

ALAMOSA CITY COUNCIL

Special Meeting Agenda

Council Chambers
300 Hunt Avenue, Alamosa, CO
August 10, 2016

As a full service municipal government, our mission is to enhance the quality of life for our residents, visitors, and businesses. We strive to provide balanced business, employment, recreational, and residential opportunities.

Any person needing reasonable accommodation to attend or participate in a public meeting, please contact the Alamosa City Clerk's office by telephone (719) 589-2593, by email cityclerk@ci.alamosa.co.us, in person at 300 Hunt Avenue, or by mail at POB 419, Alamosa, CO 81101.

6:00 PM - Marijuana work session

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

II. ROLL CALL

- a. First Reading, Ordinance No. 15-2016; An Ordinance Approving an Intergovernmental Agreement with Alamosa County for Conduct of the November 8, 2016 Coordinated Election for Presentation of Ballot Issues Relating to Marijuana and Marijuana Taxation

ADJOURNMENT

**ALAMOSA CITY COUNCIL
COUNCIL COMMUNICATION**

Subject/Title:
6:00 PM - Marijuana work session

ATTACHMENTS:

Description	Type
▣ CML Background info on marijuana issues	Backup Material
▣ CML data on various marijuana tax rates	Backup Material
▣ Draft resolution referring measures	Backup Material

The Knowledge Now series features practical research on timely topics from the Colorado Municipal League.

MARIJUANA IN COLORADO

By Rachel Allen, CML staff attorney, and Kevin Bommer, CML deputy director

This information is of a general nature and should not be interpreted as legal advice. Local facts determine what laws may apply and how, so you should always consult your municipal attorney before proceeding.

IT IS HARD TO BELIEVE THAT marijuana has been part of the conversation in Colorado for so many years. As a pioneer in this arena, the state and local governments continue to provide oversight for the industry, but there are always new issues to consider and additional areas for improvement. This *Knowledge Now* paper provides an update to the papers released in May 2013 and June 2010 on several outstanding marijuana issues.

Marijuana by the numbers

By now, most Colorado municipalities have exercised their authority to either license or prohibit sales in their community. CML tracks these local marijuana actions in several spreadsheets available at www.cml.org, under Issues > Marijuana, and keeps marijuana ordinances on file. Overall, 53 municipalities are allowing, 181 are prohibiting or have moratoria in place, and 27 are taxing retail marijuana establishments in their community.

Many communities took advantage of the opportunities provided by the November elections to either refer a prohibition question to voters during this general election as permitted by Amendment 64 and/or a TABOR question to voters to levy a marijuana tax. Colo. Const. Art. XVIII, § 16 (5)(f). Seventeen municipalities asked their voters whether to allow marijuana sales, and three opted to allow medical marijuana sales, four will allow retail marijuana sales, and twelve will prohibit retail marijuana sales. Twenty municipalities had tax measures on the

sale of retail marijuana, only four of which failed. Several of those communities authorized a floating tax within a range that may be adjusted without an election by the town board or city council. See related section below on State Marijuana Revenues and the Taxpayers' Bill of Rights

Regulating marijuana grows for personal use

Marijuana home grows have sparked growing concern since the passage of medical and retail marijuana in Colorado. Every community faces the issue of home grows regardless of whether a municipality allows medical and/or retail marijuana sales. The Colorado Constitution allows for a marijuana patient to grow six plants per person for their medicine or an adult twenty-one years of age or older to have six plants per person for recreational use. Colo. Const. Art. XVIII, § 14 (4)(a) (II) and § 16 (3)(b). Six plants per person can become a large grow operation when several adults are living together. There is also an exception in the Medical Marijuana Amendment for a patient or his/her care-giver to grow more than six plants if they are "medically necessary". Colo. Const. Art. XVIII, § 14(4)(b).¹

Several municipalities continue to rely upon their fire code, building code, and

land use authority to regulate marijuana home grows. Others have adopted regulations targeted to curb large residential marijuana grows. Here are some types of restrictions for further consideration:

- Limit personal marijuana grows to one's primary residence.
- Limit grows to single family dwellings rather than multifamily structures.
- Cap the number of plants per residence regardless of the number of adults or patient's condition that the plants serve.
- Restrict the number of plants per square or cubic foot or limit square footage in which marijuana may be grown.
- Define the types of lights that are allowed.
- Allow grows inside the primary dwelling rather than outside or in a garage, outdoor shed, or accessory dwelling.
- Prohibit odors from being detected by neighboring properties.
- Set forth procedures for inspection of personal grows.
- Declare that cultivating marijuana in a manner that does not comply with local regulations constitutes a nuisance that can be abated.

CML had previously advised municipalities to define the term "enclosed, locked space" where one may grow recreational marijuana because that term, while used in Amendment 64, was defined neither in

¹ There may be legislation in 2015 addressing doctors that are writing referrals above the six plants per person limit in the medical marijuana law and requiring caregivers to register to ensure people are not allocating plant counts to more than one caregiver.

Amendment 64 nor statute until earlier in 2014. HB 14-1122 requires any person growing marijuana in a residence where a person under 21 years of age resides to grow in an “enclosed” space, which means, “A permanent or semi-permanent area covered and surrounded on all sides. Temporary opening of windows or doors or the temporary removal of wall or ceiling panels does not convert the area into an unenclosed space.” C.R.S. § 18-18-102(14.5). The new law further defines a “locked space” as secured at all points of ingress and egress with a locking mechanism designed to limit access such as with a key or combination lock.” C.R.S. § 18-18-102(16.5). A municipality should not have to further define this term in its local ordinance unless there is some other concern this definition does not address.

CML has collected local ordinances regulating marijuana home grows. To view the ordinances, visit www.cml.org or to request copies, contact CML Staff Attorney Rachel Allen at rallen@cml.org, 303-831-6411, or 866-578-0936.

Production of hash oil

Another cause for concern has been the personal production of marijuana extracts, concentrates, and hash oil. Some communities have passed ordinances to regulate the use of flammable gases in the production of marijuana concentrates while others have relied upon their building safety codes to regulate the unlicensed production of marijuana extracts. Legislation adding a prohibition on hash oil extraction to state statute is expected in the 2015 session.

CML has collected local ordinances regulating the recreational use of flammable gases in the production of marijuana concentrates. To view the ordinances, visit www.cml.org or to request copies, contact CML Staff Attorney Rachel Allen at rallen@cml.org, 303-831-6411, or 866-578-0936.

Marijuana edibles

Edibles can pose a greater risk for over consumption because the digestion of marijuana causes a delayed onset of the effects, and confusing packaging may lead to people not knowing

exactly how much THC they are actually ingesting. There has also been significant concern over the intentional or accidental ingestion of infused products by minors. As required by HB 14-1366, which was supported by CML, the Marijuana Enforcement Division recently promulgated new rules relating to the labeling and packaging of marijuana edibles as part of an overall update to the rules governing licensed retailers. The new rules and expanded testing requirements will normalize the amount and consistency of marijuana found in any edible to ensure that a single serving size has no more than 10 milligrams of active THC, the intoxicating chemical in marijuana. Each serving size will be either individually wrapped or easy to determine one serving within a larger edible product by perforation or other marking. The serving size rule is meant to ensure more safe consumption of edible marijuana. These rules are available at www.colorado.gov/pacific/enforcement/laws-constitution-statutes-and-regulations-marijuana-enforcement.

Working groups continue to address additional packaging and labeling requirements for marijuana edibles.

Marijuana in the workplace

For the time being, employers may continue to enforce their drug-free workplace policy despite the state’s legalization of medical and recreational marijuana. Marijuana in the workplace is only an issue for medical marijuana because Amendment 64, which legalized adult use of marijuana, explicitly allows for employers to restrict marijuana use by employees by prohibiting use of recreational marijuana whether the employee is on or off-duty. Colo. Const. Art. XVIII, § 16 (6)(a). The prohibition of *medical* marijuana use by employees is pending review by the Colorado Supreme Court in the *Coats v. Dish Network* case. There likely will be more clarity once that case is decided, but the employer prevailed in the lower courts. As a result of the Court of Appeals holding from April 2013, Colorado employers may discipline employees for off-duty marijuana use without having to prove on-the-job

impairment. CML will update municipal members on the status of medical marijuana in the workplace once the Colorado Supreme Court issues a decision in the *Coats* case.

Of course, the outcome in the *Coats* case will not change the law as applied to commercial driver licensed employees or employees who operate heavy machinery in the course of their employment. Employees who are under the influence of marijuana or using marijuana in the workplace may be disciplined by his/her employer.

State marijuana revenues

The state is grappling with the TABOR implication for marijuana revenues. The state marijuana revenues are subject to the Taxpayer’s Bill of Rights (TABOR), and the current revenue forecast requires that lawmakers will likely have to take some action. The total fiscal year revenue that was estimated at the time voters approved Proposition AA was lower than the actual revenue. This may result in an estimated TABOR refund of all the special sales tax revenue² in the current and future fiscal years barring voter approval to retain it. In the current fiscal year FY 2014–2015, all of the \$30.5 million estimated to be collected would have to be returned.

Resources

Department of Revenue Marijuana Enforcement Division provides state licensure. For more information, contact 303-205-8421 or visit www.colorado.gov/pacific/enforcement/marijuanaenforcement.

Colorado Department of Public Health and Environment oversees the registration of medical marijuana patients and caregivers. For more information, contact 303-692-2184, medical.marijuana@state.co.us, or visit www.colorado.gov/pacific/cdphe/medicalmarijuana.

² In November 2013, Colorado voters approved Proposition AA, which allowed a 10 percent retail sales tax and a 15 percent excise tax on recreational marijuana.



Colorado Municipal League
1144 Sherman Street
Denver, CO 80203-2207

KNOWLEDGE *now*

Municipal Retail Marijuana Status

Prohibit (Moritorium if thru date)	Permit (Tax rate, if any)
------------------------------------	---------------------------

Recreational Marijuana Prohibition, Licensing and Taxation: thru April 2016

Akron
Alamosa
Alma
Arriba
Arvada
Aspen
Ault
Aurora (5%; up to 10%)
Avon
Basalt (5%)
Bayfield
Bennett
Berthoud
Bethune
Black Hawk (5%)
Blanca (5% excise)
Blue River
Boulder (3.5%)
Breckenridge (5%)
Brighton
Brookside
Broomfield
Brush (thru 7/1/2016)
Buena Vista
Burlington
Calhan
Cañon City
Carbondale (5%)
Castle Pines
Castle Rock
Cedaredge
Centennial
Central City
Cherry Hills Village
Coal Creek
Cokedale
Collbran (thru 7/15/2015)
Colorado Springs
Columbine Valley
Commerce City (5% excsie)
Cortez
Craig
Crawford
Creede
Crested Butte
Crestone (5%)
Cripple Creek
Crowley
Dacono
De Beque (5%)
Del Norte
Delta

Municipal Retail Marijuana Status

Prohibit (Moritorium if thru date)	Permit (Tax rate, if any)
------------------------------------	---------------------------

Recreational Marijuana Prohibition, Licensing and Taxation: thru April 2016

Denver (3.5%; up to 15% authorized)
Dillon
Dinosaur
Dove Creek
Durango
Eads
Eagle (\$5 / transaction)
Eaton
Eckley
Edgewater
Elizabeth
Empire (\$5 / transaction)
Englewood
Erie
Estes Park
Evans
Fairplay
Federal Heights
Firestone
Fleming (thru 1/1/2015)
Florence (permanent)
Fort Collins
Fort Lupton
Fort Morgan
Fountain
Fowler
Foxfield
Fraser (5%)
Frederick
Frisco (5%)
Fruita
Garden City
Georgetown (\$5/transaction)
Gilcrest
Glendale
Glenwood Springs (Thru 8/25/15)
Golden
Granada
Granby
Grand Junction
Grand Lake
Greeley
Green Mountain Falls
Greenwood Village
Gunnison (5%)
Gypsum
Haxtun
Hayden (7.5% excise tax)
Hillrose
Holly
Holyoke
Hooper

Municipal Retail Marijuana Status

Prohibit (Moritorium if thru date)	Permit (Tax rate, if any)
------------------------------------	---------------------------

Recreational Marijuana Prohibition, Licensing and Taxation: thru April 2016

Hot Sulphur Springs
Hotchkiss
Hudson
Hugo
Idaho Springs
Ignacio
Iliff
Jamestown (permanent)
Johnstown
Julesburg
Keenesburg
Kersey
Kim
Kiowa
Kremmling
La Jara
La Junta
La Salle
La Veta
Lafayette (5%; up to 10%)
Lake City
Lakewood
Lamar
Larkspur
Las Animas
Leadville (5% excise tax; up to 10%)
Limon
Littleton
Lochbuie
Log Lane Village (1.5% excise tax)
Lone Tree
Longmont
Louisville
Loveland
Lyons (3.5%;5% excise tax; up to 10%)
Mancos (up to \$10 / transaction)
Manitou Springs (5%)
Manzanola
Mead
Meeker
Milliken
Minturn
Monte Vista
Montrose
Monument
Morrison
Mountain View (5%)
Mountain Village
Mt. Crested Butte
Naturita (thru 12/31/2014)
Nederland
New Castle

Municipal Retail Marijuana Status

Prohibit (Moritorium if thru date)	Permit (Tax rate, if any)
------------------------------------	---------------------------

Recreational Marijuana Prohibition, Licensing and Taxation: thru April 2016

Northglenn (2%)
Norwood
Nucla
Nunn
Oak Creek
Olathe
Olney Springs
Orchard City
Ordway (thru 6/29/2017)
Otis
Ouray
Ovid
Pagosa Springs
Palisade
Palmer Lake
Paonia
Parachute (5% excise tax)
Parker
Peetz
Pierce
Poncha Springs
Pritchett
Pueblo (8% excise tax up to 15%)
Ramah
Rangley
Raymer
Red Cliff (up to 5% retail; up to 15% wholesale)
Rico
Ridgway
Rifle (5%)
Rockvale
Rocky Ford
Romeo
Rye
Saguache
Salida
Sanford
Sedgwick (\$5 retail; \$100 wholesale;2% excise)
Seibert
Severance
Sheridan
Silt
Silver Cliff
Silver Plume (no greater than 8%)
Silverthorne (5%)
Silverton (1% retail; 3% wholesale)
Simla

Municipal Retail Marijuana Status

Prohibit (Moritorium if thru date)	Permit (Tax rate, if any)
------------------------------------	---------------------------

Recreational Marijuana Prohibition, Licensing and Taxation: thru April 2016

Snowmass Village (thru 3/15/2017)
South Fork
Springfield
Steamboat Springs
Sterling
Stratton
Sugar City
Superior
Swink
Telluride
Thornton
Timnath
Trinidad (5%)
Vail
Victor
Vona
Walden
Walsenburg
Walsh
Wellington
Westcliffe
Westminster
Wheat Ridge
Wiggins
Williamsburg
Windsor
Winter Park
Woodland Park
Wray
Yampa
Yuma

TOTALS

Total Opt out: 168	71.79% prohibit
Moratoria: 8	3.42% have moratoria
Licensing: 58	24.79% allow
Taxes: 36	15.38% tax

Total Action Taken: 234

86.35% of Colorado municipalities have taken action to address retail marijuana establishments in their community

CITY OF ALAMOSA, COLORADO

RESOLUTION NO. ____-2016

A RESOLUTION AUTHORIZING THE SUBMISSION OF BALLOT QUESTIONS TO THE VOTERS OF THE CITY OF ALAMOSA CONCERNING ALLOWING MEDICAL AND RECREATIONAL MARIJUANA FACILITIES WITHIN THE CITY OF ALAMOSA AND THE IMPOSITION OF A TAX ON SALES OF MARIJUANA AND MARIJUANA PRODUCTS IN THE CITY OF ALAMOSA

WHEREAS, Colorado voters have approved amendments to the Colorado Constitution, found at Article XVIII, Sections 14 and 16, which allow for the sale, manufacturing, cultivation, and, in the case of Section 16, testing of both medical and retail marijuana products in the State of Colorado; and

WHEREAS, through enactment of Ordinance No. 21, 2010, codified at Chapter 10, Article X of the *Code of Ordinances of the City of Alamosa*, the City of Alamosa has prohibited medical marijuana facilities, otherwise authorized by the Colorado Constitution under Article XVIII, Section 14; and

WHEREAS, through enactment of Ordinance No. 10, 2013, codified at Chapter 10, Article XI of the *Code of Ordinances of the City of Alamosa*, the City of Alamosa has prohibited retail marijuana facilities, including retail marijuana testing facilities, otherwise authorized by the Colorado Constitution under Article XVIII, Section 16; and

WHEREAS, the City Council (the “City Council”) of the City of Alamosa, Colorado (the “City”) has received a petition for an ordinance allowing for medical and recreational marijuana facilities within the City of Alamosa, and restricting regulation of such facilities to the rules adopted for regulation of alcohol using the following language:

THE CITY OF ALAMOSA SHALL ALLOW THE ESTABLISHMENT AND OPERATION OF ALL TYPES OF FACILITIES REQUIRING A LICENSE FROM THE STATE OF COLORADO MARIJUANA ENFORCEMENT DIVISION UNDER THE COLORADO MEDICAL MARIJUANA CODE AND THE COLORADO RETAIL MARIJUANA CODE, AND LIMIT THE ADOPTION OF ANY RULES AND REGULATIONS ABOUT MARIJUANA SALES TO THOSE ENACTED FOR THE SALE OF ALCOHOL; and

WHEREAS, the City Council has considered adoption of the ordinance contained in the petition and determined not to adopt the ordinance but instead to submit it to an election of the registered electors in the City pursuant to the terms of the Charter of the City of Alamosa as set forth in Article XI thereof; and

WHEREAS, the City Council has authority pursuant to C.R.S. § 31-11-111(2) to refer ballot questions to the voters of the City of Alamosa; and

WHEREAS, Article X, Section 20 of the Colorado Constitution (“TABOR”) requires voter approval for any new tax, tax rate increases, mill levy above that for the prior year, and the creation of debt and for spending above the limits established by TABOR; and

WHEREAS, the City Council finds it to be in the best interests of the City of Alamosa to request the voters to approve an increase in taxes through the imposition of a sales tax on marijuana and marijuana products in the event that the voters determine that marijuana facilities should be allowed within the City; and

WHEREAS the City Council finds it to be in the best interests of the City of Alamosa to present the voters with an option to approve an alternative approach to allowing medical and recreational marijuana facilities that does not purport to restrict the ability of Council to enact rules and regulations governing the licensing, permitting, and operation of such marijuana facilities; and

WHEREAS, Ordinance No. 2, 1993, of the City of Alamosa, Colorado, codified at *Code of Ordinances of the City of Alamosa* Section 5-9, authorizes the City to utilize the requirements and procedures of the *Uniform Election Code of 1992*, Article 1 to 13 of Title 1, C.R.S, in lieu of the *Municipal Election Code of 1965*, and as an alternative thereto; and

WHEREAS, said Ordinance enables the City to determine on an election-by-election basis whether to utilize the *Uniform Election Code of 1992*, and to make such determination by resolution; and

WHEREAS, the City Council has determined that is in the best interest of the City to conduct a coordinated election pursuant to the *Uniform Election Code of 1992*, for the election scheduled for November 8, 2016; and

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Alamosa, Colorado:

1. An election shall be held as a coordinated election with the regular election on Tuesday, November 8, 2016, at which election there shall be submitted to the eligible electors of the City three ballot issues concerning marijuana. The ballot issues shall be in substantially the following form:

Ballot Title and Text of Ballot Issue 1 (citizen initiated ordinance):

THE CITY OF ALAMOSA SHALL ALLOW THE ESTABLISHMENT AND OPERATION OF ALL TYPES OF FACILITIES REQUIRING A LICENSE FROM THE STATE OF COLORADO MARIJUANA ENFORCEMENT DIVISION UNDER THE COLORADO MEDICAL MARIJUANA CODE AND THE COLORADO RETAIL MARIJUANA CODE, AND LIMIT THE ADOPTION OF ANY RULES AND REGULATIONS ABOUT MARIJUANA SALES TO THOSE ENACTED FOR THE SALE OF ALCOHOL.

Ballot Title and Text of Ballot Issue 2 (referred ballot question):

SHALL THE CITY OF ALAMOSA ALLOW THE ESTABLISHMENT AND OPERATION OF ALL TYPES OF FACILITIES REQUIRING A LICENSE FROM THE STATE OF COLORADO MARIJUANA ENFORCEMENT DIVISION UNDER THE COLORADO MEDICAL MARIJUANA CODE, OR THE COLORADO RETAIL MARIJUANA CODE, INCLUDING, BUT NOT LIMITED TO, MEDICAL MARIJUANA CENTERS, MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, AND RETAIL MARIJUANA STORES, SUBJECT TO APPROPRIATE LOCAL LICENSING AND REGULATION?

Ballot Title and Text of Ballot Issue 3 (referred ballot question):

SHALL THE TAXES OF THE CITY OF ALAMOSA BE INCREASED BY \$ 500,000 IN THE FIRST FISCAL YEAR, BEGINNING JANUARY 1, 2017, AND BY SUCH AMOUNTS AS ARE RAISED ANNUALLY THEREAFTER, BY IMPOSING AN ADDITIONAL SALES TAX OF 10 % ON THE SALE OF MARIJUANA AND MARIJUANA PRODUCTS (BOTH MEDICAL AND RETAIL) AND AN EXCISE TAX OF 10 % OF THE AVERAGE MARKET RATE OF UNPROCESSED MARIJUANA (BOTH MEDICAL AND RETAIL) ON THE DATE THAT IT IS FIRST SOLD OR TRANSFERRED FROM A MARIJUANA CULTIVATION FACILITY TO A MEDICAL MARIJUANA FACILITY, A RETAIL MARIJUANA FACILITY, OR MARIJUANA PRODUCT MANUFACTURING FACILITY, ONLY IN THE EVENT THAT SUCH FACILITIES ARE PERMITTED IN THE CITY OF ALAMOSA BASED UPON AN AFFIRMATIVE VOTE OF THE QUALIFIED ELECTORS OF THE CITY OF ALAMOSA, WITH THE RESULTING SALES OR EXCISE TAX RATES BEING CAPABLE OF BEING LOWERED OR REVOKED IN THE SOLE DISCRETION OF THE ALAMOSA CITY COUNCIL, WITH THE RESULTING TAX REVENUES ALLOWED TO BE COLLECTED AND SPENT, NOTWITHSTANDING ANY EXPENDITURE, REVENUE RAISING, OR OTHER LIMITATION CONTAINED IN ARTICLE X, § 20 OF THE COLORADO CONSTITUTION ANY OTHER LIMITATIONS PROVIDED BY LAW?

2. The City Clerk is hereby directed to act as the City's Election Official and participate in the preparation for the election with the Alamosa County Clerk and Recorder; and to take all necessary actions to conduct the special municipal election with the Alamosa County Clerk and Recorder; and to take all necessary actions to conduct the special Municipal Election in accordance with the *Uniform Election Code of 1992*, and all applicable laws.

3. The election shall be conducted as a coordinated mail ballot election in Alamosa County pursuant to the provisions of articles 1 to 13 of title 1, Colorado Revised Statutes (the "Uniform Election Code"). The election shall also be conducted pursuant to the provisions of the Intergovernmental Agreement (the "Intergovernmental Agreement") between the City and the Alamosa County Clerk and Recorder, concerning the conduct of the election as a coordinated mail ballot election under the Uniform Election Code.

4. All acts required or permitted by the Uniform Election Code relevant to voting which are to be performed by the designated election official, shall be performed in the City by the Alamosa County Clerk and Recorder.

5. For purposes of § 1-11-203.5, Colorado Revised Statutes, the ballot titles for the ballot issues contained in this Resolution are hereby determined to be the text of the ballot issues themselves.

6. The officers and employees of the City are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Resolution in accordance with Colorado law.

7. All actions not inconsistent with the provisions of this Resolution, heretofore taken by the members of the City Council and the officers and employees of the City, directed toward holding the election for the purposes stated herein are hereby ratified, approved and confirmed.

8. All prior resolutions or orders, or parts thereof, by the City Council in conflict with this Resolution are hereby repealed, except that this repealer shall not be construed to revive any resolution or order, or part thereof, heretofore repealed.

9. Pursuant to C.R.S. § 1-11-203.5, any election contest arising out of a Ballot Issue or Ballot Question election concerning the order of the ballot or the form or content of the ballot title shall be commenced by petition filed with the proper court within five days after the title of the ballot issue or ballot question is set.

10. If any section, paragraph, clause or provision of this Resolution shall be adjudged to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining sections, paragraphs, clauses or provisions of this Resolution, it being the intention that the various parts hereof are severable.

READ, PASSED AND ADOPTED this 17th day of August, 2016.

Josef P. Lucero, Mayor

Attest:

Holly Martinez, City Clerk

ALAMOSA CITY COUNCIL COUNCIL COMMUNICATION

Subject/Title:

First Reading, Ordinance No. 15-2016; An Ordinance Approving an Intergovernmental Agreement with Alamosa County for Conduct of the November 8, 2016 Coordinated Election for Presentation of Ballot Issues Relating to Marijuana and Marijuana Taxation

Recommended Action:

If it appears that an election on marijuana issues will be required, Introduce the Ordinance on first reading and set a public hearing thereon for Wednesday, August 24, 2016.

Background:

Since the inception of the Coordinated Elections in 1993, the City has coordinate its Regular Election with Alamosa County. Although this is not a Regular City Election, it is desired to still conduct the election as a coordinated election with Alamosa County. This IGA specifies the responsibilities for each party in conducting the election. The terms of the IGA are the same as in past elections.

A petition is currently being circulated to enact an ordinance allowing all forms of marijuana facilities within the City of Alamosa. Should that petition receive sufficient signatures, Council will consider adopting the proposed ordinance as presented, without change. If Council does not adopt the proposed ordinance, it is put to an election at the general election if that occurs within the appropriate timeframe.

Issue Before the Council:

Does Council wish to enter into the IGA with Alamosa County to conduct the November 8, 2016 coordinated election?

Alternatives:

1. Introduce the ordinance on first reading and set a public hearing for August 24, 2016.
2. Do not introduce the ordinance and take no action. The result of this alternative would be to require conducting an independent polling place election on the same day as the County's mail ballot election, assuming sufficient signatures on the petition are submitted. Because the City does not possess the necessary equipment to conduct an independent election and Alamosa County's equipment would be in use on the same day, this option would require an extremely high financial investment in order to secure equipment, if in fact such equipment can even be located.

Fiscal Impact:

The estimated costs for the coordinated election is \$4,305 as its share of the coordinated election costs.

Legal Opinion:

Counselor Schwiesow has reviewed the IGA and will be available at the meeting if needed.

Conclusion:

Coordinated elections have proven to be convenient for the voter and have increased voter turnout. Approving the IGA will continue the history the City has had in conducting its election in this manner.

ATTACHMENTS:

Description	Type
▣ Ordinance No. 15-2016	Ordinance
▣ IGA Coordinated Election 2016	Backup Material

ORDINANCE NO. 15-2016

AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH ALAMOSA COUNTY FOR CONDUCT OF THE NOVEMBER 8, 2016 COORDINATED ELECTION FOR PRESENTATION OF BALLOT ISSUES RELATING TO MARIJUANA AND MARIJUANA TAXATION

WHEREAS, the City Council intends to submit questions of the allowance of medical and retail marijuana and the imposition of sales and excise taxes thereon within the City of Alamosa to the electors of the City at the November 8, 2016 election; and

WHEREAS, the City Council has determined that it is in the best interest of the City to conduct a coordinated election pursuant to the Uniform Election Code of 1992 for the election scheduled for November 8, 2016 and intends to adopt a resolution formalizing that decision; and

WHEREAS, an Intergovernmental Agreement is required pursuant to CRS § 1-7-116(2) to specify the duties and responsibilities in conducting a coordinated election;

NOW, THEREFORE, BE IT ORDAINED by the City Council of Alamosa as follows:

Section 1. Approval of Intergovernmental Agreement. The Intergovernmental Agreement attached to this Ordinance is hereby adopted and approved, and the Mayor is directed to execute the Agreement on behalf of the City of Alamosa.

Section 2. General Repealer. All other acts, orders, ordinances, resolutions, or portions thereof in conflict with the sections adopted in this Ordinance, are hereby repealed to the extent of such conflict.

Section 3. Recording and Authentication. This ordinance, immediately upon its passage, shall be authenticated by the signatures of the Mayor and City Clerk, recorded in the City book of Ordinances kept for that purposes, and published according to law.

Section 4. Publication and Effective Date. This ordinance shall take effect ten (10) days after publication following final passage. Publication both before and after final passage shall be by the title of this ordinance, which Council determines constitutes a sufficient summary of the ordinance, together with the statement that the full text of the ordinance is available for public inspection and acquisition on the City's website and in the office of the City Clerk.

Section 5. Declaration of Public Interest. This ordinance is necessary to preserve the peace, health, safety, welfare, and to serve the best interest of the citizens of the City of Alamosa, Colorado.

INTRODUCED, READ AND APPROVED on first reading the 10th day of August 2016, and ordered published by title and reference as provided by law with notice of a public hearing to be held for consideration of the adoption of said ordinance on the 24th day of August 2016, at 7:00 p.m., or as soon thereafter as the matter may be heard, or on such subsequent date to which the Public hearing or Council consideration may be continued.

APPROVED, AND ADOPTED after public hearing the 24th day of August, 2016.

CITY OF ALAMOSA

By _____
Josef P. Lucero, Mayor

ATTEST:

Holly C. Martinez, City Clerk

INTERGOVERNMENTAL AGREEMENT FOR GENERAL ELECTION

This Intergovernmental Agreement concerning responsibilities for the November 8, 2016, Election is entered into by the Alamosa County Clerk and Recorder, hereafter referred to as "County Clerk" and the City of Alamosa, a Municipal Corporation of the State of Colorado, hereafter referred to as "City", collectively as the "Parties". The Parties agree to cooperate and contract for the purpose of conducting the 2016 General Election.

WITNESSETH

WHEREAS, pursuant to C.R.S. §1-7-116(2), as amended, the County Clerk and the City shall enter into an agreement for the administration of their respective duties concerning the conduct of the General election to be held on November 8, 2016 ("Election"); and

WHEREAS, the County Clerk and the City are authorized to conduct elections as provided by law;

WHEREAS, the County Clerk will conduct the Election as a "Mail ballot election" as such term is defined in the Uniform Election Code of 1992, C.R.S. Title 1, as amended ("Code") and the current Colorado Secretary of State Election Rules, as amended ("Rules");

WHEREAS, the City has certain ballot race(s), ballot issue(s) and/or ballot question(s) to present to its eligible electors and shall participate in this Election; and

NOW, THEREFORE, for and in consideration of the promises herein contained, the sufficiency of which is hereby acknowledged, the County Clerk and the City agree as follows:

ARTICLE I PURPOSE AND GENERAL MATTERS

A. Goal.

The purpose of this Agreement is to set forth the respective tasks in order to conduct the Election and to allocate the cost thereof.

B. General Election Official.

The County Clerk shall act as the "General Election Official" ("GEO") in accordance with the Code and Rules and shall conduct the Election for the City.

The County Clerk, Melanie Woodward, whose telephone number is 719-589-6681, is the "Contact Officer", to act as the primary liaison between the County Clerk and the City. The Contact Officer shall have primary responsibility for the coordination of the Election with the City.

C. Designated Election Official.

The City designates _____ as its "Designated Election Official" ("DEO") to act as primary liaison between the City and the Contact Officer. The DEO shall have primary responsibility for Election procedures to be handled by the City. The DEO shall act as the "designated election official" in accordance with the Code and Rules. The DEO shall be readily available and accessible during regular business hours, and at other times when notified by the Contact Officer in advance, for the purposes of consultation and

decision-making on behalf of the City. In addition, the DEO is responsible for receiving and timely responding to inquiries made by its voters or others interested in the City's election.

D. Jurisdictional Limitation.

The City encompasses territory within Alamosa County, Colorado. This Agreement shall be construed to apply only to that portion of the City situated within Alamosa County.

E. Term.

The term of this Agreement shall be from the date set forth above through December 31, 2016 and shall apply only to the Election.

**ARTICLE II
DUTIES OF THE COUNTY CLERK**

A. Voter Registration.

Supervise, administer and provide necessary facilities and forms for all regular voter registration sites.

B. Ballot Preparation.

1. Layout the text of the ballot in a format that complies with Code and Rules. To avoid ballot space issues, the County Clerk requests each ballot issue and ballot question are not more than 250 words.

2. The County Clerk will assign the letter and/or number of the City's ballot issue(s) or ballot question(s) which will appear on the ballot, and provide this assignment to the City.

3. Provide ballot printing layouts and text for the City's review and signature. If the City fails to provide approval by the required deadline, the content is to be considered approved.

4. Certify the ballot content to the printer(s).

5. Contract for ballots.

C. Voter Lists.

Upon request of the City, create and certify a list of registered voters containing the names and addresses of each elector registered to vote in the City.

D. Election Judges.

Appoint and compensate a sufficient number of election judges.

E. Mail Ballot and Walk-in sites.

1. Provide that mail ballot packets be mailed to every active elector and that the Election shall be conducted in accordance with C.R.S. Title 1, Article 7.5.

2. Conduct mail, accessible, and emergency voting. Coordinate the location of walk-in sites.

3. Obtain and provide all ballots and supplies necessary for mail, accessible and emergency voting together with replacement ballots and affidavits and ballots for property owners who live in another Colorado county.

4. Provide all necessary equipment, forms and supplies to conduct the Election, including electronic voting equipment.

F. Voting Jurisdiction.

Provide the City a street locator file, which lists the street addresses located in the City within the statewide voter registration system. In order for the County Clerk to provide correct ballots to the electors, it is critical that the information contained in the City's locator file be accurate.

G. Election Day Preparation.

1. Provide, no later than ten days before the Election, notice by publication of a mail ballot election in accordance with C.R.S. §1-7.5-107(2.5). Such notice shall satisfy the publication requirement for all entities participating in the election pursuant to C.R.S. §1-5-205(1.4).

2. Prepare and run pre-election logic and accuracy testing and required post-election tests and audits of the voting system in accordance with C.R.S. §1-7-509 and Rules.

3. Provide necessary electronic voting equipment together with personnel and related computer equipment for pre-election logic and accuracy testing and Election Day needs.

4. Conduct post-election audit of voting equipment and vote-counting equipment in accordance with C.R.S. §1-7-509 and Rules.

H. TABOR Notice.

1. If the County Clerk is responsible for preparing a TABOR notice, the County Clerk shall do so in compliance with Article X Section 20 of the Colorado Constitution and any pertinent Code and Rules.

2. Charge the City for all expenses for the preparation, printing, labeling and postage for the TABOR notice. Said expenses shall be pro-rated among all Entities participating in the TABOR notice. Such pro-ration to be based in part upon the number of addresses where one or more active registered electors of the district reside.

3. Coordinate and mail the TABOR notice not less than thirty days prior to the election in compliance with Article X Section 20 of the Colorado Constitution and any pertinent Code and Rules. The County Clerk shall determine the least cost method for mailing the TABOR notice and address the TABOR notice to "All Registered Voters" at each address in Alamosa County where one or more active electors of the district reside. Nothing herein shall preclude the County Clerk from sending the TABOR Notice of the City to persons other than electors of the District if such sending arises from the County Clerk's efforts to mail the TABOR Notice at least cost.

I. Counting Ballots.

1. Conduct and oversee the ballot counting process and report the results to the City.

2. Establish backup procedures and backup sites for ballot counting should counting equipment and/or building facilities fail. In such event, counting procedures will be moved to a predetermined site.

3. If it is determined that counting must be moved to an established backup site, all related costs shall be paid by the Entities.

J. Certifying Results.

1. Appoint, instruct and oversee the board of canvassers.

2. Certify the results of the City's Election within the time required by law and provide the City with a copy of all Election statements and certificates required under Code.

3. If a recount is called for, conduct a recount in accordance with Code.

K. Recordkeeping.

1. Pursuant to C.R.S. §1-7-802, store all Election records as required.

2. Keep an accurate account of all Election costs.

L. No Expansion of Duties.

Nothing contained in this Agreement is intended to expand the duties of the County Clerk beyond those set forth in Code or Rules.

**ARTICLE III
DUTIES OF THE CITY**

A. Authority.

Provide the County Clerk with a copy of the ordinance or resolution stating that the City will participate in the Election in accordance with the terms and conditions of this Agreement. The ordinance or resolution shall further authorize the presiding officer of the City or other designated person to execute this Agreement.

B. Call and Notice.

1. Publish all notices relative to the Election as required by Code, Rules, the City's Charter and any other statute, rule or regulation.

2. Mail notices pursuant to C.R.S. §1-7-906(2) for active electors of the city who do reside within Alamosa County or counties where the City is located.

C. Voting Jurisdiction.

1. Review the information contained in the street locator file and certify its accuracy, as well as any changes, additions or deletions to the file. It is the City's responsibility to ensure that the information contained in the locator file is an accurate representation of the City's street indexes contained within the City's legal boundaries. The certification of the street locator file shall be made no later than August 25th, 2016 at 5:00 p.m. to the County Clerk. If the certification is not provided by the date specified herein, the City may not participate in the Election.

2. Any proposed address not already identified by a tax authority code in the county Assessor's records, shall be provided to the County Clerk with a certified legal description, map and locator, identifying all "high/low" ranges for street addresses within the proposed City, no later than August 25th, 2016 at 5:00 p.m. Once the information has been entered in the statewide voter registration system, the DEO shall review the information contained in the street locator file and shall certify its accuracy, as well as any changes, additions or deletions to the file no later than August 30, 2016 at 5:00 p.m. to the County Clerk. If the certification is not provided by the required deadline specified herein, the City may not participate in the Election.

D. Petitions, Preparation and Verification.

Perform all responsibilities required to certify any candidate or initiative petition to the ballot.

E. Ballot Preparation.

1. Be solely responsible for determining whether a ballot race, ballot issue, or ballot question is properly placed before the voters.

2. Pursuant to C.R.S. §1-5-203(3) (a), provide a certified copy of the ballot content (races, issues and questions) by email to mwoodward@alamosacounty.org, at the earliest possible time and in any event no later than sixty days before the election, September 7, 2016 at 5:00 p.m., The ballot content must be certified exactly in the order in which it is to be printed on the ballot pages and sample ballots.

3. The certified list of ballot race(s), ballot issue(s) and/or ballot question(s) submitted by the City shall be final.

4. Proofread and approve the City's ballot content for printing within five business days of receipt from the County Clerk. The City shall provide a fax number and designate a person to be available for proofing and approving ballot content for printing. Due to time constraints, the City must provide contact information for someone who is available from 8:00 a.m. to 5:00 p.m. from September 8, 2016 until September 12, 2016, or until final approval of printing of ballots has been reached. The County Clerk agrees to keep all contact personnel informed of ballot printing status. The City has designated _____, whose phone is _____, cell is _____ and fax is _____.

5. Once approval has been received, the County Clerk will not make any changes to the ballot content. If the City fails to provide approval by the required deadline, the content is to be considered approved.

6. Provide audio recording of the proper pronunciation of any candidate name certified to the County Clerk. Please see exhibit B.

7. The City shall defend and resolve at its sole expense all challenges relative to the ballot race(s), ballot issue(s) and/or ballot question(s) as certified to the County Clerk for inclusion in the Election.

F. Election Participation.

If requested by the County Clerk, provide person(s) to participate and assist in the Election process. The person(s) provided by the City must be registered to vote in Alamosa County.

G. Property Owners.

1. Notify and provide information and materials to property owners where an eligible elector may vote at any walk-in site or make application for a mail-in ballot specific to that City to be voted on and filed with the County Clerk. C.R.S. §32-1-806, C.R.S. §1-7-104, C.R.S. §1-8-104(3)

2. The City shall be responsible for obtaining its property owner list(s) from the County Assessor's office in accordance with C.R.S. §1-5-304. .

3. Electors who own property within the City in Alamosa County but who reside and are registered to vote in another Colorado county may vote in person or may request a mail ballot from the County Clerk.

H. TABOR Notice.

1. If the City is responsible for preparing a TABOR notice for any ballot issue(s), the City shall do so in compliance with Article X Section 20 of the Colorado Constitution and any pertinent Code and Rules.

2. The City shall be solely responsible for calculating and providing to the County Clerk any fiscal information necessary to comply with TABOR. The County Clerk shall in no way be responsible for the City's compliance with TABOR or the accuracy of the fiscal information.

3. The process of receiving written comments relating to ballot issue(s) and summarizing such comments, as required by TABOR, is the sole responsibility of the City.

4. The City shall be solely responsible for its preparation, accuracy and the language contained therein, and shall submit such notice, including pro and con summaries and fiscal information, to the County Clerk no later than September 27, 2016 at 5:00 p.m., pursuant to C.R.S. §1-7-904. Such notice shall be provided to the County Clerk as an email attachment to mwoodward@alamosacounty.org

5. The certified text, summary of comments and fiscal information submitted by the City shall be final.

6. Proofread and approve the City's TABOR content for printing. The City shall provide a fax number and designate a person to be available for proofing and approving TABOR content for printing. Due to time constraints, the City must provide contact information for someone who is available from 8:00 a.m. to 5:00 p.m. from September 27, 2016 until September 30, 2016, or until the TABOR notice is mailed. The County Clerk agrees to keep all contact personnel informed of TABOR printing status. The City has designated

_____, whose phone is _____,
_____, cell is _____ and fax is _____.

7. Once approval has been received, the County Clerk will not make any changes to the TABOR content. If the City fails to provide approval by the required deadline, the content is to be considered approved.

8. Pursuant to C.R.S. §1-7-906(2), the City shall be responsible for mailing the TABOR notice to each address of one or more active registered electors who do not reside within Alamosa County.

I. Cancellation of Election by the City.

If the City resolves not to participate in the Election, notice shall be delivered in writing to the Contact Officer immediately; *provided, however that* the City shall not cancel after the 25th day prior to the Election, October 14, 2016, pursuant to C.R.S. §1-5-208(2). The City shall reimburse the County Clerk for the actual expenses incurred in preparing for the Election. If cancellation occurs after the certification deadline, full election costs may be incurred. The City shall provide notice by publication, as defined in Code, of cancellation of the Election and a copy of such notice shall be posted at each walk-in site, in the office of the City, in the office of the County Clerk, in the office of the DEO, and, if the City is a special City, in the office of the Division of Local Government.

ARTICLE IV COSTS

A. Election Costs.

The minimum fee for election services is \$150.00

1. The City's proportional share of costs shall be based on County expenditures relative to the Election and the number of electors of the District. Costs include, but are not limited to, supplies, printing, postage, legal notices, labor, rentals, and other expenses attributable to the County Clerk's administration of the Election for the City. The City shall be charged its pro-rated share of election costs for any software programs used to count voted ballots as well as pre-election and post-election maintenance and on-site technical support.
2. The City affirms that it has sufficient funds available in its approved budget to pay its prorated Election expenses.
3. If it is determined that counting must be moved to an established backup site, the City shall be charged its pro-rated share.
4. The cost of any recount(s) will be charged to the City, or if more than one Entity is involved in the recount, the cost will be prorated among the participating Entities.
5. Upon receipt of the invoice, pay to the County Clerk within thirty days a fee which shall be an amount determined in accordance with the formula set forth on Exhibit A. If Exhibit A cannot be completed at the time of the mailing of this Agreement, it will be provided as soon as possible.
6. The City shall pay any additional or unique election costs resulting from City delays and/or special preparations or cancellations relating to the City's participation in the Election.

B. TABOR Costs.

The minimum fee for TABOR services is \$50.00.

The City shall pay a pro-rated amount for the costs to produce and mail the TABOR notice. Such pro-ration to be based in part, on addresses where one or more electors of the District reside.

C. Invoice.

The County Clerk shall submit to the City an itemized invoice for all expenses incurred under this Agreement and the City shall remit to the County Clerk the total due upon receipt. Any

amount not paid within 30 days after receipt will be subject to an interest charge at the lesser of 1 ½% per month or the highest rate permitted under law.

ARTICLE V MISCELLANEOUS

A. Entire Agreement.

This Agreement and its Exhibits constitute the entire agreement between the parties as to the subject matter hereof and supersede all prior or current agreements, proposals, negotiations, understandings, representations and all other communications, both oral and written.

B. Indemnification.

To the extent permitted by law, each party agrees to indemnify and hold harmless the other party, its officials, officers, employees and agents from and against any and all losses, costs (including attorneys' fees), demands or actions arising out of or related to any negligent actions, errors or omissions of the indemnifying party in connection with the transactions contemplated by this Agreement.

In the event a court of competent jurisdiction finds the Election for the City was void or otherwise fatally defective as a result of the sole breach or failure of the County Clerk to perform in accordance with this Agreement or laws applicable to the Election, the City shall be entitled to recover expenses or losses caused by such breach or failure up to the maximum amount paid by the City to the County Clerk. The County Clerk shall in no event be liable for any expenses, damages or losses in excess of the amounts paid under this Agreement. This remedy shall be the sole and exclusive remedy for the breach available to the City.

C. Conflict of Agreement with Law, Impairment.

Should any provision of this Agreement be determined by a court of competent jurisdiction to be unconstitutional or otherwise null and void, it is the intent of the parties hereto that the remaining provisions of this Agreement shall be of full force and effect.

D. Time of Essence.

Time is of the essence in the performance of this Agreement. The time requirements of Code and Rules shall apply to completion of required tasks.

E. No Third Party Beneficiaries.

Enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the parties, and nothing contained herein shall give or allow any such claim or right of action by any other person or City.

F. Governing Law; Jurisdiction & Venue.

This Agreement, the interpretation thereof, and the rights of the parties under it will be governed by, and construed in accordance with, the laws of the State of Colorado. The courts of the State of Colorado shall have sole and exclusive jurisdiction of any disputes or litigation arising under this Agreement. Venue for any and all legal actions arising shall lie in the District Court in and for the County of Alamosa, State of Colorado.

G. Headings.

The section headings in this Agreement are for reference only and shall not affect the interpretation or meaning of any provision of this Agreement.

H. Severability.

If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, void or unenforceable, such provision shall be deemed to be severable, and all other provisions of this Agreement shall remain fully enforceable, and this Agreement shall be interpreted in all respects as if such provision were omitted.

ALAMOSA COUNTY ESTIMATED
ELECTION COSTS
GENERAL ELECTION 2016
EXHIBIT A

Voting System Components Leased	\$4400.00
Ballot Lay Out and Programming Fees	\$4400.00
Ballot Insertion & Mailing Fees	\$3400.00
Ballot Printing & Envelopes	\$4500.00
Publications	\$1000.00
Election Judges & Canvass Board	\$2800.00
Totals	\$20,500.00

Cost is figured by total number of active electors in each entity divided by the total cost of the election.

Alamosa School Dist	6677	37%	\$7585.00
City of Alamosa	3748	21%	\$4305.00
Sargent School Dist RE-33J	85	1%	\$ 205.00
Alamosa County	7378	41%	\$8405.00

EXHIBIT B
AUDIO FOR ACCUVOTE TSX UNIT

In accordance with Secretary of State Rule 10.5, all candidates shall provide an audio recording to the County Clerk no later than the last day upon which the City certifies the ballot content, pursuant to C.R.S. §1-5-203(3)(a). The audio recording of the candidate's name shall be recorded exactly as it is certified to the County Clerk.

The Alamosa County Clerk and Recorder's office will contact the City if pronunciation guidelines on any ballot race(s), ballot issue(s) and/or ballot question(s) are needed.

Please contact our office at 719-589-6681 if you have any questions or need additional information.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective upon the date first above written.

Date: July 18, 2016

ALAMOSA COUNTY, COLORADO
CLERK AND RECORDER

Melanie Woodward
Melanie Woodward



Date: _____

CITY OF ALAMOSA

MAYOR

ATTEST:

City Clerk