



A G E N D A
CHINO HILLS CITY COUNCIL
REGULAR MEETING
TUESDAY, NOVEMBER 22, 2016

6:00 P.M. CLOSED SESSION
7:00 P.M. PUBLIC MEETING/PUBLIC HEARINGS

CIVIC CENTER, CITY COUNCIL CHAMBERS
14000 CITY CENTER DRIVE, CHINO HILLS, CALIFORNIA

This agenda contains a brief general description of each item to be considered. Except as otherwise provided by law, no action shall be taken on any item not appearing on the agenda unless the City Council makes a determination that an emergency exists or that a need to take immediate action on the item came to the attention of the City subsequent to the posting of the agenda. The City Clerk has on file copies of written documentation relating to each item of business on this Agenda available for public inspection in the Office of the City Clerk, in the public binder located at the entrance to the Council Chambers, and on the City's website at www.chinohills.org while the meeting is in session. Materials related to an item on this Agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the Office of the City Clerk at 14000 City Center Drive, Chino Hills, CA during normal business hours.

In compliance with the Americans with Disabilities Act, if you require special assistance to participate in this meeting, please contact the City Clerk's Office, (909) 364-2620, at least 48 hours prior to the start of the meeting to enable the City to make reasonable arrangements. Thank you.

Speaker Cards - Those persons wishing to address the City Council on any matter, whether or not it appears on the agenda, are requested to complete and submit to the City Clerk a "Request to Speak" form available at the entrance to the City Council Chambers. In accordance with the Public Records Act, any information you provide on this form is available to the public. **You are not required to provide personal information in order to speak, except to the extent necessary for the City Clerk to call upon you.** Comments will be limited to three minutes per speaker.

PLEASE SILENCE ALL PAGERS, CELL PHONES AND OTHER ELECTRONIC EQUIPMENT WHILE COUNCIL IS IN SESSION. Thank you.

CITY COUNCIL MEMBERS

ART BENNETT, MAYOR
RAY MARQUEZ, VICE MAYOR
ED GRAHAM
CYNTHIA MORAN
PETER ROGERS

KONRADT BARTLAM
CITY MANAGER

MARK D. HENSLEY
CITY ATTORNEY

CHERYL BALZ
CITY CLERK

6:00 P.M. - CALL TO ORDER

1. **PUBLIC COMMENTS:** At this time members of the public may address the City Council regarding any items appearing on the Closed Session agenda. Those persons wishing to address the City Council are requested to complete and submit to the City Clerk a "Request to Speak" form available at the entrance to the City Council Chambers. Comments will be limited to three minutes per speaker.

RECESS INTO CLOSED SESSION

CLOSED SESSION

2. Conference with Legal Counsel pursuant to Government Code Section 54956.9(d)(2) - Anticipated litigation related to Mexican American Legal Defense and Education Fund (MALDEF) demand that the city convert its at-large election system to a district-based electoral system in order to comply with the California Voting Rights Act
3. Conference with real property negotiators pursuant to Government Code Section 54956.8 for price and terms for property located at Tract No. 13880-2 Lot A; APN: 1033331-42; Michael and Elizabeth O'Banion, Melvin and Michelle Hasseler, Jerry and Jerri Lynn Hunter, Majid Allyas and Bann Aboudi-Allyas, Stephen and Paulette Hawkins, David Bitzer, and Konradt Bartlam, Negotiators

7:00 P.M. - CONVENE MEETING / ROLL CALL

PLEDGE OF ALLEGIANCE TO THE FLAG

INVOCATION: Dr. Dorothy Shepherd, Christ Trinity Ministries

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

CITY COUNCIL REORGANIZATION

Select Mayor and Vice Mayor for terms of December 1, 2016 through November 30, 2017

4. **RECOGNITION – CONTEST WINNERS:** Recognition of the winners of the Interview-a-Veteran Essay Contest

7th Grade - 1st Place	Komal Kaur	Townsend Junior High
7th Grade - 2nd Place	Paola Sifuentes	Townsend Junior High
7th Grade - 3rd Place	Miriam Ugarcovici	Townsend Junior High
8th Grade - 1st Place	Lydia Sunyoung Chung	Townsend Junior High
8th Grade - 2nd Place	Kristofer Roland Bohol Nino	Townsend Junior High
8th Grade - 3rd Place	Samantha Hassel	Townsend Junior High

5. PROCLAMATION - Proclaiming Chino Hills as a Purple Heart City
6. RECOGNITION: GoodEarth Montessori School's 25th Anniversary
7. INTRODUCTION - New Employees:

Letie Estrada, Account Technician, Finance
Nisha Wells, Environmental Program Coordinator, Public Works
8. PUBLIC COMMENTS: At this time members of the public may address the City Council regarding any items within the subject matter jurisdiction of the Council, whether or not the item appears on the agenda, except testimony on Public Hearing items must be provided during those hearings. Individual audience participation is limited to three minutes per speaker. Please complete and submit a speaker card to the City Clerk.

CITY DEPARTMENT BUSINESS

CONSENT CALENDAR ITEMS (8 ITEMS) - All matters listed on the Consent Calendar are considered routine by the City Council and may be enacted by one motion in the form listed below. There will be no separate discussion of these items unless, before the City Council votes on the motion to adopt, Members of the City Council or staff request the matter to be removed from the Consent Calendar for separate action. Removed consent items will be discussed immediately after the adoption of the balance of the Consent Calendar.

9. Approve November 8, 2016 City Council Meeting Minutes
10. Approve Warrant Registers for period of October 20, 2016 through November 2, 2016 in amount of \$1,742,524.17
11. Receive and file City Official Reports pursuant to Travel, Training and Meetings Reimbursement Policy for period of October 25 through November 8, 2016
12. Adopt resolution declaring City's intent to transition from At-Large to District-Based Elections, outlining steps to facilitate transition, and setting time frame for action
13. Introduce an Ordinance entitled: An Ordinance of the City Council of the City of Chino Hills, amending Chapter 15.04 of the City of Chino Hills Municipal Code by adopting by reference the 2016 Editions of the California Building Code Volumes 1 and 2, the California Plumbing Code, the California Residential Code, the California Electrical Code, the California Mechanical Code, the California Energy Code, and the California Green Building Standards Code with Appendices and Amendments thereto based on local conditions - For first reading by title only - Waive further reading, and set a Public Hearing to consider adoption for December 13, 2016

14. Receive and file fourth quarter budget review, approve appropriation budget amendments, and recommended changes to the Capital Improvement Program
15. Authorize issuance of Purchase Order to Lake Chevrolet in amount of \$39,925.55 for purchase of 2017 Chevrolet Silverado 1500 half-ton pickup for Public Works Sanitation Division
16. Adopt resolution approving Program Supplement Agreement No. 007-N1 with the State of California Department of Transportation (CalTrans) regarding The Los Serranos Infrastructure Improvements - SRTS 3 Project to construct sidewalk, curb and gutter, curb ramps, storm drain, and street lights at various locations

DISCUSSION CALENDAR - This portion of the City Council Agenda is for all matters where staff and public participation is anticipated. Individual audience participation is limited to three minutes. Please complete and submit a speaker card to the City Clerk.

17. Introduce and adopt by a minimum four/fifths vote Urgency Ordinances entitled: (1) An Urgency Ordinance of the City Council of the City of Chino Hills, amending Chapter 5.28 of the Chino Hills Municipal Code to prohibit all Commercial Marijuana Activity, and (2) An Urgency Ordinance of the City Council of the City of Chino Hills, prohibiting permit issuance for marijuana-related land uses within the City for a period of forty-five days to consider amending Title 16 of the Chino Hills Municipal Code; and Introduce an Ordinance entitled: An Ordinance of the City Council of the City of Chino Hills, Amending Chapter 5.28 of the Chino Hills Municipal Code to prohibit all Commercial marijuana activity and finding exempt from review under the California Environmental Quality Act

PLANNING COMMISSION MATTERS - *This portion of the City Council Agenda is for matters from the November 15, 2016, Planning Commission Meeting. No action is required unless two members of the City Council wish to request a review of the matter, in accordance with Section 16.58.070 of the Chino Hills Municipal Code. Expiration of the public appeal period on Planning Commission Item No. 18 is November 29, 2016, 5:30 p.m.*

18. Custom Home Design Review No. 432 - 15511 Painter Drive: Forrest Tsao, Applicant: Adopted a resolution finding that the project is exempt from review under the California Environmental Quality Act and approved Custom Home Design Review No. 432 for the construction of a 6,212 square foot, two-story addition/remodel to an existing 2,124 square-foot two-story, single-family detached home with two (2), two-car garages, and determining that the project is exempt from review under the California Environmental Quality Act based on findings of facts

PUBLIC INFORMATION OFFICER REPORT

SAFETY UPDATES - Police and Fire (if any)

COUNCIL REPORTS

Omnitrans - Council Member Graham

San Bernardino Associated Governments - Council Member Graham

Water Facilities Authority - Council Member Rogers

COUNCIL COMMENTS

ADJOURN IN MEMORIAM AND IN HOPE: Adjourn in tribute and honor of those who serve and have served in the Armed Forces at home and abroad. Their sacrifice and strength protect the goals and ideals that have made this Country great

ADJOURNMENT:

MINUTES

CITY COUNCIL
CITY OF CHINO HILLS

NOVEMBER 8, 2016
REGULAR MEETING

Mayor Bennett called the Meeting of the City Council of the City of Chino Hills to order at 7:00 p.m. and requested the City Clerk to call roll.

PRESENT: COUNCIL MEMBERS: ART BENNETT
RAY MARQUEZ
ED GRAHAM
CYNTHIA MORAN
PETER ROGERS

ABSENT: COUNCIL MEMBERS: NONE

ALSO PRESENT: KONRADT BARTLAM, CITY MANAGER
ELIZABETH CALCIANO, ASSISTANT CITY ATTORNEY
CHERYL BALZ, CITY CLERK
DENISE CATTERN, PUBLIC INFORMATION OFFICER
DARREN GOODMAN, POLICE CHIEF, CHINO HILLS POLICE
JUDY LANCASTER, FINANCE DIRECTOR
JOANN LOMBARDO, COMMUNITY DEVELOPMENT DIRECTOR
NADEEM MAJAJ, PUBLIC WORKS DIRECTOR
JONATHAN MARSHALL, COMMUNITY SERVICES DIRECTOR
BENJAMIN MONTGOMERY, DEPUTY CITY MANAGER
TIM SCHAKELFORD, FIRE CHIEF, CHINO VALLEY FIRE
DEPARTMENT
LYNNAE SISEMORE, ASSISTANT CITY CLERK

PLEDGE OF ALLEGIANCE TO THE FLAG

Led by Commander Dennis Murillo, Chino Veterans of Foreign Wars Post 11546.

INVOCATION

Led by Pastor Brian Benson, Chino Valley Community Church

City Clerk Balz announced that there were no Closed Session matters to report on being no Closed Sessions were held.

PROCLAMATION - 50TH ANNIVERSARY - VIETNAM WAR

Mayor Bennett presented a Proclamation proclaiming May 28, 2012 to November 11, 2025 as Commemoration of the Vietnam War to Commander Don Avila, American Legion Post 299, Commander Dennis Murillo, Chino Veterans of Foreign Wars Post 11546, and Joe Bok, head of the Veterans Group of the 55+ Club. He thanked the local era Vietnam Veterans for their sacrifice and expressed his heartfelt gratitude for contributing to peace and freedom around the world.

Mr. Avila, Mr. Murillo, and Mr. Bok humbly thanked Council for the recognition.

RECOGNITION - HONORING VIETNAM WAR VETERANS

Mayor Bennett presented Certificates of Recognition and Vietnam Veteran Lapel Pins to 24 local era Vietnam Veterans by honoring them for protecting and serving this great Nation.

PROCLAMATION - MIGHTY AIR FORCE WEEK

Mayor Bennett presented a Proclamation proclaiming the week of October 8-14, 2016, as Mighty Air Force Week to Wilbur Richardson of the Eighth Air Force Historical Society. He stated that Mr. Richardson is a World War II Veteran and a true hero.

Mr. Richardson thanked Council for the acknowledgment and spoke of the World War II statistics of lives that were lost protecting this great country.

PROCLAMATION - FAMILY WEEK

Mayor Bennett presented a Proclamation proclaiming the week of November 20-26, 2016 as Family Week in Chino Hills accepted by Healthy Hills Steering Committee Members.

Al Matta, Healthy Hills Steering Committee Member, stated that it is a privilege to live in a community that recognizes and takes pride in volunteers and Veterans.

PUBLIC COMMENTS

Bob Goodwin, resident, spoke about development and traffic issues in the City.

Al Matta, resident, expressed thanks to all the local era Vietnam Veterans and shared the history of a World War II book that he owned.

Karen Haughey, San Bernardino County Supervisor Curt Hagman Representative, invited the public to attend the Veterans Appreciation Day and Jobs & Services Fair hosted by Supervisor Hagman and the City of Ontario on Friday, November 18th from 10:00 a.m. to 1:00 p.m. at the Westwind Community Center, 2455 E. Riverside Drive, Ontario.

Belinda Douglas, Chino Valley Chamber of Commerce, spoke of upcoming Chamber events in the City.

CITY DEPARTMENT BUSINESS

CONSENT CALENDAR

Item number 12, regarding investment policy guidelines for the City's Public Agency Retirement Services (PARS) Post-Employment Benefits Trust was pulled for discussion and separate vote.

Motion was made by Council Member Rogers and seconded by Vice Mayor Marquez to approve the following items on the Consent Calendar:

MINUTES

The City Council approved the October 25, 2016 City Council Meeting Minutes, as presented.

WARRANT REGISTERS

The City Council approved the Warrant Registers for the period of October 6 through October 19, 2016 in amount of \$2,714,789.83, as presented.

CITY OFFICIAL REPORTS

The City Council received and filed the City Official Reports pursuant to Travel, Training and Meetings Reimbursement Policy for period of October 12 through October 25, 2016, as presented.

FINANCIAL REPORTS

The City Council received and filed the Monthly Financial Reports for September 2016.

TREASURER REPORT

The City Council approved the Treasurer's Report for September 2016.

WIRELESS COMMUNICATIONS FACILITIES - ORDINANCE ADOPTED

The City Council adopted **Ordinance No. 302** entitled: *An Ordinance of the City Council of the City of Chino Hills, California, Amending in its entirety Chapter 16.44 (Wireless Communications Facilities) and Appendix A (Regulation of uses by Zoning District) of the Chino Hills Municipal Code and determining the Ordinance is exempt from review under the California Environmental Quality Act for second reading by title only and waived further reading.*

AWARD OF BID - LOS SERRANOS INFRASTRUCTURE IMPROVEMENTS - SAFE ROUTES TO SCHOOLS PHASE 2 SIDEWALK CONSTRUCTION PROJECT

The City Council (1) approved an appropriations budget amendment in the amount of \$92,000 from the Measure I Fund Balance to the Los Serranos Infrastructure Improvements Safe Routes to Schools Phase 2 (SRTS 2) sidewalk construction project; (2) awarded the contract to VT Electric, Inc. in an amount of \$137,270 for the installation of Street Lighting on Country Club Drive, Williams Avenue, and Esther Street project; (3) authorized staff to issue a Notice of Award; and (4) authorized staff to accept the performance and payment bonds, proof of insurance, and issue a Notice to Proceed upon receipt and acceptance of such.

AGREEMENT AMENDMENT - ASPHALT AND CONCRETE REPAIR SERVICES

The City Council authorized the execution of Amendment No. 1 to Agreement No. A2012-01 with Imperial Paving Co. increasing the annual on-call asphalt and concrete repair services by \$75,000 for a total annual amount not-to-exceed \$225,000.

Motion carried as follows:

AYES: COUNCIL MEMBERS: BENNETT, MARQUEZ, GRAHAM, MORAN, ROGERS

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

DISCUSSION CALENDAR

INVESTMENT POLICY GUIDELINES - PUBLIC AGENCY RETIREMENT SERVICES (PARS) - RESOLUTION ADOPTED

Council Members Graham and Rogers removed this item from the Consent Calendar for further discussion.

Council Member Graham asked staff to speak about the undertaking of the City's investment policy guidelines for the Public Agency Retirement Services.

City Manager Bartlam stated that in September the City Council approved a new trust that will manage the City's unfunded liability for retirement, and that the investment policy guidelines were established as a tool for the City Council and staff to monitor. He said that Highmark Capital Management is the investment manager for the trust, and that the City has a moderate strategy of 50% bond investments and 50% equity or stock investments. He stated that is a relatively conservative approach to investing the \$5 million that the City Council has set aside, and that the rate of return in the last five years has been five and a half percent. City Manager Bartlam stated that the true benefit to the City is the market rate of return on a million dollar investment, as opposed to standard local investment fund.

Following discussion, a motion was made by Council Member Graham and seconded by Council Member Rogers to adopt **Resolution No. 2016R-053**, *of the City Council of the City of Chino Hills, approving the adoption of Investment Policy Guidelines for the City's Public Agencies Post-Employment Benefit Trust, and Delegating Investment Authority to the City Treasurer for the Fiscal Year 2016-17.*

Motion carried as follows:

AYES: COUNCIL MEMBERS: BENNETT, MARQUEZ, GRAHAM, MORAN, ROGERS

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

DISCUSSION CALENDAR

APPOINTMENT - FIRE FACILITY AD HOC COMMITTEE

City Manager Bartlam stated that the City Council had a joint meeting with the Chino Valley Fire District in September and said the purpose of the meeting was to receive the Fire District's perspective on future fire facility needs. He said that it is the Fire District's desire to create a working group to discuss the fire facility needs in the community. City Manager Bartlam announced that the Fire District has appointed two members of its body to an ad hoc committee and is requesting two members of the City Council to be appointed as well for the purposes of discussion of future fire facility needs.

At the request of Council Member Moran, Fire Chief Shackelford added that the appointed members of the Chino Valley Fire District's Fire Facilities Ad Hoc Committee are President Brian Johsz and Vice President Sarah Evinger.

Following discussion, a motion was made by Mayor Bennett and seconded by Council Member Moran to appoint Vice Mayor Marquez and Council Member Graham to the Fire Facility Ad Hoc Committee.

Motion carried by roll call vote as follows:

AYES: COUNCIL MEMBERS: BENNETT, MARQUEZ, GRAHAM, MORAN,
ROGERS

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

PUBLIC INFORMATION OFFICER REPORT

Public Information Officer (PIO) Denise Cattern announced the following events:

- Letters to Santa - The City of Chino Hills will be helping Santa forward all of the letters from Chino Hills children to his home in the North Pole, beginning on Monday, November 21 through December 9, 2016. Mailbox locations are at the Chino Hills Community Center on 14250 Peyton Drive and at City Hall on 14000 City Center Drive;
- Breakfast with Santa - Saturday, December 10th at the Chino Hills Community Center from 9:00 a.m. to 11:00 p.m.; and
- 25th Anniversary Tree Lighting and Laser Light Show - Saturday, December 3rd from 5:00 p.m. to 8:30 p.m. at the Chino Hills Community Center.

COUNCIL COMMENTS

Bennett: Mayor Bennett acknowledged students from Ayala and Claremont High Schools in the audience that attend City Council Meetings for their school assignments. He thanked all the local era Vietnam Veterans for attending the meeting to be recognized. Lastly, he stated that the official election results for San Bernardino County will be on December 23, 2016 or earlier, so that Council can reorganize and install the two new elected officials to the City Council.

ADJOURN IN MEMORIAM AND IN HOPE

Mayor Bennett adjourned the meeting in tribute and honor of those who serve and have served in the Armed Forces at home and abroad. Their sacrifice and strength protect the goals and ideals that have made this Country great.

ADJOURNMENT

Mayor Bennett adjourned at 8:00 p.m.

Respectfully submitted,

CHERYL BALZ, CITY CLERK

APPROVED:

COUNCIL AGENDA STAFF REPORT

CITY CLERK USE ONLY



Meeting Date: November 22, 2016
Public Hearing:
Discussion Item:
Consent Item:

Date: 11-22-2016
Item No.: 10

November 15, 2016

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

FROM: CITY MANAGER

SUBJECT: CITY OF CHINO HILLS WARRANT REGISTERS FOR WARRANTS ISSUED FOR THE PERIOD OCTOBER 20, 2016 – NOVEMBER 2, 2016, IN AN AMOUNT OF \$1,742,524.17

RECOMMENDATION:

Approve the attached Warrant Registers for the time period mentioned above.

BACKGROUND/ANALYSIS:

The Warrant Registers are listings of all payments made by the City of Chino Hills during a given period of time, exclusive of personnel costs. Warrant Registers and Wire Transfers listing reflecting payments over \$25,000 or those referred by the Finance Committee are regularly submitted for City Council's review and approval as an agenda item at each City Council meeting. During the period of October 6, 2016, to ~~October 19,~~ ²⁰ November 2, 2016, payments in excess of \$25,000 have been issued totaling \$1,742,524.17.

The Warrant Register is reviewed by the Finance Committee prior to the City Council meeting.

FISCAL IMPACT:

The cash held by the City's various funds, including the General Fund, is reduced as a result of paying the City's authorized expenditure requests.

Respectfully submitted,

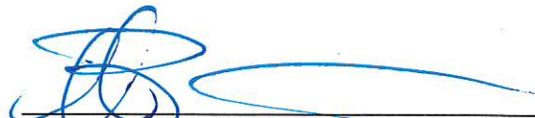
FINANCE COMMITTEE



Mayor Art Bennett



Council Member Peter Rogers



Konradt Bartlam, City Manager



Judy R. Lancaster, Finance Director

PREPARED 10/20/2016,15:57:32
 PROGRAM: GM339L
 CITY OF CHINO HILLS

EXPENDITURE APPROVAL LIST
 AS OF: 10/26/2016 PAYMENT DATE: 10/26/2016

VEND NO	SEQ#	VENDOR NAME	BNK	CHECK/DUE	ACCOUNT	ITEM	CHECK	EFT, EPAY OR
INVOICE	VOUCHER	P.O.		DATE	NO	DESCRIPTION	AMOUNT	HAND-ISSUED
NO	NO	NO						AMOUNT
0002903	00	CALIFORNIA PUBLIC EMPLOYEES'						
2143/OCT'16	001975		00	10/26/2016	001-0300-888.15-40	CALPERS INSURANCE PREMIUM	299.38	
2143/OCT'16	001982		00	10/26/2016	001-0300-888.15-40	CALPERS INSURANCE PREMIUM	271.92	
2143/OCT'16	001985		00	10/26/2016	001-0400-888.15-40	CALPERS INSURANCE PREMIUM	1,108.56	
2143/OCT'16	001987		00	10/26/2016	001-0400-888.15-40	CALPERS INSURANCE PREMIUM	1,087.66	
2143/OCT'16	001990		00	10/26/2016	001-0400-888.15-40	CALPERS INSURANCE PREMIUM	297.23	
2143/OCT'16	001974		00	10/26/2016	001-1200-888.30-90	CALPERS INSURANCE PREMIUM	286.21	
2143/OCT'16	001986		00	10/26/2016	001-1200-888.15-40	CALPERS INSURANCE PREMIUM	1,087.66	
2143/OCT'16	001976		00	10/26/2016	001-2100-888.15-40	CALPERS INSURANCE PREMIUM	149.69	
2143/OCT'16	001983		00	10/26/2016	001-2100-888.15-40	CALPERS INSURANCE PREMIUM	135.96	
2143/OCT'16	001977		00	10/26/2016	001-2200-888.15-40	CALPERS INSURANCE PREMIUM	149.68	
2143/OCT'16	001984		00	10/26/2016	001-2200-888.15-40	CALPERS INSURANCE PREMIUM	135.95	
2143/OCT'16	001991		00	10/26/2016	001-2200-888.10-10	CALPERS INSURANCE PREMIUM	543.83	
2143/OCT'16	001988		00	10/26/2016	001-2510-888.15-40	CALPERS INSURANCE PREMIUM	504.64	
2143/OCT'16	001980		00	10/26/2016	003-0900-888.15-40	CALPERS INSURANCE PREMIUM	543.83	
2143/OCT'16	001979		00	10/26/2016	500-8113-888.15-40	CALPERS INSURANCE PREMIUM	297.23	
2143/OCT'16	001981		00	10/26/2016	500-8113-888.15-40	CALPERS INSURANCE PREMIUM	594.46	
2143/OCT'16	001978		00	10/26/2016	551-8200-888.15-40	CALPERS INSURANCE PREMIUM	566.53	
2143/OCT'16	001989		00	10/26/2016	551-8200-888.15-40	CALPERS INSURANCE PREMIUM	336.42	
2143/OCT'16	001973		00	10/26/2016	575-0000-217.10-00	CALPERS INSURANCE PREMIUM	84,216.67	
						VENDOR TOTAL *	92,613.51	
0004170	00	CLS LANDSCAPE MANAGEMENT, INC.						
200054	PI2332	170350	00	10/26/2016	001-8400-888.50-10	LANDSCAPE SERVICES	7,482.27	
200054	PI2333	170350	00	10/26/2016	031-8400-888.50-10	LANDSCAPE SERVICES	2,236.87	
200742	PI2329	170349	00	10/26/2016	045-8400-888.50-10	LANDSCAPE SERVICES	93.02	
201110	PI2331	170349	00	10/26/2016	045-8400-888.50-10	LANDSCAPE SERVICES	90.00	
200054	PI2334	170350	00	10/26/2016	045-8400-888.50-10	LANDSCAPE SERVICES	42,186.38	
200054	PI2335	170350	00	10/26/2016	050-8400-888.50-10	LANDSCAPE SERVICES	6,034.59	
200054	PI2336	170350	00	10/26/2016	061-8400-888.50-10	LANDSCAPE SERVICES	2,254.82	
200787	PI2330	170349	00	10/26/2016	071-8400-888.50-10	LANDSCAPE SERVICES	92.52	
200054	PI2337	170350	00	10/26/2016	071-8400-888.50-10	LANDSCAPE SERVICES	22,490.48	
200054	PI2338	170350	00	10/26/2016	073-8400-888.50-10	LANDSCAPE SERVICES	5,139.61	
200054	PI2339	170350	00	10/26/2016	123-8400-888.50-10	LANDSCAPE SERVICES	58.60	
200054	PI2340	170350	00	10/26/2016	124-8400-888.50-10	LANDSCAPE SERVICES	588.06	
200054	PI2341	170350	00	10/26/2016	659-8400-888.50-10	LANDSCAPE SERVICES	4,747.00	
						VENDOR TOTAL *	93,494.22	
0007154	00	HENSLEY LAW GROUP						
10340	001914		00	10/26/2016	001-1000-888.30-10	LEGAL SERVICES:SEP'16	38.00	
10340	001915		00	10/26/2016	001-1000-888.30-10	LEGAL SERVICES:SEP'16	380.00	
10340	001916		00	10/26/2016	001-1000-888.30-10	LEGAL SERVICES:SEP'16	23,114.70	
10340A	001920		00	10/26/2016	005-4000-888.30-10	LEGAL SERVICES:SEP'16	624.00	
10340B	001921		00	10/26/2016	005-4000-888.30-10	LEGAL SERVICES:SEP'16	390.00	
10340C	001922		00	10/26/2016	005-4000-888.30-10	LEGAL SERVICES:SEP'16	26.00	
10340	001917		00	10/26/2016	500-8110-888.30-10	LEGAL SERVICES:SEP'16	2,061.50	
10340	001918		00	10/26/2016	501-8120-888.30-10	LEGAL SERVICES:SEP'16	389.50	
10340	001919		00	10/26/2016	552-2520-888.30-10	LEGAL SERVICES:SEP'16	4,332.00	
						VENDOR TOTAL *	31,355.70	
0000608	00	SBCERA						

VEND NO	SEQ#	VENDOR NAME	BNK	CHECK/DUE	ACCOUNT	ITEM	CHECK	EFT, EPAY OR
INVOICE	VOUCHER	P.O.		DATE	NO	DESCRIPTION	AMOUNT	HAND-ISSUED
NO	NO	NO						AMOUNT
0000608	00	SBCERA						
PP 22/16	PR1026		00	10/26/2016	575-0000-216.20-06	SURVIVOR BENEFIT:EMPLOYEE	258.00	
PP 22/16	PR1026		00	10/26/2016	575-0000-217.35-05	CITY CONTR GEN MBR:TIER 1	147,947.14	
PP 22/16	PR1026		00	10/26/2016	575-0000-217.36-05	CITY CONTR GEN MBR:TIER 2	14,232.14	
PP 22/16	PR1026		00	10/26/2016	575-0000-217.35-10	NON-REFNDBL GEN MBR CONTRB	23,432.99	
PP 22/16	PR1026		00	10/26/2016	575-0000-217.35-13	EMPL PAID PRETAX CONTRBTN	9,342.20	
PP 22/16	PR1026		00	10/26/2016	575-0000-217.36-13	EMPLOYEE RET. COST:TIER 2	4,501.22	
PP 22/16	PR1026		00	10/26/2016	575-0000-217.35-14	EXEMPT ADDT'L RETIREMENT	3,039.09	
PP 22/16	PR1026		00	10/26/2016	575-0000-217.35-15	REFUNDABLE GEN MBR CONTRB	9,760.16	
PP 22/16	PR1026		00	10/26/2016	575-0000-217.35-20	SURVIVORS BENFIT:EMPLOYER	258.00	
PP 22/16	PR1026		00	10/26/2016	575-0000-217.35-16	RETIREMENT SERVICE CREDIT	218.38	
VENDOR TOTAL *							212,989.32	
0001641	00	WEST COAST ARBORISTS, INC.						
119016	PI2328	170324	00	10/26/2016	010-8300-888.50-12	LANDSCAPE SERVICES	935.00	
119013	PI2325	170324	00	10/26/2016	045-8400-888.50-12	LANDSCAPE SERVICES	24,330.00	
119014	PI2326	170324	00	10/26/2016	071-8400-888.50-12	LANDSCAPE SERVICES	5,460.00	
119015	PI2327	170324	00	10/26/2016	073-8400-888.50-12	LANDSCAPE SERVICES	220.00	
VENDOR TOTAL *							30,945.00	
TOTAL EXPENDITURES ****							461,397.75	
GRAND TOTAL *****								461,397.75

ITEMS EXCEEDING \$25,000.00

PREPARED 10/31/2016, 7:41:01
 PROGRAM: GM339L
 CITY OF CHINO HILLS

EXPENDITURE APPROVAL LIST
 AS OF: 11/02/2016 PAYMENT DATE: 11/02/2016

PAGE 1

VEND NO	SEQ#	VENDOR NAME	INVOICE NO	VOUCHER NO	P.O. NO	BNK CHECK/DUE DATE	ACCOUNT NO	ITEM DESCRIPTION	CHECK AMOUNT	EFT, EPAY OR HAND-ISSUED AMOUNT
0000011	00	EXCEL LANDSCAPE, INC.								
88648		PI2555 170347	00			11/02/2016	001-2510-888.50-10	LANDSCAPE SERVICES	3,646.00	
88649		PI2563 170347	00			11/02/2016	001-2510-888.50-10	LANDSCAPE SERVICES	3,646.00	
88648		PI2556 170347	00			11/02/2016	001-8400-888.50-10	LANDSCAPE SERVICES	3,878.58	
88649		PI2564 170347	00			11/02/2016	001-8400-888.50-10	LANDSCAPE SERVICES	3,878.58	
88648		PI2557 170347	00			11/02/2016	031-8400-888.50-10	LANDSCAPE SERVICES	3,480.00	
88751		PI2562 170345	00			11/02/2016	031-8400-888.50-10	LANDSCAPE SERVICES	56.65	
88649		PI2565 170347	00			11/02/2016	031-8400-888.50-10	LANDSCAPE SERVICES	3,480.00	
88648		PI2558 170347	00			11/02/2016	040-8400-888.50-10	LANDSCAPE SERVICES	15,372.55	
88649		PI2566 170347	00			11/02/2016	040-8400-888.50-10	LANDSCAPE SERVICES	15,372.55	
88745		PI2570 170348	00			11/02/2016	040-8400-888.50-10	LANDSCAPE SERVICES	65.00	
88746		PI2571 170348	00			11/02/2016	040-8400-888.50-10	LANDSCAPE SERVICES	323.64	
88750		PI2572 170348	00			11/02/2016	040-8400-888.50-10	LANDSCAPE SERVICES	456.19	
88648		PI2559 170347	00			11/02/2016	045-8400-888.50-10	LANDSCAPE SERVICES	28,567.13	
88649		PI2567 170347	00			11/02/2016	045-8400-888.50-10	LANDSCAPE SERVICES	28,567.13	
88752		PI2573 170348	00			11/02/2016	045-8400-888.50-10	LANDSCAPE SERVICES	334.94	
88764		PI2574 170348	00			11/02/2016	045-8400-888.50-10	LANDSCAPE SERVICES	117.65	
88648		PI2560 170347	00			11/02/2016	121-8400-888.50-10	LANDSCAPE SERVICES	4,325.20	
88649		PI2568 170347	00			11/02/2016	121-8400-888.50-10	LANDSCAPE SERVICES	4,325.20	
88706		PI2569 170348	00			11/02/2016	121-8400-888.50-10	LANDSCAPE SERVICES	235.72	
VENDOR TOTAL *									120,128.71	
0001503	00	HD SUPPLY WATERWORKS								
G053357		PI2464 170368	00			11/02/2016	500-8112-888.84-20	WATER EQUIPMENT	8,182.29	
G251508		PI2465 170368	00			11/02/2016	500-8112-888.84-20	WATER EQUIPMENT	76,796.30	
G018826		PI2466 170368	00			11/02/2016	500-8112-888.84-20	WATER EQUIPMENT	999.13	
G074409		PI2467 170368	00			11/02/2016	500-8112-888.84-20	WATER EQUIPMENT	3,943.80	
VENDOR TOTAL *									89,921.52	
0000064	00	S.B.COUNTY SHERIFF'S DEPT.								
16019/NOV'16		002065	00			11/02/2016	001-6000-888.31-70	LAW ENFORCEMENT CONTRACT	1,009,783.00	
VENDOR TOTAL *									1,009,783.00	
TOTAL EXPENDITURES ****									1,219,833.23	
GRAND TOTAL *****									1,219,833.23	

Outgoing Wire Transfers Over \$25,000

From 10/20/16 to 11/2/16

Vendor Name	Due Date	Account Number	Item Description	Amount
Federal EFTPS	11/2/2016	575-0000-218-1000	P/R Tax Transfer - Federal	61,293.19
			Vendor Total *	<u>61,293.19</u>
			Grand Total Transfers Over \$25,000 *****	<u><u>61,293.19</u></u>



COUNCIL AGENDA STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS DATE: NOVEMBER 22, 2016

FROM: CITY MANAGER ITEM NO: 11

SUBJECT: CITY OFFICIAL REPORT

RECOMMENDATION:

Receive and file the City's Official Reports pursuant to the City's Travel, Training and Meetings Reimbursement Policy.

BACKGROUND/ANALYSIS:

In accordance with Government Code Section 53232.2 and 53232.3, implementing Assembly Bill 1234 (AB 1234) effective January 1, 2006, the City's Travel, Training and Meetings Policy was amended to reflect those changes. The City Official Report provides a brief report regarding the purpose and subject matter of meetings for the period through November 8, 2016.

ENVIRONMENTAL (CEQA) REVIEW:

This proposed action is exempt from review under the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq., "CEQA") and CEQA regulations (14 California Code Regulations §§ 15000, et seq.) because it constitutes an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. Accordingly, this action does not constitute a "project" that requires environmental review (see specifically 14 CC § 15378 (b)(4-5)).

FISCAL IMPACT:

Travel, Training and Meeting expenses are included within the City's adopted budget for Fiscal Year 2016/2017.

REVIEWED BY OTHERS:

The report format has been reviewed by the City Attorney.

Respectfully Submitted,



Konradt Bartlam
City Manager

Attachments City Official Report



COUNCIL AGENDA STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS DATE: NOVEMBER 22, 2016

FROM: CITY MANAGER ITEM NO: 12

SUBJECT: RESOLUTION DECLARING INTENT TO TRANSITION TO DISTRICT-BASED ELECTIONS

RECOMMENDATION:

Adopt Resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHINO HILLS DECLARING ITS INTENT TO TRANSITION FROM AT-LARGE TO DISTRICT-BASED ELECTIONS, OUTLINING SPECIFIC STEPS TO BE UNDERTAKEN TO FACILITATE THE TRANSITION, AND ESTIMATING A TIME FRAME FOR ACTION.

BACKGROUND/ANALYSIS:

The City of Chino Hills currently utilizes an at-large election system, which means that the electors from the entire City choose each of the five Council Members. A district-based election system is one in which the city is physically divided into separate districts, each with one Council Member chosen by the electors residing in that particular district.

On or about August 9, 2016, the City received correspondence from Mexican American Legal Defense and Educational Fund (MALDEF) alleging that Latinos constitute 27.3% of the citizen voting age population in Chino Hills and that only one Latino—current City Council Member Ray Marquez—has served on the City Council since the City’s incorporation. MALDEF further alleges that the lack of success of Latino candidates is the result of “racially polarized voting” and that the continued use of an at-large election system would violate the California Voting Rights Act (CVRA). Consequently, MALDEF demands that the City convert from an at-large to a district-based election system or it will seek a judicial order forcing the City to do so. ¹

A plaintiff may establish liability under the CVRA simply by proving the existence of “racially polarized voting.” Racially polarized voting exists when two racial groups vote differently from each other—i.e., the electoral choices preferred by voters in a protected

class (a minority group) are different from those of the rest of the electorate (the majority). Whether racially polarized voting is occurring is determined by “examining results of elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class.”² The historical success rate of minority candidates that are preferred by the minority voting bloc is but one circumstance that may be considered in determining whether racially polarized voting is occurring.³

If it is determined that racially polarized voting exists, the prescribed remedy is for the local government to switch to district-based voting.⁴ Notably, under the CVRA, a plaintiff need not demonstrate that switching to a district-based election system will provide any effective remedy to the minority group in question. In addition, the CVRA requires the court to award attorneys’ fees and cost to a prevailing plaintiff.⁵ If the defendant agency prevails, it cannot recover its attorneys’ fees and can only recover costs if the finds the action was frivolous, unreasonable, or without foundation.⁶

A number of CVRA lawsuits have been brought against cities over the past dozen years. The first notable suit came in 2004 when the Lawyers Committee for Civil Rights filed suit against the City of Modesto in *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660 on behalf of three Latino residents, claiming the city’s racially polarized voting was limiting the ability of Latinos to be elected to office. Latinos comprised 25.6 percent of the city’s population of 200,000, but only one Latino had been elected to the city council since 1911. The case against Modesto ultimately settled after the citizens voted to switch from at-large to district-based voting. Despite settling, the City of Modesto had to pay \$3 million in fees to the plaintiff’s lawyers and \$1.7 million for its own lawyers. Since then, many more cities have been sued or threatened with suit under the CVRA, including Anaheim, Bellflower, Ceres, Chino, Compton, Escondido, Fullerton, Highland, Los Banos, Merced, Palmdale, Riverbank, Santa Barbara, Santa Clarita, Tulare, Turlock, and Visalia. Given the low threshold for plaintiffs to establish a valid claim under the CVRA and the significant costs of defending against these actions, the vast majority of cities faced with similar threats have opted to voluntarily transition to district-based elections. Those that have not done so voluntarily have ultimately been forced to do so by the courts. To date, no city has successfully defended a CVRA lawsuit brought to mandate district-based council elections.

The City Council may make the transition to district-based elections by ordinance. Doing so, however, requires a significant amount of work and several opportunities for public input. After considering MALDEF’s threat of litigation at its closed session on September 13, 2016, the City Council, by unanimous vote, directed the City Attorney’s Office to hire a consultant to assist the Council in assessing districting options in response to the letter received from the Mexican American Legal Defense and Educational Fund (MALDEF).

At its regular meeting on September 27, 2016, the City Council authorized the execution of a Professional Services Agreement with National Demographics Corporation (NDC) with a proposed scope of work that included: analyzing Census and California Statewide Database Data; assessing the potential demographic liability under the CVRA; public engagement to solicit input and ensure transparency; minority group outreach; and creating draft district maps as required. Staff has met with NDC and the

process is underway.

On September 28, 2016, the Governor signed AB 350 into law. AB 350, which will become effective on January 1, 2017, sets forth a number of steps that a city must take before the public hearing at which the legislative body votes on an ordinance establishing district-based elections. The legislation also attempts to provide a “safe harbor” from litigation. If a city receives a demand letter, the city is given 45 days of protection from litigation to assess its liability. If within that 45 days, a city adopts the resolution declaring the Council’s intent to transition from at-large to district-based elections, outlining specific steps to be undertaken to facilitate the transition, and estimating a time frame for action, the legislation provides that 45 days, plus an additional 90 days to transition as a “safe harbor.” Under AB 350, a city’s liability is capped at \$30,000 if it follows this process after receiving a threat, and the plaintiff must show financial documentation that these costs were actually incurred. Further, even if more than one plaintiff tried to file suit, if a city takes advantage of the AB 350 process, the City’s liability is limited up to \$30,000. This provision was included because reportedly a number of cities have received letters and made pay-outs to multiple plaintiffs for claims under CVRA.

Unfortunately, because five public hearings and significant analysis and public debate must occur, it is very difficult to complete the transition within the 90-day time frame called for in AB 350, especially given that the holidays are coming soon. In addition, as noted above, AB 350 is not effective until January 1, 2017, so AB 350 cannot technically provide the City a “safe harbor” until January 1, 2017. Nevertheless, staff recommends that the City adopt the attached proposed resolution because it will provide a record that the Council intends to transition to district-based council elections, set forth each of the required steps for doing so, and establish an estimated time frame for completion of the process. Such a record, combined with good faith implementation of the schedule, should make it more difficult for future potential plaintiffs to obtain a judgment against the City under the CVRA. This is because the City would have already committed to this change, thus it will be difficult for plaintiffs to claim that they were a “catalyst” for such change and receive reimbursement for attorney’s fees and other litigation costs. Further, since the City’s next election is not until November of 2018, there is plenty of time to complete these steps well in advance of that election. The proposed resolution lays out such a timeline that would result in adoption of the ordinance in July of 2017.

¹ In its letter, MALDEF incorrectly asserts that the City Council can effectuate a conversion from at-large to district-based elections by passage of a resolution. This is not the case. The transition from at-large to district-based elections can be accomplished by adopted of an ordinance which must be preceded by several public hearings. Government Code § 34886; Elections Code § 10010 (as amended effective Jan. 1, 2017).

² Elections Code § 14028(b).

³ *Id.*

⁴ Elections Code § 14029.

⁵ Elections Code § 14030.

⁶ *Id.*

ENVIRONMENTAL (CEQA) REVIEW:

This action is not a project within the meaning of the CEQA Guidelines Section 15278 and is therefore exempt from CEQA as it is an administrative change that will not result in any direct or indirect physical change in the environment. It is therefore exempt from CEQA.

FISCAL IMPACT:

When the City hired National Demographics Corporation, a fiscal impact decrease to the General Fund, Unreserved Fund Balance in the amount of \$31,000 and transfer to the City Manager's Department budget was noted. There may be additional expenditures to complete this process.

REVIEWED BY OTHERS:

This item has been reviewed by the City Attorney.

Respectfully Submitted,



Konradt Bartlam
City Manager

Attachments Resolution

RESOLUTION NO. 2016R-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHINO HILLS DECLARING ITS INTENT TO TRANSITION FROM AT-LARGE TO DISTRICT-BASED ELECTIONS, OUTLINING SPECIFIC STEPS TO BE UNDERTAKEN TO FACILITATE THE TRANSITION, AND ESTIMATING A TIME FRAME FOR ACTION

WHEREAS, at its closed session meeting on September 13, 2016, the City Council, by unanimous vote, directed the City Attorney's office to hire a consultant to assist the Council in assessing districting options in consideration of the California Voting Rights Act; and

WHEREAS, at its regular meeting on September 27, 2016, the City Council authorized the execution of a Professional Services Agreement with a qualified demographics consultant, National Demographics Corporation (NDC), with a proposed scope of work that included: analyzing Census and California Statewide Database Data; assessing the potential demographic liability under the CVRA; public engagement to solicit input and ensure transparency; minority group outreach; and creating draft district maps as required; and

WHEREAS, City staff has met with NDC and the process is underway. NDC reports that given the upcoming holidays, the report can be completed by January. City staff will need time to review the NDC report and make recommendations, so the earliest the City Council can begin the hearing process is in early February; and

WHEREAS, the City Council intends to take all steps necessary to transition from at-large to district-based elections in time for the November 6, 2018 general municipal election.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHINO HILLS DOES RESOLVE, DETERMINE, AND ORDERS AS FOLLOWS:

SECTION 1. The City Council proposes the following schedule of actions:

Step 1: The City Council directs the City Manager to work with a qualified consultant to provide a detailed analysis of the City's current demographics (including the geographic distribution of the various demographic groups identified) and any other information or data necessary to prepare a draft map that divides the City into five districts in a manner consistent with the intent and purpose of the California Voting Rights Act and the Federal Voting Rights Act.

Step 2: Before a draft district map is prepared by staff and/or a qualified consultant, two public hearings shall be conducted in order to provide interested members of the public with an opportunity to provide

input regarding the composition of the districts. Prior to the first of these public hearings, and again prior to the second public hearing, staff, under the supervision and direction of the City Manager, shall conduct a public outreach program for the purpose of explaining the explaining the districting process and encouraging public participation. The public outreach program shall be designed to target both English- and non-English-speaking communities within the City. The two public hearings shall be conducted within 30 days of one another. The first of these public hearings shall be held on February 14, 2017. The second shall be held on March 14, 2017.

Step 3: Complete initial draft district map by March 28, 2017.

Step 4: After the initial draft district map is complete, it shall be published and otherwise made available to the public for review. If councilmembers are to be elected from the districts at different times in order to provide for staggered terms, a proposed sequence of district elections shall also be published and otherwise made available along with the draft district map. The target date for publication of the draft district map is April 1, 2017.

Step 5: No sooner than seven days after the initial draft district map is published and otherwise made available to the public, the Council will hold the first of two public hearings at which time the public will be invited to provide input regarding the content of the draft district map and the proposed sequence of elections. The target date for the first public hearing on the draft district map is April 11, 2017.

Step 6: Within 30 days of the public hearing described in Step 5, the Planning Commission will hold a public hearing for the purpose of examining, as to definiteness and certainty, the boundaries of the legislative districts proposed in the draft district map. The Planning Commission's recommendations, if any, will be passed along to the City Council at the hearing contemplated in Step 7. The target date for the first public hearing on the draft district map is May 2, 2017.

Step 7: Within 45 days of the public hearing described in Step 5, the Council will hold a second public hearing for the same purpose. If the draft district map is revised at or following the first public hearing, the revised map shall be published and otherwise made available to the public at least seven days prior to its consideration at the second public hearing. The target date for the second public hearing on the draft district map is May 25, 2017.

Step 8: After holding the second public hearing on the draft district map, the Council may, pursuant to Government Code section 34886,

hold a public hearing to introduce an ordinance adopting a district map and requiring members of the City Council to be elected by district. The Council desires to have the ordinance introduced no later than June 27, 2017. Second reading would occur on July 11, 2017.

SECTION 2. The City Manager is directed to work with the City's qualified consultant, to analyze the City's current demographics and recommend proposed district boundaries that are consistent with intent and purpose of the California Voting Rights Act and the Federal Voting Rights Act.

SECTION 3. Public hearing and other dates set forth hereinabove may be adjusted by the City Manager if he deems necessary. In any event, the two public hearings contemplated in Step 2 must be held within 30 days of one another and the two public hearings contemplated in Steps 5 and 6 must be held within 45 days of one another.

SECTION 4. This matter is exempt from review under the general rule that CEQA only applies to projects that have the potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that the adoption of a resolution outlining the Council's intention to transition from at-large to district-based elections, specific steps it will undertake to facilitate the transition, and an estimated time frame for doing so, may have a significant effect on the environment. Therefore, this matter is not subject to CEQA pursuant to section 15061(b)(3) of the CEQA Guidelines.

SECTION 5. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED, AND ADOPTED this 22nd day of November, 2016.

ART BENNETT, MAYOR

ATTEST:

CHERYL BALZ, CITY CLERK

APPROVED AS TO FORM:

MARK D. HENSLEY, CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) §
CITY OF CHINO HILLS)

I, Cheryl Balz, City Clerk of the City of Chino Hills, DO HEREBY CERTIFY that the foregoing Resolution No. 2016R-___ was duly adopted at a regular meeting of the City Council of the City of Chino Hills held on the 22nd day of November, 2016, by the following vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

CHERYL BALZ, CITY CLERK

The foregoing is the original of Resolution No. 2016R-___ duly passed and adopted by the Chino Hills City Council at their regular meeting held November 22, 2016.

CHERYL BALZ, CITY CLERK



COUNCIL AGENDA STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS DATE: NOVEMBER 22, 2016

FROM: CITY MANAGER ITEM NO: 13

SUBJECT: CODE ADOPTION: FIRST READING (INTRODUCTORY READING) OF ORDINANCE ADOPTING BY REFERENCE THE 2016 EDITIONS OF THE CALIFORNIA CONSTRUCTION CODES WITH APPENDICES AND AMENDMENTS THERETO BASED ON LOCAL CONDITIONS

RECOMMENDATION:

1. Introduce an ordinance entitled: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHINO HILLS, CALIFORNIA, AMENDING CHAPTER 15.04 OF THE CITY OF CHINO HILLS MUNICIPAL CODE BY ADOPTING BY REFERENCE THE 2016 EDITIONS OF THE CALIFORNIA BUILDING CODE VOLUMES 1 & 2, THE CALIFORNIA PLUMBING CODE, THE CALIFORNIA MECHANICAL CODE, THE CALIFORNIA ELECTRICAL CODE, THE CALIFORNIA RESIDENTIAL CODE, THE CALIFORNIA ENERGY CODE AND THE CALIFORNIA GREEN BUILDING STANDARDS CODE WITH APPENDICES AND AMENDMENTS THERETO BASED ON LOCAL CONDITIONS.
2. Set a public hearing to consider adoption of the ordinance for December 13, 2016.

BACKGROUND/ANALYSIS:

California Health and Safety Code requires cities and counties to adopt building standards that are consistent with those contained in the California Building Standards Code. If local jurisdictions do not adopt such building standards, the provisions as published in the California Building Standards Code (CCR Title 24) will become effective at the local level after 180 days from its publication, or at a later date established by the California Building Standards Commission.

A. HIGHLIGHTS OF SIGNIFICANT 2016 MODEL CODE & STATE CODE CHANGES

While hundreds of changes have occurred to the 2016 California Building Standards Code, most are minor in nature and strive to clarify provisions that were ambiguous. Additionally, many changes apply to larger more complex types of buildings such as high-rises, malls, and facilities using hazardous materials which are not prevalent in our community.

The following are some highlights of significant changes:

- 1. California Energy Code:** Energy efficiency standards for construction projects were first implemented in California in 1978. Energy regulations have consistently been increased and tightened with each new code. The 2016 California Energy Code continues this trend. Significant changes include: increased levels of required roof/ceiling/wall insulation, increased efficiency of light fixtures and bulbs, window products will require improved insulating properties, and HVAC duct systems leak testing requirements. California law requires all new residential buildings to have a “zero net energy” footprint by 2020 and all new commercial buildings by 2030.
- 2. California Green Building Standards Code:** Regulations related to sustainable construction practices were first implemented in California in 2009 as voluntary provisions and became mandatory for new buildings in 2011. Probably the most significant change in the 2016 California Green Building Standards Code that will impact designers and contractors is the addition of requirements to reduce maximum water flow rates for metering faucets, showerheads, water closets, and kitchen faucets to comply with the California Green Code, based on Governor’s Executive Order (B-29-15).
- 3. California Residential Code:** New to the California Residential Code are two requirements that will benefit our future Chino Hills residents. The first is a requirement that all new single-family dwellings, duplexes and townhomes with attached garages be designed and built with electric vehicle charging infrastructure. Also, there is a new requirement that requires all new single-family dwellings, duplexes and townhomes to have a roof structure designed to account for the future live load of photovoltaic panels even if no photovoltaic panels are installed. This means that homeowners will not need to add additional structural members to support photovoltaic panels if installed in the future. It also will result in quicker plan checks of photovoltaic systems as there will be no structural calculations to check.

B. JUSTIFYING THE AMENDMENTS

At the time of adopting the State Building Standards into local ordinances, the City may amend, add or repeal those regulations upon express findings that each of such modifications is "reasonably necessary because of local climatic, geological or topographical conditions." The modifications, however, cannot make the State-mandated standards less stringent. The modifications along with the justifications must be filed with the California Building Standards Commission in order to become legally binding.

The following amendments to the 2016 California Codes are recommended by the City's Building Services Division:

1. REVISION TO THE CALIFORNIA BUILDING CODE (CBC) SECTION 1505.1 AND THE CALIFORNIA RESIDENTIAL CODE (CRC) SECTION R902.1. The purpose of these two amendments is to require minimum Class "A" fire resistive roofing materials on all structures built within the City of Chino Hills. This has been a requirement within the City since incorporation and has helped to prevent fire configurations that can occur in areas with wood shake/shingle roofs.
2. REVISION TO THE CALIFORNIA BUILDING CODE (CBC) SECTION 107.3.4. This amendment is being proposed to clarify the procedures and requirements for the transfer of responsibilities when the Engineer of Record on a construction project changes.
3. REVISION TO THE CALIFORNIA RESIDENTIAL CODE (CRC) SECTION AV 100.2 (5) CONCERNING POOL BARRIER REQUIREMENTS. The proposed amendment adds the word "garage" to the wall of a dwelling unit to ensure that garage man-doors have the same pool barrier safety requirements as dwelling unit doors.
4. REVISION TO THE CALIFORNIA BUILDING CODE (CBC) AND THE CALIFORNIA RESIDENTIAL CODE (CRC) CONCERNING SECTION 105 & R105 CONCERNING WORK THAT IS EXEMPT FROM A PERMIT. The proposed amendment adds to and clarifies work that is exempt from Building, Plumbing, Electric and/or Mechanical permit requirements.
5. REVISION TO THE CALIFORNIA BUILDING CODE (CBC) SECTION 105.2 TO CLARIFY WHEN A CERTIFICATE OF OCCUPANCY IS REQUIRED. The proposed amendment adds to and clarifies when a Certificate of Occupancy is required for non-residential uses.

According to the Health and Safety Code, local amendments to the State building standards, except for administrative provisions, must be justified with local climatic, geological or topographical conditions, and the findings and justifications must be filed with the Building Standards Commission before the amendments can become effective. Accordingly, the proposed Ordinance makes such findings justifying the amendments.

C. PROCEDURE FOR BUILDING CODES ADOPTION

Pursuant to Government Code section 50022.2, the City may adopt another legislative body's codes by referencing the codes in an ordinance. The section further provides that the ordinance needs to be placed on a City Council Agenda to be introduced for first reading by title only, and for the City Council to schedule a public hearing. The public hearing is held prior to the City Council adopting the ordinance on second reading and public hearing. The first reading of the proposed ordinance is November 22, 2016. Staff recommends that the City Council schedule a public hearing for the second reading to take place at the City Council meeting on December 13, 2016.

Notice of the public hearing, pursuant to Section 6066 of the Government Code, must be published once a week for two successive weeks. The first publication of the notice must be at least 15 days prior to the public hearing date.

ENVIRONMENTAL (CEQA) REVIEW:

The adoption of this ordinance is exempt from review under the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq., "CEQA") and the regulations promulgated thereunder (14 California Code of Regulations §§ 15000, et seq., the "State CEQA Guidelines") because it consists only of minor revisions and clarifications to an existing code of construction-related regulations and specification of procedures related thereto and will not have the effect of deleting or substantially changing any regulatory standards or findings required therefore, and therefore does not have the potential to cause significant effects on the environment. In addition, this ordinance is an action taken by a regulatory agency as authorized by California law to assure maintenance or protection of the environment and is exempt from further review under CEQA Guidelines § 15308.

FISCAL IMPACT:

None.

REVIEWED BY OTHERS:

This item has been reviewed by the City Attorney.

Respectfully Submitted,

Recommended By:



Konradt Bartlam
City Manager



Joann Lombardo
Community Development Director

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHINO HILLS, CALIFORNIA, AMENDING CHAPTER 15.04 OF THE CITY OF CHINO HILLS MUNICIPAL CODE BY ADOPTING BY REFERENCE THE 2016 EDITIONS OF THE CALIFORNIA BUILDING CODE VOLUMES 1 & 2, THE CALIFORNIA PLUMBING CODE, THE CALIFORNIA MECHANICAL CODE, THE CALIFORNIA ELECTRICAL CODE, THE CALIFORNIA RESIDENTIAL CODE, THE CALIFORNIA ENERGY CODE AND THE CALIFORNIA GREEN BUILDING STANDARDS CODE WITH APPENDICES AND AMENDMENTS THERETO BASED ON LOCAL CONDITIONS

WHEREAS, California Health and Safety Code Section 17958, *et seq.*, provides that the City may adopt model codes by reference;

WHEREAS, the City desires to adopt the 2016 editions of the California Building Code volumes 1 & 2, the California Plumbing Code, the California Mechanical Code, the California Electrical Code, the California Residential Code, the California Energy Code and the California Green Building Standards Code;

WHEREAS, pursuant to Section 50022.6 of the Government Code, at least one copy of all codes adopted by reference were filed with the City Clerk of the City and were available for public inspection for at least fifteen (15) days preceding the date of the public hearing; and

WHEREAS, on _____, 2016, a noticed public hearing was held by the City Council at which time all interested persons had the opportunity to appear and be heard regarding the adoption of the above-referenced codes.

THE CITY COUNCIL OF THE CITY OF CHINO HILLS DOES ORDAIN AS FOLLOWS:

SECTION 1. In accordance with Health and Safety Code section 17958.7, the City Council of the City of Chino Hills hereby finds that the proposed amendments to the 2016 California Building Code volumes 1 & 2, and the 2016 California Residential Code are reasonable and necessary because of local climactic, geologic and topographical conditions within the City's jurisdiction. This finding is supported and based upon the following express findings which address each of these conditions and present the local situation which makes the proposed amendments necessary:

1. The climate weather patterns within the City include frequent periods of drought and low humidity adding to the fire danger. Fire season can be year-round in this region.

2. During the summer months the dry winds and existing vegetation mix to create a hazardous fuel condition which has resulted in large loss of vegetation and structure fires. Summer temperatures exceeding one hundred degrees (100°), and severe "Santa Ana" winds frequently occur and can move a fire quickly throughout areas of the City. Multiple shifting wind patterns throughout the canyon areas add to the difficulty in suppressing fires.
3. Because of weather patterns, the City has experienced a need for water conservation. Due to the storage capacities and consumption, and a limited amount of rainfall (drought conditions), future water allocation is not fully dependable. While sound management of the water resources are possible, demands and possible critical depletions on an already stressed water supply can most assuredly be predicted.
4. Features located throughout the City are major roadways, highways, freeways and flood control channels which create barriers and slow response times. Other unique factors which create barriers and slow response times are the multiple canyons located within the City.
5. The topography is also very steep in large areas of the City affecting the rate of fire spread and response times.
6. Due to the topography, as well as the present street and storm drain design, heavy rainfall causes roadway flooding and landslides which at times may make an access route impassable.
7. The City has, within its boundaries, active seismic hazards. Seismic activity within the City occurs yearly and a fire potential exists with these active faults. Existing structures and planned new development are at serious risk from an earthquake. This risk includes fire, collapse and the disruption of water supply for firefighting purposes. Areas can also become isolated as a result of bridge, overpass and road damage, and debris.
8. Structures in close proximity to each other pose an exposure problem which may cause a fire to spread from one structure to another as well as to the wildland area.
9. For practical and economic reasons, many new structures are built of wood construction. Many existing structures also have wood shake roofs. The potential for a conflagration exists due to the design and density of current structures.
10. Electrical supply and telephone communication failures occur due to high winds as well as others reasons. Water supply pumps and early notification cannot always be counted on.

11. Narrow and winding streets with little circulation and streets designed as storm drains impede emergency vehicle access and evacuation routes.
12. The warm dry climate is conducive to swimming pool construction which creates a higher probability of child drownings where pools are unprotected.

SECTION 2. Chapter 15.04 of the Chino Hills Municipal Code is hereby amended in its entirety to read as follows:

“Chapter 15.04 – CALIFORNIA CONSTRUCTION CODES ADOPTED

15.04.010 - 2016 EDITION OF THE CALIFORNIA BUILDING CODE ADOPTED

The California Building Code 2016 Edition Volumes 1 and 2 including Appendix Chapters “C,” “F,” “H,” and “J,” is adopted by reference, subject to the amendments set forth below. The California Building Code is the building code of the City for regulating the erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area and maintenance of all buildings and/or structures in the City. The California Building Code and its appendix chapters will be on file for public examination in the office of the City Clerk.

15.04.020 - AMENDMENTS TO THE CALIFORNIA BUILDING CODE

The 2016 California Building Code is hereby amended as follows:

CHAPTERS DELETED

Chapters 16A, 17A, 18A, 19A, 21A, 22A and 31F of the 2016 California Building Code are deleted in their entirety.

APPENDICES DELETED

Appendices “A,” “B,” “D,” “G,” “L” and “M” of the 2016 California Building Code are deleted in their entirety.

SCOPE AND ADMINISTRATION

Chapter 1 of the 2016 California Building Code is amended to read as follows:

Chapter 1 Section 105.1 is hereby amended to add the following provision:

105.1.3 Unpermitted Structures.

No person shall own, use, occupy or maintain any "Unpermitted Structure."

For the purposes of this Code, "Unpermitted Structure" shall be defined as any structure, or portion thereof, that was erected, constructed, enlarged, altered, repaired, moved, improved, removed, connected, converted, demolished, or equipped, at any point in time, without the required permit(s) having first been obtained from the Building Official, pursuant to Section 105.1, or any unfinished work for which a permit has expired.

Chapter 1 Section 105.2 is hereby amended, by the deletion of item number 1 listed under work exempt from a Building Permit and the addition of a new item number 1 to read as follows:

One-story detached accessory buildings used as tool and storage sheds, playhouses and similar uses, provided the height does not exceed 10-feet from lowest adjacent grade to the highest point and the floor area as measured from outside surface to outside surface does not exceed 120 square feet.

Chapter 1 section 105.2 is hereby amended by adding the following items listed under work exempt from a Building Permit.

14. Flagpoles not erected upon a building and not exceeding 15 feet in height.

15. A tree house provided that:

It does not exceed 64 square feet of floor area and does not exceed 8 feet in height from floor to highest point of roof.

It does not exceed 16 feet in height from adjacent grade to highest point.

16. Playground equipment.

17. Decks and raised platforms that do not exceed 30 inches in height from adjacent grade.

Section 105.3.2 of the 2016 California Building Code is hereby amended, by the deletion of the entire section and the addition of a new section thereto, to read as follows:

An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued;

except that the building official is authorized to grant one extension for a maximum period of time not exceeding 180 days. The extension shall be requested in writing and justifiable cause demonstrated.

Section 105.5 of the 2016 California Building Code is hereby amended, by the deletion of the entire section and the addition of a new section thereto, to read as follows:

Every permit issued shall become invalid unless the work on the site authorized by such permits commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, one extension of time, not to exceed 180 days. The extension shall be requested in writing and justifiable cause demonstrated. No permit may receive more than one extension of time. Expired permits shall be reinstated at full current fees. An expired permit may be reinstated at 50% of full fees if only one inspection is required to final the permit. No additional permits may be issued on any property that has any expired permits that have not been reinstated.

Section 111.1 of the 2016 California Building Code is hereby amended, by the deletion of the entire section and the addition of a new section thereto, to read as follows:

No building or portion of a building, lease space, office space and/or tenant space shall be used or occupied, and no change of occupant, ownership or business entity shall be permitted until such time as a Certificate of Occupancy has been applied for and approved by the Building Official.

FIRE-RESISTIVE ROOFING

Section 1505.1 of the 2016 California Building Code is hereby amended, by the deletion of the entire section and the addition of a new section thereto, to read as follows:

The roof covering on any structure regulated by this Code shall be Class "A" as classified in Section 1505.2 Except that repairs of and additions to existing structures, which repairs and additions require the replacement or installation of no more than twenty-five percent (25%) of the total roof area in any twelve-month period, may be made using material to match the existing roof.

**15.04.030 - 2016 EDITION OF THE CALIFORNIA RESIDENTIAL CODE
ADOPTED**

The California Residential Code 2016 Edition is adopted by reference, subject to the amendments set forth below. The California Residential Code is the building code of the City for regulating the erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area and maintenance of all detached one and two family dwellings and townhouses not more than three stories in height with a separate means of egress and their accessory structures in the City. The California Residential Code and its appendix chapters will be on file for public examination in the office of the City Clerk.

**15.04.040 – AMENDMENTS TO THE CALIFORNIA RESIDENTIAL
CODE**

The 2016 California Residential Code is hereby amended as follows:

APPENDICES DELETED

Appendices “L”, “P” and U of the 2016 California Residential Code are deleted in their entirety.

ADMINISTRATION

Chapter 1 Section R105.1 is hereby amended to add the following provision:

R105.1.3 Unpermitted Structures.

No person shall own, use, occupy or maintain any “Unpermitted Structure.”

For the purposes of this Code, “Unpermitted Structure” shall be defined as any structure, or portion thereof, that was erected, constructed, enlarged, altered, repaired, moved, improved, removed, connected, converted, demolished, or equipped, at any point in time, without the required permit(s) having first been obtained from the Building Official, pursuant to Section R105.1, or any unfinished work for which a permit has expired.

Section R105.2 is hereby amended, by the deletion of the entire Building Section and the addition of a new section thereto, to read as follows:

Work exempt from permits “Building” shall be limited to the items listed in the 2016 CBC section 105.2 as amended by this ordinance

Section R105.3.2 of the 2016 California Residential Code is hereby amended, by the deletion of the entire section and the addition of a new section thereto, to read as follows:

An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the building official is authorized to grant one extension for a maximum period of time not exceeding 180 days. The extension shall be requested in writing and justifiable cause demonstrated.

Section R105.5 of the 2016 California Residential Code is hereby amended, by the deletion of the entire section and the addition of a new section thereto, to read as follows:

Every permit issued shall become invalid unless the work on the site authorized by such permits commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, one extension of time, not to exceed 180 days. The extension shall be requested in writing and justifiable cause demonstrated. No permit may receive more than one extension of time. Expired permits shall be reinstated at full current fees. An expired permit may be reinstated at 50% of full fees if only one inspection is required to final the permit. No additional permits may be issued on any property that has any expired permits that have not been reinstated.

FIRE-RESISTIVE ROOFING

Section R902.1 of the 2016 California Residential Code is hereby amended, by the deletion of the entire section and the addition of a new section thereto, to read as follows:

The roof covering on any structure regulated by this Code shall be Class "A" as classified in Section 1505.2 of the 2016 CBC. Except that repairs of and additions to existing structures, which repairs and additions require the replacement or installation of no more than twenty-five percent (25%) of the total roof area in any twelve-month period, may be made using material to match the existing roof.

SWIMMING POOL ENCLOSURES AND SAFETY DEVICES

Appendix V section AV 100.2 (5) of the 2016 California Residential Code is hereby amended, by the deletion of the entire section and the addition of a new section thereto, to read as follows:

All doors providing direct access from the home/garage to the swimming pool area shall be equipped with a self-closing and self-latching device. The self-latching device shall be placed a minimum of 54 inches from the garage floor.

15.04.050 - 2016 EDITION OF THE CALIFORNIA PLUMBING CODE ADOPTED

The California Plumbing Code, 2016 Edition, is adopted by reference and is the Plumbing Code of the City of Chino Hills, regulating erection, installation, alteration, repair, relocation, replacement, maintenance or use of plumbing systems within the City. The California Plumbing Code will be on file for public examination in the office of the City Clerk.

15.04.060 - 2016 EDITION OF THE CALIFORNIA MECHANICAL CODE ADOPTED

The California Mechanical Code, 2016 Edition, is adopted by reference and is the Mechanical Code of the City of Chino Hills, regulating and controlling the design, construction, installation, quality of materials, location, operation and maintenance of heating, ventilating, cooling, refrigeration systems, incinerators and other miscellaneous heat producing appliances. The California Mechanical Code is on file for public examination in the office of the City Clerk.

15.04.070 - 2016 EDITION OF THE CALIFORNIA ELECTRICAL CODE ADOPTED

The California Electrical Code, 2016 Edition, is adopted by reference and is the Electrical Code of the City of Chino Hills, regulating all installation, arrangement, alteration, repair, use and other operation of electrical wiring, connections, fixtures and other electrical appliances on premises within the City. The California Electrical Code is on file for public examination in the office of the City Clerk.

15.04.080 - 2016 EDITION OF THE CALIFORNIA GREEN BUILDING STANDARDS CODE ADOPTED

The California Green Building Standards Code, 2016 Edition, is adopted by reference and is the Green Code of the City of Chino Hills. The

purpose of this code is to promote the health, safety and general welfare of residents, workers, and visitors by minimizing waste of energy, water, and other resources in the construction and operation of buildings in the City and by providing a healthy indoor environment. The green building practices required by this code will also further the goal of reducing the greenhouse gas emissions in the City. The 2016 Green Building Standards Code is on file for public examination in the office of the City Clerk.

15.04.090 - 2016 EDITION OF THE CALIFORNIA ENERGY CODE ADOPTED

The 2016 Edition of the California Energy Code is adopted by reference and is the Energy Code of the City of Chino Hills. The purpose of this code is to reduce energy costs and environmental impacts of energy use - such as greenhouse gas emissions - while ensuring a safe, resilient, and reliable supply of energy.”

SECTION 3. This Ordinance must be broadly construed in order to achieve the purposes stated in this Ordinance. It is the City Council’s intent that the provisions of this Ordinance be interpreted or implemented by the City and others in a manner that facilitates the purposes set forth in this Ordinance.

SECTION 4. Repeal of any provision of the Chino Hills Municipal Code does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this Ordinance’s effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Ordinance.

SECTION 5. If this entire Ordinance or its application is deemed invalid by a court of competent jurisdiction, any repeal or amendment of the CHMC or other city ordinance by this Ordinance will be rendered void and cause such previous CHMC provision or other the city ordinance to remain in full force and effect for all purposes.

SECTION 6. The City Council finds that adoption of this Ordinance is exempt from review under the California Environmental Quality Act (California Public Resources Code §§ 21000, *et seq.*, “CEQA”) and the regulations promulgated thereunder (14 California Code of Regulations §§ 15000, *et seq.*, the “State CEQA Guidelines”) because it consists only of minor revisions and clarifications to an existing code of construction-related regulations and specification of procedures related thereto and will not have the effect of deleting or substantially changing any regulatory standards or findings required therefor, and therefore does not have the potential to cause significant effects on the environment. In addition, this ordinance is an action being taken for enhanced protection of the environment and is exempt from further review under CEQA Guidelines § 15308.

SECTION 7. The City Clerk must file a certified copy of this Ordinance with the California Building Standards Commission.

SECTION 8. If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance and each and all provisions thereof, irrespective of the fact that any one or more of said provisions may be declared invalid.

SECTION 9. The City Clerk is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Chino Hills' book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within fifteen (15) days after the passage and adoption of this Ordinance, cause it to be published and posted in accordance with California law.

SECTION 10. This Ordinance will take effect on the 30th day following its final passage and adoption.

PASSED, APPROVED AND ADOPTION this _____ day of _____, 2016.

ART BENNETT, MAYOR

ATTEST:

CHERYL BALZ, CITY CLERK

APPROVED AS TO FORM:

MARK D. HENSLEY, CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss
CITY OF CHINO HILLS)

I, CHERYL BALZ, City Clerk of the City of Chino Hills, DO HEREBY CERTIFY that Ordinance No. ____ was duly introduced at a regular meeting held November 22, 2016; and adopted at a regular meeting of the City Council held on the 13th day of December, 2016 by the following vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

CHERYL BALZ, CITY CLERK

I hereby certify that the foregoing is the original of Ordinance No. ____ duly passed and adopted by the Chino Hills City Council at their regular meeting held on November 22, 2016 and that summaries of the Ordinance were published on December 3, 2016 and December 17, 2016 in the Chino Hills Champion newspaper.

CHERYL BALZ, CITY CLERK



COUNCIL AGENDA STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS DATE: NOVEMBER 22, 2016
FROM: CITY MANAGER ITEM NO: 14
SUBJECT: FIRST QUARTER BUDGET PROGRAM REVIEW

RECOMMENDATION:

1. Receive, review, and file the quarterly budget program review.
2. Approve the appropriation budget amendments described in the Background/Analysis and Fiscal Impact sections of this report.
3. Approve the recommended changes to the Capital Improvement Program.

BACKGROUND/ANALYSIS:

As part of the annual budget process, a quarterly review is performed to provide a status of the current financials. Staff continues to review and monitor the status of all revenues and expenditures and recommends the following adjustments:

Revenue Amendments

General Fund

Sale of Founders Property Site:

It is recommended that estimated revenues in the General Fund be increased by \$11,583,900 to record the proceeds from the sale of the Founders property site. The sale price of \$11,600,000 was reduced by \$16,100 to account for closing costs related to the processing of the real estate transaction. The proceeds of this sale will be used for the payment of interfund loans (see expenditure amendment below).

Expenditure Amendments

General Fund

Interfund Loan Obligations:

It is recommended that the City Council approve an appropriation amendment in the amount of \$727,800 in principal payments and authorize the payment of \$12,311,700 in General Fund interfund loans. Of this amount, \$11,583,900 will be paid using proceeds received from the sale of the Founders property site (see revenue adjustment above). The remaining balance, totaling \$727,800, will be paid from the General Fund unreserved fund balance. These payments will satisfy all General Fund interfund loans in full, reducing the interfund loan balance owed by the General Fund to zero. The net effect of the sale of property and the payment of the interfund loans will be an overall increase in the amount of \$11,583,900 in the General Fund unreserved fund balance available for use.

Finance - Community Facilities District (CFD) No. 4- The Oaks:

It is recommended that appropriations be increased in the amount of \$220,000 for principal payments in CFD No. 4. The CFD has been accumulating funds for the purpose of paying off the Special Tax Bonds, Series 2006. As of September 1, 2016, sufficient funds have been collected to fully pay the CFD No. 4 portion of the debt. This budget amendment will decrease the unreserved fund balance in CFD No. 4 by \$220,000.

Finance - Re-Assessment District (RAD) No. 10-1:

It is recommended to approve an appropriations amendment in the amount of \$210,000 for principal payments in RAD No. 10-1. Additional funds that are collected in the RAD are accumulated to pay principal amounts in advance on the limited obligation improvement bond issued in 2010. As of September 1, 2016, \$210,000 of additional funds have been collected to pay a portion of the debt. This budget amendment will decrease the unreserved fund balance in RAD No. 10-1 by \$210,000.

Capital Improvement Program

The City currently has 38 projects designated in the Capital Improvement Program. As of September 30, 2016, there is 1 project completed, 31 projects either in the design process or under construction, and 6 projects which have not had any activity.

The completed project is as follows:

Install Transfer Switch for Emergency Generator

ENVIRONMENTAL (CEQA) REVIEW:

This proposed action is exempt from review under the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq.; “CEQA”) and CEQA regulations (14 California Code Regulations §§15000, et seq.) because it does not involve any commitment to a specific project which could result in a potentially significant physical impact on the environment; and constitutes an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. Accordingly, this action does not constitute a “project” that requires environmental review (see specifically 14 CCR § 15378(b)(4-5)).

FISCAL IMPACT:

The recommended modifications to the budget will increase the General Fund Unreserved Fund balance in the amount of \$11,583,900. The following table indicates the financial impact to its respective fund reserves as a result of the recommended modifications:

	<u>Net Increase/ (Decrease)</u>
General Fund – Unreserved	\$ 11,583,900
Community Facilities District No. 4	(220,000)
Re-Assessment District No. 10-1	<u>(210,000)</u>
TOTAL	<u>\$ 11,153,900</u>

REVIEWED BY OTHERS:

This agenda item has been reviewed by the Community Development Director and the Public Works Director.

Respectfully Submitted,

Recommended By:



Konradt Bartlam
City Manager



Judy R. Lancaster
Finance Director



COUNCIL AGENDA STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS DATE: NOVEMBER 22, 2016

FROM: CITY MANAGER ITEM NO: 15

SUBJECT: PURCHASE ORDER FOR CITY VEHICLE

RECOMMENDATION:

Authorize issuance of a purchase order to Lake Chevrolet in the amount of \$39,925.55 for the purchase of a 2017 Chevrolet Silverado 1500 half-ton pickup.

BACKGROUND/ANALYSIS:

As part of the FY 2016/17 budget, the City Council approved the purchase of a replacement service truck for the Sanitation Section. The Public Works Department prepared specifications and started the procurement process.

A formal Request for Bid for Vehicle Purchase No. 1617-01 was posted on the City's website and advertised in a local newspaper on September 17, 2016 and September 24, 2016. A total of two (2) bids for the purchase were received on October 6, 2016 as shown in the following table:

Reynolds Buick/GMC/Isuzu, Inc.	\$40,292.75
Lake Chevrolet	\$39,925.55

Staff sought piggy-back opportunities from California Multiple Award Schedules and for equivalent features were quoted \$40,150.22. Therefore, staff is recommending the award of a purchase order in the amount of \$39,925.55 to Lake Chevrolet, the lowest price bidder, for a 2017 Chevrolet Silverado 1500 Double Cab Pickup Truck. This truck is a replacement for vehicle #5050 currently in use by the Sanitation Section.

ENVIRONMENTAL (CEQA) REVIEW:

This action is not a project within the meaning of the California Environmental Quality Act (California Public Resources Code § 21000, et seq., "CEQA") and CEQA Guidelines (Title 14 California Code of Regulations § 15000, et seq.) Section 15378 and is therefore exempt from CEQA.

FISCAL IMPACT:

Funding for the replacement of this vehicle was included in the FY 2016/17 Equipment Maintenance and Sewer Utility budgets.

REVIEWED BY OTHERS:

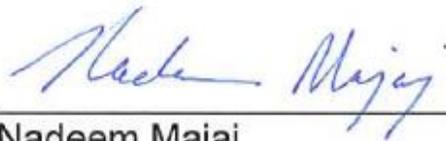
This item was reviewed by the Finance Director.

Respectfully Submitted,



Konradt Bartlam
City Manager

Recommended By:



Nadeem Majaj
P.E., Director of Public Works



COUNCIL AGENDA STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS DATE: NOVEMBER 22, 2016

FROM: CITY MANAGER ITEM NO: 16

SUBJECT: PROGRAM SUPPLEMENT AGREEMENT BETWEEN THE CITY OF CHINO HILLS AND THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) REGARDING THE LOS SERRANOS INFRASTRUCTURE IMPROVEMENTS – SRTS 3 PROJECT

RECOMMENDATION:

Adopt a Resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHINO HILLS APPROVING PROGRAM SUPPLEMENT AGREEMENT NO. 007-N1 BETWEEN THE CITY OF CHINO HILLS AND THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) REGARDING THE LOS SERRANOS INFRASTRUCTURE IMPROVEMENTS – SRTS 3 PROJECT

BACKGROUND/ANALYSIS:

The City has been awarded a Safe Routes to Schools grant in the amount of \$523,700 by Caltrans for the Los Serranos Infrastructure Improvements – SRTS 3 project. The project will construct sidewalk, curb and gutter, curb ramps, storm drain, and street lights on Yorba Avenue between Fairway Boulevard and Bird Farm Road, Los Serranos Boulevard between Pipeline Avenue and Bird Farm Road, and Pomona Rincon Road between Banbury Court and Fairway Boulevard.

On October 11, 2016, the City received the Program Supplement Agreement (PSA) No. 007-N1 to Administering Agency-State Agreement No. 08-5467R with Caltrans; which is specific to the Los Serranos Infrastructure Improvements – SRTS 3 project. The accompanying letter of instruction requires the agreement to be signed and returned within ninety (90) days or the funds will be disencumbered and/or de-obligated.

Accordingly, staff is asking the City Council to adopt a Resolution approving PSA No. 007-N1, and authorize the City Manager to negotiate and execute any future agreements and amendments with Caltrans related to this project.

ENVIRONMENTAL (CEQA) REVIEW:

On March 22, 2005, the City Council adopted a Mitigated Negative Declaration pursuant to the California Environmental Quality Act, and an Environmental Assessment/Finding of “No Significant Impact” pursuant to the Federal National Environmental Policy Act for the Los Serranos Infrastructure Improvements project. The Los Serranos Infrastructure Improvements – SRTS 3 project is included within the Los Serranos Infrastructure Improvements project. Finally, a NEPA Categorical Exemption was approved by Caltrans on July 9, 2015.

FISCAL IMPACT:

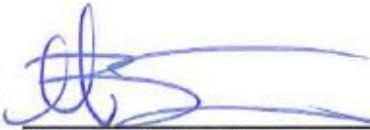
There is no fiscal impact associated with this action.

REVIEWED BY OTHERS:

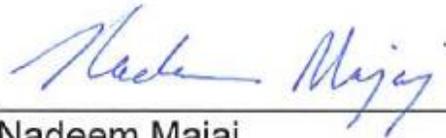
This agenda item has been reviewed by the City Attorney and the Finance Director.

Respectfully Submitted,

Recommended By:



Konradt Bartlam
City Manager



Nadeem Majaj
P.E., Director of Public Works

Attachments Program Supplement Agreement
Resolution

PROGRAM SUPPLEMENT NO. N007 Rev. 1
to
ADMINISTERING AGENCY-STATE AGREEMENT
FOR FEDERAL-AID PROJECTS NO 08-5467R

Adv Project ID **Date:** September 20, 2016
0812000160 **Location:** 08-SBD-0-CHNH
 Project Number: SRTSL-5467(009)
 E.A. Number:
 Locode: 5467

This Program Supplement hereby adopts and incorporates the Administering Agency-State Agreement for Federal Aid which was entered into between the Administering Agency and the State on 07/03/08 and is subject to all the terms and conditions thereof. This Program Supplement is executed in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. _____ approved by the Administering Agency on _____ (See copy attached).

The Administering Agency further stipulates that as a condition to the payment by the State of any funds derived from sources noted below obligated to this PROJECT, the Administering Agency accepts and will comply with the special covenants or remarks set forth on the following pages.

PROJECT LOCATION:

Yorba Avenue from Fairway Boulevard to Bird Farm Road, Los Serranos Boulevard from Pipeline Avenue to Bird Farm Road, and Pomona Rincon Road from Banbury Court to Fairway Boulevard

TYPE OF WORK: Curb, gutter, sidewalk, curb ramps, minor safety lighting, and drainage **LENGTH:** 0.6(MILES)

Estimated Cost	Federal Funds		Matching Funds	
			LOCAL	OTHER
\$861,558.00	LU2R	\$427,300.00	\$0.00	\$337,858.00
	LU20	\$96,400.00		

CITY OF CHINO HILLS

STATE OF CALIFORNIA
Department of Transportation

By _____
Title _____
Date _____
Attest _____

By _____
Chief, Office of Project Implementation
Division of Local Assistance
Date _____

I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance:

Accounting Officer Roryanne Jane Chyn Date 9/20/2016 \$523,700.00

SPECIAL COVENANTS OR REMARKS

1. A. The ADMINISTERING AGENCY will advertise, award and administer this project in accordance with the current published Local Assistance Procedures Manual.

B. ADMINISTERING AGENCY agrees that it will only proceed with work authorized for specific phase(s) with an "Authorization to Proceed" and will not proceed with future phase(s) of this project prior to receiving an "Authorization to Proceed" from the STATE for that phase(s) unless no further State or Federal funds are needed for those future phase(s).

C. STATE and ADMINISTERING AGENCY agree that any additional funds which might be made available by future Federal obligations will be encumbered on this PROJECT by use of a STATE-approved "Authorization to Proceed" and Finance Letter. ADMINISTERING AGENCY agrees that Federal funds available for reimbursement will be limited to the amounts obligated by the Federal Highway Administration.

D. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer within 60 days of project contract award and prior to the submittal of the ADMINISTERING AGENCY'S first invoice for the construction contract.

Failure to do so will cause a delay in the State processing invoices for the construction phase. Attention is directed to Section 15.7 "Award Package" of the Local Assistance Procedures Manual.

E. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six months commencing after the funds are encumbered for each phase by the execution of this Project Program Supplement Agreement, or by STATE's approval of an applicable Finance Letter. STATE reserves the right to suspend future authorizations/obligations for Federal aid projects, or encumbrances for State funded projects, as well as to suspend invoice payments for any on-going or future project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six-month period.

If no costs have been invoiced for a six-month period, ADMINISTERING AGENCY agrees to submit for each phase a written explanation of the absence of PROJECT activity along with target billing date and target billing amount.

ADMINISTERING AGENCY agrees to submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure of ADMINISTERING AGENCY to submit a "Final Report of Expenditures" within 180 days of PROJECT completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current Local Assistance Procedures Manual.

F. Administering Agency shall not discriminate on the basis of race, religion, age, disability, color, national origin, or sex in the award and performance of any Federal-

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assisted contract or in the administration of its DBE Program Implementation Agreement. The Administering Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of Federal-assisted contracts. The Administering Agency's DBE Implementation Agreement is incorporated by reference in this Agreement. Implementation of the DBE Implementation Agreement, including but not limited to timely reporting of DBE commitments and utilization, is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Administering Agency of its failure to carry out its DBE Implementation Agreement, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

G. Any State and Federal funds that may have been encumbered for this project are available for disbursement for limited periods of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act to the applicable fund Reversion Date shown on the State approved project finance letter. Per Government Code Section 16304, all project funds not liquidated within these periods will revert unless an executed Cooperative Work Agreement extending these dates is requested by the ADMINISTERING AGENCY and approved by the California Department of Finance.

ADMINISTERING AGENCY should ensure that invoices are submitted to the District Local Assistance Engineer at least 75 days prior to the applicable fund Reversion Date to avoid the lapse of applicable funds. Pursuant to a directive from the State Controller's Office and the Department of Finance; in order for payment to be made, the last date the District Local Assistance Engineer can forward an invoice for payment to the Department's Local Programs Accounting Office for reimbursable work for funds that are going to revert at the end of a particular fiscal year is May 15th of the particular fiscal year. Notwithstanding the unliquidated sums of project specific State and Federal funding remaining and available to fund project work, any invoice for reimbursement involving applicable funds that is not received by the Department's Local Programs Accounting Office at least 45 days prior to the applicable fixed fund Reversion Date will not be paid. These unexpended funds will be irrevocably reverted by the Department's Division of Accounting on the applicable fund Reversion Date.

H. As a condition for receiving federal-aid highway funds for the PROJECT, the Administering Agency certifies that NO members of the elected board, council, or other key decision makers are on the Federal Government Exclusion List. Exclusions can be found at www.sam.gov.

2. A. ADMINISTERING AGENCY shall conform to all State statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "LOCAL ASSISTANCE PROCEDURES") relating to the federal-aid program, all Title 23 Code of

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Federal Regulation (CFR) and 2 CFR Part 200 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise specifically waived as designated in the executed project-specific PROGRAM SUPPLEMENT.

B. Invoices shall be submitted on ADMINISTERING AGENCY letterhead that includes the address of ADMINISTERING AGENCY and shall be formatted in accordance with LOCAL ASSISTANCE PROCEDURES.

C. ADMINISTERING AGENCY must have at least one copy of supporting backup documentation for costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. ADMINISTERING AGENCY agrees to submit supporting backup documentation with invoices if requested by State. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.

D. Indirect Cost Allocation Plan/Indirect Cost Rate Proposals (ICAP/ICRP), Central Service Cost Allocation Plans and related documentation are to be prepared and provided to STATE (Caltrans Audits & Investigations) for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect costs incurred within each fiscal year being claimed for State and federal reimbursement. ICAPs/ICRPs must be prepared in accordance with the requirements set forth in 2 CFR, Part 200, Chapter 5 of the Local Assistance Procedural Manual, and the ICAP/ICRP approval procedures established by STATE.

E. STATE will withhold the greater of either two (2) percent of the total of all federal funds encumbered for each PROGRAM SUPPLEMENT or \$40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.

F. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand within thirty (30) days of such invoice.

G. ADMINISTERING AGENCY agrees to comply with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards.

H. ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree, that Contract Cost Principles and Procedures,

SPECIAL COVENANTS OR REMARKS

48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items.

I. Every sub-recipient receiving PROJECT funds under this AGREEMENT shall comply with 2 CFR, Part 200, 23 CFR, 48 CFR Chapter 1, Part 31, Local Assistance Procedures, Public Contract Code (PCC) 10300-10334 (procurement of goods), PCC 10335-10381 (non-A&E services), and other applicable STATE and FEDERAL regulations.

J. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, 23 CFR, 48 CFR, Chapter 1, Part 31, and other applicable STATE and FEDERAL regulations, are subject to repayment by ADMINISTERING AGENCY to STATE.

K. STATE reserves the right to conduct technical and financial audits of PROJECT WORK and records and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by the following paragraph:

ADMINISTERING AGENCY, ADMINISTERING AGENCY'S contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit by STATE, the California State Auditor, or any duly authorized representative of STATE or the United States all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts and ADMINISTERING AGENCY shall furnish copies thereof if requested. All of the above referenced parties shall make such AGREEMENT, PROGRAM SUPPLEMENT, and contract materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of submission of the final expenditure report by the STATE to the FHWA.

L. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain a financial management system and records that properly accumulate and segregate reasonable, allowable, and allocable incurred PROJECT costs and matching funds by line item for the PROJECT. The financial management system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices set to or paid by STATE.

M. ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act of 2 CFR 200 if it expends \$750,000 or more in Federal Funds in a single fiscal year of the Catalogue of Federal Domestic Assistance.

N. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in

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ADMINISTERING AGENCY's annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with 2 CFR, Part 200.

O. ADMINISTERING AGENCY shall not award a non-A&E contract over \$5,000, construction contracts over \$10,000, or other contracts over \$25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. Contracts awarded by ADMINISTERING AGENCY, if intended as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.

P. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain provisions B, C, F, H, I, K, and L under Section 2 of this agreement.

[Faint, illegible stamp or signature]

RESOLUTION NO. 2016R - ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHINO HILLS APPROVING THE PROGRAM SUPPLEMENT AGREEMENT NO. 007-N1 BETWEEN THE CITY OF CHINO HILLS AND THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) REGARDING THE LOS SERRANOS INFRASTRUCTURE IMPROVEMENTS – SRTS 3 PROJECT

WHEREAS, the City has been awarded a Safe Routes to Schools grant in the amount of \$523,700 by Caltrans for the Los Serranos Infrastructure Improvements – SRTS 3 project; and

WHEREAS, this project will construct sidewalk, curb and gutter, curb ramps, storm drain, and street lights on Yorba Avenue between Fairway Boulevard and Bird Farm Road, Los Serranos Boulevard between Pipeline Avenue and Bird Farm Road, and Pomona Rincon Road between Banbury Court and Fairway Boulevard; and

WHEREAS, a Program Supplement Agreement (PSA) for the construction phase was issued by the Caltrans, Division of Local Assistant on September 21, 2016.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHINO HILLS, DOES RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. That the City Council authorizes the execution of PSA No. 007-N1 to the Administering Agency-State Master Agreement No.08-5467R with Caltrans.

SECTION 2. The City Manager, or his/her designee, is authorized to negotiate and execute any future agreements and amendments related to this project with Caltrans.

SECTION 3. The Director of Public Works, or his/her designee, is authorized to sign Caltrans' forms related to the project administration and grant reimbursement.

SECTION 4. Direct the City Clerk to forward a certified copy of the Resolution, with the agreement, to Caltrans, Division of Local Assistance, Office of Project Implementation.

SECTION 5. The City Clerk shall certify as to the adoption of this resolution.

PASSED, APPROVED, AND ADOPTED this 22nd day of November, 2016.

ART BENNETT, MAYOR

ATTEST:

CHERYL BALZ, CITY CLERK

APPROVED AS TO FORM:

MARK D. HENSLEY, CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) §
CITY OF CHINO HILLS)

I, Cheryl Balz, City Clerk of the City of Chino Hills, DO HEREBY CERTIFY that the foregoing Resolution No. 2016R-_____ was duly adopted at a regular meeting of the City Council of the City of Chino Hills held on the ____ day of _____, 2016, by the following vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

CHERYL BALZ, CITY CLERK

The foregoing is the original of Resolution No. 2016R-_____ duly passed and adopted by the Chino Hills City Council at their regular meeting held _____.

CHERYL BALZ, CITY CLERK



COUNCIL AGENDA STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS DATE: NOVEMBER 22, 2016

FROM: CITY MANAGER ITEM NO: 17

SUBJECT: URGENCY ORDINANCE AMENDING CHAPTER 5.28 PROHIBITING ALL COMMERCIAL MARIJUANA ACTIVITY, URGENCY ORDINANCE AMENDING TITLE 16 PROHIBITING PERMIT ISSUANCE FOR MARIJUANA-RELATED LAND USES WITHIN THE CITY FOR A PERIOD OF FORTY-FIVE DAYS AND AMENDING CHAPTER 5.28 OF THE CHINO HILLS MUNICIPAL CODE TO PROHIBIT ALL COMMERCIAL MARIJUANA ACTIVITY

RECOMMENDATION:

1. Adopt by a minimum four/fifths vote an Urgency Ordinance entitled:

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHINO HILLS, AMENDING CHAPTER 5.28 OF THE CHINO HILLS MUNICIPAL CODE TO PROHIBIT ALL COMMERCIAL MARIJUANA ACTIVITY

2. Adopt by a minimum four/fifths vote an Urgency Ordinance entitled:

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHINO HILLS, PROHIBITING PERMIT ISSUANCE FOR MARIJUANA-RELATED LAND USES WITHIN THE CITY FOR A PERIOD OF FORTY-FIVE DAYS TO CONSIDER AMENDING TITLE 16 OF THE CHINO HILLS MUNICIPAL CODE

3. Introduce an Ordinance entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHINO HILLS, AMENDING CHAPTER 5.28 OF THE CHINO HILLS MUNICIPAL CODE TO PROHIBIT ALL COMMERCIAL MARIJUANA ACTIVITY AND FINDING EXEMPT FROM REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

BACKGROUND/ANALYSIS:

On November 8, 2016, the voters approved a statewide initiative entitled the “Control, Regulate and Tax Adult Use of Marijuana Act” (AUMA). The AUMA controls and regulates the cultivation, processing, manufacture, distribution, testing and sale of nonmedical marijuana, including marijuana products, for use by adults 21 years of age or older. The AUMA does not, and cannot, affect federal laws and regulations pertaining to marijuana or its derivatives. The AUMA expressly preserves local control over the regulation of marijuana-related business and marijuana-related land uses.

The following are some of the key provisions in the AUMA:

- It is now lawful under state and local law for persons 21 years of age or older to possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever up to 28.5 grams of marijuana in the form of concentrated cannabis or not more than eight grams of marijuana in the form of concentrated cannabis contained within marijuana products. (Health & Safety Code § 11362.1, subds. (a)(1) and (a)(2).)
- A person 21 years of age or older may possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants. (Health & Safety Code § 11362.1, subd. (a)(3).) A city or county may adopt and enforce reasonable regulations pertaining this personal cultivation of marijuana, but no city or county may completely prohibit the personal cultivation of marijuana if it is conducted within a private residence or within an accessory structure to a private residence. (Health & Safety Code § 11362.2, subds. (b)(1) and (b)(2).)
- Local jurisdictions may adopt and enforce local ordinances to regulate state-licensed marijuana business, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke. Local jurisdictions may also completely prohibit the establishment or operation of one or more types of marijuana-related businesses licensed pursuant to the AUMA. (Business & Professions Code § 26200.)
- Local jurisdictions may not prevent transportation of marijuana or marijuana products on public roads by a state licensee transporting marijuana or marijuana products in compliance with state law.
- The AUMA does not permit smoking of marijuana in public places or other places where tobacco smoking is prohibited, and prescribes penalties for violators. (Health & Safety Code §§ 11362.3, subds. (a)(1) and (a)(2); 11362.4, subds. (a) and (b).)

Pursuant to Government Code sections 36934 and 36937, a city may adopt an urgency ordinance that takes effect immediately if necessary to preserve the public peace, health or safety.

Marijuana uses are known to result in negative direct and secondary impacts on the health, safety and welfare of citizens, particularly when unregulated. These negative impacts include illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards and building hazards, and offensive odors.

In addition to the negative effects recited above, marijuana cultivation and distribution can attract crime, lead to fires, expose minors to marijuana, negatively impact neighborhoods, damage buildings, require dangerous electrical alterations and use, and create the nuisance of strong and noxious odors.[1] In Colorado, where recreational marijuana is legal and commercialized, marijuana-related traffic deaths increased 92% from 2010 to 2014 while all traffic deaths increased only 8 percent during the same time period.[2] Use of marijuana by Colorado teens ages 12-17 is at least 56% higher than the national average.[3] A study released in May 2016 by AAA Foundation for Traffic Research found that fatal crashes involving drivers who recently used marijuana doubled in the state of Washington after it legalized marijuana.[4] Based on these facts and other evidence, there is a concern that the proliferation of marijuana-related businesses and activities in the City would result in increased crime and other negative secondary effects like those experienced in other communities throughout California and around the country. By expressly prohibiting commercial marijuana activities and marijuana cultivation to the maximum extent authorized by State law, the City can further safeguard against the detrimental secondary impacts associated with such activities. A complete prohibition on commercial marijuana activities and marijuana cultivation in the City of Chino Hills is necessary to avoid the deleterious secondary effects of such activity as detailed herein.

Moreover, the possession, use, transportation, distribution, sale, and other marijuana-related activities, for medical or recreational purposes, remain illegal under the federal Controlled Substances Act. Marijuana is classified as a Schedule 1 substance; a designation reserved for substances with a high propensity for abuse and addiction, and lacking any recognized medical benefits.

At this time, it is unclear how the AUMA will be implemented by the State, and whether the statutory scheme will adequately address local health, safety, and welfare concerns. The City has not yet studied the potential health, safety, and welfare impacts of recreational marijuana on local residents, businesses, and the community, and the City has not yet made a determination as to the locations, zoning districts, or development standards that should be applied to marijuana-related uses to preserve such interests, or whether a complete ban on such uses is necessary and appropriate.

[1] White Paper on Marijuana Dispensaries, California Police Chiefs Association's Task Force on Marijuana Dispensaries, April 22, 2009, p. 12.

[2] The Legalization of Marijuana in Colorado: The Impact, Rocky Mountain High Intensity Drug Trafficking Area, Vol. 3, September 2015, pp. 14-15.

[3] Id. at pp. 35-36.

[4] Prevalence of Marijuana Involvement in Fatal Crashes: Washington, 2010-2014, May 2016, AAA Foundation for Traffic Safety.

Presently, the Municipal Code prohibits medical marijuana collectives and medical marijuana cultivation throughout the city. The proposed ordinances extend the 61/398

prohibition to all commercial marijuana activities that are now permissible under state law, including a prohibition on all outdoor cultivation of marijuana, regardless of purpose.

Two urgency ordinances are presented for the Council's consideration. The first ordinance amends Chapter 5.28 to expressly prohibit all commercial marijuana activities (regardless of purpose) and to prohibit all cultivation of marijuana with the exception of the cultivation of up to six plants within a private residence. Under the AUMA, cities and counties may not completely prohibit indoor personal cultivation of up to six marijuana plants, but may enact and enforce reasonable regulations pertaining to personal, indoor cultivation. The second ordinance focuses on marijuana-related land uses and imposes a 45-day moratorium on all marijuana-related land uses, as defined, during which time no permit or license of any kind can be issued for a marijuana-related land use. The moratorium will allow reasonable time for the City to consider whether to formulate and adopt zoning standards and regulations governing marijuana-related land uses, or whether to prohibit such uses in their entirety. Adoption of an urgency ordinance requires a 4/5 vote of the City Council.

In addition to the two urgency ordinances, staff recommends the City Council introduce on first reading a regular, non-urgency ordinance amending Chapter 5.28 in an identical manner. Introduction of an identical non-urgency ordinance at the same meeting at which an urgency ordinance is adopted is a common method used to "back up" the action taken in the urgency ordinance. If the urgency clause is successfully challenged, the non-urgency version of the ordinance will already be effective. In such a case, only those actions taken or citations issued prior to the effective date of the non-urgency ordinance are vulnerable to challenge.

GENERAL PLAN CONSISTENCY:

The proposed ordinances are consistent with the Chino Hills General Plan, and in particular General Plan Land Use Element Policy LU-3.1 which states: "Maintain the character and quality of existing neighborhoods," because by prohibiting the establishment or operation of commercial marijuana uses, the City is preventing the negative secondary effects and adverse impacts of marijuana businesses. Further, this ordinance does not create new law and clarifies the City's existing regulations on distribution and cultivation of marijuana.

ENVIRONMENTAL (CEQA) REVIEW:

Adoption of the proposed ordinances are exempt from the provisions of the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq., "CEQA") and CEQA regulations (14 California Code of Regulations §§ 15000, et seq.) because these ordinances are categorically exempt from further CEQA review under California Code Regs. Title 14, §§ 15305 (minor alterations in land use limitations) and 15308 (actions taken as authorized by local ordinance to assure protection of the environment). Further, these ordinances do not have the potential to cause significant effects on the environment and, therefore, the project is exempt from the CEQA pursuant to 14 Cal. Code Regs. § 15061(b)(3). The ordinances amend the Chino Hills Municipal Code to expressly prohibit commercial marijuana activities and outdoor cultivation of marijuana in the City. The City is not aware of any existing marijuana

commercial uses in Chino Hills, and the proposed ordinances would maintain the status quo. The ordinances do not portend any development or changes to the physical environment. Following an evaluation of possible adverse impacts, it can be seen with certainty that there is no possibility that the ordinances will have a significant effect on the environment.

FISCAL IMPACT:

There is no fiscal impact associated with the adoption of these Ordinances.

REVIEWED BY OTHERS:

This item has been reviewed by the City Attorney's Office.

Respectfully Submitted,

Recommended By:



Konradt Bartlam
City Manager



Elizabeth M. Calciano
Asst. City Attorney for
Mark D. Hensley
City Attorney

Attachments Urgency Ordinance Amending Chapter 5.28

Urgency Ordinance Consider Amending Title 16

Ordinance Amending Chapter 5.28

White Paper on Marijuana Dispensaries

The Legalization of Marijuana in Colorado

Prevalence of Marijuana Involvement in Fatal Crashes

ORDINANCE NO. _____

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHINO HILLS, CALIFORNIA, AMENDING CHAPTER 5.28 OF THE CHINO HILLS MUNICIPAL CODE TO PROHIBIT ALL COMMERCIAL MARIJUANA ACTIVITY

The City Council of the City of Chino Hills does ordain as follows:

SECTION 1: The City Council finds and determines as follows:

A. On November 5, 1996, the voters of the State of California approved Proposition 215, codified as Health and Safety Code Section 11362.5 et seq., and entitled the Compassionate Use Act of 1996 (“CUA”). The CUA exempts qualified patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for personal medical use.

B. The intent of the CUA was to enable persons in the State of California who are in need of marijuana for medicinal purposes to obtain it and use it under limited, specified circumstances.

C. The State enacted Senate Bill 420 in October 2003, codified a Health and Safety Section 11362.7, et seq., (“Medical Marijuana Program Act,” or “MMPA”) to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420. The MMPA created a state-approved voluntary medical marijuana identification card program and provided for certain additional immunities from state marijuana laws. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances.

D. The CUA and MMPA do not “legalize” marijuana, but provide limited defenses to certain categories of individuals with respect to certain conduct and certain state criminal offenses.

E. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land. . . .” Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Court of Appeal held that “there is no right – and certainly no constitutional right – to cultivate medical marijuana. . . .” The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.

F. The Federal Controlled Substances Act, 21 U.S.C. § 801 et seq., classifies marijuana as a Schedule 1 Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United State, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for medical purposes.

G. On October 9, 2015 Governor Brown signed three bills into law (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act (“MMRSA”). MMRSA established a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. MMRSA allows a City to completely prohibit commercial medical marijuana activities.

H. The City Council finds that commercial medical marijuana activities, as well as cultivation for personal medical use as allowed by the CUA and MMP can adversely affect the health, safety, and well-being of City residents. Citywide prohibition is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

I. The limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program does not confer a land use right or the right to create or maintain a public nuisance.

J. MMRSA contained language that required the city to prohibit cultivation uses either expressly or otherwise under the principles of permissive zoning, or the State would become the sole licensing authority. MMRSA also contained language that required delivery services to be expressly prohibited by local ordinance, if the City wished to do so.

K. On September 23, 2014, the City Council adopted Ordinance No. 275 expressly prohibiting medical marijuana collectives and medical marijuana cultivation throughout the City.

L. On November 8, 2016, the voters of the State of California passed proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA). The AUMA decriminalizes (under California law), controls and regulates the cultivation, processing, manufacture, distribution, testing and sale of nonmedical marijuana,

including marijuana products, for use by adults 21 years of age or older. The AUMA also taxes the commercial growth and retail sale of marijuana. It does not, and cannot, affect federal regulations as to marijuana or its derivatives.

M. The AUMA expressly preserves local control over the regulation of marijuana-related businesses and marijuana-related land uses (Business & Professions Code § 26200, *et seq.*) The City Council wishes to prohibit all commercial marijuana activity and marijuana cultivation to the maximum extent authorized by State law.

N. In accordance with Government Code sections 36934 and 36937(b), the City Council finds that this Ordinance should be adopted on an urgency basis to preserve the public health, safety and welfare. A complete prohibition on commercial marijuana activities and marijuana cultivation in the City of Chino Hills is necessary to avoid the deleterious secondary effects of such activity as detailed herein. In addition to the negative effects recited above, marijuana cultivation and distribution can attract crime, lead to fires, expose minors to marijuana, negatively impact neighborhoods, damage buildings, require dangerous electrical alterations and use, and create the nuisance of strong and noxious odors. (*White Paper on Marijuana Dispensaries*, California Police Chiefs Association's Task Force on Marijuana Dispensaries, April 22, 2009, p. 12.) In Colorado, where recreational marijuana is legal and commercialized, marijuana-related traffic deaths increased 92% from 2010 to 2014 while all traffic deaths increased only 8 percent during the same time period. (*The Legalization of Marijuana in Colorado: The Impact*, Rocky Mountain High Intensity Drug Trafficking Area, Vol. 3, September 2015, pp. 14-15.) Use of marijuana by Colorado teens ages 12-17 is at least 56% higher than the national average. (*Id.* at pp. 35-36.) A study released in May 2016 by AAA Foundation for Traffic Research found that fatal crashed involving drivers who recently used marijuana doubled in the state of Washington after it legalized marijuana. (*Prevalence of Marijuana Involvement in Fatal Crashes: Washington, 2010-2014*, May 2016, AAA Foundation for Traffic Safety.) Based on these facts and other evidence, there is a concern that the proliferation of marijuana-related businesses and activities in the City would result in increased crime and other negative secondary effects like those experienced in other communities throughout California and around the country. By expressly prohibiting commercial marijuana activities and marijuana cultivation to the maximum extent authorized by State law, the City can further safeguard against the detrimental secondary impacts associated with such activities.

SECTION 2: Authority. This ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including but not limited to Article XI, Section 7 of the California Constitution, the Compassionate Use Act, the Medical Marijuana Program Act, the Medical Marijuana Regulation and Safety Act, the Control, Regulate and Tax Adult Use of Marijuana Act, and Government Code sections 36934 and 36937(b).

SECTION 3: Chapter 5.28 of the Chino Hills Municipal Code is amended to read as follows:

“Chapter 5.28 — MARIJUANA

Sections:

- 5.28.010 Definitions.**
- 5.28.020 Commercial marijuana activity—Prohibited.**
- 5.28.030 Cultivation of marijuana for personal use.**
- 5.28.040 Severability.**
- 5.28.050 Interpretation.**

5.28.010 Definitions.

“Commercial marijuana activity” means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery, or sale of marijuana and marijuana products.

“Cultivation” means any activity involving the planting, growing, cultivating, harvesting, drying, curing, grading, trimming or processing of marijuana.

“Delivery” means the commercial transfer of marijuana or marijuana products to a customer. “Delivery” also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under this division, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

“Marijuana” means all parts of the plant *Cannabis sativa L.*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include:

- (a) industrial hemp, as defined in Health & Safety Code Section 11018.5; or
- (b) the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

“Marijuana accessories” means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.

“Marijuana cultivation facility” means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana

product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

“Marijuana establishment” means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

“Marijuana product manufacturing facility” means an entity licensed to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

“Marijuana products” means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.

“Marijuana storage facility” means any entity or premises used for the storage of marijuana, marijuana products or marijuana accessories.

“Marijuana testing facility” means an entity licensed to analyze and certify the safety and potency of marijuana.

“Private residence” means a house, an apartment unit, a mobile home, or other similar habitable dwelling.

“Retail marijuana store” means any entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers; or any premises, whether licensed or unlicensed, where marijuana, marijuana products, or devices for the use of marijuana or marijuana products are offered, either individually or in any combination, for retail sale, including an establishment that delivers marijuana and marijuana products as part of a retail sale.

5.28.020 Commercial marijuana activity—Prohibited.

No license can be issued for, nor shall any person operate, a marijuana cultivation facility, marijuana product manufacturing facility, marijuana testing facility, marijuana delivery business, marijuana storage facility, retail marijuana store, marijuana establishment, or any commercial marijuana activity in the City of Chino Hills.

5.28.030 Cultivation of marijuana for personal use.

A. Outdoor Cultivation. The cultivation of marijuana outdoors is prohibited in the City of Chino Hills regardless of purpose.

B. Indoor Cultivation. Not more than six plants may be cultivated, planted, harvested, dried, processed or possessed within a single private residence at one time pursuant to Health & Safety Code Section 11362.2.

5.28.040 Severability.

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this chapter, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances.

5.28.050 Interpretation.

The intent of this chapter is to prohibit commercial marijuana activities and the personal cultivation of marijuana, whether medical or recreational in nature, to the maximum extent allowed under state law. Nothing in this chapter shall be interpreted as allowing behavior otherwise prohibited by state law and nothing in this chapter shall be interpreted as prohibiting conduct that the city is expressly preempted from prohibiting under state law.”

SECTION 4: Environmental Review. The City Council finds that this ordinance does not have the potential to cause significant effects on the environment and, therefore, the project is exempt from the California Environmental Quality Act (CEQA) pursuant to 14 Cal. Code Regs. § 15061(b)(3). The ordinance amends the Chino Hills Municipal Code to expressly prohibit commercial marijuana activities and outdoor cultivation of marijuana in the City. The ordinance does not portend any development or changes to the physical environment. Further, the City Council finds that this ordinance is categorically exempt from further CEQA review under California Code Regs. Title 14, §§ 15305 (minor alterations in land use limitations) and 15308 (actions taken as authorized by local ordinance to assure protection of the environment). The City is not aware of any existing marijuana commercial uses in Chino Hills and the proposed ordinance would maintain the status quo. Following an evaluation of possible adverse impacts, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

SECTION 5: Construction. This Ordinance must be broadly construed in order to achieve the purposes stated in this Ordinance. It is the City Council’s intent that the provisions of this Ordinance be interpreted or implemented by the City and others in a manner that facilitates the purposes set forth in this Ordinance.

SECTION 6: *Enforceability.* Repeal of any provision of the Chino Hills Municipal Code does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this Ordinance's effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Ordinance.

SECTION 7: *Severability.* If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

SECTION 8: The City Clerk is directed to certify the passage and adoption of this Ordinance, cause it to be entered into the city of Chino Hill's book of original ordinances, make a note of the passage and adoption in the records of this meeting, and, within fifteen days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

SECTION 9: *Declaration of Urgency.* Based on the findings set forth in Section 1, this is an urgency ordinance adopted for the immediate preservation of the public peace, health, safety and welfare. This Ordinance is adopted by a four-fifths vote and will become effective immediately upon adoption pursuant to Government Code section 36937(b).

INTRODUCED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Chino Hills, California this 22nd day of November, 2016.

ART BENNETT, MAYOR

ATTEST:

CHERYL BALZ, CITY CLERK

APPROVED AS TO FORM:

MARK D. HENSLEY, CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss
CITY OF CHINO HILLS)

I, CHERYL BALZ, City Clerk of the City of Chino Hills, DO HEREBY CERTIFY that Ordinance No. _____ was duly introduced at a regular meeting held November 22, 2016; and adopted at a regular meeting of the City Council held on the 22nd day of November, 2016 by the following vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

CHERYL BALZ, CITY CLERK

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Chino Hills City Council at their regular meeting held on November 22, 2016 and that the Ordinance in its entirety was published on December 3, 2016 the Chino Hills Champion newspaper.

CHERYL BALZ, CITY CLERK

ORDINANCE NO. _____

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHINO HILLS, CALIFORNIA, PROHIBITING PERMIT ISSUANCE FOR MARIJUANA-RELATED LAND USES WITHIN THE CITY FOR A PERIOD OF FORTY-FIVE DAYS TO CONSIDER AMENDING TITLE 16 OF THE CHINO HILLS MUNICIPAL CODE

The Council of the City of Chino Hills does ordain as follows:

SECTION 1: This ordinance is adopted pursuant to Government Code Sections 36937 and 65858, and other applicable laws.

SECTION 2: *Findings:* The Chino Hills City Council finds, determines and declares as follows:

- A. The City can adopt and enforce all laws and regulations not in conflict with the general laws and the City holds all rights and powers established by state law.
- B. The City has a compelling interest in the careful and orderly planning and regulation of land uses within the City.
- C. Without orderly, careful planning, portions of the City can quickly deteriorate, resulting in negative consequences to social, environmental and economic values.
- D. Title 16, Appendix A of the Chino Hills Municipal Code currently prohibits medical-marijuana related land uses.
- E. On November 8, 2016, the voters of the State of California passed the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”).
- F. The AUMA legalized various recreational marijuana activities for persons 21 years of age or older, including recreational marijuana businesses, dispensaries, retailers, delivery services, use, possession, transportation, manufacture, testing, indoor and outdoor cultivation, and other activities.
- G. The AUMA expressly preserves local control over the regulation of marijuana-related businesses and marijuana-related land uses (Business & Professions Code § 26200, *et seq.*)
- H. Other states that have legalized recreational marijuana have experienced a host of negative secondary impacts associated with recreational marijuana, including, without limitation, increased traffic accidents

resulting in death or serious injury, burglaries, personal and property crimes, loitering, fire and building hazards, public intoxication, and other undesirable imp acts on the quality of life for local residents. (See, e.g., *The Legalization of Marijuana in Colorado: The Impact*, Rocky Mountain High Intensity Drug Trafficking Area, Vol. 3, September 2015; *Prevalence of Marijuana Involvement in Fatal Crashes: Washington, 2010-2014*, May 2016, AAA Foundation for Traffic Safety.)

- I. The impact of the AUMA and legalization of recreational marijuana on the City of Chino Hills and its residents is unclear at this time and it is foreseeable that the City could see an influx of applications for marijuana-related land uses, as well as an influx of unpermitted and unregulated marijuana-related land uses, the scope and extent of which is difficult to predict at this time.
- J. Without clear and precise regulations on marijuana-related land uses, there is a present and immediate threat to the health, safety and welfare of the residents of the City of Chino Hills from the unregulated establishment of marijuana-related land uses.
- K. In light of the intent and purpose of the City's existing ban on medical marijuana-related businesses (CHMC Chapter 5.28) and medical marijuana-related land uses (Title 16, Appendix A), together with the permissive nature of the City's zoning scheme as codified in Title 16, the City interprets its current Municipal Code as prohibiting all marijuana-related businesses and land uses, regardless of whether they are medical or recreational in nature.
- L. Despite the City's intent and its interpretation of its existing Code, it is foreseeable that persons seeking to establish recreational marijuana-related land uses may attempt to do so regardless of Chapter 5.28 and Title 16, Appendix A.
- M. To avoid doubt as to the illegality of all marijuana-related land uses, including recreational marijuana-related land uses, and to allow the City time to study the impacts of recreational marijuana land uses on the general health, safety and welfare of City residents, and the consistency of such uses with the City's General Plan and Zoning Code, the City Council desires to adopt an interim ordinance as an urgency ordinance, effective immediately, declaring and establishing a temporary moratorium on all marijuana-related land uses legalized by the AUMA in order to protect the health, safety and welfare of the City's residents.
- N. The best method for protecting the public health, safety and welfare is either to prohibit marijuana-related land uses entirely or to adopt comprehensive regulations for the establishment and operation of

marijuana-related land uses, including, without limitation, locational and operational standards.

- O. The City cannot enact a comprehensive set of restrictions and regulations without due study and deliberation. The City requires an indeterminate length of time to analyze the details of such comprehensive restrictions in light of the enactment of the AUMA. Significant damage to the public health, safety and welfare could occur if persons are permitted to engage in or operate marijuana-related land uses without regulation while a set of proposed regulations is being studied and considered through a public hearing process. Until the City has had the opportunity to evaluate its options and make an informed decision, approval of any land use entitlement or permit such as a use permit, variance, building permit, license, certificate of occupancy, zone clearance or any other land use approval involving marijuana-related uses would threaten the public health, safety and welfare.
- P. This moratorium is consistent with the Chino Hills General Plan, and in particular General Plan Land Use Element Policy LU-3.1 that provides: "Maintain the character and quality of existing neighborhoods," because by prohibiting the establishment or operation of commercial marijuana uses, the City is preventing the negative secondary effects and adverse impacts of marijuana businesses. Further, this ordinance does not create new law and clarifies the City's existing regulations on distribution and cultivation of marijuana.
- Q. Based on the foregoing, the City finds that there is a current and immediate threat to the public health, safety, or welfare and that this Ordinance is warranted and necessary in order to protect the City from the potential effects and impacts of unregulated marijuana-related land uses including, without limitation, potential impacts on vehicle traffic, public safety, neighboring land uses, and other similar or related effects on property values and the quality of life in the City's neighborhoods.
- R. The City Council further finds that this moratorium is a matter of local and City-wide importance and is not directed towards any particular applicant or potential applicant for a marijuana-related land use.
- S. Government Code sections 36937 and 65858 authorize the adoption of an urgency ordinance to protect the public health, safety and welfare and to prohibit certain land uses that may conflict with the land use regulations that the City Council is considering or intends to study within a reasonable time.

- T. This Ordinance is in addition to, and does not alter or supersede, the City's current ban on medical marijuana collectives and medical marijuana cultivation set forth in Chapter 5.28 and Title 16, Appendix A of the Chino Hills Municipal Code. The City Council further finds that the length of the moratorium imposed by this Ordinance will not in any way deprive any person of rights granted by state or federal laws, because the moratorium is short in duration and essential to protect the public health, safety and welfare.

SECTION 3: *Interim Regulations:* The following provisions are adopted as interim requirements for issuing permits pursuant to the Chino Hills Municipal Code for marijuana-related land uses and any construction, conversion, or other activity in the City in conflict with these provisions is expressly prohibited:

- A. **Restricted Activities.** For a period of forty-five (45) days after adoption of this Ordinance, the City will not issue a permit or land use entitlement to any person for any marijuana-related land use. City staff, including City boards and commissions, are directed to refrain from accepting or processing any application for any land use entitlement, including, without limitation, use permits, variances, building permits, licenses and certificates of occupancy, necessary for constructing, establishing, or operating a marijuana-related land use within the City, and to refrain from issuing any land use entitlement for any pending applications already received. These prohibitions will remain effective for forty-five (45) days following adoption of this Ordinance.
- B. **Definitions.** In addition to the definitions contained in the Chino Hills Municipal Code, the following words and phrases will, for the purposes of this Ordinance, be defined as follows, unless it is clearly apparent from the context that another meaning is intended. Should any of the definitions be in conflict with the current provisions of the Chino Hills Municipal Code, the following definitions will prevail:

"Marijuana-related land use" means any use of land that involves or includes the cultivation, processing, packaging, testing, manufacture, transportation, storage, delivery, distribution, dispensing, or selling of marijuana, marijuana accessories, or marijuana products.

"Marijuana" means all parts of the plant *Cannabis sativa L.*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin.

"Marijuana accessories" means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing,

compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.

“Marijuana products” means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.

SECTION 4: CEQA. Exercising its independent judgment on the basis of the whole record, the City Council finds that this Ordinance is not subject to environmental review under the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines. Sections 15060(c)(2) and 15060(c)(3) pertain to activities that will not result in a direct or reasonably foreseeable indirect change to the environment and that are not defined as a project under Section 15378. This Ordinance has no potential for resulting in physical change to the environment directly or indirectly in that its purpose is to prevent change to the environment pending the completion of the contemplated research and evaluation of regulatory alternatives. Further, the City Council finds that this Ordinance is categorically exempt from further CEQA review under California Code Regs. Title 14, §§ 15305 (minor alterations in land use limitations) and 15308 (actions taken as authorized by local ordinance to assure protection of the environment). The ordinance amends the Chino Hills Municipal Code to expressly prohibit commercial marijuana activities and outdoor cultivation of marijuana in the City. The City is not aware of any existing marijuana commercial uses in Chino Hills and the proposed ordinance would maintain the status quo. The ordinance does not portend any development or changes to the physical environment.

SECTION 5: If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

SECTION 6: The City Clerk is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Chino Hills’s book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within fifteen (15) days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

SECTION 7: This Ordinance will become effective immediately upon adoption pursuant to Government Code § 36937(b) for the immediate preservation of the public peace, health, safety, and welfare. Pursuant to that statute, and Government Code § 65858, this Ordinance is adopted by a four-fifths vote.

PASSED, APPROVED AND ADOPTED this 22nd day of November 22, 2016.

ART BENNETT, MAYOR

ATTEST:

CHERYL BALZ, CITY CLERK

APPROVED AS TO FORM:

MARK D. HENSLEY, CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss
CITY OF CHINO HILLS)

I, CHERYL BALZ, City Clerk of the City of Chino Hills, DO HEREBY CERTIFY that Ordinance No. _____ was duly introduced at a regular meeting held November 22, 2016; and adopted at a regular meeting of the City Council held on the 13th day of December, 2016 by the following vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

CHERYL BALZ, CITY CLERK

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Chino Hills City Council at their regular meeting held on November 22, 2016 and that summaries of the Ordinance were published on December 3, 2016 and December 17, 2016 in the Chino Hills Champion newspaper.

CHERYL BALZ, CITY CLERK

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHINO HILLS, CALIFORNIA, AMENDING CHAPTER 5.28 OF THE CHINO HILLS MUNICIPAL CODE TO PROHIBIT ALL COMMERCIAL MARIJUANA ACTIVITY AND FINDING EXEMPT FROM REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council of the City of Chino Hills does ordain as follows:

SECTION 1: The City Council finds and determines as follows:

A. On November 5, 1996, the voters of the State of California approved Proposition 215, codified as Health and Safety Code Section 11362.5 et seq., and entitled the Compassionate Use Act of 1996 (“CUA”). The CUA exempts qualified patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for personal medical use.

B. The intent of the CUA was to enable persons in the State of California who are in need of marijuana for medicinal purposes to obtain it and use it under limited, specified circumstances.

C. The State enacted Senate Bill 420 in October 2003, codified a Health and Safety Section 11362.7, et seq., (“Medical Marijuana Program Act,” or “MMPA”) to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420. The MMPA created a state-approved voluntary medical marijuana identification card program and provided for certain additional immunities from state marijuana laws. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances.

D. The CUA and MMPA do not “legalize” marijuana, but provide limited defenses to certain categories of individuals with respect to certain conduct and certain state criminal offenses.

E. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land. . . .” Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Court of Appeal held that “there is no right – and certainly no constitutional right – to cultivate medical marijuana. . . .” The Court in

Maral affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.

F. The Federal Controlled Substances Act, 21 U.S.C. § 801 et seq., classifies marijuana as a Schedule 1 Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United State, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for medical purposes.

G. On October 9, 2015 Governor Brown signed three bills into law (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act (“MMRSA”). MMRSA established a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. MMRSA allows a City to completely prohibit commercial medical marijuana activities.

H. The City Council finds that commercial medical marijuana activities, as well as cultivation for personal medical use as allowed by the CUA and MMP can adversely affect the health, safety, and well-being of City residents. Citywide prohibition is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

I. The limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program does not confer a land use right or the right to create or maintain a public nuisance.

J. MMRSA contained language that required the city to prohibit cultivation uses either expressly or otherwise under the principles of permissive zoning, or the State would become the sole licensing authority. MMRSA also contained language that required delivery services to be expressly prohibited by local ordinance, if the City wished to do so.

K. On September 23, 2014, the City Council adopted Ordinance No. 275 expressly prohibiting medical marijuana collectives and medical marijuana cultivation throughout the City.

L. On November 8, 2016, the voters of the State of California passed proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA). The AUMA decriminalizes (under California law), controls and regulates the cultivation, processing, manufacture, distribution, testing and sale of nonmedical marijuana, including marijuana products, for use by adults 21 years of age or older. The AUMA also taxes the commercial growth and retail sale of marijuana. It does not, and cannot, affect federal regulations as to marijuana or its derivatives.

M. The AUMA expressly preserves local control over the regulation of marijuana-related businesses and marijuana-related land uses (Business & Professions Code § 26200, *et seq.*) The City Council wishes to prohibit all commercial marijuana activity and marijuana cultivation to the maximum extent authorized by State law.

N. A complete prohibition on commercial marijuana activities and marijuana cultivation in the City of Chino Hills is necessary to avoid the deleterious secondary effects of such activity as detailed herein. In addition to the negative effects recited above, marijuana cultivation and distribution can attract crime, lead to fires, expose minors to marijuana, negatively impact neighborhoods, damage buildings, require dangerous electrical alterations and use, and create the nuisance of strong and noxious odors. (*White Paper on Marijuana Dispensaries*, California Police Chiefs Association's Task Force on Marijuana Dispensaries, April 22, 2009, p. 12.) In Colorado, where recreational marijuana is legal and commercialized, marijuana-related traffic deaths increased 92% from 2010 to 2014 while all traffic deaths increased only 8 percent during the same time period. (*The Legalization of Marijuana in Colorado: The Impact*, Rocky Mountain High Intensity Drug Trafficking Area, Vol. 3, September 2015, pp. 14-15.) Use of marijuana by Colorado teens ages 12-17 is at least 56% higher than the national average. (*Id.* at pp. 35-36.) A study released in May 2016 by AAA Foundation for Traffic Research found that a fatal crash involving drivers who recently used marijuana doubled in the state of Washington after it legalized marijuana. (*Prevalence of Marijuana Involvement in Fatal Crashes: Washington, 2010-2014*, May 2016, AAA Foundation for Traffic Safety.) Based on these facts and other evidence, there is a concern that the proliferation of marijuana-related businesses and activities in the City would result in increased crime and other negative secondary effects like those experienced in other communities throughout California and around the country. By expressly prohibiting commercial marijuana activities and marijuana cultivation to the maximum extent authorized by State law, the City can further safeguard against the detrimental secondary impacts associated with such activities.

SECTION 2: *Authority.* This ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including but not limited to Article XI, Section 7 of the California Constitution, the Compassionate Use Act, the Medical Marijuana Program Act, the Medical Marijuana Regulation and Safety Act, and the Control, Regulate and Tax Adult Use of Marijuana Act.

SECTION 3: Chapter 5.28 of the Chino Hills Municipal Code is amended to read as follows:

“Chapter 5.28 — MARIJUANA

Sections:

- 5.28.010 Definitions.**
- 5.28.020 Commercial marijuana activity—Prohibited.**
- 5.28.030 Cultivation of marijuana for personal use.**
- 5.28.040 Severability.**
- 5.28.050 Interpretation.**

5.28.010 Definitions.

“Commercial marijuana activity” means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery, or sale of marijuana and marijuana products.

“Cultivation” means any activity involving the planting, growing, cultivating, harvesting, drying, curing, grading, trimming or processing of marijuana.

“Delivery” means the commercial transfer of marijuana or marijuana products to a customer. “Delivery” also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under this division, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

“Marijuana” means all parts of the plant *Cannabis sativa L.*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include:

- (a) industrial hemp, as defined in Health & Safety Code Section 11018.5; or
- (b) the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

“Marijuana accessories” means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.

“Marijuana cultivation facility” means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

“Marijuana establishment” means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

“Marijuana product manufacturing facility” means an entity licensed to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

“Marijuana products” means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.

“Marijuana storage facility” means any entity or premises used for the storage of marijuana, marijuana products or marijuana accessories.

“Marijuana testing facility” means an entity licensed to analyze and certify the safety and potency of marijuana.

“Private residence” means a house, an apartment unit, a mobile home, or other similar habitable dwelling.

“Retail marijuana store” means any entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers; or any premises, whether licensed or unlicensed, where marijuana, marijuana products, or devices for the use of marijuana or marijuana products are offered, either individually or in any combination, for retail sale, including an establishment that delivers marijuana and marijuana products as part of a retail sale.

5.28.020 Commercial marijuana activity—Prohibited.

No license can be issued for, nor shall any person operate, a marijuana cultivation facility, marijuana product manufacturing facility, marijuana testing facility, marijuana delivery business, marijuana storage facility, retail marijuana store, marijuana establishment, or any commercial marijuana activity in the City of Chino Hills.

5.28.030 Cultivation of marijuana for personal use.

A. Outdoor Cultivation. The cultivation of marijuana outdoors is prohibited in the City of Chino Hills regardless of purpose.

B. Indoor Cultivation. Not more than six plants may be cultivated, planted, harvested, dried, processed or possessed within a single private residence at one time pursuant to Health & Safety Code Section 11362.2.

5.28.040 Severability.

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this chapter, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances.

5.28.050 Interpretation.

The intent of this chapter is to prohibit commercial marijuana activities and the personal cultivation of marijuana, whether medical or recreational in nature, to the maximum extent allowed under state law. Nothing in this chapter shall be interpreted as allowing behavior otherwise prohibited by state law and nothing in this chapter shall be interpreted as prohibiting conduct that the city is expressly preempted from prohibiting under state law.”

SECTION 4: Environmental Review. The City Council finds that this Ordinance is categorically exempt from further CEQA review under California Code Regs. Title 14, §§ 15305 (minor alterations in land use limitations) and 15308 (actions taken as authorized by local ordinance to assure protection of the environment). Further, the City Council finds that this ordinance does not have the potential to cause significant effects on the environment and, therefore, the project is exempt from the California Environmental Quality Act (CEQA) pursuant to 14 Cal. Code Regs. § 15061(b)(3). The ordinance amends the Chino Hills Municipal Code to expressly prohibit commercial marijuana activities and outdoor cultivation of marijuana in the City. The proposed ordinance does not involve any development or other changes to the physical environment. The City is not aware of any existing marijuana commercial uses in Chino Hills and the proposed ordinance would maintain the status quo. The ordinance does not portend any development or changes to the physical environment.

SECTION 5: Construction. This Ordinance must be broadly construed in order to achieve the purposes stated in this Ordinance. It is the City Council’s intent that the provisions of this Ordinance be interpreted or implemented by the City and others in a manner that facilitates the purposes set forth in this Ordinance.

SECTION 6: *Enforceability.* Repeal of any provision of the Chino Hills Municipal Code does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this Ordinance's effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Ordinance.

SECTION 7: *Severability.* If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

SECTION 8: The City Clerk is directed to certify the passage and adoption of this Ordinance, cause it to be entered into the city of Chino Hill's book of original ordinances, make a note of the passage and adoption in the records of this meeting, and, within fifteen days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

INTRODUCED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Chino Hills, California this 22nd day of November, 2016.

ART BENNETT, MAYOR

ATTEST:

CHERYL BALZ, CITY CLERK

APPROVED AS TO FORM:

MARK D. HENSLEY, CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss
CITY OF CHINO HILLS)

I, CHERYL BALZ, City Clerk of the City of Chino Hills, DO HEREBY CERTIFY that Ordinance No. _____ was duly introduced at a regular meeting held November 22, 2016; and adopted at a regular meeting of the City Council held on the 22nd day of November, 2016 by the following vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

CHERYL BALZ, CITY CLERK

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Chino Hills City Council at their regular meeting held on November 22, 2016 and that the Ordinance in its entirety was published on December 3, 2016 the Chino Hills Champion newspaper.

CHERYL BALZ, CITY CLERK

WHITE PAPER ON MARIJUANA DISPENSARIES

by

**CALIFORNIA POLICE CHIEFS ASSOCIATION'S
TASK FORCE ON MARIJUANA DISPENSARIES**

ACKNOWLEDGMENTS

Beyond any question, this White Paper is the product of a major cooperative effort among representatives of numerous law enforcement agencies and allies who share in common the goal of bringing to light the criminal nexus and attendant societal problems posed by marijuana dispensaries that until now have been too often hidden in the shadows. The critical need for this project was first recognized by the California Police Chiefs Association, which put its implementation in the very capable hands of CPCA's Executive Director Leslie McGill, City of Modesto Chief of Police Roy Wasden, and City of El Cerrito Chief of Police Scott Kirkland to spearhead. More than 30 people contributed to this project as members of CPCA's Medical Marijuana Dispensary Crime/Impact Issues Task Force, which has been enjoying the hospitality of Sheriff John McGinnis at regular meetings held at the Sacramento County Sheriff's Department's Headquarters Office over the past three years about every three months. The ideas for the White Paper's components came from this group, and the text is the collaborative effort of numerous persons both on and off the task force. Special mention goes to Riverside County District Attorney Rod Pacheco and Riverside County Deputy District Attorney Jacqueline Jackson, who allowed their Office's fine White Paper on Medical Marijuana: History and Current Complications to be utilized as a partial guide, and granted permission to include material from that document. Also, Attorneys Martin Mayer and Richard Jones of the law firm of Jones & Mayer are thanked for preparing the pending legal questions and answers on relevant legal issues that appear at the end of this White Paper. And, I thank recently retired San Bernardino County Sheriff Gary Penrod for initially assigning me to contribute to this important work.

Identifying and thanking everyone who contributed in some way to this project would be well nigh impossible, since the cast of characters changed somewhat over the years, and some unknown individuals also helped meaningfully behind the scenes. Ultimately, developing a *White Paper on Marijuana Dispensaries* became a rite of passage for its creators as much as a writing project. At times this daunting, and sometimes unwieldy, multi-year project had many task force members, including the White Paper's editor, wondering if a polished final product would ever really reach fruition. But at last it has! If any reader is enlightened and spurred to action to any degree by the White Paper's important and timely subject matter, all of the work that went into this collaborative project will have been well worth the effort and time expended by the many individuals who worked harmoniously to make it possible.

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April 22, 2009

Dennis Tilton, Editor

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WHITE PAPER ON MARIJUANA DISPENSARIES

by

CALIFORNIA POLICE CHIEFS ASSOCIATION'S TASK FORCE ON MARIJUANA DISPENSARIES

EXECUTIVE SUMMARY

INTRODUCTION

Proposition 215, an initiative authorizing the limited possession, cultivation, and use of marijuana by patients and their care providers for certain medicinal purposes recommended by a physician without subjecting such persons to criminal punishment, was passed by California voters in 1996. This was supplemented by the California State Legislature's enactment in 2003 of the Medical Marijuana Program Act (SB 420) that became effective in 2004. The language of Proposition 215 was codified in California as the Compassionate Use Act, which added section 11362.5 to the California Health & Safety Code. Much later, the language of Senate Bill 420 became the Medical Marijuana Program Act (MMPA), and was added to the California Health & Safety Code as section 11362.7 *et seq.* Among other requirements, it purports to direct all California counties to set up and administer a voluntary identification card system for medical marijuana users and their caregivers. Some counties have already complied with the mandatory provisions of the MMPA, and others have challenged provisions of the Act or are awaiting outcomes of other counties' legal challenges to it before taking affirmative steps to follow all of its dictates. And, with respect to marijuana dispensaries, the reaction of counties and municipalities to these nascent businesses has been decidedly mixed. Some have issued permits for such enterprises. Others have refused to do so within their jurisdictions. Still others have conditioned permitting such operations on the condition that they not violate any state or federal law, or have reversed course after initially allowing such activities within their geographical borders by either limiting or refusing to allow any further dispensaries to open in their community. This White Paper explores these matters, the apparent conflicts between federal and California law, and the scope of both direct and indirect adverse impacts of marijuana dispensaries in local communities. It also recounts several examples that could be emulated of what some governmental officials and law enforcement agencies have already instituted in their jurisdictions to limit the proliferation of marijuana dispensaries and to mitigate their negative consequences.

FEDERAL LAW

Except for very limited and authorized research purposes, federal law through the Controlled Substances Act absolutely prohibits the use of marijuana for any legal purpose, and classifies it as a banned Schedule I drug. It cannot be legally prescribed as medicine by a physician. And, the federal regulation supersedes any state regulation, so that under federal law California medical marijuana statutes do not provide a legal defense for cultivating or possessing marijuana—even with a physician's recommendation for medical use.

CALIFORNIA LAW

Although California law generally prohibits the cultivation, possession, transportation, sale, or other transfer of marijuana from one person to another, since late 1996 after passage of an initiative (Proposition 215) later codified as the Compassionate Use Act, it has provided a limited affirmative defense to criminal prosecution for those who cultivate, possess, or use limited amounts of marijuana for medicinal purposes as qualified patients with a physician's recommendation or their designated primary caregiver or cooperative. Notwithstanding these limited exceptions to criminal culpability, California law is notably silent on any such available defense for a storefront marijuana dispensary, and California Attorney General Edmund G. Brown, Jr. has recently issued guidelines that generally find marijuana dispensaries to be unprotected and illegal drug-trafficking enterprises except in the rare instance that one can qualify as a true cooperative under California law. A primary caregiver must consistently and regularly assume responsibility for the housing, health, or safety of an authorized medical marijuana user, and nowhere does California law authorize cultivating or providing marijuana—medical or non-medical—for profit.

California's Medical Marijuana Program Act (Senate Bill 420) provides further guidelines for mandated county programs for the issuance of identification cards to authorized medical marijuana users on a voluntary basis, for the chief purpose of giving them a means of certification to show law enforcement officers if such persons are investigated for an offense involving marijuana. This system is currently under challenge by the Counties of San Bernardino and San Diego and Sheriff Gary Penrod, pending a decision on review by the U.S. Supreme Court, as is California's right to permit any legal use of marijuana in light of federal law that totally prohibits any personal cultivation, possession, sale, transportation, or use of this substance whatsoever, whether for medical or non-medical purposes.

PROBLEMS POSED BY MARIJUANA DISPENSARIES

Marijuana dispensaries are commonly large money-making enterprises that will sell marijuana to most anyone who produces a physician's written recommendation for its medical use. These recommendations can be had by paying unscrupulous physicians a fee and claiming to have most any malady, even headaches. While the dispensaries will claim to receive only donations, no marijuana will change hands without an exchange of money. These operations have been tied to organized criminal gangs, foster large grow operations, and are often multi-million-dollar profit centers.

Because they are repositories of valuable marijuana crops and large amounts of cash, several operators of dispensaries have been attacked and murdered by armed robbers both at their storefronts and homes, and such places have been regularly burglarized. Drug dealing, sales to minors, loitering, heavy vehicle and foot traffic in retail areas, increased noise, and robberies of customers just outside dispensaries are also common ancillary byproducts of their operations. To repel store invasions, firearms are often kept on hand inside dispensaries, and firearms are used to hold up their proprietors. These dispensaries are either linked to large marijuana grow operations or encourage home grows by buying marijuana to dispense. And, just as destructive fires and unhealthy mold in residential neighborhoods are often the result of large indoor home grows designed to supply dispensaries, money laundering also naturally results from dispensaries' likely unlawful operations.

LOCAL GOVERNMENTAL RESPONSES

Local governmental bodies can impose a moratorium on the licensing of marijuana dispensaries while investigating this issue; can ban this type of activity because it violates federal law; can use zoning to control the dispersion of dispensaries and the attendant problems that accompany them in unwanted areas; and can condition their operation on not violating any federal or state law, which is akin to banning them, since their primary activities will always violate federal law as it now exists—and almost surely California law as well.

LIABILITY

While highly unlikely, local public officials, including county supervisors and city council members, could potentially be charged and prosecuted for aiding and abetting criminal acts by authorizing and licensing marijuana dispensaries if they do not qualify as “cooperatives” under California law, which would be a rare occurrence. Civil liability could also result.

ENFORCEMENT OF MARIJUANA LAWS

While the Drug Enforcement Administration has been very active in raiding large-scale marijuana dispensaries in California in the recent past, and arresting and prosecuting their principals under federal law in selective cases, the new U.S. Attorney General, Eric Holder, Jr., has very recently announced a major change of federal position in the enforcement of federal drug laws with respect to marijuana dispensaries. It is to target for prosecution only marijuana dispensaries that are exposed as fronts for drug trafficking. It remains to be seen what standards and definitions will be used to determine what indicia will constitute a drug trafficking operation suitable to trigger investigation and enforcement under the new federal administration.

Some counties, like law enforcement agencies in the County of San Diego and County of Riverside, have been aggressive in confronting and prosecuting the operators of marijuana dispensaries under state law. Likewise, certain cities and counties have resisted granting marijuana dispensaries business licenses, have denied applications, or have imposed moratoria on such enterprises. Here, too, the future is uncertain, and permissible legal action with respect to marijuana dispensaries may depend on future court decisions not yet handed down.

Largely because the majority of their citizens have been sympathetic and projected a favorable attitude toward medical marijuana patients, and have been tolerant of the cultivation and use of marijuana, other local public officials in California cities and counties, especially in Northern California, have taken a “hands off” attitude with respect to prosecuting marijuana dispensary operators or attempting to close down such operations. But, because of the life safety hazards caused by ensuing fires that have often erupted in resultant home grow operations, and the violent acts that have often shadowed dispensaries, some attitudes have changed and a few political entities have reversed course after having previously licensed dispensaries and authorized liberal permissible amounts of marijuana for possession by medical marijuana patients in their jurisdictions. These “patients” have most often turned out to be young adults who are not sick at all, but have secured a physician’s written recommendation for marijuana use by simply paying the required fee demanded for this document without even first undergoing a physical examination. Too often “medical marijuana” has been used as a smokescreen for those who want to legalize it and profit off it, and storefront dispensaries established as cover for selling an illegal substance for a lucrative return.

WHITE PAPER ON MARIJUANA DISPENSARIES

by

CALIFORNIA POLICE CHIEFS ASSOCIATION

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INTRODUCTION

In November of 1996, California voters passed Proposition 215. The initiative set out to make marijuana available to people with certain illnesses. The initiative was later supplemented by the Medical Marijuana Program Act. Across the state, counties and municipalities have varied in their responses to medical marijuana. Some have allowed businesses to open and provide medical marijuana. Others have disallowed all such establishments within their borders. Several once issued business licenses allowing medical marijuana stores to operate, but no longer do so. This paper discusses the legality of both medical marijuana and the businesses that make it available, and more specifically, the problems associated with medical marijuana and marijuana dispensaries, under whatever name they operate.

FEDERAL LAW

Federal law clearly and unequivocally states that all marijuana-related activities are illegal. Consequently, all people engaged in such activities are subject to federal prosecution. The United States Supreme Court has ruled that this federal regulation supersedes any state's regulation of marijuana – even California's. (*Gonzales v. Raich* (2005) 125 S.Ct. 2195, 2215.) “The Supremacy Clause unambiguously provides that if there is any conflict between federal law and state law, federal law shall prevail.” (*Gonzales v. Raich, supra.*) Even more recently, the 9th Circuit Court of Appeals found that there is no fundamental right under the United States Constitution to even use medical marijuana. (*Raich v. Gonzales* (9th Cir. 2007) 500 F.3d 850, 866.)

In *Gonzales v. Raich*, the High Court declared that, despite the attempts of several states to partially legalize marijuana, it continues to be wholly illegal since it is classified as a Schedule I drug under federal law. As such, there are no exceptions to its illegality. (21 USC secs. 812(c), 841(a)(1).) Over the past thirty years, there have been several attempts to have marijuana reclassified to a different schedule which would permit medical use of the drug. All of these attempts have failed. (See *Gonzales v. Raich* (2005) 125 S.Ct. 2195, fn 23.) The mere categorization of marijuana as “medical” by some states fails to carve out any legally recognized exception regarding the drug. Marijuana, in any form, is neither valid nor legal.

Clearly the United States Supreme Court is the highest court in the land. Its decisions are final and binding upon all lower courts. The Court invoked the United States Supremacy Clause and the Commerce Clause in reaching its decision. The Supremacy Clause declares that all laws made in pursuance of the Constitution shall be the “supreme law of the land” and shall be legally superior to any conflicting provision of a state constitution or law.¹ The Commerce Clause states that “the

Congress shall have power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”²

Gonzales v. Raich addressed the concerns of two California individuals growing and using marijuana under California’s medical marijuana statute. The Court explained that under the Controlled Substances Act marijuana is a Schedule I drug and is strictly regulated.³ “Schedule I drugs are categorized as such because of their high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment.”⁴ (21 USC sec. 812(b)(1).) The Court ruled that the Commerce Clause is applicable to California individuals growing and obtaining marijuana for their own personal, medical use. Under the Supremacy Clause, the federal regulation of marijuana, pursuant to the Commerce Clause, supersedes any state’s regulation, including California’s. The Court found that the California statutes did not provide any federal defense if a person is brought into federal court for cultivating or possessing marijuana.

Accordingly, there is no federal exception for the growth, cultivation, use or possession of marijuana and all such activity remains illegal.⁵ California’s Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 do not create an exception to this federal law. All marijuana activity is absolutely illegal and subject to federal regulation and prosecution. This notwithstanding, on March 19, 2009, U.S. Attorney General Eric Holder, Jr. announced that under the new Obama Administration the U.S. Department of Justice plans to target for prosecution only those marijuana dispensaries that use medical marijuana dispensing as a front for dealers of illegal drugs.⁶

CALIFORNIA LAW

Generally, the possession, cultivation, possession for sale, transportation, distribution, furnishing, and giving away of marijuana is unlawful under California state statutory law. (See Cal. Health & Safety Code secs. 11357-11360.) But, on November 5, 1996, California voters adopted Proposition 215, an initiative statute authorizing the medical use of marijuana.⁷ The initiative added California Health and Safety code section 11362.5, which allows “seriously ill Californians the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician”⁸ The codified section is known as the Compassionate Use Act of 1996.⁹ Additionally, the State Legislature passed Senate Bill 420 in 2003. It became the Medical Marijuana Program Act and took effect on January 1, 2004.¹⁰ This act expanded the definitions of “patient” and “primary caregiver”¹¹ and created guidelines for identification cards.¹² It defined the amount of marijuana that “patients,” and “primary caregivers” can possess.¹³ It also created a limited affirmative defense to criminal prosecution for qualifying individuals that collectively gather to cultivate medical marijuana,¹⁴ as well as to the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana for a person who qualifies as a “patient,” a “primary caregiver,” or as a member of a legally recognized “cooperative,” as those terms are defined within the statutory scheme. Nevertheless, there is no provision in any of these laws that authorizes or protects the establishment of a “dispensary” or other storefront marijuana distribution operation.

Despite their illegality in the federal context, the medical marijuana laws in California are specific. The statutes craft narrow affirmative defenses for particular individuals with respect to enumerated marijuana activity. All conduct, and people engaging in it, that falls outside of the statutes’ parameters remains illegal under California law. Relatively few individuals will be able to assert the affirmative defense in the statute. To use it a person must be a “qualified patient,” “primary caregiver,” or a member of a “cooperative.” Once they are charged with a crime, if a person can prove an applicable legal status, they are entitled to assert this statutory defense.

Former California Attorney General Bill Lockyer has also spoken about medical marijuana, and strictly construed California law relating to it. His office issued a bulletin to California law enforcement agencies on June 9, 2005. The office expressed the opinion that *Gonzales v. Raich* did not address the validity of the California statutes and, therefore, had no effect on California law. The office advised law enforcement to not change their operating procedures. Attorney General Lockyer made the recommendation that law enforcement neither arrest nor prosecute “individuals within the legal scope of California’s Compassionate Use Act.” Now the current California Attorney General, Edmund G. Brown, Jr., has issued guidelines concerning the handling of issues relating to California’s medical marijuana laws and marijuana dispensaries. The guidelines are much tougher on storefront dispensaries—generally finding them to be unprotected, illegal drug-trafficking enterprises if they do not fall within the narrow legal definition of a “cooperative”—than on the possession and use of marijuana upon the recommendation of a physician.

When California’s medical marijuana laws are strictly construed, it appears that the decision in *Gonzales v. Raich* does affect California law. However, provided that federal law does not preempt California law in this area, it does appear that the California statutes offer some legal protection to “individuals within the legal scope of” the acts. The medical marijuana laws speak to patients, primary caregivers, and true collectives. These people are expressly mentioned in the statutes, and, if their conduct comports to the law, they may have some state legal protection for specified marijuana activity. Conversely, all marijuana establishments that fall outside the letter and spirit of the statutes, including dispensaries and storefront facilities, are not legal. These establishments have no legal protection. Neither the former California Attorney General’s opinion nor the current California Attorney General’s guidelines present a contrary view. Nevertheless, without specifically addressing marijuana dispensaries, Attorney General Brown has sent his deputies attorney general to defend the codified Medical Marijuana Program Act against court challenges, and to advance the position that the state’s regulations promulgated to enforce the provisions of the codified Compassionate Use Act (Proposition 215), including a statewide database and county identification card systems for marijuana patients authorized by their physicians to use marijuana, are all valid.

1. Conduct

California Health and Safety Code sections 11362.765 and 11362.775 describe the conduct for which the affirmative defense is available. If a person qualifies as a “patient,” “primary caregiver,” or is a member of a legally recognized “cooperative,” he or she has an affirmative defense to possessing a defined amount of marijuana. Under the statutes no more than eight ounces of dried marijuana can be possessed. Additionally, either six mature or twelve immature plants may be possessed.¹⁵ If a person claims patient or primary caregiver status, and possesses more than this amount of marijuana, he or she can be prosecuted for drug possession. The qualifying individuals may also cultivate, plant, harvest, dry, and/or process marijuana, but only while still strictly observing the permitted amount of the drug. The statute may also provide a limited affirmative defense for possessing marijuana for sale, transporting it, giving it away, maintaining a marijuana house, knowingly providing a space where marijuana can be accessed, and creating a narcotic nuisance.¹⁶

However, for anyone who cannot lay claim to the appropriate status under the statutes, all instances of marijuana possession, cultivation, planting, harvesting, drying, processing, possession for the purposes of sales, completed sales, giving away, administration, transportation, maintaining of marijuana houses, knowingly providing a space for marijuana activity, and creating a narcotic nuisance continue to be illegal under California law.

2. Patients and Cardholders

A dispensary obviously is not a patient or cardholder. A “qualified patient” is an individual with a physician’s recommendation that indicates marijuana will benefit the treatment of a qualifying illness. (Cal. H&S Code secs. 11362.5(b)(1)(A) and 11362.7(f).) Qualified illnesses include cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or *any other illness for which marijuana provides relief*.¹⁷ A physician’s recommendation that indicates medical marijuana will benefit the treatment of an illness is required before a person can claim to be a medical marijuana patient. Accordingly, such proof is also necessary before a medical marijuana affirmative defense can be claimed.

A “person with an identification card” means an individual who is a qualified patient who has applied for and received a valid identification card issued by the State Department of Health Services. (Cal. H&S Code secs. 11362.7(c) and 11362.7(g).)

3. Primary Caregivers

The only person or entity authorized to receive compensation for services provided to patients and cardholders is a primary caregiver. (Cal. H&S Code sec. 11362.77(c).) However, nothing in the law authorizes any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.765(a).) It is important to note that it is almost impossible for a storefront marijuana business to gain true primary caregiver status. Businesses that call themselves “cooperatives,” but function like storefront dispensaries, suffer this same fate. In *People v. Mower*, the court was very clear that the defendant had to prove he was a primary caregiver in order to raise the medical marijuana affirmative defense. Mr. Mower was prosecuted for supplying two people with marijuana.¹⁸ He claimed he was their primary caregiver under the medical marijuana statutes. This claim required him to prove he “**consistently** had assumed responsibility for either one’s **housing, health, or safety**” before he could assert the defense.¹⁹ (Emphasis added.)

The key to being a primary caregiver is not simply that marijuana is provided for a patient’s health; the responsibility for the health must be consistent; it must be independent of merely providing marijuana for a qualified person; and such a primary caregiver-patient relationship must begin before or contemporaneously with the time of assumption of responsibility for assisting the individual with marijuana. (*People v. Mentch* (2008) 45 Cal.4th 274, 283.) Any relationship a storefront marijuana business has with a patient is much more likely to be transitory than consistent, and to be wholly lacking in providing for a patient’s health needs beyond just supplying him or her with marijuana.

A “primary caregiver” is an individual or facility that has “consistently assumed responsibility for the housing, health, or safety of a patient” over time. (Cal. H&S Code sec. 11362.5(e).) “Consistency” is the key to meeting this definition. A patient can elect to patronize any dispensary that he or she chooses. The patient can visit different dispensaries on a single day or any subsequent day. The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. But, in light of the holding in *People v. Mentch, supra*, to qualify as a primary caregiver, more aid to a person’s health must occur beyond merely dispensing marijuana to a given customer.

Additionally, if more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. And, in most circumstances the primary caregiver must be at least 18 years of age.

The courts have found that the act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. (*See People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390: “One maintaining a source of marijuana supply, from which all members of the public qualified as permitted medicinal users may or may not discretionarily elect to make purchases, does not thereby become the party ‘who has consistently assumed responsibility for the housing, health, or safety’ of that purchaser as section 11362.5(e) requires.”)

The California Legislature had the opportunity to legalize the existence of dispensaries when setting forth what types of facilities could qualify as “primary caregivers.” Those included in the list clearly show the Legislature’s intent to restrict the definition to one involving a significant and long-term commitment to the patient’s health, safety, and welfare. The only facilities which the Legislature authorized to serve as “primary caregivers” are clinics, health care facilities, residential care facilities, home health agencies, and hospices which actually provide medical care or supportive services to qualified patients. (Cal. H&S Code sec. 11362.7(d)(1).) Any business that cannot prove that its relationship with the patient meets these requirements is not a primary caregiver. Functionally, the business is a drug dealer and is subject to prosecution as such.

4. Cooperatives and Collectives

According to the California Attorney General’s recently issued *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, unless they meet stringent requirements, dispensaries also cannot reasonably claim to be cooperatives or collectives. In passing the Medical Marijuana Program Act, the Legislature sought, in part, to enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation programs. (*People v. Urziceanu* (2005) 132 Cal.App.4th 747, 881.) The Act added section 11362.775, which provides that “Patients and caregivers who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions” for the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana. However, there is no authorization for any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.77(a).) If a dispensary is only a storefront distribution operation open to the general public, and there is no indication that it has been involved with growing or cultivating marijuana for the benefit of members as a non-profit enterprise, it will not qualify as a cooperative to exempt it from criminal penalties under California’s marijuana laws.

Further, the common dictionary definition of “collectives” is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess “the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; capital investment receives either no return or a limited return; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy, or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members.”²⁰ Marijuana businesses, of any kind, do not normally meet this legal definition.

Based on the foregoing, it is clear that virtually all marijuana dispensaries are not legal enterprises under either federal or state law.

LAWS IN OTHER STATES

Besides California, at the time of publication of this White Paper, thirteen other states have enacted medical marijuana laws on their books, whereby to some degree marijuana recommended or prescribed by a physician to a specified patient may be legally possessed. These states are Alaska, Colorado, Hawaii, Maine, Maryland, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont, and Washington. And, possession of marijuana under one ounce has now been decriminalized in Massachusetts.²¹

STOREFRONT MARIJUANA DISPENSARIES AND COOPERATIVES

Since the passage of the Compassionate Use Act of 1996, many storefront marijuana businesses have opened in California.²² Some are referred to as dispensaries, and some as cooperatives; but it is how they operate that removes them from any umbrella of legal protection. These facilities operate as if they are pharmacies. Most offer different types and grades of marijuana. Some offer baked goods that contain marijuana.²³ Monetary donations are collected from the patient or primary caregiver when marijuana or food items are received. The items are not technically sold since that would be a criminal violation of the statutes.²⁴ These facilities are able to operate because they apply for and receive business licenses from cities and counties.

Federally, all existing storefront marijuana businesses are subject to search and closure since they violate federal law.²⁵ Their mere existence violates federal law. Consequently, they have no right to exist or operate, and arguably cities and counties in California have no authority to sanction them.

Similarly, in California there is no apparent authority for the existence of these storefront marijuana businesses. The Medical Marijuana Program Act of 2004 allows *patients* and *primary caregivers* to grow and cultivate marijuana, and no one else.²⁶ Although California Health and Safety Code section 11362.775 offers some state legal protection for true collectives and cooperatives, no parallel protection exists in the statute for any storefront business providing any narcotic.

The common dictionary definition of collectives is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess “the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; *capital investment receives either no return or a limited return*; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members.”²⁷ Marijuana businesses, of any kind, do not meet this legal definition.

Actual medical dispensaries are commonly defined as offices in hospitals, schools, or other institutions from which medical supplies, preparations, and treatments are dispensed. Hospitals, hospices, home health care agencies, and the like are specifically included in the code as primary caregivers as long as they have “consistently assumed responsibility for the housing, health, or safety” of a patient.²⁸ Clearly, it is doubtful that any of the storefront marijuana businesses currently

existing in California can claim that status. Consequently, they are not primary caregivers and are subject to prosecution under both California and federal laws.

HOW EXISTING DISPENSARIES OPERATE

Despite their clear illegality, some cities do have existing and operational dispensaries. Assuming, *arguendo*, that they may operate, it may be helpful to review the mechanics of the business. The former Green Cross dispensary in San Francisco illustrates how a typical marijuana dispensary works.²⁹

A guard or employee may check for medical marijuana cards or physician recommendations at the entrance. Many types and grades of marijuana are usually available. Although employees are neither pharmacists nor doctors, sales clerks will probably make recommendations about what type of marijuana will best relieve a given medical symptom. Baked goods containing marijuana may be available and sold, although there is usually no health permit to sell baked goods. The dispensary will give the patient a form to sign declaring that the dispensary is their “primary caregiver” (a process fraught with legal difficulties). The patient then selects the marijuana desired and is told what the “contribution” will be for the product. The California Health & Safety Code specifically prohibits the sale of marijuana to a patient, so “contributions” are made to reimburse the dispensary for its time and care in making “product” available. However, if a calculation is made based on the available evidence, it is clear that these “contributions” can easily add up to millions of dollars per year. That is a very large cash flow for a “non-profit” organization denying any participation in the retail sale of narcotics. Before its application to renew its business license was denied by the City of San Francisco, there were single days that Green Cross sold \$45,000 worth of marijuana. On Saturdays, Green Cross could sell marijuana to forty-three patients an hour. The marijuana sold at the dispensary was obtained from growers who brought it to the store in backpacks. A medium-sized backpack would hold approximately \$16,000 worth of marijuana. Green Cross used many different marijuana growers.

It is clear that dispensaries are running as if they are businesses, not legally valid cooperatives. Additionally, they claim to be the “primary caregivers” of patients. This is a spurious claim. As discussed above, the term “primary caregiver” has a very specific meaning and defined legal qualifications. A primary caregiver is an individual who has “consistently assumed responsibility for the housing, health, or safety of a patient.”³⁰ The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. If more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. In most circumstances the primary caregiver must be at least 18 years of age.

It is almost impossible for a storefront marijuana business to gain true primary caregiver status. A business would have to prove that it “**consistently** had assumed responsibility for [a patient’s] **housing, health, or safety.**”³¹ The key to being a primary caregiver is not simply that marijuana is provided for a patient’s health: the responsibility for the patient’s health must be **consistent**.

As seen in the Green Cross example, a storefront marijuana business’s relationship with a patient is most likely transitory. In order to provide a qualified patient with marijuana, a storefront marijuana business must create an instant “primary caregiver” relationship with him. The very fact that the relationship is instant belies any consistency in their relationship and the requirement that housing, health, or safety is consistently provided. Courts have found that a patient’s act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. The

consistent relationship demanded by the statute is mere fiction if it can be achieved between an individual and a business that functions like a narcotic retail store.

ADVERSE SECONDARY EFFECTS OF MARIJUANA DISPENSARIES AND SIMILARLY OPERATING COOPERATIVES

Of great concern are the adverse secondary effects of these dispensaries and storefront cooperatives. They are many. Besides flouting federal law by selling a prohibited Schedule I drug under the Controlled Substances Act, marijuana dispensaries attract or cause numerous ancillary social problems as byproducts of their operation. The most glaring of these are other criminal acts.

ANCILLARY CRIMES

A. ARMED ROBBERIES AND MURDERS

Throughout California, many violent crimes have been committed that can be traced to the proliferation of marijuana dispensaries. These include armed robberies and murders. For example, as far back as 2002, two home occupants were shot in Willits, California in the course of a home-invasion robbery targeting medical marijuana.³² And, a series of four armed robberies of a marijuana dispensary in Santa Barbara, California occurred through August 10, 2006, in which thirty dollars and fifteen baggies filled with marijuana on display were taken by force and removed from the premises in the latest holdup. The owner said he failed to report the first three robberies because “medical marijuana is such a controversial issue.”³³

On February 25, 2004, in Mendocino County two masked thugs committed a home invasion robbery to steal medical marijuana. They held a knife to a 65-year-old man’s throat, and though he fought back, managed to get away with large amounts of marijuana. They were soon caught, and one of the men received a sentence of six years in state prison.³⁴ And, on August 19, 2005, 18-year-old Demarco Lowrey was “shot in the stomach” and “bled to death” during a gunfight with the business owner when he and his friends attempted a takeover robbery of a storefront marijuana business in the City of San Leandro, California. The owner fought back with the hooded home invaders, and a gun battle ensued. Demarco Lowrey was hit by gunfire and “dumped outside the emergency entrance of Children’s Hospital Oakland” after the shootout.³⁵ He did not survive.³⁶

Near Hayward, California, on September 2, 2005, upon leaving a marijuana dispensary, a patron of the CCA Cannabis Club had a gun put to his head as he was relieved of over \$250 worth of pot. Three weeks later, another break-in occurred at the Garden of Eden Cannabis Club in September of 2005.³⁷

Another known marijuana-dispensary-related murder occurred on November 19, 2005. Approximately six gun- and bat-wielding burglars broke into Les Crane’s home in Laytonville, California while yelling, “This is a raid.” Les Crane, who owned two storefront marijuana businesses, was at home and shot to death. He received gunshot wounds to his head, arm, and abdomen.³⁸ Another man present at the time was beaten with a baseball bat. The murderers left the home after taking an unknown sum of U.S. currency and a stash of processed marijuana.³⁹

Then, on January 9, 2007, marijuana plant cultivator Rex Farrance was shot once in the chest and killed in his own home after four masked intruders broke in and demanded money. When the homeowner ran to fetch a firearm, he was shot dead. The robbers escaped with a small amount of

cash and handguns. Investigating officers counted 109 marijuana plants in various phases of cultivation inside the house, along with two digital scales and just under 4 pounds of cultivated marijuana.⁴⁰

More recently in Colorado, Ken Gorman, a former gubernatorial candidate and dispenser of marijuana who had been previously robbed over twelve times at his home in Denver, was found murdered by gunshot inside his home. He was a prominent proponent of medical marijuana and the legalization of marijuana.⁴¹

B. BURGLARIES

In June of 2007, after two burglarizing youths in Bellflower, California were caught by the homeowner trying to steal the fruits of his indoor marijuana grow, he shot one who was running away, and killed him.⁴² And, again in January of 2007, Claremont Councilman Corey Calaycay went on record calling marijuana dispensaries “crime magnets” after a burglary occurred in one in Claremont, California.⁴³

On July 17, 2006, the El Cerrito City Council voted to ban all such marijuana facilities. It did so after reviewing a nineteen-page report that detailed a rise in crime near these storefront dispensaries in other cities. The crimes included robberies, assaults, burglaries, murders, and attempted murders.⁴⁴ Even though marijuana storefront businesses do not currently exist in the City of Monterey Park, California, it issued a moratorium on them after studying the issue in August of 2006.⁴⁵ After allowing these establishments to operate within its borders, the City of West Hollywood, California passed a similar moratorium. The moratorium was “prompted by incidents of armed burglary at some of the city’s eight existing pot stores and complaints from neighbors about increased pedestrian and vehicle traffic and noise”⁴⁶

C. TRAFFIC, NOISE, AND DRUG DEALING

Increased noise and pedestrian traffic, including nonresidents in pursuit of marijuana, and out of area criminals in search of prey, are commonly encountered just outside marijuana dispensaries,⁴⁷ as well as drug-related offenses in the vicinity—like resales of products just obtained inside—since these marijuana centers regularly attract marijuana growers, drug users, and drug traffickers.⁴⁸ Sharing just purchased marijuana outside dispensaries also regularly takes place.⁴⁹

Rather than the “seriously ill,” for whom medical marijuana was expressly intended,⁵⁰ “‘perfectly healthy’ young people frequenting dispensaries” are a much more common sight.⁵¹ Patient records seized by law enforcement officers from dispensaries during raids in San Diego County, California in December of 2005 “showed that 72 percent of patients were between 17 and 40 years old”⁵² Said one admitted marijuana trafficker, “The people I deal with are the same faces I was dealing with 12 years ago but now, because of Senate Bill 420, they are supposedly legit. I can totally see why cops are bummed.”⁵³

Reportedly, a security guard sold half a pound of marijuana to an undercover officer just outside a dispensary in Morro Bay, California.⁵⁴ And, the mere presence of marijuana dispensaries encourages illegal growers to plant, cultivate, and transport ever more marijuana, in order to supply and sell their crops to these storefront operators in the thriving medical marijuana dispensary market, so that the national domestic marijuana yield has been estimated to be 35.8 billion dollars, of which a 13.8 billion dollar share is California grown.⁵⁵ It is a big business. And, although the operators of some dispensaries will claim that they only accept monetary contributions for the products they

dispense, and do not sell marijuana, a patron will not receive any marijuana until an amount of money acceptable to the dispensary has changed hands.

D. ORGANIZED CRIME, MONEY LAUNDERING, AND FIREARMS VIOLATIONS

Increasingly, reports have been surfacing about organized crime involvement in the ownership and operation of marijuana dispensaries, including Asian and other criminal street gangs and at least one member of the Armenian Mafia.⁵⁶ The dispensaries or “pot clubs” are often used as a front by organized crime gangs to traffic in drugs and launder money. One such gang whose territory included San Francisco and Oakland, California reportedly ran a multi-million dollar business operating ten warehouses in which vast amounts of marijuana plants were grown.⁵⁷ Besides seizing over 9,000 marijuana plants during surprise raids on this criminal enterprise’s storage facilities, federal officers also confiscated three firearms,⁵⁸ which seem to go hand in hand with medical marijuana cultivation and dispensaries.⁵⁹

Marijuana storefront businesses have allowed criminals to flourish in California. In the summer of 2007, the City of San Diego cooperated with federal authorities and served search warrants on several marijuana dispensary locations. In addition to marijuana, many weapons were recovered, including a stolen handgun and an M-16 assault rifle.⁶⁰ The National Drug Intelligence Center reports that marijuana growers are employing armed guards, using explosive booby traps, and murdering people to shield their crops. Street gangs of all national origins are involved in transporting and distributing marijuana to meet the ever increasing demand for the drug.⁶¹ Active Asian gangs have included members of Vietnamese organized crime syndicates who have migrated from Canada to buy homes throughout the United States to use as grow houses.⁶²

Some or all of the processed harvest of marijuana plants nurtured in these homes then wind up at storefront marijuana dispensaries owned and operated by these gangs. Storefront marijuana businesses are very dangerous enterprises that thrive on ancillary grow operations.

Besides fueling marijuana dispensaries, some monetary proceeds from the sale of harvested marijuana derived from plants grown inside houses are being used by organized crime syndicates to fund other legitimate businesses for profit and the laundering of money, and to conduct illegal business operations like prostitution, extortion, and drug trafficking.⁶³ Money from residential grow operations is also sometimes traded by criminal gang members for firearms, and used to buy drugs, personal vehicles, and additional houses for more grow operations,⁶⁴ and along with the illegal income derived from large-scale organized crime-related marijuana production operations comes widespread income tax evasion.⁶⁵

E. POISONINGS

Another social problem somewhat unique to marijuana dispensaries is poisonings, both intentional and unintentional. On August 16, 2006, the Los Angeles Police Department received two such reports. One involved a security guard who ate a piece of cake extended to him from an operator of a marijuana clinic as a “gift,” and soon afterward felt dizzy and disoriented.⁶⁶ The second incident concerned a UPS driver who experienced similar symptoms after accepting and eating a cookie given to him by an operator of a different marijuana clinic.⁶⁷

OTHER ADVERSE SECONDARY IMPACTS IN THE IMMEDIATE VICINITY OF DISPENSARIES

Other adverse secondary impacts from the operation of marijuana dispensaries include street dealers lurking about dispensaries to offer a lower price for marijuana to arriving patrons; marijuana smoking in public and in front of children in the vicinity of dispensaries; loitering and nuisances; acquiring marijuana and/or money by means of robbery of patrons going to or leaving dispensaries; an increase in burglaries at or near dispensaries; a loss of trade for other commercial businesses located near dispensaries; the sale at dispensaries of other illegal drugs besides marijuana; an increase in traffic accidents and driving under the influence arrests in which marijuana is implicated; and the failure of marijuana dispensary operators to report robberies to police.⁶⁸

SECONDARY ADVERSE IMPACTS IN THE COMMUNITY AT LARGE

A. UNJUSTIFIED AND FICTITIOUS PHYSICIAN RECOMMENDATIONS

California's legal requirement under California Health and Safety Code section 11362.5 that a physician's recommendation is required for a patient or caregiver to possess medical marijuana has resulted in other undesirable outcomes: wholesale issuance of recommendations by unscrupulous physicians seeking a quick buck, and the proliferation of forged or fictitious physician recommendations. Some doctors link up with a marijuana dispensary and take up temporary residence in a local hotel room where they advertise their appearance in advance, and pass out medical marijuana use recommendations to a line of "patients" at "about \$150 a pop."⁶⁹ Other individuals just make up their own phony doctor recommendations,⁷⁰ which are seldom, if ever, scrutinized by dispensary employees for authenticity. Undercover DEA agents sporting fake medical marijuana recommendations were readily able to purchase marijuana from a clinic.⁷¹ Far too often, California's medical marijuana law is used as a smokescreen for healthy pot users to get their desired drug, and for proprietors of marijuana dispensaries to make money off them, without suffering any legal repercussions.⁷²

On March 11, 2009, the Osteopathic Medical Board of California adopted the proposed decision revoking Dr. Alfonso Jimenez's Osteopathic Physician's and Surgeon's Certificate and ordering him to pay \$74,323.39 in cost recovery. Dr. Jimenez operated multiple marijuana clinics and advertised his services extensively on the Internet. Based on information obtained from raids on marijuana dispensaries in San Diego, in May of 2006, the San Diego Police Department ran two undercover operations on Dr. Jimenez's clinic in San Diego. In January of 2007, a second undercover operation was conducted by the Laguna Beach Police Department at Dr. Jimenez's clinic in Orange County. Based on the results of the undercover operations, the Osteopathic Medical Board charged Dr. Jimenez with gross negligence and repeated negligent acts in the treatment of undercover operatives posing as patients. After a six-day hearing, the Administrative Law Judge (ALJ) issued her decision finding that Dr. Jimenez violated the standard of care by committing gross negligence and repeated negligence in care, treatment, and management of patients when he, among other things, issued medical marijuana recommendations to the undercover agents without conducting adequate medical examinations, failed to gain proper informed consent, and failed to consult with any primary care and/or treating physicians or obtain and review prior medical records before issuing medical marijuana recommendations. The ALJ also found Dr. Jimenez engaged in dishonest behavior by preparing false and/or misleading medical records and disseminating false and misleading advertising to the public, including representing himself as a "Cannabis Specialist" and "Qualified Medical Marijuana Examiner" when no such formal specialty or qualification existed. Absent any

requested administrative agency reconsideration or petition for court review, the decision was to become effective April 24, 2009.

B. PROLIFERATION OF GROW HOUSES IN RESIDENTIAL AREAS

In recent years the proliferation of grow houses in residential neighborhoods has exploded. This phenomenon is country wide, and ranges from the purchase for purpose of marijuana grow operations of small dwellings to "high priced McMansions . . ." ⁷³ Mushrooming residential marijuana grow operations have been detected in California, Connecticut, Florida, Georgia, New Hampshire, North Carolina, Ohio, South Carolina, and Texas. ⁷⁴ In 2007 alone, such illegal operations were detected and shut down by federal and state law enforcement officials in 41 houses in California, 50 homes in Florida, and 11 homes in New Hampshire. ⁷⁵ Since then, the number of residences discovered to be so impacted has increased exponentially. Part of this recent influx of illicit residential grow operations is because the "THC-rich 'B.C. bud' strain" of marijuana originally produced in British Columbia "can be grown only in controlled indoor environments," and the Canadian market is now reportedly saturated with the product of "competing Canadian gangs," often Asian in composition or outlaw motorcycle gangs like the Hells Angels. ⁷⁶ Typically, a gutted house can hold about 1,000 plants that will each yield almost half a pound of smokable marijuana; this collectively nets about 500 pounds of usable marijuana per harvest, with an average of three to four harvests per year. ⁷⁷ With a street value of \$3,000 to \$5,000 per pound" for high-potency marijuana, and such multiple harvests, "a successful grow house can bring in between \$4.5 million and \$10 million a year . . ." ⁷⁸ The high potency of hydroponically grown marijuana can command a price as much as six times higher than commercial grade marijuana. ⁷⁹

C. LIFE SAFETY HAZARDS CREATED BY GROW HOUSES

In Humboldt County, California, structure fires caused by unsafe indoor marijuana grow operations have become commonplace. The city of Arcata, which sports four marijuana dispensaries, was the site of a house fire in which a fan had fallen over and ignited a fire; it had been turned into a grow house by its tenant. Per Arcata Police Chief Randy Mendosa, altered and makeshift "no code" electrical service connections and overloaded wires used to operate high-powered grow lights and fans are common causes of the fires. Large indoor marijuana growing operations can create such excessive draws of electricity that PG&E power pole transformers are commonly blown. An average 1,500-square-foot tract house used for growing marijuana can generate monthly electrical bills from \$1,000 to \$3,000 per month. From an environmental standpoint, the carbon footprint from greenhouse gas emissions created by large indoor marijuana grow operations should be a major concern for every community in terms of complying with Air Board AB-32 regulations, as well as other greenhouse gas reduction policies. Typically, air vents are cut into roofs, water seeps into carpeting, windows are blacked out, holes are cut in floors, wiring is jury-rigged, and electrical circuits are overloaded to operate grow lights and other apparatus. When fires start, they spread quickly.

The May 31, 2008 edition of the *Los Angeles Times* reported, "Law enforcement officials estimate that as many as 1,000 of the 7,500 homes in this Humboldt County community are being used to cultivate marijuana, slashing into the housing stock, spreading building-safety problems and sowing neighborhood discord." Not surprisingly, in this bastion of liberal pot possession rules that authorized the cultivation of up to 99 plants for medicinal purpose, most structural fires in the community of Arcata have been of late associated with marijuana cultivation. ⁸⁰ Chief of Police Mendosa clarified that the actual number of marijuana grow houses in Arcata has been an ongoing subject of public debate. Mendosa added, "We know there are numerous grow houses in almost every neighborhood in and around the city, which has been the source of constant citizen complaints." House fires caused by

grower-installed makeshift electrical wiring or tipped electrical fans are now endemic to Humboldt County.⁸¹

Chief Mendosa also observed that since marijuana has an illicit street value of up to \$3,000 per pound, marijuana grow houses have been susceptible to violent armed home invasion robberies. Large-scale marijuana grow houses have removed significant numbers of affordable houses from the residential rental market. When property owners discover their rentals are being used as grow houses, the residences are often left with major structural damage, which includes air vents cut into roofs and floors, water damage to floors and walls, and mold. The June 9, 2008 edition of the *New York Times* shows an unidentified Arcata man tending his indoor grow; the man claimed he can make \$25,000 every three months by selling marijuana grown in the bedroom of his rented house.⁸² Claims of ostensible medical marijuana growing pursuant to California's medical marijuana laws are being advanced as a mostly false shield in an attempt to justify such illicit operations.

Neither is fire an uncommon occurrence at grow houses elsewhere across the nation. Another occurred not long ago in Holiday, Florida.⁸³ To compound matters further, escape routes for firefighters are often obstructed by blocked windows in grow houses, electric wiring is tampered with to steal electricity, and some residences are even booby-trapped to discourage and repel unwanted intruders.⁸⁴

D. INCREASED ORGANIZED GANG ACTIVITIES

Along with marijuana dispensaries and the grow operations to support them come members of organized criminal gangs to operate and profit from them. Members of an ethnic Chinese drug gang were discovered to have operated 50 indoor grow operations in the San Francisco Bay area, while Cuban-American crime organizations have been found to be operating grow houses in Florida and elsewhere in the South. A Vietnamese drug ring was caught operating 19 grow houses in Seattle and Puget Sound, Washington.⁸⁵ In July of 2008, over 55 Asian gang members were indicted for narcotics trafficking in marijuana and ecstasy, including members of the Hop Sing Gang that had been actively operating marijuana grow operations in Elk Grove and elsewhere in the vicinity of Sacramento, California.⁸⁶

E. EXPOSURE OF MINORS TO MARIJUANA

Minors who are exposed to marijuana at dispensaries or residences where marijuana plants are grown may be subtly influenced to regard it as a generally legal drug, and inclined to sample it. In grow houses, children are exposed to dangerous fire and health conditions that are inherent in indoor grow operations.⁸⁷ Dispensaries also sell marijuana to minors.⁸⁸

F. IMPAIRED PUBLIC HEALTH

Indoor marijuana grow operations emit a skunk-like odor,⁸⁹ and foster generally unhealthy conditions like allowing chemicals and fertilizers to be placed in the open, an increased carbon dioxide level within the grow house, and the accumulation of mold,⁹⁰ all of which are dangerous to any children or adults who may be living in the residence,⁹¹ although many grow houses are uninhabited.

G. LOSS OF BUSINESS TAX REVENUE

When business suffers as a result of shoppers staying away on account of traffic, blight, crime, and the undesirability of a particular business district known to be frequented by drug users and traffickers, and organized criminal gang members, a city's tax revenues necessarily drop as a direct consequence.

H. DECREASED QUALITY OF LIFE IN DETERIORATING NEIGHBORHOODS, BOTH BUSINESS AND RESIDENTIAL

Marijuana dispensaries bring in the criminal element and loiterers, which in turn scare off potential business patrons of nearby legitimate businesses, causing loss of revenues and deterioration of the affected business district. Likewise, empty homes used as grow houses emit noxious odors in residential neighborhoods, project irritating sounds of whirring fans,⁹² and promote the din of vehicles coming and going at all hours of the day and night. Near harvest time, rival growers and other uninvited enterprising criminals sometimes invade grow houses to beat "clip crews" to the site and rip off mature plants ready for harvesting. As a result, violence often erupts from confrontations in the affected residential neighborhood.⁹³

ULTIMATE CONCLUSIONS REGARDING ADVERSE SECONDARY EFFECTS

On balance, any utility to medical marijuana patients in care giving and convenience that marijuana dispensaries may appear to have on the surface is enormously outweighed by a much darker reality that is punctuated by the many adverse secondary effects created by their presence in communities, recounted here. These drug distribution centers have even proven to be unsafe for their own proprietors.

POSSIBLE LOCAL GOVERNMENTAL RESPONSES TO MARIJUANA DISPENSARIES

A. IMPOSED MORATORIA BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

While in the process of investigating and researching the issue of licensing marijuana dispensaries, as an interim measure city councils may enact date-specific moratoria that expressly prohibit the presence of marijuana dispensaries, whether for medical use or otherwise, and prohibiting the sale of marijuana in any form on such premises, anywhere within the incorporated boundaries of the city until a specified date. Before such a moratorium's date of expiration, the moratorium may then either be extended or a city ordinance enacted completely prohibiting or otherwise restricting the establishment and operation of marijuana dispensaries, and the sale of all marijuana products on such premises.

County supervisors can do the same with respect to marijuana dispensaries sought to be established within the unincorporated areas of a county. Approximately 80 California cities, including the cities of Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill, and 6 counties, including Contra Costa County, have enacted moratoria banning the existence of marijuana dispensaries. In a novel approach, the City of Arcata issued a moratorium on any new dispensaries in the downtown area, based on no agricultural activities being permitted to occur there.⁹⁴

B. IMPOSED BANS BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

While the Compassionate Use Act of 1996 permits seriously ill persons to legally obtain and use marijuana for medical purposes upon a physician's recommendation, it is silent on marijuana dispensaries and does not expressly authorize the sale of marijuana to patients or primary caregivers.

Neither Proposition 215 nor Senate Bill 420 specifically authorizes the dispensing of marijuana in any form from a storefront business. And, no state statute presently exists that expressly permits the licensing or operation of marijuana dispensaries.⁹⁵ Consequently, approximately 39 California cities, including the Cities of Concord and San Pablo, and 2 counties have prohibited marijuana dispensaries within their respective geographical boundaries, while approximately 24 cities, including the City of Martinez, and 7 counties have allowed such dispensaries to do business within their jurisdictions. Even the complete prohibition of marijuana dispensaries within a given locale cannot be found to run afoul of current California law with respect to permitted use of marijuana for medicinal purposes, so long as the growing or use of medical marijuana by a city or county resident in conformance with state law is not proscribed.⁹⁶

In November of 2004, the City of Brampton in Ontario, Canada passed The Grow House Abatement By-law, which authorized the city council to appoint inspectors and local police officers to inspect suspected grow houses and render safe hydro meters, unsafe wiring, booby traps, and any violation of the Fire Code or Building Code, and remove discovered controlled substances and ancillary equipment designed to grow and manufacture such substances, at the involved homeowner's cost.⁹⁷ And, after state legislators became appalled at the proliferation of for-profit residential grow operations, the State of Florida passed the Marijuana Grow House Eradication act (House Bill 173) in June of 2008. The governor signed this bill into law, making owning a house for the purpose of cultivating, packaging, and distributing marijuana a third-degree felony; growing 25 or more marijuana plants a second-degree felony; and growing "25 or more marijuana plants in a home with children present" a first-degree felony.⁹⁸ It has been estimated that approximately 17,500 marijuana grow operations were active in late 2007.⁹⁹ To avoid becoming a dumping ground for organized crime syndicates who decide to move their illegal grow operations to a more receptive legislative environment, California and other states might be wise to quickly follow suit with similar bills, for it may already be happening.¹⁰⁰

C. IMPOSED RESTRICTED ZONING AND OTHER REGULATION BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

If so inclined, rather than completely prohibit marijuana dispensaries, through their zoning power city and county officials have the authority to restrict owner operators to locate and operate so-called "medical marijuana dispensaries" in prescribed geographical areas of a city or designated unincorporated areas of a county, and require them to meet prescribed licensing requirements before being allowed to do so. This is a risky course of action though for would-be dispensary operators, and perhaps lawmakers too, since federal authorities do not recognize any lawful right for the sale, purchase, or use of marijuana for medical use or otherwise anywhere in the United States, including California. Other cities and counties have included as a condition of licensure for dispensaries that the operator shall "violate no federal or state law," which puts any applicant in a "Catch-22" situation since to federal authorities any possession or sale of marijuana is automatically a violation of federal law.

Still other municipalities have recently enacted or revised comprehensive ordinances that address a variety of medical marijuana issues. For example, according to the City of Arcata Community

Development Department in Arcata, California, in response to constant citizen complaints from what had become an extremely serious community problem, the Arcata City Council revised its Land Use Standards for Medical Marijuana Cultivation and Dispensing. In December of 2008, City of Arcata Ordinance #1382 was enacted. It includes the following provisions:

“Categories:

1. Personal Use
2. Cooperatives or Collectives

Medical Marijuana for Personal Use: An individual qualified patient shall be allowed to cultivate medical marijuana within his/her private residence in conformance with the following standards:

1. Cultivation area shall not exceed 50 square feet and not exceed ten feet (10’) in height.
 - a. Cultivation lighting shall not exceed 1200 watts;
 - b. Gas products (CO₂, butane, etc.) for medical marijuana cultivation or processing is prohibited.
 - c. Cultivation and sale is prohibited as a Home Occupation (sale or dispensing is prohibited).
 - d. Qualified patient shall reside in the residence where the medical marijuana cultivation occurs;
 - e. Qualified patient shall not participate in medical marijuana cultivation in any other residence.
 - f. Residence kitchen, bathrooms, and primary bedrooms shall not be used primarily for medical marijuana cultivation;
 - g. Cultivation area shall comply with the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation.
 - h. The medical marijuana cultivation area shall not adversely affect the health or safety of the nearby residents.
2. City Zoning Administrator may approve up to 100 square foot:
 - a. Documentation showing why the 50 square foot cultivation area standard is not feasible.
 - b. Include written permission from the property owner.
 - c. City Building Official must inspect for California Building Code and Fire Code.
 - d. At a minimum, the medical marijuana cultivation area shall be constructed with a 1-hour firewall assembly of green board.
 - e. Cultivation of medical marijuana for personal use is limited to detached single family residential properties, or the medical marijuana cultivation area shall be limited to a garage or self-contained outside accessory building that is secured, locked, and fully enclosed.

Medical Marijuana Cooperatives or Collectives.

1. Allowed with a Conditional Use Permit.
2. In Commercial, Industrial, and Public Facility Zoning Districts.
3. Business form must be a cooperative or collective.
4. Existing cooperative or collective shall be in full compliance within one year.
5. Total number of medical marijuana cooperatives or collectives is limited to four and ultimately two.
6. Special consideration if located within
 - a. A 300 foot radius from any existing residential zoning district,
 - b. Within 500 feet of any other medical marijuana cooperative or collective.

- c. Within 500 feet from any existing public park, playground, day care, or school.
7. Source of medical marijuana.
- a. Permitted Cooperative or Collective. On-site medical marijuana cultivation shall not exceed twenty-five (25) percent of the total floor area, but in no case greater than 1,500 square feet and not exceed ten feet (10') in height.
 - b. Off-site Permitted Cultivation. Use Permit application and be updated annually.
 - c. Qualified Patients. Medical marijuana acquired from an individual qualified patient shall received no monetary remittance, and the qualified patient is a member of the medical marijuana cooperative or collective. Collective or cooperative may credit its members for medical marijuana provided to the collective or cooperative, which they may allocate to other members.
8. Operations Manual at a minimum include the following information:
- a. Staff screening process including appropriate background checks.
 - b. Operating hours.
 - c. Site, floor plan of the facility.
 - d. Security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification.
 - e. Screening, registration and validation process for qualified patients.
 - f. Qualified patient records acquisition and retention procedures.
 - g. Process for tracking medical marijuana quantities and inventory controls including on-site cultivation, processing, and/or medical marijuana products received from outside sources.
 - h. Measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana.
 - i. Chemicals stored, used and any effluent discharged into the City's wastewater and/or storm water system.
9. Operating Standards.
- a. No dispensing medical marijuana more than twice a day.
 - b. Dispense to an individual qualified patient who has a valid, verified physician's recommendation. The medical marijuana cooperative or collective shall verify that the physician's recommendation is current and valid.
 - c. Display the client rules and/or regulations at each building entrance.
 - d. Smoking, ingesting or consuming medical marijuana on the premises or in the vicinity is prohibited.
 - e. Persons under the age of eighteen (18) are precluded from entering the premises.
 - f. No on-site display of marijuana plants.
 - g. No distribution of live plants, starts and clones on through Use Permit.
 - h. Permit the on-site display or sale of marijuana paraphernalia only through the Use Permit.
 - i. Maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cooperatives or collectives shall also provide invoices to vendors to ensure vendor's tax liability responsibility;
 - j. Submit an "Annual Performance Review Report" which is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary.
 - k. Monitoring review fees shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.
10. Permit Revocation or Modification. A use permit may be revoked or modified for non-compliance with one or more of the items described above."

LIABILITY ISSUES

With respect to issuing business licenses to marijuana storefront facilities a very real issue has arisen: counties and cities are arguably aiding and abetting criminal violations of federal law. Such actions clearly put the counties permitting these establishments in very precarious legal positions. Aiding and abetting a crime occurs when someone commits a crime, the person aiding that crime knew the criminal offender intended to commit the crime, and the person aiding the crime intended to assist the criminal offender in the commission of the crime.

The legal definition of aiding and abetting could be applied to counties and cities allowing marijuana facilities to open. A county that has been informed about the *Gonzales v. Raich* decision knows that all marijuana activity is federally illegal. Furthermore, such counties know that individuals involved in the marijuana business are subject to federal prosecution. When an individual in California cultivates, possesses, transports, or uses marijuana, he or she is committing a federal crime.

A county issuing a business license to a marijuana facility knows that the people there are committing federal crimes. The county also knows that those involved in providing and obtaining marijuana are intentionally violating federal law.

This very problem is why some counties are re-thinking the presence of marijuana facilities in their communities. There is a valid fear of being prosecuted for aiding and abetting federal drug crimes. Presently, two counties have expressed concern that California's medical marijuana statutes have placed them in such a precarious legal position. Because of the serious criminal ramifications involved in issuing business permits and allowing storefront marijuana businesses to operate within their borders, San Diego and San Bernardino Counties filed consolidated lawsuits against the state seeking to prevent the State of California from enforcing its medical marijuana statutes which potentially subject them to criminal liability, and squarely asserting that California medical marijuana laws are preempted by federal law in this area. After California's medical marijuana laws were all upheld at the trial level, California's Fourth District Court of Appeal found that the State of California could mandate counties to adopt and enforce a voluntary medical marijuana identification card system, and the appellate court bypassed the preemption issue by finding that San Diego and San Bernardino Counties lacked standing to raise this challenge to California's medical marijuana laws. Following this state appellate court decision, independent petitions for review filed by the two counties were both denied by the California Supreme Court.

Largely because of the quandary that county and city peace officers in California face in the field when confronted with alleged medical marijuana with respect to enforcement of the total federal criminal prohibition of all marijuana, and state exemption from criminal penalties for medical marijuana users and caregivers, petitions for a writ of certiorari were then separately filed by the two counties seeking review of this decision by the United States Supreme Court in the consolidated cases of *County of San Diego, County of San Bernardino, and Gary Penrod, as Sheriff of the County of San Bernardino v. San Diego Norml, State of California, and Sandra Shewry, Director of the California Department of Health Services in her official capacity*, Ct.App. Case No. D-5-333.) The High Court has requested the State of California and other interested parties to file responsive briefs to the two counties' and Sheriff Penrod's writ petitions before it decides whether to grant or deny review of these consolidated cases. The petitioners would then be entitled to file a reply to any filed response. It is anticipated that the U.S. Supreme Court will formally grant or deny review of these consolidated cases in late April or early May of 2009.

In another case, *City of Garden Grove v. Superior Court* (2007) 157 Cal.App.4th 355, although the federal preemption issue was not squarely raised or addressed in its decision, California's Fourth District Court of Appeal found that public policy considerations allowed a city standing to challenge a state trial court's order directing the return by a city police department of seized medical marijuana to a person determined to be a patient. After the court-ordered return of this federally banned substance was upheld at the intermediate appellate level, and not accepted for review by the California Supreme Court, a petition for a writ of certiorari was filed by the City of Garden Grove to the U.S. Supreme Court to consider and reverse the state appellate court decision. But, that petition was also denied. However, the case of *People v. Kelly* (2008) 163 Cal.App.4th 124—in which a successful challenge was made to California's Medical Marijuana Program's maximum amounts of marijuana and marijuana plants permitted to be possessed by medical marijuana patients (Cal. H&S Code sec. 11362.77 *et seq.*), which limits were found at the court of appeal level to be without legal authority for the state to impose—has been accepted for review by the California Supreme Court on the issue of whether this law was an improper amendment to Proposition 215's Compassionate Use Act of 1996.

A SAMPLING OF EXPERIENCES WITH MARIJUANA DISPENSARIES

1. MARIJUANA DISPENSARIES-THE SAN DIEGO STORY

After the passage of Proposition 215 in 1996, law enforcement agency representatives in San Diego, California met many times to formulate a comprehensive strategy of how to deal with cases that may arise out of the new law. In the end it was decided to handle the matters on a case-by-case basis. In addition, questionnaires were developed for patient, caregiver, and physician interviews. At times patients without sales indicia but large grows were interviewed and their medical records reviewed in making issuing decisions. In other cases where sales indicia and amounts supported a finding of sales the cases were pursued. At most, two cases a month were brought for felony prosecution.

In 2003, San Diego County's newly elected District Attorney publicly supported Prop. 215 and wanted her newly created Narcotics Division to design procedures to ensure patients were not caught up in case prosecutions. As many already know, law enforcement officers rarely arrest or seek prosecution of a patient who merely possesses personal use amounts. Rather, it is those who have sales amounts in product or cultivation who are prosecuted. For the next two years the District Attorney's Office proceeded as it had before. But, on the cases where the patient had too many plants or product but not much else to show sales—the DDAs assigned to review the case would interview and listen to input to respect the patient's and the DA's position. Some cases were rejected and others issued but the case disposition was often generous and reflected a "sin no more" view.

All of this changed after the passage of SB 420. The activists and pro-marijuana folks started to push the envelope. Dispensaries began to open for business and physicians started to advertise their availability to issue recommendations for the purchase of medical marijuana. By spring of 2005 the first couple of dispensaries opened up—but they were discrete. This would soon change. By that summer, 7 to 10 dispensaries were open for business, and they were selling marijuana openly. In fact, the local police department was doing a small buy/walk project and one of its target dealers said he was out of pot but would go get some from the dispensary to sell to the undercover officer (UC); he did. It was the proliferation of dispensaries and ancillary crimes that prompted the San Diego Police Chief (the Chief was a Prop. 215 supporter who sparred with the Fresno DEA in his prior job over this issue) to authorize his officers to assist DEA.

The Investigation

San Diego DEA and its local task force (NTF) sought assistance from the DA's Office as well as the U.S. Attorney's Office. Though empathetic about being willing to assist, the DA's Office was not sure how prosecutions would fare under the provisions of SB 420. The U.S. Attorney had the easier road but was noncommittal. After several meetings it was decided that law enforcement would work on using undercover operatives (UCs) to buy, so law enforcement could see exactly what was happening in the dispensaries.

The investigation was initiated in December of 2005, after NTF received numerous citizen complaints regarding the crime and traffic associated with "medical marijuana dispensaries." The City of San Diego also saw an increase in crime related to the marijuana dispensaries. By then approximately 20 marijuana dispensaries had opened and were operating in San Diego County, and investigations on 15 of these dispensaries were initiated.

During the investigation, NTF learned that all of the business owners were involved in the transportation and distribution of large quantities of marijuana, marijuana derivatives, and marijuana food products. In addition, several owners were involved in the cultivation of high grade marijuana. The business owners were making significant profits from the sale of these products and not properly reporting this income.

Undercover Task Force Officers (TFO's) and SDPD Detectives were utilized to purchase marijuana and marijuana food products from these businesses. In December of 2005, thirteen state search warrants were executed at businesses and residences of several owners. Two additional follow-up search warrants and a consent search were executed the same day. Approximately 977 marijuana plants from seven indoor marijuana grows, 564.88 kilograms of marijuana and marijuana food products, one gun, and over \$58,000 U.S. currency were seized. There were six arrests made during the execution of these search warrants for various violations, including outstanding warrants, possession of marijuana for sale, possession of psilocybin mushrooms, obstructing a police officer, and weapons violations. However, the owners and clerks were not arrested or prosecuted at this time—just those who showed up with weapons or product to sell.

Given the fact most owners could claim mistake of law as to selling (though not a legitimate defense, it could be a jury nullification defense) the DA's Office decided not to file cases at that time. It was hoped that the dispensaries would feel San Diego was hostile ground and they would do business elsewhere. Unfortunately this was not the case. Over the next few months seven of the previously targeted dispensaries opened, as well as a slew of others. Clearly prosecutions would be necessary.

To gear up for the re-opened and new dispensaries prosecutors reviewed the evidence and sought a second round of UC buys wherein the UC would be buying for themselves and they would have a second UC present at the time acting as UC1's caregiver who also would buy. This was designed to show the dispensary was not the caregiver. There is no authority in the law for organizations to act as primary caregivers. Caregivers must be individuals who care for a marijuana patient. A primary caregiver is defined by Proposition 215, as codified in H&S Code section 11362.5(e), as, "For the purposes of this section, 'primary caregiver' means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person." The goal was to show that the stores were only selling marijuana, and not providing care for the hundreds who bought from them.

In addition to the caregiver-controlled buys, another aim was to put the whole matter in perspective for the media and the public by going over the data that was found in the raided dispensary records, as well as the crime statistics. An analysis of the December 2005 dispensary records showed a breakdown of the purported illness and youthful nature of the patients. The charts and other PR aspects played out after the second take down in July of 2006.

The final attack was to reveal the doctors (the gatekeepers for medical marijuana) for the fraud they were committing. UCs from the local PD went in and taped the encounters to show that the pot docs did not examine the patients and did not render care at all; rather they merely sold a medical MJ recommendation whose duration depended upon the amount of money paid.

In April of 2006, two state and two federal search warrants were executed at a residence and storage warehouse utilized to cultivate marijuana. Approximately 347 marijuana plants, over 21 kilograms of marijuana, and \$2,855 U.S. currency were seized.

Due to the pressure from the public, the United States Attorney's Office agreed to prosecute the owners of the businesses with large indoor marijuana grows and believed to be involved in money laundering activities. The District Attorney's Office agreed to prosecute the owners in the other investigations.

In June of 2006, a Federal Grand Jury indicted six owners for violations of Title 21 USC, sections 846 and 841(a)(1), Conspiracy to Distribute Marijuana; sections 846 and 841(a), Conspiracy to Manufacture Marijuana; and Title 18 USC, Section 2, Aiding and Abetting.

In July of 2006, 11 state and 11 federal search warrants were executed at businesses and residences associated with members of these businesses. The execution of these search warrants resulted in the arrest of 19 people, seizure of over \$190,000 in U.S. currency and other assets, four handguns, one rifle, 405 marijuana plants from seven grows, and over 329 kilograms of marijuana and marijuana food products.

Following the search warrants, two businesses reopened. An additional search warrant and consent search were executed at these respective locations. Approximately 20 kilograms of marijuana and 32 marijuana plants were seized.

As a result, all but two of the individuals arrested on state charges have pled guilty. Several have already been sentenced and a few are still awaiting sentencing. All of the individuals indicted federally have also pled guilty and are awaiting sentencing.

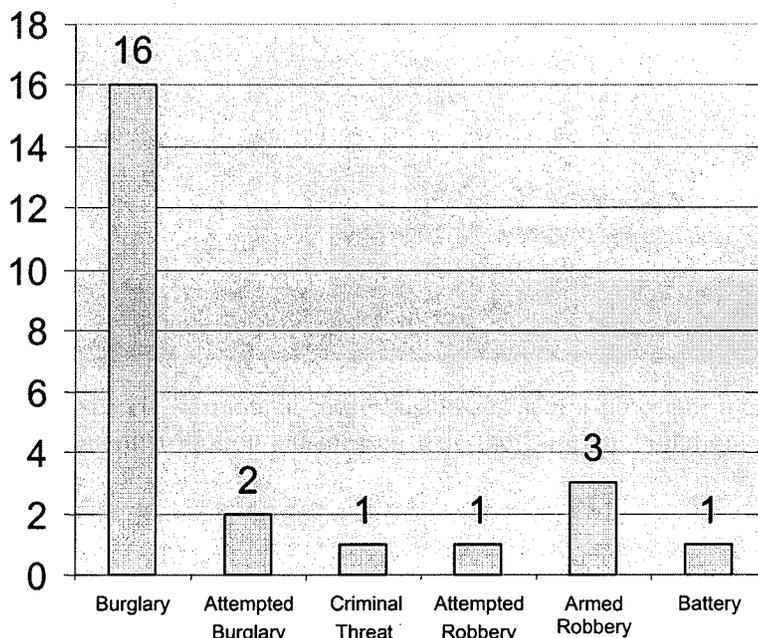
After the July 2006 search warrants a joint press conference was held with the U.S. Attorney and District Attorney, during which copies of a complaint to the medical board, photos of the food products which were marketed to children, and the charts shown below were provided to the media.

Directly after these several combined actions, there were no marijuana distribution businesses operating in San Diego County. Law enforcement agencies in the San Diego region have been able to successfully dismantle these businesses and prosecute the owners. As a result, medical marijuana advocates have staged a number of protests demanding DEA allow the distribution of marijuana. The closure of these businesses has reduced crime in the surrounding areas.

The execution of search warrants at these businesses sent a powerful message to other individuals operating marijuana distribution businesses that they are in violation of both federal law and California law.

Press Materials:

**Reported Crime at Marijuana Dispensaries
From January 1, 2005 through June 23, 2006**



Information showing the dispensaries attracted crime:

The marijuana dispensaries were targets of violent crimes because of the amount of marijuana, currency, and other contraband stored inside the businesses. From January 1, 2005 through June 23, 2006, 24 violent crimes were reported at marijuana dispensaries. An analysis of financial records seized from the marijuana dispensaries showed several dispensaries were grossing over \$300,000 per month from selling marijuana and marijuana food products. The majority of customers purchased marijuana with cash.

Crime statistics inadequately reflect the actual number of crimes committed at the marijuana dispensaries. These businesses were often victims of robberies and burglaries, but did not report the crimes to law enforcement on account of fear of being arrested for possession of marijuana in excess of Prop. 215 guidelines. NTF and the San Diego Police Department (SDPD) received numerous citizen complaints regarding every dispensary operating in San Diego County.

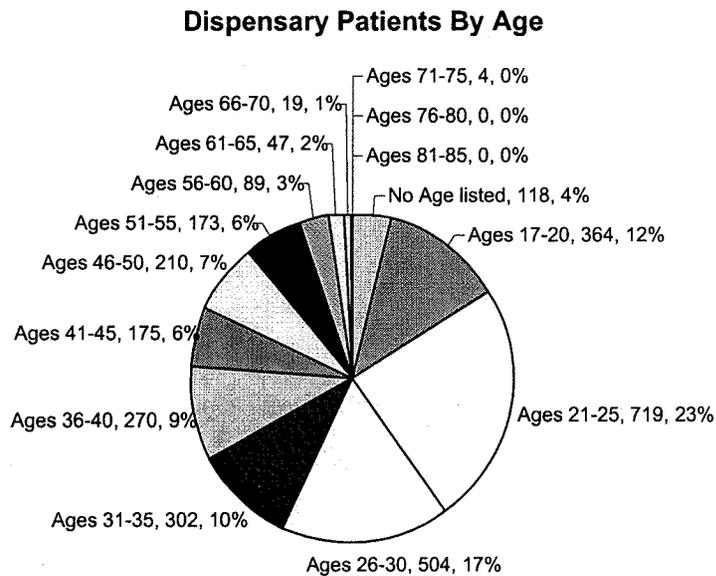
Because the complaints were received by various individuals, the exact number of complaints was not recorded. The following were typical complaints received:

- high levels of traffic going to and from the dispensaries
- people loitering in the parking lot of the dispensaries
- people smoking marijuana in the parking lot of the dispensaries

- vandalism near dispensaries
- threats made by dispensary employees to employees of other businesses
- citizens worried they may become a victim of crime because of their proximity to dispensaries

In addition, the following observations (from citizen activists assisting in data gathering) were made about the marijuana dispensaries:

- Identification was not requested for individuals who looked under age 18
- Entrance to business was not refused because of lack of identification
- Individuals were observed loitering in the parking lots
- Child-oriented businesses and recreational areas were situated nearby
- Some businesses made no attempt to verify a submitted physician's recommendation



An analysis of patient records seized during search warrants at several dispensaries show that 52% of the customers purchasing marijuana were between the ages of 17 to 30. 63% of primary caregivers purchasing marijuana were between the ages of 18 through 30. Only 2.05% of customers submitted a physician's recommendation for AIDS, glaucoma, or cancer.

Why these businesses were deemed to be criminal--not compassionate:

The medical marijuana businesses were deemed to be criminal enterprises for the following reasons:

- Many of the business owners had histories of drug and violence-related arrests.
- The business owners were street-level marijuana dealers who took advantage of Prop. 215 in an attempt to legitimize marijuana sales for profit.
- Records, or lack of records, seized during the search warrants showed that all the owners were not properly reporting income generated from the sales of marijuana. Many owners were involved in money laundering and tax evasion.
- The businesses were selling to individuals without serious medical conditions.
- There are no guidelines on the amount of marijuana which can be sold to an individual. For

example, an individual with a physician's recommendation can go to as many marijuana distribution businesses and purchase as much marijuana as he/she wants.

- California law allows an individual to possess 6 mature or 12 immature plants per qualified person. However, the San Diego Municipal Code states a "caregiver" can only provide care to 4 people, including themselves; this translates to 24 mature or 48 immature plants total. Many of these dispensaries are operating large marijuana grows with far more plants than allowed under law. Several of the dispensaries had indoor marijuana grows inside the businesses, with mature and/or immature marijuana plants over the limits.
- State law allows a qualified patient or primary caregiver to possess no more than eight ounces of dried marijuana per qualified patient. However, the San Diego Municipal Code allows primary caregivers to possess no more than two pounds of processed marijuana. Under either law, almost every marijuana dispensary had over two pounds of processed marijuana during the execution of the search warrants.
- Some marijuana dispensaries force customers to sign forms designating the business as their primary caregiver, in an attempt to circumvent the law.

2. EXPERIENCES WITH MARIJUANA DISPENSARIES IN RIVERSIDE COUNTY

There were some marijuana dispensaries operating in the County of Riverside until the District Attorney's Office took a very aggressive stance in closing them. In Riverside, anyone that is not a "qualified patient" or "primary caregiver" under the Medical Marijuana Program Act who possesses, sells, or transports marijuana is being prosecuted.

Several dispensary closures illustrate the impact this position has had on marijuana dispensaries. For instance, the Palm Springs Caregivers dispensary (also known as Palm Springs Safe Access Collective) was searched after a warrant was issued. All materials inside were seized, and it was closed down and remains closed. The California Caregivers Association was located in downtown Riverside. Very shortly after it opened, it was also searched pursuant to a warrant and shut down. The CannaHelp dispensary was located in Palm Desert. It was searched and closed down early in 2007. The owner and two managers were then prosecuted for marijuana sales and possession of marijuana for the purpose of sale. However, a judge granted their motion to quash the search warrant and dismissed the charges. The District Attorney's Office then appealed to the Fourth District Court of Appeal. Presently, the Office is waiting for oral arguments to be scheduled.

Dispensaries in the county have also been closed by court order. The Healing Nations Collective was located in Corona. The owner lied about the nature of the business in his application for a license. The city pursued and obtained an injunction that required the business to close. The owner appealed to the Fourth District Court of Appeal, which ruled against him. (*City of Corona v. Ronald Naulls et al.*, Case No. E042772.)

3. MEDICAL MARIJUANA DISPENSARY ISSUES IN CONTRA COSTA COUNTY CITIES AND IN OTHER BAY AREA COUNTIES

Several cities in Contra Costa County, California have addressed this issue by either banning dispensaries, enacting moratoria against them, regulating them, or taking a position that they are simply not a permitted land use because they violate federal law. Richmond, El Cerrito, San Pablo, Hercules, and Concord have adopted permanent ordinances banning the establishment of marijuana dispensaries. Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill have imposed moratoria against dispensaries. Clayton, San Ramon, and Walnut Creek have not taken any formal action regarding the establishment of marijuana dispensaries but have indicated that marijuana dispensaries

are not a permitted use in any of their zoning districts as a violation of federal law. Martinez has adopted a permanent ordinance regulating the establishment of marijuana dispensaries.

The Counties of Alameda, Santa Clara, and San Francisco have enacted permanent ordinances regulating the establishment of marijuana dispensaries. The Counties of Solano, Napa, and Marin have enacted neither regulations nor bans. A brief overview of the regulations enacted in neighboring counties follows.

A. Alameda County

Alameda County has a nineteen-page regulatory scheme which allows the operation of three permitted dispensaries in unincorporated portions of the county. Dispensaries can only be located in commercial or industrial zones, or their equivalent, and may not be located within 1,000 feet of other dispensaries, schools, parks, playgrounds, drug recovery facilities, or recreation centers. Permit issuance is controlled by the Sheriff, who is required to work with the Community Development Agency and the Health Care Services agency to establish operating conditions for each applicant prior to final selection. Adverse decisions can be appealed to the Sheriff and are ruled upon by the same panel responsible for setting operating conditions. That panel's decision may be appealed to the Board of Supervisors, whose decision is final (subject to writ review in the Superior Court per CCP sec. 1094.5). Persons violating provisions of the ordinance are guilty of a misdemeanor.

B. Santa Clara County

In November of 1998, Santa Clara County passed an ordinance permitting dispensaries to exist in unincorporated portions of the county with permits first sought and obtained from the Department of Public Health. In spite of this regulation, neither the County Counsel nor the District Attorney's Drug Unit Supervisor believes that Santa Clara County has had *any* marijuana dispensaries in operation at least through 2006.

The only permitted activities are the on-site cultivation of medical marijuana and the distribution of medical marijuana/medical marijuana food stuffs. No retail sales of any products are permitted at the dispensary. Smoking, ingestion or consumption is also prohibited on site. All doctor recommendations for medical marijuana must be verified by the County's Public Health Department.

C. San Francisco County

In December of 2001, the Board of Supervisors passed Resolution No. 012006, declaring San Francisco to be a "Sanctuary for Medical Cannabis." City voters passed Proposition S in 2002, directing the city to explore the possibility of establishing a medical marijuana cultivation and distribution program run by the city itself.

San Francisco dispensaries must apply for and receive a permit from the Department of Public Health. They may only operate as a collective or cooperative, as defined by California Health and Safety Code section 11362.7 (see discussion in section 4, under "California Law" above), and may only sell or distribute marijuana to members. Cultivation, smoking, and making and selling food products may be allowed. Permit applications are referred to the Departments of Planning, Building Inspection, and Police. Criminal background checks are required but exemptions could still allow the operation of dispensaries by individuals with prior convictions for violent felonies or who have had prior permits suspended or revoked. Adverse decisions can be appealed to the Director of

Public Health and the Board of Appeals. It is unclear how many dispensaries are operating in the city at this time.

D. Crime Rates in the Vicinity of MariCare

Sheriff's data have been compiled for "Calls for Service" within a half-mile radius of 127 Aspen Drive, Pacheco. However, in research conducted by the El Cerrito Police Department and relied upon by Riverside County in recently enacting its ban on dispensaries, it was recognized that not all crimes related to medical marijuana take place in or around a dispensary. Some take place at the homes of the owners, employees, or patrons. Therefore, these statistics cannot paint a complete picture of the impact a marijuana dispensary has had on crime rates.

The statistics show that the overall number of calls decreased (3,746 in 2005 versus 3,260 in 2006). However, there have been **increases** in the numbers of crimes which appear to be related to a business which is an attraction to a criminal element. Reports of commercial burglaries increased (14 in 2005, 24 in 2006), as did reports of residential burglaries (13 in 2005, 16 in 2006) and miscellaneous burglaries (5 in 2005, 21 in 2006).

Tender Holistic Care (THC marijuana dispensary formerly located on N. Buchanan Circle in Pacheco) was forcibly burglarized on June 11, 2006. \$4,800 in cash was stolen, along with marijuana, hash, marijuana food products, marijuana pills, marijuana paraphernalia, and marijuana plants. The total loss was estimated to be \$16,265.

MariCare was also burglarized within two weeks of opening in Pacheco. On April 4, 2006, a window was smashed after 11:00 p.m. while an employee was inside the business, working late to get things organized. The female employee called "911" and locked herself in an office while the intruder ransacked the downstairs dispensary and stole more than \$200 worth of marijuana. Demetrio Ramirez indicated that since they were just moving in, there wasn't much inventory.

Reports of vehicle thefts increased (4 in 2005, 6 in 2006). Disturbance reports increased in nearly all categories (Fights: 5 in 2005, 7 in 2006; Harassment: 4 in 2005, 5 in 2006; Juveniles: 4 in 2005, 21 in 2006; Loitering: 11 in 2005, 19 in 2006; Verbal: 7 in 2005, 17 in 2006). Littering reports increased from 1 in 2005 to 5 in 2006. Public nuisance reports increased from 23 in 2005 to 26 in 2006.

These statistics reflect the complaints and concerns raised by nearby residents. Residents have reported to the District Attorney's Office, as well as to Supervisor Piepho's office, that when calls are made to the Sheriff's Department, the offender has oftentimes left the area before law enforcement can arrive. This has led to less reporting, as it appears to local residents to be a futile act and residents have been advised that law enforcement is understaffed and cannot always timely respond to all calls for service. As a result, Pacheco developed a very active, visible Neighborhood Watch program. The program became much more active in 2006, according to Doug Stewart. Volunteers obtained radios and began frequently receiving calls directly from local businesses and residents who contacted them **instead** of law enforcement. It is therefore significant that there has still been an increase in many types of calls for law enforcement service, although the overall number of calls has decreased.

Other complaints from residents included noise, odors, smoking/consuming marijuana in the area, littering and trash from the dispensary, loitering near a school bus stop and in the nearby church parking lot, observations that the primary patrons of MariCare appear to be individuals under age 25,

and increased traffic. Residents observed that the busiest time for MariCare appeared to be from 4:00 p.m. to 6:00 p.m. On a typical Friday, 66 cars were observed entering MariCare's facility; 49 of these were observed to contain additional passengers. The slowest time appeared to be from 1:00 p.m. to 3:00 p.m. On a typical Saturday, 44 cars were counted during this time, and 29 of these were observed to have additional passengers. MariCare has claimed to serve 4,000 "patients."

E. Impact of Proposed Ordinance on MedDelivery Dispensary, El Sobrante

It is the position of Contra Costa County District Attorney Robert J. Kochly that a proposed ordinance should terminate operation of the dispensary in El Sobrante because the land use of that business would be inconsistent with both state and federal law. However, the Community Development Department apparently believes that MedDelivery can remain as a "legal, non-conforming use."

F. Banning Versus Regulating Marijuana Dispensaries in Unincorporated Contra Costa County

It is simply bad public policy to allow the proliferation of any type of business which is illegal and subject to being raided by federal and/or state authorities. In fact, eight locations associated with the New Remedies dispensary in San Francisco and Alameda Counties were raided in October of 2006, and eleven Southern California marijuana clinics were raided by federal agents on January 18, 2007. The Los Angeles head of the federal Drug Enforcement Administration told CBS News after the January raids that "Today's enforcement operations show that these establishments are nothing more than drug-trafficking organizations bringing criminal activities to our neighborhoods and drugs near our children and schools." A Lafayette, California resident who owned a business that produced marijuana-laced foods and drinks for marijuana clubs was sentenced in federal court to five years and 10 months behind bars as well as a \$250,000 fine. Several of his employees were also convicted in that case.

As discussed above, there is absolutely no exception to the federal prohibition against marijuana cultivation, possession, transportation, use, and distribution. Neither California's voters nor its Legislature authorized the existence or operation of marijuana dispensing businesses when given the opportunity to do so. These enterprises cannot fit themselves into the few, narrow exceptions that were created by the Compassionate Use Act and Medical Marijuana Program Act.

Further, the presence of marijuana dispensing businesses contributes substantially to the existence of a secondary market for illegal, street-level distribution of marijuana. This fact was even recognized by the United States Supreme Court: "The exemption for cultivation by patients and caregivers can only increase the supply of marijuana in the California market. The likelihood that all such production will promptly terminate when patients recover or will precisely match the patients' medical needs during their convalescence seems remote; whereas the danger that excesses will satisfy some of the admittedly enormous demand for recreational use seems obvious." (*Gonzales v. Raich, supra*, 125 S.Ct. at p. 2214.)

As outlined below, clear evidence has emerged of such a secondary market in Contra Costa County.

- In September of 2004, police responded to reports of two men pointing a gun at cars in the parking lot at Monte Vista High School during an evening football game/dance. Two 19-year-old Danville residents were located in the parking lot (which was full of vehicles and pedestrians) and in possession of a silver Airsoft pellet pistol designed to replicate a

real Walther semi-automatic handgun. Marijuana, hash, and hash oil with typical dispensary packaging and labeling were also located in the car, along with a gallon bottle of tequila (1/4 full), a bong with burned residue, and rolling papers. The young men admitted to having consumed an unknown amount of tequila at the park next to the school and that they both pointed the gun at passing cars “as a joke.” They fired several BBs at a wooden fence in the park when there were people in the area. The owner of the vehicle admitted that the marijuana was his and that he was **not** a medicinal marijuana user. He was able to buy marijuana from his friend “Brandon,” who used a Proposition 215 card to purchase from a cannabis club in Hayward.

- In February of 2006, Concord police officers responded to a report of a possible drug sale in progress. They arrested a high school senior for two outstanding warrants as he came to buy marijuana from the cannabis club located on Contra Costa Boulevard. The young man explained that he had a cannabis club card that allowed him to purchase marijuana, and admitted that he planned to re-sell some of the marijuana to friends. He also admitted to possession of nearly 7 grams of cocaine which was recovered. A 21-year-old man was also arrested on an outstanding warrant. In his car was a marijuana grinder, a baggie of marijuana, rolling papers, cigars, and a “blunt” (hollowed out cigar filled with marijuana for smoking) with one end burned. The 21-year-old admitted that he did **not** have a physician’s recommendation for marijuana.
- Also in February of 2006, a 17-year-old Monte Vista High School senior was charged with felony furnishing of marijuana to a child, after giving a 4-year-old boy a marijuana-laced cookie. The furnishing occurred on campus, during a child development class.
- In March of 2006, police and fire responded to an explosion at a San Ramon townhouse and found three young men engaged in cultivating and manufacturing “honey oil” for local pot clubs. Marijuana was also being sold from the residence. Honey oil is a concentrated form of cannabis chemically extracted from ground up marijuana with extremely volatile **butane** and a special “honey oil” extractor tube. The butane extraction operation *exploded* with such force that it blew the garage door partially off its hinges. Sprinklers in the residence kept the fire from spreading to the other homes in the densely packed residential neighborhood. At least one of the men was employed by Ken Estes, owner of the Dragonfly Holistic Solutions pot clubs in Richmond, San Francisco, and Lake County. They were making the “honey oil” with marijuana and butane that they brought up from one of Estes’ San Diego pot clubs after it was shut down by federal agents.
- Also in March of 2006, a 16-year-old El Cerrito High School student was arrested after selling pot cookies to fellow students on campus, many of whom became ill. At least four required hospitalization. The investigation revealed that the cookies were made with a butter obtained outside a marijuana dispensary (a secondary sale). Between March of 2004 and May of 2006, the El Cerrito Police Department conducted seven investigations at the high school and junior high school, resulting in the arrest of eight juveniles for selling or possessing with intent to sell marijuana on or around the school campuses.
- In June of 2006, Moraga police officers made a traffic stop for suspected driving under the influence of alcohol. The car was seen drifting over the double yellow line separating north and southbound traffic lanes and driving in the bike lane. The 20-year-old driver denied having consumed any alcohol, as he was the “designated driver.” When asked about his bloodshot, watery, and droopy eyes, the college junior explained that he had

smoked marijuana earlier (confirmed by blood tests). The young man had difficulty performing field sobriety tests, slurred his speech, and was ultimately arrested for driving under the influence. He was in possession of a falsified California Driver's License, marijuana, hash, a marijuana pipe, a scale, and \$12,288. The marijuana was in packaging from the Compassionate Collective of Alameda County, a Hayward dispensary. He explained that he buys the marijuana at "Pot Clubs," sells some, and keeps the rest. He only sells to close friends. About \$3,000 to \$4,000 of the cash was from playing high-stakes poker, but the rest was earned selling marijuana while a freshman at Arizona State University. The 18-year-old passenger had half an ounce of marijuana in her purse and produced a doctor's recommendation to a marijuana club in Oakland, the authenticity of which could not be confirmed.

Another significant concern is the proliferation of marijuana usage at community schools. In February of 2007, the Healthy Kids Survey for Alameda and Contra Costa Counties found that youthful substance abuse is more common in the East Bay's more affluent areas. These areas had higher rates of high school juniors who admitted having been high from drugs. The regional manager of the study found that the affluent areas had higher alcohol and marijuana use rates. *USA Today* recently reported that the percentage of 12th Grade students who said they had used marijuana has increased since 2002 (from 33.6% to 36.2% in 2005), and that marijuana was the most-used illicit drug among that age group in 2006. KSDK News Channel 5 reported that high school students are finding easy access to medical marijuana cards and presenting them to school authorities as a legitimate excuse for getting high. School Resource Officers for Monte Vista and San Ramon Valley High Schools in Danville have reported finding marijuana in prescription bottles and other packaging from Alameda County dispensaries. Marijuana has also been linked to psychotic illnesses.¹⁰¹ A risk factor was found to be starting marijuana use in adolescence.

For all of the above reasons, it is advocated by District Attorney Kochly that a ban on land uses which violate state or federal law is the most appropriate solution for the County of Contra Costa.

4. SANTA BARBARA COUNTY

According to Santa Barbara County Deputy District Attorney Brian Cota, ten marijuana dispensaries are currently operating within Santa Barbara County. The mayor of the City of Santa Barbara, who is an outspoken medical marijuana supporter, has stated that the police must place marijuana **behind** every other police priority. This has made it difficult for the local District Attorney's Office. Not many marijuana cases come to it for filing. The District Attorney's Office would like more regulations placed on the dispensaries. However, the majority of Santa Barbara County political leaders and residents are very liberal and do not want anyone to be denied access to medical marijuana if they say they need it. Partly as a result, no dispensaries have been prosecuted to date.

5. SONOMA COUNTY

Stephan R. Passalocqua, District Attorney for the County of Sonoma, has recently reported the following information related to distribution of medical marijuana in Sonoma County. In 1997, the Sonoma County Law Enforcement Chiefs Association enacted the following medical marijuana guidelines: a qualified patient is permitted to possess three pounds of marijuana and grow 99 plants in a 100-square-foot canopy. A qualified caregiver could possess or grow the above-mentioned amounts for each qualified patient. These guidelines were enacted after Proposition 215 was overwhelmingly passed by the voters of California, and after two separate unsuccessful prosecutions in Sonoma County. Two Sonoma County juries returned "not guilty" verdicts for three defendants

who possessed substantially large quantities of marijuana (60 plants in one case and over 900 plants in the other) where they asserted a medical marijuana defense. These verdicts, and the attendant publicity, demonstrated that the community standards are vastly different in Sonoma County compared to other jurisdictions.

On November 6, 2006, and authorized by Senate Bill 420, the Sonoma County Board of Supervisors specifically enacted regulations that allow a qualified person holding a valid identification card to possess up to three pounds of dried cannabis a year and cultivate 30 plants per qualified patient. No individual from any law enforcement agency in Sonoma County appeared at the hearing, nor did any representative publicly oppose this resolution.

With respect to the *People v. Sashon Jenkins* case, the defendant provided verified medical recommendations for five qualified patients prior to trial. At the time of arrest, Jenkins said that he had a medical marijuana card and was a care provider for multiple people, but was unable to provide specific documentation. Mr. Jenkins had approximately 10 pounds of dried marijuana and was growing 14 plants, which number of plants is consistent with the 2006 Sonoma County Board of Supervisors' resolution.

At a preliminary hearing held In January of 2007, the defense called five witnesses who were proffered as Jenkins' "patients" and who came to court with medical recommendations. Jenkins also testified that he was their caregiver. After the preliminary hearing, the assigned prosecutor conducted a thorough review of the facts and the law, and concluded that a Sonoma County jury would not return a "guilty" verdict in this case. Hence, no felony information was filed. With respect to the return of property issue, the prosecuting deputy district attorney never agreed to release the marijuana despite dismissing the case.

Other trial dates are pending in cases where medical marijuana defenses are being alleged. District Attorney Passalacqua has noted that, given the overwhelming passage of proposition 215, coupled with at least one United States Supreme Court decision that has not struck it down to date, these factors present current challenges for law enforcement, but that he and other prosecutors will continue to vigorously prosecute drug dealers within the boundaries of the law.

6. ORANGE COUNTY

There are 15 marijuana dispensaries in Orange County, and several delivery services. Many of the delivery services operate out of the City of Long Beach in Los Angeles County. Orange County served a search warrant on one dispensary, and closed it down. A decision is being made whether or not to file criminal charges in that case. It is possible that the United States Attorney will file on that dispensary since it is a branch of a dispensary that the federal authorities raided in San Diego County.

The Orange County Board of Supervisors has ordered a study by the county's Health Care Department on how to comply with the Medical Marijuana Program Act. The District Attorney's Office's position is that any activity under the Medical Marijuana Program Act beyond the mere issuance of identification cards violates federal law. The District Attorney's Office has made it clear to County Counsel that if any medical marijuana provider does not meet a strict definition of "primary caregiver" that person will be prosecuted.

PENDING LEGAL QUESTIONS

Law enforcement agencies throughout the state, as well as their legislative bodies, have been struggling with how to reconcile the Compassionate Use Act ("CUA"), Cal. Health & Safety Code secs. 11362.5, et seq., with the federal Controlled Substances Act ("CSA"), 21 U.S.C. sec. 801, et seq., for some time. Pertinent questions follow.

QUESTION

1. **Is it possible for a storefront marijuana dispensary to be legally operated under the Compassionate Use Act of 1996 (Health & Saf. Code sec. 11362.5) and the Medical Marijuana Program Act (Health & Saf. Code secs. 11362.7-11362.83)?**

ANSWER

1. **Storefront marijuana dispensaries may be legally operated under the CUA and the Medical Marijuana Program Act ("MMPA"), Cal. Health & Safety Code secs. 11362.7-11362.83, as long as they are "cooperatives" under the MMPA.**

ANALYSIS

The question posed does not specify what services or products are available at a "storefront" marijuana dispensary. The question also does not specify the business structure of a "dispensary." A "dispensary" is often commonly used nowadays as a generic term for a facility that distributes medical marijuana.

The term "dispensary" is also used specifically to refer to marijuana facilities that are operated more like a retail establishment, that are open to the public and often "sell" medical marijuana to qualified patients or caregivers. By use of the term "store front dispensary," the question may be presuming that this type of facility is being operated. For purposes of this analysis, we will assume that a "dispensary" is a generic term that does not contemplate any particular business structure.¹ Based on that assumption, a "dispensary" might provide "assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person" and be within the permissible limits of the CUA and the MMPA. (Cal. Health & Safety Code sec. 11362.765 (b)(3).)

¹ As the term "dispensary" is commonly used and understood, marijuana dispensaries would *not* be permitted under the CUA or the MMPA, since they "sell" medical marijuana and are not operated as true "cooperatives."

The CUA permits a "patient" or a "patient's primary caregiver" to possess or cultivate marijuana for personal medical purposes with the recommendation of a physician. (Cal. Health & Safety Code sec. 11362.5 (d).) Similarly, the MMPA provides that "patients" or designated "primary caregivers" who have voluntarily obtained a valid medical marijuana identification card shall not be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in specified quantities. (Cal. Health & Safety Code sec. 11362.71 (d) & (e).) A "storefront dispensary" would not fit within either of these categories.

However, the MMPA also provides that "[q]ualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who *associate* within the State of California in order collectively or *cooperatively* to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under section 11357 [possession], 11358 [planting, harvesting or processing], 11359 [possession for sale], 11360 [unlawful transportation, importation, sale or gift], 11366 [opening or maintaining place for trafficking in controlled substances], 11366.5 [providing place for manufacture or distribution of controlled substance; Fortifying building to suppress law enforcement entry], or 11570 [Buildings or places deemed nuisances subject to abatement]." (Cal. Health & Safety Code sec. 11362.775.) (Emphasis added.)

Since medical marijuana cooperatives are permitted pursuant to the MMPA, a "storefront dispensary" that would qualify as a cooperative *would* be permissible under the MMPA. (Cal. Health & Safety Code sec. 11362.775. See also *People v. Urziceanu* (2005) 132 Cal. App. 4th 747 (finding criminal defendant was entitled to present defense relating to operation of medical marijuana cooperative).) In granting a re-trial, the appellate court in *Urziceanu* found that the defendant could present evidence which might entitle him to a defense under the MMPA as to the operation of a medical marijuana cooperative, including the fact that the "cooperative" verified physician recommendations and identities of individuals seeking medical marijuana and individuals obtaining medical marijuana paid membership fees, reimbursed defendant for his costs in cultivating the medical marijuana by way of donations, and volunteered at the "cooperative." (*Id.* at p. 785.)

Whether or not "sales" are permitted under *Urziceanu* and the MMPA is unclear. The *Urziceanu* Court did note that the incorporation of section 11359, relating to marijuana "sales," in section 11362.775, allowing the operation of cooperatives, "contemplates the formation and operation of medicinal marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana." Whether "reimbursement" may be in the form only of donations, as were the facts presented in *Urziceanu*, or whether "purchases" could be made for medical marijuana, it does seem clear that a medical marijuana "cooperative" may not make a "profit," but may be restricted to being reimbursed for actual costs in providing the marijuana to its members and, if there are any "profits," these may have to be reinvested in the "cooperative" or shared by its members in order for a dispensary to

be truly considered to be operating as a "cooperative."² If these requirements are satisfied as to a "storefront" dispensary, then it will be permissible under the MMPA. Otherwise, it will be a violation of both the CUA and the MMPA.

QUESTION

2. If the governing body of a city, county, or city and county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, can an individual board or council member be found to be acting illegally and be subject to federal criminal charges, including aiding and abetting, or state criminal charges?

ANSWER

2. If a city, county, or city and county authorizes and regulates marijuana dispensaries, individual members of the legislative bodies may be held criminally liable under state or federal law.³

ANALYSIS

A. Federal Law

Generally, legislators of federal, state, and local legislative bodies are absolutely immune from liability for legislative acts. (U.S. Const., art. I, sec. 6 (Speech and Debate Clause, applicable to members of Congress); Fed. Rules Evid., Rule 501 (evidentiary privilege against admission of legislative acts); *Tenney v. Brandhove* (1951) 341 U.S. 367 (legislative immunity applicable to state legislators); *Bogan v. Scott-Harris* (1998) 523 U.S. 44 (legislative immunity applicable to local legislators).) However, while federal legislators are absolutely immune from *both* criminal *and* civil liability for purely legislative acts, local legislators are *only* immune from *civil* liability under federal law. (*United States v. Gillock* (1980) 445 U.S. 360.)

Where the United States Supreme Court has held that federal regulation of marijuana by way of the CSA, including any "medical" use of marijuana, is within Congress' Commerce Clause power, federal law stands as a bar to local action in direct violation of the CSA. (*Gonzales v. Raich* (2005) 545 U.S. 1.) In fact, the CSA itself provides that federal regulations do not

² A "cooperative" is defined as follows: An enterprise or organization that is owned or managed jointly by those who use its facilities or services. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, by Houghton Mifflin Company (4th Ed. 2000).

³ Indeed, the same conclusion would seem to result from the adoption by state legislators of the MMPA itself, in authorizing the issuance of medical marijuana identification cards. (Cal. Health & Safety Code secs. 11362.71, et seq.)

exclusively occupy the field of drug regulation "unless there is a positive conflict between that provision of this title [the CSA] and that state law so that the two cannot consistently stand together." (21 U.S.C. sec. 903.)

Based on the above provisions, then, legislative action by local legislators *could* subject the individual legislators to federal criminal liability. Most likely, the only violation of the CSA that could occur as a result of an ordinance approved by local legislators authorizing and regulating medical marijuana would be aiding and abetting a violation of the CSA.

The elements of the offense of aiding and abetting a criminal offense are: (1) specific intent to facilitate commission of a crime by another; (2) guilty knowledge on the part of the accused; (3) that an offense was being committed by someone; and (4) that the accused assisted or participated in the commission of an offense. (*United States v. Raper* (1982) 676 F.2d 841; *United States v. Staten* (1978) 581 F.2d 878.)

Criminal aiding and abetting liability, under 18 U.S.C. section 2, requires proof that the defendants in some way associated themselves with the illegal venture; that they participated in the venture as something that they wished to bring about; and that they sought by their actions to make the venture succeed. (*Central Bank, N.A. v. First Interstate Bank, N.A.* (1994) 511 U.S. 164.) Mere furnishing of company to a person engaged in a crime does not render a companion an aider or abettor. (*United States v. Garguilo* (2d Cir. 1962) 310 F.2d 249.) In order for a defendant to be an aider and abettor he must know that the activity condemned by law is actually occurring and must intend to help the perpetrator. (*United States v. McDaniel* (9th Cir. 1976) 545 F.2d 642.) To be guilty of aiding and abetting, the defendant must willfully seek, by some action of his own, to make a criminal venture succeed. (*United States v. Ehrenberg* (E.D. Pa. 1973) 354 F. Supp. 460 *cert. denied* (1974) 94 S. Ct. 1612.)

The question, as posed, may presume that the local legislative body has acted in a manner that affirmatively supports marijuana dispensaries. As phrased by Senator Kuehl, the question to be answered by the Attorney General's Office assumes that a local legislative body has adopted an ordinance that "authorizes" medical marijuana facilities. What if a local public entity adopts an ordinance that explicitly indicates that it does *not* authorize, legalize, or permit any dispensary that is in violation of federal law regarding controlled substances? If the local public entity grants a permit, regulates, or imposes locational requirements on marijuana dispensaries with the announced understanding that it does not thereby allow any *illegal* activity and that dispensaries are required to comply with all applicable laws, including federal laws, then the public entity should be entitled to expect that all laws will be obeyed.

It would seem that a public entity is not intentionally acting to encourage or aid acts in violation of the CSA merely because it has adopted an ordinance which regulates dispensaries; even the issuance of a "permit," if it is expressly *not* allowing violations of federal law, cannot necessarily support a charge or conviction of aiding and abetting violation of the CSA. A public entity should be entitled to presume that dispensaries will obey all applicable laws and that lawful business will be conducted at dispensaries. For instance, dispensaries could very well *not* engage in actual medical marijuana distribution, but instead engage in education and awareness activities as to the medical effects of marijuana; the sale of other, legal products that aid in the suffering of

ailing patients; or even activities directed at effecting a change in the federal laws relating to regulation of marijuana as a Schedule I substance under the CSA.

These are examples of legitimate business activities, and First Amendment protected activities at that, in which dispensaries could engage relating to medical marijuana, but *not* apparently in violation of the CSA. Public entities should be entitled to presume that legitimate activities can and will be engaged in by dispensaries that are permitted and/or regulated by local regulations. In fact, it seems counterintuitive that local public entities within the state should be expected to be the watchdogs of federal law; in the area of controlled substances, at least, local public entities do not have an affirmative obligation to discern whether businesses are violating federal law.

The California Attorney General's Office will note that the State Board of Equalization ("BOE") has already done precisely what has been suggested in the preceding paragraph. In a special notice issued by the BOE this year, it has indicated that sellers of medical marijuana must obtain a seller's permit. (See <http://www.boe.ca.gov/news/pdf/medseller2007.pdf> (Special Notice: Important Information for Sellers of Medical Marijuana).) As the Special Notice explicitly indicates to medical marijuana facilities, "[h]aving a seller's permit does not mean you have authority to make unlawful sales. The permit only provides a way to remit any sales and use taxes due. The permit states, 'NOTICE TO PERMITTEE: You are required to obey all federal and state laws that regulate or control your business. This permit does not allow you to do otherwise.'"

The above being said, however, there is no guarantee that criminal charges would not actually be brought by the federal government or that persons so charged could not be successfully prosecuted. It does seem that arguments contrary to the above conclusions could be persuasive in convicting local legislators. By permitting and/or regulating marijuana dispensaries by local ordinance, some legitimacy and credibility may be granted by governmental issuance of permits or authorizing and allowing dispensaries to exist or locate within a jurisdiction.⁴

All of this discussion, then, simply demonstrates that individual board or council members can, indeed, be found criminally liable under federal law for the adoption of an ordinance authorizing and regulating marijuana dispensaries that promote the use of marijuana as medicine. The actual likelihood of prosecution, and its potential success, may depend on the particular facts of the regulation that is adopted.

⁴ Of course, the question arises as to how far any such liability be taken. Where can the line be drawn between any permit or regulation adopted specifically with respect to marijuana dispensaries and other permits or approvals routinely, and often *ministerially*, granted by local public entities, such as building permits or business licenses, which are discussed *infra*? If local public entities are held responsible for adopting an ordinance authorizing and/or regulating marijuana dispensaries, cannot local public entities also be subject to liability for providing general public services for the illegal distribution of "medical" marijuana? Could a local public entity that knew a dispensary was distributing "medical" marijuana in compliance with state law be criminally liable if it provided electricity, water, and trash services to that dispensary? How can such actions really be distinguished from the adoption of an ordinance that authorizes and/or regulates marijuana dispensaries?

B. *State Law*

Similarly, under California law, aside from the person who directly commits a criminal offense, no other person is guilty as a principal unless he aids and abets. (*People v. Dole* (1898) 122 Cal. 486; *People v. Stein* (1942) 55 Cal. App. 2d 417.) A person who innocently aids in the commission of the crime cannot be found guilty. (*People v. Fredoni* (1910) 12 Cal. App. 685.)

To authorize a conviction as an aider and abettor of crime, it must be shown not only that the person so charged aided and assisted in the commission of the offense, but also that he abetted the act— that is, that he criminally or with guilty knowledge and intent aided the actual perpetrator in the commission of the act. (*People v. Terman* (1935) 4 Cal. App. 2d 345.) To "abet" another in commission of a crime implies a consciousness of guilt in instigating, encouraging, promoting, or aiding the commission of the offense. (*People v. Best* (1941) 43 Cal. App. 2d 100.) "Abet" implies knowledge of the wrongful purpose of the perpetrator of the crime. (*People v. Stein, supra.*)

To be guilty of an offense committed by another person, the accused must not only aid such perpetrator by assisting or supplementing his efforts, but must, with knowledge of the wrongful purpose of the perpetrator, abet by inciting or encouraging him. (*People v. Le Grant* (1946) 76 Cal. App. 2d 148, 172; *People v. Carlson* (1960) 177 Cal. App. 2d 201.)

The conclusion under state law aiding and abetting would be similar to the analysis above under federal law. Similar to federal law immunities available to local legislators, discussed above, state law immunities provide some protection for local legislators. Local legislators are certainly immune from civil liability relating to legislative acts; it is unclear, however, whether they would also be immune from criminal liability. (*Steiner v. Superior Court*, 50 Cal.App.4th 1771 (assuming, but finding no California authority relating to a "criminal" exception to absolute immunity for legislators under state law).)⁵ Given the apparent state of the law, local legislators could only be certain that they would be immune from civil liability and could not be certain that

⁵ Although the *Steiner* Court notes that "well-established federal law supports the exception," when federal case authority is applied in a state law context, there may be a different outcome. Federal authorities note that one purpose supporting criminal immunity as to federal legislators from federal prosecution is the separation of powers doctrine, which does not apply in the context of *federal* criminal prosecution of *local* legislators. However, if a state or county prosecutor brought criminal charges against a local legislator, the separation of powers doctrine may bar such prosecution. (Cal. Const., art. III, sec. 3.) As federal authorities note, bribery, or other criminal charges that do not depend upon evidence of, and cannot be said to further, any legislative acts, can still be prosecuted against legislators. (See *Bruce v. Riddle* (4th Cir. 1980) 631 F.2d 272, 279 ["Illegal acts such as bribery are obviously not in aid of legislative activity and legislators can claim no immunity for illegal acts."]; *United States v. Brewster*, 408 U.S. 501 [indictment for bribery not dependent upon how legislator debated, voted, or did anything in chamber or committee; prosecution need only show acceptance of money for promise to vote, not carrying through of vote by legislator]; *United States v. Swindall* (11th Cir. 1992) 971 F.2d

they would be at all immune from criminal liability under state law. However, there would not be any criminal violation if an ordinance adopted by a local public entity were in compliance with the CUA and the MMPA. An ordinance authorizing and regulating medical marijuana would not, by virtue solely of its subject matter, be a violation of state law; only if the ordinance itself permitted some activity inconsistent with state law relating to medical marijuana would there be a violation of state law that could subject local legislators to criminal liability under state law.

QUESTION

3. If the governing body of a city, city and county, or county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, and subsequently a particular dispensary is found to be violating state law regarding sales and trafficking of marijuana, could an elected official on the governing body be guilty of state criminal charges?

ANSWER

3. After adoption of an ordinance authorizing or regulating marijuana dispensaries, elected officials could not be found criminally liable under state law for the subsequent violation of state law by a particular dispensary.

ANALYSIS

Based on the state law provisions referenced above relating to aiding and abetting, it does not seem that a local public entity would be liable for any actions of a marijuana dispensary in violation of state law. Since an ordinance authorizing and/or regulating marijuana dispensaries would necessarily only be authorizing and/or regulating to the extent already *permitted* by state law, local elected officials could not be found to be aiding and abetting a *violation* of state law. In fact, the MMPA clearly contemplates local regulation of dispensaries. (Cal. Health & Safety Code sec. 11362.83 ("Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.")) Moreover, as discussed above, there may be legislative immunity applicable to the legislative acts of individual elected officials in adopting an ordinance, especially where it is consistent with state law regarding marijuana dispensaries that dispense crude marijuana as medicine.

1531, 1549 [evidence of legislative acts was essential element of proof and thus immunity applies].) Therefore, a criminal prosecution that relates *solely* to legislative acts cannot be maintained under the separation of powers rationale for legislative immunity.

QUESTION

4. Does approval of such an ordinance open the jurisdictions themselves to civil or criminal liability?

ANSWER

4. Approving an ordinance authorizing or regulating marijuana dispensaries may subject the jurisdictions to civil or criminal liability.

ANALYSIS

Under federal law, criminal liability is created solely by statute. (*Dowling v. United States* (1985) 473 U.S. 207, 213.) Although becoming more rare, municipalities have been, and still may be, criminally prosecuted for violations of federal law, where the federal law provides not just a penalty for imprisonment, but a penalty for monetary sanctions. (See Green, Stuart P., *The Criminal Prosecution of Local Governments*, 72 N.C. L. Rev. 1197 (1994) (discussion of history of municipal criminal prosecution).)

The CSA prohibits persons from engaging in certain acts, including the distribution and possession of Schedule I substances, of which marijuana is one. (21 U.S.C. sec. 841.) A person, for purposes of the CSA, includes "any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity." (21 C.F.R. sec. 1300.01 (34). See also 21 C.F.R. sec. 1301.02 ("Any term used in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.")) By its very terms, then, the CSA may be violated by a local public entity. If the actions of a local public entity otherwise satisfy the requirements of aiding and abetting a violation of the CSA, as discussed above, then local public entities may, indeed, be subject to criminal prosecution for a violation of federal law.

Under either federal or state law, local public entities would not be subject to civil liability for the mere adoption of an ordinance, a legislative act. As discussed above, local legislators are absolutely immune from civil liability for legislative acts under both federal and state law. In addition, there is specific immunity under state law relating to any issuance or denial of permits.

QUESTION

5. Does the issuance of a business license to a marijuana dispensary involve any additional civil or criminal liability for a city or county and its elected governing body?

ANSWER

5. Local public entities will likely *not* be liable for the issuance of business licenses to marijuana dispensaries that plan to dispense crude marijuana as medicine.

ANALYSIS

Business licenses are imposed by cities within the State of California oftentimes solely for revenue purposes, but are permitted by state law to be imposed for revenue, regulatory, or for both revenue and regulatory purposes. (Cal. Gov. Code sec. 37101.) Assuming a business license ordinance is for revenue purposes only, it seems that a local public entity would not have any liability for the mere collection of a tax, whether on legal or illegal activities. However, any liability that would attach would be analyzed the same as discussed above. In the end, a local public entity could hardly be said to have aided and abetted the distribution or possession of marijuana in violation of the CSA by its mere collection of a generally applicable tax on all business conducted within the entity's jurisdiction.

OVERALL FINDINGS

All of the above further exemplifies the catch-22 in which local public entities are caught, in trying to reconcile the CUA and MMPA, on the one hand, and the CSA on the other. In light of the existence of the CUA and the MMPA, and the resulting fact that medical marijuana *is* being used by individuals in California, local public entities have a need and desire to regulate the location and operation of medical marijuana facilities within their jurisdiction.^{6 102}

However, because of the divergent views of the CSA and California law regarding whether there is any accepted "medical" use of marijuana, state and local legislators, as well as local public entities themselves, could be subject to criminal liability for the adoption of statutes or ordinances furthering the possession, cultivation, distribution, transportation (and other act prohibited under the CSA) as to marijuana. Whether federal prosecutors would pursue federal criminal charges against state and/or local legislators or local public entities remains to be seen. But, based on past practices of locally based U.S. Attorneys who have required seizures of large amounts of marijuana before federal filings have been initiated, this can probably be considered unlikely.

⁶ Several compilations of research regarding the impacts of marijuana dispensaries have been prepared by the California Police Chiefs Association and highlight some of the practical issues facing local public entities in regulating these facilities. Links provided are as follows: "Riverside County Office of the District Attorney," [White Paper, Medical Marijuana: History and Current Complications, September 2006]; "Recent Information Regarding Marijuana and Dispensaries [El Cerrito Police Department Memorandum, dated January 12, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Marijuana Memorandum" [El Cerrito Police Department Memorandum, dated April 18, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Law Enforcement Concerns to Medical Marijuana Dispensaries" [Impacts of Medical Marijuana Dispensaries on communities between 75,000 and 100,000 population: Survey and council agenda report, City of Livermore].

CONCLUSIONS

In light of the United States Supreme Court's decision and reasoning in *Gonzales v. Raich*, the United States Supremacy Clause renders California's Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 suspect. No state has the power to grant its citizens the right to violate federal law. People have been, and continue to be, federally prosecuted for marijuana crimes. The authors of this White Paper conclude that medical marijuana is not legal under federal law, despite the current California scheme, and wait for the United States Supreme Court to ultimately rule on this issue.

Furthermore, storefront marijuana businesses are prey for criminals and create easily identifiable victims. The people growing marijuana are employing illegal means to protect their valuable cash crops. Many distributing marijuana are hardened criminals.¹⁰³ Several are members of stepped criminal street gangs and recognized organized crime syndicates, while others distributing marijuana to the businesses are perfect targets for thieves and robbers. They are being assaulted, robbed, and murdered. Those buying and using medical marijuana are also being victimized. Additionally, illegal so-called "medical marijuana dispensaries" have the potential for creating liability issues for counties and cities. All marijuana dispensaries should generally be considered illegal and should not be permitted to exist and engage in business within a county's or city's borders. Their presence poses a clear violation of federal and state law; they invite more crime; and they compromise the health and welfare of law-abiding citizens.

ENDNOTES

- ¹ U.S. Const., art. VI, cl. 2.
- ² U.S. Const., art. I, sec. 8, cl. 3.
- ³ *Gonzales v. Raich* (2005) 125 S.Ct. 2195 at p. 2204.
- ⁴ *Gonzales v. Raich*. See also *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 121 S.Ct. 1711, 1718.
- ⁵ *Gonzales v. Raich* (2005) 125 S.Ct. 2195; see also *United States v. Oakland Cannabis Buyers' Cooperative* 121 S.Ct. 1711.
- ⁶ Josh Meyer & Scott Glover, "U.S. won't prosecute medical pot sales," *Los Angeles Times*, 19 March 2009, available at <http://www.latimes.com/news/local/la-me-medpot19-2009mar19,0,4987571.story>
- ⁷ See *People v. Mower* (2002) 28 Cal.4th 457, 463.
- ⁸ Health and Safety Code section 11362.5(b) (1) (A). All references hereafter to the Health and Safety Code are by section number only.
- ⁹ H&S Code sec. 11362.5(a).
- ¹⁰ H&S Code sec. 11362.7 *et. seq.*
- ¹¹ H&S Code sec. 11362.7.
- ¹² H&S Code secs. 11362.71–11362.76.
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- McDonalds Corporate Office
- Starbucks Coffee Company Corporate Office
- The Salvation Army

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Executive Summary

Purpose

Rocky Mountain High Intensity Drug Trafficking Area (RMHIDTA) is tracking the impact of marijuana legalization in the state of Colorado. This report will utilize, whenever possible, a comparison of three different eras in Colorado's legalization history:

- **2006 – 2008:** Early medical marijuana era
- **2009 – Present:** Medical marijuana commercialization and expansion era
- **2013 – Present:** Recreational marijuana era

Rocky Mountain HIDTA will collect and report comparative data in a variety of areas, including but not limited to:

- Impaired driving
- Youth marijuana use
- Adult marijuana use
- Emergency room admissions
- Marijuana-related exposure cases
- Diversion of Colorado marijuana

This is the third annual report on the impact of legalized marijuana in Colorado. It is divided into eleven sections, each providing information on the impact of marijuana legalization. The sections are as follows:

Section 1 – Impaired Driving:

- In 2014, when retail marijuana businesses began operating, there was a **32 percent** increase in marijuana-related traffic deaths in just one year from 2013.
- Colorado marijuana-related traffic deaths increased **92 percent** from 2010 – 2014. During the same time period all traffic deaths only increased **8 percent**.

- Marijuana-related traffic deaths were approximately **20 percent** of all traffic deaths in 2014 compared to half that (**10 percent**) just five years ago.
- In 2014, when retail marijuana businesses began operating, toxicology reports with positive marijuana results of active THC results for primarily driving under the influence have increased **45 percent** in just one year.

Section 2 – Youth Marijuana Use:

- In 2013, **11.16 percent** of Colorado youth ages 12 to 17 years old were considered current marijuana users compared to **7.15 percent** nationally. Colorado ranked **3rd** in the nation and was **56 percent** higher than the national average.
- Drug-related suspensions/expulsions increased **40 percent** from school years 2008/2009 to 2013/2014. The vast majority were for marijuana violations.
- Positive THC urinalyses tests, for probationers ages 12 to 17 years old, increased **20 percent** since marijuana was legalized in 2013.
- A 2015 survey of school resource officers and school counselors revealed similar results about increased school marijuana issues since the legalization of recreational marijuana.

Section 3 – Adult Marijuana Use:

- In 2013, **29 percent** of college age students (ages 18 to 25 years old) were considered current marijuana users compared to **18.91 percent** nationally. Colorado, ranked **2nd** in the nation, was **54 percent** higher than the national average.
- In 2013, **10.13 percent** of adults ages 26 years old and over were considered current marijuana users compared to **5.45 percent** nationally. Colorado, ranked **5th** in the nation, was **86 percent** higher than the national average.
- Positive THC urinalyses tests, for probationers age 18 to 25 and 26+ years old, increased **49 and 87 percent** respectively since marijuana was legalized in 2013.

Section 4 – Emergency Room Marijuana and Hospital Marijuana-Related Admissions:

- In 2014, when retail marijuana businesses began operating, there was a **29 percent** increase in the number of marijuana-related emergency room visits in only one year.
- In 2014, when retail marijuana businesses began operating, there was a **38 percent** increase in the number of marijuana-related hospitalizations in only one year.
- In the three years after medical marijuana was commercialized, compared to the three years prior, there was a **46 percent** increase in hospitalizations related to marijuana.
- Children’s Hospital Colorado reported **2** marijuana ingestions among children under 12 in 2009 compared to **16** in 2014.

Section 5 – Marijuana-Related Exposure:

- In 2014, when retail marijuana businesses began operating, marijuana-only related exposures increased **72 percent** in only one year.
- In the years medical marijuana was commercialized (2009 – 2012), marijuana-related exposures averaged a **42 percent** increase from pre-commercialization years (2006 – 2008) average.
- During the years 2013 – 2014, the average number of all age exposures was 175 per year. Exposures have doubled since marijuana was legalized in Colorado.
- Young children (ages 0 to 5) marijuana-related exposures in Colorado:
 - During the years 2013 – 2014, the average number of children exposed was **31** per year.
 - This is a **138 percent** increase from the medical marijuana commercialization years (2009 – 2012) average which was a **225 percent** increase from pre-commercialization years (2006 – 2008).

Section 6 – Treatment:

- Over the last ten years, the top three drugs involved in treatment admissions, in descending order, were alcohol (average **12,943**), marijuana (average **6,491**) and methamphetamine (average **5,044**).
- Marijuana treatment data from Colorado in years 2005 – 2014 does not appear to demonstrate a definite trend. Colorado averages approximately **6,500** treatment admissions annual for marijuana abuse.

Section 7 – Diversion of Colorado Marijuana:

- During 2009 – 2012, when medical marijuana was commercialized, the yearly average number interdiction seizures of Colorado marijuana increased **365 percent** from 52 to 242 per year.
- During 2013 – 2014, when recreational marijuana was legalized, the yearly average interdiction seizures of Colorado marijuana increased another **34 percent** from 242 to 324.
- The average pounds of Colorado marijuana seized, destined for 36 other states, increased **33 percent** from 2005 – 2008 compared to 2009 – 2014.

Section 8 – Diversion by Parcel:

- U.S. mail parcel interceptions of Colorado marijuana, destined for 38 other states, increased **2,033 percent** from 2010 – 2014.
- Pounds of Colorado marijuana seized in the U.S. mail, destined for 38 other states, increased **722 percent** from 2010 – 2014.
- From 2006 – 2008, compared to 2013 – 2014, the average number of seized parcels containing Colorado marijuana, that were destined outside the United States, increased over **7,750 percent** and pounds of marijuana seized in those parcels increased over **1,079 percent**.

Section 9 – THC Extraction Labs:

- In 2013, there were **12 THC extraction lab explosions** compared to **32** in 2014.
- In 2013, there were **18 injuries from THC extraction lab explosions** compared to **30** in 2014.

Section 10 – Related Data:

- Overall, **crime in Denver** increased 12.3 percent from 2012 to 2014.
- Colorado **annual tax revenue** from the sale of recreational marijuana was **52.5 million (CY2014)** or about **0.7 percent** of total general fund revenue (FY2015).
- The majority of cities and counties in Colorado have **banned** recreational marijuana businesses.
- National THC potency has risen from an average of **3.96 percent** in 1995 to an average of **12.55 percent** in 2013. The average potency in Colorado was **17.1 percent**.
- Homelessness increased with the appeal of legal marijuana being a factor.
- Denver has more licensed medical marijuana centers (**198**) than pharmacies (**117**).

Section 11 – Related Material:

- This section lists various studies and reports.

There is much more data in each of the eleven sections, which can be used as a standalone document. All of the sections are on the Rocky Mountain HIDTA website and can be printed individually; go to www.rmhidta.org/Reports.

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Introduction

Purpose

The purpose of this report and future reports is to document the impact of the legalization of marijuana for medical and recreational use in Colorado. Colorado and Washington serve as experimental labs for the nation to determine the impact of legalizing marijuana. This is an important opportunity to gather and examine meaningful data and facts. Citizens and policymakers may want to delay any decisions on this important issue until there is sufficient and accurate data to make an informed decision.

The Debate

There is an ongoing debate in this country concerning the impact of legalizing marijuana. Those in favor argue that the benefits of removing prohibition far outweigh the potential negative consequences. Some of the benefits they cite include:

- Eliminate arrests for possession and sale, resulting in fewer people with criminal records and a reduction in the prison population.
- Free up law enforcement resources to target more serious and violent criminals.
- Reduce traffic fatalities since users will switch from alcohol to marijuana, which does not impair driving to the same degree.
- No increase in use, even among youth, because of tight regulations.
- Added revenue generated through taxation.
- Eliminate the black market.

Those opposed to legalizing marijuana argue that the potential benefits of lifting prohibition pale in comparison to the adverse consequences. Some of the consequences they cite include:

- Increase in marijuana use among youth and young adults.
- Increase in marijuana-impaired driving fatalities.
- Rise in number of marijuana-addicted users in treatment.

- Diversion of marijuana.
- Adverse impact and cost of the physical and mental health damage caused by marijuana use.
- The economic cost to society will far outweigh any potential revenue generated.

Background

The next several years should help determine which side is most accurate. A number of states have enacted varying degrees of legalized marijuana by permitting medical marijuana and four permitting recreational marijuana. In 2010, Colorado's legislature passed legislation that included the licensing of medical marijuana centers ("dispensaries"), cultivation operations and manufacturing of marijuana edibles for medical purposes. In November 2012, Colorado voters legalized recreational marijuana allowing individuals to use and possess an ounce of marijuana and grow up to six plants. The amendment also permits licensing marijuana retail stores, cultivation operations, marijuana edible factories and testing facilities. Washington voters passed a similar measure in 2012.

Preface

Volume 3 2015 will be formatted similar to *Volume 2*. It is important to note that, for purposes of the debate on legalizing marijuana in Colorado, there are three distinct timeframes to consider. Those are: the early medical marijuana era (2000 – 2008), the medical marijuana commercialization era (2009 – current) and the recreational marijuana era (2013 – current).

- **2000 – 2008:** In November 2000, Colorado voters passed Amendment 20 which permitted a qualifying patient, and/or caregiver of a patient, to possess up to 2 ounces of marijuana and grow 6 marijuana plants for medical purposes. During that time there were between 1,000 and 4,800 medical marijuana cardholders and no known dispensaries operating in the state.
- **2009 – Current:** Beginning in 2009 due to a number of events, marijuana became *de facto* legalized through the commercialization of the medical marijuana industry. By the end of 2012, there were over 100,000 medical marijuana cardholders and 500 licensed dispensaries operating in Colorado. There were also licensed cultivation operations and edible manufacturers.

- **2013 – Current:** In November 2012, Colorado voters passed Constitutional Amendment 64 which legalized marijuana for recreational purposes for anyone over the age of 21. The amendment also allowed for licensed marijuana retail stores, cultivation operations and edible manufacturers. Retail marijuana businesses became operational January 1, 2014.

Colorado's History with Marijuana Legalization

Early Medical Marijuana 2000 – 2008

In November 2000, Colorado voters passed Amendment 20 which permitted a qualifying patient and/or caregiver of a patient to possess up to 2 ounces of marijuana and grow 6 marijuana plants for medical purposes. Amendment 20 provided identification cards for individuals with a doctor's recommendation to use marijuana for a debilitating medical condition. The system was managed by the Colorado Department of Public Health and Environment (CDPHE), which issued identification cards to patients based on a doctor's recommendation. The department began accepting applications from patients in June 2001.

From 2001 – 2008, there were only 5,993 patient applications received and only 55 percent of those designated a primary caregiver. During that time, the average was three patients per caregiver and there were no known retail stores selling medical marijuana ("dispensaries"). Dispensaries were not an issue because CDPHE regulations limited a caregiver to no more than five patients.

Medical Marijuana Commercialization and Expansion 2009 – Present

In 2009, the dynamics surrounding medical marijuana in Colorado changed substantially. There were a number of factors that played a role in the explosion of the medical marijuana industry and number of patients:

The first was a Denver District Judge who, in late 2007, ruled that CDPHE violated the state's open meeting requirement when setting a five-patient-to-one-caregiver ratio and overturned the rule. That opened the door for caregivers to claim an unlimited number of patients for whom they were providing and growing marijuana. Although this decision expanded the parameters, very few initially began operating medical

marijuana commercial operations (dispensaries) in fear of prosecution, particularly from the federal government.

The judge's ruling, and caregivers expanding their patient base, created significant problems for local prosecutors seeking a conviction for marijuana distribution by caregivers. Many jurisdictions ceased or limited filing those types of cases.

At a press conference in Santa Ana, California on February 25, 2009, the U.S. Attorney General was asked whether raids in California on medical marijuana dispensaries would continue. He responded "No" and referenced the President's campaign promise related to medical marijuana. In mid-March 2009, the U.S. Attorney General clarified the position saying that the Department of Justice enforcement policy would be restricted to traffickers who falsely masqueraded as medical dispensaries and used medical marijuana laws as a shield.

Beginning in the spring of 2009, Colorado experienced an explosion to over 20,000 new medical marijuana patient applications and the emergence of over 250 medical marijuana dispensaries (allowed to operate as "caregivers"). One dispensary owner claimed to be a primary caregiver to 1,200 patients. Government took little or no action against these commercial operations.

In July 2009, the Colorado Board of Health, after hearings, failed to reinstate the five-patients-to-one-caregiver rule.

On October 19, 2009, U.S. Deputy Attorney General David Ogden provided guidelines for U.S. Attorneys in states that enacted medical marijuana laws. The memo advised "Not focus federal resources in your state on individuals whose actions are in clear and unambiguous compliance with existing state law providing for the medical use of marijuana."

By the end of 2009, new patient applications jumped from around 6,000 for the first seven years to an additional 38,000 in just one year. Actual cardholders went from 4,800 in 2008 to 41,000 in 2009. By mid-2010, there were over 900 unlicensed marijuana dispensaries identified by law enforcement.

In 2010, law enforcement sought legislation to ban dispensaries and reinstate the one-to-five ratio of caregiver to patient as the model. However, in 2010 the Colorado Legislature passed HB-1284 which legalized medical marijuana centers (dispensaries), marijuana cultivation operations, and manufacturers for marijuana edible products. By

2012, there were 532 licensed dispensaries in Colorado and over 108,000 registered patients, 94 percent of who qualified for a card because of severe pain.

Recreational Marijuana 2013 – Present

In November of 2012, Colorado voters passed Amendment 64, which legalized marijuana for recreational use. Amendment 64 allows individuals 21 years or older to grow up to six plants, possess/use 1 ounce or less and furnish an ounce or less of marijuana if not for remuneration. Amendment 64 permits marijuana retail stores, marijuana cultivation sites, marijuana edible factories and marijuana testing sites. The first retail marijuana businesses were licensed and operational in January of 2014. Some individuals have established private cannabis clubs, formed co-ops for large marijuana grow operations, and/or supplied marijuana for no fee other than donations.

What has been the impact of commercialized medical marijuana and legalized recreational marijuana on Colorado? Review the report and you decide.

NOTE:

- DATA, IF AVAILABLE, WILL COMPARE PRE- AND POST-2009 WHEN MEDICAL MARIJUANA BECAME COMMERCIALIZED AND AFTER 2013 WHEN RECREATIONAL MARIJUANA BECAME LEGALIZED.
- MULTI-YEAR COMPARISONS ARE GENERALLY BETTER INDICATORS OF TRENDS. ONE-YEAR FLUCTUATIONS DO NOT NECESSARILY REFLECT A NEW TREND.
- PERCENTAGE COMPARISONS MAY BE ROUNDED TO THE NEAREST WHOLE NUMBER
- PERCENT CHANGES ADDED TO GRAPHS WERE CALCULATED AND ADDED BY ROCKY MOUNTAIN HIDTA.
- THIS REPORT WILL CITE DATASETS WITH TERMS SUCH AS "MARIJUANA-RELATED" OR "TESTED POSITIVE FOR MARIJUANA." THAT DOES NOT NECESSARILY PROVE THAT MARIJUANA WAS THE CAUSE OF THE INCIDENT.

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SECTION 1: Impaired Driving

Introduction

This section provides information on traffic deaths and impaired driving involving positive tests for marijuana. The data comparison, when available, will be from 2006 through 2014. The information compares the early medical marijuana era (2006 – 2008), the medical marijuana commercialization and expansion era (2009 – current) and the recreational marijuana era (2013 – current) in Colorado.

- **2006 – 2008:** There were between 1,000 and 4,800 medical marijuana cardholders and no known dispensaries operating in Colorado.
- **2009 – Current:** There were over 108,000 medical marijuana cardholders and 532 licensed dispensaries operating in Colorado by the end of 2012. See the introduction at the beginning of this report for more details on the commercialization and explosion of Colorado’s medical marijuana trade.
- **2013 to– Current:** In November 2012, Colorado voters passed Constitutional Amendment 64 which legalized marijuana for recreational purposes for anyone over 21 years of age. The amendment also allowed for licensed marijuana retail stores, cultivation operations and edibles manufacturing.

Definitions

DUID: Driving Under the Influence of Drugs (DUID) which can include alcohol in combination with drugs. This is an important measurement since the driver’s ability to operate a vehicle was sufficiently impaired that it brought his or her driving to the attention of law enforcement. Not only the erratic driving but the subsequent evidence that the subject was under the influence of marijuana confirms the causation factor.

Definitions in Reviewing Fatality Data:

- **Marijuana-Related:** Also called “marijuana mentions,” is any time marijuana shows up in the toxicology report. It could be marijuana only or marijuana with other drugs and/or alcohol.
- **Marijuana Only:** When toxicology results show marijuana and no other drugs or alcohol.
- **Fatalities:** A death resulting from a traffic crash involving a motor vehicle.
- **Operators:** Anyone in control of their own movements such as a driver, pedestrian or bicyclist.

Some Findings

- In 2014, when retail marijuana stores began operating, there was a 32 percent increase in marijuana-related traffic deaths in just one year.
- Colorado marijuana-related traffic deaths increased **92 percent** from 2010 – 2014. During the same time periods all traffic deaths only increased **8 percent** respectively.
- In 2009, Colorado marijuana-related traffic deaths involving operators testing positive for marijuana represented **10 percent** of all traffic fatalities. By 2014, that number nearly doubled to **19.26 percent**.
- The average number of marijuana-related traffic deaths increased **41 percent** in the two years recreational marijuana was legalized (2013 – 2014) compared to the medical marijuana commercialization years (2009 – 2012), which was **48 percent** higher than pre-commercialization years (2006 – 2008).
- Consistent with the past, in 2014 still only **47 percent** of operators involved in traffic deaths were tested for drug impairment. Out of those who were tested, about **1 in 4** tested positive for marijuana.
- The Colorado State Patrol DUID Program, started in 2014, indicated:
 - **77 percent** (674) of the 874 DUIDs involved marijuana

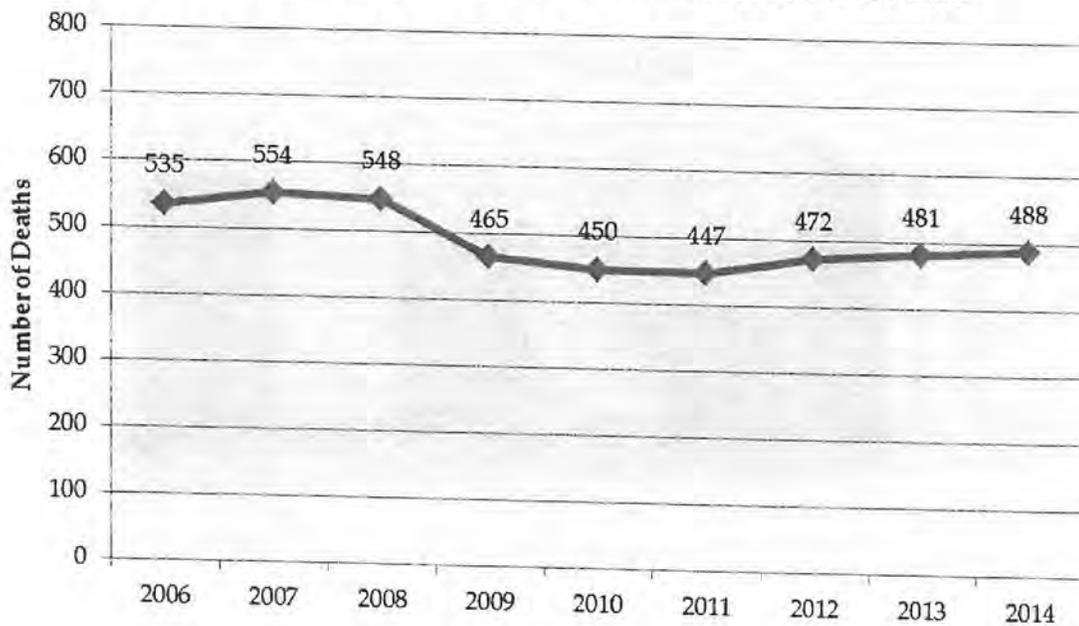
- **41 percent** (354) of the 874 DUIDs involved marijuana only
- Denver Police Department DUIDs involving marijuana increased **100 percent** from 2013 (33) to 2014 (66).
- In 2014, when retail marijuana businesses began operating, toxicology reports with positive marijuana results of active THC primarily related to driving under the influence **increased 45 percent** in only one year.

Data for Traffic Deaths

NOTE:

- THE DATA FOR 2012 THROUGH 2014 WAS OBTAINED FROM THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION'S FATALITY ANALYSIS REPORTING SYSTEM (FARS). COLLECTION AND ANALYSIS OF DATA WAS CONDUCTED BY ROCKY MOUNTAIN HIDTA AFTER CONTACTING ALL CORONER OFFICES AND LAW ENFORCEMENT AGENCIES INVOLVED WITH FATALITIES TO OBTAIN TOXICOLOGY REPORTS. THIS REPRESENTS 100 PERCENT REPORTING. PRIOR YEAR(S) MAY HAVE HAD LESS THAN 100 PERCENT REPORTING TO THE COLORADO DEPARTMENT OF TRANSPORTATION, AND SUBSEQUENTLY THE FATALITY ANALYSIS REPORTING SYSTEM (FARS).
- 2014 FARS DATA WILL NOT BE OFFICIAL UNTIL JANUARY 2016.

Total Number of Statewide Traffic Deaths



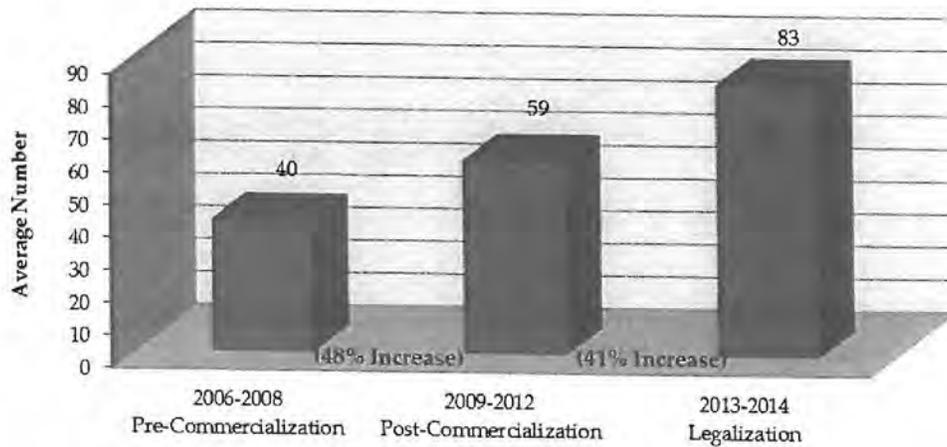
SOURCE: National Highway Traffic Safety Administration, Fatality Analysis Reporting System (FARS), 2006-2013 and CDOT/RMHIDTA 2014

Marijuana-Related Traffic Deaths*			
Crash Year	Total Statewide Fatalities	Fatalities with Operators Testing Positive for Marijuana	Percentage Total Fatalities (Marijuana)
2006	535	37	6.92%
2007	554	39	7.04%
2008	548	43	7.85%
2009	465	47	10.10%
2010	450	49	10.89%
2011	447	63	14.09%
2012	472	78	16.53%
2013	481	71	14.76%
2014	488	94	19.26%

*Fatalities Involving Operators Testing Positive for Marijuana

SOURCE: National Highway Traffic Safety Administration, Fatality Analysis Reporting System (FARS), 2006-2013 and CDOT/RMHIDTA 2014

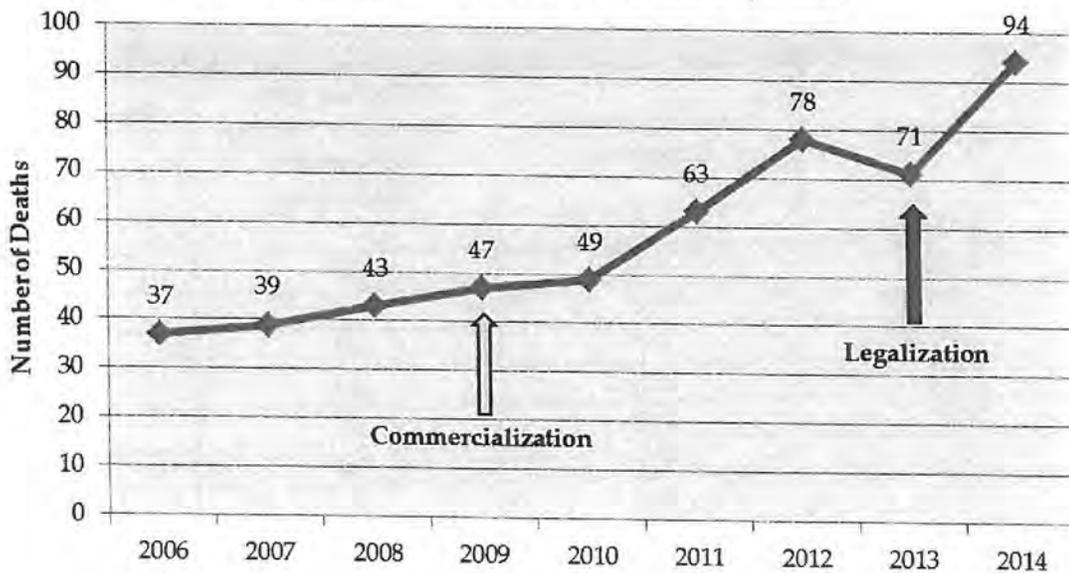
Average Number of Traffic Deaths Related to Marijuana *



*Average Number of Fatalities when an Operator Tested Positive for Marijuana

SOURCE: National Highway Traffic Safety Administration, Fatality Analysis Reporting System (FARS), 2006-2013 and CDOT/RMHIDTA 2014

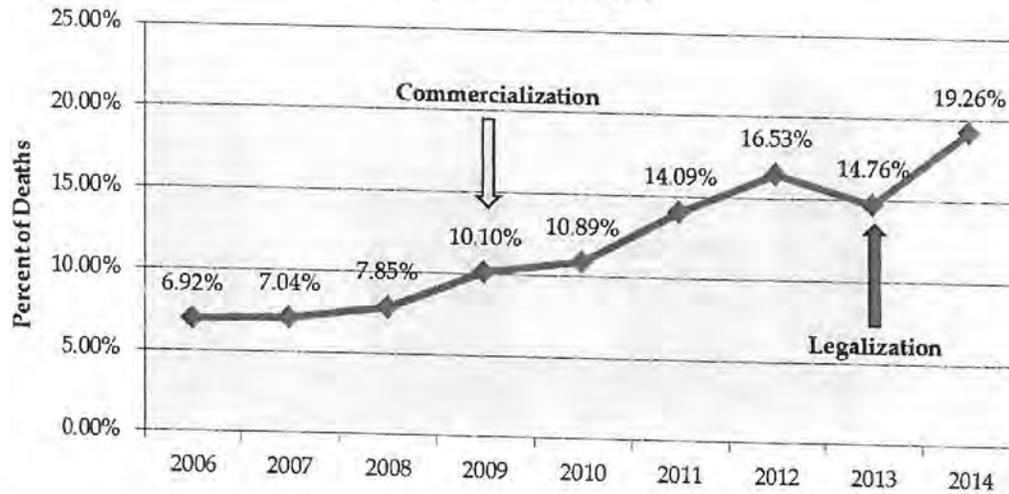
Traffic Deaths Related to Marijuana*



*Number of Fatalities Involving Operators Testing Positive for Marijuana

SOURCE: National Highway Traffic Safety Administration, Fatality Analysis Reporting System (FARS), 2006-2013 and CDOT/RMHIDTA 2014

Percent of All Traffic Deaths That Were Marijuana Related*



*Percent of All Fatalities Where the Operators Tested Positive for Marijuana

SOURCE: National Highway Traffic Safety Administration, Fatality Analysis Reporting System (FARS), 2006-2013 and CDOT/RMHIDTA 2014

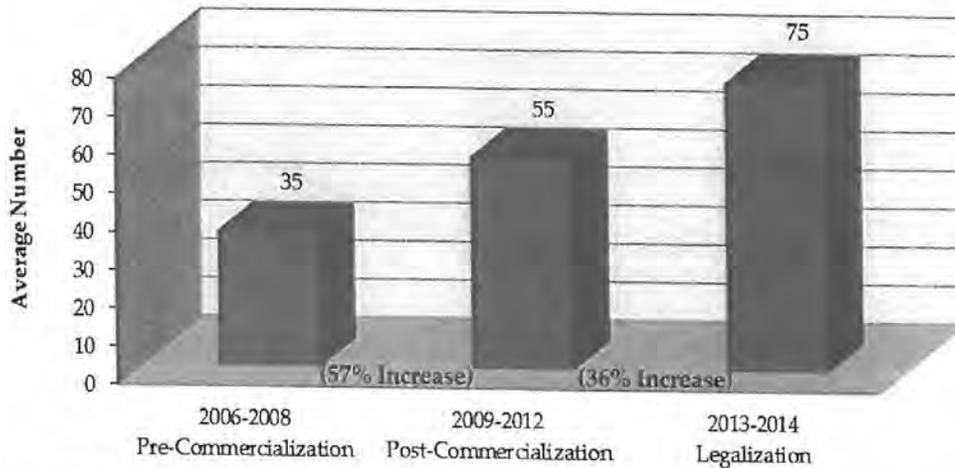
Operators Testing Positive for Marijuana*			
Crash Year	Total Operators Involved in Crashes	Operators in Fatal Crashes Testing Positive for Marijuana	Percentage of Total Operators Who Tested Positive for Marijuana
2006	795	32	4.03%
2007	866	34	3.93%
2008	782	39	4.99%
2009	718	46	6.41%
2010	652	45	6.90%
2011	648	57	8.81%
2012	732	70	9.56%
2013	702	63	8.97%
2014	765	87	11.37%

*Operators Involved in Fatalities Testing Positive for Marijuana

SOURCE: National Highway Traffic Safety Administration, Fatality Analysis Reporting System (FARS), 2006-2013 and RMHIDTA 2014

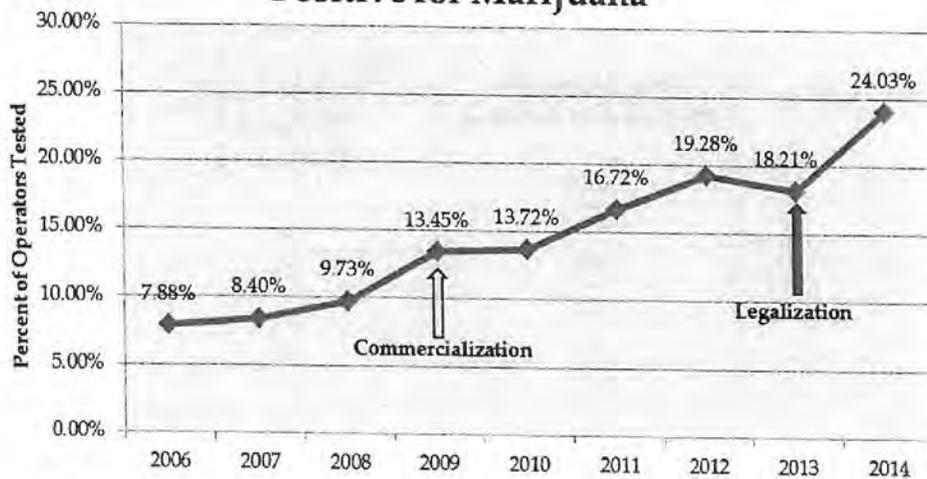
- ❖ Consistent with the past, in 2014 still only 47 percent of operators involved in traffic deaths were tested for drug impairment.

Average Number of Operators Testing Positive for Marijuana



SOURCE: National Highway Traffic Safety Administration, Fatality Analysis Reporting System (FARS), 2006-2013 and CDOT/RMHIDTA 2014

Percent of Operators Tested Who Were Positive for Marijuana*



*Percent of All Operators Tested for Drug Impairment

SOURCE: National Highway Traffic Safety Administration, Fatality Analysis Reporting System (FARS), 2006-2013 and CDOT/RMHIDTA 2014

Drug Combinations for Operators Positive for Marijuana*



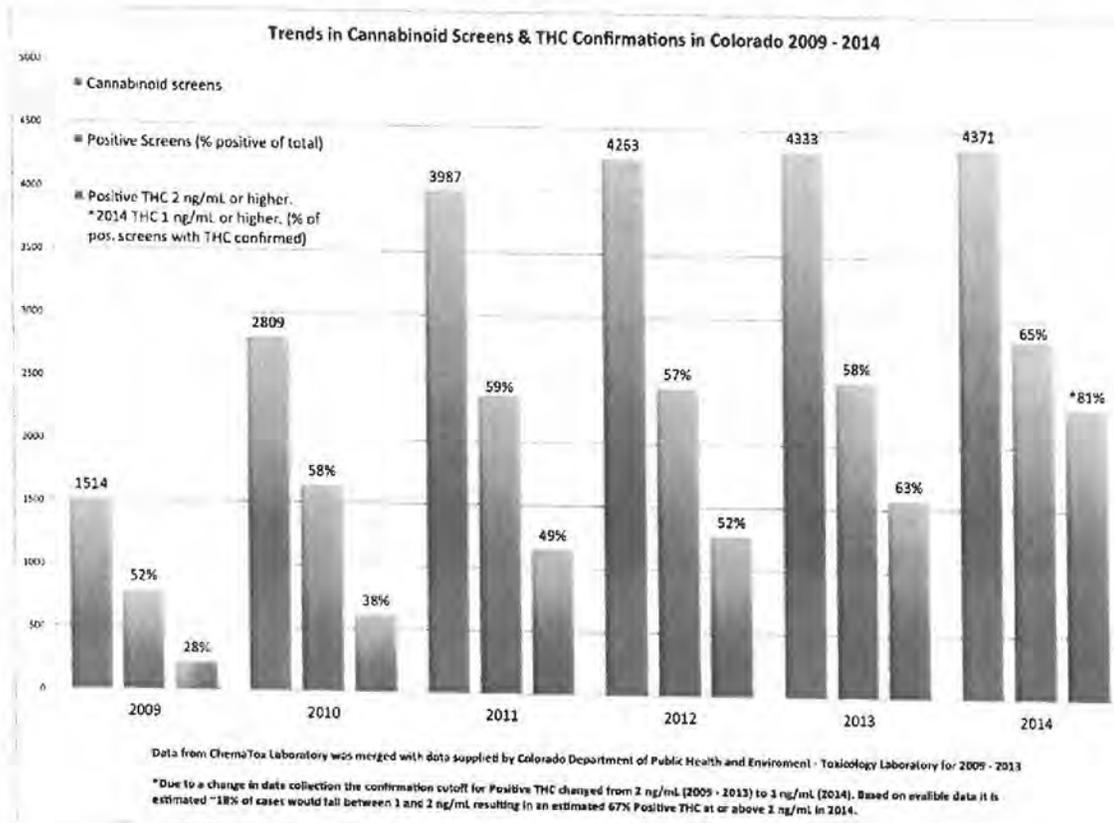
*Toxicology results for all substances present in individuals who tested positive for marijuana

SOURCE: National Highway Traffic Safety Administration/Colorado Department of Transportation/Rocky Mountain HIDTA

- ❖ In 2014, of the operators who tested positive for marijuana, one out of three had only marijuana present in their system.

Data for Impaired Driving

NOTE: THE NUMBER OF DUID ARRESTS IS NOT REFLECTIVE OF THE TOTAL NUMBER OF PEOPLE ARRESTED FOR DRIVING UNDER THE INFLUENCE WHO ARE INTOXICATED ON NON-ALCOHOL SUBSTANCES. IF SOMEONE IS DRIVING BOTH INTOXICATED ON ALCOHOL AND INTOXICATED ON ANY OTHER DRUG (INCLUDING MARIJUANA), ALCOHOL IS ALMOST ALWAYS THE ONLY INTOXICANT TESTED FOR. A DRIVER WHO TESTS OVER THE LEGAL LIMIT FOR ALCOHOL WILL BE CHARGED WITH DUI, EVEN IF HE OR SHE IS POSITIVE FOR OTHER DRUGS. HOWEVER, WHETHER OR NOT HE OR SHE IS POSITIVE FOR OTHER DRUGS WILL REMAIN UNKNOWN BECAUSE OTHER DRUGS ARE NOT OFTEN TESTED FOR.

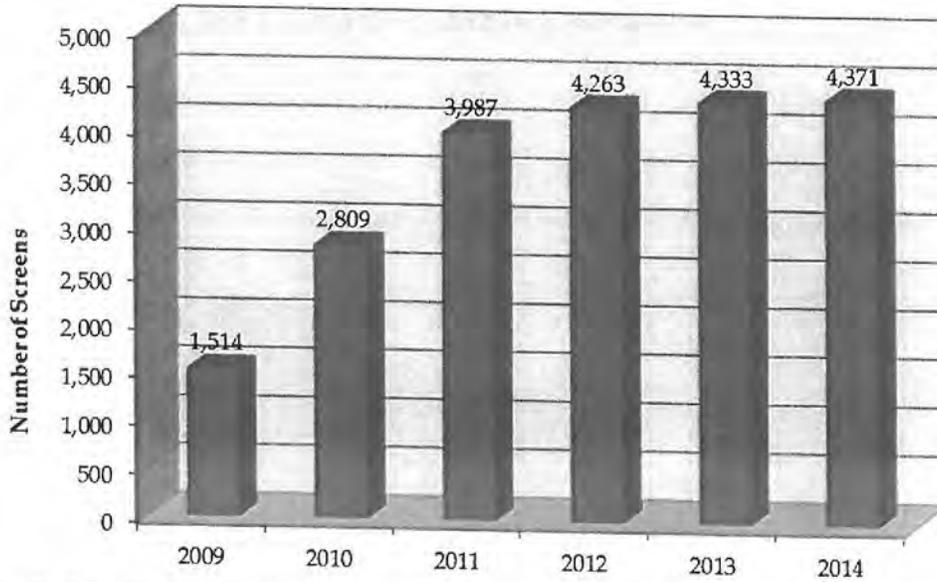


SOURCE: Sarah Urfer, M.S., D-ABFT-FT; ChemaTox Laboratory

Explanation of ChemaTox Graphs

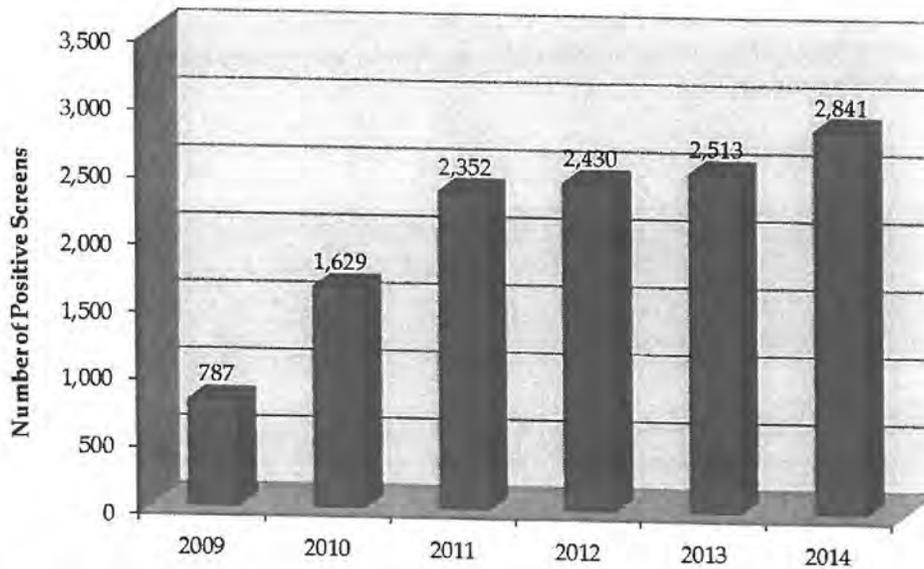
The below three graphs are Rocky Mountain HIDTA’s conversation of ChemaTox data into raw numbers. The first graph represents the total number of drug screens that were tested for cannabinoids. Of those screens tested, the second graph represents the number of cannabinoid positive screens. The third graph demonstrates, of those positive screens, how many were positive for active THC.

Number of Cannabinoid Screens



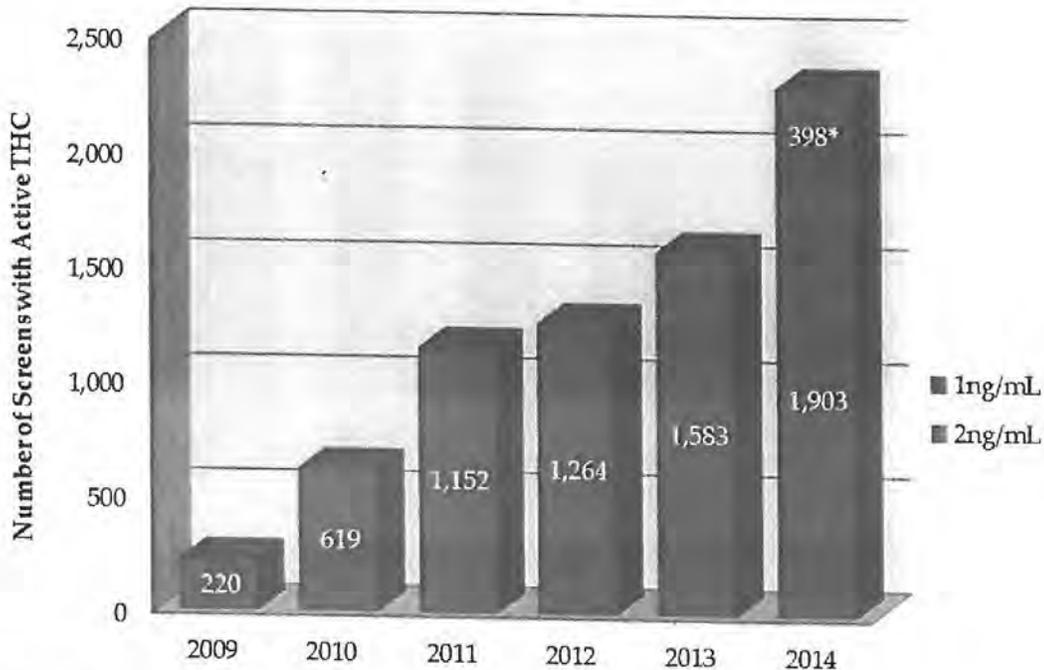
SOURCE: Rocky Mountain HIDTA

Number of Positive Cannabinoid Screens



SOURCE: Rocky Mountain HIDTA

Number of Positive Cannabinoid Screens with Active THC



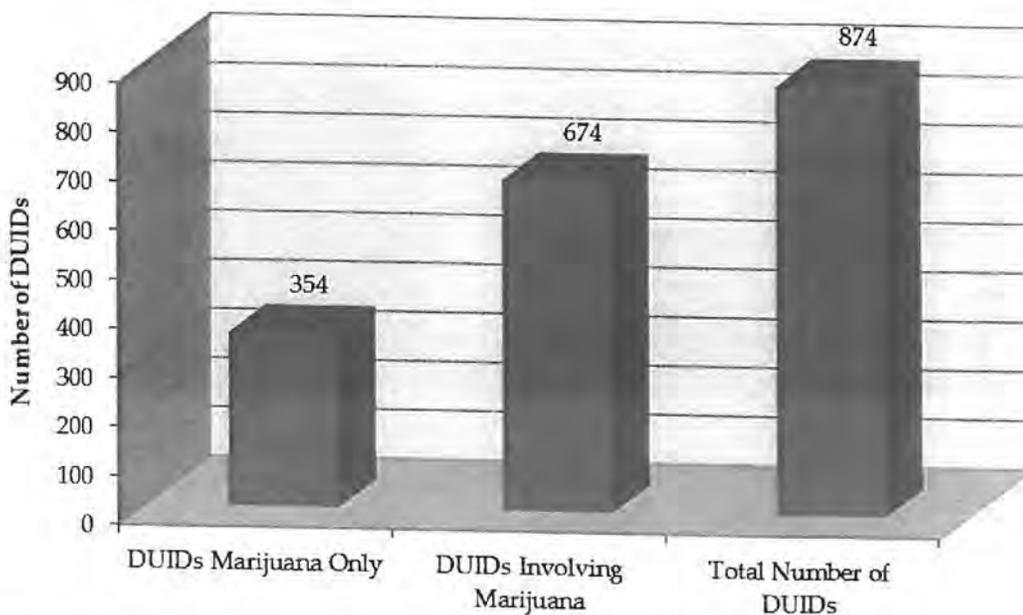
***Due to a change in data collection, the confirmation cutoff for Positive THC changed from 2ng/mL (2009-2013) to 1 ng/mL (2014). Based on available data it is estimated ~18% of cases would fall between 1 and 2ng/mL resulting in an estimated 67% Positive THC at or above 2 ng/mL in 2014."1

SOURCE: Rocky Mountain HIDTA

NOTE: THE ABOVE GRAPHS INCLUDE DATA FROM CHEMATOX LABORATORY WHICH WAS MERGED WITH DATA SUPPLIED BY COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT - TOXICOLOGY LABORATORY. THE VAST MAJORITY OF THE SCREENS ARE DUID SUBMISSIONS FROM COLORADO LAW ENFORCEMENT.

NOTE: COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT DISCONTINUED TESTING IN JULY 2013.

Colorado State Patrol Number of DUIDs, 2014

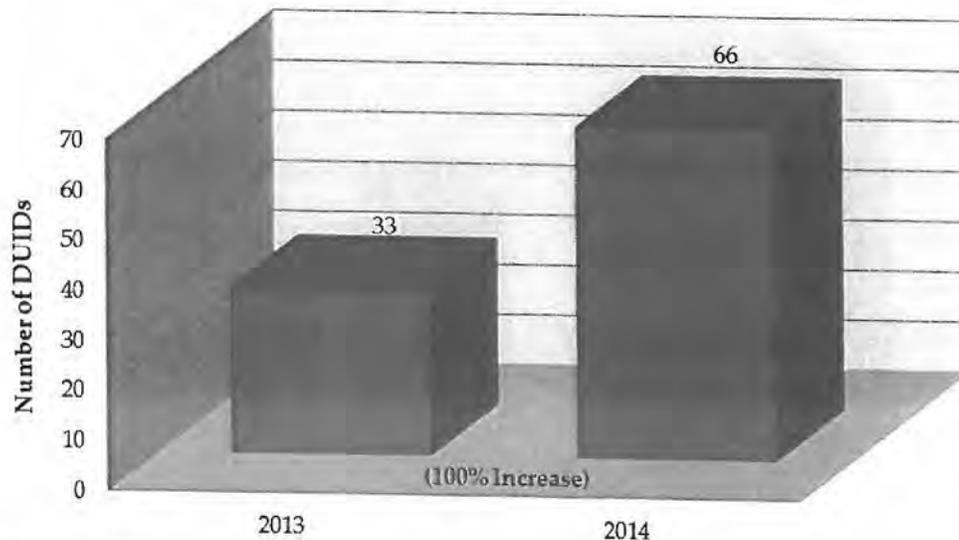


SOURCE: Colorado State Patrol, CSP Citations for Drug Impairment by Drug Type, 2014

- ❖ 77 percent of total DUIDs involved marijuana
- ❖ 41 percent of total DUIDs involved marijuana only

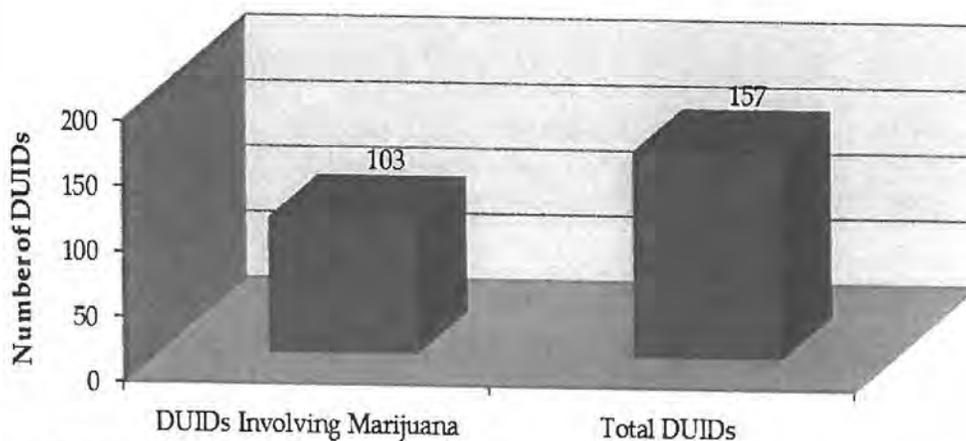
NOTE: "MARIJUANA CITATIONS DEFINED AS ANY CITATION WHERE CONTACT WAS CITED FOR DRIVING UNDER THE INFLUENCE (DUI) OR DRIVING WHILE ABILITY IMPAIRED (DWAI) AND MARIJUANA INFORMATION WAS FILLED OUT ON TRAFFIC STOP FORM INDICATING MARIJUANA & ALCOHOL, MARIJUANA & OTHER CONTROLLED SUBSTANCES, OR MARIJUANA ONLY PRESENT BASED ON OFFICER OPINION ONLY (NO TOXICOLOGICAL CONFIRMATION)." - COLORADO STATE PATROL

Denver Police Department Number of DUIDs Involving Marijuana



SOURCE: Denver Police Department, Traffic Investigations Bureau via Data Analysis Unit

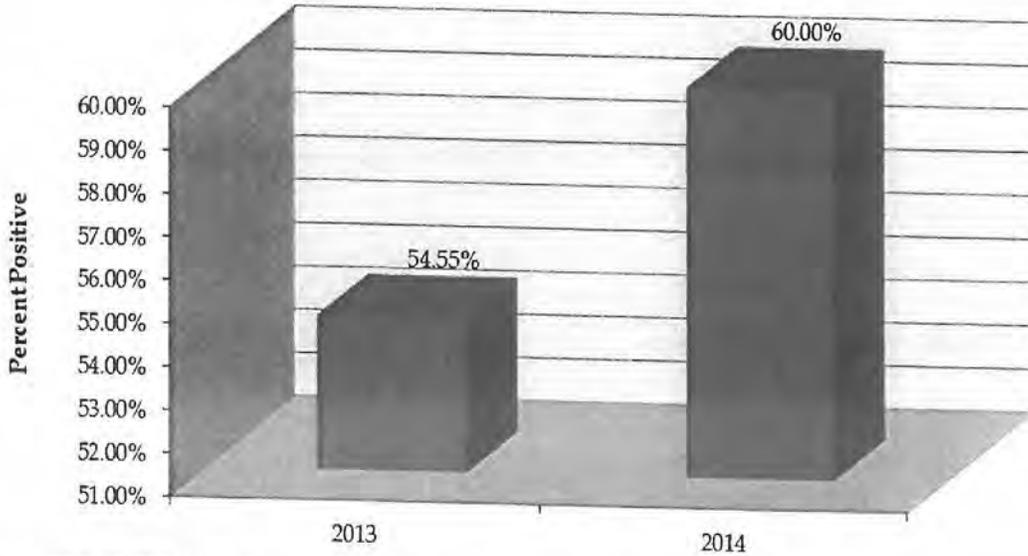
Aurora Police Department Number of DUIDs, 2014



SOURCE: Aurora Police Department, Traffic Division

❖ 66 percent of total DUIDs involved marijuana.

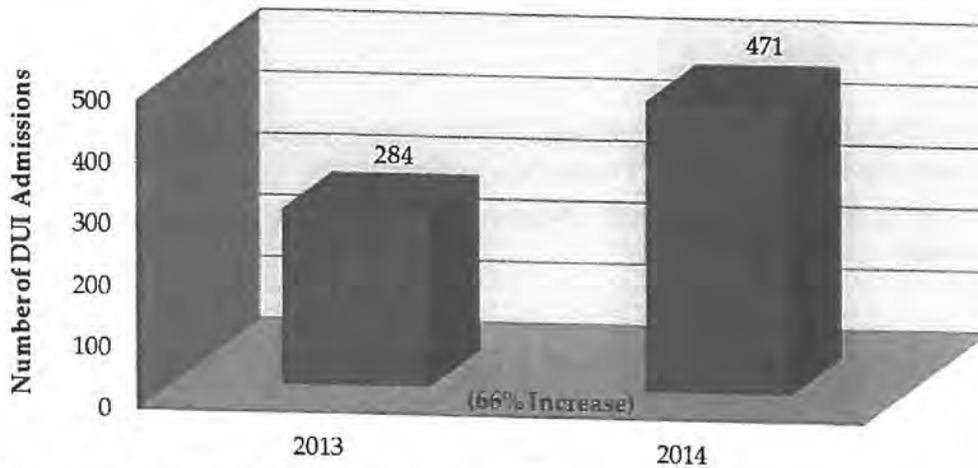
Larimer County Sheriff's Office Percent of DUIDs Involving Marijuana*



*Percent of all DUID blood samples submitted for drug testing

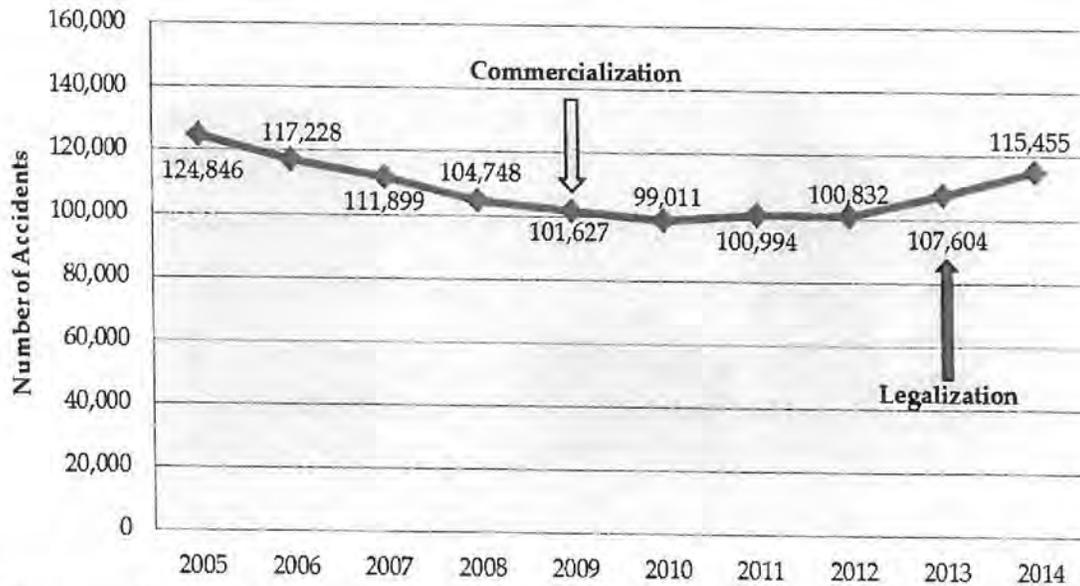
SOURCE: Larimer County Sheriff's Office, Records Unit

Number of DUI Admissions to Arapahoe House with Marijuana as a Self-Reported Drug of Choice



SOURCE: Arapahoe House, Public Communications Office

Total Number of Accidents in Colorado



SOURCE: Colorado Department of Transportation (CDOT)

❖ 15 percent increase from 2012 to 2014

Related Costs

Economic Cost of Vehicle Accidents Resulting in Fatalities: According to the National Highway Traffic Safety Administration report, *The Economic and Societal Impact Of Motor Vehicles Crashes, 2010*, the total economic costs for a vehicle fatality is \$1,398,916. That includes property damage, medical, insurance, productivity, among other considerations.²

Cost of Driving Under the Influence: The cost associated with the first driving-under-the-influence offense (DUI) is estimated at \$10,270. Costs associated with a DUID (driving-under-the-influence-of-drugs) are very similar to those of a DUI/alcohol.³

Drug Recognition Experts

According to the Colorado Department of Transportation Drug Recognition Experts (DRE) Coordinator, in 2014, 290 individuals evaluated (48.49 percent) showed signs of marijuana impairment.⁴

Case Examples and Related Material

Both Drivers Killed Were "Stoned": Two females, one 28 and the other 49, died in an automobile crash on September 29, 2014 in Longmont, Colorado. "Both drivers had more than 5 ng/mL of THC in their systems..." The younger woman, who was believed to be the primary cause of the accident, was also under the influence of alcohol. This woman was the mother of twin 3-year-olds who were in the vehicle but survived.⁵

Hit and Run Kills Veteran: In April 2014, the driver of a vehicle ran into the back of a motorcycle sending the cyclist flying into the street. The driver of the vehicle, who had blood alcohol content (BAC) of 2.5 and marijuana in his system*, failed to stop and went home. The driver of the motorcycle was a 23-year-old airman stationed at Buckley Air Force Base involved in the Global Missile Warning System. The driver of the vehicle, a 32-year-old and former president of his fraternity at Colorado State University, was sentenced to 12 years in prison.⁶

Teen Driver Under the Influence Kills a High School Student: In November 2014, a teenager driving under the influence of marijuana hit and killed a 16-year-old high school student. One of the passengers in the vehicle said that the driver had been smoking "weed" in the car and was too high to drive safely. Another friend told law enforcement and he and the driver had smoked "weed" before driving to the high school the day of the crash. He said that he tried to convince the driver not to take the wheel but the driver refused. According to police the driver had trouble walking a straight line, following directions and smelled like marijuana.⁷

One Died in Three-Car Accident During Morning Commute: In January 2013, during the morning commute, a Jeep hit the back of a Subaru station wagon as both vehicles were headed eastbound on U.S. 36. The driver of the Jeep lost control and the vehicle flipped, ejecting the driver who died at the scene.⁸ The driver of the Jeep tested positive for marijuana only.*

* Information obtained by Rocky Mountain HIDTA not published in the original article.

Driver and Passenger Engulfed in Flames: On August 3, 2015 at 6:30 in the morning, 25-year-old Ricardo Gardea drove his SUV through a neighborhood careening through traffic. He was spotted by police prior to the crash and estimated to be driving at about 100 mph. He ran a red light and began “pinballing” off cars in the intersection. He eventually slammed into the back of a Jeep which was “hurtled roughly a block.” The gas tank exploded, engulfing the driver and his passenger in flames. The police officer at the scene called in “we need the paramedics in here quick because this person is still moving, but he, uh, he’s on fire.”

The driver of the vehicle, whose burns covered 65 percent of his body, died leaving behind a 7-month-old daughter. The passenger of the vehicle was seriously injured. Gardea, who caused this six-vehicle accident, fled the scene on foot but was subsequently arrested. According to the police report, “Gardea told investigators that he was under the influence of marijuana and had been drinking.” The 25-year-old has a criminal record dating back to 2007 including more than 20 arrests.⁹

Hit and Run Kills One: An SUV crashed into a minivan driven by a mother with two children inside. The crash happened at Peoria and 51st Street a little after midnight. Both the driver and the passenger of the SUV left the scene of the accident, taking off running. The driver was later arrested and tested positive for marijuana only.* The mother died from her injuries, the 6-year-old had serious injuries and the 11-year-old minor injuries.¹⁰

Drag Racing Kills Two: In June 2013, while drag racing a driver lost control of his vehicle and struck another vehicle head on. This happened at about 8:30 p.m. at Constitution Avenue just east of Circle Drive in Colorado Springs. The driver, who was allegedly drag racing, was killed as was the driver of the other vehicle who was an 84-year-old woman. The driver was a 25-year-old male who tested positive for marijuana only.¹¹

Pedestrian Killed: In June 2013 a pedestrian was hit and killed when crossing a street at the 1400 block of South Nevada Avenue in Colorado Springs, Colorado. The driver of the vehicle was not charged because the pedestrian was not crossing at a crosswalk.¹² The pedestrian tested positive for marijuana only.*

Bicyclist Died from a Collision: A bicyclist cycling eastbound on westbound lanes of 100th Avenue in Thornton didn’t stop at a stop light at the intersection with Colorado Boulevard. The bicyclist was struck by a GMC pick-up at about 10:30 p.m.¹³ The bicyclist, who was at fault, tested positive for marijuana and oxycodone, died.*

Injured Teacher No Fan of Marijuana: An article in *The Pueblo Chieftain* dated June 21, 2015 tells the story of a young schoolteacher who was crippled from a head-on collision by a truck driven by a man under the influence of marijuana. Witnesses to the accident saw the driver of the truck stumbling out of a Loaf 'N Jug and enter his truck. The observers were so alarmed they called authorities and then followed him so they could report his location. They then watched him weave across the lines of the highway and smash head-on into the young teacher's vehicle. They searched the vehicle and subsequently discovered small amounts of marijuana inside a marijuana grinder. The Pueblo West High School mathematics teacher said, "People didn't know what they were voting for. And if it continues to grow as it has since being legalized, there will be a lot more drivers who are high, and a lot more victims like me."¹⁴

Driver High on Pot Causes Crash that Injures Six: In July 2014, a 22-year-old woman was speeding eastbound on Colfax Avenue at about 2:30 in the morning. She ran a red light at Speer Boulevard and collided with another vehicle. Apparently she was driving 60 mph in a 30 mph zone when the accident, injuring six people, occurred. The young female admitted to "drinking one beer and smoked a bowl of marijuana."

"A just-completed study on medical marijuana by University of Colorado researchers found the proportion of marijuana-positive drivers involved in fatal crashes in Colorado increased dramatically since the middle of 2009. That's when medical marijuana was commercialized in the state."¹⁵

Pilot Error Caused Fatal 2013 Plane Crash: In December 2013, a pilot and her two passengers were killed when the airplane stalled and went into a spin prior to crashing into a remote snow-covered area on the Western Slope. The National Transportation Safety Board report said that the pilot failed to maintain adequate air speed while flying in low altitude, causing the wreck. A toxicology test showed that the pilot had consumed marijuana prior to the accident but there was not enough evidence to determine impairment.¹⁶

Drugged Driving Increases:

It was brought to the attention of Rocky Mountain HIDTA that although the article "Drug Use on U.S. Roads Rises as Drunken Driving Drops," was correctly cited and used in this report; the article itself misquotes a study from the National Highway Traffic Safety Administration (NHTSA). Therefore, we have removed that entry from our publication.

Buying Auto Insurance to Combat Pothead Drivers: A 2007 study by the National Highway Traffic Safety Administration found that marijuana was the most common drug used by drivers. "This sample found that about 4 percent of drivers were high during day and more than 6 percent at night."

Researchers from Columbia University's Mailman School of Public Health, examining over 23,500 fatal car crashes, found that marijuana contributed to 12 percent of the deaths in 2010 from only 4 percent in 1999.

"But increased danger on the road from stoned drivers in states where use is legal means all drivers should consider additional auto insurance, such as uninsured/underinsured motor coverage..." This came from Insurance Information Institute spokesperson Loretta Worters.¹⁷

Study on Marijuana-Impaired Drivers. The National Institute on Drug Abuse and the National Highway Traffic Safety Administration funded a study of 18 persons behind the wheel of a driving simulator who were given different combinations of marijuana, alcohol and/or a placebo. The study revealed that newer marijuana users were worse drivers at just 1 or 2 nanograms than heavy marijuana users. Also of note for the study:

- "THC moved more rapidly than alcohol out of the bloodstream and into the body, making it harder to detect accurately with a blood test." Also of note from this study:
- "Some heavy users had detectable THC in their body for nearly a month, and they performed some tasks worse up to three weeks after they last consumed marijuana."
- "Drivers who drank alcohol and smoked marijuana saw a stronger "high" than with pot alone..."
- Combining alcohol and marijuana impairs the driver to a greater degree than just one or the other.

Marilyn Huestis, chief of chemistry and drug metabolism of the Intramural Research Program at the National Institute on Drug Abuse, stated, "One of the things we know happens with cannabis is that it reduces your field of vision and you get tunnel vision, so you're unable to react as quickly."^{18,19}

70 Percent of Marijuana Users Have Driven Under the Influence: The National Cannabis Prevention and Information Centre (NCPIC) surveyed 4,600 Australians and found that 70 percent of recent marijuana users had driven under the influence of the drug. The primary researcher, Dr. Gates, stated, "We know from research that any cannabis use will affect your tracking ability, your reaction time, your attention span, your awareness of distance, your coordination, concentration." He said, "It is time for a wake-up call."²⁰

Sources

¹ Sarah Urfer, ChemaTox Laboratory.

² U.S. Department of Transportation National Highway Traffic Safety Administration, "The Economic and Societal Impact Of Motor Vehicle Crashes, 2010," May 2014, <<http://www.nrd.nhtsa.dot.gov/pubs/812013.pdf>>, accessed February 19, 2015

³ *Cost of a DUI brochure*, <<https://www.codot.gov/library/brochures/COSTDUI09.pdf/view>>, accessed February 19, 2015

⁴ Colorado Department of Transportation, 2015

⁵ Anica Padilla, ABC7 News-Denver, December 3, 2014, "Police: Both drivers killed in Longmont crash were stoned, one had also been drinking", <<http://www.thedenverchannel.com/news/local-news/police-both-drivers-killed-in-longmont-crash-were-stoned-one-had-also-been-drinking>>, accessed December 3, 2014

⁶ Raquel Villanueva and Blair Shiff, KUSA-9 News, November 14, 2014, "Man get 12 years for hit-and-run that killed airman," <<http://www.9news.com/story/news/local/2014/11/14/man-sentenced-in-hit-and-run-that-killed-an-airman/19027447/>>, accessed July 23, 2015

⁷ Megan Quinn, *Broomfield News*, March 17, 2015, "Police: Teen driver who struck. Killed Broomfield HS student Chad Britton was high at time of accident," <http://www.broomfieldenterprise.com/broomfield-news/ci_27729745/police-teen-driver-who-struck-killed-broomfield-hs>, accessed March 18, 2015

⁸ Mitchel Byars, *The Denver Post*/Lifestyles section, January 22, 2013, "1 dead after 3-car accident closes U.S. 36 for hours during morning commute", <http://www.denverpost.com/ci_22423991/u-s-36-shut-down-after-possibly-fatal>, accessed December 3, 2014

⁹ Jesse Paul, *The Denver Post*, "Denver Hit-and-Run/Police ID suspect in deadly wreck," August 5, 2015

¹⁰ KUSA 9News/Denver, December 25, 2013, "1 killed, 3 injured in Denver hit-and-run," <http://archive.9news.com/news/local/article/370380/346/1-killed-3-injured-in-Denver-hit-and-run>, accessed December 4, 2014

¹¹ Travis Ruiz, FOX21News.com, June 24, 2013, "Two people killed in possible street-racing crash", <<http://fox21news.com/2013/06/24/two-people-killed-in-possible-street-racing-crash/>>, accessed December 3, 2014

¹² Travis Ruiz, Fox21news.com, June 24, 2013, "Springs police: Pedestrian killed when crossing street," <<http://fox21news.com/2013/06/24/springs-police-pedestrian-killed-when-crossing-street/>>, accessed December 3, 2014

¹³ 9News Staff, KUSA-Channel 9 Denver, March 10, 2013, "Police: Bicyclist at fault in fatal weekend collision," <<http://www.9news.com/story/news/local/2014/02/25/1847780/>>, accessed December 4, 2014

¹⁴ Steven Henson, *The Pueblo Chieftain*, June 21, 2015, "Injured teacher no fan of marijuana," <<http://www.chieftain.com/news/3695332-120/driver-marijuana-pueblo-driving>>, accessed June 22, 2015

¹⁵ Dave Young, KDVR.com, July 30, 2014, "Driver accused of causing crash that hurt 6 was high on pot, DA says," <<http://kdvr.com/2014/07/30/22-year-old-woman-charged-with-driving-high-assaulting-six-people/>>, accessed July 23, 2015

¹⁶ The Associated Press, May 5, 2015, "Pilot error caused fatal 2013 plane crash," <<http://www.9news.com/story/news/crime/2015/05/05/grand-junction-pilot-error-plane-crash-2013/26916463/>>, accessed May 7, 2015

¹⁷ Ed Leefeldt, insurance.com, April 29, 2014, "Buying auto insurance to combat pothead drivers," <<http://www.insurance.com/auto-insurance/coverage/buying-auto-insurance-combat-pothead-drivers.html>>, accessed October 20, 2014

¹⁸ Trevor Hughes, *USA Today*, June 23, 2015, "Study analyzes how much pot impairs drivers," <<http://www.usatoday.com/story/news/2015/06/23/marijuana-drivers/29155165/>>, accessed June 25, 2015

¹⁹ DailyMail.com reporter, June 24, 2015, "Official: Cannabis use impairs driving as much as alcohol says first of its kind study while drug's legality continues to spread," <<http://www.dailymail.co.uk/news/article->

3137943/Marijuana-DOES-impair-driving-kind-comprehensive-government-study-reveals-cannabis-use-affect-motor-skills-three-drinks.html>, accessed June 25, 2015

²⁰ Andrew Griffiths, ABCNews.net, June 9, 2015, "Nearly 70 per cent of cannabis users report driving under the influence: research," <<http://www.abc.net.au/news/2015-06-10/cannabis-users-report-driving-under-influence/6534368>>, accessed June 22, 2015

SECTION 2: Youth Marijuana Use

Introduction

The following section reviews youth use rates of marijuana in Colorado and nationally. Datasets examine reported use "within the last 30 days" as opposed to "lifetime" usage. The use of the 30-day data provides a more accurate picture and is classified as current use. The lifetime data collection model typically includes individuals who are infrequent or experimental users of marijuana.

Most of the comparisons are between 2006 through 2013. The information compares the early medical marijuana era (2006 – 2008), the medical marijuana commercialization and expansion era (2009 – current) and the recreational marijuana era (2013 –current) in Colorado.

- **2006 –2008:** There were between 1,000 and 4,800 medical marijuana cardholders and no known dispensaries operating in Colorado.
- **2009 – Current:** There were over 108,000 medical marijuana cardholders and 532 licensed dispensaries operating in Colorado by the end of 2012. See the introduction at the beginning of this report for more details on the commercialization and explosion of Colorado's medical marijuana trade.
- **2013 – Current:** In November 2012, Colorado voters passed Constitutional Amendment 64 which legalized marijuana for recreational purposes for anyone over 21 years of age. The amendment also allowed for licensed marijuana retail stores, cultivation operations and edibles manufacturing.

Some Findings

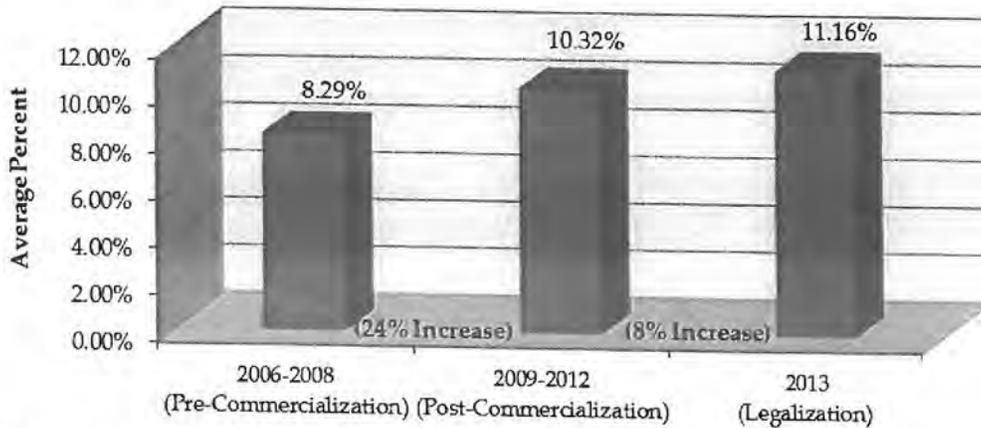
- Youth (ages 12 to 17 years old) Past Month Marijuana Use, 2013
 - Colorado average for youth was 11.16 percent

- National average for youth was 7.15 percent
 - Colorado was ranked 3rd in the nation for current marijuana use among youth (56.08 percent higher than the national average)
 - In 2006, Colorado ranked 14th in the nation for current marijuana use among youth
- Between pre-commercialization and post-commercialization of medical marijuana, there was a **24 percent** increase in youth (ages 12 to 17 years old) monthly marijuana use. There was an **8 percent** increase in just one year after legalization of recreational marijuana in 2013.
- The top ten states for the highest rate of current marijuana use were all medical marijuana states whereas the bottom ten were all non-medical-marijuana states.
- There was a **40 percent** increase in drug-related suspensions and expulsions in Colorado from school year 2008/2009 to 2013/2014.
- There was a **20 percent** increase in the percent of 12 to 17 year old probationers testing positive for marijuana since marijuana was legalized for recreational purposes.
- A June, 2015 Rocky Mountain HIDTA survey of 95 Colorado school resource officers (SROs) and an August 2015 survey of 188 Colorado school counselors reveals:
 - The majority have experienced an increase in student marijuana-related incidents since recreational marijuana was legalized.
 - The most common violations on campus are possession and being under the influence during school hours.
 - Most students obtain their marijuana from a friend who gets it legally, or from their parents/family member(s).

NOTE: SAMHSA RELEASED NATIONAL DATA ON DRUG USE FOR 2014 IN SEPTEMBER 2015. HOWEVER, STATE DRUG USE DATA FOR 2014 WILL NOT BE AVAILABLE UNTIL TOWARD THE END OF 2015.

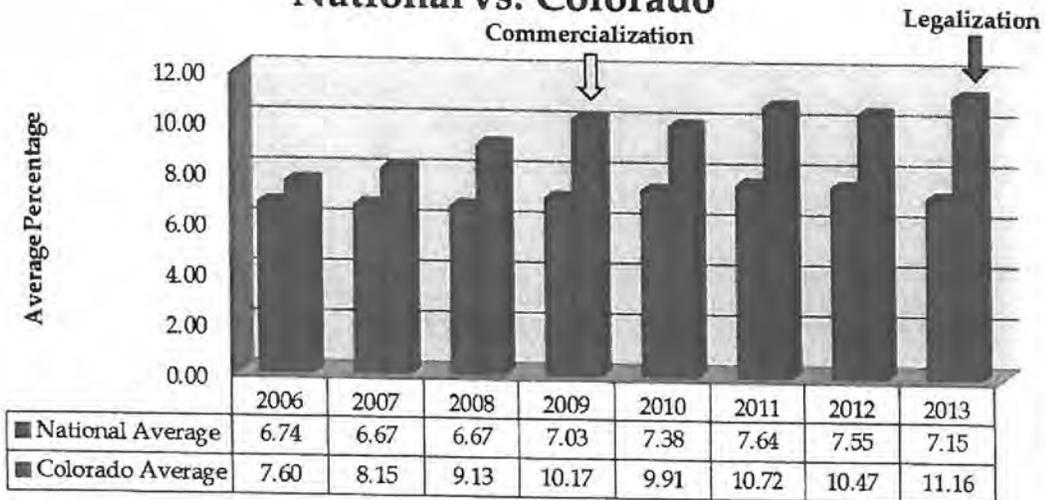
Data

Colorado Average Past Month Use of Marijuana Ages 12 to 17 Years Old



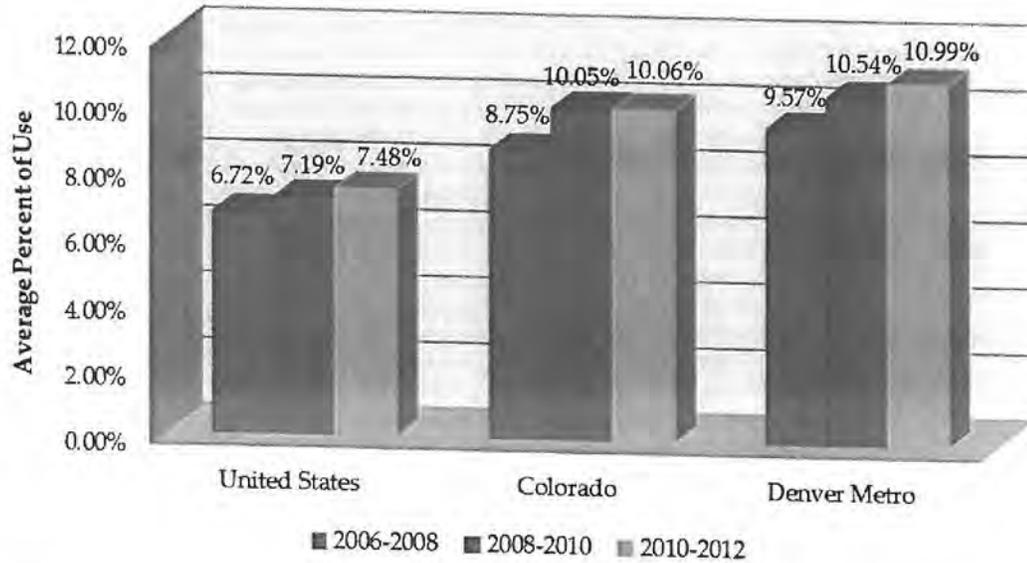
SOURCE: SAMHSA.gov, National Survey on Drug Use and Health 2012 and 2013

Youth (Ages 12 to 17 Years Old) Past Month Marijuana Use National vs. Colorado



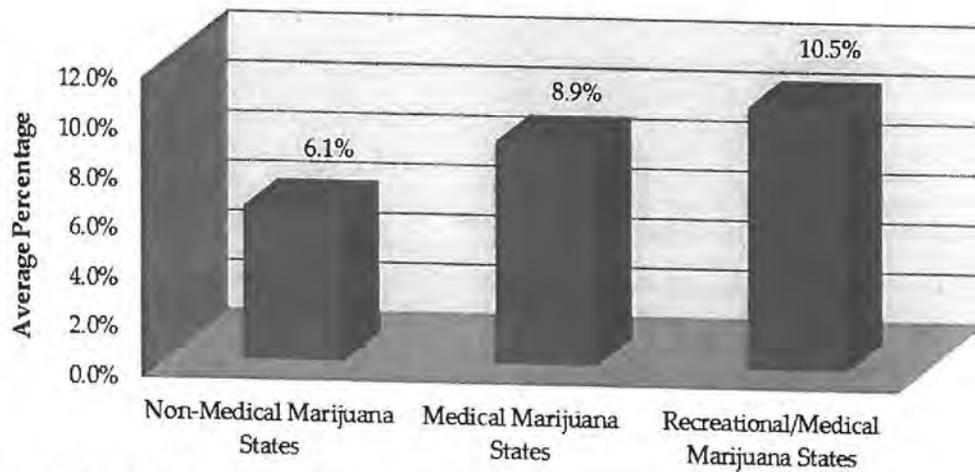
SOURCE: SAMHSA.gov, National Survey on Drug Use and Health, 2006-2013

Prevalence of Past 30-Day Marijuana Use, 12 to 17 Years Old, 2006-2012



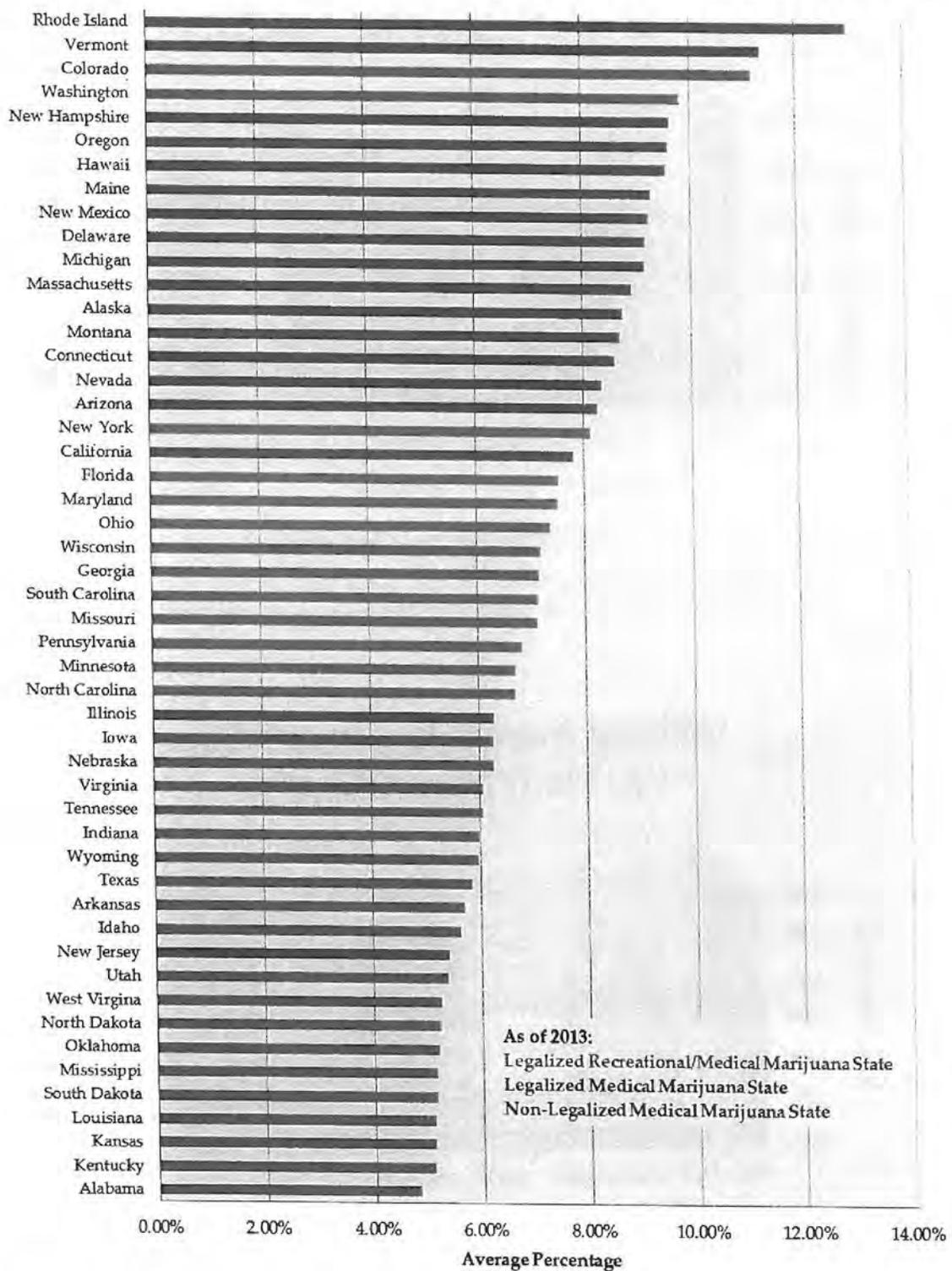
SOURCE: Denver Epidemiology Working Group (DEWG), Denver Office of Drug Strategy, October 29, 2014 and National Survey of Drug Use and Health, Sub-state Estimates 2006 – 2012

National Average Past Month Use by 12 to 17 Years Old, 2013



SOURCE: SAMHSA.gov, National Survey on Drug Use and Health 2012 and 2013

State-by-State Past Month Usage by 12 to 17 Years Old, 2013



SOURCE: SAMHSA.gov, National Survey on Drug Use and Health 2012 and 2013

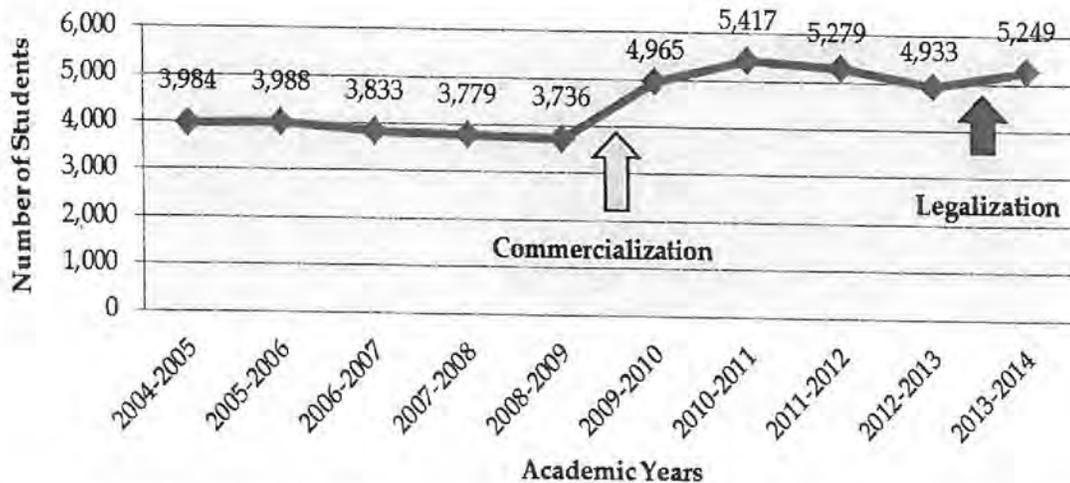
States for Past Month Marijuana Use Youth (12 to 17 Years Old), 2013¹

Top 10 (Medical Marijuana States in 2013)	Bottom 10 (Non-Medical Marijuana States in 2013)
National Rate = 7.15%	

<ol style="list-style-type: none"> 1. Rhode Island – 12.95% 2. Vermont – 11.34% 3. ++Colorado – 11.16% 4. ++Washington – 9.81% 5. New Hampshire – 9.62% 6. Oregon – 9.59% 7. Hawaii – 9.55% 8. Maine – 9.26% 9. New Mexico – 9.22% 10. Delaware – 9.15% 	<ol style="list-style-type: none"> 41. Utah – 5.35% 42. West Virginia – 5.23% 43. North Dakota – 5.19% 44. Oklahoma – 5.16% 45. Mississippi – 5.13% 46. South Dakota – 5.13% 47. Kansas – 5.09% 48. Louisiana – 5.09% 49. Kentucky – 5.07% 50. Alabama – 4.81%
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++ Legalized recreational marijuana in 2013

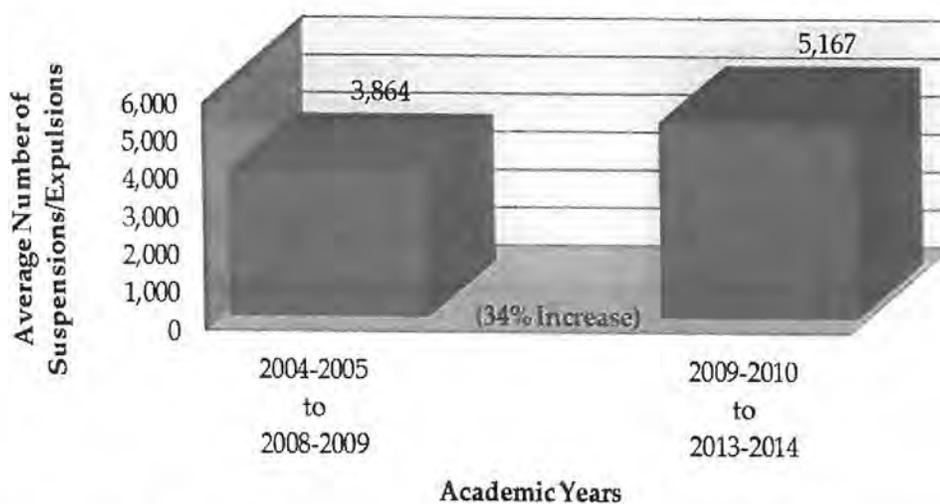
Drug-Related Suspensions/Expulsions



SOURCE: Colorado Department of Education, 10-Year Trend Data: State Suspension and Expulsion Incident Rates and Reasons

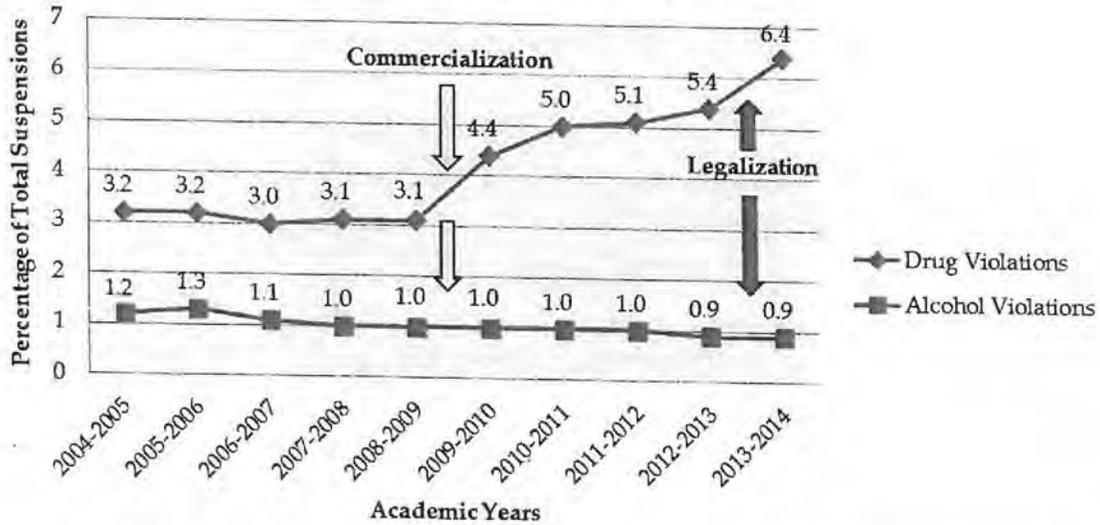
NOTE: THE COLORADO DEPARTMENT OF EDUCATION INCLUDED ALL DRUGS IN THIS DATASET. HOWEVER, DEPARTMENT OFFICIALS REPORTED THAT MOST DRUG-RELATED SUSPENSIONS/EXPULSIONS REPORTED SINCE THE 2008/2009 ACADEMIC YEAR HAVE BEEN RELATED TO MARIJUANA.²

Average Drug-Related Suspensions/Expulsions



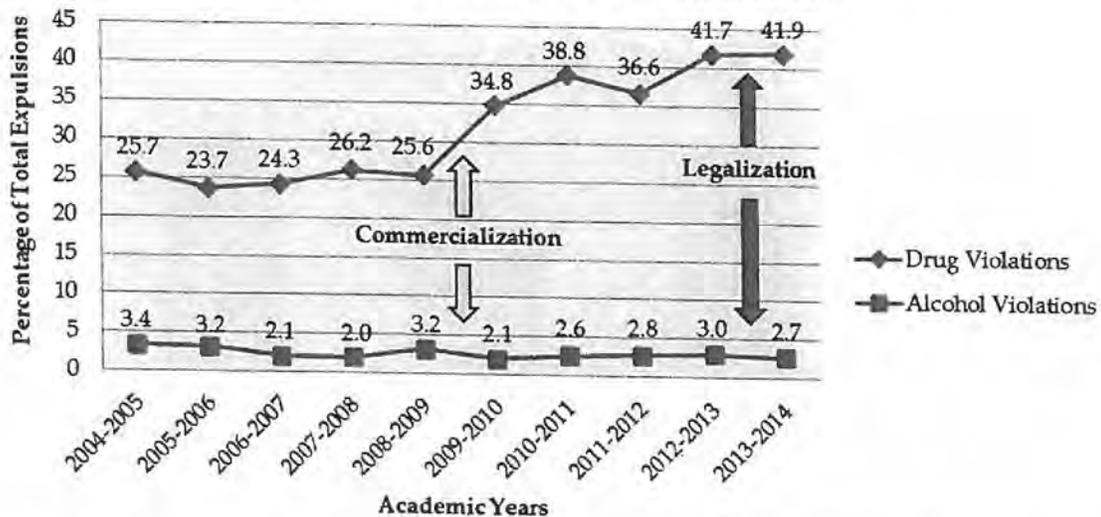
SOURCE: Colorado Department of Education, 10-Year Trend Data: State Suspension and Expulsion Incident Rates and Reasons

Percentage of *Total Suspensions* in Colorado from 2004-2014 School Years



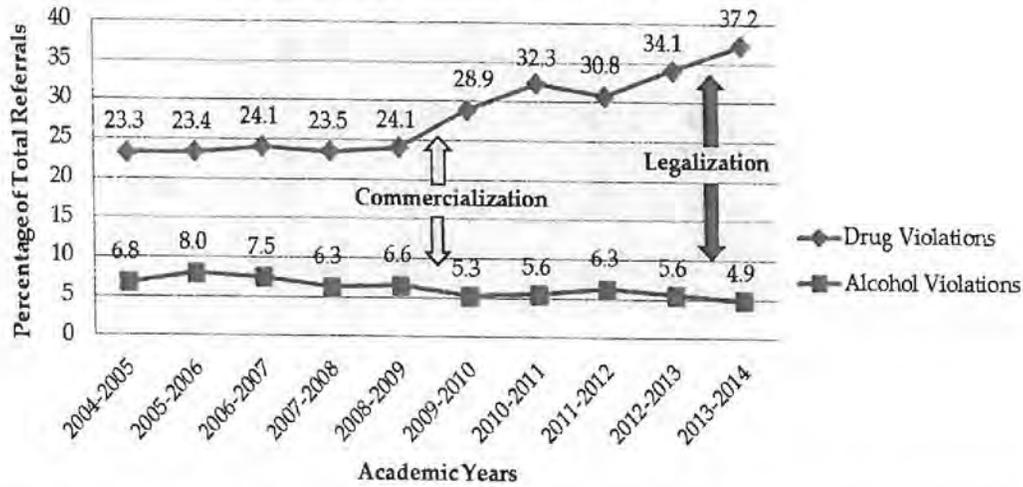
SOURCE: Colorado Department of Education, 10-Year Trend Data: State Suspension and Expulsion Incident Rates and Reasons

Percentage of *Total Expulsions* in Colorado from 2004-2014 School Years



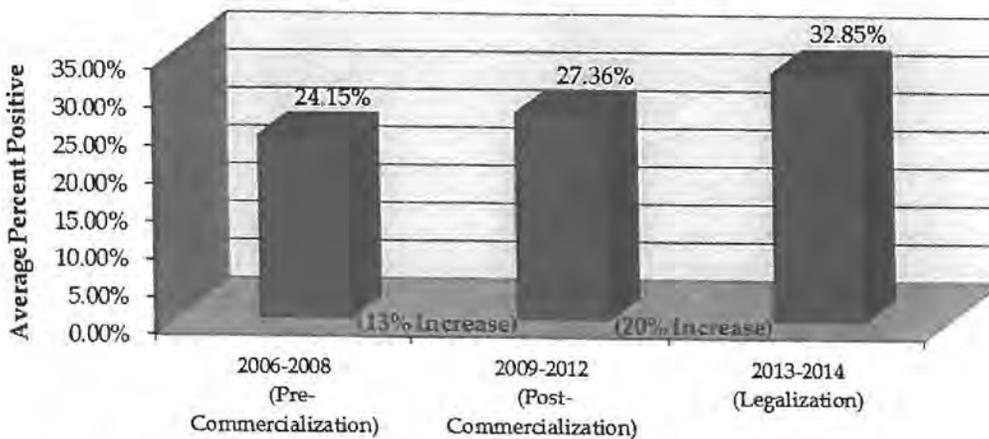
SOURCE: Colorado Department of Education, 10-Year Trend Data: State Suspension and Expulsion Incident Rates and Reasons

Percentage of Total Referrals to Law Enforcement in Colorado from 2004-2014 School Years



SOURCE: Colorado Department of Education, 10-Year Trend Data: State Suspension and Expulsion Incident Rates and Reasons

Colorado Probation Average Percent Positive THC Urinalyses Ages 12 to 17 Years Old



SOURCE: State of Colorado Judicial Branch, Division of Probation Services

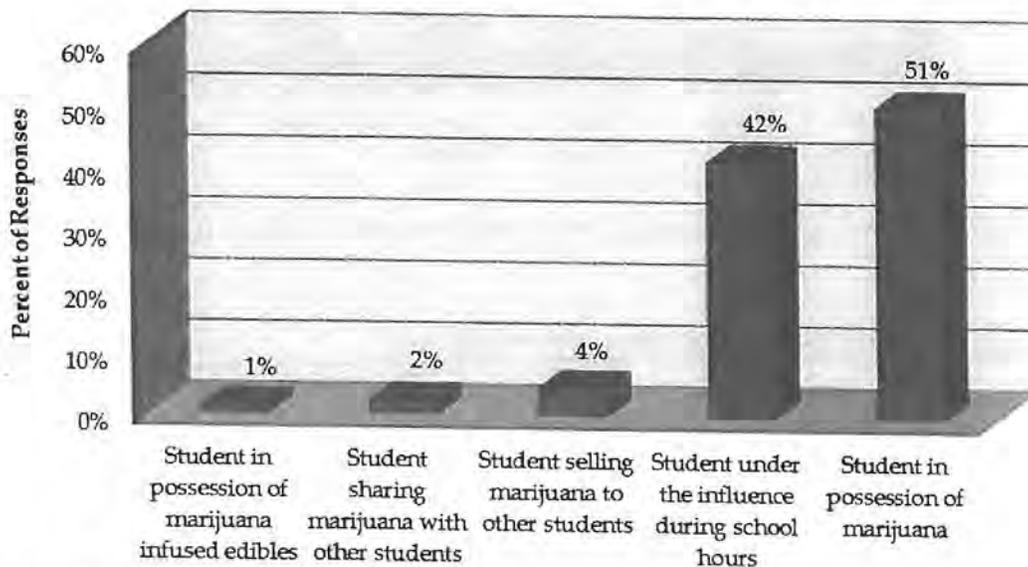
Colorado School Resource Officer Survey³

In June 2015, 95 school resource officers (SROs) completed a survey concerning marijuana at schools. The majority were assigned to high schools with an average tenure of six years as an SRO. They were asked for their professional opinion on a number of questions including:

- Since the legalization of recreational marijuana, what impact has there been on marijuana-related incidents at your school?
 - 90 percent reported an increase in incidents
 - 9 percent reported no change in incidents
 - 1 percent reported a slight decrease in incidents

- What were the most predominant marijuana violations on campus?
 - 51 percent reported possession of marijuana
 - 42 percent reported being under the influence during school hours
 - 4 percent reported selling marijuana to other students
 - 2 percent reported sharing marijuana with other students
 - 1 percent reported possession of marijuana-infused edibles

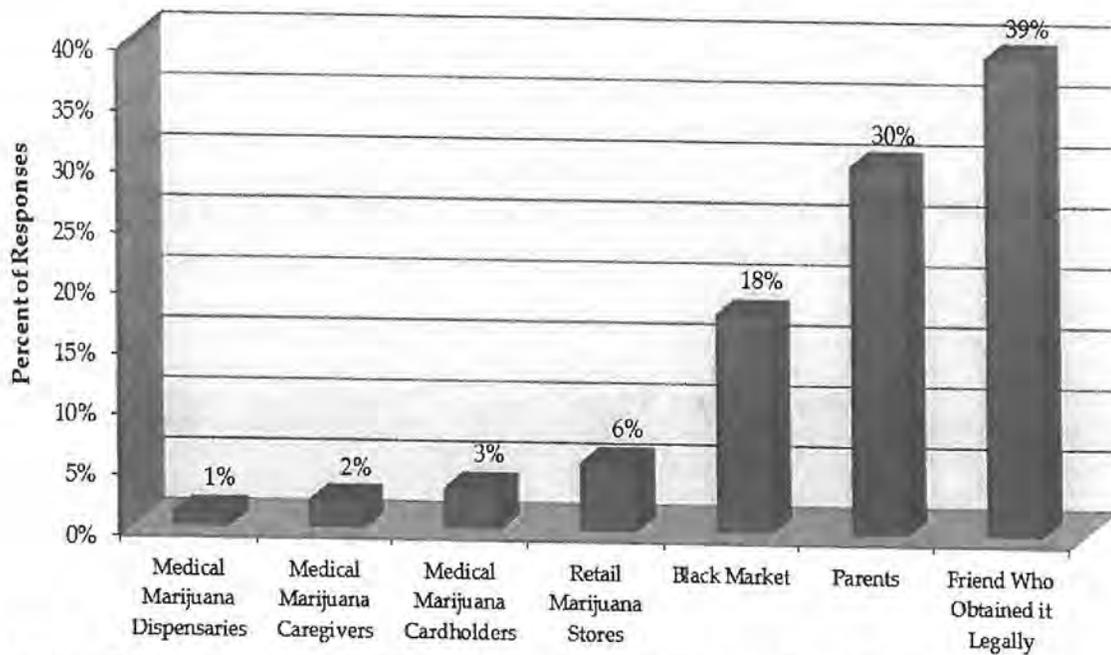
Predominant Marijuana Violations, 2015



SOURCE: Colorado Association of School Resource Officers (CASRO) and Rocky Mountain HIDTA

- Where do the students get their marijuana?
 - 39 percent reported friends who obtain it legally
 - 30 percent reported from their parents
 - 18 percent reported from the black market
 - 6 percent reported from retail marijuana stores
 - 3 percent reported from medical marijuana cardholders
 - 2 percent reported from medical marijuana caregivers
 - 1 percent reported from medical marijuana dispensaries

Student Marijuana Source, 2015



SOURCE: Colorado Association of School Resource Officers (CASRO) and Rocky Mountain HIDTA

Some Comments from School Resource Officers

6th Grade Users: "I have 6th graders that smoke marijuana before school. They steal it from their parents or older siblings."

Pick Up Tool: "One junior boy, while in class and trying to pick up girls in his class. Offered to share marijuana edibles (Rice Krispy treats/fruity pebbles infused) to three girls in his class while asking for their phone numbers."

Medical Marijuana Card for 18th Birthday: "During the spring I made contact with a student under the influence of marijuana with friends in an alley. After taking them back to my office to write citations. A female who was 18 years old had a marijuana card. She related that her parents took her to get it on her birthday. I advised her she had to be 21 regardless of her card."

School to ER: Had two marijuana overdoses requiring ambulance transport to ER. Both incidents were 14 year old females."

Increased Incidents: "Numbers of incidents are climbing each year in a school of 430,

2012-2013 (5 incidents)

2013-2014 (11 incidents)

2014-2015 (18 incidents)"

15-Year-Old Marijuana Card Holder: "15 year old with red card obtaining marijuana from friends in tobacco form. Attempted to give it to other females if they would smoke with him. Same student was caught with pipes one month before, the student attempted to fight with staff to keep them from searching him."

17-Year-Old Assaults Father: "17 year old male refused to hang up cell phone during class. Student caused disruption in class attempted to physically stop principal from taking his backpack subsequent search found marijuana in his backpack. Suspect later assaulted his father and was taken into custody."

Father's Joint: "In April 2015, five middle school students were observed on the playground passing around what appeared to be a marijuana joint. When contacted, each admitted to consuming marijuana on campus. When asked where (sic) the marijuana was obtained, one of the students admitted taking it from his father."

Vapor Pens: "Students smoking marijuana in class out of vapor pens. 8 year old found in possession of vapor pens and test positive for marijuana."

School Counselor Survey⁴

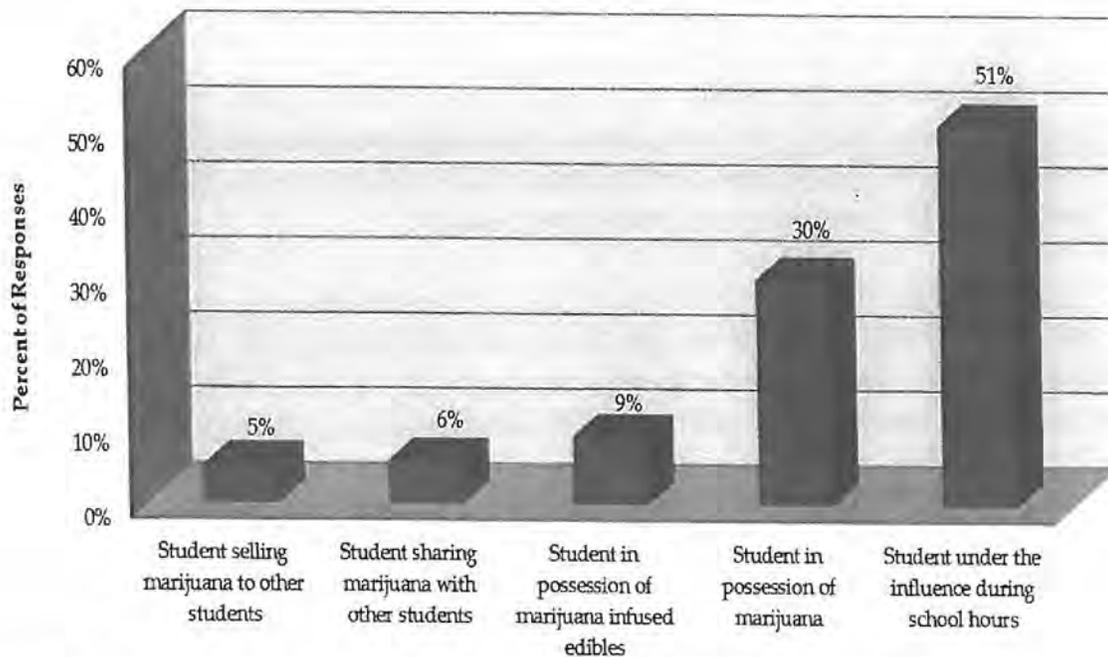
In August 2015, 188 school counselors completed a survey concerning the legalization of marijuana at schools. The majority were assigned to high schools with

an average tenure of ten years. They were asked for their professional opinion on a number of questions including:

- Since the legalization of recreational marijuana, what impact has there been on marijuana-related incidents at your school?
 - 69 percent reported an increase in incidents
 - 30 percent reported no change in incidents
 - 2 percent reported a slight decrease in incidents

- What were the most predominant marijuana violations on campus?
 - 51 percent reported being under the influence during school hours
 - 30 percent reported possession of marijuana
 - 9 percent reported possession of marijuana-infused edibles
 - 6 percent reported sharing marijuana with other students
 - 5 percent reported selling marijuana to other students

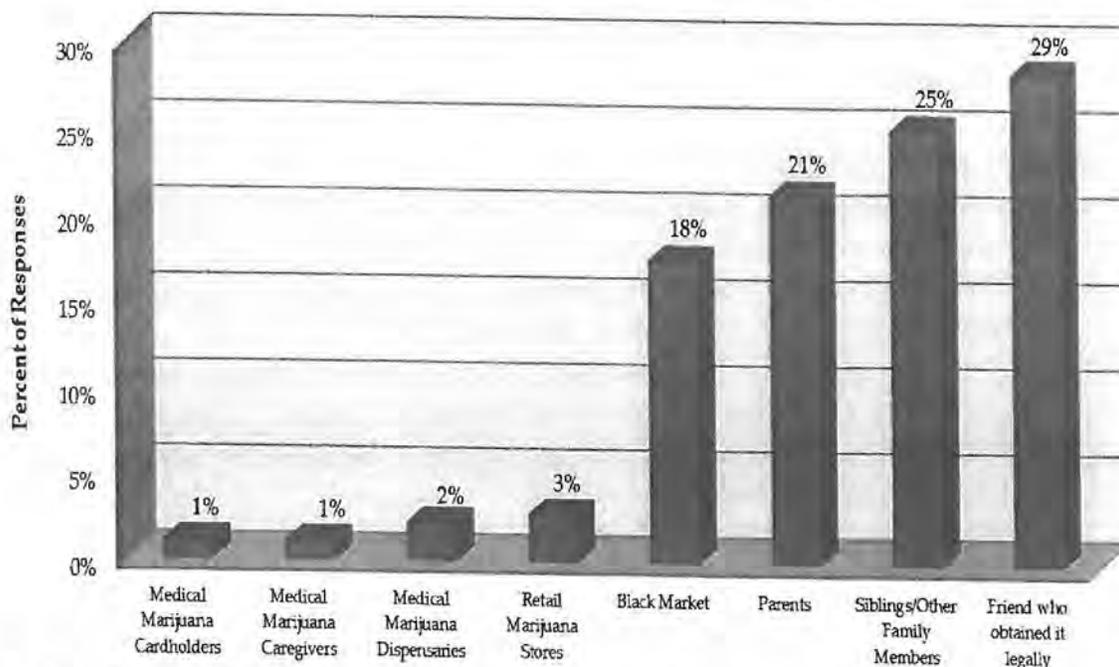
Predominant Marijuana Violations, 2015



SOURCE Colorado School Counselor Association (CSCA) and Rocky Mountain HIDTA

- Where do the students get their marijuana?
 - 29 percent reported friends who obtain it legally
 - 25 percent reported from their siblings or other family members
 - 21 percent reported from their parents
 - 18 percent reported from the black market
 - 3 percent reported from retail marijuana stores
 - 2 percent reported from medical marijuana dispensaries
 - 1 percent reported from medical marijuana cardholders
 - 1 percent reported from medical marijuana caregivers

Student Marijuana Source, 2015



SOURCE Colorado School Counselor Association (CSCA) and Rocky Mountain HIDTA

Some Comments from School Counselors

Halls Reek of Pot After Lunch:

- “Many kids come back from lunch highly intoxicated from marijuana use. Halls reek of pot, so many kids are high that it is impossible to apprehend all but the most impaired.”
- “They go off campus and smoke during lunch with friends. They will run home with friends during lunch and smoke then.”

- “There have been several instances of students in their cars on lunch or during their off hours ‘hotboxing’ or smoking marijuana. Most students are seniors but on occasion, seniors will provide marijuana to 9th or 10th grade students.”
- “2014/2015 school year, several students caught coming back from off-campus lunch under the influence of marijuana.”
- “Had a student come back from lunch, teacher believed that they were high. Student was escorted to the office, student admitted they were indeed high to the administrator.”
- “Students are often referred after lunch (open campus) after they have been riding around smoking marijuana with their friends.”
- “More and more students are coming back to school high after lunch.”
- “In April 2015, students were going out for a break. 2-3 students smoked marijuana about a block away from school. They smelled like pot when they got back.”

Arrives at School Stoned:

- “At the beginning of the second semester, three middle school boys were routinely arriving late at school, and noticeable intoxicated.”
- “We have middle school students who either come to school high, or have it on them in a bag. Or they have pipes on them.”
- “In May 2015, a teacher witnessed 2 seniors smoking marijuana while driving to school. One student admitted to having done so; the other denied it.”
- “Teaching a lesson in class during first period that started 7:30 AM and 2 students were already high in class.”
- “A male 13 y/o student fell asleep in several classes. He was interviewed by the school counselor and the RSO (sic). He was assessed as being high and admitted that he uses marijuana often before school. He steals it from his older brother.”
- “12 yr. old, sixth grader, was suspected of coming to summer school high. When confronted he told the teacher that he smoked it at home the night before but denied being high at the time. Later, he confirmed that he had smoked early that morning. The marijuana came from his mother’s stash.”

New Use of Bathrooms:

- “Students using in the bathroom.”
- “2 students were smoking marijuana in the restroom last year.”
- “8th grade male student had marijuana in his locker, classmates reported it. 8th grade female student smoked a joint in a school bathroom during school hours. Shared it with a friend.”

- “7th grade girl last year had hidden marijuana and a pipe in the girl’s restroom and told several friends who began getting bathroom break passes from various classrooms. Security noted an increased traffic flow to and from that restroom and found the weed and soon after the violators.”

It’s Legal:

- “3 or 4 times in the last school year, students have come to school under the influence after meeting at homes where parents were absent, sharing marijuana off campus and then bringing it on campus. 7th and 8th grade students have been involved, and most often their reaction when caught is ‘it’s legal’.”
- “I met with at least 5 students last year alone that have been showing significant signs of drug use or were caught and they all said they will not stop using weed on a daily basis. Their justification was it’s fine because it’s legal. If it’s legal it’s not as bad as what adults say about the risks.”

Just a Plant:

- “In March of 2015 a fifth grade boy offered marijuana to another fifth grader on the playground. In October of 2014 a kindergarten girl described the pipe in her grandmother’s car and the store where you go to buy pipes. In May of 2015 a first grade girl reported that her mom smokes weed in the garage. ‘It’s not a drug, it’s just a plant’.”

Grades Decline:

- “I would like to say that in general our Marijuana incidents have not gone up. We have a savvy population that knows to keep it away from school. However, I have seen a huge spike in talking with kids about it in my sessions. Last year I had two very intelligent students (above 4.0) that used marijuana 2-6 times a week. Both of them had grades decline and significant social emotional issues spike in the Spring of their Senior Year. They also both had violations at school.”

Dad Allows Pot Smoking:

- “We had reports of two students (brothers) appear to be high at school. Our officer assessed both of them and discovered that their father, who had a medical marijuana card, was having them both “smoke a bowl” before school. He thought it would make their school day easier.”

Parents High:

- “At our elementary school, we have noticed an increased number of parents showing up to school high. Kids have also brought [marijuana] to school to show their friends.”

Difficulty in Assessment:

- “For school personnel, it is more difficult to evaluate what substance a student is under the influence of. We can smell alcohol and smoked marijuana but the edibles and vapes are hard to detect.”

Warning: Drug Canines:

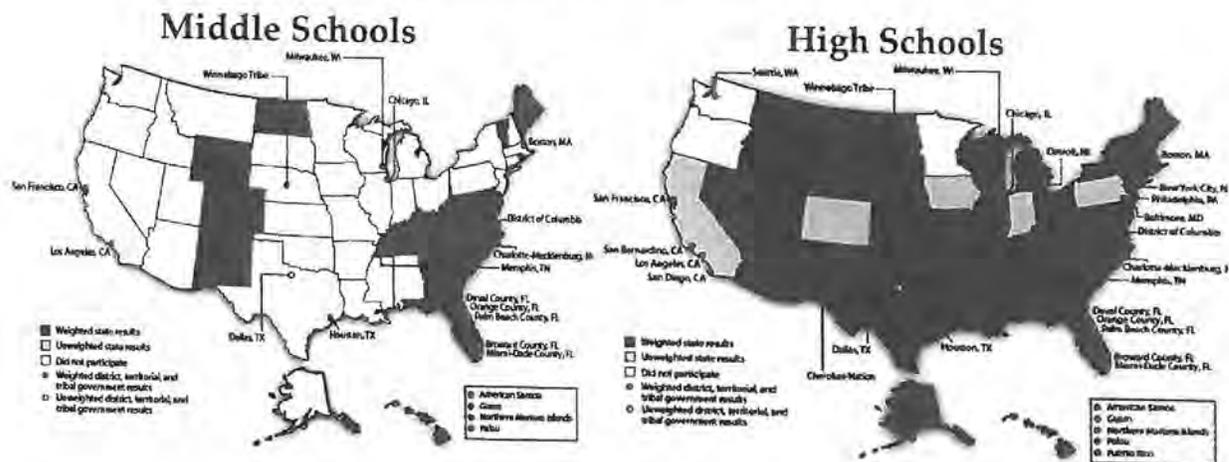
- “I would like to just offer that we need policy that allows for more use of drug dogs and not having to forewarn students or parents when these dogs will be present. Students and especially dealers, the ones we need to catch, are very vigilant in making adjustments when these resources are used.”

Youth Use Surveys Not Utilized and Why

- ❖ After careful analysis and consideration, Rocky Mountain HIDTA did not use the following datasets in this report because of the following reasons:

Centers for Disease Control Youth Risk Behavior Survey (YRBS): In 2013, Colorado fell short of the required number of student responses and was, therefore, not included. Additionally, upon further review, it was discovered that since 1991 the state of Colorado has only been represented in the High School YRBS survey with weighted data four times. Since 1995, Colorado has only been represented in the Middle School YRBS survey by weighted data twice. States that participated in the 2013 Middle School and High School YRBS surveys are represented in dark blue in the below maps. It should be noted, in 2013, high schools in the following eight states were not included with high school data: California, Colorado, Oregon, Washington, Minnesota, Illinois, Iowa and Pennsylvania.⁵

Centers for Disease Control Youth Risk Behavior Survey
2013 YRBS Participation Map



SOURCE: Centers for Disease Control and Prevention, Adolescent and School Health, YRBS Participation Maps and History <<http://www.cdc.gov/healthyyouth/data/yrbs/participation.htm>>

Monitoring the Future (MTF) Study: Monitoring The Future is designed to be nationally-represented and not state-represented. MTF does not provide usable estimates for the specific state of Colorado because of the state’s relatively small size. Colorado is only 1.6 percent of the total U.S. population; thus, the sampling would only

be 1.6 percent of Colorado schools (400) or about 6 schools per year. Since 2010, the survey sampled an average of 4.6 Colorado schools. In 2014 and 2015, there were four schools surveyed each year of which three were eighth grade. Therefore, the MTF study is not useful for state data pertaining to Colorado for school-age drug use data and trends.⁶

Healthy Kids Colorado Survey (HKCS): The Healthy Kids Colorado Survey is voluntary, self-reported health information from Colorado middle and high school students. However, this survey notably changed in 2013. "Sample sizes from 2005-2011 ranged from about 700 to 1,500 students" whereas "sample size for 2013 for current and lifetime use was about 25,000 high school students." Additionally, the HKCS "methodology changed in 2013 to include charter schools and to expand the sample size." Rocky Mountain HIDTA did not feel it was consistent to compare data pre-2013 with the new method of collecting data.⁷

Related Material

Denver Public School Marijuana Arrests Increased 39 Percent: Since marijuana was legalized in 2013, Denver Police Department reported 154 arrests in 2013 compared to 111 in 2012 which is a 39 percent increase. Students who talked to 9News from one high school are quoted as saying:⁸

- "[Legalization] does make it more acceptable because a lot of people couldn't get it before, but now they have uncles or cousins or whatever that are old enough to get it, and they can just get it for them."
- Another student saying he sees pot use frequently, "around the parks, walking on the streets, at the bus, in the bus. Everywhere."
- Another student saying that students have easier access to the drug than they did before made the comment, "It's Colorado." A student commented, "Yeah, some kids just come to class all stoned." "[Teachers] don't really do nothing. They just look at them. Give them a weird look and then just walk away."

School workers say it can be a tough call to report cases like that. Kids suspected of being high that are not disrupting classes, just quietly zoned out at their desk.

Valley Schools See Increase in Marijuana-Related Offenses: "Administrators at the Roaring Fork Valley high schools have seen an uptick in marijuana-related infractions over the first full year of the drug being legalized for adult recreational use, causing some changes in the curriculum to better inform students about how pot can adversely affect the teenage brain." School District Superintendent Diana Sirko said in

comparison to the last three to five years there has been a “dramatic increase” in infractions during the recently-completed school year. She states, “I didn’t think [legalization] would affect things any more than alcohol does, but we’ve been more impacted than we first thought. Because of the fact that [marijuana] is now legal, it’s viewed differently by kids... It’s the availability and overall mindset that leads to problems.”⁹

School Drug Incidents Raise Questions on Colorado Pot Policy: “Hundreds of Colorado’s middle-school students got caught with drugs at school last year, setting a decade-high record while raising questions about the impact of the state’s legal marijuana industry.” School-based experts believe that the 24 percent increase in middle school drug reports directly relate to the legal marijuana industry. Denver Public Schools saw a 7 percent increase from 452 in school year 2012/13 to 482 in school year 2013/14. “The 951 middle-school drug violations across Colorado was the highest tally in a decade.” School officials say that the greater availability and acceptance appears to be prompting more kids to try marijuana. Aurora P.D. School Resource Officer Susan Condrey stated, “I would say that at any given time, any day of the week, there are probably about 10% of the kids in the high school that are under the influence of something.”¹⁰

Chuck Frank: Study Shatters Claims Marijuana is Harmless: An article in the scientific journal *Addiction* by Professor Wayne Hall of King’s College in London, who is also the World Health Organization drug advisor, “built a compelling case with regard to the negative and adverse effects of cannabis.” Among the professor’s findings was that regular use, particularly among teens, leads to long-term mental health problems as well as addiction.¹¹

- “One in six teenagers who regularly smoke the drug become dependent on it.”
- Cannabis doubles the risk of developing psychotic disorders, including schizophrenia.
- “Cannabis users do worse at school. Heavy use in adolescence appears to impair intellectual development.”
- “One in ten adults who regularly smoke marijuana become dependent and are more likely to go on to harder drugs.”
- “Driving after smoking marijuana doubles the risk of car crashes, which increases substantially if the driver also drank alcohol.”
- “A study released (April 23, 2014) by the *Journal of the American Heart Association* revealed a relationship between cardiovascular disease and cannabis use in regular marijuana users.”

This New Study is Bad News if You're a Marijuana Supporter: Researchers at Northwestern University released a study in the journal *Hippocampus* related to some findings regarding heavy use of marijuana on teenagers' long-term memory. The study examined daily marijuana users who began at the age of 16 compared to the same age young adults who never used marijuana. Researchers used an MRI scan of the area of the brain responsible for long-term memory retention. Researchers also conducted MRI scans for subjects in their early 20's who were two years removed from heavy marijuana use. The study showed an "oddly shaped hippocampus" in heavy marijuana users that accompanied long-term memory test scores 18 percent lower than those who had not used marijuana. One of the senior authors stated, "The memory processes that appear to be affected by cannabis are ones that we use every day to solve common problems and to sustain our relationships with friends and family." This apparently was the first study that confirmed the relationship between heavy marijuana use and a misshapen hippocampus that lead to poor long-term memory function.¹²

Impact of Youth Marijuana Use: A study published in the journal *Lancet Psychiatry* by Dr. Muiris Houston provides some startling findings concerning marijuana use among youth.

- Daily users of marijuana prior to the age of 17 are 60 percent less likely to complete high school or get a university degree than those who do not use marijuana.
- Teens who are daily users of marijuana are seven times more likely to attempt suicide.
- Teens who use marijuana on a daily basis are eight times more likely to use other drugs later in life.¹³

Teen Marijuana Use and the Risk of Psychosis: "Doctors in Germany have noted an alarming rise in psychotic episodes linked to excessive marijuana use among young people, which follows other studies around the world raising alarms." "The number of patients admitted with psychotic episodes after having consumed cannabis has more than tripled in Germany over the last 15 years, from 3,392 in 2000 to 11,708 in 2013." "More than half the patients are younger than 25."¹⁴

Pot Smoking Can Damage Developing Brains "Scientists believe that the increased potency leads to abnormalities in the shape, density, and volume of the nucleus accumbens, the walnut-shaped area of the brain that's associated with pleasure and pain. The nucleus accumbens "Is the core of motivation," says study co-author Hans Breiter. J.M. [Gilman et al., Cannabis Use Is Quantitatively Associated with Nucleus Accumbens and Amygdala Abnormalities in Young Adult Recreational Users, *Journal of*

Neuroscience (Neurobiology of Disease section), 34 (2014), 5529–5538] “This is a part of the brain you do not want to mess around with.”¹⁵

Teens That Smoke Pot Could End Up Shorter: “Researchers at a university in Pakistan studied levels of hormones linked to growth and puberty in the blood of 217 boys addicted to marijuana and 220 who didn’t smoke at all.” They found certain hormones linked to puberty were higher among pot users but growth hormone levels were significantly lower. When checking back years later, the researchers found non-marijuana users were 9 pounds heavier and 4.6 inches taller on average than their marijuana-smoking counterparts. The scientists, who presented their findings at a conference in Ireland, said that this might help provide some insight into the effects of drug use on growth and development.¹⁶

Medical Marijuana May Pose Risk to Teens: Study: A study by a professor in the School of Nursing at the University of Michigan showed that teens who legally were using medical marijuana were ten times more likely to say they were addicted than those that got the drugs illegally. The study author, Carol Boyd, stated, “I think that medical marijuana laws are failed policy and that these data lend support to my position.”¹⁷

Study Identifies Teens at Risk for Hashish Use: “The recent increase in popularity of marijuana use coupled with more liberal state-level policies has begun to change the landscape of adolescent marijuana use. More potent forms of marijuana, such as hashish, may present a threat to adolescent health.” A study by researchers connected to the New York University Center for Drug Use and HIV Research was one of the first to examine the prevalence and correlation between hash use among a sample of U.S. high school students. One of the researchers reports that one out of ten teens reported using hashish and that marijuana and hashish bear the same risk factors for regular users but are much stronger from hashish, which is a more potent form of marijuana.¹⁸

THC Levels in Teens: In a Colorado Springs *Gazette* Op/Ed dated June 21, 2015 entitled “THC extracts concentrate problems: For example, the average level of THC found in the urine of about 5,000 adolescents ages 12-19 by researchers at the University of Colorado jumped from 358 nanograms per milliliter in 2007 through 2009 – just before the state’s boom in medical marijuana dispensaries – to 536 milliliters from 2010 through 2013.”¹⁹

Pot Unsafe to Teen and Young Adult Brains Under Construction: “Even moderate marijuana use among teens and young people was shown in a study this year to cause abnormalities in the developing brain. Yet as Colorado and other states legalize

recreational pot use, the public perception is that it is generally safe." A study published in the *Journal of Neuroscience* in April 2014, conducted by the Harvard Medical School and Northwestern University Feinberg School of Medicine, used brain scans on young adults who smoked marijuana moderately. The researchers found changes in the volume, shape and density in the regions of the brain responsible for judgment, motivation, decision-making and emotional behavior. They found that the more these young adults smoked, the greater the abnormalities.²⁰

Pot Used to be Pretty Harmless, But It's Plenty Dangerous Today: Dr. Grace M. McCorrigan, in a *Pittsburgh Post-Gazette* editorial, compares the impact of marijuana from the 1960s and '70s to the marijuana of today. She states, "Modern marijuana has been genetically modified to be more potent – six to 10 times higher in THC." The article goes on to describe experience with marijuana users in that they have a greater distortion of reality and consciousness and also sometimes appear to be very sedated and unsteady on their feet. She mentions poor balance and compromised memory even when no longer high. She mentions that she has seen THC levels rise from "200 nanograms per milliliter to 500, to 1,000, to 1,750 (I have seen all these levels.)" Dr. McCorrigan also cites that 50 percent of those using high-potency marijuana daily will experience withdrawal symptoms to include poor sleep, decline in appetite, possible vomiting and stomach pain. She cites anxiety, irritability increases and some experience muscle twitching and limb spasms. She says the symptoms will clear in less than a week but the experience is rough and that many heavy users resume smoking mid-withdrawal. Dr. McCorrigan is board-certified in adult and forensic psychiatry.²¹

Under the Influence of Parents: A survey conducted by the Hazelden Betty Ford Foundation's Center for Public Advocacy show that children of parents who have used marijuana are three times more likely to use it themselves. This nationwide survey was conducted of individuals between the ages of 18 and 25 to get a better understanding of marijuana using habits and attitudes. The survey found that 72 percent of children who reported their parents have used, or are using, marijuana have in fact used it themselves. That compares to less than 20 percent of children whose parents have not used marijuana. The survey also found that 15 percent stated they used marijuana before the age of 14 and about 35 percent between the ages of 14 and 16.

The survey also found that the majority of young adult marijuana users (6 out of 10) did not think marijuana was addictive and didn't damage the brain. Almost half of those felt that eating marijuana was safer than smoking it.

In Colorado, close to 49 percent of youth surveyed admitted they had used marijuana compared to approximately 41 percent nationwide. In Colorado, 24 percent of youth said they used marijuana daily compared to about 19 percent for the rest of the country.²²

Marijuana Exposure Among Children Younger Than Six Years in the United States: "The rate of exposure to marijuana among young children nationwide is rising. Young children in states where laws allow sale and use of marijuana face significantly elevated risks of exposure and poisoning."²³

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SECTION 3: Adult Marijuana Use

Introduction

The following section reviews rates of marijuana use by adults in Colorado and nationally. Data sets examine reported use “within the last 30 days” as opposed to “lifetime” use. Use of the 30-day data provides a more accurate picture and is classified as current use. The lifetime data collection model includes those who were typically infrequent or experimental users of marijuana.

Data comparisons are from years 2006 through 2013. The information compares the early medical marijuana era (2006 – 2008), the medical marijuana commercialization and expansion era (2009 – current) and the recreational marijuana era (2013 – current) in Colorado.

- **2006 – 2008:** There were between 1,000 and 4,800 medical marijuana cardholders and no known dispensaries operating in Colorado.
- **2009 – Current:** There were over 108,000 medical marijuana cardholders and 532 licensed dispensaries operating in Colorado by the end of 2012. See the introduction at the beginning of this report for more details on the commercialization and explosion of Colorado’s medical marijuana trade.
- **2013 – Current:** In November 2012, Colorado voters passed Constitutional Amendment 64 which legalized marijuana for recreational purposes for anyone over 21 years of age. The amendment also allowed for licensed marijuana retail stores, cultivation operations and edibles manufacturing.

Some Findings

- College Age Adults (ages 18 to 25 years old) Current Marijuana Use 2013
 - Colorado average – **29.05 percent**
 - National average – **18.91 percent**
 - Colorado was ranked **2nd** in the nation for current marijuana use among college-age adults (**53.62 percent** higher than the national average).
 - In 2006, Colorado was ranked **8th** in the nation for current marijuana use among college-age adults.
- Between pre- and post-commercialization of medical marijuana, there was a **17 percent** increase in college-age (ages 18 to 25 years old) monthly marijuana use. There was an **11 percent** increase in just one year after legalization of recreational marijuana in 2013.
- There was a **49 percent** increase in 18 to 25-year-old probationers testing positive for marijuana since marijuana was legalized for recreational purposes.
- Adults (ages 26+ years old) Current Marijuana Use 2013
 - Colorado average – **10.13 percent**
 - National average – **5.45 percent**
 - Colorado was ranked **5th** in the nation for current marijuana use among adults (**85.87 percent** higher than the national average)
 - In 2006, Colorado was ranked **8th** in the nation for current marijuana use among adults
- Between pre- and post-commercialization of medical marijuana, there was a **32 percent** increase in adult (26+ years old) monthly marijuana use. There was a **27 percent** increase in just one year after legalization of recreational marijuana in 2013.
- The top ten states for the highest rate of current marijuana use were all medical-marijuana states.
 - College age rate (18 to 25 years old): Top ten states average of **26.31 percent** compared to national average of **18.91 percent**
 - Adult rate (26+ years old): Top ten states average of **9.28 percent** compared to national average of **5.45 percent**

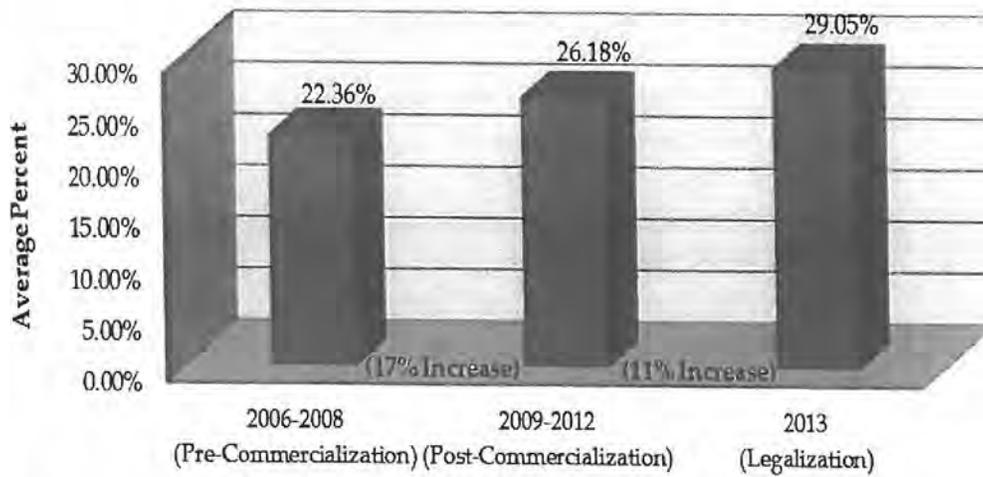
- There has been an **87 percent** increase in 26+ years old probationers testing positive for marijuana since marijuana was legalized for recreational use.

NOTE: SAMSHA RELEASED NATIONAL DATA ON DRUG USE FOR 2014 IN SEPTEMBER 2015. HOWEVER, STATE DRUG USE DATA FOR 2014 WILL NOT BE AVAILABLE UNTIL TOWARD THE END OF THE YEAR 2015.

Data

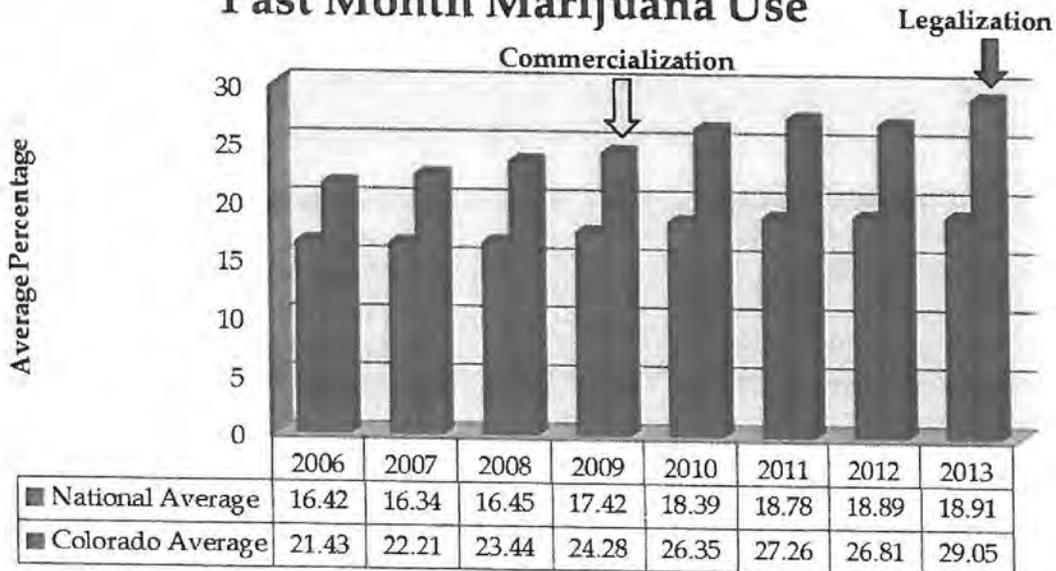
College Age (18 to 25 Years Old)

Average Past Month Use of Marijuana College Age (18 to 25 Years Old)



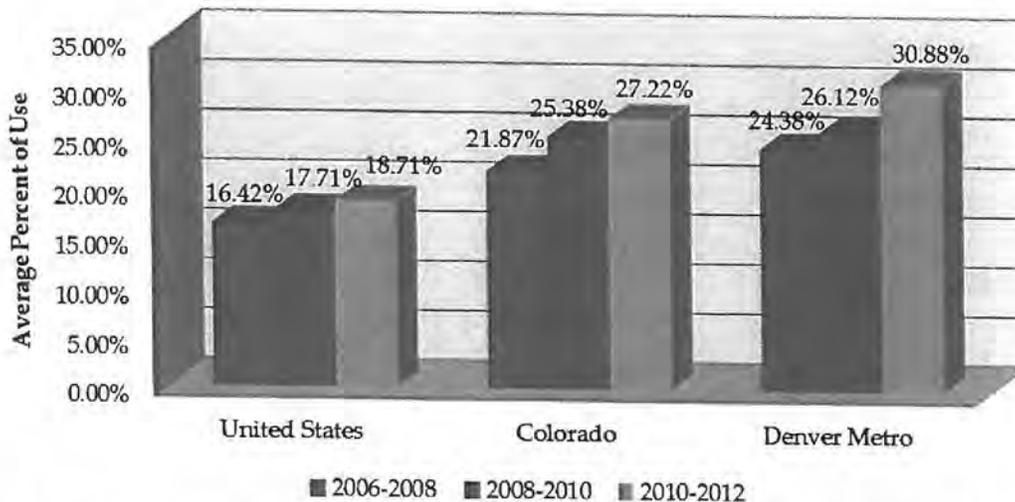
SOURCE: SAMHSA.gov, National Survey on Drug Use and Health, 2006-2013

College Age (18 to 25 Years Old) Past Month Marijuana Use



SOURCE: SAMHSA.gov, National Survey on Drug Use and Health, 2006 - 2013

Prevalence of Past 30-Day Marijuana Use, 18 to 25 Years Old, 2006-2012



SOURCE: Denver Epidemiology Workgroup (DEWG), Denver Office of Drug Strategy, October 29, 2014 and the National Survey of Drug Use and Health, Sub-state Estimates 2006-2012

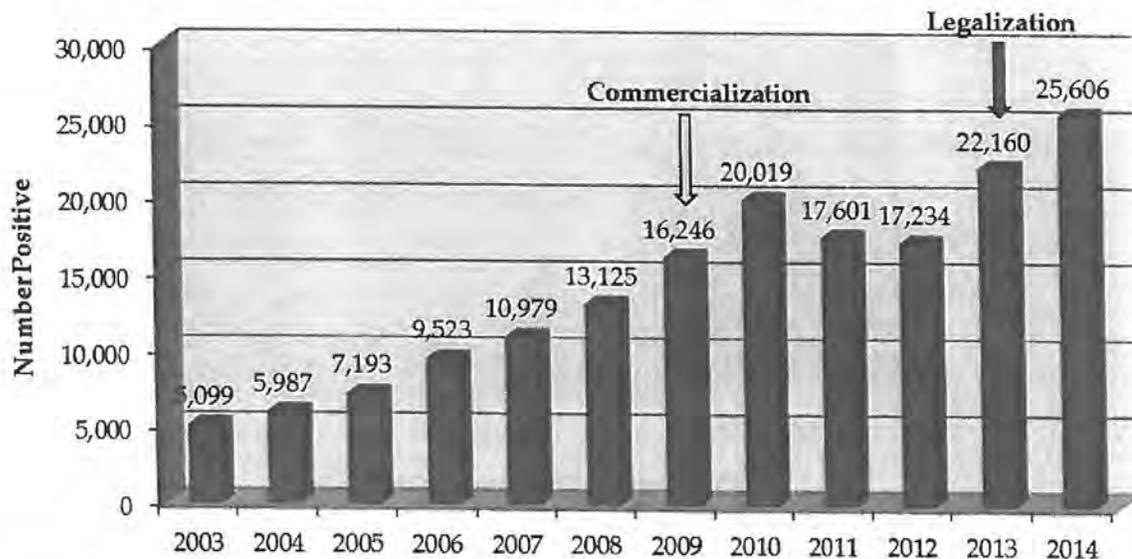
States for Past Month Marijuana Use College Age (18 to 25 Years Old), 2013¹

<u>Top 10</u> (Medical Marijuana States in 2013)	<u>Bottom 10</u> (Non-Medical Marijuana States in 2013)
National Rate = 18.91%	

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Rhode Island – 29.79% 2. ++Colorado – 29.05% 3. Vermont – 28.74% 4. New Hampshire – 27.77% 5. Massachusetts – 26.64% 6. ++Washington – 25.56% 7. Maine – 24.71% 8. Connecticut – 24.41% 9. Oregon – 23.39% 10. Montana – 23.04% | <ol style="list-style-type: none"> 41. Oklahoma – 14.43% 42. Arkansas – 14.28% 43. Wyoming – 14.12% 44. Idaho – 14.05% 45. North Dakota – 14.04% 46. Alabama – 13.93% 47. Texas – 13.88% 48. South Dakota – 12.68% 49. Kansas – 12.23% 50. Utah – 10.91% |
|---|--|

++ Legalized recreational marijuana in 2013

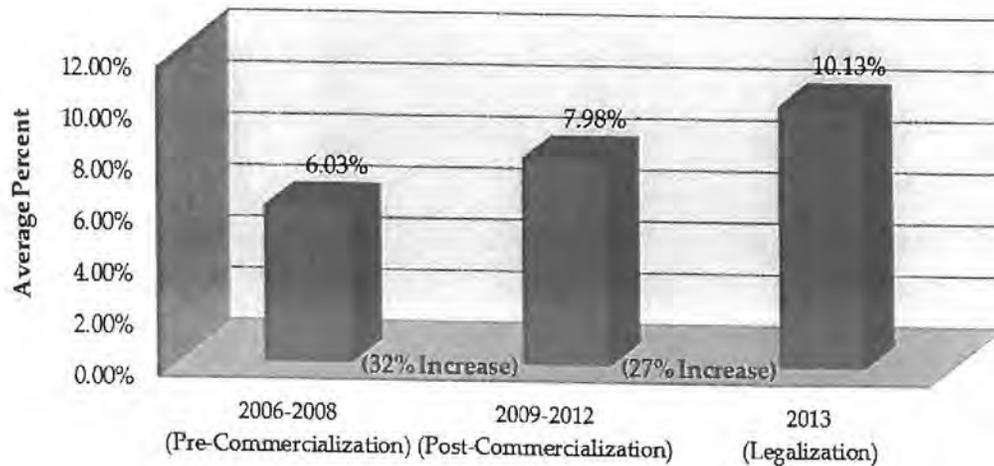
State of Colorado Probation Number of Positive THC Urinalyses Ages 18 to 25 Years Old



SOURCE: State of Colorado Judicial Branch, Division of Probation Services

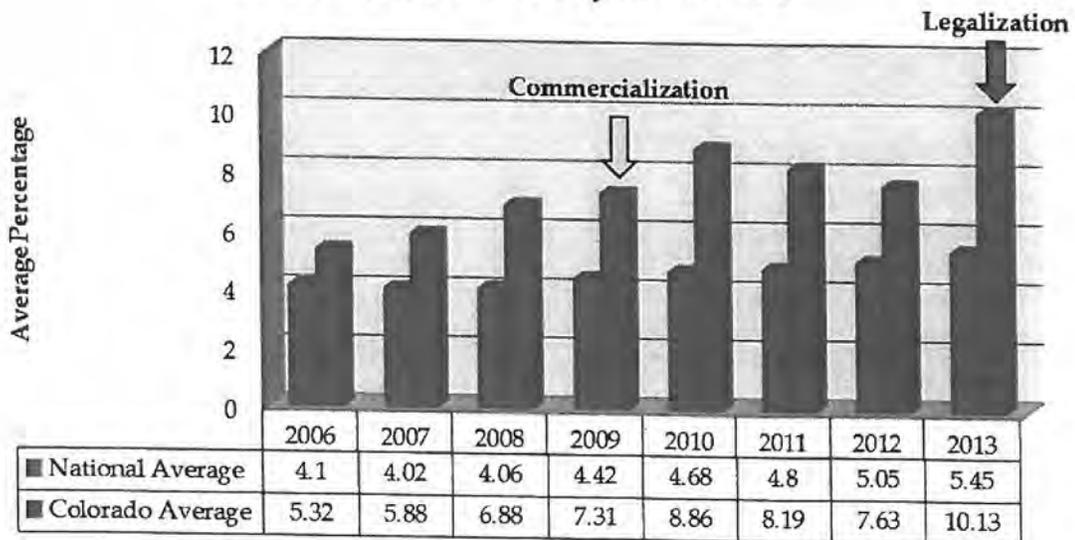
Adults (26+ Years Old)

Average Past Month Use of Marijuana Adults (Age 26+ Years Old)



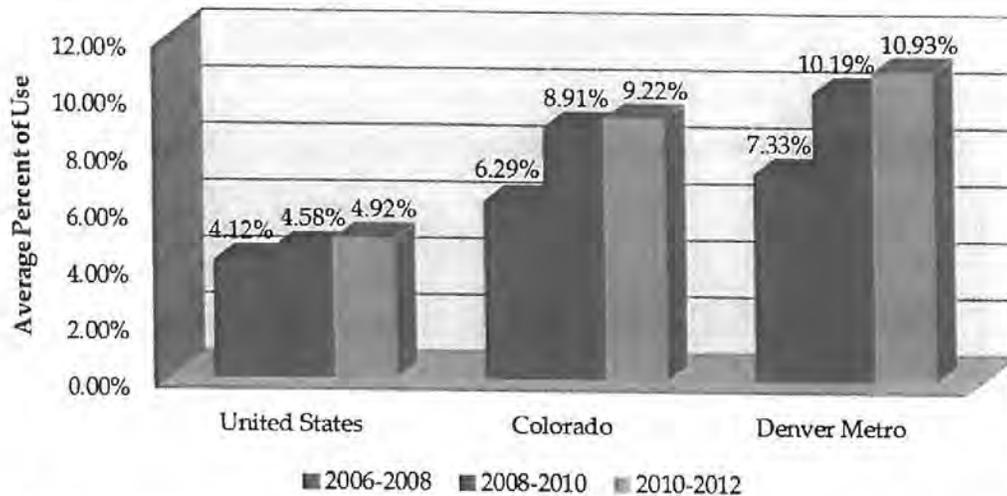
SOURCE: SAMHSA.gov, National Survey on Drug Use and Health, 2006-2013

Adult (Age 26+ Years Old) Past Month Marijuana Use



SOURCE: SAMHSA.gov, National Survey on Drug Use and Health, 2006-2013

Prevalence of Past 30-Day Marijuana Use, 26+ Years Old, 2006-2012



SOURCE: Denver Epidemiology Workgroup (DEWG), Denver Office of Drug Strategy, October 29, 2014 and the National Survey of Drug Use and Health, Sub-state Estimates 2006-2012

States for Past Month Marijuana Use Adults 26 Years Old and Older, 2013¹

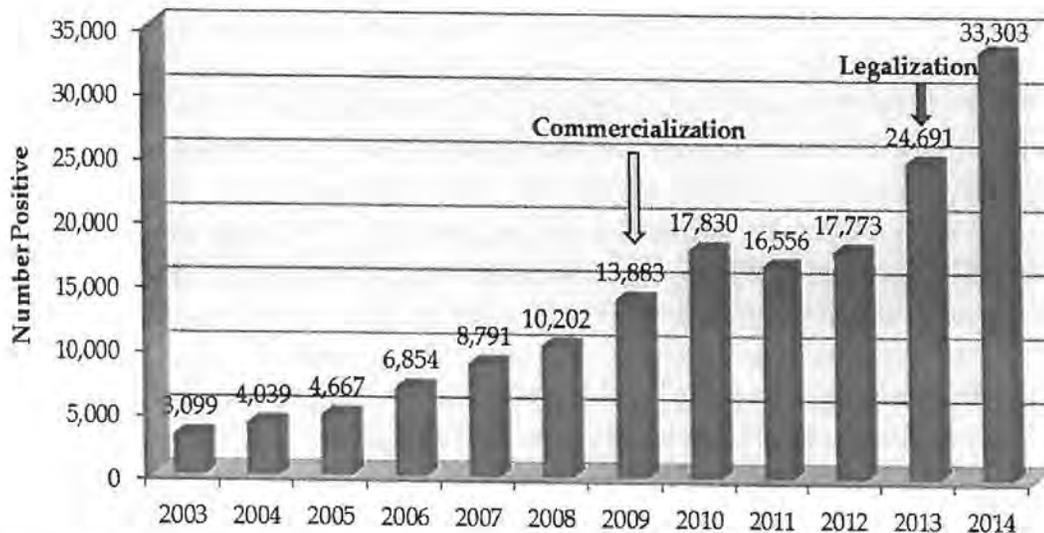
<u>Top 10</u> (Medical Marijuana States in 2013)	<u>Bottom 10</u> (Non-Medical Marijuana States in 2013)
National Rate = 5.45%	

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Rhode Island – 11.18% 2. Alaska – 10.60% 3. ++Washington – 10.39% 4. Oregon – 10.37% 5. ++Colorado – 10.13% 6. Vermont – 8.88% 7. Montana – 8.44% 8. Maine – 7.95% 9. Michigan – 7.64% 10. New Mexico – 7.23% | <ol style="list-style-type: none"> 41. South Dakota – 3.67% 42. **New Jersey – 3.64% 43. Texas – 3.62% 44. West Virginia – 3.57% 45. Kentucky – 3.53% 46. Alabama – 3.41% 47. Louisiana – 3.33% 48. Mississippi – 3.26% 49. North Dakota – 3.26% 50. Kansas – 2.90% |
|---|---|

++ Legalized recreational marijuana in 2013

** First dispensary opened in December 2012

State of Colorado Probation Number of Positive THC Urinalyses Ages 26+ Years Old



SOURCE: State of Colorado Judicial Branch, Division of Probation Services

Colorado Adult Marijuana Use Demographics?

According to the Colorado Behavior Risk Factor Surveillance System, 2014:

- 13.6 percent of adults (18+ years old) are current users of marijuana
- Approximately 1 out of 3 current users report using marijuana daily
- A little less than 1 in 5 (18.8 percent) report driving after using marijuana
- Highest current use demographics:
 - Younger adults (18 to 24 years old)
 - Less than high school education
 - Lower household income
 - Black
 - Gay/Lesbian/Bisexual adults
 - Men
- Three highest current use areas in Colorado:
 - Boulder 18.9 percent
 - Denver 18.5 percent
 - Mountain Area West of Denver 15.6 percent

Related Material

Marijuana Intoxication Blamed for More Deaths, Injuries: CBS4 Investigates reporter Brian Maass, in May of 2015, did a report on marijuana intoxication and deaths. One case cited was an 18-year-old former outstanding soccer player (Daniel Juarez) who was smoking marijuana with a friend and subsequently told the friend he did not want anymore because he was too high. According to witnesses, he began acting irrationally, running wild, stripping off his clothes and went into an apartment. He then got a knife and stabbed himself 20 times, one of which pierced his heart. The autopsy report showed 38.2 nanograms of THC in his blood at the time of death. The level set for impaired driving by the state of Colorado is 5 nanograms.

A second case cited was a University of Wyoming 19-year-old student (Levy Pongi) who was visiting Denver. Apparently he and his friends were ingesting marijuana edibles when the student began acting irrationally by upending furniture, tipping over lamps then rushing out on the hotel balcony and jumping to his death. This student had 7.2 nanograms of THC in his blood at time of death.

A third case cited was a wife (Kristine Kirk) who called 911 to report her husband (Richard Kirk) was acting erratically after eating marijuana edibles. While she was on the phone, her husband shot and killed her in front of their three children. The husband's lawyer claimed he was not responsible for his actions due to "involuntary" intoxication.

A fourth case cited was a 17-year-old Boulder high school student (Brant Clark) who committed suicide. According to his mother he had consumed a large amount of marijuana at a party and then suffered major psychotic episodes requiring emergency care at two hospitals over a three-day period. Three days later he took his own life leaving behind a note that said, "Sorry for what I have done. I wasn't thinking the night I smoked myself out." This case occurred in 2007 prior to the commercialization of medical marijuana.

A fifth case cited was an individual (Tron Doshe) who was returning home from a Colorado Rockies game and had lost his keys. He attempted to climb the outside of the apartment building to reach his balcony when he fell to his death. This death was ruled an accident. The autopsy report showed that this individual had 27.3 nanograms of marijuana in his system, 5 times over Colorado's legal limit and no other drugs were found in his system.

The last case cited was a college student (Luke Goodman) who was on a skiing vacation with his family in Keystone, ingested marijuana edibles and subsequently shot himself to death. The autopsy report showed that he had 3.1 nanograms of THC in his system but that family members said he acted extremely irrational after ingesting the edibles.

Doctor Chris Colwell, chief of Emergency Medicine at Denver Health Medical Center, said, "Since the legalization of marijuana in Colorado, he has seen more and more cases like these of people who have ingested marijuana making poor decisions, decisions they would not otherwise make." He said, "In some cases they will ingest marijuana and behave in a way we would describe as psychotic." Dr. Colwell goes on to state several times each week they see people at the emergency department who have ingested marijuana and are acting suicidal. He states that they have to be restrained to ensure they are not a danger to themselves or other people. Dr. Colwell recalls one example in which a man dressed as Super Man ingested marijuana edibles and then jumped off a balcony as if he could fly. Although the man survived, he suffered several fractures.³

Marijuana Edibles Blamed for Keystone Death: Luke Goodman, a 23-year-old college graduate was on a two-week ski vacation with his family. He and a cousin purchased marijuana edibles and marijuana. They began ingesting the edible marijuana. Apparently Goodman consumed several peach tart candies and several hours later was reported to be jittery, incoherent and talking non-sensibly. His cousin reports that he made eye contact but didn't see them. His cousin described him as "pretty weird and relatively incoherent. It was almost like something else was speaking through him." Apparently the family left the condo and Luke Goodman retrieved a handgun he traveled with and shot himself to death. His cousin and family members referred to him as well-adapted, well-adjusted with no signs of depression or suicidal thoughts. His cousin said that, "He was the happiest guy in the world. He had everything going for him."^{4,5,6}

Hiker Falls to His Death: Twenty-one year old Justin Bondi fell 150 feet to his death while hiking with a friend. According to the friend, on May 3, 2015 they stopped to eat sandwiches while hiking. The friend said that Bondi, "suddenly started shaking" and then fell to his death. The friend later acknowledged to investigators that they had smoked marijuana before embarking on their hike. The autopsy report showed marijuana, a metabolic of cocaine and Xanax. "A 'marijuana drink' and a 'metal tool commonly used in association with marijuana' were also found at the scene according to the police report."⁷

Comedian Takes Too Much of Colorado Marijuana: "Comedian Ralphie May was escorted by police out of his concert venue on Thursday night after he allegedly indulged in too many marijuana-infused edibles and 'lost the plot' on stage." Apparently the 42-year-old entertainer was so high that he struggled to make it onto the stage. While trying to continue, he apparently couldn't put a sentence together, had trouble finishing a joke and constantly lost his place. Obviously the audience was not

happy and demanded refunds. This took place at Avalon Theater in Grand Junction, Colorado.⁸

Colorado Adult Marijuana Use Now Almost Double the National Average: “A new statewide study funded by the Colorado Department of Public Health and Environment found that 13.6% of Colorado adults are regular users of marijuana – almost double the rate (7.4%) of the entire country, according to recent Health and Human Services studies.” “Denver is home to the most number of marijuana stores – and leads the state with 18.5% of adults as current users.”⁹

Marijuana Use Increases in Colorado, According to New Federal Survey: “As marijuana legalization took hold in Colorado, the estimated percentage of regular cannabis users in the state jumped to the second-highest level in the country, according to new federal stats.” “Only Rhode Island topped Colorado in the percentage of residents who reported using marijuana as frequently.”¹⁰

Colorado Partly Blamed as Pot Use Up: “An increasing number of visitors to Yellowstone National Park are being prosecuted for possession of small amounts of medical and recreational pot, which remains illegal on federal land. Park rangers attribute the trend to ignorance of federal law and the growing prevalence of legal pot in other states, including neighboring Colorado, which has legal medical and recreational marijuana. The U.S. attorney’s office prosecuted 21 marijuana cases from Yellowstone in 2010 and 52 in 2014. As of December 17th, the office had handled 80 cases in 2014. Those convicted of misdemeanor possession typically receive \$1,000 fines.”¹¹

Study Shows Increased Adult Marijuana Use and Binge Drinking in States That Legalize Medical Marijuana: “Researchers from Emory’s [University] Rollins School of Public Health found an increase in adult marijuana use and binge drinking after the implementation of medical marijuana laws (MML) in ten states that permit marijuana use for medical purposes.” Dr. Heife Wen, PhD states, “These potential public health consequences may impose considerable economic and social costs on the society.”¹²

Cannabis Smokers Warned They Risk Poorer Exam Grades: “After studying data on more than 54,000 course grades achieved by students from around the world who were enrolled at Maastricht University [Netherlands] before and after the restrictions were introduced, the economists came to a striking conclusion.” [Before and after the restrictions were introduced, for certain out-of-country students from buying marijuana.] In a paper presented to the Royal Economic Society conference in Manchester, the economists revealed that those who could no longer legally buy

cannabis did better in their studies. University economist Olivier Marie stated, "The effects we find are large, consistent and statistically very significant." The economist goes on, "In line with how THC consumption affects cognitive functioning, we find that performance gains are larger for courses that require more numerical/mathematical skills."¹³

Marijuana-Using Employees: According to Quest Diagnostics: "Drug use costs the U.S. economy billions of dollars annually. According to the 1998 report by the Department of Labor, 73 percent of all current drug users aged 18 and older were employed. This calculates to 6.7 million full-time workers and 1.6 million part-time workers. Marijuana use among employees can lead to lower productivity, increased workplace accidents and injuries, increased absenteeism and lower morale." "According to the U.S. Department of Labor, drug abuse in the workplace costs employers approximately \$81 billion each year in lost productivity."¹⁴

Drug Tests in the Workforce: "Quest Diagnostics' Drug Testing Index showed that, in 2013, positive drug test results in the workforce for marijuana increased nationwide by 6.2 percent. This is the first increase in positive reported drug tests in a decade. Positive tests for marijuana were dramatically higher in the two states with legal recreational marijuana. The marijuana positivity rates increased 20 percent in Colorado and 23 percent in Washington."¹⁵

Sources

¹ National Survey on Drug Use and Health (NSDUH), Substance Abuse and Mental Health Services Administration (reports 2006 through 2013)

² Colorado Behavioral Risk Factor Surveillance System, "Marijuana Use in Colorado," Colorado Department of Public Health and Environment

³ Brian Maass, CBS4 Investigates, May 18, 2015, "Marijuana Intoxication Blamed In More Deaths, Injuries," <<http://denver.cbslocal.com/2015/05/18/marijuana-intoxication-blamed-in-more-deaths-injuries/>>, accessed May 19, 2015

⁴ Brian Maass, CBS4 Investigates, March 25, 2015, "Marijuana Edibles Blamed For Keystone Death," <<http://denver.cbslocal.com/2015/03/25/marijuana-edibles-blamed-for-keystone-death/>>, accessed March 26, 2015

⁵ From Staff Reports, *Tulsa World*, March 26, 2015, "Mother of local man who committed suicide says marijuana candy in Colorado led to his death," <http://www.tulsaworld.com/news/local/mother-of-local-man-who-committed-suicide-says-marijuana-candy/article_5f34296b-7bec-5689-90b5-fd677d2dd8e5.html>, accessed March 26, 2015

⁶ National Families in Action & Partners, *The Marijuana Report*, May 27, 2015, *The Marijuana Report.org/The Marijuana Report*, accessed May 28, 2015

⁷ Mitchel Byars, *Daily Camera*, August 20, 2015, "Boulder coroner: Man's fall accidental; drugs may have been involved," <http://www.dailycamera.com/news/boulder/ci_28676915/boulder-coroner-mans-fall-accidental-drugs-may-have>, accessed August 21, 2015

⁸ Sophie Jane Evans, *Dailymail.com*, January 18, 2015, "Police called to comedian Ralphyie May's Colorado show after 'he takes too much legal marijuana', forgets his act and causes uproar among the audience," <<http://www.dailymail.co.us/news/>>, accessed January 18, 2015

⁹ Smart Approaches to Marijuana (SAM), "Colorado Adult Marijuana Use Now Almost Double the National Average," press release, June 16, 2015

¹⁰ John Ingold, *The Denver Post*, December 26, 2014, "Marijuana use increased in Colorado, according to new federal survey", <http://www.denverpost.com/news/ci_27212493/marijuana-use-increased-colorado-according-new-federal-survey>, accessed December 26, 2014

¹¹ *The Denver Post/Colorado Roundup*, Tuesday, January 6, 2015 "Yellowstone National Park - Colorado partly blamed as pot use up"

¹² Woodruff Health Sciences Center, May 6, 2015, "Emory study shows increased adult marijuana use and binge drinking in states that legalize medical marijuana," <http://www.news.emory.edu/stories/2015/05/legalize_medical_marijuana_abuse/index.html>, accessed May 7, 2015

¹³ Jamie Doward, *The Guardian*, April 22, 2015, "Cannabis smokers warned they risk poorer exam grades," <<http://www.theguardian.com/society/2015/apr/11/cannabis-smokers-risk-poorer-grades-dutch-study-legalisation>>, accessed April 11, 2015

¹⁴ Quest Diagnostics webpage,
<<http://www.questdiagnostics.com/home/companies/employer/drug-screening/drugs-tested.html/>>, accessed November 29, 2014

¹⁵ Institute for Behavior and Health, Inc., *“Workplace Drug Testing in the Era of Legal Marijuana*, March 2015”

SECTION 4: Emergency Room and Hospital Marijuana-Related Admissions

Introduction

The following section summarizes emergency room (ER) and hospital data related to marijuana in Colorado. The information, when available, compares the early medical marijuana era (2006 – 2008), the medical marijuana commercialization and expansion era (2009 – current) and the recreational marijuana era (2013 – current) in Colorado.

- **2006 – 2008:** There were between 1,000 and 4,800 medical marijuana cardholders and no known dispensaries operating in Colorado.
- **2009 – Current:** There were over 108,000 medical marijuana cardholders and 532 licensed dispensaries operating in Colorado by the end of 2012. See the introduction at the beginning of this report for more details on the commercialization and explosion of Colorado’s medical marijuana trade.
- **2013 – Current:** In November 2012, Colorado voters passed Constitutional Amendment 64 which legalized marijuana for recreational purposes for anyone over 21 years of age. The amendment also allowed for licensed marijuana retail stores, cultivation operations and edibles manufacturing.

Some Findings

- Colorado emergency room visits per year related to marijuana:
 - 2013 – 14,148
 - 2014 – 18,255

- In 2014, when retail marijuana businesses began operating, there was a **29 percent** increase in the number of marijuana-related emergency room visits in only one year.
- In 2014, when retail marijuana businesses began operating, the rate of emergency department visits likely related to marijuana increased **25 percent** in just one year.
- Emergency room visits related to marijuana per 100,000 in 2013:
 - Denver rate – **415.46**
 - Colorado rate – **248.32**
 - Denver's rate was **67 percent** higher than Colorado's rate and increased **25 percent** when recreational marijuana was legalized in 2013.
- Hospitalizations related to marijuana:
 - 2011 – **6,305**
 - 2012 – **6,715**
 - 2013 – **8,272**
 - 2014 – **11,439**
- In 2014, when retail marijuana businesses began operating, there was a **38 percent** increase in the number of marijuana-related hospitalizations in only one year.
- In 2014, when retail marijuana stores began operating, the rate of hospitalizations likely related to marijuana increased **20 percent** in only one year.
- Hospital discharges related to marijuana per 100,000 in 2013:
 - Denver rate – **245.94**
 - Colorado rate – **148.80**
 - Denver's rate was over **65 percent higher** than Colorado's rate and increased **29 percent** when recreational marijuana was legalized in 2013.
- In the three years after medical marijuana was commercialized, compared to the three years prior, there was a **46 percent** increase in hospitalization related to marijuana.

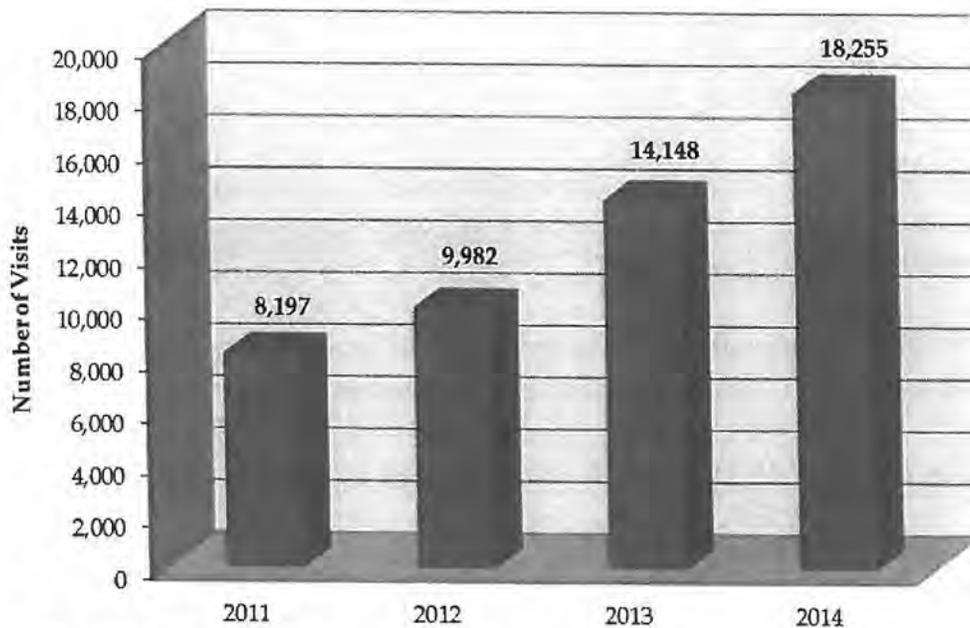
- Children’s Hospital Colorado reported 2 marijuana ingestions among children under 12 years old in 2009 compared to 16 in 2014.

Definitions

Marijuana-Related: Also referred to as “marijuana mentions.” This means the data could be obtained from lab tests, self-admitted or some other form of validation by the physician. That does not necessarily prove marijuana was the cause of the emergency admission or hospitalization.

Data

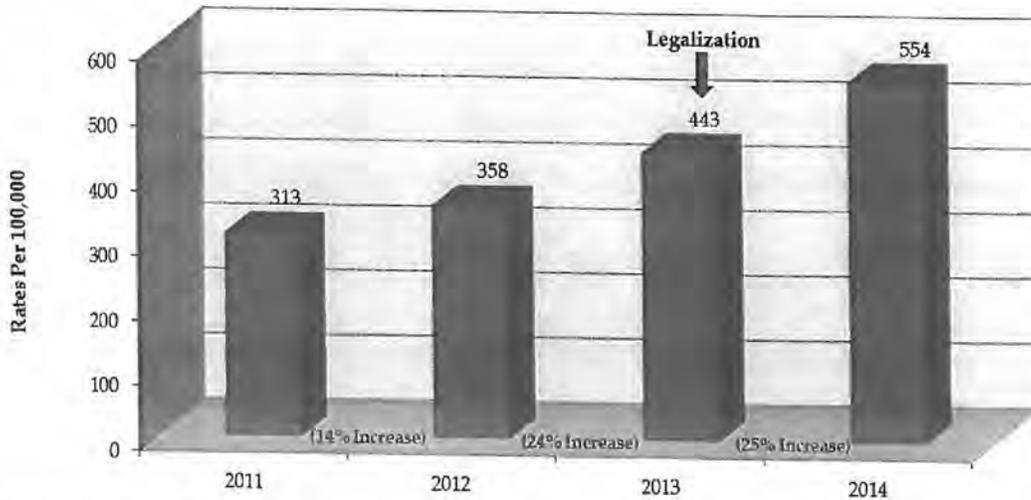
Marijuana-Related Emergency Room Visits



SOURCE: Colorado Hospital Association, Emergency Department Visit Dataset. Statistics prepared by the Health Statistics and Evaluation Branch, Colorado Department of Public Health and Environment

NOTE: 2011 AND 2012 EMERGENCY DEPARTMENT DATA REFLECTS INCOMPLETE REPORTING STATEWIDE. INFERENCES CONCERNING TRENDS, INCLUDING 2011 AND 2012, SHOULD NOT BE MADE. 2014 FIGURES SHOULD BE ACCURATE, OR CLOSE TO ACCURATE, BUT HAVE NOT YET BEEN FINALLY CONFIRMED.

Colorado Emergency Department Rates that are Likely Related to Marijuana*



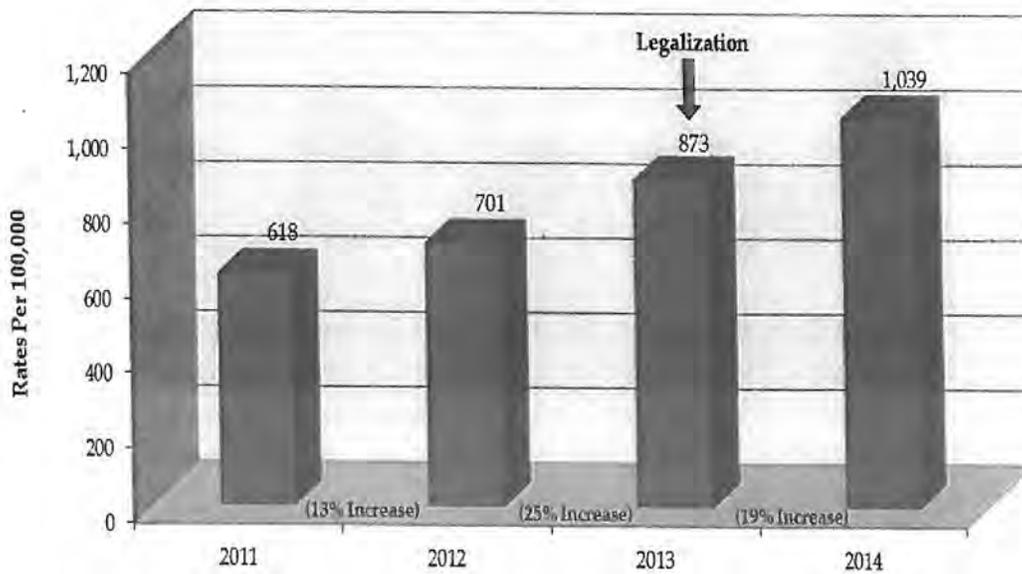
*Rates of Emergency Department (ED) Visits with Possible Marijuana Exposures, Diagnoses, or Billing Codes in the First Three Diagnosis Codes per 100,000 ED Visits by Year in Colorado

SOURCE: Colorado Department of Public Health and Environment, *Monitoring Health Concerns Related to Marijuana in Colorado: 2014*

NOTE: "POSSIBLE MARIJUANA EXPOSURES, DIAGNOSES, OR BILLING CODES IN THE FIRST THREE DIAGNOSIS CODES: THESE DATA WERE CHOSEN TO REPRESENT THE HD AND ED VISITS WHERE MARIJUANA USE WAS LIKELY A CAUSAL OR STRONG CONTRIBUTING FACTOR TO THE UNDERLYING REASON FOR THE HD AND ED VISIT. THESE DATA CONSISTED OF HD AND ED VISITS CODED WITH DISCHARGE CODES RELATED TO POISONING BY PSYCHODYSLEPTICS OR SEPARATE CODES RELATED TO CANNABIS ABUSE IN THE FIRST THREE DIAGNOSIS CODES WHICH ARE MORE LIKELY TO BE CLINICALLY SIGNIFICANT CODES." - COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, *MONITORING HEALTH CONCERNS RELATED TO MARIJUANA IN COLORADO: 2014*

NOTE: DATA NOT AVAILABLE PRE-2011.

Colorado Emergency Department Rates that Could be Related to Marijuana*



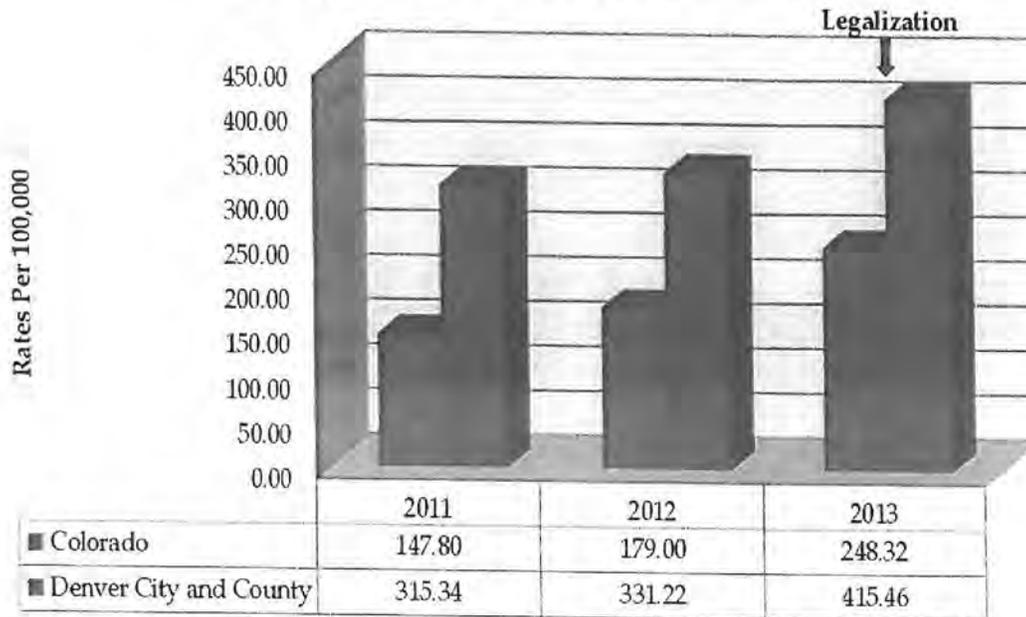
*Rates of Emergency Department (ED) Visits with Possible Marijuana Exposures, Diagnoses, or Billing Codes per

SOURCE: Colorado Department of Public Health and Environment, *Monitoring Health Concerns Related to Marijuana in Colorado: 2014*

NOTE: "POSSIBLE MARIJUANA EXPOSURES, DIAGNOSES, OR BILLING CODES IN ANY OF LISTED DIAGNOSIS CODES: THESE DATA WERE CHOSEN TO REPRESENT THE HD AND ED VISITS WHERE MARIJUANA COULD BE A CAUSAL, CONTRIBUTING, OR COEXISTING FACTOR NOTED BY THE PHYSICIAN DURING THE HD OR ED VISIT. FOR THESE DATA, MARIJUANA USE IS NOT NECESSARILY RELATED TO THE UNDERLYING REASON FOR THE HD OR ED VISIT. SOMETIMES THESE DATA ARE REFERRED TO AS HD OR ED VISITS WITH ANY MENTION OF MARIJUANA." - COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, *MONITORING HEALTH CONCERNS RELATED TO MARIJUANA IN COLORADO: 2014*

NOTE: DATA NOT AVAILABLE PRE-2011.

Emergency Department Rates Per 100,000 Marijuana-Related, 2011-2013

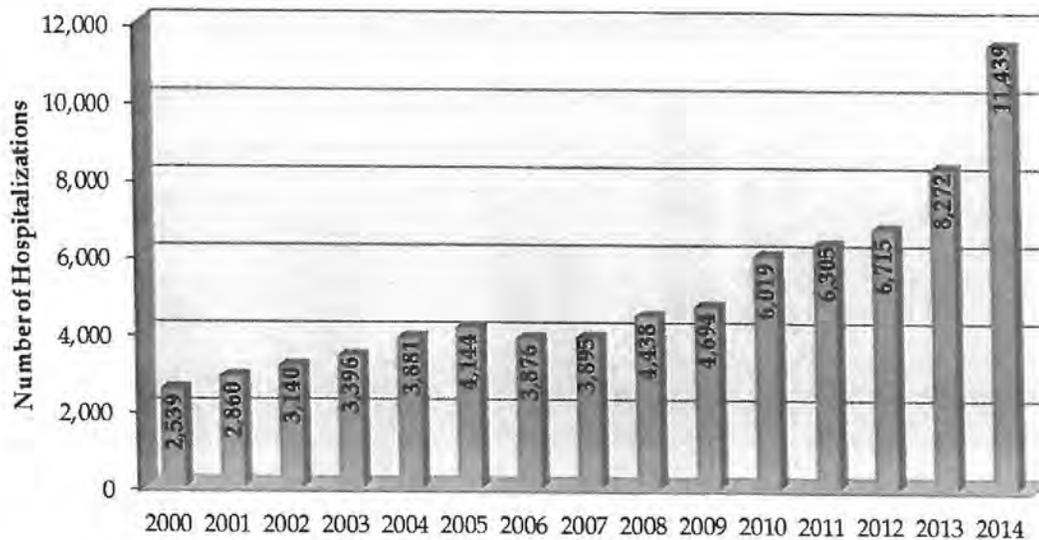


SOURCE: Denver Office of Drug Strategy, The Denver Drug Strategy Commission, *Proceedings of the Denver Epidemiology Work Group (DEWG)*, October 29, 2014

❖ The highest rates from 2011 to 2013 were among young adults (18 to 25 years).

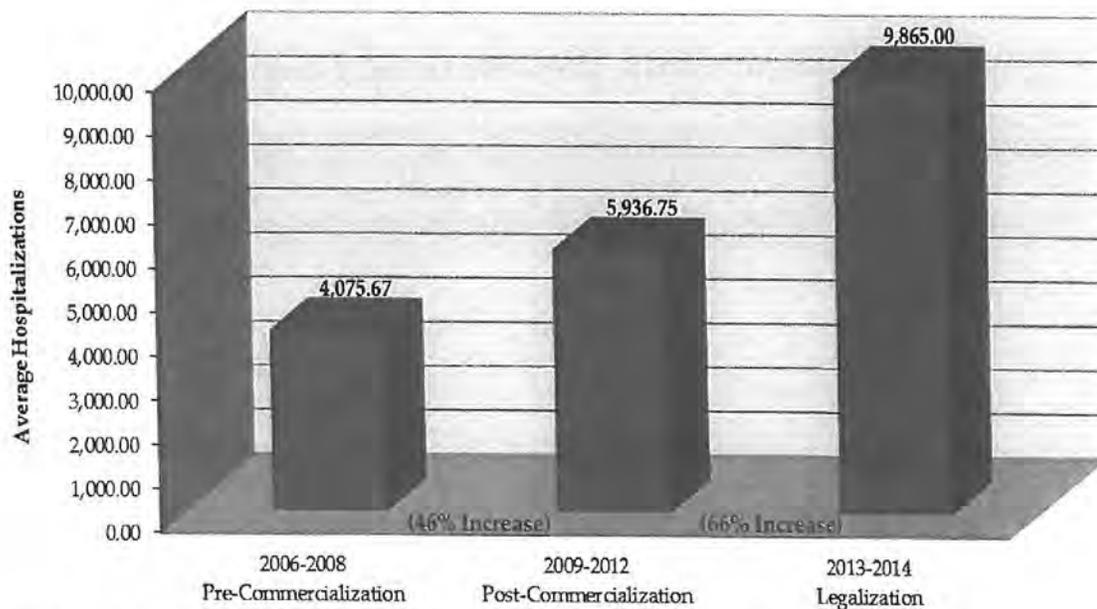
NOTE: 2011 AND 2012 EMERGENCY ROOM DATA DOES NOT REPRESENT COMPLETE, STATEWIDE PARTICIPATION. INCREASES OBSERVED OVER THESE THREE YEARS MAY BE DUE PARTLY, OR COMPLETELY, TO INCREASES IN REPORTING BY EMERGENCY ROOMS.

Hospitalizations Related to Marijuana



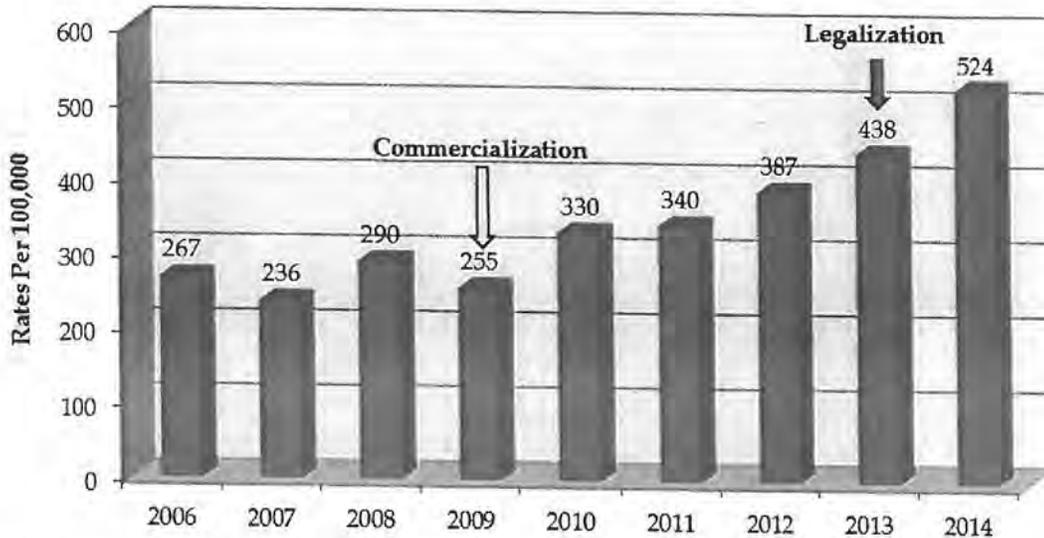
SOURCE: Colorado Hospital Association, Hospital Discharge Dataset. Statistics prepared by the Health Statistics and Evaluation Branch, Colorado Department of Public Health and Environment

Average Marijuana-Related Hospitalizations



SOURCE: Colorado Hospital Association, Hospital Discharge Dataset. Statistics prepared by the Health Statistics and Evaluation Branch, Colorado Department of Public Health and Environment

Colorado Hospitalization Rates that are Likely Related to Marijuana*

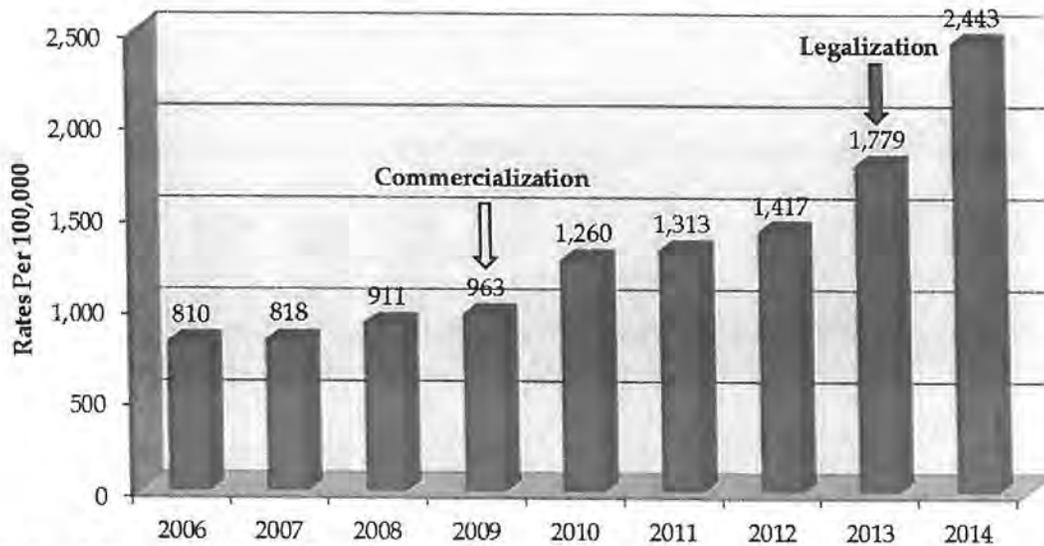


*Rates of Hospitalization (HD) Visits with Possible Marijuana Exposures, Diagnoses, or Billing Codes in the First Three Diagnosis Codes per 100,000 HD Visits by Year in Colorado

SOURCE: Colorado Department of Public Health and Environment, *Monitoring Health Concerns Related to Marijuana in Colorado: 2014*

NOTE: "POSSIBLE MARIJUANA EXPOSURES, DIAGNOSES, OR BILLING CODES IN THE FIRST THREE DIAGNOSIS CODES: THESE DATA WERE CHOSEN TO REPRESENT THE HD AND ED VISITS WHERE MARIJUANA USE WAS LIKELY A CAUSAL OR STRONG CONTRIBUTING FACTOR TO THE UNDERLYING REASON FOR THE HD AND ED VISIT. THESE DATA CONSISTED OF HD AND ED VISITS CODED WITH DISCHARGE CODES RELATED TO POISONING BY PSYCHODYSLEPTICS OR SEPARATE CODES RELATED TO CANNABIS ABUSE IN THE FIRST THREE DIAGNOSIS CODES WHICH ARE MORE LIKELY TO BE CLINICALLY SIGNIFICANT CODES." - COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, *MONITORING HEALTH CONCERNS RELATED TO MARIJUANA IN COLORADO: 2014*

Colorado Hospitalization Rates that Could be Related to Marijuana*

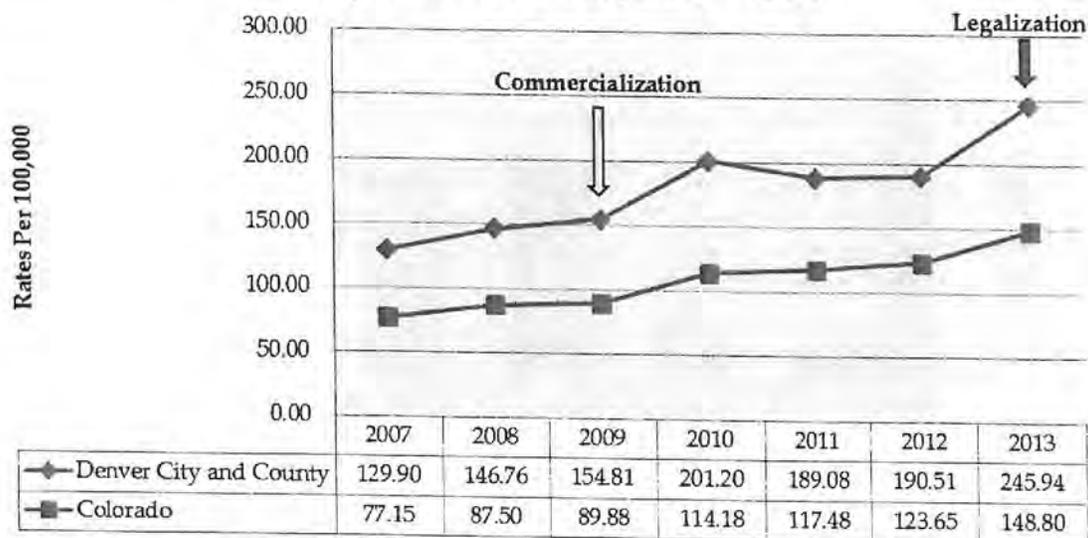


*Rates of Hospitalization (HD) Visits with Possible Marijuana Exposures, Diagnoses, or Billing Codes per 100,000 HD Visits by Year in Colorado

SOURCE: Colorado Department of Public Health and Environment, *Monitoring Health Concerns Related to Marijuana in Colorado: 2014*

NOTE: "POSSIBLE MARIJUANA EXPOSURES, DIAGNOSES, OR BILLING CODES IN ANY OF LISTED DIAGNOSIS CODES: THESE DATA WERE CHOSEN TO REPRESENT THE HD AND ED VISITS WHERE MARIJUANA COULD BE A CAUSAL, CONTRIBUTING, OR COEXISTING FACTOR NOTED BY THE PHYSICIAN DURING THE HD OR ED VISIT. FOR THESE DATA, MARIJUANA USE IS NOT NECESSARILY RELATED TO THE UNDERLYING REASON FOR THE HD OR ED VISIT. SOMETIMES THESE DATA ARE REFERRED TO AS HD OR ED VISITS 'WITH ANY MENTION OF MARIJUANA.'" - COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, *MONITORING HEALTH CONCERNS RELATED TO MARIJUANA IN COLORADO: 2014*

Hospital Discharge Rates Per 100,000 Marijuana-Related, 2007-2013

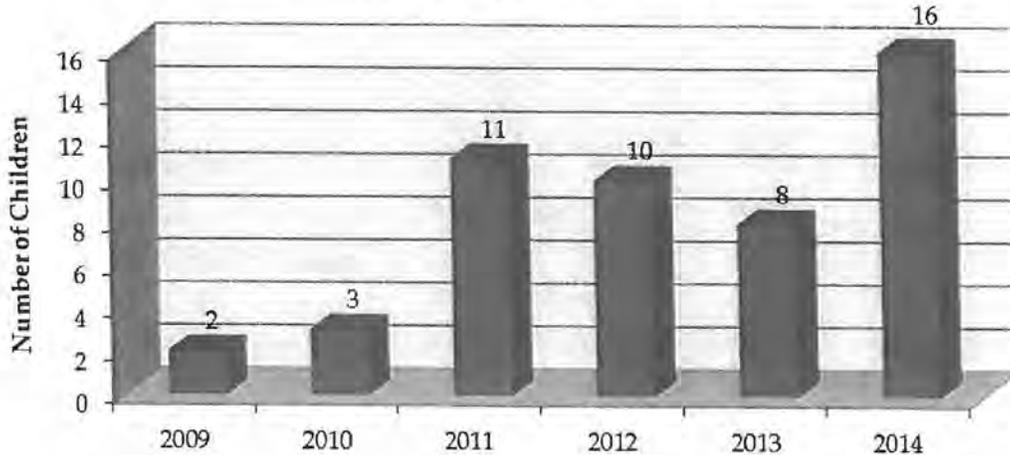


SOURCE: Denver Office of Drug Strategy, The Denver Drug Strategy Commission, *Proceedings of the Denver Epidemiology Work Group (DEWG)*, October 29, 2014

❖ The highest rates from 2011 to 2013 were among young adults (18 to 25 years).

NOTE: HOSPITAL DISCHARGE DATA REPRESENTS AN INDIVIDUAL'S INPATIENT STAY AT A HOSPITAL REQUIRING, AT MINIMUM, AN OVERNIGHT STAY AND IS IN REFERENCE TO WHEN THE PATIENT LEAVES THE HOSPITAL. A CODE IS ASSIGNED AS TO WHY THE PATIENT WAS IN THE HOSPITAL, CALLED THE ICD-9 CODE, WHICH IS USED FOR BOTH THE PATIENT'S MEDICAL RECORD AND FOR BILLING PURPOSES.

Marijuana Ingestion Among Children Under 12 Years-of-Age



SOURCE: George Sam Wang, M.D. and Lalit Bajaj, M.D., Children’s Hospital Colorado

Cost

Cost of Emergency Room: A study was conducted of a cross section of ER encounters from 2006 to 2008. The study found that “During our study period, the median charge for outpatient conditions in the emergency room was \$1,233.”¹

Related Material

Cannabis-Related ED Visits Rise in States With Legalized Use: “Cannabis use and abuse have increased significantly during the past few years, especially in states where use of the substance is now legal, new research suggests.” A study from the U.S. Healthcare Cost and Utilization Project show that emergency room visits coded for marijuana grew 50.4 percent between 2007 and 2012 in Colorado. This study was presented at the American Academy of Addiction Psychiatry (AAAP) 25th Annual meeting. “Everyone’s talking about Colorado, but why aren’t they also talking about the states with medical use of marijuana? There appears to be a flaw in the system,” lead author Abhishek Rai, MD, from the Department of Psychiatry at St. Mary Mercy

Hospital in Livonia, Michigan, told *Medscape Medical News*. "People with access to marijuana are using it and then coming to the ED," added Dr. Rai.²

Places With More Marijuana Dispensaries Have More Marijuana-Related Hospitalizations: A press release on August 10, 2015 from the University of Pittsburgh Schools of the Health Sciences released a study to be published in the scientific journal *Drug and Alcohol Dependence*. The study revealed that, "People who live in areas of California with a higher density of marijuana dispensaries experience a greater number of hospitalizations involving marijuana abuse and dependence."³

The Implications of Marijuana Legalization in Colorado: An article in the *Journal of the American Medical Association* by physicians from the Department of Emergency Medicine University of Colorado discusses the health implications of "marijuana policy liberalization." They write that, "Increased availability lead to increased health care utilization related to marijuana exposure. Exacerbation of chronic health conditions was expected. Tetrahydrocannabinol (THC) is associated with psychosis, anxiety, and depression symptoms, making exacerbation of underlying psychiatric disorders inevitable." The article further states, "However, there has been an increase in visits for pure marijuana intoxication. These were previously a rare occurrence, but even this increase is difficult to quantify. Patients may present to emergency departments (EDs) with anxiety, panic attacks, public intoxication, vomiting, or other nonspecific symptoms precipitated by marijuana use. The University of Colorado ED sees approximately 2000 patients per week; each week, an estimated 1 to 2 patients present solely for marijuana intoxication and another 10 to 15 for marijuana-associated illnesses."⁴

Five Students at a Denver Middle School Ingest Pot Edibles: A Denver middle school student had sprinkled marijuana on top of "rice crispy treats". Apparently five students ingested the marijuana, some of whom became ill. One of the students was rushed to the hospital at the request of her parents.⁵

3-Year-Old Rushed to Emergency A 3-year-old was taken to the emergency room after her father told the mother that the child was laying on the couch, seemed tired and not acting normally. At the hospital, the little girl vomited and was subsequently tested positive for marijuana. A search of the couple's residence found nearly 9 ounces of marijuana in a "plastic open top bin" and four marijuana plants growing. Officers also discovered suspected cocaine in the residence.⁶

Burglar Taken to Hospital. Two juveniles were caught burglarizing a marijuana dispensary in Denver. One of the juveniles had to be taken to the hospital because he was so intoxicated.⁷

Sources

¹ Caldwell N, Srebotnjak T, Wang T, Hsia R (2013 "How Much Will I get Charged for This?" Patient Charges for Top Ten Diagnoses in the Emergency Department, *PloS ONE* 8(2): e55491. Doi:10.1371/journal.pone.0055491, accessed January 2015

² Deborah Brauser, Medscape Medical News from the American Academy of Addiction Psychiatry (AAAP) 25th Annual Meeting, December 16, 2014, "Cannabis-Related ED Visits Rise in States with Legalized Use", <<http://www.medscape.com/viewarticle/836663>>, XXWAAWS December 16, 2014

³ University of Pittsburgh, Schools of the Health Sciences Media Relations, press release, August 10, 2015, <<http://www.upmc.com/media/NewsReleases/2015/Pages/mair-marijuana.aspx>>, accessed August 10, 2015

⁴ Andrew A. Monte, MD; Richard D. Zane, MD; and Kennon J. Heard, MD, PhD, Department of Emergency Medicine, University of Colorado, *Journal of the American Medical Association*, December 8, 2014, "The Implications of Marijuana Legalization in Colorado," <<http://jama.jamanetwork.com>>, accessed December 9, 2014

⁵ Anthony Cotton, *The Denver Post*, May 7, 2015, "Denver police: Five students at Skinner Middle School ingest pot edibles; girl cited", <http://www.denverpost.com/news/ci_28070625/denver-police-investigating-reports-that-students-at-middle>, accessed May 7, 2015

⁶ Alan Gaithright, ABC 7 News Denver, December 17, 2014, "Denver toddler ingests marijuana; parents charged with child abuse, drug possession, DA says," <<http://www.thedenverchannel.com/news/local-news/denver-toddler-ingests-marijuana-parents-charged-with-child-abuse-drug-possession-da-says>>, accessed December 17, 2014

⁷ Noelle Phillips, *The Denver Post*, January 14, 2015, "Two juveniles busted breaking into Denver marijuana dispensary," <http://denverpost.com/news/ci_27320321/two-juveniles-busted-breaking-into-denver-marijuana-dispensary>, accessed January 24, 2015

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SECTION 5: Marijuana-Related Exposure

Introduction

This section provides information primarily regarding Colorado marijuana-related self-reported calls to the Rocky Mountain Poison and Drug Center (RMPDC), Denver, Colorado.

The data comparisons are from 2006 through 2013. The information compares the early medical marijuana era (2006 – 2008), the medical marijuana commercialization/expansion era (2009 – current) and the recreational marijuana era (2013 – current) in Colorado.

- **2006 – 2008:** There were between 1,000 and 4,800 medical marijuana cardholders and no known dispensaries operating in Colorado.
- **2009 – Current:** There were over 108,000 medical marijuana cardholders and 532 licensed dispensaries operating in Colorado by the end of 2012. See the introduction at the beginning of this report for more details on the commercialization and explosion of Colorado's medical marijuana trade.
- **2013 – Current:** In November 2012, Colorado voters passed Constitutional Amendment 64 which legalized marijuana for recreational purposes for anyone over 21 years of age. The amendment also allowed for licensed marijuana retail stores, cultivation operations and edibles manufacturing.

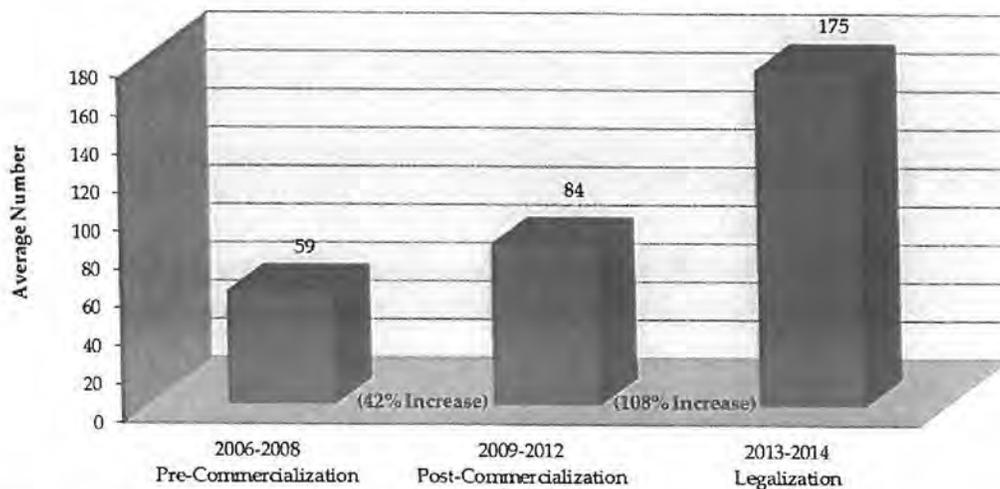
Some Findings

- In 2014, when retail marijuana businesses began operating, marijuana-only related exposures increased **72 percent** in only one year.

- In the years medical marijuana was commercialized (2009 – 2012), marijuana-related exposures averaged a **42 percent** increase from prior years (2001 – 2008) average.
- All ages Colorado marijuana-related exposures:
 - During the years 2013 – 2014, the average number of all ages exposures was **175** per year.
 - Exposures for all ages **doubled** in Colorado after legalization.
- Youth (ages 6 to 17 years old) marijuana-related exposures in Colorado:
 - During the years 2013 – 2014, the average number of children exposed was **45** per year.
 - This is an **80 percent** increase from medical marijuana commercialization years (2009 – 2012) average which was a **67 percent** higher increase over previous years (2006 – 2008) averages.
- Young children (ages 0 to 5 years old) marijuana-related exposures in Colorado:
 - During the years 2013 – 2014, the average number of children exposed was **31** per year.
 - This is a **138 percent** increase from the medical marijuana commercialization years (2009 – 2012) average which was a **225 percent** increase from prior years (2006 – 2008).
- Percent of total marijuana-related exposures involving children ages 0 to 5 years old:
 - During 2013 – 2014, a yearly average of **17.71 percent**
 - This is about triple the national average of **5.95 percent**

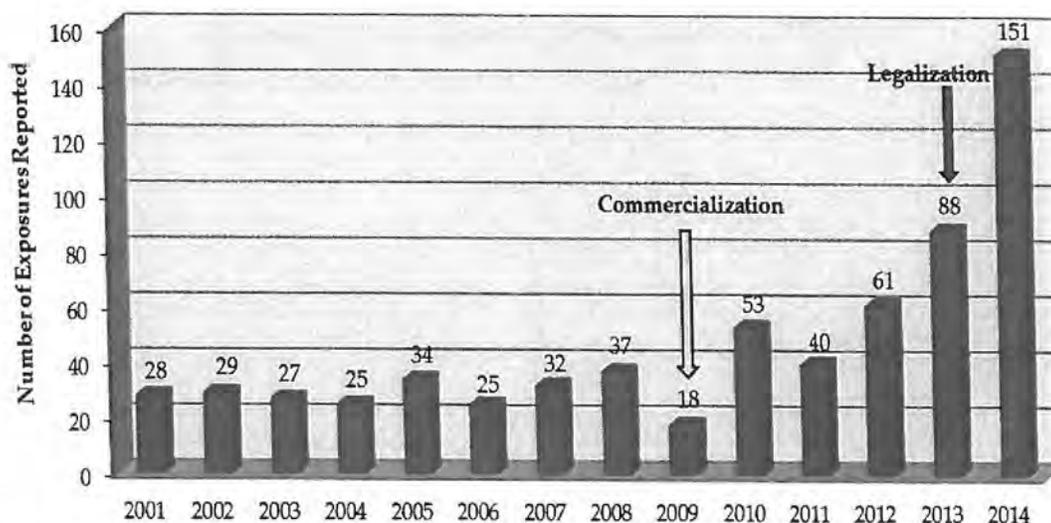
Data

**All Ages,
Average Number of Marijuana-Related Exposures**



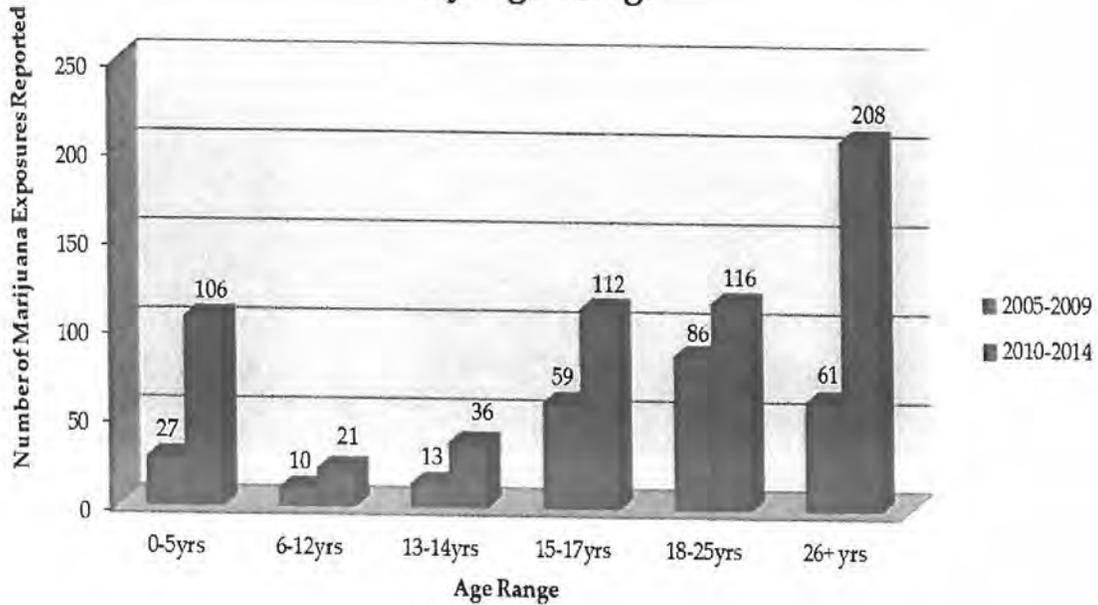
SOURCE: Rocky Mountain Poison and Drug Center

**Number of Exposures Reported for
Marijuana Only**



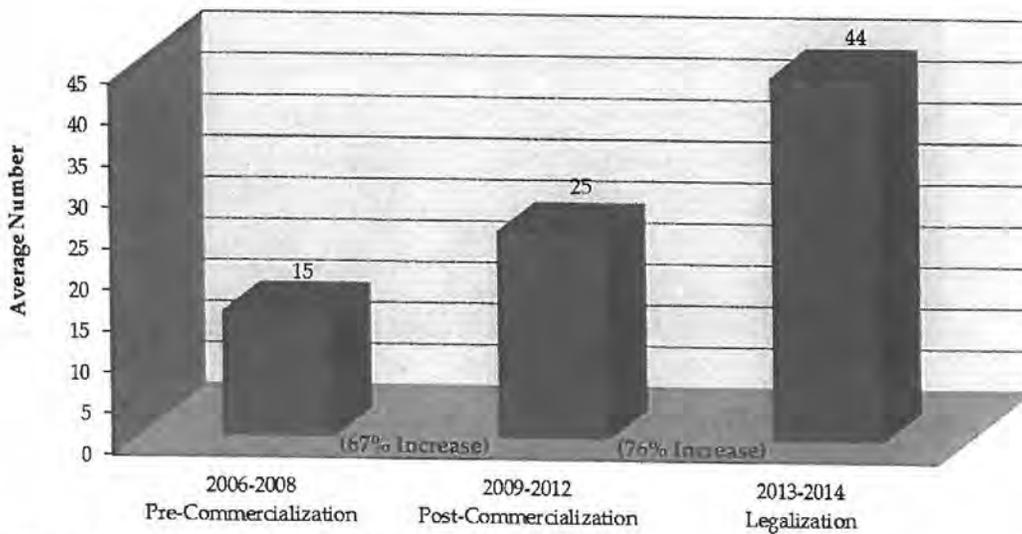
SOURCE: Colorado Department of Public Health and Environment, *Monitoring Health Concerns Related to Marijuana in Colorado: 2014* via Rocky Mountain Poison and Drug Center

Number of Marijuana-Related Exposures, by Age Range



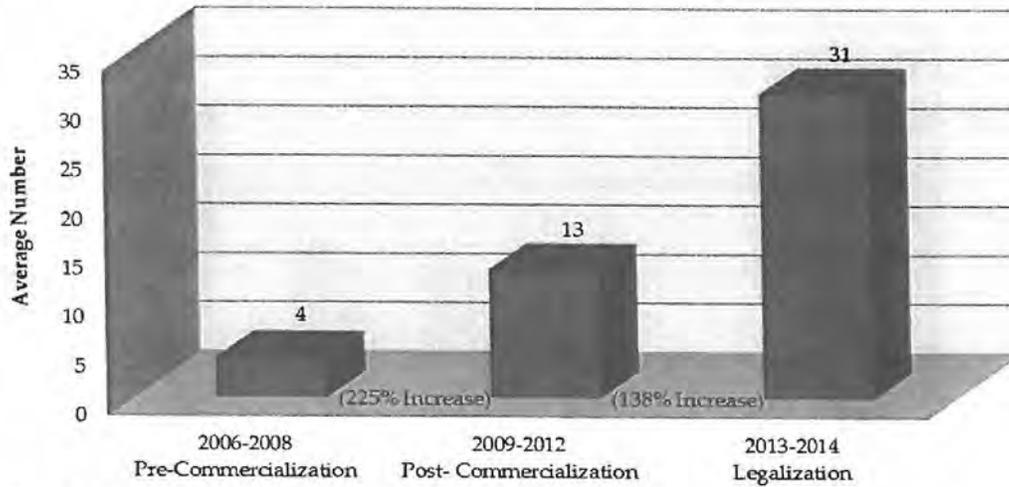
SOURCE: Rocky Mountain Poison and Drug Center

Youth Ages 6 to 17 Years Old, Average Number of Marijuana-Related Exposures



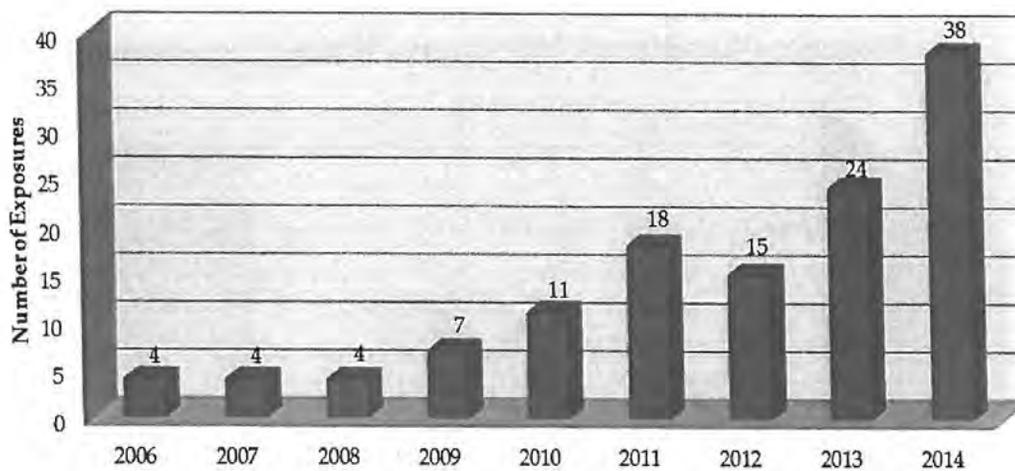
SOURCE: Rocky Mountain Poison and Drug Center

Children Ages 0 to 5 Years Old, Average Number of Marijuana-Related Exposures



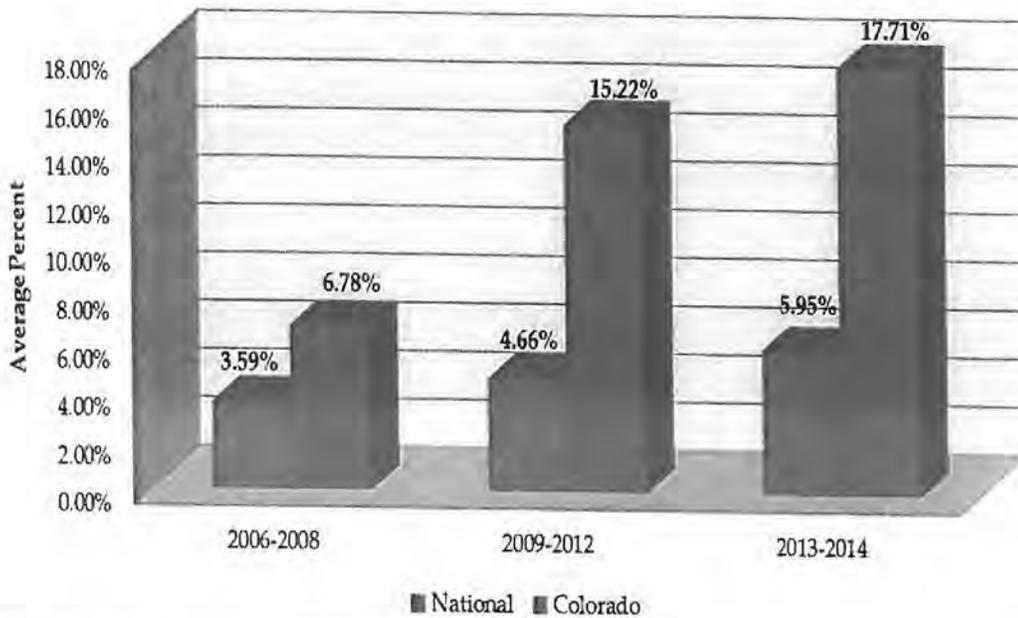
SOURCE: Rocky Mountain Poison and Drug Center

Marijuana-Related Exposures Children Ages 0 to 5 Years Old



SOURCE: Rocky Mountain Poison and Drug Center

Average Percent of All Marijuana-Related Exposures, Ages 0 to 5 Years Old



SOURCE: Rocky Mountain Poison and Drug Center

Related Material

Pot-related Calls to Colorado, Washington Poison Centers Up: In a *Denver Post* article dated January 25, 2015 by Gene Johnson of the Associated Press, it cites the substantial increase in calls to poison control centers related to marijuana. “The spike in numbers since marijuana was legalized includes a troubling jump in cases involving young kids.” Calls to the Colorado poison center in 2014 almost doubled the number of calls in 2013 and tripled the calls in 2012. Calls to the Washington poison center jumped about 50 percent from 2013 to 2014. Calls involving children nearly doubled in both states.¹

Child Marijuana Poisoning Incidents Increase After States Legalize Pot: A study by researchers at the Nationwide Children’s Hospital report, “More young children are exposed to marijuana in states after the drug had become legal for medical or recreational use...” This study, in the journal *Clinical Pediatrics* found: “the rate of marijuana exposures among children 5 years old and under increased 16 percent each

year after legalization in those states.” According to the National Poison Database System, child exposures increased 147 percent from 2006- 2013.²

Children and THC-Infused Edibles: According to a Colorado Springs *Gazette Op/Ed* dated June 21, 2015, entitled “THC extracts concentrate problems”: “In Colorado, the number of exposures to THC-infused edibles in your children increased fourfold in one year, from 19 cases in 2013 to 95 in 2014, according to the Rocky Mountain Poison and Drug Center.”³

Sources

¹ Gene Johnson, the Associated Press/*Denver Post*, January 25, 2015, “Pot-related calls to Colo., Wash. poison centers up”

² Jackie Borchardt, Northeast Ohio Media Group, June 16, 2015, “Child marijuana poisoning incidents increase after states legalize pot,” <http://www.cleveland.com/open/index.ssf/2015/06/child_poisoning_cases_increase.html%23incart_river>, accessed June 17, 2015

³ Wayne Laugesen and Pula Davis, *The Gazette* editorial board, June 21 2015, “Clearing the Haze/THC extracts concentrate problems,” <<http://gazette.com/clearing-the-haze-thc-extracts-concentrate-problems/article/1554097>>, accessed June 22, 2015

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SECTION 6: Treatment

Introduction

This section examines whether Colorado's legalized medical marijuana industry and the recent legalization of marijuana for recreational use has affected the admission rate to substance abuse treatment programs.

The information compares the early medical marijuana era (2006 – 2008), the medical marijuana commercialization and expansion era (2009 – current) and the recreational marijuana era (2013 – current) in Colorado.

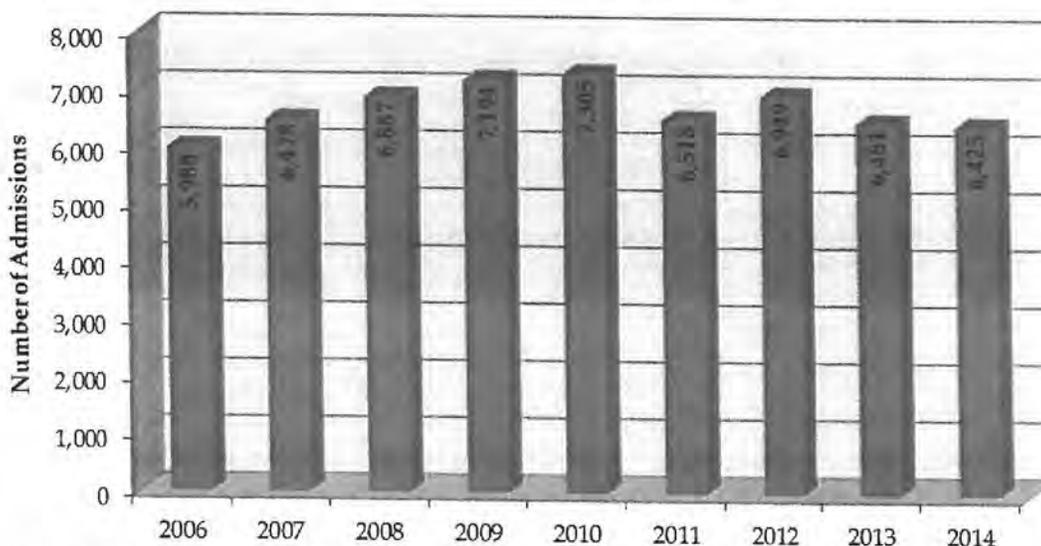
- **2006 – 2008:** There were between 1,000 and 4,800 medical marijuana cardholders and no known dispensaries operating in Colorado.
- **2009 – Current:** There were over 108,000 medical marijuana cardholders and 532 licensed dispensaries operating in Colorado by the end of 2012. See the introduction at the beginning of this report for more details on the commercialization and explosion of Colorado's medical marijuana trade.
- **2013 – Current:** In November 2012, Colorado voters passed Constitutional Amendment 64 which legalized marijuana for recreational purposes for anyone over 21 years of age. The amendment also allowed for licensed marijuana retail stores, cultivation operations and edibles manufacturing.

Some Findings

- Marijuana treatment data from Colorado in years 2005 – 2014 does not appear to demonstrate a definitive trend. Colorado averages approximately 6,500 treatment admissions annually for marijuana abuse.
- Over the last ten years, the top three drugs involved in treatment admissions, in descending order, were alcohol (average 12,943), marijuana (average 6,491) and methamphetamine (average 5,044).

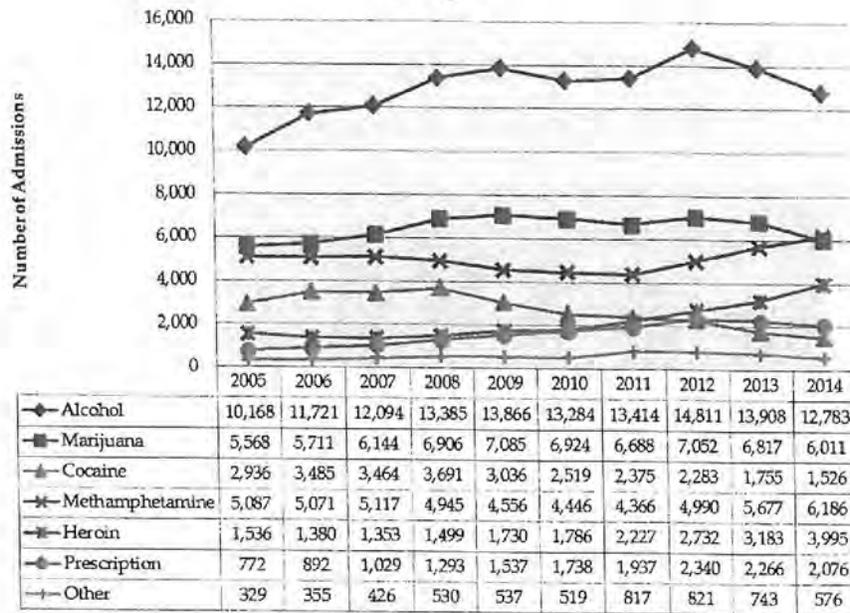
Data

Treatment with Marijuana as Primary Substance of Abuse, All Ages



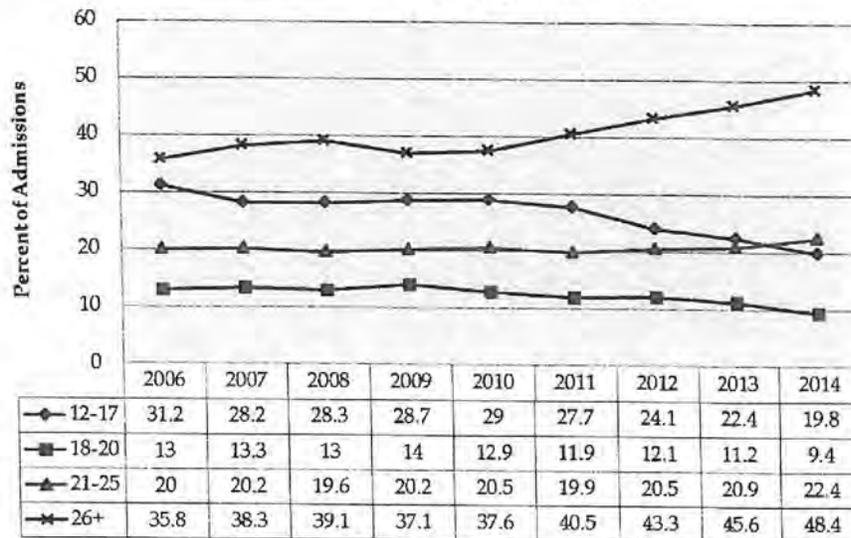
SOURCE: Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration, Treatment Episode Data Set (TEDS) based on administrative data reported by states to TEDS through April 03, 2015

Drug Type for Treatment Admissions All Ages



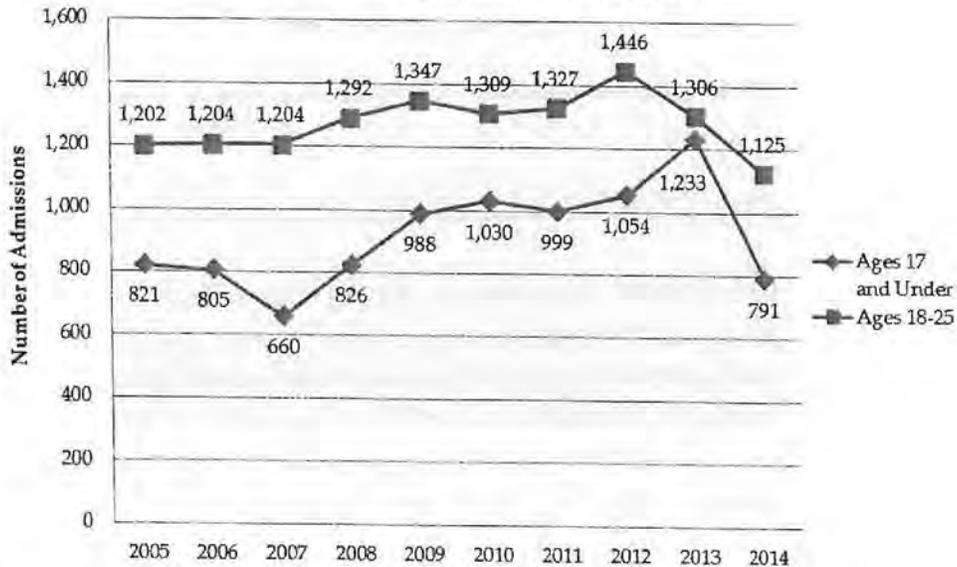
SOURCE: Colorado Department of Human Services, Office of Behavioral Health, 2005 – 2014

Percent of Marijuana Treatment Admissions by Age Group



SOURCE: Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration, Treatment Episode Data Set (TEDS) based on administrative data reported by states to TEDS through April 3, 2015

Marijuana Treatment Admissions Based on Criminal Justice Referrals



SOURCE: Colorado Department of Health Services, Office of Behavioral Health, 2005 – 2014

NOTE: DATA FROM THE COLORADO OFFICE OF BEHAVIORAL HEALTH IN YEARS 2011 THROUGH 2013 SHOWS THAT APPROXIMATELY 70 PERCENT OF MARIJUANA TREATMENT ADMISSIONS FOR THOSE OVER 18 YEARS OF AGE WERE REFERRALS FROM CRIMINAL JUSTICE AND 30 PERCENT WERE CLASSIFIED AS VOLUNTARY.¹ THIS IS LIKELY A CONTRIBUTING FACTOR FOR THE DROP IN ADMISSIONS FOR MARIJUANA ABUSE.

“We have noticed that those presenting with Cannabis Use Disorder are more committed to their use and harder to get through to than in years past. Patients tell us regularly that they will give up other drugs/alcohol but not marijuana and remind us of its legal status. This logic would obviously hold no water with alcohol and is a disturbing trend given that patients telling us this are often in dire straits. Their use/addiction has had and is having extremely detrimental effects on their lives yet they tell us it can’t be an issue because marijuana is “legal and non-addictive.”²

Sources

¹ Colorado Department of Human Services, Office of Behavioral Health, 2005 – 2014

² Clinical Director Michael Barnes, PhD, LMFT, Business Development/Community Liaison, CeDAR/University of Colorado Hospital, September 2015

SECTION 7: Diversion of Colorado Marijuana

Introduction

This section examines whether Colorado legalizing medical and recreational marijuana has established Colorado as a marijuana source state for other parts of the country. There is no mandatory process for law enforcement to report either the seizure or the source of the marijuana. Rocky Mountain High Intensity Drug Trafficking Area (RMHIDTA) contacted some law enforcement entities and requested voluntary reporting of those instances in which Colorado marijuana was seized in their jurisdiction. Only those cases that were completed and are a matter of public record were used in this report. Open or long-term major investigations involving marijuana trafficking from Colorado have been excluded. This section includes:

- Interdictions resulting in seizure of marijuana from Colorado
- Investigations resulting in seizure of marijuana from Colorado
- Cases involving youth trafficking

The information compares the early medical marijuana era (2006 – 2008), the medical marijuana commercialization and expansion era (2009 – current) and the recreational marijuana era (2013 – current) in Colorado.

- **2006 – 2008:** There were between 1,000 and 4,800 medical marijuana cardholders and no known dispensaries operating in Colorado.
- **2009 – Current:** There were over 108,000 medical marijuana cardholders and 532 licensed dispensaries operating in Colorado by the end of 2012. See the introduction at the beginning of this report for more details on the commercialization and explosion of Colorado's medical marijuana trade.

- **2013 – Current:** In November 2012, Colorado voters passed Constitutional Amendment 64 which legalized marijuana for recreational purposes for anyone over 21 years of age. The amendment also allowed for licensed marijuana retail stores, cultivation operations and edibles manufacturing.

Definitions

Colorado Marijuana Interdiction Seizures: Incidents where highway or state patrols stopped a driver for a traffic violation and subsequently found Colorado marijuana destined for other parts of the country. These interdiction seizures are reported on a voluntary basis to the National Seizure System (NSS) managed by the El Paso Intelligence Center (EPIC). These are random traffic stops, not investigations, and does not include local law enforcement data.

Some Findings

- During 2009 – 2012, when medical marijuana was commercialized, the yearly average number interdiction seizures of Colorado marijuana increased **365 percent** from 52 to 242 per year.
- During 2013 – 2014, when recreational marijuana was legalized, the yearly average interdiction seizures of Colorado marijuana increased another **34 percent** from 242 to 324.
- In 2014, there were **360 interdiction** seizures of Colorado marijuana destined for other states. When compared to the pre-commercialization average of 52 from 2005 – 2008, this represents a **592 percent increase.**
- The total average number of pounds of Colorado marijuana seized from 2005 – 2008 compared to 2009 – 2014 increased **33 percent** from 2,763 pounds to 3,671 pounds.
- Of the 360 seizures in 2014, there were **36 different states** destined to receive marijuana from Colorado. The most common destinations identified were Kansas, Missouri, Illinois, Oklahoma and Florida.

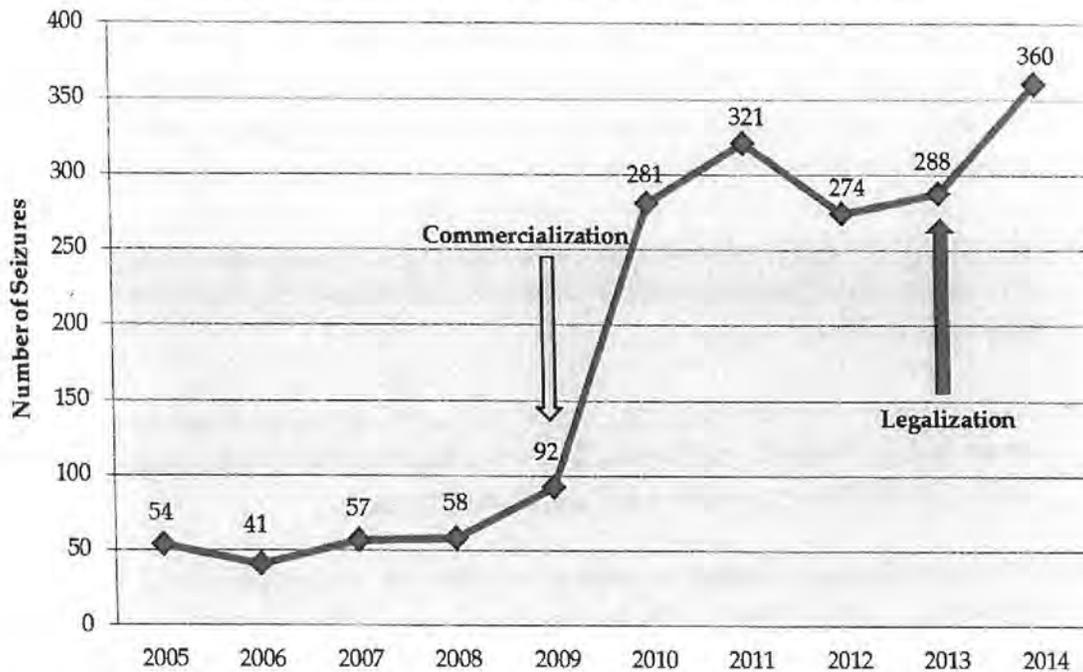
- The top county identified as the source for the marijuana in 2014 was Denver, with 63 percent.

Data

NOTE: THE BELOW CHARTS ONLY INCLUDE CASES WHERE COLORADO MARIJUANA WAS ACTUALLY SEIZED AND REPORTED. IT IS UNKNOWN HOW MANY COLORADO MARIJUANA LOADS WERE NOT DETECTED OR, IF SEIZED, WERE NOT REPORTED.

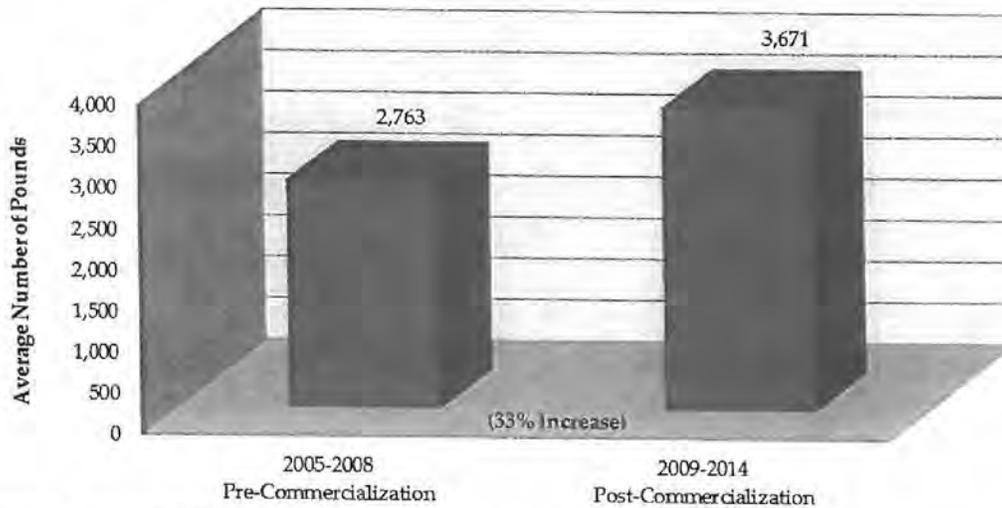
- ❖ A 2014 survey of approximately 100 interdiction experts estimates they seize 10 percent or less of what gets through undetected.

Colorado Marijuana Interdiction Seizures



SOURCE: El Paso Intelligence Center, National Seizure System, as of March 20, 2015

Average Pounds of Colorado Marijuana from Interdiction Seizures



SOURCE: El Paso Intelligence Center, National Seizure System, as of March 20, 2015

Rocky Mountain HIDTA expects the total weight of marijuana seized in the future will likely decrease due to:

- More marijuana loads with high THC content and lower weight “buds” as opposed to lower THC content and higher weight bulk.
- The increased popularity of hash and hash oil which are high THC, high price and low weight.
- Smaller loads with less weight are easier to conceal and more difficult to detect.

States to Which Colorado Marijuana Was Destined (2014) (Total Reported Incidents per State)



SOURCE: El Paso Intelligence Center, National Seizure System, as of March 20, 2015

❖ 21 seizures with undisclosed destination states

Top Three Cities for Marijuana Origin

Originating City Rank	Number of Seizures from Originating City	Percentage
1. Denver	227	63.06%
2. Yuma	20	5.56%
3. Colorado Springs	14	3.89%

A Few Examples of Interdictions

Wyoming Highway Patrol Busy with Colorado Marijuana: The Wyoming Highway Patrol reported that, in the first quarter of 2015, 30 percent of their highway

interdiction seizures involved people traveling to Colorado specifically for the purpose of purchasing and transporting marijuana and THC products to locations outside of Colorado. In one case in March, a highway patrol trooper stopped a vehicle for traffic violations. The officer subsequently found that the driver had failure-to-appear warrants for traffic offenses out of Wyoming and did not have a valid drivers' license. Subsequent to the arrest, officers found close to 5 ounces of high-grade marijuana. The driver told the officer that he had purchased the marijuana from a dispensary in the Steamboat Springs area of Colorado.

Georgia Dealer Moves to Colorado for Marijuana Supply: On June 4, 2014, a Mississippi Highway Patrol trooper stopped a vehicle with Georgia plates for a traffic violation. As a result of the traffic stop, the trooper seized 5 pounds of marijuana from Denver, Colorado en route to **Atlanta, Georgia**. Apparently a Georgia resident moved to Denver so he could qualify for and use Colorado's legalization status to obtain and ship marijuana back to Georgia. The marijuana was referred to as "legal mile-high weed."

Scottsbluff, Nebraska Resident Frequents Colorado Dispensaries: On December 20, 2014, a Scottsbluff (Nebraska) Police Department officer stopped a vehicle for a traffic violation. The vehicle was being driven by a female but the vehicle was registered to her boyfriend, both from Scottsbluff. Pursuant to the stop the officer found numerous items of marijuana literature from dispensaries in Denver and containers of marijuana bottles from dispensaries. The female told the officer that her boyfriend frequents marijuana dispensaries. The search further revealed numerous concealment locations in the vehicle. While the officer was conducting the search, the boyfriend arrived and advised the officer that anything found in the vehicle belonged to him.

"Old Stuff" (Colorado Marijuana) to Mom's House: On December 17, 2014, a Shawnee County Sheriff's Office deputy stopped a rental vehicle registered in Missouri. The driver, from Denver, Colorado, was en route to **Parkville, Missouri** allegedly with boxes of "old stuff" to be taken to his mother's house. During this traffic stop the officer found THC butter, 3.9 pounds of high-grade marijuana in 17 different containers, labels from a Colorado dispensary as well as equipment and butane for setting up a marijuana extraction lab.

Medical Marijuana Items from Colorado: On January 28, 2015, a South Dakota Highway Patrol officer stopped a vehicle registered in Minnesota for a traffic violation. During the search of the vehicle, the officer found 1 pound of marijuana, ½ pound of

butane hash oil and 4 pounds of marijuana edibles. According to the officer, almost all of it was medical marijuana items from Colorado.

Candy and Gummy Bears from Colorado to Florida: On September 8, 2014, Louisiana law enforcement stopped a rental vehicle for a traffic violation. The vehicle, traveling from Colorado to **Tallahassee, Florida**, was subsequently searched. The officer found approximately 10 pounds of high-grade marijuana and assorted marijuana edibles, including 3 bottles of sour gummy bears, "Monkey Bar", "Boulder Bar" and "Cookies and Cream."

Marijuana Plants and Edibles: In March of 2015, a Kansas Highway Patrol trooper stopped a vehicle, registered in Wisconsin, for a traffic violation. Subsequent to the stop the trooper searched the vehicle and found 4 pounds of marijuana, 44 marijuana plants, 2 tubs of marijuana edibles and 3 marijuana candy bars in the vehicle. The vehicle was coming from Denver, Colorado en route to **Wisconsin**.

Colorado Marijuana and Candy to Montana: On July 27, 2014, a Wyoming Highway Patrol trooper stopped a vehicle with Tennessee plates coming from Denver, Colorado en route to **Montana**. As a result of the traffic stop the trooper seized over 11 ounces of high-grade marijuana, 1 THC lollipop and 2 THC candies. The driver claimed he was going to Montana to fly fish although there was no fly fishing gear in the vehicle.

Over 14 Pounds of Marijuana and Half a Pound of THC Wax: On March 14, 2015, a South Dakota Highway Patrol trooper stopped a vehicle registered in Minnesota for a traffic violation. A subsequent search revealed close to 15 pounds of marijuana and over half a pound of THC wax concealed in a suitcase and bag in the trunk of the vehicle. The vehicle was coming from Denver, Colorado en route to **Rapid City, South Dakota**.

120 Pounds and Edibles: In December of 2014, Kansas Highway Patrol troopers stopped a vehicle registered in Georgia for a traffic violation. Subsequent to the stop, the trooper discovered 120 pounds of marijuana and a half pound of marijuana edibles inside the vehicle. The vehicle was coming from Denver, Colorado en route to **Missouri**.

Marijuana and Edibles Destined for Lincoln, Nebraska: On April 4, 2015, a Colorado State Patrol trooper stopped a rental vehicle for a traffic violation. During the stop, the trooper discovered 30 pounds of marijuana and 3,200 milligrams of marijuana

edibles concealed in a suitcase and duffel bag in the trunk. The vehicle was headed to **Lincoln, Nebraska** from Denver, Colorado.

U-Haul with Marijuana: In July of 2014, a Kansas Highway Patrol trooper stopped a vehicle towing a U-Haul trailer for traffic violations. During the traffic stop, the vehicle was searched and 67 pounds of marijuana, along with 17 pounds of marijuana edibles, were found inside the vehicle. The vehicle was coming from Denver, Colorado en route to **Missouri**.

Colorado to Minnesota: On January 24, 2015, a South Dakota Highway Patrol trooper stopped a vehicle registered in Minnesota for a traffic violation. A subsequent search revealed 3 pounds of marijuana and 44 grams of THC wax as well as a loaded 9 mm handgun. This vehicle was coming from Fort Collins, Colorado en route to **Minnesota**.

Colorado Marijuana to Virginia: On April 6, 2015, a Nebraska State Patrol trooper stopped a vehicle registered in Virginia for a traffic violation. A subsequent search revealed over 7 pounds of marijuana as well as marijuana edibles concealed inside a suitcase in the trunk of the vehicle and backpacks throughout the vehicle. The vehicle was coming from Colorado en route to **Virginia**.

168 Pounds Seized in South Carolina Two individuals from Colorado were arrested in Cherokee County, South Carolina after a traffic stop revealed approximately 168 pounds of marijuana. According to arresting officers, the marijuana was destined for **Charlotte, North Carolina** and worth approximately \$900,000.¹

Troopers Seize 33 Pounds of Pot: In November, 2014, Texas Department of Public Safety troopers seized 33 pounds of marijuana during a traffic stop. The two occupants of the vehicle who were arrested had just come from Colorado and were suspected of transporting the marijuana back to **Ashville, North Carolina**.²

34 Pounds Found in Pennsylvania Rental Vehicle: On January 11, 2015, a Nebraska State Patrol trooper stopped a vehicle for a traffic violation. This rental vehicle, registered out of Pennsylvania, was coming from Colorado en route to **Mason City, Iowa**. The trooper subsequently discovered 34 pounds of marijuana concealed inside two duffel bags in the trunk of the vehicle.

242 Pounds of Marijuana Seized: On April 11, 2014, a Nebraska State Patrol trooper stopped a vehicle for a traffic violation. A subsequent search revealed 242

pounds of marijuana found under the bed of the truck. The vehicle was coming from Denver, Colorado en route to **Rochester, New York**.

53 Pounds Destined for Wisconsin: On February 19, 2015, a South Dakota Highway Patrol trooper stopped a vehicle registered in Wisconsin. A subsequent search of the vehicle revealed 53 pounds of marijuana concealed in the trunk. This vehicle was coming from Colorado en route to **Wisconsin**.

10 Pounds Destined for Cedar Falls, Iowa: On October 20, 2014, an Iowa State Patrol trooper stopped a vehicle for a traffic violation. The trooper subsequently discovered 10 pounds of marijuana concealed inside two bags in the back seat of this pick-up truck. The driver came from Aurora, Colorado and was en route to **Cedar Falls, Iowa**.

5 Pounds Destined for College Town: On December 13, 2014, an Iowa State Patrol trooper stopped a vehicle for a traffic violation. The trooper subsequently discovered 5 pounds of marijuana concealed inside the inner lining of a suitcase that was located in the trunk of the vehicle. The vehicle was coming from Denver, CO en route to **Ann Arbor, Michigan**.

New Jersey Rental Transporting Marijuana to Minnesota: On March 6, 2015, an Iowa State Patrol trooper stopped a vehicle for a traffic violation. A subsequent search revealed 6 pounds of marijuana concealed inside the spare tire area of the trunk of the vehicle. The rental vehicle, registered in New Jersey, was coming from Colorado en route to **Twin Cities, Minnesota**.

Yuma, Colorado to Boston, Massachusetts: On March 8, 2014, an Ohio Highway Patrol trooper stopped a vehicle for traffic violations. During the stop, the trooper seized over 45 kilograms of marijuana. The vehicle was coming from Yuma, CO en route to **Boston, Massachusetts**.

55 Pounds to Columbia, Missouri: On October 25, 2014, Missouri Highway Patrol troopers pulled over a vehicle for traffic violations. During the stop, a subsequent search was conducted and the troopers discovered 55 pounds of marijuana. The vehicle, registered in Texas, was coming from Yuma, CO en route to **Columbia, Missouri**.

Illinois Stops Marijuana Destined for Ohio: On October 23, 2014, Illinois State Police stopped a vehicle traveling from Denver, Colorado to **Akron, Ohio**. During the traffic stop officers, assisted by a K9, seized 8 pounds of high-grade marijuana vacuum-sealed and placed in two duffel bags in the trunk.

36 Pounds Destined for Florida: In January of 2015, a Kansas Highway Patrol trooper stopped a vehicle for traffic violations. Subsequent to the stop, the trooper discovered 36 pounds of high-grade marijuana inside the vehicle. This vehicle, registered in Florida, was coming from Denver, Colorado en route to **Florida**.

Marijuana to Kentucky: In April of 2015, a Kansas Highway Patrol trooper stopped a vehicle with Texas registration for a traffic violation. A subsequent search of the vehicle revealed 24 pounds of marijuana concealed inside the vehicle. The vehicle was coming from Denver, Colorado en route to **Kentucky**.

Marijuana to New Mexico: On September 4, 2014, a Colorado State Patrol trooper stopped a vehicle registered in New Mexico for a traffic violation. During the stop the trooper discovered 32 pounds of marijuana in a duffel bag in the trunk of the car. The vehicle was coming from Denver, Colorado en route to **Roswell, New Mexico**.

38 Pounds to Sioux Falls, South Dakota: On September 18, 2014, a Colorado State Patrol trooper stopped a vehicle for traffic violations. During the stop, the trooper discovered 38 pounds of marijuana in brand new luggage that was purchased in Denver specifically for the purpose of storing the marijuana in the trunk. The vehicle was coming from Denver en route to **Sioux Falls, South Dakota**.

Trick or Treat Bag with Marijuana: On November 1, 2014, a Wyoming Highway Patrol trooper stopped a vehicle for speeding. When asked, the driver admitted she did not have registration for the vehicle and that she was coming from Colorado en route to **Wamsutter, Wyoming**. The trooper subsequently found eight plastic bags containing over 7 ounces of high-grade marijuana that were concealed in a plastic trick or treat bag.

Colorado Marijuana to North Dakota: On December 5, 2014, a Colorado State Patrol trooper stopped a vehicle for a traffic violation. The vehicle was coming from Denver, Colorado en route to **Grand Forks, North Dakota**. During the stop, the trooper seized 15 pounds of marijuana wrapped in a vacuum-sealed container found in a suitcase and duffel bag in the trunk.

A Few Examples of Investigations

NOTE: THE EXAMPLES BELOW ARE ONLY A SMALL SAMPLE OF THE MANY INVESTIGATIONS INVOLVING COLORADO MARIJUANA CITED BY VARIOUS DRUG UNITS.

Colorado “Medical” Marijuana Sold in Springfield, Missouri: Based on a tip, Springfield (Missouri) P.D. officers secured a search warrant on the home of a drug dealer. Pursuant to the warrant, officers seized half a pound of marijuana, \$2,000 in cash and nine weapons. Records show that one of the suspects had removed some of the contraband from the residence prior to police executing the warrant. They also seized items consistent with a THC extraction lab. Both suspects face charges of possession with intent to distribute a controlled substance. According to the news article: “A pair of Springfield men have been arrested and accused of collecting medical marijuana in Colorado and selling it in southwest Missouri.”³

Caregiver and 425 Pounds of Colorado Marijuana in Nashville: Two Breckenridge residents were arrested in a drug bust in Nashville, Tennessee where officers seized 425 pounds of marijuana, 4 pounds of hashish and \$355,000 in cash.

“Nashville police say Breckenridge’s Christopher Steven Crumbliss, 39, and Tasha Desmond, 21, were part of a group traveling around the country illegally selling high-grade marijuana from Colorado.” Crumbliss had a history of brushes with the law connected with marijuana cultivation and distribution activities but claimed to be a caregiver. In 2007 he and his wife, Tiffany, were charged in Larimer County (Colorado) with marijuana cultivation and possession with intent to distribute. They argued they were protected under the caregiver provision of Colorado medical marijuana law. Charges against Tiffany were dropped and Christopher Crumbliss plead guilty but was given probation in lieu of prison. A year later Larimer County Sheriff’s Department and DEA served search warrants at the Crumbliss’ three homes in Larimer County and Blue River, seizing more than 200 plants and 20 pounds of finished product. There were no criminal charges filed. Tiffany Crumbliss is the owner of Soul Shine Medical Consulting, a medical marijuana dispensary in Breckenridge. She categorically denies that the marijuana seized in Nashville came from her business.⁴

“Weak Enforcement” Leads to Colorado Marijuana Trafficking Organizations: In March 2015, Colorado law enforcement secured indictments against 32 people accused of being part of a multi-million dollar organization growing marijuana in Colorado for distribution out of state. This group, although growing illegally, had warehouses in areas populated by licensed commercial marijuana growers. The organization operated under the false pretense of being medical marijuana caregivers. “Their real goal,

according to the indictment, was to use Colorado's laws and commercial marijuana industry to 'hide in plain sight.'" "Organization members 'subjectively felt Colorado's weak regulatory enforcement structure afforded them the easiest opportunity to conduct illegal marijuana and distribution activity with little to no consequences from law enforcement and civil regulators,' the indictment states." Apparently most of the marijuana, estimated at 400 pounds monthly, was exported primarily to Minnesota. In fact, an individual with a skydiving business is accused of using company aircraft for marijuana shipments between Colorado and Minnesota or Texas. Apparently this individual was stopped in Kansas and found to be in possession of 66 pounds of marijuana and \$330,000 in cash.⁵

Sex Trafficking and Drugs: "Denver has evolved into a breeding ground, officials say, for sex-traffickers who lure young runaways, often in exchange for drugs, into the underground business." "Tom Ravenelle with the FBI said he's seeing more print and online advertisements – chock-full of keywords like '4-20 friendly' – that attract young girls." "A former prostitute who said she traded sex for marijuana talked to CBS4 anonymously about her experience." Apparently she ran away when she was 17 and fell into prostitution, bartering sex for drugs and didn't leave until more than two decades. "I traded for marijuana because that was my vice," she said. "I needed to escape."⁶

Legalization of Marijuana and Sex Tourism:

- The legalization of marijuana is fueling a sex tourism industry in Colorado.
- "Several victims were brought to Colorado specifically because of the availability of marijuana and the state being '420-friendly'."⁷

Outlaw Motorcycle Gang Affiliate Trafficking in Colorado Marijuana: In September 2014, Colorado law enforcement initiated an undercover operation involving the sale of large quantities of marijuana. A suspect sold an undercover agent 1 pound of marijuana for \$2,300 and negotiated the sale of an additional 30 pounds of marijuana. Just prior to completing the sale, officers served a search warrant at the unregistered warehouse and the suspect's residence. Officers seized a sophisticated marijuana grow operation with 198 marijuana plants and approximately 31 pounds of marijuana. The entire investigation resulted in 2 arrests and the seizure of 1,600 marijuana plants, 36 pounds of processed marijuana, 22 firearms and over \$100,000 in cash.⁸

1,100 Marijuana Plants in Lafayette, Colorado: David Melvin, 44, and Katie Melvin, 31, were arrested for growing 1,100 marijuana plants inside their home in Lafayette, Colorado. The two claimed the marijuana grow was legal, although the Colorado Department of Revenue "asserts that neither Kingsley [Katie Melvin's former

business partner] nor the Melvins had any existing applications with the state, or with the city or county of Denver, with whom Katie told police she had applied.”⁹

Pot Delivery Services Thriving in Colorado’s Black Market: “Legalizing marijuana was supposed to largely eliminate the black market for pot, but a CBS4 Investigation found dealers have come off the street corner and onto the Internet, openly posing as legitimate delivery services. In just three hours, we contacted three delivery services and had marijuana products delivered all over Denver. The services claim to be perfectly legal because nothing was for sale. Instead of payment, buyers were expected to pay a pre-specified, cash ‘donation.’” In one case, a CBS4 employee appearing under age answered an ad for marijuana for a “\$35 donation.” When the marijuana delivery service arrived, the delivery man said that he had to get the money first and that he got the marijuana from a friend who was a grower for a dispensary.

Another CBS4 employee responded to an ad for “Delicious Edibles for Donation.” When ordering by text, the CBS4 employee asked if they were strong and the reply was, “Yes, will have a morbidly depressed person laughing on the floor.”

In the third case, the delivery driver claimed to be the chef who made the edibles and arrived with pre-packaged candies. Apparently they offered a full menu and the CBS4 employee ordered a \$60 sampling but again there was no proof of age required. The delivery service offered to ship bulk orders.

None of these delivery services would be interviewed on camera.¹⁰

Springfield Inundated by High-grade Marijuana from Colorado: Springfield, Missouri drug investigators are seeing an influx of high-grade marijuana, particularly from Colorado. A highway patrol sergeant says that the more potent marijuana has driven up the prices. In 2013, the Missouri State Highway Patrol seized 1,071 pounds of marijuana and approximately 1,700 pounds in 2014. So far in 2015, January through June, they seized more than 1,000 pounds. They also say that they have seen a huge increase in marijuana-infused food products.¹¹

Medical Marijuana Scam Leads to Residence Turned Into Pot Farm: In June of 2015, a Colorado woman thought she was renting her home to a sweet couple from Florida who needed a place to live. What she didn’t realize is this sweet couple was actually engaged in marijuana cultivation and trafficking. Apparently the couple turned the unfinished 2,800 sq. ft. basement into an elaborate marijuana cultivation facility. She said they had been cleaning up the mess for a week and that the tenants caused tens of thousands of dollars in damage. She said, “It absolutely makes me sick to my stomach.” Apparently the tenant stated that his doctor had prescribed him 75 plants as well as his cousin and his cousin’s wife. He claimed he was in compliance with the law. The lady who owned the home thought she was renting to a couple who

were going to start a senior care service. Little did she know that the man had served 3-1/2 years in prison for trafficking more than a ton of marijuana.¹²

Colorado Marijuana to Illinois and Georgia: In January 2015, Colorado law enforcement conducted an undercover operation into a marijuana trafficking organization shipping Colorado marijuana to Illinois and Georgia. The operation resulted in several undercover purchases of marijuana and a search warrant for the primary location. Pursuant to the search warrant, a 456 marijuana plant grow, a hash oil lab and 28 weapons were seized.¹³

Yellowstone Sees Rise in Marijuana Cases: “An increasing number of visitors to Yellowstone National Park are being prosecuted for possession small amounts of medical and recreational pot, which remains illegal on federal land.” Park rangers attribute this increasing trend to ignorance of federal law and the growing prevalence of legal marijuana, including neighboring Colorado. In 2010, there were only 21 marijuana cases in Yellowstone which more than doubled in 2013 and quadrupled in 2014 as of December 17, 2014. There were 52 cases in 2013 and, as of December 17, 2014, 80 cases handled by the U.S. Attorney’s Office in October 2013. An artist from Hawaii was pulled over for speeding and park rangers subsequently found 3 grams of marijuana which he admitted to purchasing in Colorado.¹⁴

Oklahoman Busted with 85 Pounds of Colorado Marijuana: In December 2014, two days after Oklahoma officials filed a lawsuit against the state of Colorado, a Tulsa subject was arrested with 85 pounds of marijuana and \$20,000 in cash. Apparently the man and a mother-daughter team from Broken Arrow, Oklahoma were taking the marijuana to Tulsa. Officers found receipts showing that the three had gone to Colorado where they had purchased the marijuana.¹⁵

Undercover Operation in Boulder: On May 9, 2014 Boulder Police Department arrested six adults and one juvenile after a month-long undercover investigation. Apparently this group was responsible for distributing marijuana and psychedelic mushrooms to juveniles and adults in and around the Central Park area. The involved officers believe the marijuana was purchased from a local medical marijuana dispensary.¹⁶

Forged Marijuana Business Licenses: Anna Cozy, 36, was charged with forging marijuana business licenses. “The charges allege that Cozy was running a marijuana business in Denver and provided phony business licenses to inspectors.”¹⁷

Colorado Marijuana-Infused Candy in Maryland: Prince Georges County (Maryland) police seized several boxes of candy that were infused with marijuana. The boxes were destined for Laurel, Maryland coming from Colorado and the West Coast. The candy included taffy, mint chocolate bars, blueberry chocolate bars and banana-walnut chocolate bars. The police put out a warning to parents to be aware of such products saying they are easily confused with real candy.¹⁸

State Shuts Down Pot Shops: The Department of Revenue has around 55 fulltime employees to keep “a closer eye” on over 2,000 marijuana businesses. However, in 2014 55 medical marijuana businesses closed compared to 35 during the 3 previous years combined. Some of the reasons for the closures include a dispensary with 4,000 ounces of marijuana beyond their per-patient limit, neglecting to implement required inventory tracking, failing to provide evidence that at least 70 percent of their stock was self-grown, insufficient internal cultivation and other violations of regulations.

“In October, the Herbal Center in Denver was closed for a laundry list of infractions, including having more than 200 pounds of excess marijuana on its medical side, evidence of consumption on the premises, operating before obtaining a local license, inventory tracking errors and insufficient security.”

In Carbondale (Colorado) in 2011 the owner of Mother Earth Dispensary was arrested on charges of selling marijuana to unlicensed buyers and selling cocaine to undercover law enforcement officers.¹⁹

Craigslist Pot Sellers: Three men were arrested for selling 4-1/4 pounds of marijuana for \$10,000. An undercover officer found a posting for an online marketplace for marijuana and made a contact. He made arrangements for the undercover purchase, meeting two of the individuals at one location and driving to another which was a licensed marijuana retailer. It was there they met another individual who was an employee of the retail marijuana operation who had a backpack full of marijuana. This individual “had been buying thousands of dollars’ worth of marijuana from his employer, according to the [Denver Police Department’s] Facebook post.”²⁰

2,630 Marijuana Plants in an Outdoor Grow on Public Land: On October 1, 2014 federal and local law enforcement seized an outdoor marijuana cultivation site with 2,630 marijuana plants on White River National Forest land. This grow operation was well tended by the growers. It had black piping supplying water to the grow operation from a stream that was dammed up to collect the water. Officers reported tents, food, shovels, tarps, weed spreader and other items for the grow operation, including piles of trash throughout the grow site.²¹

A Few Examples of Diversion Involving Youth

Teacher Accused of Providing Pot to Students: A high school teacher in Thornton, Colorado was fired for allegedly providing marijuana to students. "One parent told FOX31 Denver, 'My daughter is a senior at Pinnacle and she said that kids have been buying edibles as well as regular marijuana from her.'"²²

Teen Shot During Hash Oil Deal: A man, with a female teenager, made arrangements over Facebook to buy "marijuana wax" (hash oil). When they met to consummate the transaction, one of the suspects got out of the vehicle and robbed the man at gunpoint. The man then drove after the suspect's vehicle from which a shot was fired, hitting the 16-year-old teenager and a dog that was in the man's vehicle.²³

Mother Provided Marijuana to Son Who Jumped From Window: The mother of a 19-year-old teenager was arrested for providing a marijuana edible brownie to her son. On April 14, 2015, the young man consumed one dose of edible marijuana brownie and started acting strangely. According to witnesses, he ran toward the living room window and jumped three stories to the ground. A neighbor reports that he heard the window shatter when the young man jumped and found him lying bloodied on the ground. Reports indicate he was covered in glass and blood but was confused when he ran up to him to ask for help. According to a neighbor, the young man didn't realize he had jumped from a window.²⁴

Mom Supplies Marijuana Edibles: In February 2015, a 14-year-old was taken by ambulance to a hospital after eating homemade marijuana-infused candy. The student obtained the candy from a fellow student who brought it to school after his mom had made it at home. The mother, who claims to be a consultant for marijuana manufacturing, stated that the candy did not contain any marijuana. Apparently the Colorado Bureau of Investigation disagreed as analysis of the candy revealed it did contain marijuana. The mother will be charged with contributing to the delinquency of a minor.²⁵

Girl Eats Father's Marijuana-Laced Bar: A young Wisconsin girl ate a THC-laced chocolate bar that was purchased in Colorado and brought back to Wisconsin. The girl said she found the bar in the dresser drawer of her father's bedroom. When school officers were alerted, the young girl's pulse was so weak that the officers were unable to read it. When officers served a search warrant at the girl's residence, they found infused marijuana labeled as being medicinal THC. The officers also seized hash oil, a concentrated form of THC.²⁶

Some Examples from School Resource Officers²⁷

Middle School Drug Organization: “On an incident three students, one-sixth, seventh and eighth graders, were involved in sale, transport and exchange of marijuana. One of the students was the salesman the other would transport the weed and last student would collect the money. All the students were reported by the buyer. All received a citation.”

Medical Marijuana “Patient” Sells at High School: “19 years of age non-student leaves medical marijuana dispensary and drives straight to my high school. The non-student was able to blend in inside the school and was attempting to sell his medical marijuana to students in the lunch room. He went to jail. Approximately three ounces of marijuana was recovered from his car in the parking lot.”

Mom is Source: “In February 2015, a high school student was contacted on campus with marijuana and marijuana edibles that she was given by her mother who legally obtained them recreationally.”

Dispensary Marijuana: “More than 50% of confiscated marijuana was in dispensary containers.”

Grow Operation “Discards”: “Students are retrieving discards from a grow operation to re-sell as true product. Charged with felony distribution.”

13-Year-Old Dealer: “In February 2014, a 13 year old was dealing marijuana to two other students after stealing marijuana from his father’s medical supply.”

10-Year-Old Dealer: “A ten year old boy selling marijuana to other ten year olds on school grounds. Boy got the drugs from parents stuff.”

Lock and Key: 10th grade student takes approximately three ounces of medical marijuana from parents inventory and brings it to school where he was attempting to sell it to other students. Parents were adamant that he couldn’t have got it from their supply as they have the only key to gain access to it. They were wrong.”

Some Examples from School Counselors²⁸

Dealing Pot at School:

- "Last spring we had a 10th grade student who sold marijuana to another student in the men's faculty bathroom."
- "October, 2014. 7th grade students reported another 7th grader trying to sell marijuana at school. He was searched and the substance was found. Got it from dad's supply."
- "A seventh grade student was caught selling edibles to classmates in the hallway. The student was suspended. An 8th grade student was caught carrying a knife and an empty container of marijuana in his backpack. He was also suspended. Ironically, he was one of the students. Who was caught buying the brownies from the 7th grade student."

Comments

Nebraska Sheriff Speaks Out Against Marijuana Source: Adam Hayward, the sheriff of Deuel County, Nebraska, which is right by the state line with Colorado, says he has "arrested all sorts of people carrying marijuana back from Colorado along Interstate 76: teenagers making weekend runs to Denver and once a 67 year old grandmother." In reference to a 75 pound seizure of marijuana, he stated that the pot came from a marijuana growing facility in Colorado.²⁹

Sidney, Nebraska Chief of Police Rolls Eyes at Colorado Ads: The Chief of Police of Sidney, Nebraska felt that the radio ads by the Colorado Department of Public Health and Environment telling people not to take marijuana out of the state were a joke. He says, "Do you really think that somebody listening to that is going to say, 'Oh, they said on the radio I shouldn't take my marijuana back into Nebraska. So because they said it on the radio and I got a warning, I'm gonna listen to it'? Nah." Since Colorado has had retail stores, police in rural counties that border Colorado are reporting big increases in illegal marijuana trafficking. The chief says they have seen a 50 percent increase during that time.³⁰

Black Market is Thriving in Colorado: Colorado Attorney General Cynthia Coffman, in referencing the marijuana black market, stated "Don't buy that," she told the room (fellow state attorneys general at a professional conference in February). "The criminals are still selling on the black market. ... We have plenty of cartel activity in Colorado (and) plenty of illegal activity that has not decreased at all."³¹

Oklahoma Sheriff's Deputy Reference Colorado Marijuana: "We're running into more people with marijuana out of Colorado – just a regular, old traffic stop," said Dillon March, a sheriff's deputy in Custer County, Oklahoma who regularly patrols Interstate 40, a major east-west freeway stretching across the country. "They'll drive to Colorado, they'll pick it (marijuana) up, and they'll drive back to where they're from, whether that be Oklahoma, Texas, Missouri or Arkansas."³²

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SECTION 8: Diversion by Parcel

Introduction

This section examines whether Colorado's legalized medical marijuana industry and the recent legalization of marijuana for recreational use has established Colorado as a source state for marijuana for other parts of the country. The use of parcel packages as a drug transportation method has gained popularity with drug traffickers.

The available information compares the years 2009 through 2013 considered the medical marijuana commercialization/expansion era (2009 – current) and the recreational marijuana era (2013 – current) in Colorado.

- **2006 – 2008:** There were between 1,000 and 4,800 medical marijuana cardholders and no known dispensaries operating in Colorado.
- **2009 – Current:** There were over 108,000 medical marijuana cardholders and 532 licensed dispensaries operating in Colorado by the end of 2012. See the introduction at the beginning of this report for more details on the commercialization and explosion of Colorado's medical marijuana trade.
- **2013 – Current:** In November 2012, Colorado voters passed Constitutional Amendment 64 which legalized marijuana for recreational purposes for anyone over 21 years of age. The amendment also allowed for licensed marijuana retail stores, cultivation operations and edibles manufacturing.

Some Findings

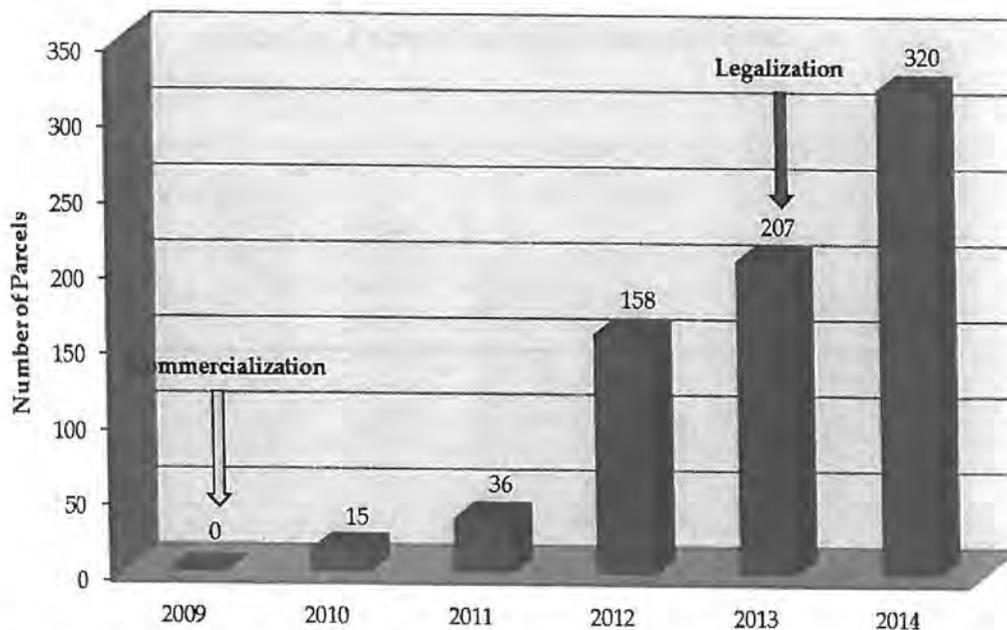
- From 2010 – 2014, the number of intercepted U.S. mail packages of marijuana from Colorado, has increased 2,033 percent from 15 to 320.
- In just one year, from 2013 to 2014 when retail marijuana businesses began operating, there was a 55 percent increase in Colorado marijuana packages seized in the mail.

- From 2010 – 2014, the total pounds of marijuana seized from U.S. packages mailed from Colorado has increased 722 percent from 57 to 470 pounds.
- Between 2010 and 2014, the number of states destined to receive marijuana mailed from Colorado has increased each year from 10 to 38.
- From 2006 – 2008, compared to 2013 – 2014, the average number of parcels containing Colorado marijuana seized that were destined outside the United States increased over 7,750 percent and the pounds of marijuana seized in those parcels increased over 1,079 percent.

Data

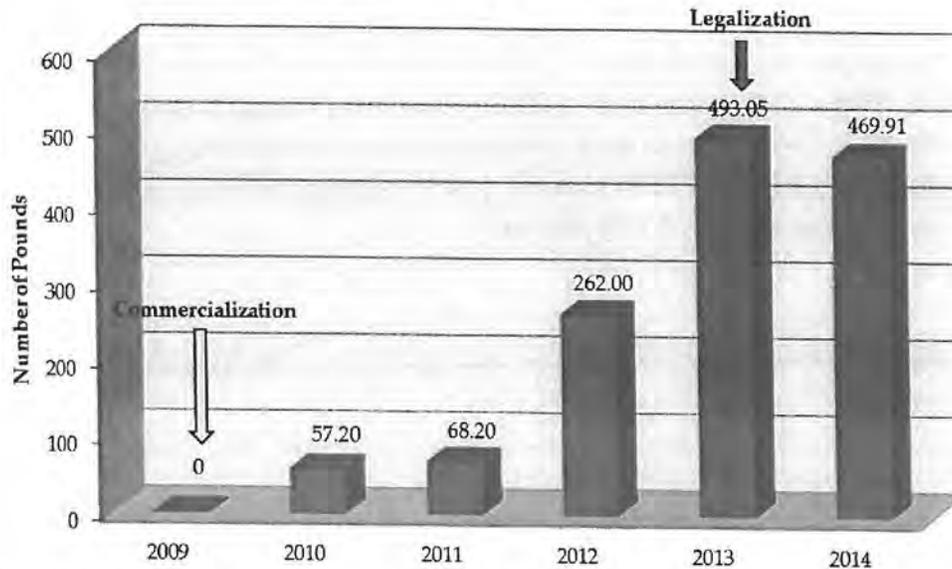
NOTE: THESE FIGURES ONLY REFLECT PACKAGES SEIZED; THEY DO NOT INCLUDE PACKAGES OF COLORADO MARIJUANA THAT WERE MAILED AND REACHED THE INTENDED DESTINATION. INTERDICTION EXPERTS BELIEVE THE PACKAGES SEIZED WERE JUST THE "TIP OF THE ICEBERG."

Parcels Containing Marijuana Mailed from Colorado to Another State



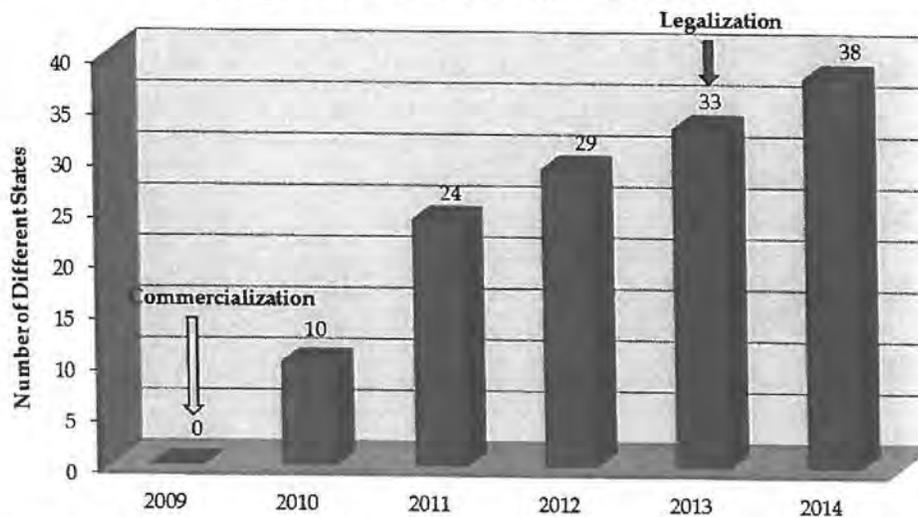
SOURCE: United States Postal Inspection Service, Prohibited Mailing of Narcotics, as of January 21, 2015

Pounds of Colorado Marijuana Seized by the U.S. Postal Inspection Service



SOURCE: United States Postal Inspection Service, Prohibited Mailing of Narcotics, as of January 21, 2015

Number of States Destined to Receive Marijuana Mailed from Colorado



SOURCE: United States Postal Inspection Service – Prohibited Mailing of Narcotics

NOTE: INFORMATION ON THIS PAGE (PG. 126) WAS REMOVED AS IT WAS DISCOVERED TO BE INACCURATE INFORMATION RELATED TO SOME COLORADO PARCELS OF MARIJUANA BEING SENT OUTSIDE THE UNITED STATES.

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NOTE: INFORMATION ON THIS PAGE (PG. 127) WAS REMOVED AS IT WAS DISCOVERED TO BE INACCURATE INFORMATION RELATED TO SOME COLORADO PARCELS OF MARIJUANA BEING SENT OUTSIDE THE UNITED STATES.

A Few Parcel Examples

- ❖ There are courier delivery service companies, with locations throughout the country, from which Colorado marijuana destined for other states have been seized. Unlike the U.S. Postal Service, a central data repository does not exist for these various private couriers.

Bad Luck in Marijuana Industry Leads to Arrest: In April 2015, a major parcel company alerted Chicago Police to a package coming from Colorado that had a strong odor of marijuana. Police obtained a search warrant and seized nearly 7 pounds of marijuana. The individual to whom the package was delivered was arrested. This individual was identified as part of the young entrepreneurs who went to Colorado about five years prior to make money in the medical marijuana industry. Apparently he moved to Colorado and grew marijuana plants in a warehouse outside of Denver. At the same time, his wife operated a small medical marijuana dispensary in Denver. Prior to this arrest in 2015, he was arrested in 2010 by Chicago Police for a parcel post package containing 40 pounds of marijuana. The individual reflected on his hard luck in the medical marijuana business and stated, "Some people in the industry have gotten lucky. Other guys like me have gotten caught in the system."¹

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North Metro Task Force Busy with Parcel Cases: North Metro Task Force responded to 142 packages containing marijuana from just one parcel company. They have had additional cases with two other major parcel companies.²

Medical Marijuana Store Owner to Receive \$16,000: In February 2015, three suspicious parcels were identified. A search warrant was obtained and revealed the packages contained over \$16,000 in cash. These three parcels, all coming from different locations including Idaho, Pennsylvania and Illinois, were destined for a Colorado Springs metro area medical marijuana store owner.²

Colorado Marijuana Selfie: In February 2015, a Texas man was arrested for trying to send himself marijuana and marijuana products he purchased in Pueblo, Colorado. Apparently the subject purchased the marijuana in Pueblo and then mailed it to himself in **San Angelo, Texas** where he resides. The package, when seized, contained 9 pounds of "high-grade marijuana" and marijuana edibles as well as cough syrups, skin patches and "wax" that had been "legally purchased" from two separate dispensaries in Pueblo. This individual was arrested in Texas.³

Breck Man Gets Pot Christmas Presents at New York Hotel: In December, 2014, a 28-year-old Breckenridge, Colorado resident was taken into custody for possession of over 16 pounds of marijuana. Apparently he used the U.S. Postal Service to ship the marijuana, wrapped as Christmas presents, to himself in **New York**.⁴

It's Illegal to Ship Marijuana Out of State?: In October 2013, North Metro Task Force investigated a package containing 10.2 pounds of marijuana and 3.4 pounds of edibles being shipped to Florida. They were able to identify the individual, a former resident of Florida, who was sending packages to relatives living in **Florida**. He claimed he didn't realize it was illegal to ship marijuana and edibles.²

Castle Rock Man Mails Pot: An individual in Castle Rock, Colorado plead guilty to sending more than 100 packages of marijuana to "locations across the country and receiving several hundred thousand dollars through the mail in return." The U.S. Attorney's Office in Colorado reports that searches of the subject's apartment and vehicle turned up approximately 24 pounds of marijuana, marijuana extract and marijuana edibles. The authorities also seized \$53,000 in cash.⁵

Colorado Marijuana to Broward County, Florida: In 2014, there were nine separate parcels received in **Broward County, Florida** that were marijuana originating from Colorado. The total weight was 30.17 pounds with one package as small as 4 grams and another as large as 17 pounds. There was hash oil and marijuana candy seized in two of the packages. Four of the packages were sent from Denver, two from Aurora, one from Lakewood, one from Colorado Springs and one from Golden.²

25 Parcels Seized Going to 13 States: In 2014, one parcel facility seized 25 packages containing marijuana from Colorado with a total weight of 123 pounds. They were able to identify that nine of the packages came directly from Denver, three from Littleton, two from Aurora, two from Breckenridge and the rest were sent from six other cities in Colorado.²

Brownies to Florida: In March 2015, the West Metro Task Force responded to a parcel company that opened a suspicious package and found two baggies with marijuana brownies, along with a business card. The card read "Sweet Mary Jane – Merciful Chocolate." The package was destined for **Sulphur Springs, Florida**.²

Regular Customer: In January 2014, a suspicious parcel was located which subsequently lead to a search warrant revealing 1.2 pounds of marijuana. Law enforcement was able to identify the sender who was shipping the marijuana from Colorado to **Maryland**. The individual was a frequent customer at this parcel location.²

Colorado Marijuana to Northern Florida: In Northern Florida, 15 marijuana and/or hashish parcels from Colorado had been sent to Florida weighing a total of 40.5 pounds. All the marijuana was hydroponic and destined for **Florida** with the exception of one 5.7 pound package that was destined for **Georgia**.²

Highway Traffic Stop Results in Package Interception: In July 2014, two subjects traveling from Aurora, Colorado to **Des Moines, Iowa** were stopped on Interstate 76 in Colorado for a traffic violation. During the stop, a receipt from a major parcel company was discovered. The package on the receipt was subsequently intercepted and 3.5 pounds of marijuana was seized.²

Colorado to Arkansas: In April 2014, a parcel company turned over a package containing 5.4 ounces of marijuana to TRIDENT. Apparently the package, coming from Garfield County, Colorado, was en route to **Jonesboro, Arkansas**.²

Regular Packages from Colorado to South Dakota: In July 2014, North Metro Task Force investigated a package containing 3.2 pounds of marijuana being shipped from

Colorado to **Rapid City, South Dakota**. The follow-up investigation with the South Dakota authorities resulted in the suspect confessing to have received packages from Colorado on a regular basis.²

Stuffed Animals with Marijuana: In June 2015, Loveland Police Department was called out on a suspicious package from a parcel company. They discovered that the package contained stuffed animals full of marijuana and weighing over 2 ounces. The package was coming from Colorado en route to **Navarre, Florida**.²

Hash to Florida: In January 2015, a customer acting very suspicious attempted to ship a parcel from the Colorado Springs area to **Florida**. This individual subsequently gave consent to open the parcel, which contained approximately 5 ounces of hash.²

5 Pounds to Houston, Texas: In May 2015, West Metro Task Force investigators were called by a parcel company who had discovered five 1-pound packages of marijuana destined to be shipped to **Houston, Texas**.²

Helping a Friend: In September 2014, West Metro Task Force investigators responded when a 29-year-old male attempted to send an overnight package containing miscellaneous food items and marijuana concentrate. When arrested, the individual told the investigators he was attempting to "help" a friend who lived in **Hawaii**.²

Halloween Candy from Colorado: In October 2014, law enforcement in the Metropolitan Washington, DC area seized three parcels containing approximately 7.2 pounds of THC-laced Halloween candy. These parcels originated from Colorado and were set to be delivered to an address in **Maryland**.²

Colorado Marijuana to Mississippi: In 2014, there were six packages with marijuana from Colorado being sent to **Mississippi** via parcels. The total weight of the six parcels was 9.7 pounds.²

Sources

¹ CBS2 Local/Chicago, April 6, 2015, "Man Busted Again For Colorado-To-Chicago UPS Marijuana Shipment," <<http://chicago.cbslocal.com/2015/04/06/man-busted-again-for-colorado-to-chicago-ups-marijuana-shipment/>>, accessed April 6, 2015

² Rocky Mountain High Intensity Drug Trafficking Area, 2015

³ Jesse Paul, *The Denver Post*/Denver and the West Section, February 5, 2015, "Pueblo police: Texas man arrested after trying to send \$63,000 of marijuana," <http://www.denverpost.com/news/ci_27465615/pueblo-police-texas-man-arrested-after-trying-send?source=infinite>, accessed February 5, 2015

⁴ Allison Sylte, 9News.com, December 17, 2014, "Breck man gets pot Christmas presents at NY hotel," <<http://www.9news.com/story/news/crime/2014/12/17/david-malchow-marijuana-christmas-present/20548229/>>, accessed December 18, 2014

⁵ *The Denver Post*/Colorado Roundup Section, May 13, 2015 "Castle Rock Man pleads guilty to mailing marijuana."

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SECTION 9: THC Extraction Labs

Introduction

Since the *de facto* and actual legalization of marijuana, many new trends have developed. The emergence of the THC extraction lab, commonly referred to as a butane hash oil (BHO) lab, is a prime example. The major draw to marijuana extraction is the potency of the final product. Some marijuana concentrates can contain 80-90 percent THC, whereas an average size marijuana cigarette averages 10-15 percent THC. Marijuana users state that vaporizing even a small amount of marijuana concentrate produces a more euphoric high than smoking.

There are several solvents that can be used during the extraction process, including acetone, butane, carbon dioxide (CO₂), hexane and rubbing alcohol. However, butane hash oil extraction has become an increasingly popular method of producing marijuana concentrate. The process involves forcing butane through an extraction tube filled with finely-ground marijuana. The residue that emerges from the other end is a mixture of highly-concentrated THC and butane. Once the butane has completely evaporated, the final product is a viscous liquid known as "dab," "wax," "shatter", or "earwax," to name a few. This product does not emit the characteristic odor of traditional marijuana.

Butane is a very volatile and explosive solvent. Flash fire explosions have originated from the butane used in the extraction process. Several elements can spark a deadly explosion, such as static electricity, open flame from a cigarette lighter, or a simple electric switch. This process has sent several individuals to the hospital for burn treatments and the numbers continue to rise. This section examines the trends in both extraction lab explosions and the resulting injuries.

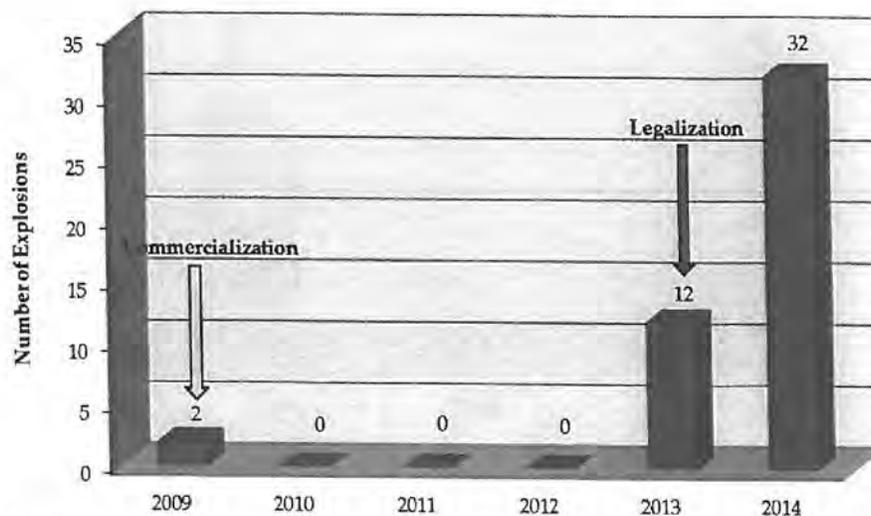
The information in this section covers the medical marijuana commercialization and expansion era (2009 – current) and the recreational marijuana era (2013 – current) in Colorado.

Some Findings

- From 2013 – 2014 there was a **167 percent** increase in reported Colorado THC extraction lab explosions from 12 to 32.
- From 2013 – 2014, there was a **67 percent** increase of injuries related to Colorado THC extraction lab explosions from 18 to 30.
- **Top three cities** where a THC extraction lab explosion occurred in Colorado in 2014:
 - Denver = 7
 - Grand Junction = 4
 - Colorado Springs = 3
- In 2014, **94 percent** of all explosions occurred in a residential setting.
- As of September 9, 2015, there have only been 7 THC extraction lab explosions reported.

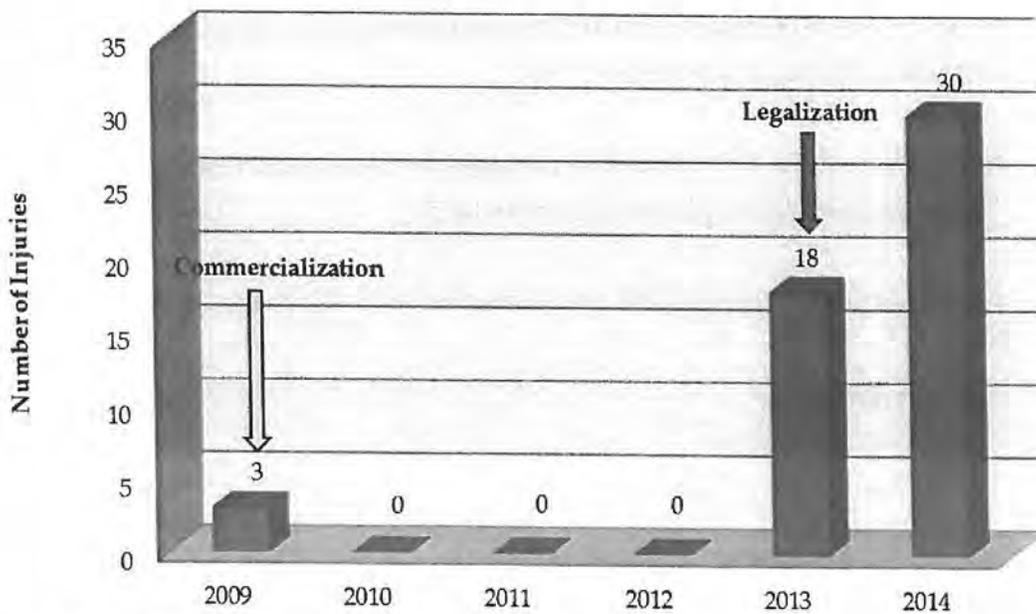
Data

THC Extraction Lab Explosions



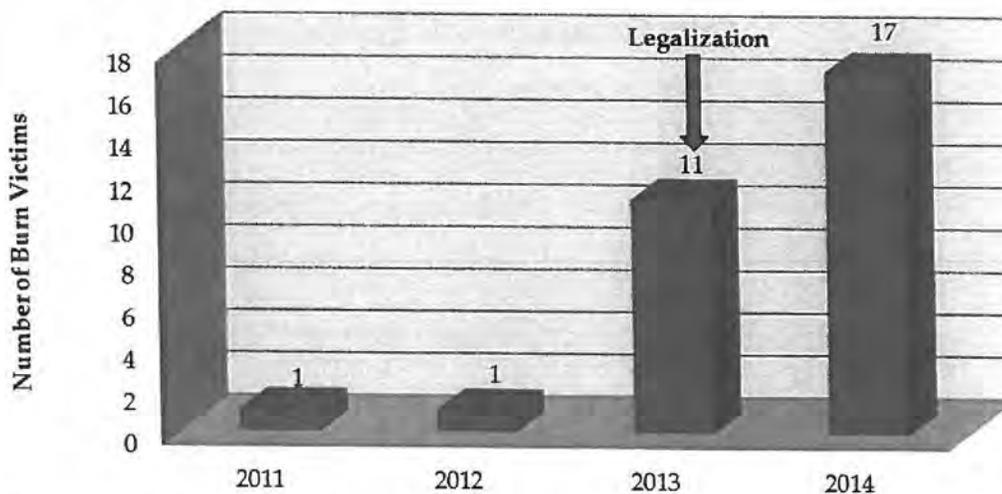
SOURCE: Rocky Mountain HIDTA, Investigative Support Center

THC Extraction Lab Explosion Injuries



SOURCE: Rocky Mountain HIDTA, Investigative Support Center

University of Colorado Hospital THC Extraction Lab Self-Admitted Burn Victims



SOURCE: University Hospital Burn Unit – University of Colorado Hospital

- ❖ Some of the injuries from the extraction process include, but are not limited to, severe burns to the hands, arms and face. The University Hospital Burn Unit – University of Colorado Hospital reports several cases in which skin grafts were required to repair the injuries.¹
- ❖ It should be noted that based on the first seven months of reported THC extraction lab explosions in 2015, there appears to be a significant decline from the previous two years. This is largely due to the publicity generated by the police, fire, healthcare and media in 2014 regarding the dangers of THC extraction labs. As of September 9, 2015, only seven lab explosions have been reported to Rocky Mountain HIDTA and only four lab-related injuries reported to the Burn Center.

Sources

¹ Camy Boyle, MS, RN, CCRN, CCNS, associate nurse manager, University Hospital Burn Unit – University of Colorado Hospital, personal interview, March 2014

Rocky Mountain HIDTA compiled the data provided by local, fire and police departments.

SECTION 10: Related Data

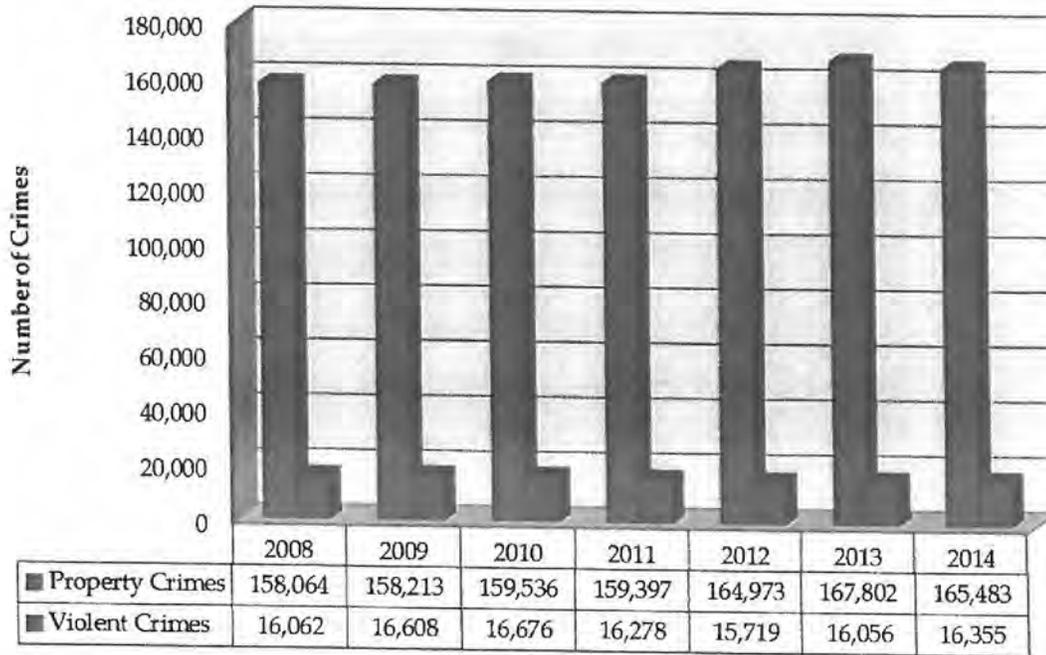
Topics

- Crime
- Revenue
- Homeless
- Suicides
- Environmental Impact
- THC Potency
- Marijuana Use and Alcohol Consumption
- Medical Marijuana Registry
- Licensed Marijuana Businesses as of January 2015
- Business Comparisons as of January 2015
- Demand and Market Size
- 2014 Reported Sales of Marijuana in Colorado
- 2014 Price of Marijuana
- Local Response to the Medical and Recreational Marijuana Industry in Colorado
- Polling
- Lawsuits
- Other Issues

Crime

Denver Crime: Some proponents from the marijuana industry claim that, since marijuana retail stores began on January 1, 2014, the crime rate in Denver has decreased. Actually, reported crime in Denver increased 10 percent during that time period.

Colorado Crime



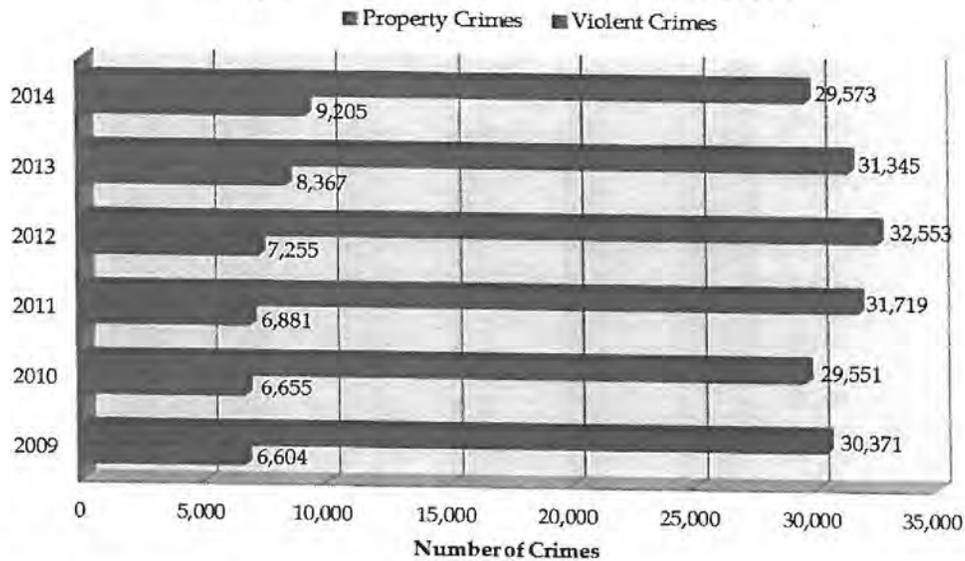
SOURCE: Colorado Bureau of Investigation, <http://crimeinco.cbi.state.co.us/>

All Reported Crime in Denver		
2013	2014	
55,115 reported crimes	60,788 reported crimes	5,391 reported crimes increase from 2013 to 2014 (10 percent increase)

- Crimes against persons increased 15.1 percent
- Crimes against property decreased 3 percent
- Crimes against society increased 23 percent
- All other offenses increased 41 percent

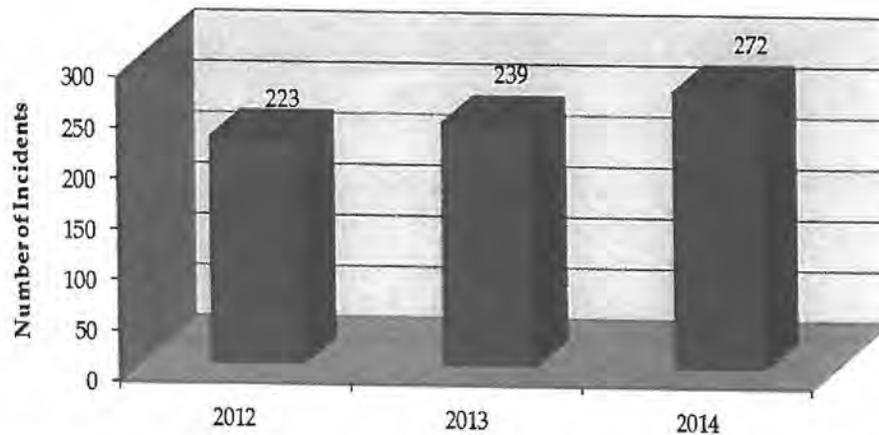
SOURCE: National Incident Based Reporting System definitions in the City and County of Denver, September 11, 2015

City and County of Denver Crime



SOURCE: City and County of Denver, Denver Police Department, Crime Statistics and Maps, September 10, 2015

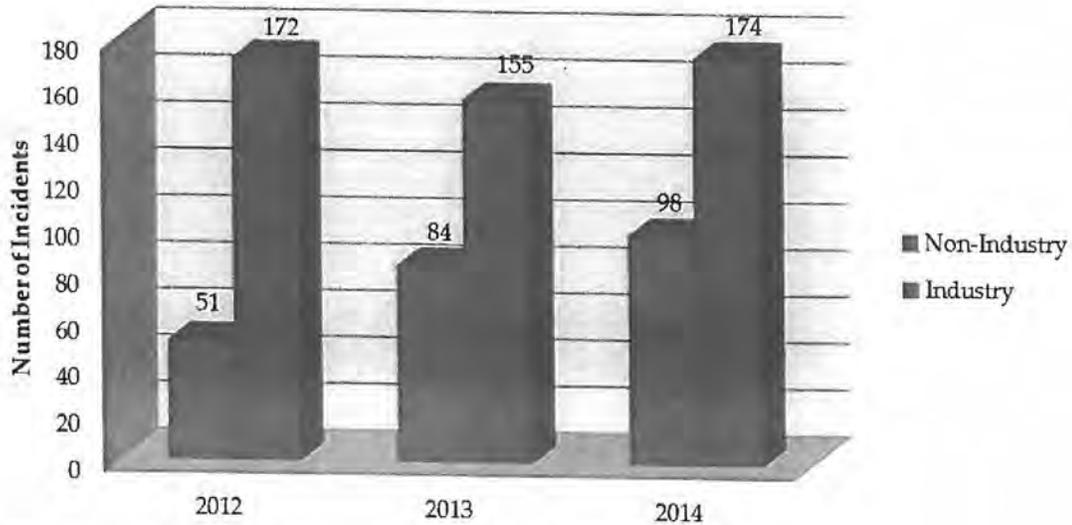
Total Marijuana-Related Crime for Denver City and County



SOURCE: City and County of Denver Open Source Data Catalog, July 2015

NOTE: "DATA ARE CRIMES REPORTED TO THE DENVER POLICE DEPARTMENT WHICH, UPON REVIEW, WERE DETERMINED TO HAVE CLEAR CONNECTIONS OR RELATION TO MARIJUANA. THESE DATA DO NOT INCLUDE POLICE REPORTS FOR VIOLATIONS RESTRICTING THE POSSESSION, SALE, AND/OR CULTIVATION OF MARIJUANA." - OPEN DATA CATALOG, MARIJUANA CRIME, DATA.DENVERGOV.ORG

Marijuana-Related Crime for Denver City and County

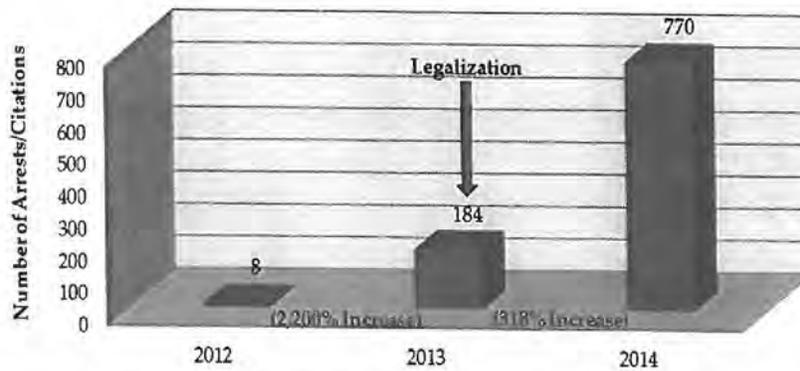


SOURCE: City and County of Denver Open Source Data Catalog, July 2015

- ❖ The majority of marijuana-related crime was the burglary of licensed marijuana businesses.

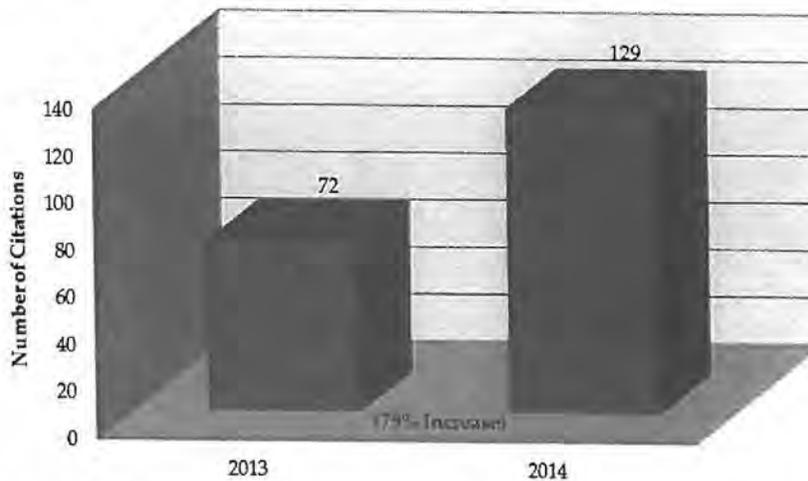
NOTE: "DATA ARE CRIMES REPORTED TO THE DENVER POLICE DEPARTMENT WHICH, UPON REVIEW, WERE DETERMINED TO HAVE CLEAR CONNECTIONS OR RELATION TO MARIJUANA. THESE DATA DO NOT INCLUDE POLICE REPORTS FOR VIOLATIONS RESTRICTING THE POSSESSION, SALE, AND/OR CULTIVATION OF MARIJUANA." - OPEN DATA CATALOG, MARIJUANA CRIME, DATA.DENVERGOV.ORG

Denver Police Department Unlawful Public Display/Consumption of Marijuana



SOURCE: Denver Police Department, Traffic Operations Bureau via Vice/Drug Bureau

Boulder Police Department Marijuana Public Consumption Citations



SOURCE: Boulder Police Department, Records and Information Services

NOTE: THE CITY OF BOULDER DID NOT HAVE A MUNICIPAL STATUTE SPECIFIC TO PUBLIC CONSUMPTION OF MARIJUANA UNTIL MID-2013.

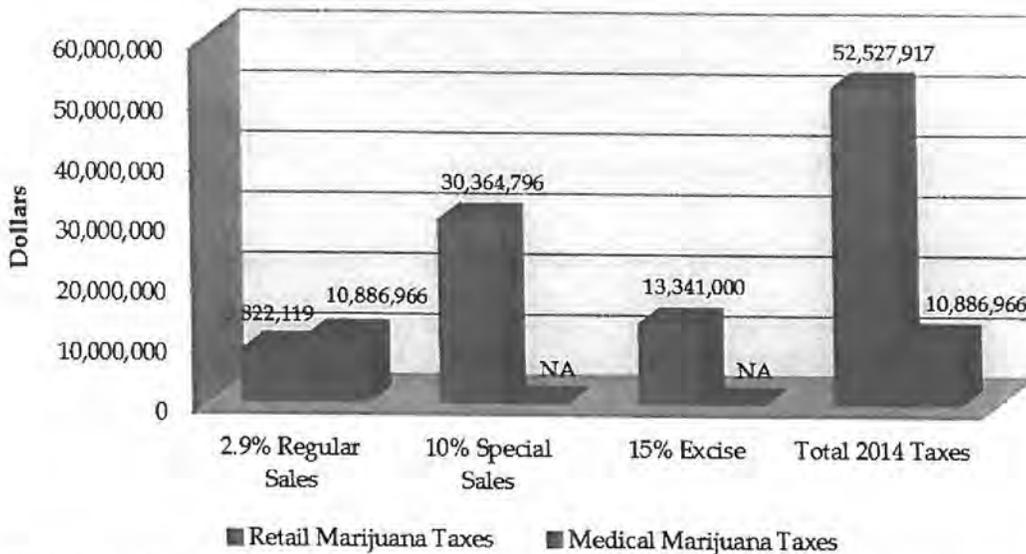
“City Leaders in Vail recently banned recreational marijuana stores, sighting (sic) the increase in crime and panhandling in other mountain towns that do allow sales, as a major factor their ban.”¹

Revenue

Question: How much revenue will the recreational marijuana industry generate in Colorado? Will the income exceed the cost related to the impact of legalization in Colorado?

Answer: No one knows for sure. It will take years of data collection to complete an analysis of whether marijuana legalization is economically positive or an economic disaster.

Total Revenue from Marijuana Taxes, Calendar Year 2014



SOURCE: Colorado Department of Revenue, Monthly Marijuana Taxes, Licenses and Fees Transfers and Distribution

NOTE: FIGURES DO NOT INCLUDE ANY CITY TAXES: THE STATE DOES NOT ASSESS OR COLLECT THOSE TAXES.

Colorado's Total General Fund Revenue, FY 2015*



***Preliminary Numbers based on June 2015 Forecast**

SOURCE: Colorado Office of State Planning and Budgeting, June 2015 Forecast (eleven months of data)

- ❖ Total marijuana tax revenue (medical and recreational) for FY2015 comprises 7/10 of 1 percent (0.7%) of Colorado's total general fund revenue.

Some Costs Related to Marijuana Revenue for the State of Colorado FY2015/16²

\$13,000,728	Department of Revenue (includes the Marijuana Enforcement Division)
\$314,633	Department of Agriculture
\$3,292,643	Department of Public Health and Environment (primarily medical marijuana)
\$271,328	Department of Public Safety
\$190,097	Governor’s Office of Marijuana Coordination
\$436,766	Department of Law
\$1,168,000	Department of Law (Peace Officer Standards and Training)
\$320,388	Department of Public Health and Environment
\$2,150,000	Department of Public Health and Environment (Marijuana public education campaign)
<u>\$212,369</u>	Department of Local Affairs
\$21,806,952	TOTAL
\$6,600,000	Estimate distributed to local government (FY 2014/15)
\$29,900,000	Estimate collected for school construction (18 months, January, 2014 – June, 2015)

NOTE: THESE ARE BUDGETED AMOUNTS AND MAY NOT REPRESENT ACTUAL SPENDING. DOES NOT INCLUDE COSTS TO LOCAL GOVERNMENT NOR ANY COSTS ASSOCIATED WITH SOCIETAL IMPACTS SUCH AS TRAFFIC DEATHS AND EMERGENCY ROOM ADMISSIONS.

Articles

Colorado Weed Czar: Revenue Up in Smoke: According to Andrew Freedman, director of the Colorado Governor’s Office of Marijuana Coordination, most revenue generated from legal marijuana sales will be used to regulate the industry. “Freedman, who is tasked with keeping tabs on the regulation of Colorado’s retail and medical marijuana markets, said the tax dollars brought in largely go toward the ‘cost of legalization.’” He said, “You do not legalize for taxation. It is a myth. You are not

going to pave streets. You are not going to be able to pay teachers. The big red herring is the whole thing that the tax revenue will solve a bunch of crises. But it won't."³

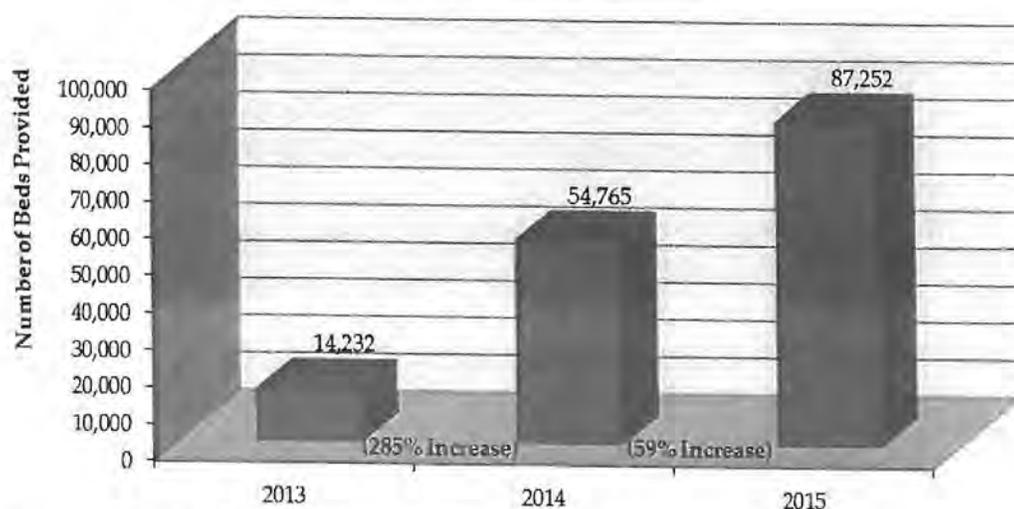
Tax Revenue Doesn't Measure Up: In February 2015, state officials released tax revenue figures from recreational and medical marijuana for 2014 at around \$63 million. "The 15 percent excise tax dedicated for schools – projected alone to raise \$40 million – has generated about one-third of the original estimates. Excise taxes totaled \$13.3 million from Jan. 1 through Dec. 31 according to data from the Colorado Department of Revenue." Colorado's governor had to drastically modify his \$100 million plan for tax revenue. "We ended up with much closer to a \$33.5 million budget for this fiscal year," said Andrew Freedman, director of the Governor's Office of Marijuana Coordination. Freedman said the first priority is to cover costs of regulation. Apparently about \$7.6 million is needed to enforce regulations and \$5.6 million for a statewide public education campaign.⁴

"Marijuana Taxes Won't Save State Budgets": Colorado Governor John Hickenlooper's office projected \$118 million in taxes from recreational marijuana and modified that projection down to \$69 million. The Colorado Department of Revenue commissioned report estimated 130 metric tons of marijuana would be consumed in Colorado, but just 77 metric tons were sold through medical or recreational retailers. The rest was sold through an unregulated and untaxed gray market and the black market.⁵

The False Promise of Marijuana Money in Education: This article cites a 2014 survey in which more than half the respondents said that the positive to legalization was tax revenue as the greatest benefit. The article goes on to point out that, of the \$40 million earmarked for schools, excise taxes have brought in about half of that.⁶

Homeless

Total Overnight Beds Provided, January Through June



SOURCE: The Salvation Army, Intermountain Division

Related Material

Denver Shelters Cite Legal Pot in Homeless Upswing:⁷ There are no records on how many homeless people came to Colorado because of “legal weed.” However, homeless centers are seeing an influx, straining their ability to meet the need.

- Director Brett Van Sickle of Denver’s Salvation Army Crossroads Shelter: “The older ones are coming for medical (marijuana), the younger ones are coming just because it’s legal.” An informal survey of around 500 new out-of-towners found as many as 30 percent relocated for pot.
- Executive Director Tom Luehrs of Denver’s Saint Francis Center has seen a big increase in new faces at the shelter and an increase of 50 people a day more in 2014 than 2013. He says many have said they were drawn to Colorado because of legal marijuana.
- Urban Peak, which provides services to those ages 15 to 25, saw a 152 percent increase at their drop-in center in just one year. Director Kim Easton said about one-third of the newcomers cite legal marijuana as a factor in moving to Colorado.

Legal Pot Blamed for Influx of Homeless:⁸

- Deputy Director Kendall Rames of Urban Peak said, “Of the new kids we’re seeing, the majority are saying they’re here because of the weed.”
- Director Melinda Paterson, of Father Woody’s Haven of Hope, said, “Typically, they have an attitude. But we are really strict here.” She said that normally in the summer Father Woody’s gets an increase of 50 people per month but this year more than 300 a month.
- The Salvation Army Denver shelter averages went from 225 men to about 300 per night. They are seeing a much larger number of 18 to 25-year-olds. An informal survey suggested about 25 percent of the increase was related to marijuana.
- St. Francis Center Executive Director Tom Luehrs says marijuana only trails looking for work among a list of reasons for coming to Colorado.

Legalized Recreational Marijuana Use Draws Homeless Texans to Colorado: An article about homelessness and marijuana, published on September 22, 2014 states, “Colorado is seeing a significant increase in the number of homeless people arriving from Texas and the head of two homeless shelters said a big reason for the increase is homeless people wanting to smoke pot.” One homeless female from Texas is quoted as saying, “It wasn’t the only reason but it was one of the main factors.” Another individual from Lubbock, Texas who went to Denver, Colorado says he meets homeless Texans every day that went to Colorado to smoke marijuana.

Murray Flagg, of the Salvation Army, said, “We were averaging 190 people a night. Now we are averaging 345 people a night.” He goes on to state, “We find about one in four people have come for some marijuana related issue.”⁹

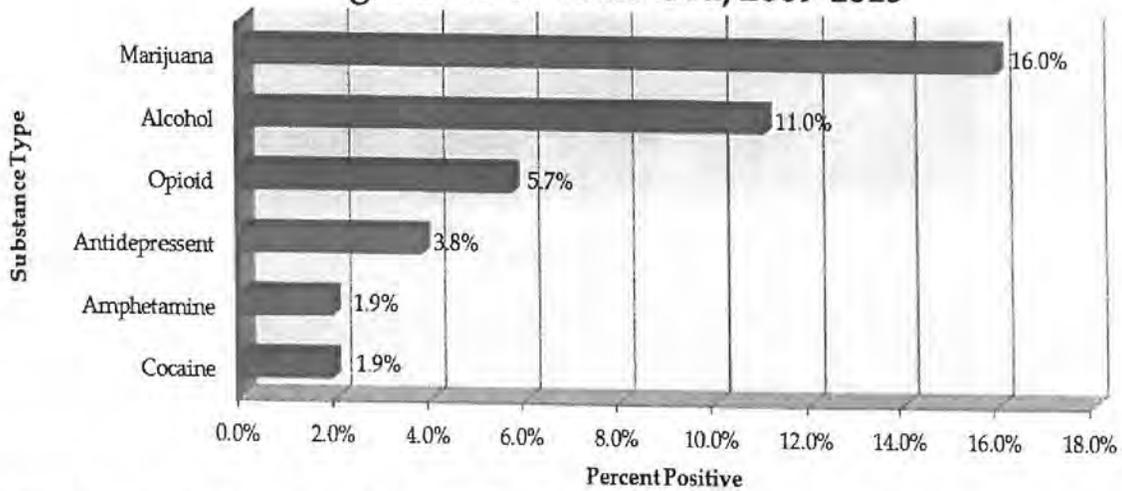
Homeless, Marijuana and Crime: Larimer County (Colorado) Sheriff Justin Smith has noted that, since marijuana was legalized, his agency is experiencing a significant spike in the homeless, transient and sheltered (HTS) population. HTS accounts for approximately 25 percent of county jail inmates. Many of those admit they came to Colorado because marijuana was legalized. The 121 homeless, transient and sheltered inmates generally have not been arrested for petty crime. In reviewing booking charges, it appears only 20 percent could be considered minor crime. Most were arrested for multiple crimes such as:¹⁰

- 28 percent – some kind of assault charge
- 26 percent – harassment or felony menacing charge
- 22 percent – some kind of theft, from burglary to auto theft charge
- 13 percent – resisting arrest charge

Suicide Data

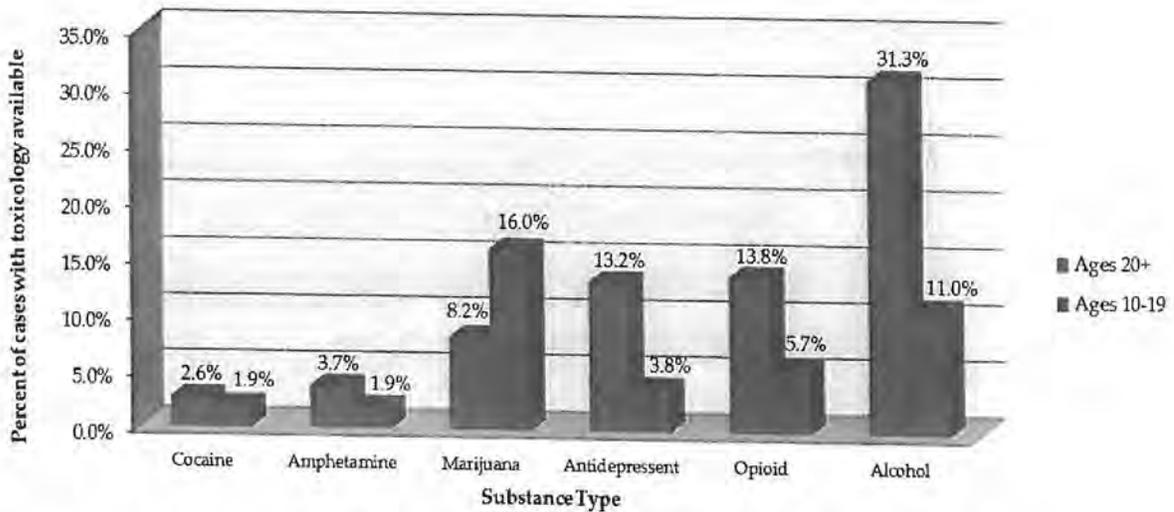
NOTE: ON AVERAGE, BETWEEN 2006 – 2013, 95 PERCENT OF ALL SUICIDES HAD TOXICOLOGY RESULTS OF WHICH 8 PERCENT WERE POSITIVE FOR MARIJUANA.³⁶

**Average Toxicology of Suicides Among Adolescents
Ages 10 to 19 Years Old, 2009-2013**



SOURCE: Colorado Violent Death Reporting System, Colorado Department of Public Health and Environment (CDPHE)

Average Toxicology Results by Age Group Colorado, 2009-2013



SOURCE: Colorado Violent Death Reporting System, Colorado Department of Public Health and Environment (CDPHE)

- ❖ Marijuana is the only substance where youth ages 10 to 19 years old have a higher percent than adults ages 20 and older.

Environmental Impact

Pesticides on “Legal” Marijuana Grows: Denver city officials quarantined marijuana plants at eleven legal grow facilities in May of 2015. This quarantine is based on hundreds of millions of dollars’ worth of marijuana believed to be contaminated with pesticides.¹¹

Water-Intensive Marijuana Cultivation: An article concerning marijuana cultivation in California, published in the journal *Bioscience*, revealed that marijuana is an extremely thirsty plant. “In the state’s north coast region, about 22 liters of water or more per plant per day is used during the growing season, which lasts from June through October.” A co-author pointed out that marijuana grown in the state of California uses nearly twice as much water as wine grapes.¹²

Side Effects of Legal Marijuana: “Damaged homes have become an epidemic nightmare for the realtors who manage rental properties, who have been left explaining

to homeowners why black mold has infested their income properties, why their sheetrock has been pulled out and makeshift watering systems installed. Every realtor seems to have a horror story about renting to seemingly fine tenants who are actually quick-profit-making pot entrepreneurs. No insurance company will cover damages from a grow establishment because it is still federally illegal."¹³

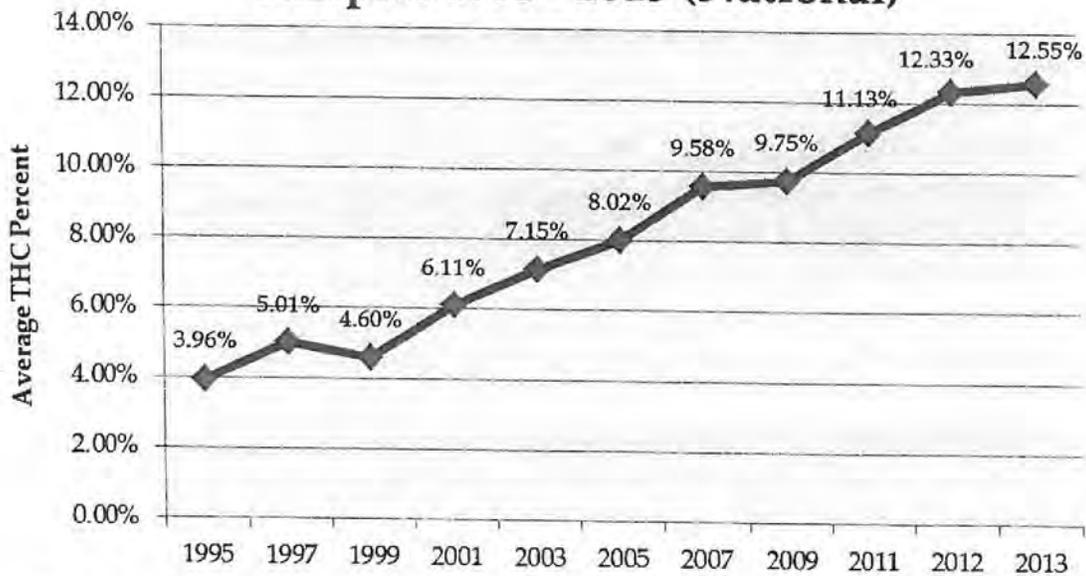
Marijuana Stink Means Property Values Sink: Apparently neighbors in Pitkin County (Colorado) are infuriated by the stench that comes from a marijuana greenhouse.¹⁴

Marijuana Electric Demands: "Surging electricity consumption by Colorado's booming marijuana industry is sabotaging Denver's push to use less energy – just as the White House perfects a Clean Power Plan to curb carbon pollution." Apparently Denver's electricity rate is increasing at a rate of 1.2 percent per year and 45 percent of the increase comes from marijuana growing facilities. The growing facilities used 86 million kWh in 2012, 121 million in 2013 and 200 million in 2014.¹⁵

Pot Growers and Sky-High Power Bills: "The average indoor grow operation in Denver has a monthly electric bill of \$20,000 to \$50,000," said Jay Czarkowski, a principal at Canna Advisors, a consulting firm in Boulder." Colorado's marijuana industry uses large amounts of energy for lighting and air conditioning. The owner of one of Colorado's largest cannabis companies said that her utility bill is approximately \$40,000 a month. Ron Flax, a building sustainability expert in Boulder, said that the power demand for marijuana growing operations is five times higher than the typical monthly demand of comparable commercial buildings. Evan Mills, an energy analyst and scientist from the Lawrence Berkeley National Laboratory, wrote a paper entitled, "Energy Up in Smoke: The Carbon Footprint of Indoor Cannabis Production." Her conclusion was that growing marijuana indoors requires four times more energy than a hospital on a per-square-foot basis and eight times more energy than a typical U.S. commercial building.¹⁶

THC Potency

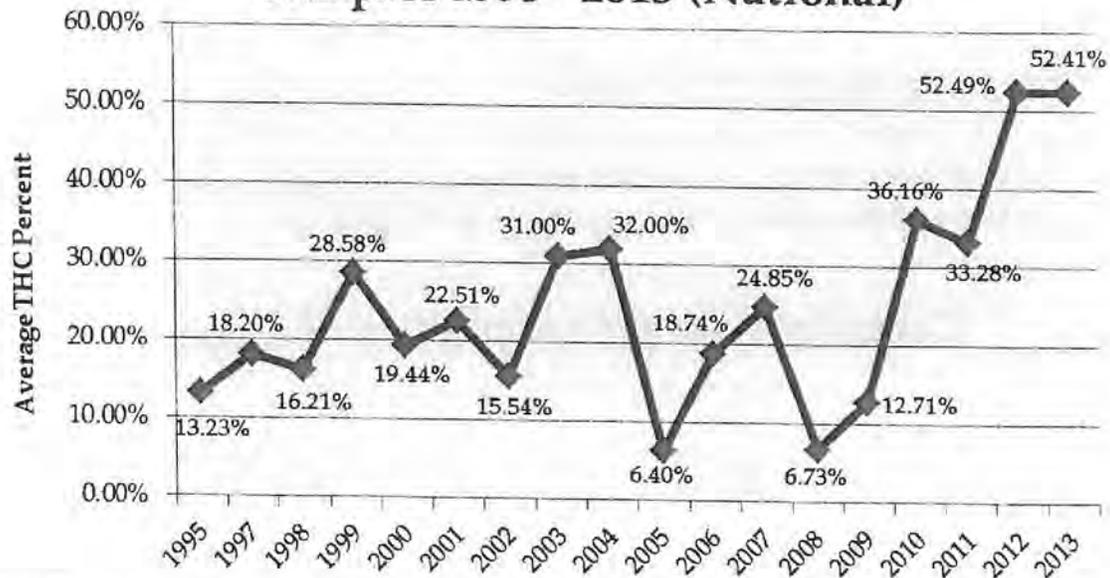
Potency Monitoring Program- Average THC Percent DEA-Submitted Cannabis Samples 1995 - 2013 (National)



SOURCE: Potency Monitoring Program, Quarterly Report Number 123, National Center for Natural Products Research (NCNRP) at the University of Mississippi, under contract with the National Institute on Drug Abuse.

❖ The 2015 average THC percent for Colorado marijuana is 17.1 percent.¹⁷

Potency Monitoring Program- Average THC Percent All Submitted Hash Oil Samples 1995 - 2013 (National)



SOURCE: Potency Monitoring Program, Quarterly Report Number 123, National Center for Natural Products Research (NCNRP) at the University of Mississippi, under contract with the National Institute on Drug Abuse.

❖ The 2015 average THC percent for Colorado concentrate is 62.1 percent.¹⁷

Colorado Marijuana Study Finds Legal Weed Contains Potent THC Levels: “In old-school dope, levels of THC – the psychoactive chemical that makes people high – were typically well below 10 percent. But in Colorado’s legal bud, the average THC level is 18.7 percent, and some retail pot contains 30 percent THC or more...” A Denver lab licensed to analyze marijuana samples reports that after 600 samples provided by licensed growers and sellers, they detected little medical value and lots of contamination. “We have been finding some really dirty marijuana,” said Andy LaFrate, president of Charas Scientific. He cited fungi and solvents such as butane. He also stated that the 600-plus samples generally carried little or no CBD, the compound that makes medical marijuana “medical.” His study shows that the average CBD was 0.1 percent.¹⁸

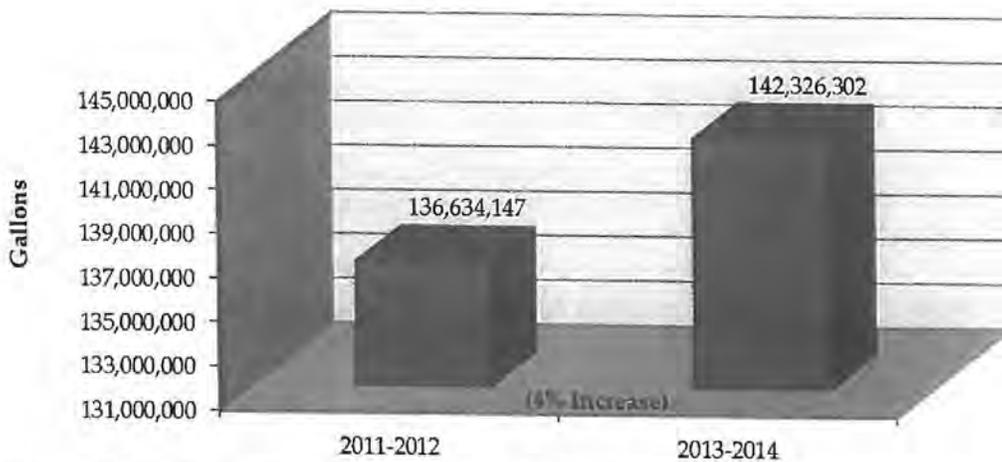
THC Concentrates and Youth: “Now the threat of THC concentrates pose to public health and safety loom large. A new study from researchers at Ohio’s Nationwide Children’s Hospital finds more American children are exposed to marijuana before reaching their fifth birthday. The report, published in the peer-reviewed journal *Clinical*

Pediatrics, found that, between 2006 and 2013, the marijuana exposure rate rose 147.5 percent among children age 5 and under. In that same period, the rate rose nearly 610 percent in states that sanctioned medical marijuana before 2000, the year Colorado followed suit.”¹⁹

Marijuana Use and Alcohol Consumption

There are some who have theorized that legalizing marijuana would reduce alcohol consumption. Thus far that theory is not supported by the data.

Colorado Average Consumption of Alcohol in Gallons, Per Calendar Year



SOURCE: Colorado Department of Revenue, Colorado Liquor Excise Tax

Medical Marijuana Registry

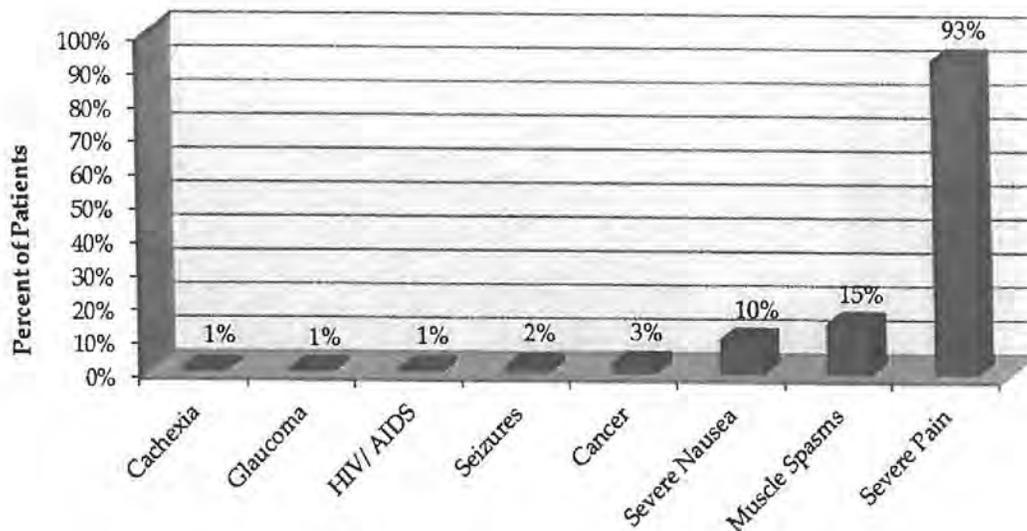
Medical Marijuana Registry Identification Cards²⁰

- December 31, 2009 – 41,039
- December 31, 2010 – 116,198
- December 31, 2011 – 82,089
- December 31, 2012 – 108,526
- December 31, 2013 – 110,979
- December 31, 2014 – 115,467

Profile of Colorado Medical Marijuana Cardholders:²⁰

- 65 percent male, with an average age of 41 years
- 23 percent between the ages of 21 and 30
- 66 percent under the age of 50
- 15 percent over the age of 61
- 93 percent reporting severe pain as the medical condition
- Only 5 percent reporting cancer, AIDS and glaucoma as the medical condition

Percent of Medical Marijuana Patients Based on Reporting Condition



SOURCE: Colorado Department of Public Health and Environment, Medical Marijuana Statistics

NOTE: TOTAL DOES NOT EQUAL 100 PERCENT AS SOME PATIENTS REPORT USING MEDICAL MARIJUANA FOR MORE THAN ONE DEBILITATING MEDICAL CONDITION.

Colorado Licensed Marijuana Businesses as of January 2015

Medical Marijuana:²¹

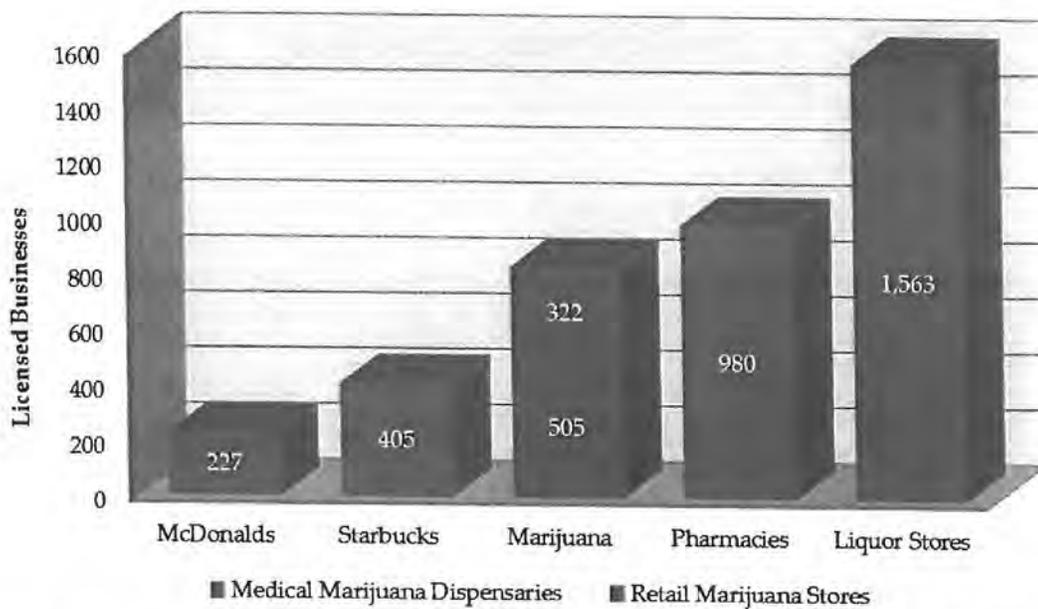
- 505 medical marijuana centers (“dispensaries”)
- 748 marijuana cultivation facilities
- 163 infused products (edibles) businesses

Recreational Marijuana:²²

- 322 marijuana retail stores
- 397 marijuana cultivation facilities
- 98 infused product (edibles) businesses
 - 16 testing facilities

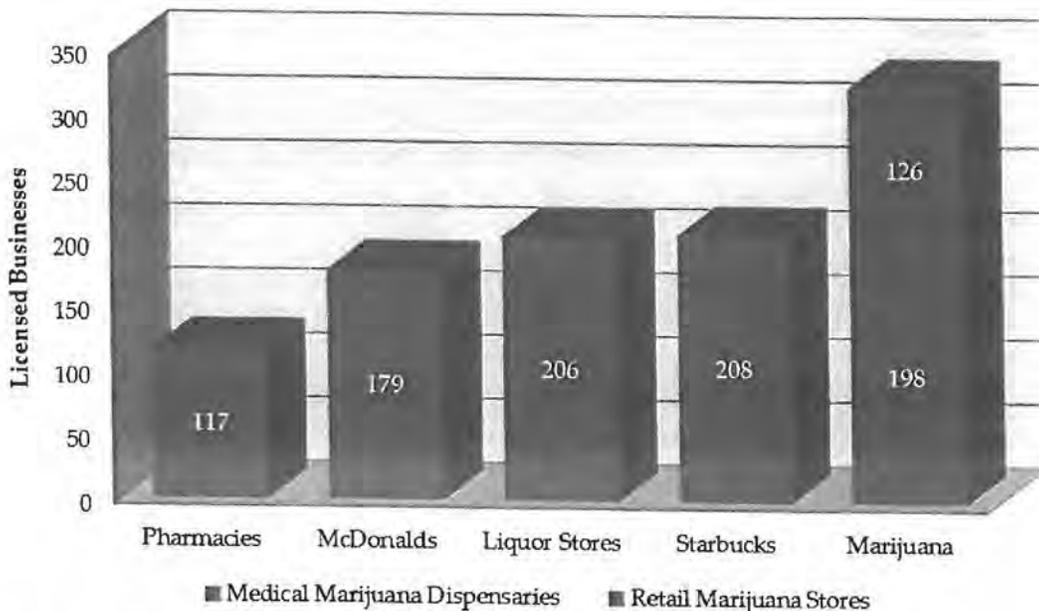
Business Comparisons, January 2015

Colorado Business Comparisons, January 2015



SOURCE: Colorado Department of Revenue; Starbucks Coffee Company, Corporate Office Headquarters; McDonalds Corporation, Corporate Office Headquarters

Denver Business Comparisons, January 2015



SOURCE: Colorado Department of Revenue; Starbucks Coffee Company, Corporate Office Headquarters; McDonalds Corporation, Corporate Office Headquarters

❖ **Denver:**

- 198 licensed medical marijuana centers (“dispensaries”)²²
- 117 pharmacies (as of February 12, 2015)²³

Demand and Market Size

The Colorado Department of Revenue published a report in July 2014 called, “Market Size and Demand for Marijuana in Colorado.”⁶ Some of the information included:

Demand:

- In 2014, the established demand for marijuana by Colorado residents 21 years and older is **121.4 metric tons (267,638.44 pounds)** of marijuana.
- In 2014, the estimated demand for marijuana by out-of-state visitors 21 years and older is **8.9 metric tons (19,620.94 pounds)**.

- The potential range of demand for the above two groups is between 104.2 – 157.9 **metric tons** (between 229,719.32 and 348,106.34 pounds).

Market Size:

- There are an estimated 485,000 Colorado adult regular marijuana users (at least once per month), which is **9 percent** of the total Colorado population of all ages (5.363 million).
- Heavy users who consume marijuana nearly daily make up the top **21.8 percent of the user population** but account for **66.9 percent** of the demand for marijuana.
- Out-of-state visitors represent about **44 percent** of the metro area marijuana retail sale of marijuana and approximately **90 percent** of sales in heavily-visited mountain communities.
- Colorado has **23 percent** of its users consume nearly daily compared to **17 percent** nationally; that is **35.29 percent** higher.

2014 Reported Sales of Marijuana in Colorado¹⁷

- 109,578 pounds of medical marijuana flower
 - 36,600 pounds of recreational marijuana flower
 - 1,964,917 units of medical edible products
 - 2,850,733 units of recreational edible products
- ❖ **A single ounce of marijuana, depending on the solvent type and production method, can produce between 347 and 413 edibles of 10 mg strength.**

2014 Price of Marijuana¹⁷

	1 Gram	Ounce
Buds/Flowers	\$14.03	\$264.14
Edibles	\$24.99 (100 mg)	N/A
Concentrates	\$55.00	N/A

Local Response to the Medical and Recreational Marijuana Industry in Colorado²⁴

- 321 total local jurisdictions
 - 228 (71 percent) prohibit any medical or recreational marijuana businesses
 - 67 (21 percent) allow any medical and recreational marijuana businesses
 - 26 (8 percent) allow either medical or recreational marijuana businesses, not both

Polling

August 2015 Smith Johnson Research Poll
(Colorado Survey)

- In 2012: 51.5 percent favored legalization
48.5 percent opposed legalization
- In 2015: 49.2 percent now favor legalization (2.3 percent drop)
50.8 percent now oppose legalization

October 2014 Pew Research Center Poll

	Favor Legalized	Oppose Legalized	Unsure
February 2014	54 percent	42 percent	3 percent
October 2014	52 percent	45 percent	3 percent

October 2014 Gallup Poll

	Favor Legalized	Oppose Legalized	Unsure
2013	58 percent	39 percent	3 percent
2014	51 percent	47 percent	2 percent

September 2014 Suffolk University/USA Today Poll Colorado

- 46 percent continue to support Amendment 64
- 50.2 percent do not agree with Amendment 64 decision

SOURCE: Polling Report.com

Quinnipiac University Poll, February 2015:²⁵

- 58 percent of Coloradoans polled still support legalizing marijuana for recreational use
 - 38 percent are opposed
- ❖ November 2012 Amendment 64 election results:
- 55 percent in favor
 - 45 percent opposed

Lawsuits

Lawsuit Using Federal Racketeering Laws: In February 2015, the Safe Streets Alliance filed a lawsuit on behalf of a horse farm and mountain hotel against two licensed marijuana businesses. The lawsuit, claiming damages, is utilizing the federal Racketeer Influenced and Corruption Organizations (RICO) Act. The lawsuit says, "Marijuana businesses make bad neighbors. They drive away legitimate businesses' customers, emit pungent, foul odors, attract undesirable visitors, increase criminal activity, increase traffic, and reduce property values." Five months after the suit was filed one of the defendants, a medical marijuana retail store, closed.^{26, 27}

Colorado, Nebraska and Kansas Sheriffs and Prosecutors File Lawsuit: Twelve sheriffs and prosecutors from Colorado, Nebraska and Kansas have filed a lawsuit as a federal preemption challenge to Colorado's recreational marijuana laws. The lawsuit puts Colorado sheriffs in the position of supporting Colorado's marijuana law in violation of federal law and their oath of office. The out-of-state authorities are citing the challenges and issues of dealing with the diversion of Colorado marijuana into their states.²⁸

Colorado Lawsuit Claims Marijuana Edibles Caused People to ‘Overdose’: Seven people filed a suit in Denver after they became sick from eating THC-laced treats manufactured by a licensed edible business. The plaintiffs visiting the Pot Pavilion at the Denver County Fair claimed they were told the chocolates did not contain THC. “A few hours later, though, they were in hospitals complaining about rapid heart rates, passing out, tunnel vision, and other scary symptoms.” One of the plaintiffs became so sick that he uncontrollably vomited into his vehicle and was diagnosed at the emergency room as overdosing on THC.²⁹

Fifth Amendment Lawsuit: A pro-marijuana industry attorney, on behalf of several plaintiffs, filed a lawsuit in June of 2014 alleging the payment of sales and excise taxes on the sale of recreational marijuana in Colorado violates the plaintiff’s Fifth Amendment rights against self-incrimination.³⁰

Employers Rights to Drug Tests: An employee of Dish Network, LLC filed a lawsuit against the company for having been fired for failing to pass a drug test. The individual, a licensed medical marijuana cardholder, believes he should have the right to possess and use medical marijuana under limited circumstances without fear of being fired from his place of employment.³¹

Nebraska and Oklahoma Sue Colorado Over Pot: In 2014, the states of Nebraska and Oklahoma filed a lawsuit against Colorado for legalizing recreational marijuana. The lawsuit deals with the diversion of Colorado marijuana to the states of Nebraska and Oklahoma and the burden it places on the two states. Since this is a lawsuit in which a state is suing another state, it goes directly to the Supreme Court.³²

Other Issues

Too Many “Stoned” Employees: In the spring of 2015, Little Spider Creations’ owner is moving his company to South Carolina. The owner claims that, since Colorado legalized marijuana, too many of his employees were coming in high. He said the main reason they are leaving Colorado is that marijuana got into their industry and half of their sculptors would come to work high. He said, “We went through 25 sculptors. Only five of [our sculptors] either were quality or would show up unimpaired.” He says those employees coming to work high were not as productive and tended to have a “it’s good enough” attitude. The owner, a native Coloradoan, had 47 full-time employees.³³

Pot Stores Find Ways of Accepting Credit Cards: Fox31 News (Denver) found that 47 percent of medical marijuana centers polled are allowing the use of credit cards although technically illegal. Apparently these medical retail stores are using holding companies that have legitimate banking relationships. That prevents the banks from knowing they are doing business with marijuana retailers.³⁴

Edible Pot Labels Inaccurate: A study from John Hopkins University shows that more than 80 percent of product labels for marijuana edibles were inaccurate according to researchers. The study, published in the *Journal of the American Medical Association*, showed that only 17 percent of the labels were accurate to within 10 percent of the actual THC content.³⁵

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SECTION 11: Reference Materials

Reports

- ❑ *ANNUAL UPDATE BY THE COLORADO DEPARTMENT OF REVENUE, ENFORCEMENT DIVISION – MARIJUANA, FEBRUARY 27, 2015*

This report includes information on the Marijuana Enforcement Division's activities related to medical and recreational marijuana businesses as well as data concerning cultivation and distribution of marijuana by licensed businesses in Colorado.

- ❑ *MARKET SIZE AND DEMAND FOR MARIJUANA IN COLORADO PREPARED FOR THE COLORADO DEPARTMENT OF REVENUE BY THE MARIJUANA POLICY GROUP, MILES K. LIGHT ET AL*

This report provides estimates for the demand for marijuana and the characteristics of Colorado's market for marijuana.

- ❑ *MARIJUANA EQUIVALENCY IN PORTIONS AND DOSAGE BY THE COLORADO DEPARTMENT OF REVENUE, AUGUST 2015*

This report is an assessment of physical and pharmacokinetic relationships in marijuana products and consumption in Colorado.

- ❑ *MONITORING HEALTH CONCERNS RELATED TO MARIJUANA IN COLORADO: 2014, PUBLISHED BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT*

Based on legislative mandate, the Colorado Department of Health and Environment appointed a thirteen-member committee to review the scientific literature on the health effects of marijuana including Colorado-specific outcomes and use data. This report looks at changes in marijuana use in Colorado and also reviews literature on marijuana use and health effects. The committee, in reviewing the literature, judges the findings based on the evidence including categories such as substantial evidence, limited evidence, insufficient evidence, etc.

- ❑ *COLORADO'S LEGALIZATION OF MARIJUANA AND IMPACT ON PUBLIC SAFETY: A PRACTICAL GUIDE FOR LAW ENFORCEMENT, PUBLISHED BY THE COLORADO ASSOCIATION OF CHIEFS OF POLICE AND THE POLICE FOUNDATION*
This report focuses on identifying "Colorado's public safety challenges, solutions, and unresolved issues with legalized medical marijuana and recreational marijuana."
- ❑ *POST-LEGALIZATION OF RETAIL MARIJUANA: A STUDY FOCUSING ON EFFECTS OF CRIME, LIVABILITY AND PERCEPTIONS OF CRIME IN THE DENVER METRO AREA, EARLY SUMMER 2015 BY METROPOLITAN STATE UNIVERSITY*
This report examines crime in Denver and homelessness since the first recreational retail businesses went into effect January 1 2014.
- ❑ *DENVER METRO AREA SENTINEL COMMUNITY EPIDEMIOLOGY REPORT #1, MAY 15, 2015 BY THE DENVER OFFICE OF DRUG STRATEGY, PREPARED BY BRUCE MENDELSON, MPA, DENVER METRO AREA SENTINEL COMMUNITY EPIDEMIOLOGIST*
This report includes "data collection, analysis, and discussions" regarding alcohol and drug abuse in Denver and the Denver Metro area.
- ❑ *MARIJUANA DATA DISCOVERY AND GAP ANALYSIS SUMMARY REPORT, SEPTEMBER 4, 2014 BY REBOUND SOLUTIONS*
This report by Rebound Solutions for the state of Colorado analyzes available data to gauge the impact of the legalization of marijuana has on the state of Colorado. This report identifies data, the value of the data and the gaps involved in doing a complete assessment.
- ❑ *HEALTHY KIDS COLORADO SURVEY 2013, SEPTEMBER 2014 PREPARED FOR THE COLORADO DEPARTMENT OF EDUCATION, COLORADO DEPARTMENT OF HUMAN SERVICES AND COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT BY THE UNIVERSITY OF COLORADO-DENVER COMMUNITY EPIDEMIOLOGY AND PROGRAM EVALUATION GROUP*
This report collected self-reported health information from Colorado middle to high school students related to a number of issues including drug abuse.
- ❑ *FEDERAL PROPOSALS TO TAX MARIJUANA: AN ECONOMIC ANALYSIS, NOVEMBER 13, 2014 BY THE CONGRESSIONAL RESEARCH SERVICE, JANE G. GRAVELLE, ET AL*
This report "focuses solely on issues surrounding a potential federal marijuana tax." It provides a brief overview of marijuana production, justification estimate levels of tax and possible marijuana tax designs.

- ❑ *EXAMINING THE RELATIONSHIP BETWEEN MARIJUANA USE, MEDICAL MARIJUANA DISPENSARIES, AND ABUSIVE AND NEGLECTFUL PARENTING BY FREISTHLER, B., ET AL.*
This study examines whether and how current marijuana use, and the physical availability of marijuana, are related to child physical abuse, supervisory neglect, or physical neglect by parents while controlling a child, caregiver or family characteristics in a general population survey in California.

- ❑ *WHAT WILL LEGAL MARIJUANA COST EMPLOYERS, 2014 BY NATIONAL FAMILIES IN ACTION*
This report covers the impact of legal marijuana on employers dealing with safety, litigation, compliance and productivity.

- ❑ *I-502 EVALUATION PLAN AND PRELIMINARY REPORT ON IMPLEMENTATION BY WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, SEPTEMBER 2015*

- ❑ *THE EFFECTS OF CANNABIS USE DURING ADOLESCENCE, 2015 BY THE CANADIAN CENTRE ON SUBSTANCE ABUSE*
This report covers the impact of marijuana use on youth including the brain, mental illness and addiction.

- ❑ *'HIGH' ACHIEVERS? CANNABIS ACCESS AND ACADEMIC PERFORMANCE, BY OLIVIER MARIE AND ULF ZÖLITZ, INSTITUTE FOR THE STUDY OF LABOR, BONN, GERMANY, MARCH 2015*
This report investigates the impact of marijuana on student performance.

- ❑ *RESULTS OF THE 2013-2014 NATIONAL ROADSIDE SURVEY OF ALCOHOL AND DRUG USE BY DRIVERS BY THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, FEBRUARY 2015*

Articles

- ❑ *AMERICAN ACADEMY OF PEDIATRICS REAFFIRMS OPPOSITION TO LEGALIZATION OF MARIJUANA FOR RECREATIONAL OR MEDICAL USE, JANUARY 26, 2015 BY THE AMERICAN ACADEMY OF PEDIATRICS*
This policy statement opposing the legalization of marijuana also has some recommendations from the American Academy of Pediatrics.

- ❑ AMERICAN EPILEPSY SOCIETY PRESIDENT SAYS SIDE EFFECTS OF ARTISANAL CBD OILS CAN BE SO SEVERE NO PEDIATRIC NEUROLOGIST IN COLORADO WILL RECOMMEND THEM, FROM NATIONAL FAMILIES IN ACTION & PARTNERS, *THE MARIJUANA REPORT E-NEWSLETTER*, JUNE 24, 2015

This article discusses medical marijuana related to CBD.

- ❑ ANY DOSE OF ALCOHOL COMBINED WITH CANNABIS SIGNIFICANTLY INCREASES LEVELS OF THC IN BLOOD, AMERICAN ASSOCIATION FOR CLINICAL CHEMISTRY, MAY 27, 2015 AS REPORTED IN *ScienceDaily*

This article points to a study for the first time that the use of alcohol and marijuana produces a significantly higher blood concentration of THC than use of marijuana alone.

- ❑ EVIDENCE LINKING MARIJUANA AND RISK OF STROKE GROWS, AMERICAN HEART ASSOCIATION/NEWSROOM, FEBRUARY 20, 2015

This article reports that smoking marijuana may increase the chance of having a stroke.

- ❑ MARIJUANA BY THE AMERICAN LUNG ASSOCIATION (WEBSITE)

This report discusses the negative impact of marijuana on health and youth.

- ❑ MARIJUANA AND MADNESS: CLINICAL IMPLICATIONS OF INCREASED AVAILABILITY AND POTENCY, ROBIN M. MURRAY, MD, PROFESSOR OF PSYCHIATRIC RESEARCH AT THE INSTITUTE OF PSYCHIATRY, KING'S COLLEGE LONDON, *PSYCHIATRIC TIMES*, APRIL 30, 2015

In the *Psychiatric Times* this article discussed use and potency as well as cognitive impairment, psychosis, the developing brain and other implications.

- ❑ *MARIJUANA USE DURING PREGNANCY AND LACTATION*, JULY 2015 BY THE AMERICAN COLLEGE OF OBSTETRICIAN AND GYNECOLOGISTS, COMMITTEE ON OBSTETRIC PRACTICE

This report discusses the use of marijuana while pregnant.

- ❑ PROPORTION OF PATIENTS IN SOUTH LONDON WITH FIRST-EPISODE PSYCHOSIS ATTRIBUTABLE TO USE OF HIGH POTENCY CANNABIS: A CASE-CONTROL STUDY, DEFORTI, ET AL, DEPARTMENT OF PSYCHOSIS STUDIES, INSTITUTE OF PSYCHIATRY, KING'S COLLEGE, LONDON, UK, *LANCET PSYCHIATRY* 2015

In the *Lancet Psychiatry* 2015 this study investigates how frequent use of high-potency marijuana in south London is associated with psychotic disorders.

- ❑ **STUDY: SCANT EVIDENCE THAT MEDICAL POT HELPS MANY ILLNESSES, JUNE 23, 2015, AP MEDICAL WRITER LINDSEY TANNER, WITH HIGHLIGHTS FROM THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION**

This article states, "Medical marijuana has not been proven to work for many illnesses that state laws have approved it for, according to the first comprehensive analysis of research on its potential benefits."

- ❑ **MARIJUANA STUDY: MEDICAL POT ISN'T PROVEN, BY RICARDO BACA, THE DENVER POST BY RICARDO BACA, THE DENVER POST, JUNE 24, 2014**

This article discusses a study published in the Journal of the American Medical Association concerning an analysis involving 6,500 participants that shows marijuana's efficacy regarding most related conditions is unproven.

- ❑ **TEEN CANNABIS USERS HAVE POOR LONG-TERM MEMORY IN ADULTHOOD, MARCH 12, 2015, NORTHWESTERN UNIVERSITY**

This article discusses heavy teenage marijuana users having abnormally-shaped brain hippocampus that affects long-term memory.

- ❑ **WHAT HAS RESEARCH OVER THE PAST TWO DECADES REVEALED ABOUT THE ADVERSE HEALTH EFFECTS OF RECREATIONAL CANNABIS USE?, WAYNE HALL, THE UNIVERSITY OF QUEENSLAND CENTRE FOR YOUTH SUBSTANCE ABUSE RESEARCH, HERSTON, AUSTRALIA, AUGUST 4, 2014, *Addiction*, 110. 19-35**

This study examines the adverse impact of marijuana on health.

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Rocky Mountain High Intensity Drug Trafficking Area
Investigative Support Center
Denver, Colorado
www.rmhidta.org/reports

EXHIBIT 3

CPCA Findings on Marijuana Use

Brain Development and Public Health

- In a paper published on November 10, 2014 in *Proceedings of the National Academy of Sciences*, researchers for the first time comprehensively describe existing abnormalities in brain function and structure of long-term marijuana users with multiple magnetic resonance imaging (MRI) techniques. **Findings show chronic marijuana users have smaller brain volume in the orbitofrontal cortex (OFC), a part of the brain commonly associated with addiction, but also increased brain connectivity.**
- In a study published on October 2, 2012 in *Proceedings of the National Academy of Science*, researchers found that **persistent cannabis use was associated with neuropsychological decline broadly across domains of functioning, even after controlling for years of education.** Informants also reported noticing more cognitive problems for persistent cannabis users. Impairment was concentrated among adolescent-onset cannabis users, with more persistent use associated with greater decline. **Further, cessation of cannabis use did not fully restore neuropsychological functioning among adolescent-onset cannabis users.**
- In 2011, marijuana accounted for 38 percent of ED visits in which illicit drugs were mentioned (about 450,000 visits, or one for every 40 past-month marijuana users; SAMHSA, 2013a, Table 4); **this is a 62-percent increase since 2004** (SAMHSA, 2013a, Table 9). The most common stated reason for these visits is "unexpected reaction" (Kissin and Ball, 2003), which is usually a transient panic attack brought on by extreme intoxication.
- Marijuana smoke contains many of the same carcinogens as tobacco smoke (Moir et al., 2008).
- According to the National Institute on Drug Abuse/ National Institute of Health, approximately 9 percent, or 1 in 11, of those who use marijuana will become addicted. **This rate increases to 17 percent**, or about 1 in 6, if you start in your teens.
- The Rocky Mountain High Intensity Drug Trafficking Area (HIDTA) reports that ED visits related to marijuana (for those of any age) **increased in Colorado by 29 percent** in the first year after legalization of personal possession and use (12,888 in 2013 versus 9,982 in 2012), and that was before stores selling recreational marijuana opened.
- According to Colorado Public Radio, on April 29, 2014 "**The head of the emergency room at one of Denver's largest hospitals says he's seeing more**

people being admitted after consuming large quantities of edible marijuana in the form of cookies or other foods. Dr. Richard Zane, head of the Department of Emergency Medicine at the University of Colorado Hospital, says the increase coincides with the legalization of recreational marijuana...Dr. Zane says University Hospital is admitting about a person a day for pot-related problems, and most are linked to edibles.”

- According to a doctor’s account at Colorado’s Telluride Medical Center, “I have served in emergency departments for over 15 years. During those first ten years I don't recall treating a single case of an adverse reaction to marijuana. This changed as medicinal marijuana use became more prevalent. Now, after the legalization of recreational marijuana, I'm noticing a dramatic increase in emergency visits related to the drug...The majority of patients reporting marijuana related emergencies at the Telluride Medical Center have the same symptoms: severe nausea and vomiting, anxiety, elevated heart, respiratory and blood pressure rates...A recent study published by the journal JAMA Pediatrics reported a spike in the number of young children treated at Children's Hospital Colorado for accidentally eating marijuana treats. The study found that in the two years after marijuana laws were liberalized in 2009, 14 kids were treated for accidental ingestion. In the four years before the change, the study found no children had been hospitalized for accidental ingestion.
- According to the 2012 National Survey for Drug Use and Health (conducted by the U.S. Department of Health and Human Services), because they are accessible and available, our legal drugs are used far more than our illegal ones. According to recent surveys, alcohol use is used by 52% of Americans and tobacco is used by 27% of Americans. Marijuana is used by 8% of Americans.
- According to the national organization “Smart Approaches to Marijuana,” for every \$1 in alcohol and tobacco tax revenues, society loses \$10 in social costs, from accidents to health damage.
 - *LM Note: unable to find primary source of this statistic.*
- According to the University of Mississippi Potency-Monitoring Project, since 1983, when the THC concentrations averaged below 5 percent, potency has intensified with today’s potency averaging 14% with peak content exceeding 30%. In BHO was it is up to 95% THC

Impact on Youth

- In Colorado, Drug-related suspensions/expulsions increased **40 percent** from school years 2008/2009 to 2013/2014. The vast majority were for marijuana violations (HIDTA).
- Legalization diminishes perceived risk of use among high school students. A 2013 study conducted by the Colorado Department of Public Health and Environment found that the percentage of high school students who thought there was moderate or great risk from marijuana **declined from 58 percent in 2011 to 54 percent in 2013.**
- ED episodes involving children are a particular concern. Colorado has experienced an increase in young children admitted to EDs because of accidental ingestion of marijuana infused edibles (e.g., Ingold, 2014b; Wang, Roosevelt, and Heard, 2013). According to an article in *The Denver Post* published in May 2014, **nine children went to just one hospital ED (Children's Hospital Colorado) between January and May 2014, which was more than it saw the entire year before.** Seven of the nine were admitted to the hospital's intensive care unit to be watched due to extreme sedation and agitation, and one required a respirator.
- In a January 2015 Policy Statement, the American Academy of Pediatrics stated that **"The AAP opposes legalization of marijuana** because of the potential harms to children and adolescents. The AAP supports studying the effects of recent laws legalizing the use of marijuana to better understand the impact and define best policies to reduce adolescent marijuana use."
- In Colorado, there was a **20 percent increase** in the percent of 12 to 17 year old probationers testing positive for marijuana since marijuana was legalized for recreational purposes (HIDTA).
- Children's Hospital Colorado reported **2** marijuana ingestions among children under **12** in 2009 compared to 16 in 2014 (HIDTA).

Drugged Driving

- The 2007 National Roadside Survey found that the most prevalent drug detected in the pilot study was marijuana. In 2009, marijuana accounted for 25 percent of all positive drug tests for fatally injured drivers for whom drug-test results were known and 43 percent among fatalities involving drivers 24 years of age and younger with known drug-test results.
- Downey (2012) finds that the increase of THC dosage alone influences perception of what is a safe distance to leave between cars. Furthermore, differences in the

amount of “straddling the solid line,” “straddling the barrier line,” “insufficient stopped clear space” occur when THC was consumed (rather than a placebo).

- Li (2011) finds that drivers who test positive for marijuana or self-report using marijuana are more than twice as likely as other drivers to be involved in motor vehicle crashes
- Bosker (2012) finds that cannabis is significantly related to performance on the one-leg stand test.
- According to a May 2014 Denver Post article, in 2011, the proportion of drivers in fatal crashes in Colorado testing positive for marijuana had **risen to 10 percent** — up from 5.9 percent in early 2009.
 - *LM Note: Even with a 5 nanogram per se in Colorado, drugged driving has increased.*

Black Market Activity

- PBS recently did a program on black market activity in Colorado, “One of the benefits attached to legalization was that it would eliminate the black market. But that market is still thriving, according to a 39 year old marijuana grower who asked us to call him John Doe and to conceal his identity because he sells on the underground market.... John Doe says low-income buyers turn to the black market because prices are higher at legal retail stores. There’s conflicting information, but an ounce of pot on the black market can cost as little as \$180. At the store Andy Williams owns, you have to pay around \$240 for an ounce... The illegal trade is doing especially well in black and Latino communities, and he says it works the same way it did when pot was illegal.”
- According to an April 2014 Washington Times article, legalization has done nothing more than enhance the opportunity for the black market.
- During 2009 - 2012, when medical marijuana was commercialized, the yearly average number of interdiction seizures of Colorado marijuana **increased 365 percent** from 52 to 242 per year. During 2013 - 2014, when recreational marijuana was legalized, the yearly average interdiction seizures of Colorado marijuana increased another 34 percent from 242 to 324 (HIDTA).
- The average pounds of Colorado marijuana seized, destined for 36 other states, **increased 33 percent** from 2005 - 2008 compared to 2009 - 2014 (HIDTA).
- U.S. mail parcel interceptions of Colorado marijuana, destined for 38 other states, **increased 2,033 percent** from 2010 - 2014 (HIDTA).
- Pounds of Colorado marijuana seized in the U.S. mail, destined for 38 other states, **increased 722 percent** from 2010 - 2014 (HIDTA).

Our Penal System

- As of January 1, 2011 possession of one ounce or less of marijuana is an infraction punishable by a **maximum \$100 fine with no criminal record** under CA Health and Safety Code 11357b.
- According to the Office of the Attorney General, there were 13,779 marijuana-related felony arrests in California in 2013, compared to 85,035 “dangerous drug” related felony arrests. Because personal possession is an infraction, these felony arrests apply to illicit sale and illicit cultivation (meaning sale and cultivation occurring outside of permitted medical marijuana activity).

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Prevalence of Marijuana Involvement in Fatal Crashes: Washington, 2010-2014

May 2016



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Title

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About the Sponsor

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Executive Summary

The purpose of this study was to quantify the prevalence of marijuana involvement in fatal crashes in the state of Washington in years 2010 – 2014 and to investigate whether the prevalence changed after Washington Initiative 502, which legalized recreational use of marijuana for adults aged 21 years and older and also created a new *per se* limit for driving under the influence of marijuana, took effect on 6 December 2012.

The data examined were obtained from the Washington Traffic Safety Commission and comprised a census of all motor vehicle crashes that occurred on public roads in the state of Washington and resulted in a death within 30 days. This study examined the presence and concentration of delta-9-tetrahydrocannabinol (hereafter *THC*), the main psychoactive chemical in marijuana, in the blood toxicological test results of drivers involved in fatal crashes. *THC* presence and concentration in the subset of drivers whose blood was not tested or whose test results were unavailable were estimated using the method of multiple imputation. The imputation method explicitly accounted for changes implemented during the study period in the cutoff levels used in the state laboratory for detection of *THC*.

Statewide, 3,031 drivers were involved in fatal crashes in years 2010 – 2014. Overall, considering both the actual blood toxicology test results and imputed results, an estimated 303 drivers—10.0% of all drivers involved in fatal crashes in Washington between 2010 and 2014—had detectable *THC* in their blood at or shortly after the time of the crash. Of all *THC*-positive drivers involved in fatal crashes, an estimated 34.0% had neither alcohol nor other drugs in their blood, 39.0% had detectable alcohol in addition to *THC*, 16.5% had other drugs in addition to *THC*, and 10.5% had had both alcohol and other drugs in addition to *THC* in their blood.

From 2010 through 2013, the estimated number and proportion of drivers involved in fatal crashes who had a detectable concentration of *THC* in their blood ranged from a low of 48 (7.9%) to a high of 53 (8.5%); the number and proportion both approximately doubled from 49 (8.3%) in 2013 to 106 (17.0%) in 2014. Analysis of trends over time before and after Initiative 502 took effect indicated that the proportion of drivers positive for *THC* was generally flat before and immediately after Initiative 502 took effect, but began increasing significantly at a rate of 9.7 percentage points per year approximately 9 months after Initiative 502 took effect. It was not clear whether this increasing trend was attributable to Initiative 502 or to other factors that were beyond the scope of the study.

THC is metabolized rapidly, thus, it is possible that some surviving drivers in fatal crashes may have had a detectable concentration of *THC* in their blood at the time of the crash but that their *THC* levels had fallen below the minimum detectable level by the time a blood sample was drawn. Also, results of this study do not indicate that drivers with detectable *THC* in their blood at the time of the crash were necessarily impaired by *THC* or that they were at-fault for the crash; the data available cannot be used to assess whether a given driver was actually impaired, and examination of fault in individual crashes was beyond the scope of this study.

Introduction

On 6 November 2012, the citizens of the state of Washington approved by popular vote ballot Initiative 502, which allows adults aged 21 years and older to possess up to 1 ounce of marijuana, 16 ounces of marijuana-infused product in solid form, or 72 ounces of marijuana-infused product in liquid form (Revised Code of Washington 69.50.4013; Revised Code of Washington 69.50.360(3)). Initiative 502 also established a *per se* legal limit for driving under the influence [DUI] such that a person aged 21 years or older is guilty of DUI if he or she, “has, within two hours after driving, a THC concentration of 5.00 or higher,” where *THC* denotes delta-9-tetrahydrocannabinol, the main psychoactive chemical in marijuana, and *THC concentration of 5.00* denotes 5 nanograms of THC per milliliter of whole blood (Revised Code of Washington 46.61.502). The new laws also made it illegal for a person under the age of 21 to drive with any measurable amount of THC in their blood (Revised Code of Washington 46.61.503). The laws legalizing possession of marijuana and creating a *per se* THC limit for DUI became effective on 6 December 2012.

Data from population-based surveys indicate that the proportion of Washington state residents who report having used marijuana at least once in the past month and the proportion who reported having ever used marijuana both increased after the new law took effect (Washington State Institute for Public Policy, 2015). However, not much is known about the prevalence of driving after using marijuana or the prevalence of recent marijuana use among drivers involved in crashes in Washington primarily due to data limitations.

In January 2016, the Washington Traffic Safety Commission (WTSC) made available for the first time the quantitative results of toxicology tests for THC performed on drivers involved in fatal crashes in the state of Washington, and appended these new data to their database of all drivers involved in fatal crashes statewide. This study uses these new data from the WTSC to estimate the proportion of drivers in fatal crashes in the state of Washington who had a detectable concentration of THC in their blood at or soon after the time of the crash and to investigate whether that proportion changed after Washington Initiative 502 took effect on 6 December 2012.

Methods

Overview

The purpose of this study was to estimate the number and proportion of drivers involved in fatal crashes in Washington state who had a detectable concentration of THC in their blood at or shortly after the time of the crash each year for years 2010 – 2014, and to investigate whether the proportion of fatal-crash-involved drivers with detectable THC changed after recreational use of marijuana by adults was legalized. Some drivers were not tested for drugs. The method of multiple imputation was used to estimate the proportion of drivers not tested for drugs who likely would have tested positive for THC had they been tested. This was done by analyzing the relationships between other available data and the probability of being tested for drugs and the probability of testing positive for THC if tested. Results of actual drug tests were combined with imputed results from drivers not tested for drugs to estimate the overall prevalence of detectable levels of THC among all drivers involved in fatal crashes in Washington during the study period.

Data

The data analyzed for this study was the Washington State Fatality Analysis Reporting System (FARS) data file, which was obtained from the WTSC. The Washington State FARS data file is a census of all crashes that occurred on public roadways in the state of Washington and resulted in a death within 30 days of the crash. Data pertaining to the details of each crash and the vehicles and drivers involved were recorded by police officers and entered into a database by Washington State FARS Analysts for submission to the National Highway Traffic Safety Administration (NHTSA) FARS data system. The data included records of 3,031 drivers involved in 2,070 fatal crashes that occurred in the state of Washington between 1 January 2010 and 31 December 2014.

NHTSA's FARS data includes some information regarding the results of toxicological tests, however, FARS data are very limited with respect to toxicology results related to marijuana (Berning & Smither, 2014). To address this limitation, Washington State FARS Analysts collaborated with the Washington State Toxicologist to manually abstract from actual toxicology reports data on the presence and concentration of delta-9-tetrahydrocannabinol (hereafter *THC*), its inactive metabolite carboxy-tetrahydrocannabinol (hereafter *carboxy-THC*), and unspecified cannabinoids, and append these data to the Washington State FARS data file. The process by which this was accomplished is described by Grondel (2015). Analyses pertaining to detection of THC, carboxy-THC, and unspecified cannabinoids were based on the data abstracted from toxicology reports and appended to the FARS data file, not the standard FARS variables reported in the FARS data file published by NHTSA.

Drug testing

The FARS data file includes variables to indicate the type of specimen on which toxicological tests were performed; values include blood, urine, both blood and urine, other specimen type, unknown specimen type, specimen type not reported, unknown if tested, and not tested. For the purpose of this study, drug test specimen type was classified as:

- Blood
- Other/unknown/unreported specimen type
- Not tested

Drivers coded as having had both blood and another specimen tested were coded as having had blood tested; for the purpose of this study, the fact that another type of specimen in addition to blood was also tested was not of substantive interest. Overall, 1,508 drivers (49.8%) had a blood specimen tested, 280 (9.2%) had an other/unknown/unreported type of specimen tested (239 urine; 41 other/unknown specimen type), 37.8% of drivers were not tested for drugs at all, and 3.2% were reported as “unknown if tested,” which for the purpose of this study were assumed to have not been tested for drugs and thus were grouped with those who were not tested.

Determination of THC presence and concentration

The main outcome of interest in this study was the number and proportion of drivers who had a detectable level of THC in their blood. Toxicology test results for THC were reported in the Washington State FARS data file as an indicator for whether THC was detected, and the concentration of THC, measured in nanograms of THC per milliliter of blood (ng/mL), if THC was detected. Because THC may not be reliably detected in urine (Huestis & Smith, 2007), only results from tests of blood specimens were used; results from tests of specimens other than blood were treated as unknown.

The minimum concentration of THC that would be recorded as a positive test result changed twice during the study period. At the beginning of the study period, the threshold for detection of THC in blood was 1 nanogram of THC per milliliter of blood (ng/mL), which was increased to 2 ng/mL on 3 December 2012 and then returned to 1 ng/mL on 8 May 2014. To produce results that had the same physical meaning for the entire study period, negative toxicology results for THC during the period when the 2 ng/mL threshold was in effect were treated as unknown if the same driver also tested positive for carboxy-THC, because the presence of carboxy-THC suggests that the driver had consumed cannabis at some point which may or may not have been recent enough for THC to remain in the driver’s blood; this resulted in 27 negative results for THC being treated as unknown. Drivers who tested negative for carboxy-THC as well as for THC were assumed truly THC-negative, because carboxy-THC is detectable in blood for a longer period of time subsequent to cannabis consumption than is THC (Desrosiers et al., 2014).

Blood toxicological test results for THC were also treated as unknown if a driver was not reported to have tested positive for THC nor for carboxy-THC but was reported to have tested positive for unspecified cannabinoids, which typically suggests that a specimen was screened for the presence of cannabinoids and cannabinoids were found but no confirmatory test was performed to confirm the presence of THC and/or carboxy-THC. This resulted in test results from an additional 11 drivers being treated as unknown for both THC and carboxy-THC.

For the purpose of this report, a driver is said to have had a *usable blood toxicology test result* if the driver was given a blood toxicology test, results were available, and results

were not treated as unknown for any of the previously-mentioned reasons. A total of 1,470 drivers (48.5% of all drivers) had usable blood toxicology test results.

Missing information about THC

Slightly more than half of all drivers had an unknown (missing) values for THC presence and concentration, including 1,243 (41.0%) who were not tested for drugs at all, 280 (9.2%) whose test for drugs was not performed on a blood specimen, 27 (0.9%) who tested negative for THC but positive for carboxy-THC during the period of time when a positive test result for THC was based on a threshold of 2 ng/mL rather than the 1 ng/mL threshold in use during most of the study period, and 11 drivers (0.4%) who tested positive for unspecified cannabinoids which could have been THC or carboxy-THC.

Multiple imputation of missing THC values

To estimate the distribution of THC values and proportion positive for THC in the entire population of drivers involved in fatal crashes including those not tested for drugs or whose results were unknown, the method of multiple imputation (Rubin, 1987) by chained equations (van Buuren et al., 1999) was used to create ten independent estimates of what would have been each driver's THC test result had the driver's blood been tested at a detection threshold of 1 ng/mL and the results known. A variable was included in the imputation model if it was significantly associated with the probability of a driver being subject to a blood toxicology test (χ^2 test, $P < 0.05$; see Table 1), if it was significantly associated with the probability of testing positive for THC if tested, or if the variable's relationship to THC was of analytical interest. Variables included in the final imputation model for THC are shown in the Appendix. All variables included in the model except day of week were significantly associated with the probability of being tested for drugs, the probability of testing positive for THC if tested, or both; day of week was included because it was of interest for subsequent analyses.

The imputation procedure replaced each missing value of THC with a value selected randomly from among the cases most similar to the case of interest with respect to the values of the explanatory variables specified in the imputation model, yielding a new copy of the data file in which all drivers had a THC value (i.e., their actual toxicology test result if known, or else an imputed value). THC values were imputed in two stages: first a binary indicator was imputed (THC present vs. absent), and then THC concentration was imputed in cases in which THC was imputed as present. Missing values of explanatory variables included in the imputation model were imputed similarly in order to enable the imputation of THC to proceed. Imputation was performed 10 times, yielding 10 independent copies of the data file in which observed values of THC were copied from the original data file and missing values of THC were replaced by imputed values.

Results based on imputed values of THC in conjunction with actual THC test results were obtained by calculating the statistic of interest (e.g., the proportion of drivers who had a THC concentration of 1 ng/mL or greater) in each of the ten copies of the data file separately and then averaging the results. Standard errors and confidence intervals were calculated using the method of Rubin (1987) to account for both the variability in the observed data and the uncertainty in the imputed values.

Validation of imputation model

To assess the performance of the imputation model, half of all drivers with usable blood toxicology test results and complete data for all variables included in the imputation (hereafter *complete cases*, $n=1,253$) were selected at random and their toxicology test results for THC, carboxy-THC, and cannabinoids were replaced with missing values and were imputed. The proportion imputed THC-positive was compared to the proportion actually THC-positive. This procedure was repeated 500 times with 500 independent random samples of half of all complete cases. The mean difference over the 500 repetitions between the imputed versus actual proportion of drivers who were THC-positive was -0.2 percentage points. The mean absolute difference (i.e., regardless of the sign of the difference) was 1.5 percentage points. The 95th percentile absolute difference between the proportion imputed THC-positive vs. actually THC-positive was 3.4 percentage points (i.e., the difference was 3.4 percentage points or smaller in 95% of the 500 repetitions). The actual proportion of drivers who were THC-positive fell within the 95% confidence interval of the imputed proportion in 484 of the 500 repetitions (96.8%), indicating that the nominal 95% confidence intervals of the imputed values were slightly wider than true 95% confidence intervals.

Analysis

Descriptive statistics

The numbers and proportions of drivers who tested positive for THC or were imputed to have had a detectable concentration of THC were tabulated in relation to crash, vehicle, and driver characteristics. The proportion of drivers with THC concentrations of 5 ng/dL or greater was tabulated overall and in relation to year and survival status. The prevalence of alcohol and other drugs in THC-positive drivers was also examined by year and survival status.

Estimating the effect of Initiative 502

A binomial regression model with an identity link function was used to assess whether the proportion of drivers with detectable THC changed subsequent to the effective date of Washington Initiative 502 (6 December 2012), which legalized marijuana use in Washington for adults aged 21 years and older and established a *per se* legal limit of 5 ng/mL of THC for DUI. The model used to estimate the effect of the new law included a binary indicator for whether the Initiative 502 was in effect (0 before 6 December 2012, 1 after) to account for the immediate effect of Initiative 502 on the average proportion of drivers in fatal crashes who were THC-positive, indicator variables for seasons to account for seasonal variation in the proportion of drivers who were THC-positive, and a piecewise linear spline representing time in days before or after Initiative 502 became effective to account for any underlying trend in THC involvement in fatal crashes before Initiative 502 took effect and any change in the slope of the trend associated with Initiative 502.

Alternative models were also fit to the data with the change in the slope of the linear time trend occurring up to 1 year (at 1 week increments) before or after Initiative 502 took effect, to assess whether the data were more consistent with a change in the slope of the trend at some point before or after Initiative 502 became effective rather than requiring that any

change in the slope of the trend occur at the same time as Initiative 502 became effective. The deviance of alternative models was compared, with lower deviance indicating better fit.

Several sensitivity analyses were also performed, including: using the 2 ng/mL detection threshold rather than the 1 ng/mL threshold, using only actual blood toxicology test results (with missing values excluded rather than imputed), using only fatally-injured drivers with actual blood toxicology test results, and using only fatally-injured drivers with both actual blood toxicology test results and blood alcohol concentration test results that indicated a BAC lower than 0.08.

All results are based on both actual observations and imputed data for THC, other drugs, and blood alcohol concentration (BAC) unless otherwise noted. Imputed values of other variables whose missing values were imputed in the course of imputing the missing values of THC (age, sex, etc.) are not shown; those variables are presented with respect to their original values only.

Results

A total of 3,031 drivers were involved in fatal crashes in Washington state in years 2010 – 2014. Blood toxicology tests were performed on 49.8% of all drivers (Table 1, at end of report). The proportion of drivers tested for drugs (at all) varied by year. Also importantly, the proportion of tested drivers whose tests were performed on blood specimens increased substantially over the study period. At the beginning of the study period, approximately one in four drivers tested for drugs was not subject to a blood test, whereas in 2013 and 2014, almost all drivers tested for drugs were subject to a blood test. Drivers who died within 2 hours of the crash were the most likely to be tested for drugs, drivers who died later were somewhat less likely to be tested, and drivers who survived were much less likely to be tested. The likelihood of a driver's blood being tested for drugs was also associated with the driver's age, sex, license status, driving record, vehicle type, vehicle age, circumstances of the crash (time of day, number of vehicles in crash, whether the vehicle departed the roadway, pedestrian involvement, unsafe driving actions or errors), type of police agency investigating (state patrol vs. county sheriff vs. city or municipal police), officer suspicion of alcohol or drug involvement, and blood alcohol concentration (Table 1).

Examining only drivers who were tested for drugs and who had usable blood toxicology test results (i.e., excluding cases with $n=1,470$; 48.5% of all drivers), 14.5% tested positive for the presence of THC (Table 2). The proportion positive for THC varied substantially by year. From 2010 through 2013, an average of 12.2% of drivers whose blood was tested for drugs tested positive for THC (range: 10.8% – 13.4%); in 2014, the proportion increased to 22.1%. To investigate whether this increase was attributable to the change in the threshold that the state laboratory used for the detection of THC from 2 ng/mL to 1 ng/mL in May of 2014, the proportion of drivers with usable toxicology results whose THC concentrations were equal to or greater than 2 ng/mL were also examined: an average of 11.5% of drivers whose blood was tested for drugs between 2010 and 2013 had a THC concentration of 2 ng/mL or greater (range: 10.1% - 12.5%); that proportion increased to 17.1% in 2014 (not shown in table). Drivers who died within one hour of the crash were much more likely to test positive for THC (at either threshold) than were drivers who died later or who survived. The proportion of those subject to blood test who tested positive for THC varied significantly in relation to most of the same variables as the probability of receiving a blood test, with the exceptions of seatbelt use, previous DWI convictions, road type, pedestrian involvement, and unsafe actions or errors reported, which were associated with the probability of being tested for drugs but were not significantly associated with the detection of THC.

Including drivers whose values of THC were imputed as well as those that were confirmed by usable blood toxicology test results, an estimated 303 drivers, representing 10.0% of all drivers involved in fatal crashes in the state of Washington over the five-year study period, had a THC concentration of at least 1 ng/mL at the time of the crash (213 confirmed by toxicology and an additional 90 imputed).

There was a large increase in the estimated number and proportion of THC-positive drivers in 2014. In each year of 2010 – 2013, the estimated annual number of drivers in fatal crashes who were THC-positive ranged from a low of 48 to a high of 53, which represented 7.9 – 8.5% of all drivers involved in fatal crashes each year. In 2014, the estimated number

(106) and percentage (17.0%) of drivers in fatal crashes who were THC-positive were both double the largest number (53) and largest percent (8.5%) estimated in any of the prior four years.

Drivers whose license was suspended or revoked at the time of the crash were much more likely than drivers with a valid license to have been THC-positive (23.9% vs. 8.1%). Drivers who tested positive for alcohol were much more likely to have been THC-positive than were drivers who were tested for alcohol and were found alcohol-negative (19.2% vs. 8.7%). Drivers who left the scene of the crash were much more likely to have been THC-positive than were drivers who remained at the scene (27.6% vs. 9.4%). After excluding deceased drivers, who by definition were unable to leave the scene, drivers who left the scene of the crash were fully 4 times as likely to have been THC-positive as were drivers who remained at the scene (27.6% vs. 6.8%). Drivers who died were significantly more likely to have been THC-positive than drivers who survived, the proportion THC-positive was greater for drivers ages 18-20 than for any other age group, males were more likely than females to have been THC-positive, drivers of vehicles that were more than 15 years old were more likely to have been THC-positive than drivers of newer vehicles, drivers involved in crashes between 8 PM and 5:59 AM were more likely to have been THC-positive than were drivers who crashed during daytime hours, and drivers involved in single-vehicle road-departure crashes were more likely to have been THC-positive than were drivers in multiple-vehicle crashes or other types of single-vehicle crashes.

THC-positive drivers who died tended to have higher THC concentrations than did drivers who survived. The proportion of all deceased drivers whose THC concentration was equal to or greater than 5 ng/mL (67.6%) was nearly double the corresponding proportion of surviving drivers (36.3%) (Table 3). While the proportion of all drivers with THC concentrations of 5 ng/mL or greater did not vary significantly by year ($P=0.071$), the proportion of deceased drivers with THC concentrations of 5 ng/mL or greater increased by a statistically significant 7.8 percentage points (95% CI: 2.8 – 12.8 percentage points) from 2013 to 2014.

The majority of drivers who had detectable levels of THC also had alcohol and/or other drugs in their blood at the time of the crash (Table 4). Of all THC-positive drivers involved in fatal crashes over the study period, an estimated 34.0% were positive for THC only, 39.0% were positive for both THC and alcohol, 16.5% were positive for both THC and one more other drugs (but not alcohol), and 10.5% were positive for THC, alcohol, and one or more other drugs. (Note that not all drugs included in the category of "other drugs" were necessarily illegal nor impairing; however, sample sizes were insufficient to examine specific drugs.) THC-positive drivers who died were relatively more likely to be positive for alcohol and/or other drugs; only 24.1% were positive for THC alone. In contrast, 47.0% of surviving drivers in fatal crashes who were THC-positive were positive for THC alone. *Post hoc* analysis suggest this was largely a function of seatbelt use: drivers positive for alcohol and/or other drugs in addition to THC had much lower rates of seatbelt use than did drivers positive for THC alone, and thus were more likely to die given involvement in a crash. The proportions positive for other substances besides THC fluctuated somewhat from year to year but did not exhibit any clear evidence of a trend. Notably, however, the raw number of drivers positive for THC alone, THC in conjunction with alcohol, THC in conjunction with other drugs, and THC in conjunction with both alcohol and other drugs all were greater in

2014 than in any of the preceding four years, as were their shares of all drivers involved in fatal crashes.

Analysis of whether the proportion of drivers in fatal crashes who were THC-positive or the trend therein changed after Washington Initiative 502 took effect on 6 December 2012 showed that the new law was not associated with a significant shift in the average proportion of fatal-crash involved drivers who were THC-positive ($P=0.65$), but was associated with a statistically significant change in the slope of the trend ($P=0.004$). However, the change in the slope of the trend appeared to have actually occurred several months after the effective date of Initiative 502. The model that provided the best fit to the data modeled the increasing trend in the proportion THC-positive as beginning 39 weeks after the effective date of Initiative 502 (Figure 1). In this model, after adjustment for seasonal variation, the proportion of drivers in fatal crashes who were THC-positive had been decreasing at a statistically non-significant rate of 0.1 percentage points per year prior to the effective date of Initiative 502, continued to follow this trend for approximately 39 weeks after Initiative 502 took effect, and then began increasing at a rate of 9.7 percentage points per year (95% CI 4.4 – 14.9 percentage points per year) beginning in September 2013 (Figure 1).

To investigate whether this result was confounded by the timing of changes in the state laboratory's minimum threshold for detection of THC, changes in practices regarding whether drivers already found to have been legally intoxicated by alcohol were tested for drugs, or other issues related to the imputation procedure, sensitivity analyses were performed:

- 1) Using 2 ng/mL rather than 1 ng/mL as the threshold for classifying drivers as THC-positive,
- 2) Including only fatally-injured drivers who were tested for both alcohol and drugs and had usable test results for both,
- 3) Using only drivers who had a BAC below 0.08.

Results were similar. There was no discernible trend in the proportion of drivers with THC concentrations of 2 ng/mL or greater before or immediately after Initiative 502 took effect; in September 2013 the proportion THC-positive at 2 ng/mL began increasing by an average of 5.7 percentage points per year (95% CI 1.6 – 9.7). Analyses based only on actual blood toxicology test results of fatally-injured drivers (with missing values excluded rather than imputed) produced the same general pattern of results. Limiting analyses to actual blood toxicology test results from fatally-injured drivers with $BAC < 0.08$ yielded the largest estimates of the rate of increase in the prevalence of THC-positive drivers beginning in September 2013 (estimated rate of increase = 12.5 percentage points per year).

Discussion

This study examined the prevalence of THC, the main psychoactive chemical in marijuana, in the blood of drivers involved in fatal crashes in Washington state in years 2010 – 2014. Results showed that overall, 10% of drivers involved in fatal crashes over the study period had a detectable concentration of THC in their blood at the time of the crash. The prevalence was not constant over the study period. The proportion of fatal-crash-involved drivers with detectable THC in their blood was approximately twice as great in 2014 as in prior years.

Analysis of trends before and after the Initiative 502 legalized the recreational use of marijuana for adults suggested that the proportion of drivers in fatal crashes who had detectable THC in their blood was basically flat before and immediately after the new law went into effect, but then began increasing rapidly in or around September 2013, or approximately 9 months later. It is possible—because Initiative 502 not only legalized recreational use of marijuana but also established a *per se* THC limit for DUI—that new users of marijuana may have refrained from driving after using marijuana out of concern of arrest for DUI, but that such concern subsided somewhat in the months following Initiative 502, leading to a gradually increasing prevalence of THC-positive drivers on the road and in fatal crashes. This, however, is merely speculative. This study could not determine whether the increase beginning in or around September 2013 in the proportion of drivers in fatal crashes who were THC positive was a delayed effect of Initiative 502 or whether it was attributable to some other phenomenon that was beyond the scope of the study.

Another factor that might have been expected to have been associated with an increase in the proportion of drivers positive for THC was the opening of marijuana retail stores in Washington state in July of 2014. It was not possible to evaluate the impact of the opening of marijuana retail stores on the prevalence of THC-positive drivers in fatal crashes, because this occurred only 6 months before the end of the study period. However, this does not appear to have been a major contributor to the increase in prevalence of THC-positive drivers observed in this study, because most of the increase clearly occurred prior to the date when the first marijuana retail stores opened in Washington. This should be investigated in future research when newer data become available.

This study analyzed data compiled by the Washington Traffic Safety Commission in collaboration with the state toxicologist and appended to Washington state's FARS file. These data were more detailed than the data on drug test results reported in the relevant variables included in the NHTSA's version of the FARS data file, without which this study could not have been performed. The drug test result variables in the NHTSA's version of the FARS data file allow for the reporting of a positive drug test result for: "marijuana;" THC; cannabinoids, type unknown; and several other related substances not coded for any drivers in Washington over the study period. A *post hoc* analysis was performed to compare the presence of THC and other cannabinoids in the standard FARS variables versus in the supplemental variables produced by the WTSC. While both the standard FARS variables and the supplemental WTSC variables agreed regarding the presence or absence of any cannabinoids of any kind in 99.7% of all cases, the two disagreed regarding specifically the presence of THC in 4.7% of all cases and 27.5% of all cases in which either set of variables indicated that THC was detected over the study period. Notably, the level of agreement

between the standard FARS variables and the supplemental WTSC variables with respect to THC presence varied substantially by year, with relatively poor agreement in years 2010-2012 (disagreed in 8.5% of all cases and 46.6% in which either indicated that THC was detected) but much better agreement in 2013 and 2014 (disagreed in 0.4% of all cases and 2.7% of cases in which either indicated that THC was detected). Also importantly, the supplemental WTSC data included quantitative test results for THC, which made it possible to examine the number and proportion of drivers whose THC concentration exceeded Washington's *per se* legal limit of 5 ng/mL. The standard FARS variables do not report the actual concentration of THC that was detected, thus precluding such analysis.

The Washington Traffic Safety Commission also performed analysis of the same data that were analyzed in this study (Grondel, 2015), yielding similar but not identical results. There were a number of important differences between the current study and the WTSC study. Most importantly, the WTSC study reported the proportion of drivers who tested positive for THC as a proportions of all drivers who were tested for drugs and alcohol. Those proportions should not be projected onto the entire population of drivers involved in fatal crashes in the state unless the probability of being tested for drugs is assumed to be independent of the probability that the driver was actually THC-positive. The current study found that the probability of being tested for drugs was strongly associated with numerous driver, vehicle, and crash-related characteristics that were also predictive of THC presence among those drivers who were tested. In addition, the WTSC study reported THC-positive drivers as a percent of all drivers tested for drugs, including some for whom only a urine specimen and not a blood specimen was tested, and treated as THC-negative all drivers who were tested for drugs and did not produce a positive result for THC. However, THC may not be reliably detected in urine (Huestis & Smith, 2007). Thus, the current study treated drug test results as unknown if they were not from a blood specimen.

To produce estimates of THC prevalence applicable to the entire population of drivers involved in fatal crashes in the state of Washington, the current study used the method of multiple imputation to estimate the distribution of THC presence and levels among drivers for whom drug test results were not available or were not altogether interpretable with respect to THC. The imputation model accounted for the relationships of the probability of being tested for drugs and the probability of being positive for THC if tested with numerous crash, vehicle, and driver-related characteristics found to be associated with either or both probabilities. By producing ten independent data sets containing both actual and imputed THC values, this study was able to produce statistical estimates of the proportion of all drivers involved in fatal crashes—not only those who were tested for drugs—who had a detectable amount of THC in their blood at the time of the crash, and account for the uncertainty introduced into the estimates through the imputation process.

NHTSA has been using the method of multiple imputation since 2001 to estimate the distribution of the BACs of drivers for whom test results were unavailable (Subramanian, 2002). The data analyzed in this study were obtained from the Washington Traffic Safety Commission and did not include NHTSA's imputed BAC values in cases when BAC test results were unavailable. Thus, missing values of BAC were imputed in this study along with missing values of THC, to ensure that imputed values of THC reflected the strong relationship with alcohol presence that was observed among drivers tested for both alcohol and drugs. To compare the performance of the imputation model used in the current study with that developed and validated by NHTSA (Rubin et al., 1998), the distribution of BAC

values imputed in the present study were compared to those imputed by NHTSA and published in NHTSA's version of the FARS data file. This study estimates that 711 drivers involved in fatal crashes in Washington over the 5-year study period had a BAC of 0.08 mg/dL or greater, compared with NHTSA's estimate of 701, a discrepancy of 10 drivers out of 1,183 for whom BAC was imputed; the largest discrepancy in any single year was 4 drivers out of 236 in 2011.

Limitations

THC is metabolized rapidly after consumption in a living human body (Desrosiers et al., 2014). Consequently, if a driver had used cannabis at some point relatively shortly (e.g., in the past few hours) prior to driving, toxicology tests performed on a blood sample drawn from a surviving driver hours after the occurrence of a crash are likely to underestimate the concentration of THC that was present in the driver's blood at the time of the crash, or even fail to detect THC at all. In another AAA Foundation study, Banta-Green et al. (2016) estimated that the average time between contact with police and the collection of a sample of a driver's blood was over two hours and that THC concentrations present in drivers' blood decreased by an average of 5 ng/mL over the first two hours between initial contact with police and the time that blood was drawn. In the current study, deceased drivers were significantly more likely than surviving drivers to have had any THC detected, and deceased drivers who tested positive for THC had higher THC concentrations than surviving drivers who tested positive for THC. Thus, it is possible that some surviving drivers who were tested for THC and tested negative actually had what would have been a detectable concentration of THC in their blood at the time of the crash, but that it was no longer detectable by the time their blood was drawn for testing. Thus, the results of this study may underestimate the proportion of drivers in fatal crashes who had a detectable concentration of THC in their blood at the actual time of the crash, especially among drivers who survived.

This study used the presence of at least 1 ng/mL of THC in blood as an indicator of recent use of marijuana. In a study of 14 frequent marijuana smokers (defined as smoking marijuana at least 4 times per week) and 11 occasional marijuana smokers (less than twice per week), Desrosiers et al. (2014) found that none of the occasional users had a blood THC concentration of 5 ng/mL or greater, the *per se* limit for DUI in Washington, 2 hours after having smoked one 6.8% THC cannabis cigarette, and the longest time that any of the occasional users had any detectable THC in their blood was 6 hours after smoking. However, all of the frequent users had a detectable concentration of THC in their blood for at least 24 hours after smoking the same one 6.8% THC cannabis cigarette, and four still had a blood THC concentration of 5 ng/mL or greater 24 hours after smoking. Another study of chronic marijuana users found a small proportion still had a blood THC concentration of 1 ng/mL or greater 7 full days after the last time that they had used marijuana (Karschner et al., 2009). Thus, it is possible that some of the THC-positive drivers in the current study may have last used marijuana several hours or even days prior to the crash. In a population-based survey conducted in Washington State in 2014, 9.2% of licensed drivers aged 18 years and older reported having used marijuana at least once in the past 30 days; 45% of those reported having used marijuana on 15 days or more out of the past 30, including 28% who reported having used marijuana every single day for the past 30 days (Washington State Department of Health, 2014). Another study, however,

found that chronic daily marijuana users may experience some degree of psychomotor impairment for days or even weeks after the last time that they used marijuana (Bosker et al., 2015), suggesting that it is possible that impairment might have still been present even if the marijuana use that resulted in the detection of THC among drivers in the current study occurred days earlier.

Some research also suggests that THC may be redistributed in the body after death and thus that the concentration of THC in a sample of blood would vary depending upon the location in the body from which the blood was drawn (e.g., Lemos et al., 2015). However, it is unlikely that this phenomenon would have led to THC-positive drivers being classified as THC-negative, and it would not result in drivers who had not used any cannabis testing positive for THC, and thus should have had little if any impact on the main results of this study.

Approximately half of all drivers had missing values of THC, either because they were not tested for drugs, because the drug test administered was not a blood test (results of urine tests were treated as unknown for THC because THC is not reliably detected in urine), or because the results of the test were unclear (e.g., indicated "cannabinoids," but did not specify whether the cannabinoid detected was THC, carboxy-THC, or another metabolite of cannabis). The imputation model was found to perform very well in imputing the presence of THC in cases when drug test results were actually known but were treated as unknown and imputed for validation purposes. However, in those cases, missing values were by definition missing completely at random, because they were deleted randomly. If the probability that a driver was tested for drugs was associated with whether the driver actually had detectable THC in his or her blood in ways not specifically accounted for in the model (i.e., if THC values were not missing at random conditional upon the explanatory variables included in the model), bias could still be present in the imputed values.

Finally, this study examined the presence of detectable concentrations of THC in drivers' blood. Drivers who had detectable THC in their blood at the time of the crash were not necessarily experiencing impairment in their ability to drive safely, nor were they necessarily at fault for the crash. Determination of actual impairment or fault status was beyond the scope of the study. Relatedly, many of those who were positive for THC were also positive for alcohol and/or other drugs, which in some cases likely contributed more significantly to the crash than did the THC. Research on the relationship between THC presence and risk of crash involvement has been inconclusive. One systematic review and meta-analysis of studies of the relationship between THC and crash risk (Asbridge et al., 2012) reported that THC was associated with significantly elevated crash risk, however, another systematic review & meta-analysis (Elvik, 2013) found that THC was not significantly associated with elevated crash risk after controlling for other factors. A recent case-control study by the National Highway Traffic Safety Administration found a statistically significant but small association between THC and crash risk before controlling for other factors, but this association was reduced to zero (adjusted odds ratio = 1.00) after controlling for driver demographic characteristics and blood alcohol concentration (Compton & Berning, 2015).

Conclusion

This study estimates that an average of 10% of all drivers involved in fatal crashes in Washington between 2010 and 2014 had detectable THC in their blood at the time of the crash. There was evidence that the proportion of drivers in fatal crashes who were positive for THC increased after Initiative 502 legalized recreational use of marijuana for adults aged 21 years and older, however, the increase was not immediate and appeared to have begun approximately 9 months after the effective date of Initiative 502. In 2014, the number and proportion of drivers in fatal crashes who were positive for THC were both more than double the averages from the prior four years. Researchers and policymakers should continue to monitor trends in THC presence and concentrations among drivers involved in crashes. Other states should follow the model of the Washington Traffic Safety Commission in recording quantitative toxicology test results and appending them to their motor vehicle crash databases to make such surveillance possible.

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Tables

Table 1. Toxicology test status of drivers involved in fatal crashes in relation to crash, vehicle, and driver characteristics, Washington, 2010 – 2014.

	Drug test type				P	Drug test type				P
	Blood	Other/ unknown Row %	None	Total N		Blood	Other/ unknown Row %	None	Total N	
All	49.8	9.3	41.0	3,031						
Year						Blood Alcohol Concentration (mg/dL)				
2010	45.2	15.8	38.9	619		0	84.3	13.9	1.8	1,154
2011	39.9	17.2	42.9	606		0.01 – 0.07	75.5	13.3	11.2	98
2012	47.5	11.0	41.5	591	<0.001	0.08+	75.5	17.6	6.9	596
2013	61.7	1.9	36.5	592		Unknown / not tested	0.9	0.3	98.8	1,183
2014	54.6	0.5	44.9	623		Vehicle type				
						Car / light truck	48.2	8.3	43.5	2,405
						Large truck / bus	42.9	3.7	53.4	191
						Motorcycle	65.2	19.8	15.0	374
Survival status / time to death						Vehicle age (years)				
Died < 1 hour after crash	72.2	22.2	5.6	985		0-5	43.6	9.4	46.9	637
Died 1-2 hours after crash	71.4	15.6	13.0	77	<0.001	6-10	48.6	10.8	40.6	870
Died > 2 hours after crash	57.2	11.4	31.4	334		11-15	48.0	10.2	41.8	687
Survived	33.5	0.5	66.0	1,617		16+	59.0	6.9	34.1	800
Age (years)						Driving errors reported				
<16	62.5	0.0	37.5	8		Yes	63.5	8.5	28.0	739
16-17	54.7	9.3	36.0	75		No	45.3	9.5	45.2	2,292
18-20	59.4	10.4	30.2	212		Left scene (hit and run)				
21-24	52.9	11.9	35.3	329	0.039	Yes	30.6	1.0	68.4	98
25-34	51.4	9.8	38.8	580		No	50.4	9.5	40.1	2,933
35-49	47.9	8.0	44.1	714		Time of day				
50-64	47.2	8.8	44.0	702		6:00-9:59 AM	47.2	7.0	45.8	371
65+	50.9	9.6	39.5	375		10:00AM-3:59 PM	42.5	7.8	49.6	842
Sex						4:00-7:59 PM	48.8	9.0	42.2	754
Female	44.7	6.2	49.1	754	<0.001	8:00-11:59 PM	51.8	11.1	37.1	542
Male	52.2	10.4	37.4	2,244		Midnight-5:59 AM	62.7	11.4	25.8	507
Seatbelt used						Crash location				
Yes	43.0	6.8	50.2	1,759	<0.001	Rural	46.3	7.6	46.1	1,409
No	60.7	14.1	25.2	1,044		Urban	52.7	10.7	36.6	1,610
Driver's license status (non-CDL)						Road type				
Valid	47.3	9.7	43.1	2,601		Interstate	43.5	10.4	46.1	347
Unlicensed	66.7	8.7	24.6	69	<0.001	Principal arterial	46.2	7.4	46.4	1,039
Suspended/Revoked	74.7	6.5	18.8	292		Collector / local street/road	53.4	10.7	35.9	1,513
Expired/Cancelled/Denied	69.2	15.4	15.4	13		Crash Type				
Convicted of DWI in past 3 years						Single-vehicle road departure	66.6	16.9	16.4	815
Yes	75.8	6.5	17.7	62	<0.001	Single vehicle other	40.0	1.9	58.0	417
No	49.9	9.4	40.7	2,896		Multiple-vehicle	44.4	7.4	48.2	1,799
License suspended in past 3 years						Pedestrian involved				
Yes	66.3	9.1	24.6	460	<0.001	Yes	36.7	0.0	63.3	362
No	47.5	9.4	43.1	2,498		No	51.5	10.5	38.0	2,669
Police-reported alcohol						Investigating agency				
Yes	71.2	13.8	15.0	572	<0.001	Washington State Patrol	50.4	9.6	40.0	1,640
No / not reported	34.0	4.9	61.0	1,648		County Sheriff	53.6	10.6	35.8	659
Unknown (reported as "unknown")	66.6	14.9	18.5	811		City or Municipal Police	44.7	7.5	47.8	707
Police-reported drugs										
Yes	96.0	1.6	2.4	126						
No / not reported	47.7	9.6	42.7	2,902	<0.001					
Unknown (reported as "unknown")	66.7	0.0	33.3	3						

Data: Washington Traffic Safety Commission, 2010 - 2014. Drug test type Blood includes drivers given multiple types of drug tests if at least one was a blood test. P-value is from χ^2 test of whether drug test type varied by row variable.

Table 2. Number and proportion of drivers in fatal crashes who were positive for THC based on blood toxicological test results and multiple imputation of missing values, Washington, 2010 – 2014.

	Blood toxicological test results known				All drivers	
	Yes ^a		No ^b		Number of Drivers	Tested+Imputed THC-positive N (%; 95% CI)
	Number of Drivers	Tested THC-positive N (%)	Number of Drivers	Imputed THC-positive N (%)		
All	1,470	213 (14.5)	1,561	90 (5.8)	3,031	303 (10.0; 8.7 – 11.3)
Year						
2010	273	35 (12.8)	346	18 (5.2)	619	53 (8.5; 6.0 – 11.1)
2011	239	32 (13.4)	367	16 (4.3)	606	48 (7.9; 5.3 – 10.4)
2012	279	35 (12.5)	312	13 (4.1)	591	48 (8.1; 5.5 – 10.6)
2013	344	37 (10.8)	248	12 (4.8)	592	49 (8.3; 5.7 – 10.9)
2014	335	74 (22.1)	288	32 (11.0)	623	106 (17.0; 13.1 – 20.8)
Survival status						
Died	943	151 (16.0)	471	22 (4.6)	1,414	173 (12.2; 10.4 – 14.0)
Survived	527	62 (11.8)	1,090	68 (6.3)	1,617	130 (8.1; 6.3 – 9.8)
Age (years)						
16-17	41	2 (4.9)	34	3 (7.6)	75	5 (6.1; 0 – 13.0)
18-20	120	35 (29.2)	92	8 (8.8)	212	43 (20.3; 14.4 – 26.2)
21-24	169	33 (19.5)	160	10 (6.1)	329	43 (13.0; 9.2 – 16.8)
25-34	289	63 (21.8)	291	20 (6.7)	580	83 (14.2; 10.9 – 17.6)
35-49	332	43 (13.0)	382	22 (5.8)	714	65 (9.1; 6.8 – 11.5)
50-64	324	31 (9.6)	378	13 (3.5)	702	44 (6.3; 4.3 – 8.3)
65+	191	6 (3.1)	184	4 (2.3)	375	10 (2.7; 0.9 – 4.5)
Sex						
Female	330	32 (9.7)	424	17 (4.0)	754	49 (6.5; 4.2 – 8.8)
Male	1,140	181 (15.9)	1,104	63 (5.7)	2,244	244 (10.9; 9.3 – 12.5)
Drivers license status						
Valid	1,202	144 (12.0)	1,399	66 (4.7)	2,601	210 (8.1; 7.0 – 9.6)
Unlicensed	42	7 (16.7)	27	1 (5.2)	69	8 (12.2; 2.7 – 25.4)
Suspended/Revoked	211	59 (28.0)	81	11 (13.3)	292	70 (23.9; 19.6 – 30.4)
Alcohol detected						
Yes	505	120 (23.8)	189	13 (7.0)	694	133 (19.2; 16.2 – 22.2)
No	955	91 (9.5)	199	9 (4.7)	1,154	100 (8.7; 7.0 – 10.4)
Unknown / not tested	10	2 (20.0)	1,173	67 (5.7)	1,183	69 (5.9; 3.7 – 8.1)
Other drugs detected						
Yes	402	60 (14.9)	17	6 (35.9)	419	66 (15.8; 12.1 – 19.4)
No	1,068	153 (14.3)	21	5 (24.8)	1,089	158 (14.5; 12.4 – 16.6)
Unknown / not tested	0	0	1,523	79 (5.2)	1,523	79 (5.2; 3.3 – 7.0)
Left scene (hit and run)						
Yes	30	9 (30.0)	68	18 (26.5)	98	27 (27.6; 13.9 – 41.2)
No	1,440	204 (14.2)	1,493	72 (4.8)	2,933	276 (9.4; 8.2 – 10.7)
Vehicle type						
Car / light truck	1,128	177 (15.7)	1,277	71 (5.5)	2,405	248 (10.3; 8.8 – 11.7)
Large truck / bus	80	1 (1.3)	111	3 (2.9)	191	4 (2.2; -1 – 4.9)
Motorcycle	242	33 (13.6)	132	6 (4.8)	374	39 (10.5; 7.3 – 13.7)
Vehicle age (years)						
0-5	275	28 (10.2)	362	13 (3.7)	637	41 (6.5; 4.5 – 8.5)
6-15	739	92 (11.2)	818	41 (4.4)	1,557	133 (8.5; 7.0 – 10.0)
16+	451	93 (20.6)	349	27 (7.9)	800	120 (15.1; 11.9 – 18.2)
Day of week						
Monday-Friday	1,025	140 (13.7)	1,059	57 (5.4)	2,084	197 (9.5; 7.8 – 11.1)
Saturday-Sunday	445	73 (16.4)	502	33 (6.5)	947	106 (11.2; 8.9 – 13.5)
Time of day						
6:00-9:59 AM	173	14 (8.1)	198	8 (4.1)	371	22 (6.0; 2.7 – 9.2)
10:00AM-3:59 PM	351	37 (10.5)	491	18 (3.7)	842	55 (6.6; 4.7 – 8.4)
4:00-7:59 PM	360	45 (12.5)	394	23 (5.8)	754	68 (9.0; 6.7 – 11.3)
8:00-11:59 PM	274	49 (17.9)	268	19 (7.2)	542	68 (12.6; 8.6 – 16.6)
Midnight-5:59 AM	304	67 (22.0)	203	21 (10.3)	507	88 (17.3; 13.5 – 21.2)
Crash type						
Single-vehicle road departure	525	105 (20.0)	290	21 (7.1)	815	126 (15.4; 12.7 – 18.1)
Single-vehicle other	165	19 (11.5)	252	22 (8.8)	417	41 (9.9; 6.2 – 13.5)
Multiple-vehicle crash	780	89 (11.4)	1,019	47 (4.6)	1,799	136 (7.6; 6.0 – 9.1)

Data: Washington Traffic Safety Commission, 2010 – 2014. THC values were imputed 10 times when driver was not tested or test results were unknown; results reflect averages from 10 imputed values for each driver. Drivers with missing values of row variables were excluded from rows where relevant. Row and column totals may not add to grand total and percents in table may differ from percents calculated by hand from counts shown in table due to rounding of averages of imputed values.

a. THC-positive based on detection of THC concentration of 1 ng/mL or greater in sample of blood.

b. Includes 38 drivers subject to blood toxicology test but with results indeterminate for THC due to reporting issues (27 positive for unspecified cannabinoids; 11 negative at 2 ng/mL threshold but positive for carboxy-THC).

Table 3. Drivers with THC concentrations equal to or greater than 5 ng/mL as a proportion of all drivers involved in fatal crashes and as a proportion of all THC-positive drivers involved in fatal crashes, by year and survival status, Washington, 2010 – 2014.

	Total drivers	Number THC-positive	THC ≥ 5 ng/mL		
			N	% of all drivers (95% CI)	% of THC+ drivers (95% CI)
All drivers	3,031	303	164	5.4 (4.4 – 6.4)	54.1 (46.5 – 61.8)
Survival status					
Died	1,414	173	117	8.3 (6.7 – 9.8)	67.6 (59.9 – 75.2)
Survived	1,617	130	47	2.9 (1.8 – 4.1)	36.3 (23.2 – 49.6)
Year					
2010	619	53	32	5.2 (3.0 – 7.3)	60.3 (40.8 – 79.9)
2011	606	48	26	4.3 (2.5 – 6.0)	54.2 (38.4 – 70.2)
2012	591	48	29	4.9 (3.0 – 6.9)	61.2 (43.5 – 79.3)
2013	592	49	25	4.1 (2.4 – 5.9)	50.0 (34.2 – 65.9)
2014	623	106	53	8.4 (5.7 – 11.2)	49.7 (37.3 – 62.2)
Year (Died)					
2010	291	32	25	8.7 (5.2 – 12.1)	78.1 (62.0 – 94.2)
2011	291	29	19	6.6 (3.6 – 9.6)	67.4 (47.4 – 87.3)
2012	272	27	19	6.8 (3.8 – 9.9)	68.6 (49.2 – 88.2)
2013	271	26	15	5.5 (2.7 – 8.4)	58.1 (38.1 – 78.1)
2014	289	59	39	13.4 (9.3 – 17.4)	65.5 (53.0 – 78.0)
Year (Survived)					
2010	328	21	7	2.0 (0 – 4.3)	32.2 (0 – 65.5)
2011	315	19	7	2.1 (0.2 – 4.1)	34.7 (8.2 – 61.6)
2012	319	21	11	3.3 (0.8 – 5.8)	51.5 (22.2 – 81.1)
2013	321	23	10	3.0 (0.7 – 5.2)	40.9 (15.7 – 66.5)
2014	334	47	14	4.2 (0.5 – 7.8)	29.8 (7.1 – 52.1)

Data: Washington Traffic Safety Commission, 2010 – 2014.

Based on results of blood toxicological tests. Results imputed 10 times when driver was not tested or test results were unknown; results reflect averages from 10 imputed values for each driver. Row and column totals may not add to grand total and percents in table may differ from percents calculated by hand from counts shown in table due to rounding of averages of imputed values.

THC-positive and THC+ denote THC concentration of 1 ng/mL or greater.

Table 4. Presence of alcohol and other drugs among THC-positive drivers involved in fatal crashes, by year and survival status, Washington, 2010 – 2014.

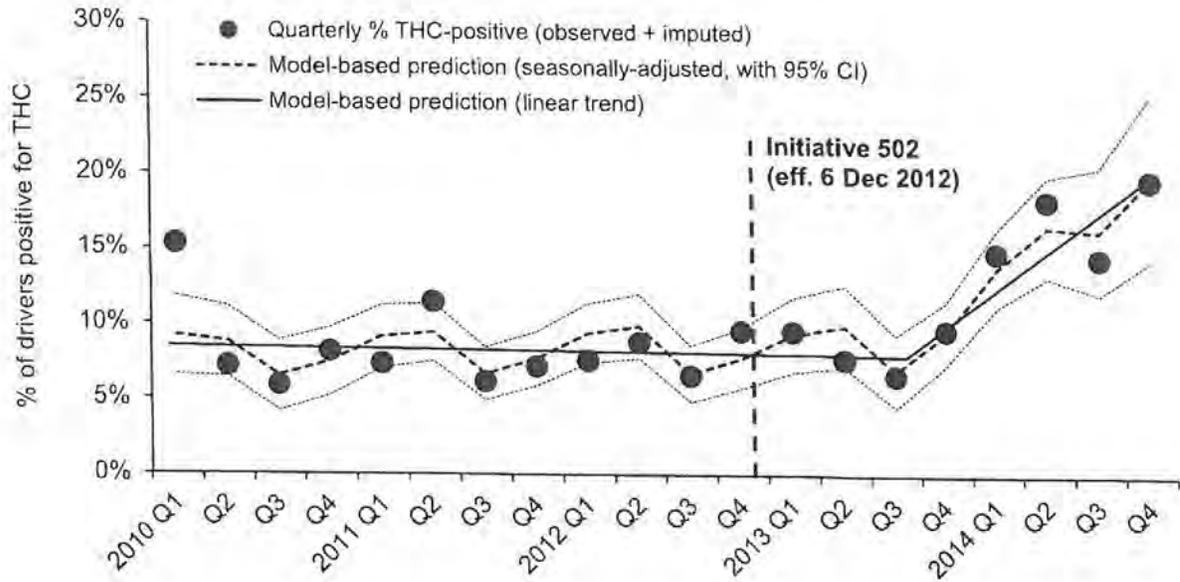
	Total THC-positive Drivers	Other substances present							
		None (THC only)		Alcohol		Other drugs		Alcohol and other drugs	
<i>N (Row %)</i>									
All drivers	303	103	(34.0)	118	(39.0)	50	(16.5)	32	(10.5)
Survival status									
Died	173	42	(24.1)	76	(44.2)	35	(20.2)	20	(11.5)
Survived	130	61	(47.0)	42	(32.2)	15	(11.6)	12	(9.1)
Year									
2010	53	16	(30.1)	23	(43.7)	9	(17.2)	5	(9.1)
2011	48	14	(29.5)	22	(46.0)	6	(11.9)	6	(12.6)
2012	48	20	(42.8)	15	(32.3)	8	(17.2)	4	(7.8)
2013	49	14	(27.6)	22	(44.3)	7	(14.7)	7	(13.5)
2014	106	39	(37.0)	36	(34.2)	20	(18.8)	11	(10.0)
Year (Died)									
2010	32	6	(17.9)	15	(46.6)	7	(21.6)	5	(13.9)
2011	29	6	(20.4)	14	(49.1)	4	(15.1)	4	(15.4)
2012	27	8	(30.3)	11	(39.1)	5	(19.2)	3	(11.4)
2013	26	6	(23.6)	11	(42.6)	5	(19.4)	4	(14.3)
2014	59	16	(26.8)	26	(43.5)	13	(22.8)	4	(7.0)
Year (Survived)									
2010	21	11	(52.7)	8	(39.0)	2	(10.2)	0	(1.5)
2011	19	8	(43.0)	8	(41.5)	1	(7.3)	2	(8.3)
2012	21	12	(59.2)	5	(23.3)	3	(14.6)	1	(2.9)
2013	23	7	(31.9)	11	(46.1)	2	(9.5)	3	(12.5)
2014	47	23	(49.9)	11	(22.5)	6	(13.7)	7	(13.9)

Data: Washington Traffic Safety Commission, 2010 – 2014.

Based on results of blood toxicological tests. Results imputed 10 times when driver was not tested or test results were unknown; results reflect averages from 10 imputed values for each driver. Row and column totals may not add to grand total and percents in table may differ from percents calculated by hand from counts shown in table due to rounding of averages of imputed values.

Category *other drugs* indicates driver tested (or imputed) positive for one or more drugs other than cannabinoids, including: depressants, stimulants, narcotics, hallucinogens, inhalants, PCP, or other unspecified drug.

Figure 1. Quarterly average proportion of drivers involved in fatal crashes who were positive for THC and modeled seasonally-adjusted linear trend before and after Washington Initiative 502 took effect on 6 December 2012 legalizing recreational use of marijuana for adults aged 21 years and older, Washington, 2010 – 2014.



Data: Washington Traffic Safety Commission, 2010 – 2014.

Drivers positive for THC based on results of blood toxicological tests. Results imputed 10 times when driver was not tested or test results were unknown; results reflect averages from 10 imputed values for each driver. Model-based predictions are from binomial regression model with identity link function, indicator variables for seasons, and a linear spline with change in slope on 5 September 2013 (39 weeks after effective date of Initiative 502).

Appendix

Variables used in imputation model for THC

- Calendar year
- Quarter (Jan-Mar, Apr-Jun, Jul-Sep, Oct-Dec)
- Day of week (Mon-Thurs, Fri, Sat, Sun)
- Time of day (6-9:59AM, 10AM-3:59PM, 4-7:59PM, 8-11:59PM, midnight-5:59AM)
- Survival / time to death (died within 1 hour after crash, died 1-2 hours after crash, died more than 2 hours after crash, survived)
- Driver's age and sex (entered into model as age, age², sex, age × sex, and age² × sex)
- Driver's license status (valid, expired, suspended/revoked, unlicensed)
- Previous DWI convictions in past 3 years (0, 1+)
- Previous license suspensions in past 3 years (0, 1+)
- Driver's seatbelt use (yes/no)
- Any unsafe driving actions or driving errors were noted on the police report (yes/no; derived from driver-related contributing factors indicative of specific driving actions or errors)
- Driver fled from the scene of the crash (yes/no)
- Number of vehicles involved in the crash (1, 2, 3+)
- Pedestrian involved in crash (yes/no)
- Vehicle departed the roadway prior to the crash (yes/no)
- Investigating agency (State Patrol, County Sheriff, City/Municipal Police)
- Vehicle type (car/light truck, large truck or bus, motorcycle, other)
- Vehicle age (0-5 years, 6-10 years, 11-15 years, 16+ years)
- Land use (urban/rural)
- Roadway type (Interstate, principal arterial, collector or local street or road)
- Police-reported alcohol involvement (yes, no, unknown [police reported "unknown"])
- Police-reported drug involvement (yes, no, unknown [police reported "unknown"])
- Blood alcohol concentration (milligrams of alcohol per deciliter of blood)
- Carboxy-THC detected in drug test (yes/no)
- Other cannabinoids detected in drug test (yes/no)
- Other drugs besides cannabinoids or alcohol detected (yes/no)
- Type of drug test (blood, other/unknown, none)
- Laboratory threshold for detection of THC (1 mg/dL, 2 mg/dL) one month after crash date



City Manager

MEMORANDUM

DATE: November 16, 2016

TO: Honorable Mayor and City Council

FROM: Konradt Bartlam, City Manager 

RE: **PLANNING COMMISSION ACTION REGARDING AGENDA ITEM 5B –
CUSTOM HOME DESIGN REVIEW NO. 432 FOR 15511 PAINTER
DRIVE**

At their meeting on November 15, 2016, the Planning Commission received a report from City staff regarding the above-mentioned item, a request for approval of a Custom Home Design Review for the construction of a two-story addition consisting of 5,707-sq.ft. of livable space with an attached 505-sq.ft., two-car garage to an existing 2,124-sq.ft. single family residence. The project is located at 15511 Painter Drive on a lot approximately 1.02-acres.

The adjacent neighbor addressed the Commission expressing concerns about visual impacts from his property and construction for the project, and requested a 6-foot wall between his property and the northeast side of the proposed project. Staff advised that there are specific hours and procedures the contractors need to follow during the construction phase of the project. Commissioner Stover had concerns about the front impervious surface of the property given the shape and width of the front yard. Staff advised the commission it is under the maximum percentage of coverage required for the property. Commissioner Voigt expressed concern regarding the amount of driveway proposed by the project. Staff suggested that a condition be added to the project requiring the use of decorative paving on the driveway. The applicant's representative, Forrest Tsao, addressed the Planning Commission to express the applicant's willingness to add the requested 6-foot wall and decorative paving.

The Planning Commission approved the project by unanimous vote 3-0 with the addition of a condition of approval to install a 6-foot block wall on the northeastern portion of the property, and a condition of approval to install enhanced/decorative paving within the driveway. Vice-Chairman Eliason and Commissioner Romero were absent.

KB:JL:MH



PLANNING COMMISSION AGENDA STAFF REPORT

Meeting Date: November 15, 2016

Public Hearing:
Discussion Item:
Consent Item:

November 8, 2016

Agenda Item No.: 5b

TO: CHAIRMAN AND PLANNING COMMISSIONERS

FROM: JOANN LOMBARDO, COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: CUSTOM HOME DESIGN REVIEW NO. 432 – 15511 PAINTER DRIVE

EXECUTIVE SUMMARY

The applicant, Forrest Tsao, representing Cheng Chen, is requesting approval of Custom Home Design Review No. 432 for the addition of 6,312 square feet to an existing single-story single family home located at 15511 Painter Drive (Exhibit "B").

Pursuant to Section 16.06.130 of the Chino Hills Development Code, and per Section 16.10.050 of the Residential Development Standards and Design Guidelines, a Design Review approval is required for the construction of any structural additions that are equal to fifty percent (50%) or more of the floor area of the existing on-site buildings. The existing single-story home consists of 1,688 square feet of livable space and an attached 436-square foot, two-car garage, totaling 2,124 square feet. The proposed addition consists of 5,707 square feet of livable space and the addition of a new two-car garage totaling 505 square feet. After the addition, the total gross square footage of the remodeled home will be 8,336 square feet including four garage spaces (Exhibit "B").

RECOMMENDATION

Staff recommends that the Planning Commission adopt the attached resolution finding that the project is exempt from review under the California Environmental Quality Act and approving Custom Home Design Review No. 432 based on the findings of facts as listed in the attached resolution and subject to the Conditions of Approval (Exhibit "A").

PROJECT

CASE NO.: Custom Home Design Review No. 432

APPLICANT: Forrest Tsao
13719 Dearborn Street
Corona, CA 92880

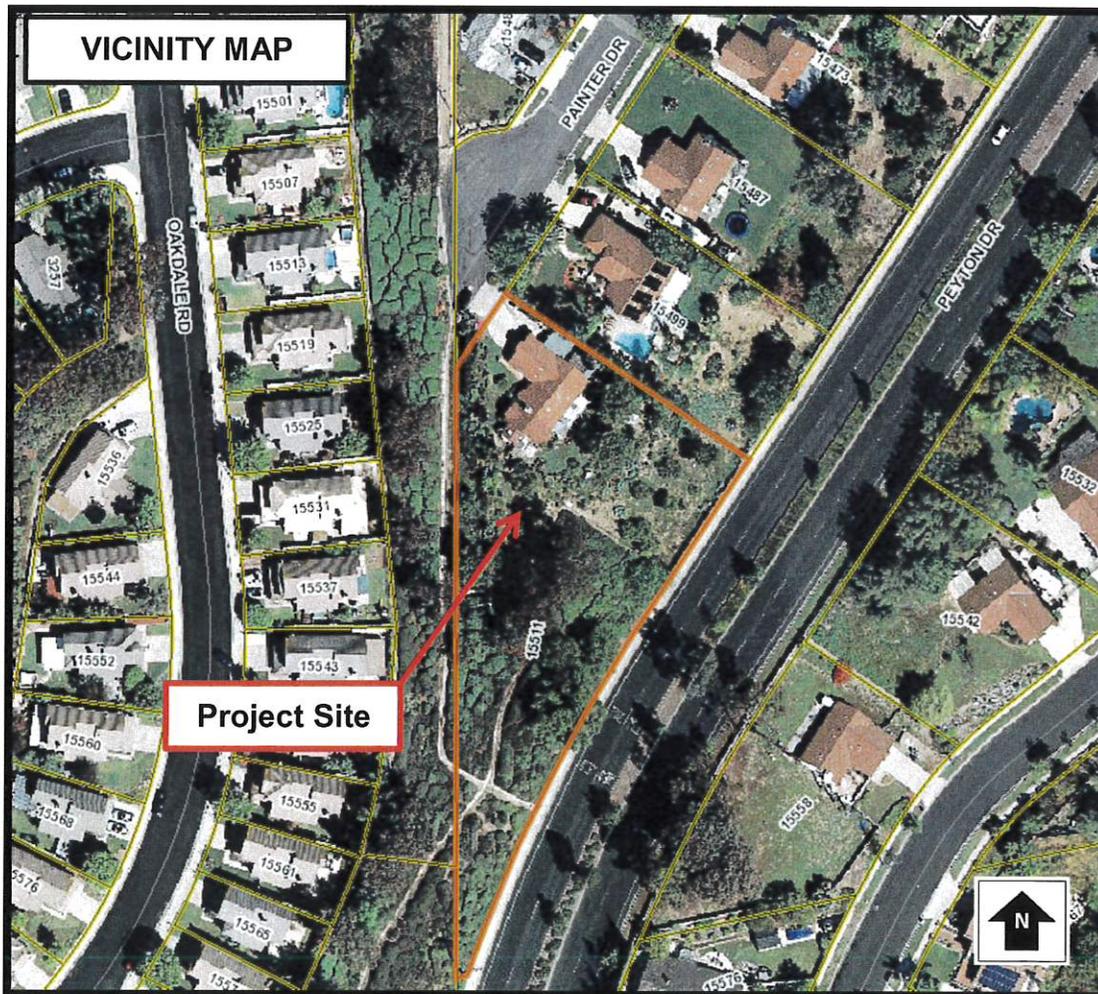
OWNER: Cheng Chen
15511 Painter Drive
Chino Hills, CA 91709

LOCATION: 15511 Painter Drive

Assessor's Parcel Number 1030-061-24

BACKGROUND

The project site is located at 15511 Painter Drive and is legally described as Lot 13 of Tract No. 9881. The project site is approximately 1.02 acres, is designated as Low Density Residential by the City's General Plan, and is zoned Low Density Residential (R-S). The project site is located within an existing neighborhood of one and two-story homes. (Exhibits "D").



PROPOSAL

The project proposes the construction of a 6,212-square foot, two-story addition/remodel with additional two-car garage to an existing 2,124-square foot, one-story single-family detached residence with an attached two-car garage located at 15511 Painter Drive. After the addition, the total gross square footage of the home will be 8,336 square feet. The first floor addition, measuring 2,786 square feet of livable space, will include the addition of a new bedroom, two bathrooms, laundry room, dining room, living room, great room and kitchen. After the new garage addition, the

addition/remodeled home will have two (2), two-car garages totaling 941 square feet. The existing kitchen will be converted to an exercise room. The second floor addition, measuring 2,921 square feet of livable space, will include a loft, four bedrooms and four bathrooms. The project will also include a 208-square foot covered patio with a 208-square foot deck on the rear of the proposed two-story addition. The patio/deck will feature an exterior lift for accessibility from the ground level to the rear deck. (Exhibit "B").

DEVELOPMENT STANDARDS

In accordance with Section 16.10.050 of the Development Code, the applicant has addressed the following design elements:

- **General Plan and Zoning Consistency:** The project site is identified as Low Density Residential on the General Plan Land Use Map and is zoned Low Density Residential (R-S). The proposed addition is consistent with the standards of this district in that the proposed design and layout of the home maintains the proper setback requirements, second story massing guidelines and is within the height limitations for residential construction, and does not exceed the allowable lot coverage. The addition of fifty-percent (50%) or more of floor area of existing on site buildings to an existing single-family residence is subject to the approval of a Custom Home Design Review, pursuant to Section 16.10.050 of the Development Code. If the Custom Home Design Review is approved, the proposed project would be consistent with the Development Code, a tool used to implement the General Plan. Approval of the proposed project furthers Goal H-2 of the General Plan "Maintain and Enhance the Quality of Existing Residential Neighborhoods". In providing the applicant the opportunity of an addition to an existing single-family home in Chino Hills, the City furthers its goal by maintaining and enhancing the quality of existing residential neighborhoods. Therefore, the approval of Custom Home Design Review No. 432, subject to the attached Conditions of Approval, would be consistent with the General Plan.
- **Building Size & Mass:** The proposed addition will reach a maximum height of 32 feet, which complies with the 35-foot maximum building height development standard for the Low Density Residential (R-S) zone. The proposed home provides a lighter second story building mass with varying wall planes and architectural movement to avoid uninterrupted wall planes consistent with Section 16.10.050 of the Municipal Code.

The existing and proposed livable area improvements on the site are detailed below:

Existing First Floor Area	1,688 sq. ft.
Proposed First Floor Addition/Remodel	2,786 sq. ft.
Proposed Second Floor Addition	2,921 sq. ft.
Total Livable Floor Area:	7,395 sq. ft.

Total Building Footprint

Proposed Building Footprint (Livable Area)	4,474 sq. ft.
Existing Two-Car Garage	436 sq. ft.
Proposed Two-Car Garage	505 sq. ft.
New Front Porch	78 sq. ft.
Total Structure Coverage:	5,493 sq. ft.

Concrete Pavement inside Front Yard Setback	1,196 sq. ft.
Total Impervious Area inside Front Yard Setback	1,196 sq. ft.

The Low Density Residential (R-S) zone specifies maximum lot coverage by structures of forty (40) percent and fifty (50) percent maximum coverage by impervious surfaces within the front yard setback, or as otherwise provided within 16.10.030 Table 20-1, note (h)¹. As shown in the following table, the proposal meets the standards for lot coverage by structures and by impervious surfaces.

PROJECT INFORMATION	PROPOSAL	MAXIMUM ALLOWED	MEETS REQUIREMENT?
Property Size (sq. ft.)	44,431	--	--
Building Footprint (sq. ft.)	5,493	17,772	Yes
Percent Coverage by Structure	12%	40%	Yes
Front Yard Setback Area (sq. ft.)	2,416	--	--
Front Yard Impervious Surfaces (sq. ft.)	1,196	1,208	Yes
Percent Coverage by Front Yard Impervious Surfaces (sq. ft.)	49%	50%	Yes

- **Building Materials:** The applicant has incorporated color/materials legend within the plans and colored elevations illustrating the exterior materials and colors for the proposed home (Exhibit "B").

MATERIAL	COLOR	MANUFACTURER
Concrete Roof Tiles	SMC 8403 Santa Barbara Blend	Eagle Roofing
Stucco	White	Dunn Edwards
Window Trim	White	Dunn Edwards
Eaves	White	Dunn Edwards

¹ Section 16.10.030 Development Standards, Table 20-1, note (h) states: "The maximum coverage in the front yard setback by impervious surfaces shall be the greater of fifty percent (50%) or the aggregate area of the following: (i) the area comprising the driveway directly fronting a primary garage door(s) to the street, (ii) one additional area of up to fifteen (15) feet in width on one side of the driveway to the street, (iii) a walkway(s) of up to five feet in width providing a walking path between the front door of the residence and the front property line and/or the driveway, and (iv) a walkway of up to five feet wide providing access from the driveway to the side yard. The remainder of the area within the front yard setback shall consist of landscaping and/or other pervious surfaces (e.g. bark or decomposed granite); notwithstanding any other provision of this code, for the purposes of this section only, permeable concrete shall be included in the calculation of impervious surface area. Impervious surface coverage that exceeds the maximum coverage permitted by this section within the required front yard setback area and that was installed prior to June 10, 2016 is legal non-conforming pursuant to Section 5 of Ordinance No. 297 consistent with Chapter 16.82 of this code. Flag lots, as defined in Section 16.02.240, are exempt from the maximum coverage in front yard setback by impervious surfaces standard."

The proposed design and building materials of the addition are in harmony with the appearance of the existing home as well as other existing residences in the neighborhood, as well as those found throughout the community. The color, materials, and design of the proposed addition is consistent with the colors, materials, and designs of the existing home as well as the existing homes within the project area and the proposed home provides 360° of architectural enhancements. The mass and scale of the proposed home is also compatible with other homes within the same area. The style and materials of the project contribute to the overall high quality design in the neighborhood.

- **Facade and Roof Articulation:** The proposed design and layout of the home and attached garages is sufficiently varied to avoid monotony in the external appearance. The front façade of the addition and the existing home features multiple vertical wall plans set back at varying distances to provide architectural relief. The material finish of the proposed addition will feature stucco to match the existing home. The new rooflines for the addition on the front facade are designed to feature the roof pitch theme to be consistent with the existing front façade roofline. Varied window sizes and shape provide visual interest and varied building setbacks and varying roof heights provide both horizontal and vertical articulation (Exhibit “B”).
- **Unit Placement:** The applicant has proposed to develop within the buildable area of the lot and will comply with the setback and building separation standards of the zoning district as shown in the following table:

SETBACKS	PROPOSED	REQUIRED	MEETS REQUIREMENT?
Front Yard	31'-0" (Existing)	30'-0"	Yes
Interior Side Yard	13'-0" & 25'-6"	5'-0' & 10'-0"	Yes
Rear Yard	76'-0"	15'-0"	Yes

- **Compatibility:** There are several different architectural styles and finishes used in the neighborhood, ranging from Spanish to Mediterranean. The proposed design features contemporary architecture and incorporates features and elements exhibited on surrounding homes. Given that the lots in the area have been built with varying designs, no one architectural style dominates the neighborhood, and the proposed home incorporates elements present in existing homes, the proposed home is compatible with the surrounding neighborhood. The mass of the proposed project is compatible with the neighborhood, which features one and two-story homes. The home incorporates a covered front porch and window treatments and building articulation for each level that are featured on other homes in the neighborhood. (Exhibits “B”, “D”, and “E”).
- **Protected Tree Removal:** The project site is a privately owned developed lot and is not located in the Fire Hazard Overlay District; therefore, the proposed project is exempt from the provisions of Chapter 16.90 Tree Preservation. The project proposes to remove three (3) existing, non-native fruit trees for the construction of the proposed addition.

PUBLIC COMMENTS

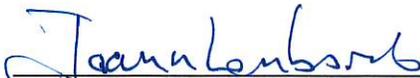
Courtesy notices regarding this project were mailed to the adjacent property owners surrounding the project site on November 3, 2016. Staff has received no public comments as of the writing of this report.

ENVIRONMENTAL ASSESSMENT

Staff has determined that the proposed project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301(e) Existing Facilities of the CEQA Guidelines because the project consists of an addition of less than 10,000 square feet to an existing single-family residence where all public services and facilities are available to serve the project and the project is not located within an environmentally sensitive area. The proposed project is also categorically exempt from CEQA pursuant to Section 15303(a) New Construction or Conversion of Small Structures of the CEQA Guidelines because the project consists of the construction of an addition to only one single-family structure in a residential zoning district. Further, staff has determined with certainty that the project does not have the potential to cause a negative impact on the environment pursuant to CEQA Guidelines Section 15061(b)(3), the “common sense” exemption.

Respectfully submitted,

Recommended by:



Joann Lombardo
Community Development Director



Jerrod Walters
Senior Planner

Prepared by:



Michael Hofflinger
Associate Planner

Attachments:

1. Resolution
2. Exhibit “A” – Conditions of Approval
3. Exhibit “B” – Project Plans, Materials, Color Elevations
4. Exhibit “C” – Project Site Photos
5. Exhibit “D” – Surrounding Property Photos
6. Exhibit “E” – 15451 Painter Drive Approved Plans
7. Affidavit of Mailing (Notification Letter & Mailing List)

RESOLUTION NO. PC 2016 – _____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CHINO HILLS APPROVING CUSTOM HOME DESIGN REVIEW NO. 432 FOR THE CONSTRUCTION OF A 6,212-SQUARE FOOT, TWO-STORY ADDITION/REMODEL TO AN EXISTING 2,124 SQUARE-FOOT TWO-STORY, SINGLE-FAMILY DETACHED HOME WITH TWO (2), TWO-CAR GARAGES LOCATED AT 15511 PAINTER DRIVE AND DETERMINING THAT THE PROJECT IS EXEMPT FROM REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

THE PLANNING COMMISSION OF THE CITY OF CHINO HILLS DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Planning Commission does hereby make the following findings of fact:

- A. The applicant, Forrest Tsao, representing Cheng Chen, requested approval of Custom Home Design Review No. 432 for the addition/remodel of 6,212 square feet to an existing 2,124-square foot, two-story, single-family detached home with two (2), two-car garages located at 15511 Painter Drive.
- B. The site is located at 15511 Painter Drive and is legally described as Lot 13 of Tract No. 9881. The Assessor's Parcel Number (APN) for the property is 1030-061-24 as shown in the latest records of the Office of the Tax Assessor of the County of San Bernardino.
- C. The property is zoned Low Density Residential (R-S) and has a General Plan designation of Low Density Residential.
- D. The project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301(e) Existing Facilities of the CEQA Guidelines because the project consists of an addition of less than 10,000 square feet to an existing single-family residence where all public services and facilities are available to serve the project and the project is not located within an environmentally sensitive area. The proposed project is also categorically exempt from CEQA pursuant to Section 15303(a) New Construction or Conversion of Small Structures of the CEQA Guidelines because the project consists of the construction of an addition to only one single-family structure in a residential zoning district. Further, staff has determined with certainty that the project does not have the potential to cause a negative impact on the environment pursuant to CEQA

Guidelines Section 15061(b)(3), the "common sense" exemption.

- E. Pursuant to Section 16.06.130.B., this application is a design review processed concurrently pursuant to Section 16.10.050 of the Chino Hills Development Code.
- F. The Planning Commission of the City of Chino Hills held a duly noticed public meeting on November 15, 2016, to review and consider the staff report prepared for the project, receive public testimony, and review all correspondence received on the project.

SECTION 2. With regard to the request for approval of Custom Home Design Review No. 432, based upon oral and written testimony and other evidence received at the public meeting held for the project, and upon studies and investigations made by the Planning Commission and on its behalf, pursuant to Section 16.10.050 of the Chino Hills Development Code, the Planning Commission does further find as follows:

- A. FINDING: The proposed single-family detached residential development is consistent with the General Plan.

FACT: The project site is identified as Low Density Residential on the General Plan Land Use Map and is zoned Low Density Residential (R-S). The proposed addition is consistent with the standards of this district in that the proposed design and layout of the home maintains the proper setback requirements, second story massing guidelines and is within the height limitations for residential construction, and does not exceed the allowable lot coverage. The addition of fifty-percent (50%) or more of floor area of existing on site buildings to an existing single-family residence is subject to the approval of a Custom Home Design Review, pursuant to Section 16.10.050 of the Development Code. If the Custom Home Design Review is approved, the proposed project would be consistent with the Development Code, a tool used to implement the General Plan. Approval of the proposed project furthers Goal H-2 of the General Plan "Maintain and Enhance the Quality of Existing Residential Neighborhoods". In providing the applicant the opportunity of an addition to an existing single-family home in Chino Hills, the City furthers its goal by maintaining and enhancing the quality of existing residential neighborhoods. Therefore, the approval of Custom Home Design Review No. 432, subject to the attached Conditions of Approval, would be consistent with the General Plan.

- B. **FINDING:** The proposed design and layout of the single-family detached residential development is sufficiently varied to avoid monotony in the external appearance.

FACT: The proposed design and layout of the home and attached garages is sufficiently varied to avoid monotony in the external appearance. The front façade of the addition and the existing home features multiple vertical wall plans set back at varying distances to provide architectural relief. The material finish of the proposed addition will feature stucco to match the existing home. The new rooflines for the addition on the front facade are designed to feature the roof pitch theme to be consistent with the existing front façade roofline. Varied window sizes and shape provide visual interest and varied building setbacks and varying roof heights provide both horizontal and vertical articulation.

- C. **FINDING:** The proposed design and layout of the single-family detached residential development is in harmony with the appearance of other existing residences in the neighborhood, as well as those found throughout the community.

FACT: The proposed design and building materials of the addition are in harmony with the appearance of the existing home as well as the other existing residences in the neighborhood. The color, materials, and design of the proposed custom home are consistent with the colors, materials, and designs of the existing homes within the project area and the proposed home provides 360° of architectural enhancements. The mass and scale of the proposed home is also compatible with other homes within the same area. The style and materials of the applicant's home contribute to the overall high quality design in the neighborhood.

- D. **FINDING:** The plans for the single-family detached residential development have properly implemented the residential design guidelines set forth in the Development Code.

FACT: The proposed custom home complies with the Residential Design Guidelines set forth in the Development Code because it maintains the proper setback requirements, is within the height limitations for residential construction, and does not exceed the allowable lot coverage. The proposed project also complies with the provisions of the Residential Design Guidelines addressing building massing and scale, enhanced architectural treatment, and varied structure design. In addition, the adjacent property owners were notified of the proposed project, staff did not receive any comments as of the writing of the staff report.

SECTION 3. Based on the findings and conclusions set forth above, the Planning Commission hereby approves Custom Home Design Review No. 432 pursuant to Section 16.10.050 and 16.20.090 of the Chino Hills Development Code, subject to the Conditions of Approval dated November 15, 2016, and labeled as Exhibit "A" incorporated into this resolution by reference, and the Project Plans on file with the Planning Commission Secretary.

SECTION 4. The Planning Commission Secretary shall certify the adoption of this resolution.

ADOPTED AND APPROVED this 15th day of November 2016.

GARY LARSON
CHAIRMAN

ATTEST:

KAREN PULVERS
PLANNING COMMISSION SECRETARY

APPROVED AS TO FORM:

ELIZABETH M. CALCIANO
ASSISTANT CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss.
CITY OF CHINO HILLS)

I, KAREN PULVERS, Planning Commission Secretary of the City of Chino Hills, do hereby certify that the foregoing Resolution No. PC 2016-__ was duly passed and adopted at a regular meeting of the Chino Hills Planning Commission held on the 15th day of November 2016, by the following roll call vote, to wit:

AYES: COMMISSION MEMBERS:

NOES: COMMISSION MEMBERS:

ABSENT: COMMISSION MEMBERS:

KAREN PULVERS
PLANNING COMMISSION SECRETARY



CITY OF CHINO HILLS
Conditions of Approval
Design Review No. 432
15511 Painter Drive

Community Development Department

1. The project construction shall be in substantial conformance with Exhibit "B" as approved by the Planning Commission. No modification to the Site Plan, Design Plan, or the Conditions of Approval for the Design Review shall be permitted without the approval of the Community Development Director or his/her designee.
2. All proposed exterior materials and colors for the addition shall match the existing home.
3. Exterior materials, finishes, and colors shall be in substantial conformance with Exhibit "B" as approved by the Planning Commission for a period of one (1) year following the completion of project construction and the final City-required inspection.
4. Impervious surface coverage within the required front yard setback area shall not exceed fifty percent (50%), or as otherwise provided within Section 16.10.030 Table 20-1, note (h) of the Chino Hills Municipal Code.
5. A final inspection by the Planning Division will be required to ensure the proposed addition is consistent with the approved plans.
6. This project has been determined to be exempt from the California Environmental Quality Act pursuant to Sections 15301(e), 15303(a) and 15061(b)(3), of the CEQA Guidelines; a Notice of Exemption will be mailed to the County Clerk of the Board upon approval by the Planning Commission. Within two (2) days of approval by the Planning Commission, the applicant shall submit to the Planning Division a check for the filing fee applicable to this notice in the amount of \$50.00, payable to the "Clerk of the Board".

Chino Valley Independent Fire District

7. A minimum of two (2) sets of plans shall be submitted separately for each of the following listed items to the Fire District for review, approval and permit prior to any installation or work being done. Approved plans must be maintained at the worksite during construction. Fees are due at the time of submittal.
 - a. Building Construction – a current fire flow is required to be submitted with the plans. Submitted plans to the Fire District shall include a scaled site plan showing the closest fire hydrant.
 - b. Fire Sprinkler Systems are required to be designed by a C16 contractor or registered engineer.

END OF SEQUENTIAL CONDITIONS

Project Manager: Michael Hofflinger

CHEN'S RESIDENCE

15511 PAINTER DR.
CHINO HILLS, CA 91709

TEAM LIST

OWNER
CHENG CHEN
15511 PAINTER DR.
CHINO HILLS, CA
PHONE: (626) 248-0669

DESIGNER

WHI PARTNERS INC.
13719 DEARBORN ST.
CORONA, CA 92680
PHONE: (909) 510-0857
CONTACT PERSON: FORREST TSAO

STRUCTURAL ENGINEER

JASON CHEN CONSULTING CIVIL ENGINEER
20601 ALDA CL.
WALNUT, CA 91786
PHONE: (909) 895-3226
CONTACT PERSON: JASON CHEN

MECHANICAL, PLUMBING & ELECTRICAL ENGINEER

PERFECT DESIGN & DEVELOPMENT, INC.
2416 W. VALLEY BLVD.,
ALHAMBRA, CA 91803
PHONE: (626) 289-8808
CONTACT PERSON: RAMOND ZHONG

DRAWING INDEX

- CS COVER SHEET + SITE PLAN
- AD EXISTING FLOOR PLAN/DEMOLITION PLAN
- A-1 FIRST FLOOR PLAN
- A-2 SECOND FLOOR PLAN
- A-3 EXTERIOR ELEVATION
- A-4 EXTERIOR ELEVATION

PROJECT SUMMARY

ADDRESS: 15511 PAINTER DR.
CHINO HILLS, CA 91709

BUILDING CODE: This Project/Plans shall comply with the 2013 California Standard Code, Local Ordinances.

SCOPE OF WORK: 1. NEW TWO STORY ADDITION

OCCUPANCY: R-1

TYPE CONSTRUCTION: TYPE V-B, W/ NEW SPRINKLER SYSTEM.
(FIRE SPRINKLERS WILL BE DEFERRED SUBMITTAL FOR THIS PROJECT.)

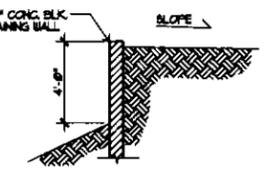
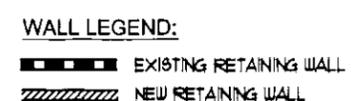
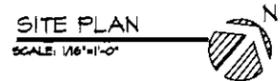
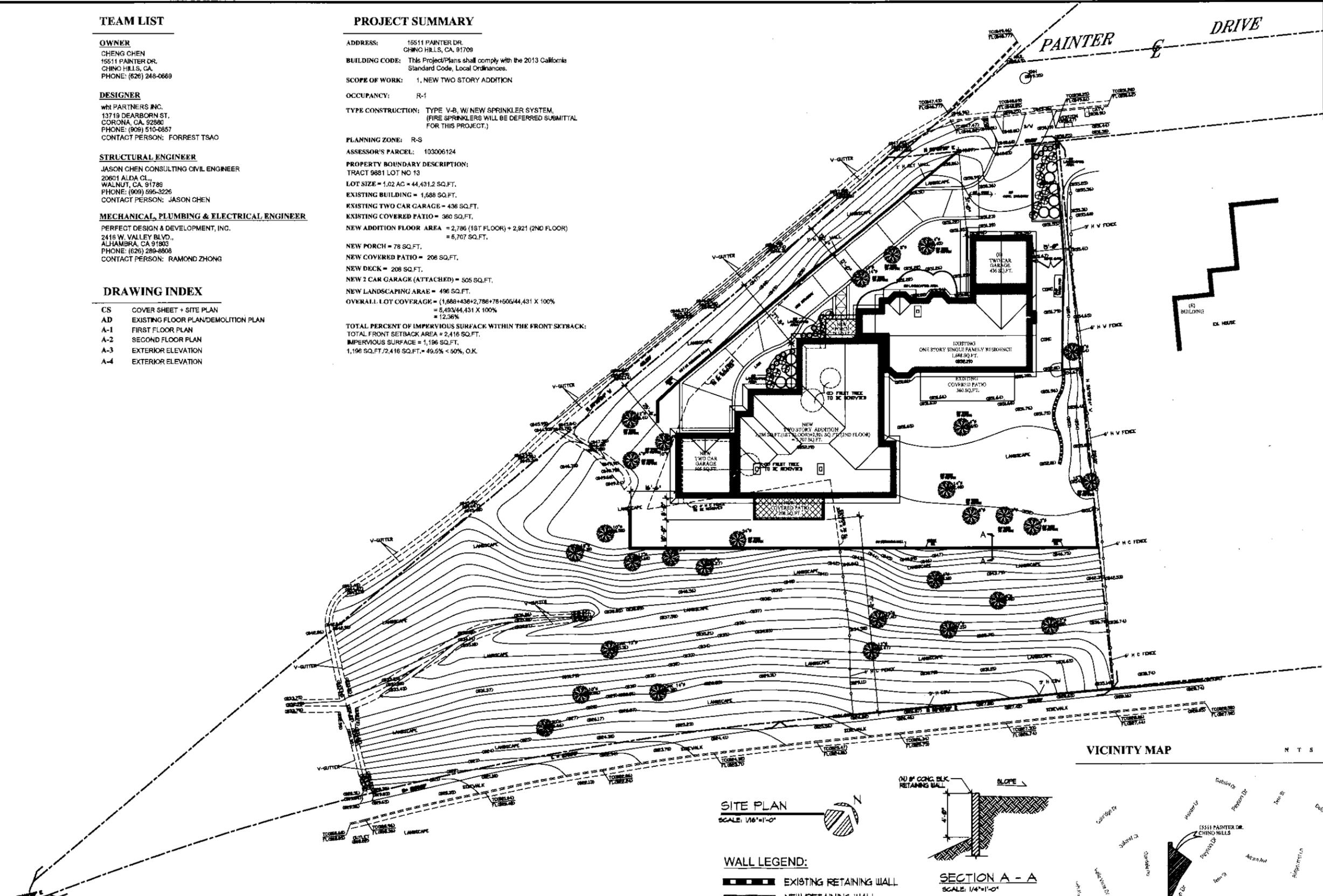
PLANNING ZONE: R-S

ASSESSOR'S PARCEL: 103006124

PROPERTY BOUNDARY DESCRIPTION:
TRACT 9881 LOT NO 13
LOT SIZE = 1.02 AC = 44,431.2 SQ.FT.
EXISTING BUILDING = 1,688 SQ.FT.
EXISTING TWO CAR GARAGE = 436 SQ.FT.
EXISTING COVERED PATIO = 360 SQ.FT.
NEW ADDITION FLOOR AREA = 2,786 (1ST FLOOR) + 2,921 (2ND FLOOR)
= 5,707 SQ.FT.

NEW PORCH = 78 SQ.FT.
NEW COVERED PATIO = 208 SQ.FT.
NEW DECK = 208 SQ.FT.
NEW 2 CAR GARAGE (ATTACHED) = 505 SQ.FT.
NEW LANDSCAPING AREA = 496 SQ.FT.
OVERALL LOT COVERAGE = (1,688+436+2,786+78+505+44,431 X 100%) = 5,493/44,431 X 100% = 12.36%

TOTAL PERCENT OF IMPERVIOUS SURFACE WITHIN THE FRONT SETBACK:
TOTAL FRONT SETBACK AREA = 2,416 SQ.FT.
IMPERVIOUS SURFACE = 1,196 SQ.FT.
1,196 SQ.FT./2,416 SQ.FT. = 49.5% < 50%, O.K.



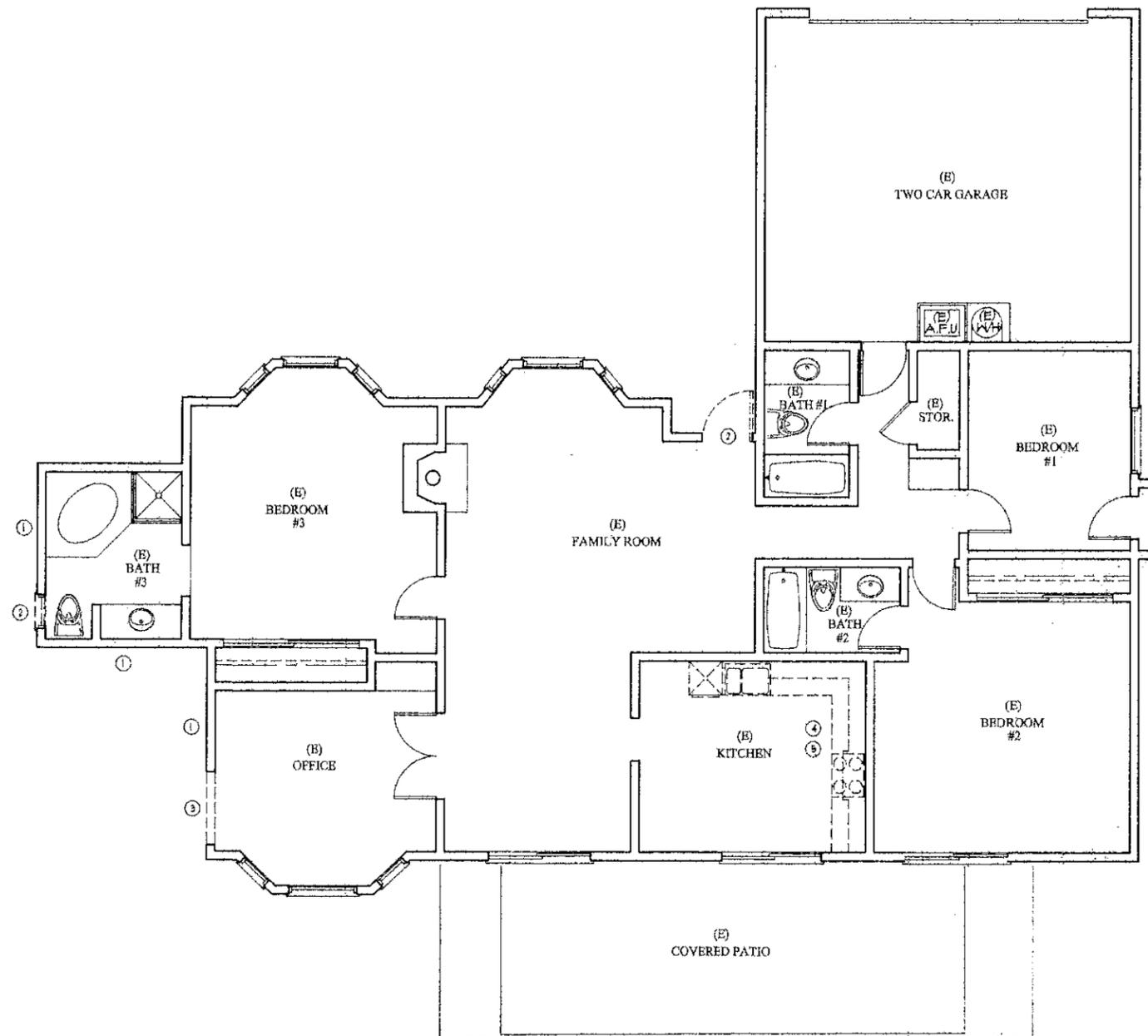
PROJECT:
CHEN'S RESIDENCE
15511 PAINTER DRIVE,
CHINO HILLS, CA.

SHEET TITLE:
COVER SHEET + SITE PLAN

THESE DRAWINGS ARE THE PROPERTY OF THE WHI PARTNERS. THE DESIGN AND TECHNICAL INFORMATION ARE PROPRIETARY AND CANNOT BE COPIED OR USED FOR ANOTHER PROJECT WITHOUT THE WRITTEN CONSENT OF THE WHI PARTNERS. THE OWNER AGREES TO HOLD THE WHI PARTNERS UNLiable AGAINST DAMAGES ARISING FROM THE UNAUTHORIZED USE OF SAID PLAN.

DRAWN BY: FT
CHECK BY: FT
JOB NUMBER: 1618018
DATE: 09-29-2016

SHEET NUMBER:
CS
Exhibit "B"
370/398



DEMOLITION NOTES:

- ① REMOVE (E) EXTERIOR STUCCO FINISH.
- ② REMOVE (E) DOOR/WINDOW SYSTEM COMPLETE.
- ③ REMOVE (E) WALL COMPLETE.
- ④ REMOVE (E) CABINETS AND PLUMBING FIXTURES.
- ⑤ REMOVE (E) FLOOR FINISH.

whit

DESIGN • PLANNING • CONSTRUCTION
 W_309-510-0957
 e_451099@atlnet

PROJECT:

CHEN'S RESIDENCE

15511 PAINTER DRIVE,
 CHINO HILLS, CA.

SHEET TITLE:

**EXISTING FLOOR PLAN/
 DEMOLITION PLAN**

THESE DRAWINGS ARE THE PROPERTY OF THE WHIT PARTNERS. THE DESIGN AND TECHNICAL INFORMATION ARE PROPRIETARY AND CANNOT BE COPIED OR USED FOR ANOTHER PROJECT WITHOUT THE WRITTEN CONSENT OF THE WHIT PARTNERS. THE OWNER AGREES TO HOLD THE WHIT PARTNERS UNLIABLE AGAINST DAMAGES ARISING FROM THE UNAUTHORIZED USE OF SAID PLAN.

DRAWN BY: FT

CHECK BY: FT

JOB NUMBER: 1618018

DATE: 09-26-2016

SHEET NUMBER:

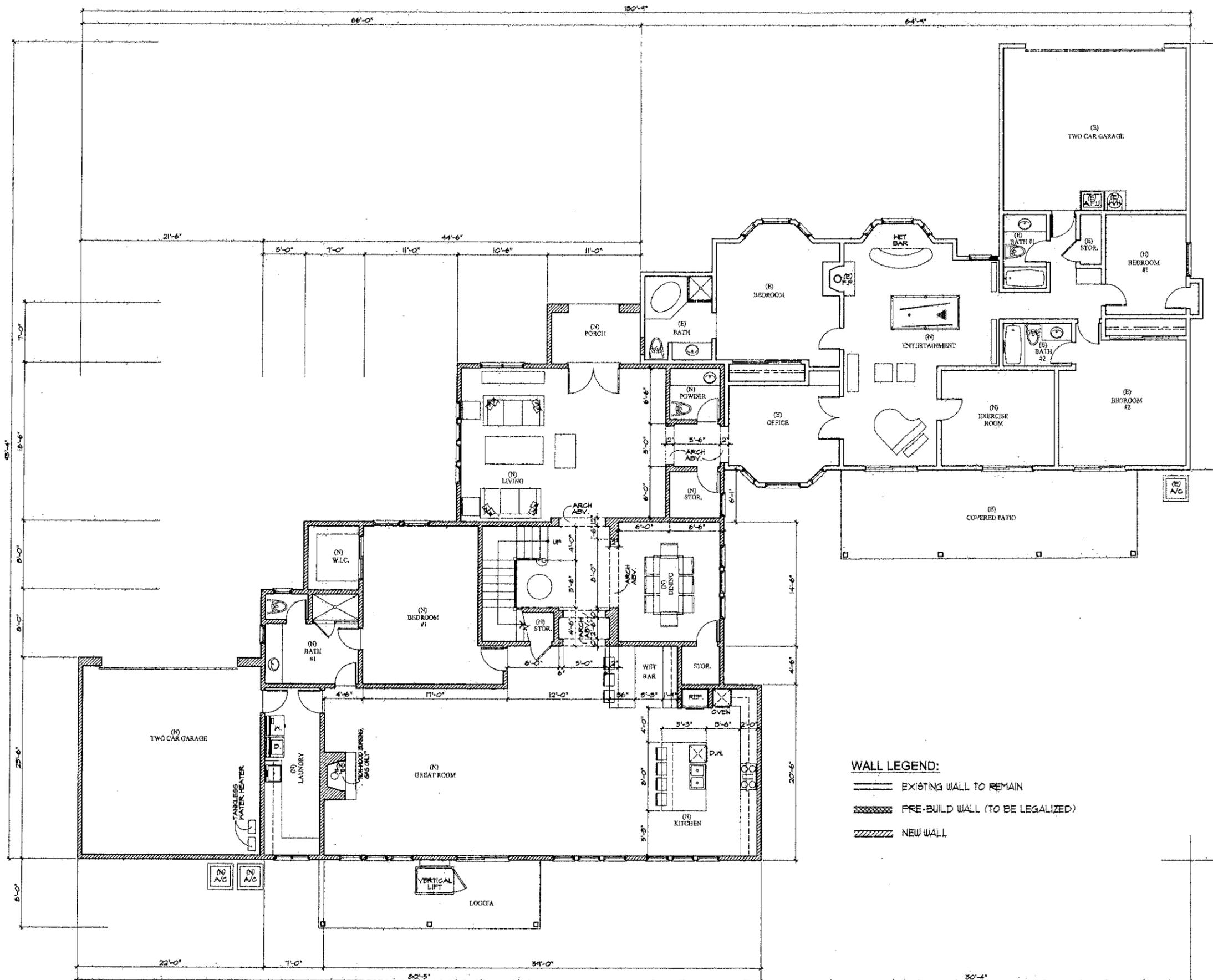
EXISTING FLOOR PLAN/DEMOLITION PLAN

SCALE: 1/4"=1'-0"



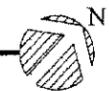
AD

371/398



FIRST FLOOR PLAN

SCALE: 1/4"=1'-0"



wht
 DESIGN • PLANNING • CONSTRUCTION
 M_909-510-0687
 w_451000@wht.com

PROJECT:

CHEN'S RESIDENCE

15511 PAINTER DRIVE,
 CHINO HILLS, CA.

SHEET TITLE:

FLOOR PLAN

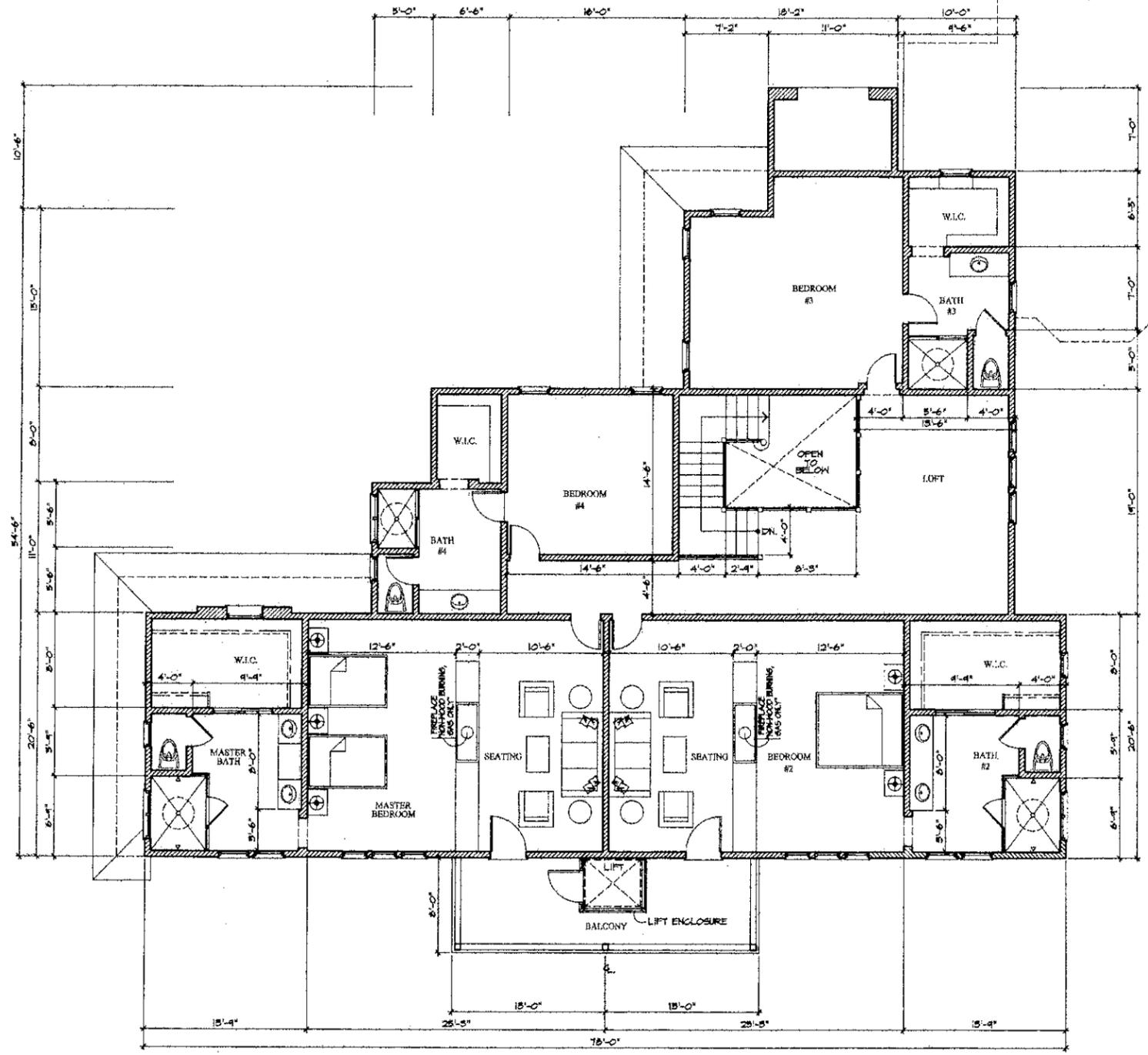
THESE DRAWINGS ARE THE PROPERTY OF THE WHT PARTNERS. THE DESIGN AND TECHNICAL INFORMATION ARE PROPRIETARY AND CANNOT BE COPIED OR USED FOR ANOTHER PROJECT WITHOUT THE WRITTEN CONSENT OF THE WHT PARTNERS. THE OWNER AGREES TO HOLD THE WHT PARTNERS UNLiable AGAINST DAMAGES ARISING FROM THE UNAUTHORIZED USE OF SAID PLAN.

DRAWN BY: FT
 CHECK BY: FT
 JOB NUMBER: 1618019
 DATE: 09-28-2016

SHEET NUMBER:

A-1.0

372/398



SECOND FLOOR PLAN
 SCALE: 3/16"=1'-0"

wht

DESIGN • PLANNING • CONSTRUCTION
 tel_909-510-0557
 e_1451099@wh.com

PROJECT:

CHEN'S RESIDENCE

15511 PAINTER DRIVE,
 CHINO HILLS, CA.

SHEET TITLE:

FLOOR PLAN

THESE DRAWINGS ARE THE PROPERTY OF THE WHT PARTNERS. THE DESIGN AND TECHNICAL INFORMATION ARE PROPRIETARY AND CANNOT BE COPIED OR USED FOR ANOTHER PROJECT WITHOUT THE WRITTEN CONSENT OF THE WHT PARTNERS. THE OWNER AGREES TO HOLD THE WHT PARTNERS UNLiable AGAINST DAMAGES ARISING FROM THE UNAUTHORIZED USE OF SAID PLAN.

DRAWN BY: FT

CHECK BY: FT

JOB NUMBER: 1618018

DATE: 05-29-2015

SHEET NUMBER:

A-2.0

373/398

wht

DESIGN • PLANNING • CONSTRUCTION
M_809-510-0857
e_451009@wht.net

PROJECT:

CHEN'S RESIDENCE

15511 PAINTER DRIVE,
CHINO HILLS, CA.

SHEET TITLE:

EXTERIOR ELEVATION

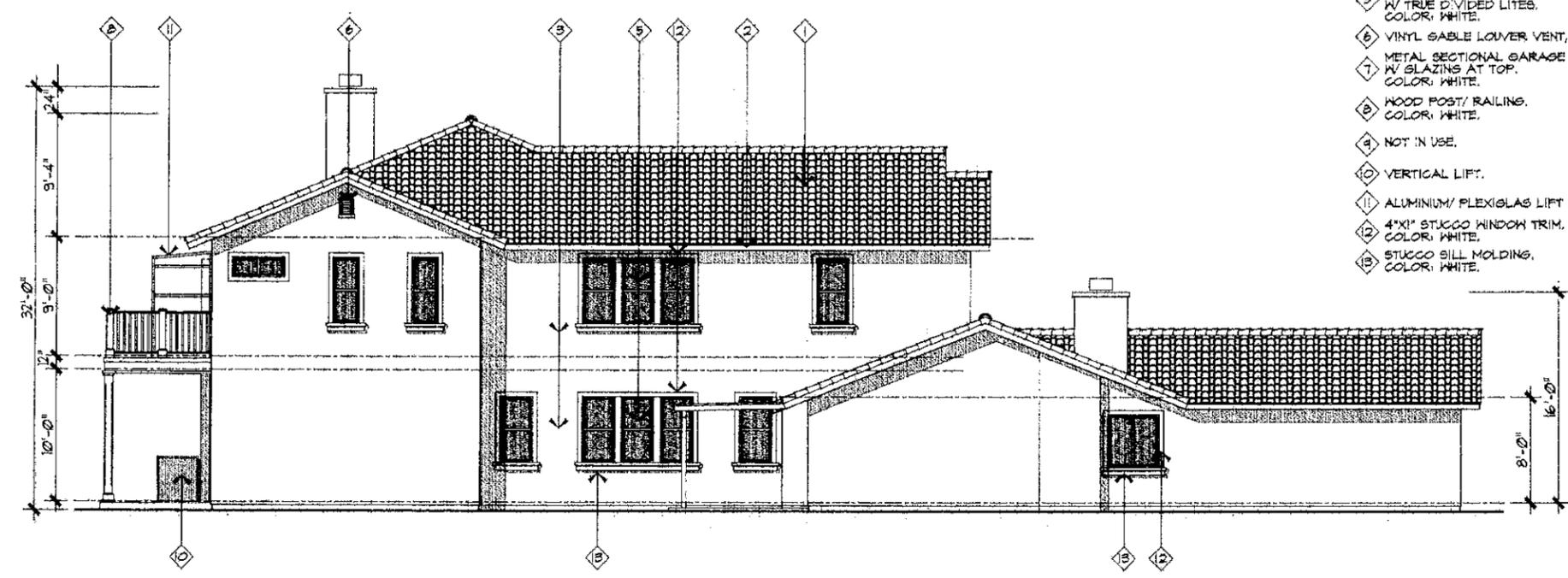
THESE DRAWINGS ARE THE PROPERTY OF THE
WHT PARTNERS. THE DESIGN AND TECHNICAL
INFORMATION ARE PROPRIETARY AND CANNOT
BE COPIED OR USED FOR ANOTHER PROJECT
WITHOUT THE WRITTEN CONSENT OF THE
WHT PARTNERS. THE OWNER AGREES TO HOLD THE
WHT PARTNERS UNLIABLE AGAINST DAMAGES
ARISING FROM THE UNAUTHORIZED USE OF SAID
PLAN.

DRAWN BY: FT
CHECK BY: FT
JOB NUMBER: 1619018
DATE: 06-26-2018

SHEET NUMBER:

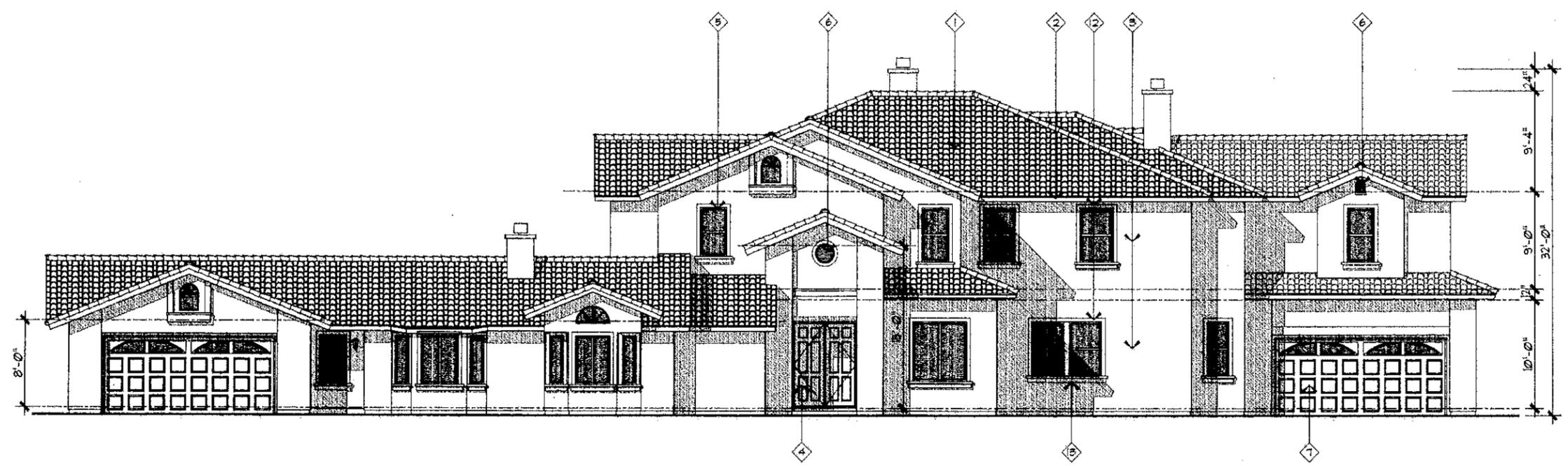
EXTERIOR FINISHES LEGEND:

- 1 LIGHTWEIGHT CONC. ROOF TILE TO MATCH EXISTING.
- 2 2 x 6 WOOD FASCIA BOARD, COLOR: WHITE.
- 3 7/8" EXTERIOR STUCCO, COLOR: WHITE.
- 4 EXTERIOR SLOLD WOOD DOOR, COLOR: WHITE.
- 5 VINYL WINDOW/DOOR (DUAL GLAZING), W/ TRUE DIVIDED LITES, COLOR: WHITE.
- 6 VINYL GABLE LOUVER VENT, COLOR WHITE.
- 7 METAL SECTIONAL GARAGE DOOR, W/ GLAZING AT TOP, COLOR: WHITE.
- 8 WOOD POST/ RAILING, COLOR: WHITE.
- 9 NOT IN USE.
- 10 VERTICAL LIFT.
- 11 ALUMINIUM/ PLEXIGLAS LIFT ENCLOSURE.
- 12 4"X1" STUCCO WINDOW TRIM, COLOR: WHITE.
- 13 STUCCO SILL MOLDING, COLOR: WHITE.



EAST ELEVATION

SCALE: 3/32"=1'-0"



NORTH ELEVATION

SCALE: 3/32"=1'-0"

wht

DESIGN • PLANNING • CONSTRUCTION
Tel: 909-510-0857
E: mh1009@wht.net

PROJECT:

CHEN'S RESIDENCE

15511 PAINTER DRIVE,
CHINO HILLS, CA.

SHEET TITLE:

EXTERIOR ELEVATION

THESE DRAWINGS ARE THE PROPERTY OF THE WHT PARTNERS. THE DESIGN AND TECHNICAL INFORMATION ARE PROPRIETARY AND CANNOT BE COPIED OR USED FOR ANOTHER PROJECT WITHOUT THE WRITTEN CONSENT OF THE WHT PARTNERS. THE OWNER AGREES TO HOLD THE WHT PARTNERS UNLiable AGAINST DAMAGES ARISING FROM THE UNAUTHORIZED USE OF SAID PLAN.

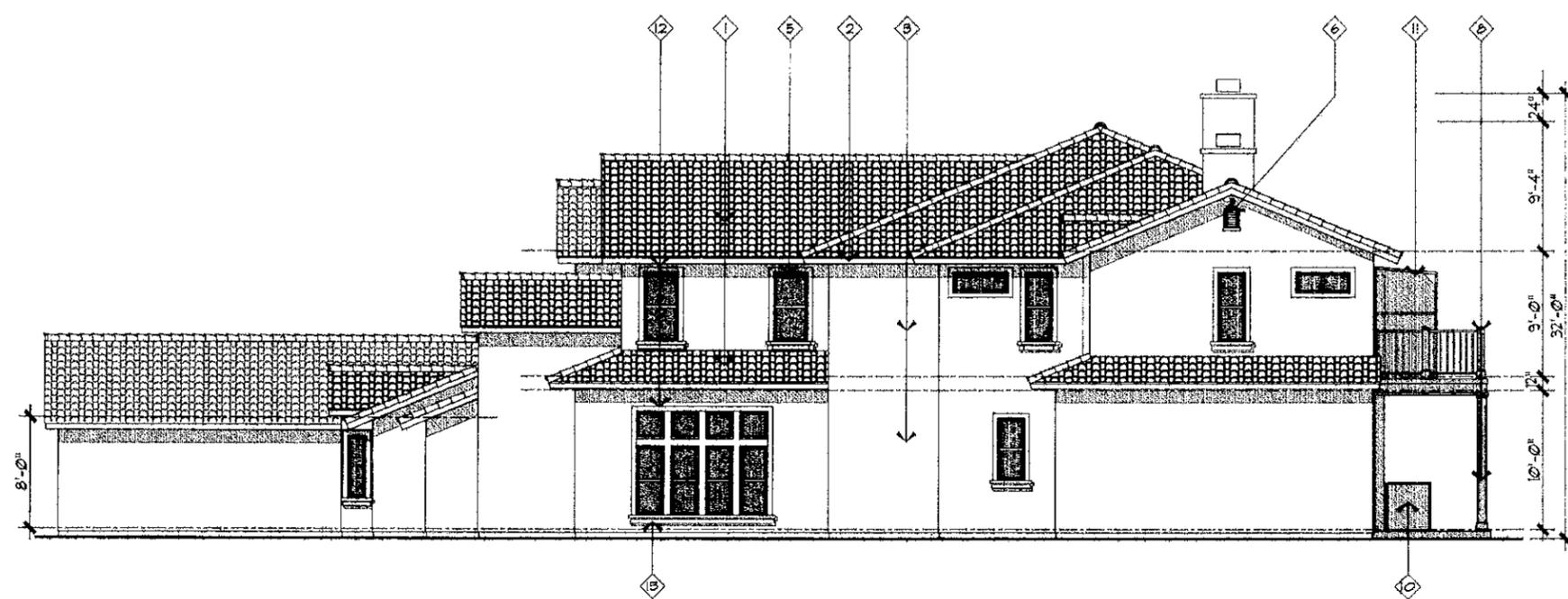
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DATE: 09-29-2018

SHEET NUMBER:

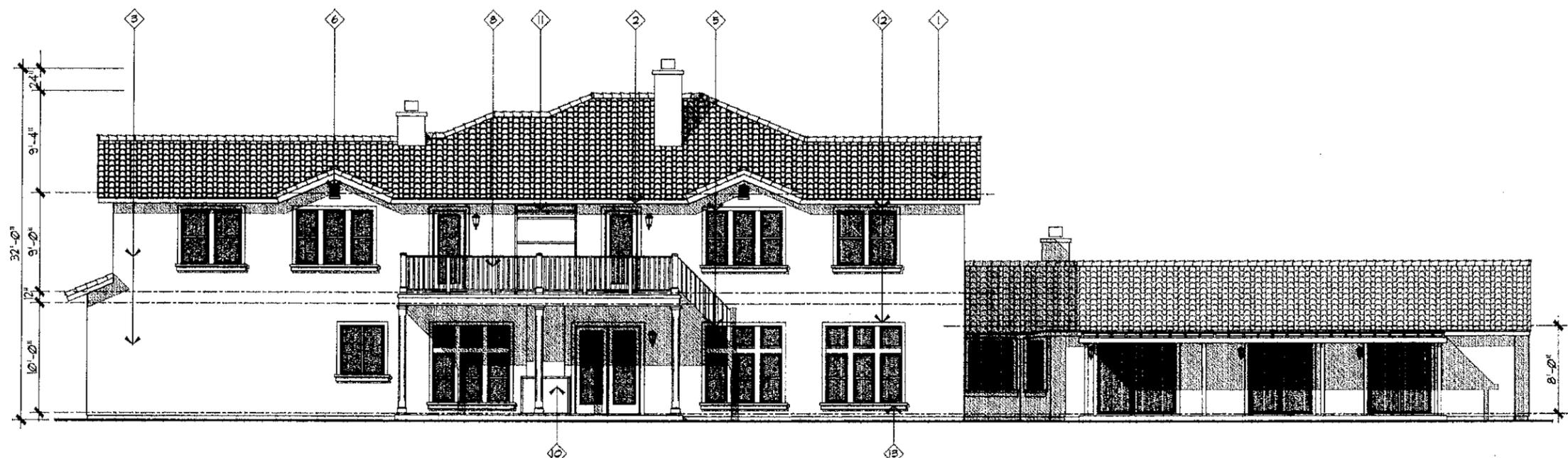
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- ① LIGHTWEIGHT CONC. ROOF TILE TO MATCH EXISTING.
- ② 2 x 6 WOOD FASCIA BOARD, COLOR: WHITE.
- ③ 1/8" EXTERIOR STUCCO, COLOR: WHITE.
- ④ EXTERIOR SLOID WOOD DOOR, COLOR: WHITE.
- ⑤ VINYL WINDOW/DOOR (DUAL GLAZING), W/ TRUE DIVIDED LITES, COLOR: WHITE.
- ⑥ VINYL GABLE LOWER VENT, COLOR WHITE.
- ⑦ METAL SECTIONAL GARAGE DOOR, W/ GLAZING AT TOP, COLOR: WHITE.
- ⑧ WOOD POST/ RAILING, COLOR: WHITE.
- ⑨ NOT IN USE.
- ⑩ VERTICAL LIFT.
- ⑪ ALUMINIUM/ FLEXIGLAS LIFT ENCLOSURE.
- ⑫ 4"X1" STUCCO WINDOW TRIM, COLOR: WHITE.
- ⑬ STUCCO SILL MOLDING, COLOR: WHITE.



WEST ELEVATION

SCALE: 3/32"=1'-0"

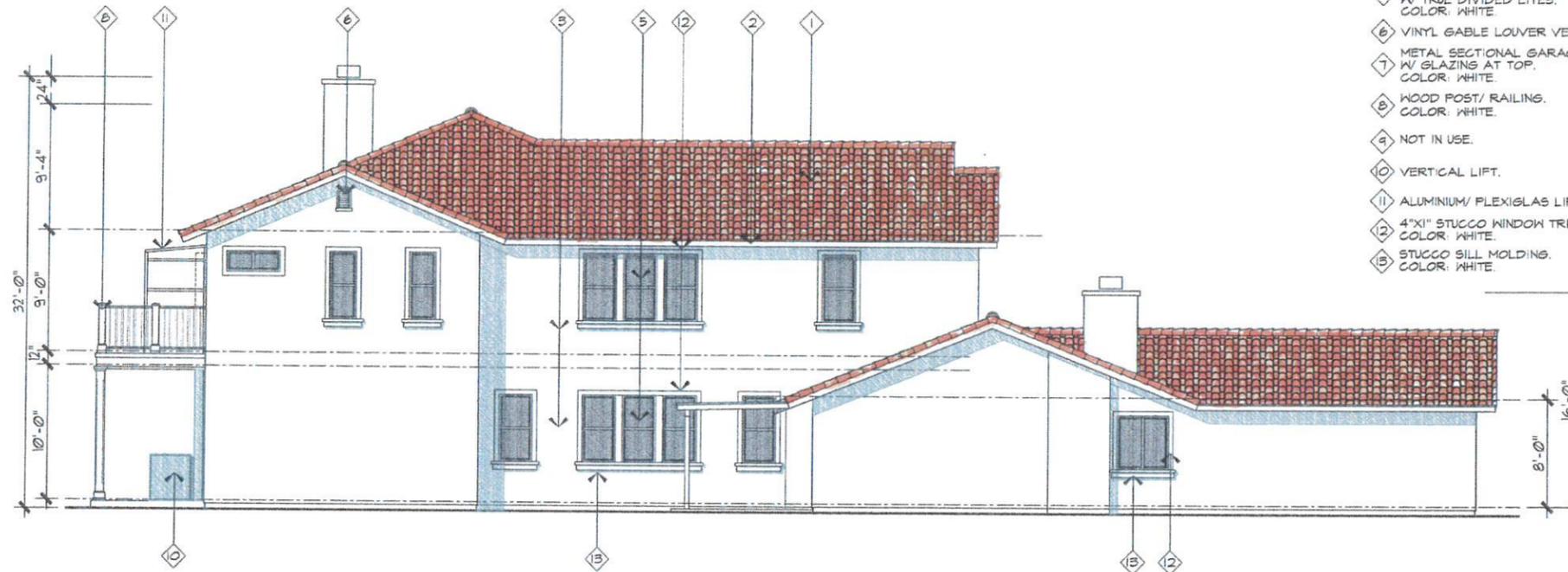


SOUTH ELEVATION

SCALE: 3/32"=1'-0"

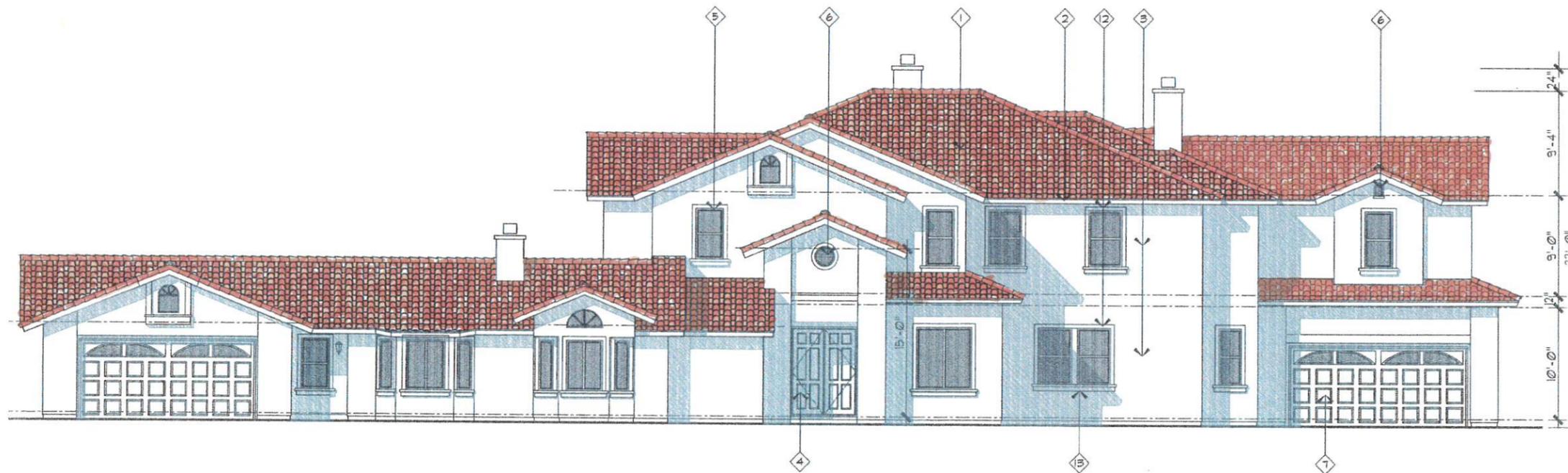
EXTERIOR FINISHES LEGEND:

- ① LIGHTWEIGHT CONC. ROOF TILE TO MATCH EXISTING.
- ② 2 x 6 WOOD FASCIA BOARD, COLOR: WHITE.
- ③ 1/8" EXTERIOR STUCCO, COLOR: WHITE.
- ④ EXTERIOR SLOLD WOOD DOOR, COLOR: WHITE.
- ⑤ VINYL WINDOW/DOOR (DUAL GLAZING); W/ TRUE DIVIDED LITES, COLOR: WHITE.
- ⑥ VINYL GABLE LOUVER VENT, COLOR WHITE.
- ⑦ METAL SECTIONAL GARAGE DOOR, W/ GLAZING AT TOP, COLOR: WHITE.
- ⑧ WOOD POST/ RAILING, COLOR: WHITE.
- ⑨ NOT IN USE.
- ⑩ VERTICAL LIFT.
- ⑪ ALUMINIUM/ PLEXIGLAS LIFT ENCLOSURE.
- ⑫ 4"x1" STUCCO WINDOW TRIM, COLOR: WHITE.
- ⑬ STUCCO SILL MOLDING, COLOR: WHITE.



EAST ELEVATION

SCALE: 3/32"=1'-0"



NORTH ELEVATION

SCALE: 3/32"=1'-0"

wht

DESIGN • PLANNING • CONSTRUCTION
tel_909-510-0657
e_1451009@att.net

PROJECT:

CHEN'S RESIDENCE

15511 PAINTER DRIVE,
CHINO HILLS, CA.

SHEET TITLE:

EXTERIOR ELEVATION

THESE DRAWINGS ARE THE PROPERTY OF THE WHT PARTNERS. THE DESIGN AND TECHNICAL INFORMATION ARE PROPRIETARY AND CANNOT BE COPIED OR USED FOR ANOTHER PROJECT WITHOUT THE WRITTEN CONSENT OF THE WHT PARTNERS. THE OWNER AGREES TO HOLD THE WHT PARTNERS UNLABLE AGAINST DAMAGES ARISING FROM THE UNAUTHORIZED USE OF SAID PLAN.

DRAWN BY: FT

CHECK BY: FT

JOB NUMBER: 1616018

DATE: 09-29-2016

SHEET NUMBER:

A-3.0



DESIGN • PLANNING • CONSTRUCTION
tel_909-510-0857
e_1451009@att.net

PROJECT:

**CHEN'S
RESIDENCE**

15511 PAINTER DRIVE,
CHINO HILLS, CA.

SHEET TITLE:

**COVER SHEET
+
SITE PLAN**

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DRAWN BY: FT
CHECK BY: FT
JOB NUMBER: 1618018
DATE: 09-29-2016

SHEET NUMBER:

**3D
VIEW**
377/398

**CHEN RESIDENCE
CUSTOM HOME DESIGN REVIEW NO. 432
15511 PAINTER DRIVE
PHOTO OF PROJECT SITE**



Exhibit "C"

**CHEN RESIDENCE
CUSTOM HOME DESIGN REVIEW NO. 432
15511 PAINTER DRIVE
PHOTO OF PROJECT SITE**



**CHEN RESIDENCE
CUSTOM HOME DESIGN REVIEW NO. 432
15511 PAINTER DRIVE
PHOTO FROM PEYTON DRIVE OF PROJECT SITE**



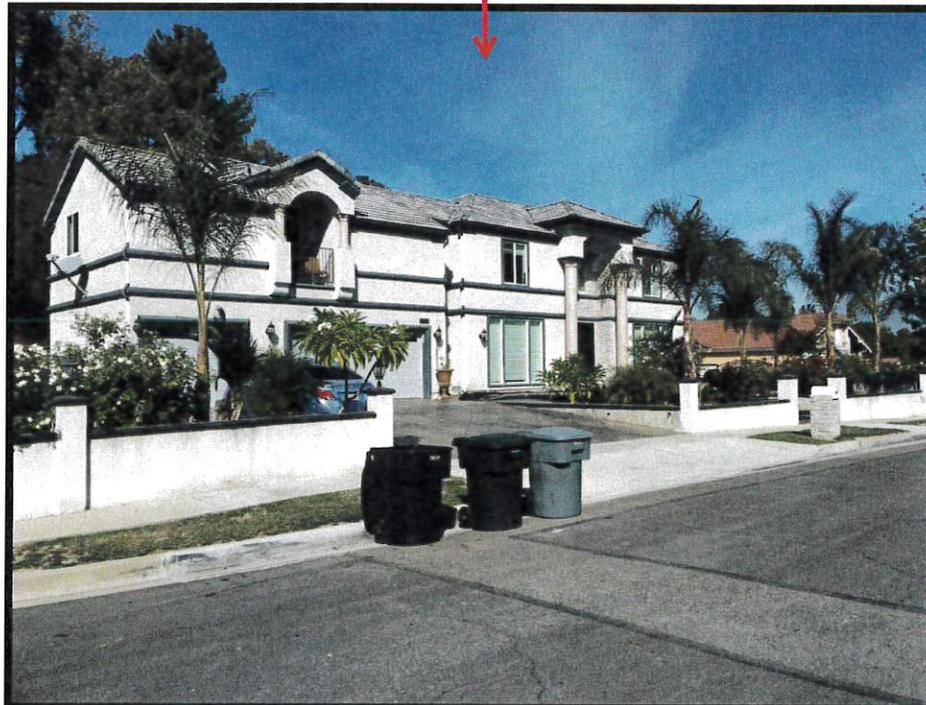
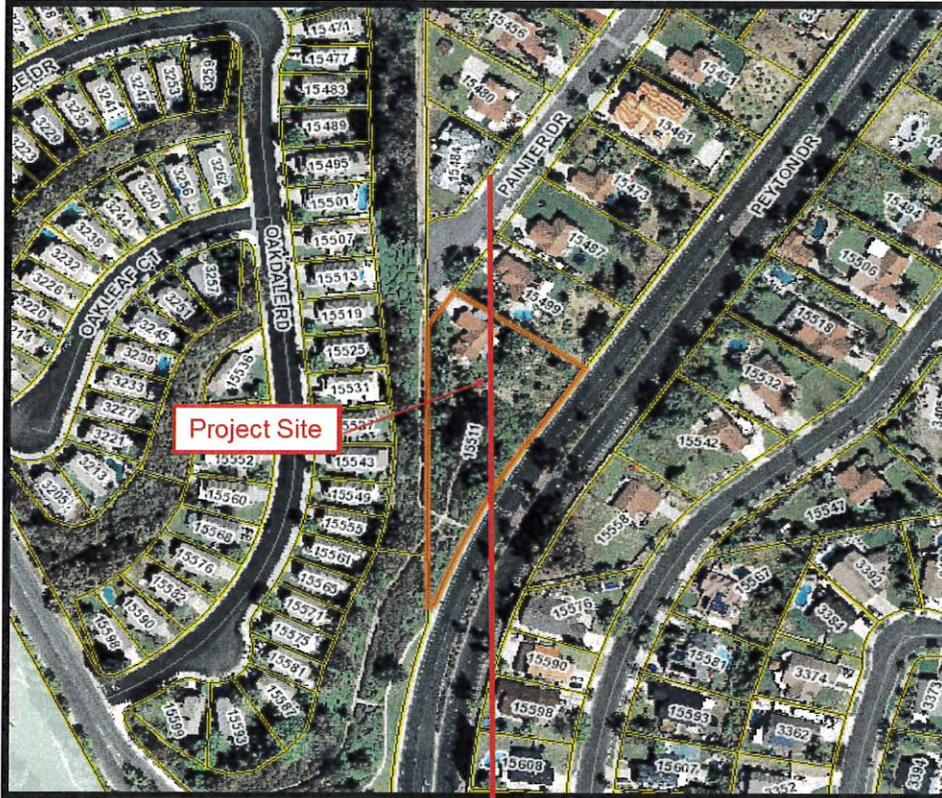
**CHEN RESIDENCE
CUSTOM HOME DESIGN REVIEW NO. 432
15511 PAINTER DRIVE
SURROUNDING PROPERTY PHOTOS**



15499 Painter Drive

Exhibit "D"

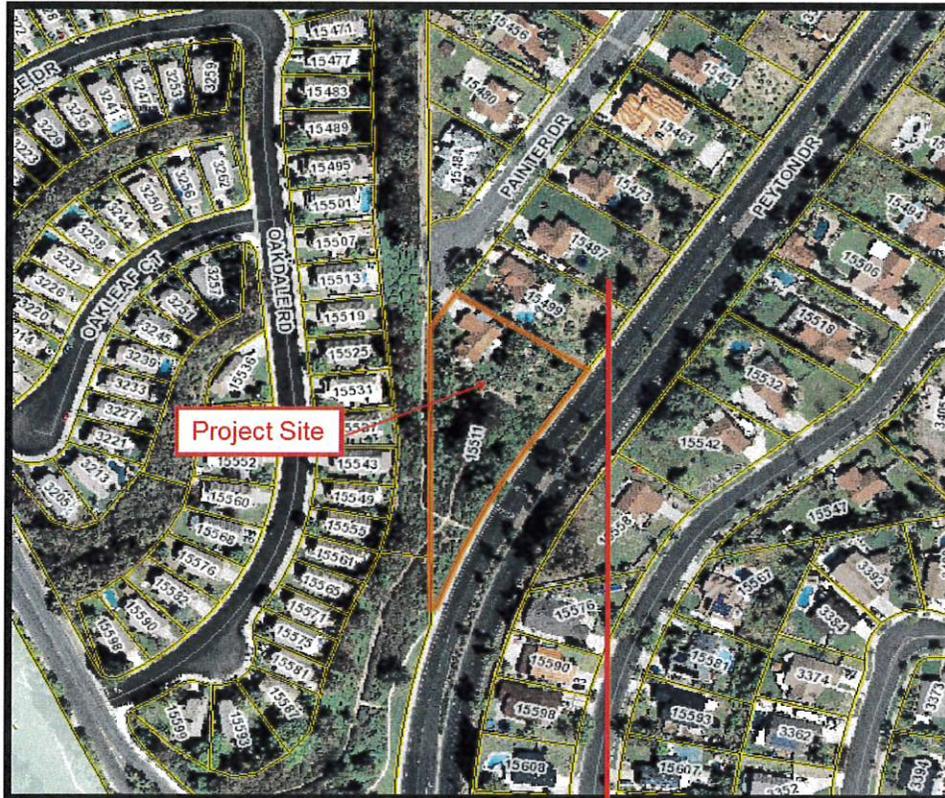
**CHEN RESIDENCE
CUSTOM HOME DESIGN REVIEW NO. 432
15511 PAINTER DRIVE
SURROUNDING PROPERTY PHOTOS**



15484 Painter Drive

Exhibit "D"

**CHEN RESIDENCE
CUSTOM HOME DESIGN REVIEW NO. 432
15511 PAINTER DRIVE
SURROUNDING PROPERTY PHOTOS**

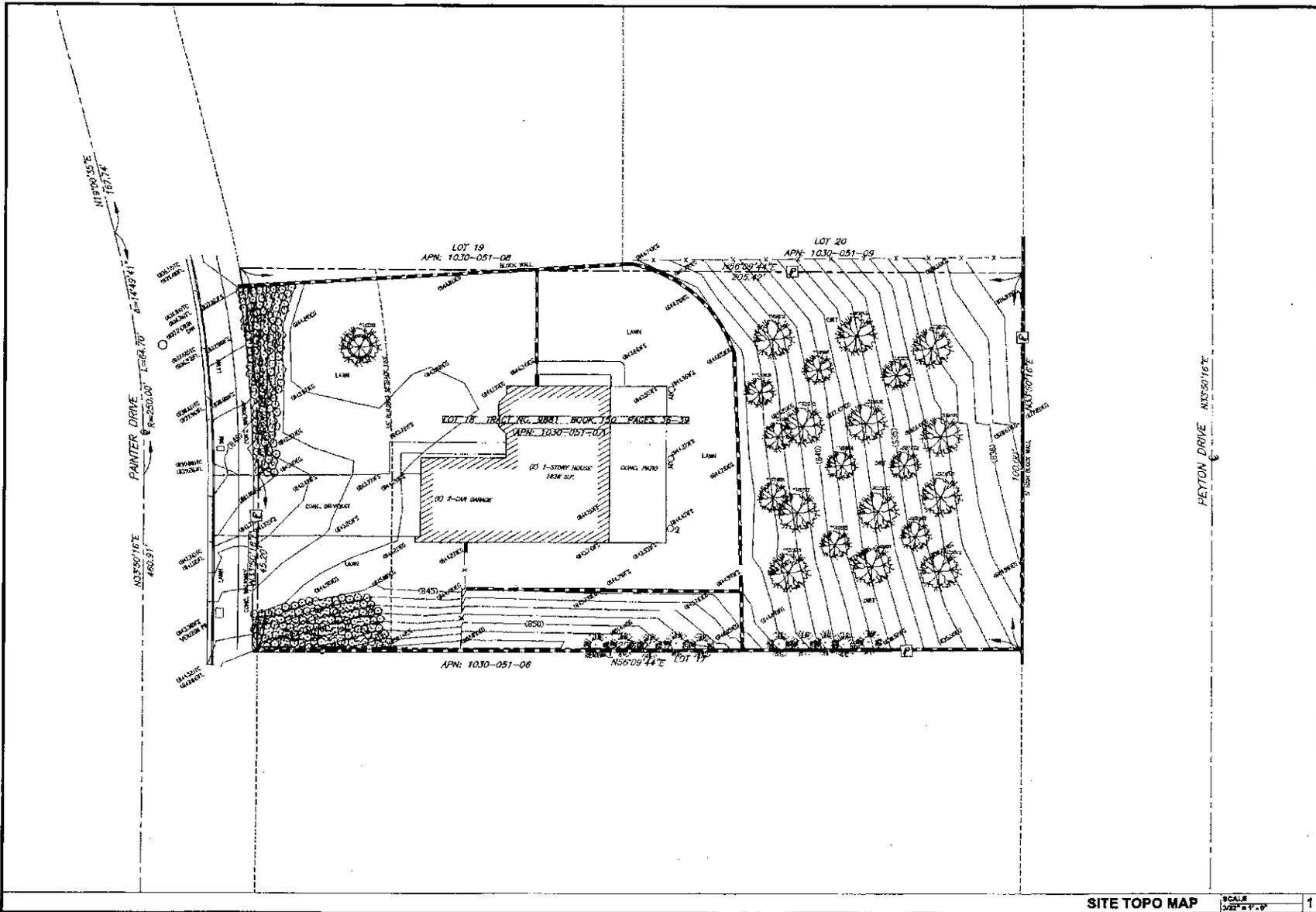


**CHEN RESIDENCE
CUSTOM HOME DESIGN REVIEW NO. 432
15511 PAINTER DRIVE
SURROUNDING PROPERTY PHOTOS**



15461 Painter Drive

Exhibit "D"



TCS
The Creative Solution
in
Engineering
in
Architecture
in
Landscaping

11025 W. 96th St., Suite 202, Los Angeles, California 90017
Tel: 310.557.0108

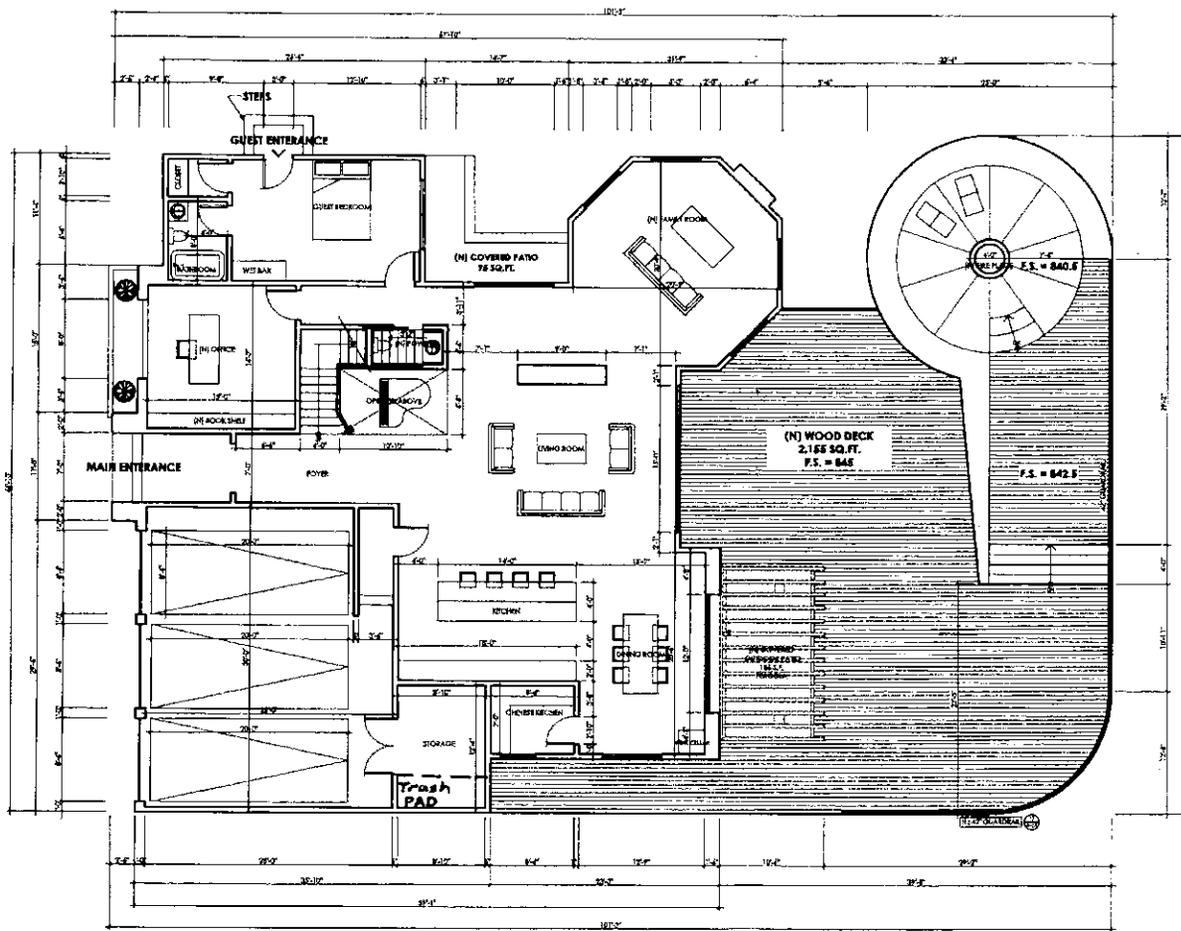
PROJECT:
SINGLE FAMILY DWELLING
ADDRESS PROJECT: 11451 PAINTER DR. CHINO HILLS, CA 91709

DATE: 09.21.2018

SCALE: 1" = 10'-0"

A-1.0

SITE TOPO MAP SCALE: 1" = 10'-0" 1



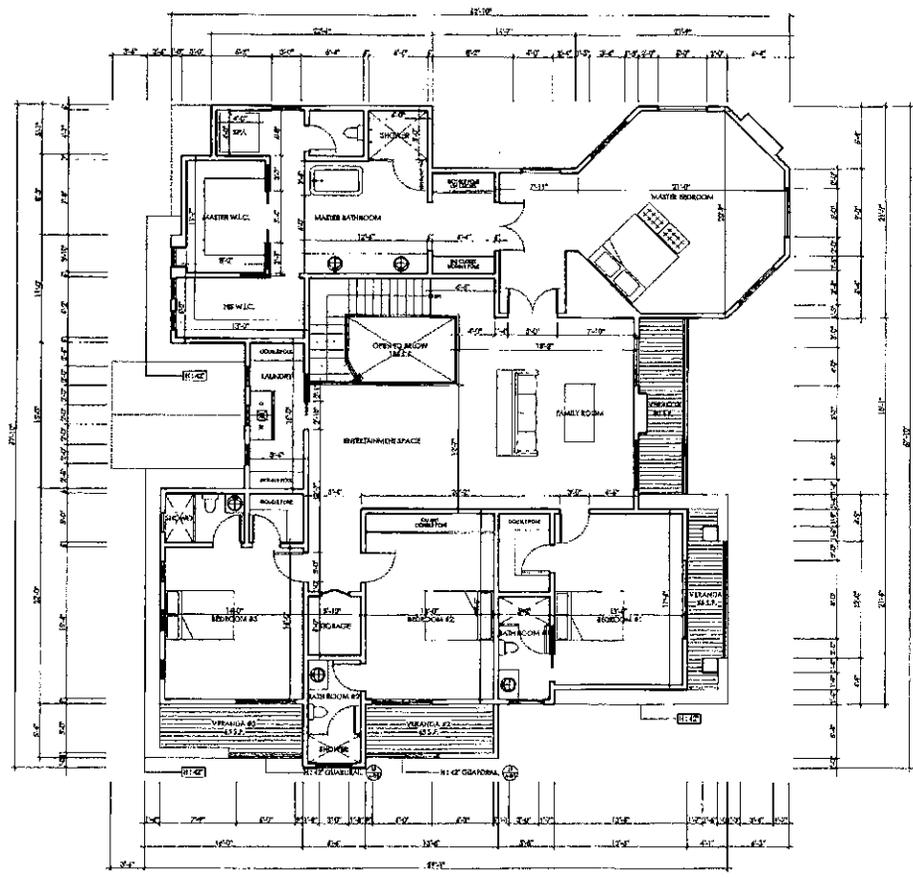
1ST FLOOR PLAN SCALE 3/16" = 1'-0"

TCS
 The Code Solution
 Architecture
 Interiors
 Design
 Construction
 1325 W. 9th St., Suite 205, Los Angeles, California 90017
 TEL: (213) 427-1188

PROJECT
SINGLE FAMILY DWELLING
 ADDRESS PROJECT 118451 PAINTER DR. CHINO HILLS, CA 91709

DATE 09.28.2016
REVISION

A-2.0



2ND FLOOR PLAN

SCALE
3/16" = 1'-0"

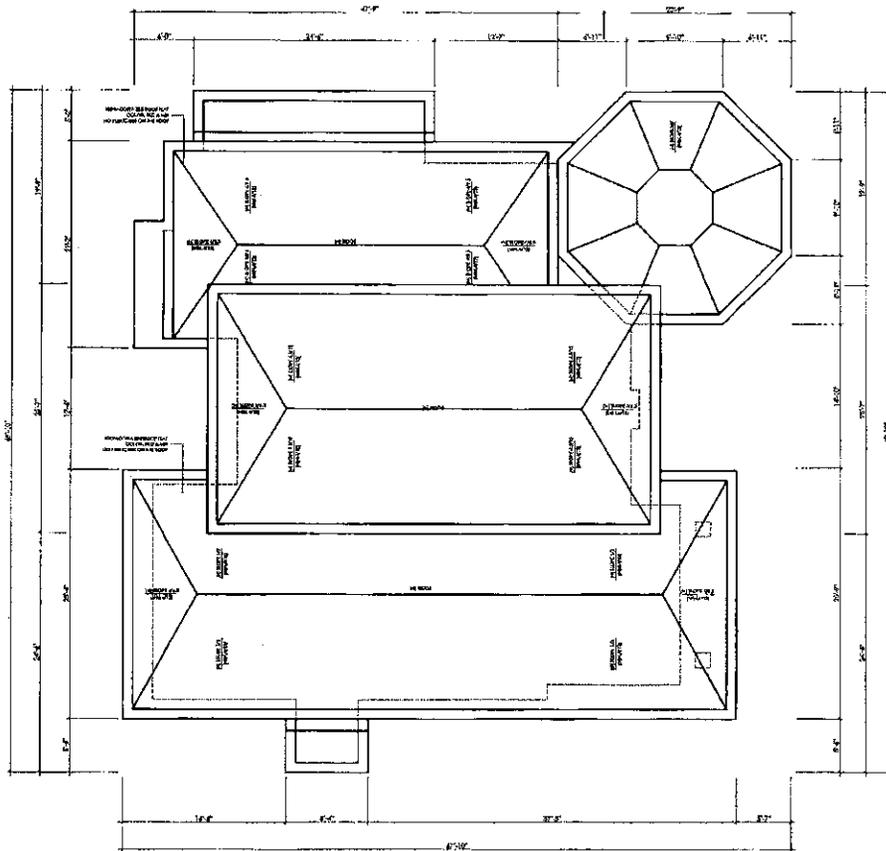
1

The Code Solution
 TCS
 1025 W. 85th St., Suite 205, Los Angeles, California 90017
 TEL: 310.557.2108

PROJECT
SINGLE FAMILY DWELLING
 ADDRESS PROJECT 115451 PAINTER DR. CHINO HILLS, CA 91709

DATE 09.21.2016

A-3.0

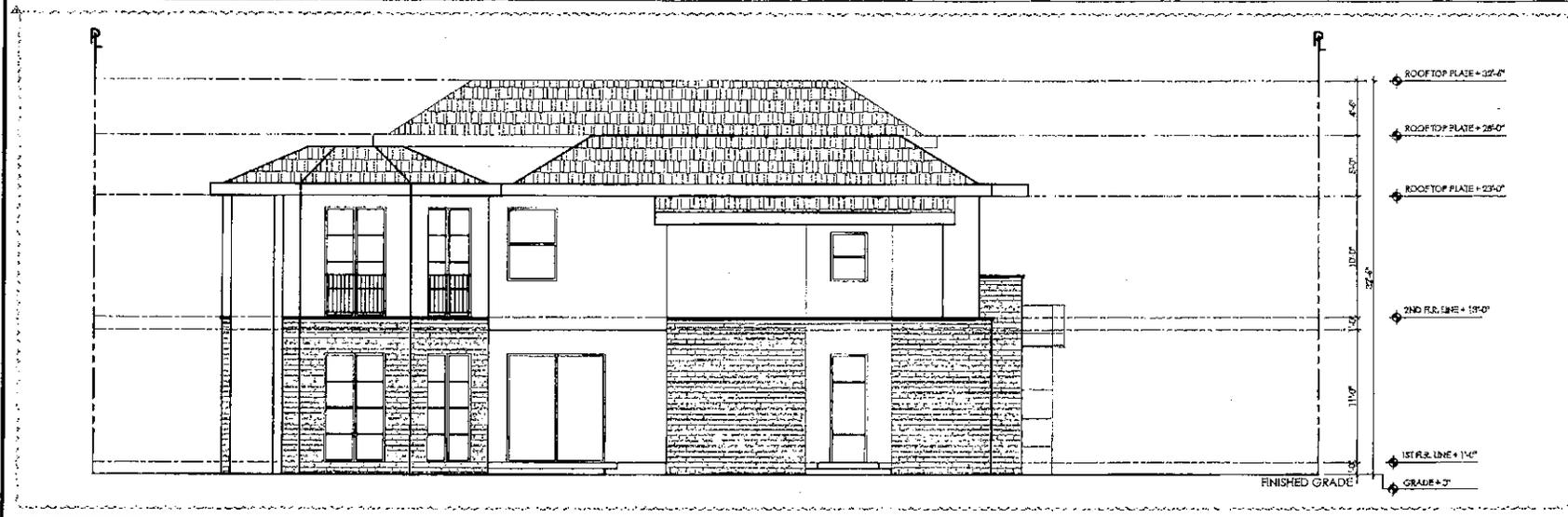


ROOF PLAN SCALE 1/8" = 1'-0" 1

<p>The Code Solution is achieved by providing a building that complies with the code.</p> <p>TCS 1125 W. 9th St. Suite 202, Los Angeles, California 90017 Tel: 213.627.2198</p>	
<p>PROJECT SINGLE FAMILY DWELLING ADDRESS PROJECT :15451 PAINTER DR. CHINO HILLS, CA 91709</p>	
DATE	08.21.2018
BY	
<p>A-4.0</p>	



FRONT ELEVATION SCALE 1/4" = 1'-0" 1



LEFT ELEVATION SCALE 1/4" = 1'-0" 2

The Code Solution
 in compliance
 with the
 California
 Building Code
TCS
 1125 Wilshire Blvd. Suite 200, Los Angeles, California 90017
 TEL: 213.352.2181

PROJECT
NEW SINGLE FAMILY DWELLING
 ADDRESS PROJECT: 15451 PAINTER DR. CHINO HILLS, CA 91709

DATE
 09.21.2010

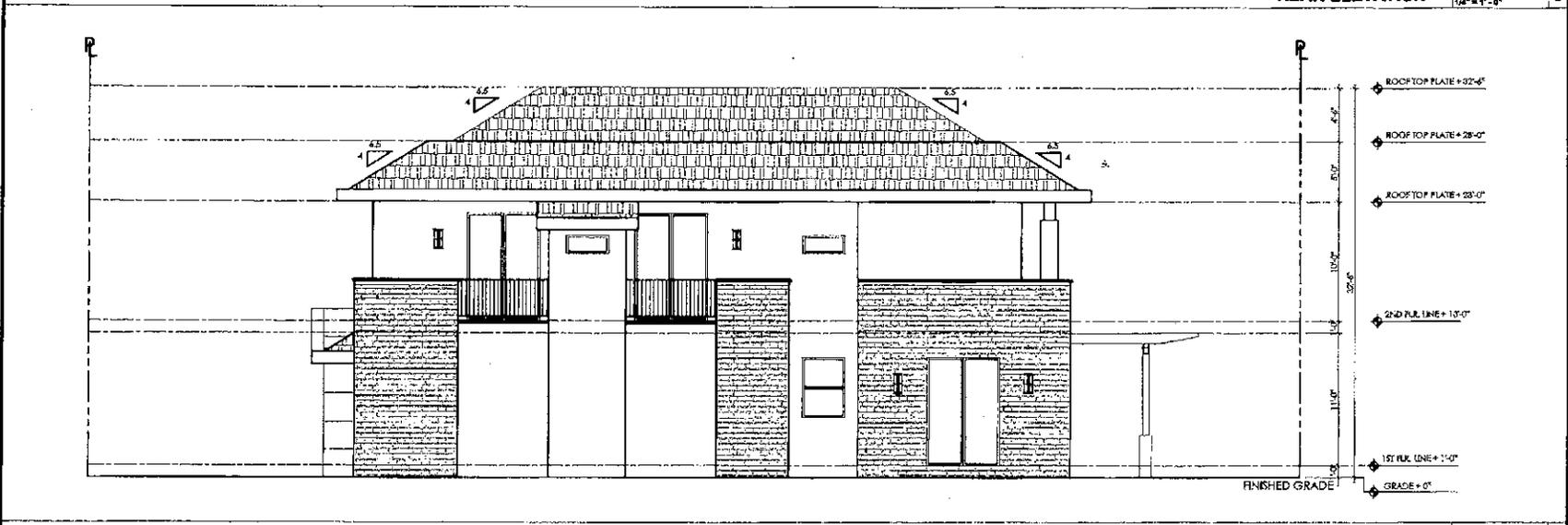
VIEW
 ELEVATION

A-5.0

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REAR ELEVATION SCALE 1/8" = 1'-0" 3



RIGHT ELEVATION SCALE 1/8" = 1'-0" 4

The Code Solution
 is available
 in electronic
 or printed
 format
 at a special
 price
 of \$100.00
 per set.

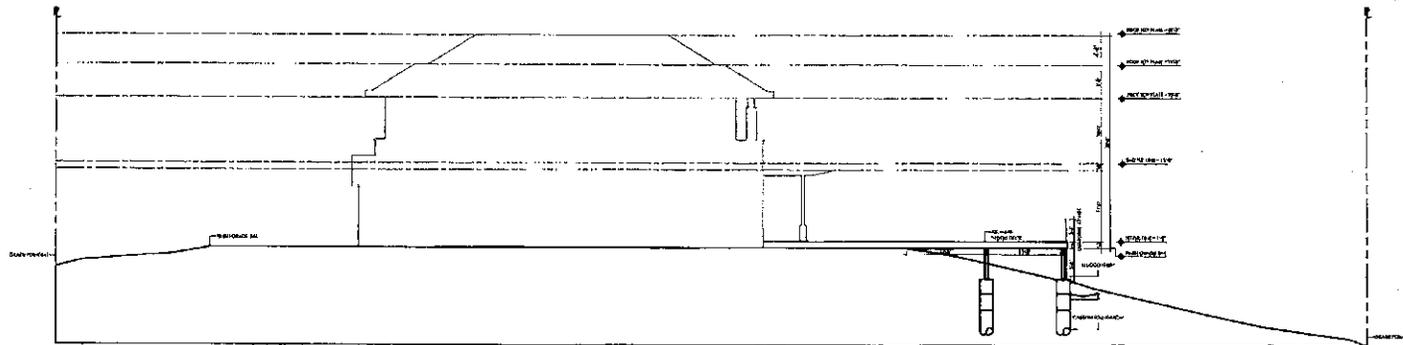
TCS
 1156 W. 5th St., Suite 105, Los Angeles, California 90017
 TEL: 213.287.1319

PROJECT: SINGLE FAMILY DWELLING
 ADDRESS: PROJECT 115451 PAINTER DR. CHINO HILLS, CA 91709

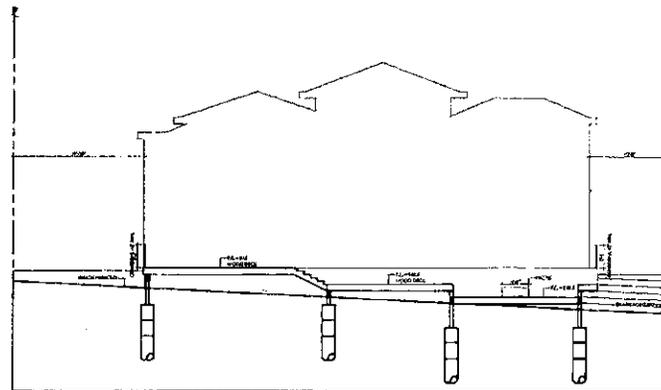
DATE: 09.21.2018
 SHEET: ELEVATION

A-6.0

THESE PLANS AND INCORPORATING ANYTHING EMBODIED THEREIN ARE THE PROPERTY OF URBAN PLANNING CONCEPT. THE USE OF PUBLICATION IS RESTRICTED TO THE ORIGINAL NOTE AND OWNER. PUBLICATION AND REPRODUCTION IS RESTRICTED TO ARCHITECT, PUBLICATION AND REPRODUCTION BY ANY METHOD, IN WHOLE OR IN PART, IS PROHIBITED. TITLE TO THE PLANS AND DESIGN REMAINS WITH URBAN PLANNING CONCEPT. VISUAL CONTACT WITH THESE CONCEPTS APPROVAL WITH THESE RESTRICTIONS.



SECTION A SCALE 1/8" = 1'-0" 1



SECTION B SCALE 1/8" = 1'-0" 4

The Code Solution
 in providing
 engineering
 & design services
TCS
 1131 W. 34th St., Suite 200, Los Angeles, California 90017
 TEL: 310.277.0100

DATE	
REVISION	

PROJECT
SINGLE FAMILY DWELLING
 ADDRESS PROJECT 115451 PAINTER DR. CHINO HILLS, CA 91709

DATE

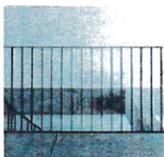
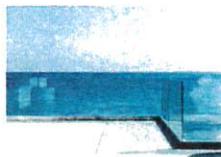
08.21.2016

CONCEPTUAL
 GRADING PLAN

A-7.0

THIS PLAN AND INCORPORATED DESIGNS EMBODIED THEREIN ARE THE PROPERTY OF TCS ENGINEERING & DESIGN. THE USER OF THIS PLAN IS RESTRICTED TO THE ORIGINAL NOT AND OTHER FOR ANY PURPOSE AND REPRODUCTION IS RESTRICTED TO THIS ONE FOR INFORMATION AND REPRODUCTION BY ANY METHOD, IN WHOLE OR IN PART, IS PROHIBITED. TITLE TO THE PLAN AND DESIGN IS RESERVED TO TCS ENGINEERING & DESIGN. VISUAL CONTACT WITH THEM CONSTITUTES APPROVAL. WITH THESE RESTRICTIONS.



<p>1</p>  <p>MANUFACTURER : LUDOWICI MATERIAL : TERRACOTTA TILE ROOF FLAT COLOR : RED & MIX</p>	<p>2</p>  <p>MANUFACTURER : LA HABRA MATERIAL : TEXTURED STUCCO COLOR : DE6381 SILVER BULLET</p>	<p>3</p>  <p>MANUFACTURER : LA HABRA MATERIAL : TEXTURED STUCCO COLOR : DEW381 COOL DECEMBER</p>	<p>5</p>  <p>MANUFACTURER : CORONADO MATERIAL : STONE VENEER - LEDGESTONE COLOR : PRO LEDGE - HURON</p>	<p>5</p>  <p>DECK COATING MATERIAL : FIRE WOOD DECK WATERPROOFING & 1 HOUR FIRE RETARDANT</p>	<p>6</p>  <p>H - 42" GUARD RAIL MATERIAL : METAL RAILING COLOR : DARK GREY</p>	<p>7</p>  <p>H - 42" GUARD RAIL MATERIAL : HIGH TEMPERED, NON GLARE GLASS COLOR : TRANSPARENT</p>
<p>8</p>  <p>SLIDING WINDOW MATERIAL : ANODIZED ALUMINUM FRAME LOW E TEMPERED, HIGH CLARE GLASS COLOR : DARK GREY</p>	<p>9</p>  <p>FIXED WINDOW MATERIAL : ANODIZED ALUMINUM FRAME LOW E TEMPERED, HIGH CLARE GLASS COLOR : DARK GREY</p>	<p>10</p>  <p>LOW PROFILE GALVANIZED STEEL FINISHING MATERIAL : GALV FINISH STEEL SMOOTH FINISH COLOR : DARK GREY</p>	<p>11</p>  <p>GARAGE DOOR MATERIAL : ANODIZED ALUMINUM FRAME - COOL WHITE FRIGID GLASS - GREY</p>	<p>12</p>  <p>MODERNISM - PALE LIGHTING CONCEPT & DESIGN CHIEF LIGHT PAUL BRACKET # P45555 / FIGURED BROWN COLOR : DARK GREY</p>	<p>13</p>  <p>H - 42" METAL FENCE & GATE MATERIAL : METAL RAILING COLOR : DARK GREY</p>	<p>14</p>  <p>WATER WALL MATERIAL : STONE VENEER - LEDGESTONE COLOR : GRAY</p>

MATERIAL BOARD

SCALE NONE 1

ARCHITECTURE
 INTERIORS
 LANDSCAPE ARCHITECTURE
TCS INC.
 872 South La Brea Park Place, Unit 42, Los Angeles, California 90037
 TEL: 213.758.0855
 email: info@tcsinc.com
 www: www.tcsinc.com

PROJECT
SINGLE FAMILY DWELLING
 ADDRESS PROJECT : 156451 PAINTER DR. CHINO HILLS, CA 91709

DATE	09.21.2016
SHEET	

PUBLIC MEETING NOTICE

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Chino Hills will hold a public meeting on Tuesday November 15, 2016, at 7:00 p.m., in the Council Chambers of the City Hall, 14000 City Center Drive, Chino Hills, CA, to consider the following project.

CASE NO.: Custom Home Design Review No. 432

APPLICANT/ OWNER: Cheng Chen
15511 Painter Drive
Chino Hills, CA 91709

PROPOSAL: A request from Cheng Chen for the approval of Custom Home Design Review No. 432 for the addition of 5,807 square feet of habitable space and two (2), two-car garages totaling 941 square feet to an existing one-story single family home.

LOCATION: 15511 Painter Drive

A.P.N.: 1030-061-24

ENVIRONMENTAL REVIEW: A determination has been made that the proposed project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15301(e) Existing Facilities of the CEQA Guidelines because the project consists of an addition of less than 10,000 square feet to an existing single-family residence where all public services and facilities are available to serve the project and the project is not located within an environmentally sensitive area. The proposed project is also categorically exempt from CEQA pursuant to Section 15303(a) New Construction or Conversion of Small Structures of the CEQA Guidelines because the project consists of the construction of an addition to only one single-family structure in a residential zoning district. Further, staff has determined with certainty that the project does not have the potential to cause a negative impact on the environment pursuant to CEQA Guidelines Section 15061(b)(3), the "common sense" exemption.

STAFF: Joann Lombardo, Community Development Director
Michael Hofflinger, Associate Planner

NOTICE IS HEREBY FURTHER GIVEN that if you challenge the above described project in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City at, or prior to, the public hearing.

ALL PERSONS INTERESTED are invited to be present at the public hearing. The proposed project application may be viewed Monday through Thursday, from 7:30 a.m. to 5:00 p.m. and Friday from 7:30 a.m. to 4:00 p.m. in the Community Development Department, City Hall, 14000 City Center Drive, Chino Hills, California. Additional information regarding this project may be obtained from Michael Hofflinger, Assistant Planner, with the Community Development Department at (909) 364-2777 or mhofflinger@chinohills.org.



VICINITY MAP
(Orange outline indicates project site; top of map is north)


Signature: Michael Hofflinger, Associate Planner

AFFIDAVIT OF MAILING

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss.
CITY OF CHINO HILLS)

I, Michael Hofflinger, do hereby certify before the Planning Commission of the City of Chino Hills that a copy of the Public Meeting Notice for Custom Home Design Review No. 432 was mailed to each and every person set forth on the attached list on the 3rd of November 2016. A copy of said Notice is attached hereto. Mailing of this document was completed by placing a copy of said document in an envelope, with postage prepaid, and depositing same in the U.S. Mail at Chino Hills, California.

I declare under penalty of perjury that the foregoing is true and correct.

Dated at Chino Hills, California, this 3rd of November 2016.



Michael Hofflinger, Associate Planner

Cheng Chen
15511 Painter Drive
Chino Hills, CA 91709

Forrest Tsao
13719 Dearborn Street
Corona, CA 92880

Hopkins Gary G.
15542 Tern Street
Chino Hills, CA 91709

Trevino Stephen
15558 Tern Street
Chino Hills, CA 91709

Piergies Thomas
15499 Painter Drive
Chino Hills, CA 91709

Kharoufeh Issa
15484 Painter Drive
Chino Hills, CA 91709