).
  - 3 "Council Bill 736 – Concerning Possession and Consumption of Marijuana," available at <http://www.denvergov.org/sirepub/cache/2/5keo0y55pschmez1euyd1hyx/45429810142013115955215>. PDF (last accessed October 14, 2013).

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their physician's recommendation. Yet for certain patients, for example, those living with severe nausea, the rapid onset of inhaled marijuana may be the necessary method for them to use.

It is unacceptable that medical marijuana patients in Denver could face jail time simply for using their medicine in accordance with their doctor's recommendation, as the city law would frustrate the purpose and intent of Amendment 20. Passage of this law would almost certainly create a host of lawsuits from patients who have their state Constitutional rights violated by enforcement of BR13-0736. We respectfully request the Committee to honor the rights of Denver medical marijuana patients by rejecting BR13-0736 in its entirety.

Sincerely,

Michael Liszewski  
Policy Director

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