AGENDA FOR THE
ENGLEWOOD CITY COUNCIL
STUDY SESSION
TUESDAY, FEBRUARY 21, 2012
COMMUNITY ROOM
6:00 P.M.

I. Medical Marijuana Caregiver
Finance and Administrative Services Director Frank Gryglewicz and
Community Development Director Alan White will provide information
concerning medical marijuana caregivers.

II. Park Land Dedication Requirement of Fee In Lieu
Community Development Director Alan White will discuss the park land
dedication requirement or fee in lieu.

III. City Manager's Choice

IV. City Attorney's Choice

Please Note: If you have a disability and need auxiliary aids or services, please notify the City of
Englewood, 303-762-2407, at least 48 hours in advance of when services are needed. Thank you.
BY AUTHORITY

ORDINANCE NO. ______
SERIES OF 2012

COUNCIL BILL NO. ______
INTRODUCED BY COUNCIL MEMBER ______

A BILL FOR

AN ORDINANCE AMENDING TITLE 5, CHAPTER 3D, SECTIONS 3 AND 19, OF THE ENGLEWOOD MUNICIPAL CODE 2000 WHICH PERTAINS TO MEDICAL MARIJUANA AND PRIMARY CARE-GIVERS.

WHEREAS, a Constitutional Amendment and subsequent legislation provided a method for the registration of patients who wish to use Medical Marijuana and their Primary Care-Givers; and

WHEREAS, the City further wishes to protect and balance the reasonable and lawful rights of patients and Primary Care-Givers with the protection, health, safety and welfare of the people of the City through prevention and mitigation of deleterious and negative secondary effects that may occur or are likely to occur from the presence of Medical Marijuana in the City of Englewood, Colorado; and

WHEREAS, the sale or distribution of Medical Marijuana may be a taxable transaction in accordance with state and local law; and

WHEREAS, federal and state laws are binding upon home rule municipalities. However, neither this Article nor its adoption, implementation, or enforcement shall be construed as an intent of the City, its elected officials, its employees or contractors or Authority members to violate federal law, including but not limited to, the Controlled Substances Act of 1970, as amended, nor shall such adoption, implementation or enforcement be construed as acquiescence or conspiracy by the City, its elected officials, appointed Authority members, contractors, or its employees to violate such federal and state law;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, THAT:

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 5, Chapter 3D, by the addition of a new Section 19, of the Englewood Municipal Code 2000, to read as follows:

5-3D-19: Regulations related to Medical Marijuana Primary Care-Givers.

A. Care-Givers subject to taxation under 4-4-4-1(A) EMC shall be subject to the following regulations:
1. **Zoning.** The cultivation, sale or distribution of Medical Marijuana shall not be allowed as a Home Occupation under Title 16.

2. **Distance restrictions in or out of City limits.**
   
   (a) Medical Marijuana shall not be cultivated, manufactured or sold within two thousand feet (2,000') of a school, an alcohol or drug treatment facility, or the principal campus of a college, university, seminary, or a residential child care facility or within two thousand five hundred feet (2,500') of an existing licensed Medical Marijuana Center, Medical Marijuana-Infused Products Manufacturer or Medical Marijuana Optional Premises Cultivation Operation.

   (b) The distances referred to in this Title are to be computed by direct measurement from the nearest property line of the land used for a school, or campus or other to the nearest portion of the building in which Medical Marijuana is to be sold, cultivated or infused, using a route of direct pedestrian access.

3. **Any cultivation of Medical Marijuana plants shall be limited within the premises:**
   
   (a) A secure, defined, contiguous one hundred fifty (150) square foot area.

4. **It shall be unlawful to cultivate, or permit to be cultivated, more than the following maximum number of Medical Marijuana plants:**
   
   (a) Six (6) Medical Marijuana plants with three (3) or fewer being mature, flowering plants that are producing a useable form of marijuana for each Patient of the Primary Care-Giver; or

   (b) The aggregate maximum number of Medical Marijuana plants necessary to alleviate the Primary Care-Giver's Patients' chronic or debilitating disease(s) or medical condition(s) as evidenced by the patients' physicians' written medical professional opinion(s).

   (c) In no event shall the maximum number of Medical Marijuana plants within a Primary Care-Giver's premises exceed thirty (30) Medical Marijuana plants regardless of size or stage or growth.

5. **The facilities for the cultivation of Medical Marijuana plants shall meet the requirements of all adopted City of Englewood building and safety codes including but not limited to Electrical, Building, Residential, Property Maintenance and Fire Codes.**

6. **Comply with all applicable sales tax licensing and reporting requirements set forth in the applicable provisions of the Englewood Municipal Code 2000.**

7. **Records to be kept for compliance verification.** The licensing requirements set forth in this Englewood Municipal Code 2000, the Englewood Home Rule Charter and in the Colorado Medical Marijuana Code shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other Federal, State or local law or regulations.
8. A Primary Care-Giver shall provide the registry identification card number of each of his/her patients to employees and contractors of the City, State or Federal and to law enforcement agencies, upon inquiry in the course of their official duties while investigating compliance with the requirements of this Article. Records should include, but are not limited to:

(a) The quantity of Medical Marijuana dispensed in each transaction.

(b) The type and source of Medical Marijuana dispensed.

(c) The total amount paid by the patient for the transaction for all goods and services provided.

(d) Confirmation that the licensee confirmed the identity of the patient receiving the Medical Marijuana with valid photo identification.

(e) The date and time dispensed.

9. To the extent required by law, documentation that evidences the name, address, or other information of a Patient or Primary Care-Giver including but not limited to, applications, permits and correspondence, shall be maintained by the City as confidential. No person shall be permitted to gain access to such confidential documentation except for authorized employees and contractors of the City in the course of their official duties and authorized employees of the Federal, State or City law enforcement agencies.

B. Primary Care-Givers subject to taxation shall also comply with the provisions of 7-6D-12 EMC.

Section 2. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 5, Chapter 3D, Section 3, of the Englewood Municipal Code 2000, to read as follows:

5-3D-3: Definitions.

Any word or term used that is defined in Article XVIII, Section 14 (1)(f) of the Colorado Constitution; in § 25-1.5-101 et seq. C.R.S. or in the Colorado Medical Marijuana Code, § 12-43.3-101 et seq. C.R.S. shall have the same meaning that is ascribed to such word or term in those Constitutional provisions or C.R.S. sections unless the definition is amended by this section.

Good Cause: for purposes of refusing or denying a license renewal, reinstatement, or initial license issuance means:

1. The licensee or applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of Article 43.3 of Title 12 C.R.S., and rules promulgated pursuant to this Title, or any supplemental local law, rules, or regulations;

2. The licensee or applicant has failed to comply with any special terms or conditions that were placed on its license pursuant to an order of the State or Local Licensing Authority;

3. The licensed premises have been operated in a manner that adversely affects the public health, welfare or the safety of the immediate neighborhood in which the establishment is located.
License: means to grant a license or registration pursuant to this Title.

Licensed Premises: means the premises specified in an application for a license under this Title, which are owned or in possession of the licensee and within which the licensee is authorized to cultivate, manufacture, distribute, or sell Medical Marijuana in accordance with the provisions of Article 43.3 of Title 12 C.R.S.

Licensee: means a person licensed or registered pursuant to Article 43.3 of Title 12 C.R.S. and this Title.

Local Licensing Authority: means the Englewood Local Liquor and Medical Marijuana Licensing Authority.

Local Licensing Official: means the Director of Finance and Administrative Services or designee.

Location: means a particular parcel of land that may be identified by an address or other descriptive means.

Medical Marijuana: means Marijuana that is grown and/or sold pursuant to the provisions of § 106 of Article 1.5 of Title 12 C.R.S.; Article 43.3 of Title 12 C.R.S. and for a purpose authorized by Section 14 of Article XVIII of the State Constitution.

Medical Marijuana Center: means a person licensed pursuant to Article 43.3 of Title 12 C.R.S. to operate a business as described in Article 43.3 of Title 12 C.R.S. that sells Medical Marijuana to registered patients or Primary Care-Givers as defined in Section 14 of Article XVIII of the State Constitution, but is not a Primary Care-Giver.

Medical Marijuana-Infused Product: means a product infused with Medical Marijuana that is intended for use or consumption other than by smoking, including, but not limited to, edible products, ointments, and tinctures. These products, when manufactured or sold by a licensed Medical Marijuana Center or a Medical Marijuana-Infused Product Manufacturer, shall not be considered a food or drug for the purposes of the "Colorado Food and Drug Act", Part 4 of Article 5 of Title 25, C.R.S.

Medical Marijuana-Infused Product Manufacturer: A person licensed pursuant to Article 43.3 of Title 12 C.R.S. to operate a business as described in Article 43.3 of Title 12 C.R.S.

Medical Marijuana Optional Premises Cultivation Operation: means the premises specified in an application for a Medical Marijuana Center License with related growing facilities in Colorado for which the Licensee is authorized to grow and cultivate Marijuana for a purpose authorized by Section 14 of Article XVIII of the State Constitution.

Multi-Tenant Building: A building that is or can be occupied by more than one tenant.

Patient: a person who meets the definition of patient under Article XVIII, Section 14 (1)(d) of the Colorado Constitution and applicable law or regulation.

Person: means a natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof.
Premises: means a distinct and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

Primary Care-Giver: In addition to the definitions set forth in Section 14(1) (f) of Article XVIII of the State Constitution, as used in Article 43.3 of Title 12 C.R.S., unless the context otherwise requires, "Primary Care-Giver" means a natural person, or as may be more fully defined in any applicable Federal or State law or regulation.

School: means a public or private preschool or a public or private elementary, middle, junior high, or high school, college or campus of a college.

Smoking: means the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco or Medical Marijuana as defined by Article 43.3 of Title 12 C.R.S.

State Licensing Authority: means the Authority created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of Medical Marijuana in this State, pursuant to Article 43.3 of Title 12 C.R.S.

Section 4. Safety Clauses. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Englewood, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 5. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance or its application to other persons or circumstances.

Section 6. Inconsistent Ordinances. All other Ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 7. Effect of repeal or modification. The repeal or modification of any provision of the Code of the City of Englewood by this Ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purposes of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 8. Medical Marijuana Care-Givers, subject to sales tax, currently legally in existence in any zone district as of the effective date of this Ordinance shall be grandfathered and shall be considered a legal use for purposes of the Zoning Ordinance.

Section 9. Penalty. The Penalty Provision of Section 1-4-1 EMC shall apply to each and every violation of this Ordinance.
Introduced, read in full, and passed on first reading on the ___ day of _____, 2012.

Published by Title as a Bill for an Ordinance in the City’s official newspaper on the __________ day of _____________________, 2012.

Published as a Bill for an Ordinance on the City’s official website beginning on the ___ day of __________, 2012 for thirty (30) days.

________________________
Randy P. Penn, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the ___ day of __________, 2012.

________________________
Loucrishia A. Ellis
A BILL FOR

AN ORDINANCE AMENDING TITLE 7, CHAPTER 6D, SECTION 12, OF THE ENGLEWOOD MUNICIPAL CODE 2000 WHICH PERTAINS TO MEDICAL MARIJUANA

WHEREAS, a Constitutional Amendment and subsequent legislation provided a method for the registration of patients and responsibilities regarding cultivation or production of Medical Marijuana; and

WHEREAS, the City further wishes to protect and balance the reasonable and lawful rights of Patients and Primary Care-Givers with the protection, health, safety and welfare of the people of the City through prevention and mitigation of deleterious and negative secondary effects that may occur or are likely to occur from the presence of Medical Marijuana in the City of Englewood, Colorado; and

WHEREAS, federal and state laws are binding upon home rule municipalities. However, neither this Article nor its adoption, implementation, or enforcement shall be construed as an intent of the City, its elected officials, its employees or contractors or Authority members to violate federal law, including but not limited to, the Controlled Substances Act of 1970, as amended, nor shall such adoption, implementation or enforcement be construed as acquiescence or conspiracy by the City, its elected officials, appointed Authority members, contractors, or its employees to violate such federal and state law;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, THAT:

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 7, Chapter 6D, Section 12, of the Englewood Municipal Code 2000, to read as follows:

7-6D-12: Possession of Marijuana Prohibited.

A. Definitions.

Any word or term used that is defined in Article XVIII, Section 14 (1)(f) of the Colorado Constitution: in § 25-1.5-101 et seq. C.R.S. or in the Colorado Medical Marijuana Code, § 12-43.3-101 et seq. C.R.S. shall have the same meaning that is ascribed to such word or term in those Constitutional provisions or C.R.S. sections unless the definition is amended by this section.
Consumption or Use of Marijuana. Shall be deemed possession thereof.

Marihuana or Marijuana: 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 its resin. It does not include fiber produced from the stalks, oil or cake made from the seeds of the plant, or sterilized seed of the plant which is incapable of germination, if these items exist apart from any other item defined as “marijuana” herein. "Marijuana" does not include marijuana concentrate as defined below.

Marijuana Concentrate: Hashish, tetrahydrocannabinols, or any alkaloid, salt, derivative, preparation, compound or mixture, whether natural or synthesized, of tetrahydrocannabinols.

Medical Marijuana: means Marijuana that is grown and sold pursuant to the provisions of § 106 of Article 1.5 of Title 12 C.R.S.; Article 43.3 of Title 12 C.R.S. and for a purpose authorized by Section 14 of Article XVIII of the State Constitution.

B. It is unlawful for any person to possess one ounce or less of marijuana, except in accordance with Section 14 of Article XVIII of the Colorado Constitution.

C. Restrictions on locations for cultivating Marijuana.

1. It shall be unlawful to cultivate Marijuana in an outdoor area or an accessory structure including but not limited to outdoor gardens, greenhouses, sheds or storage units;

2. It shall be unlawful to cultivate Marijuana within a garage, whether attached or detached, or other structure designed or intended for the keeping or storage of vehicles, equipment or goods;

3. It shall be unlawful to permit Marijuana plants to be perceptible from the exterior of any structure, including but not limited to:
   (a) Common visual observation of Marijuana.
   (b) Odors, smells, fragrances, or other olfactory stimulus generated by the cultivation, production, possession or processing of Marijuana plants that disturbs the repose of another.
   (c) Light pollution, glare, or brightness of artificial illumination associated with the cultivation of Marijuana plants that disturbs the repose of another.
   (d) Noise from fans in excess of the limits set in Section 6-2-5(F) EMC, as amended.

4. It shall be unlawful to cultivate Medical Marijuana in the common areas of a multi-family or attached residential development or a single-family attached residential property;
D. It shall be unlawful to cultivate, or permit to be cultivated, more than the following maximum number of Medical Marijuana plants:

(1) Six (6) Medical Marijuana plants with three (3) or fewer being mature, flowering plants that are producing a useable form of marijuana for each Patient of the premises; or

(2) The maximum number of Medical Marijuana plants necessary to alleviate the patient’s (or patients’) chronic debilitating disease(s) or medical condition(s) as evidenced by the patient’s (or patients’) physician’s written professional opinion or recommendation.

E. The maximum punishment that can be imposed for violation of this Section is as is set forth in Section 1-4-1 of this Code. However, in imposing punishment on minors for violation of this Section, the Court is limited to the restrictions of subsection 1-4-1(B) of this Code.

Section 2. Safety Clauses. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Englewood, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 3. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance or its application to other persons or circumstances.

Section 4. Inconsistent Ordinances. All other Ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 5. Effect of repeal or modification. The repeal or modification of any provision of the Code of the City of Englewood by this Ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purposes of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 6. Penalty. The Penalty Provision of Section 1-4-1 EMC shall apply to each and every violation of this Ordinance.

Introduced, read in full, and passed on first reading on the ____ day of _____, 2012.

Published by Title as a Bill for an Ordinance in the City’s official newspaper on the_______ day of ________________, 2012.
Published as a Bill for an Ordinance on the City’s official website beginning on the ____ day of ______________, 2012 for thirty (30) days.

ATTEST:

Randy P. Penn, Mayor

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the ____ day of ______________, 2012.

Loucrishia A. Ellis
Proposed Zone Areas Allowing New Medical Marijuana Centers, Grow Operations, and Infused Product Manufacturers After Applying 2,000 Feet School, 24 Hour Child Care Facility and Alcohol/Drug Treatment Facility Buffers, and 2,500 Feet Buffers Between MMJ Facilities

Note: Distances are approximate and are shown as a radius from property boundaries, not as direct pedestrian access.
TO: Mayor and City Council Members
THRU: Gary Sears, City Manager
FROM: Alan White, Community Development Director
DATE: February 21, 2012
RE: Park Land Dedication Requirement and Fee In Lieu

Background

The subdivision regulations of the Unified Development Code require the dedication of park land for all residential developments. Depending upon the suitability or availability of land for park purposes, the developer or City elect to require the payment of a fee in lieu of land dedication. (See Attachment A.)

The intent of the dedication requirement or payment of a fee in lieu of dedication is a method for ensuring that “development pays its own way”; that impacts of new residents on parks are mitigated by dedicating park land or paying to upgrade parks or facilities that will serve the new residents.

Several development projects are or may be coming forward where dedication or fees in lieu will be required. As the analysis below shows, this requirement could have a significant impact on the physical or financial viability of a project.

Withstanding Court Challenges

Dedication requirements have been the subject of numerous lawsuits over the years. Rulings by the U.S. Supreme Court give guidance to local jurisdictions in creating all kinds of dedication requirements. In order to withstand constitutionality and “ takings” challenges, dedication and fee requirements must meet the following tests:

- They must be reasonably related to the impacts caused by the development,
- They must be related to a legitimate government interest, and
- There must be a rough proportionality between the burdens on the public that would result from the development versus the benefit to the public from the dedication/fee
The requirement to dedicate park land or pay a fee in lieu advances a legitimate government purpose, so there is not a legal issue from that standpoint. Such requirements are common in Colorado and have rarely been tested. The issue for Englewood is establishing the reasonableness of the dedication/fee and meeting the rough proportionality test. Beyond that, there is the effect of the requirement on development proposals to consider. There should be a balance between the legitimate needs of the community versus the costs a development project can absorb.

The reasonably-related-to-impacts and rough proportionality tests are interrelated. It might be difficult to defend the current dedication requirement of 10.7 acres per 1,000 population, especially since a different standard is suggested in the Parks and Recreation Master Plan. On the other hand, any of the land values used in the three examples shown in Attachment B would be defensible in court, especially with the City recently paying roughly $350,000 per acre for the Duncan Park property.

The approaches and dedication requirements of other cities in the metro area are included in Attachment C.

**Commission Recommendations**

The Planning and Zoning Commission has reviewed this issue and has recommended that for each new residential and non-residential development, a fee of $0.25 per square foot be charged. For example, a new 2,000 square-foot home would be charged an in-lieu fee of $500; a new retail establishment of 78,000 square feet would be charged $19,500; and a 100,000-foot warehouse would be charged $25,000. A multi-family housing development with 300 units averaging 750 square feet would pay $56,250.

The Planning and Zoning Commission recommendation is problematic from two standpoints:

1. The “nexus” between the square-foot based fee and the demand for park land could be disputed easily. Why should a 2,000 square-foot home be charged a lower fee than a 3,000 square-foot home? If one argued that the larger home would conceivably have more bedrooms and therefore more persons living in it, then the nexus is beginning to be established, but is not as clear-cut as the nexus established by the current formula in the UDC. Per unit or per person demand and resultant fees in lieu are more easily defended. The square-footage based fee for residential development, however, probably would be viewed as reasonable by the development community ($500 for a 2,000 square-foot house).

2. The inclusion of non-residential uses is a major departure from the current regulations, which apply only to residential developments. Furthermore, the nexus between park demand and retail and industrial uses is arguable. Additional research at the national and local level would be needed to establish a strong link between park demand and non-residential uses.

The Parks and Recreation Commission also reviewed this issue and recommended that a value of $60,000 per acre be used to calculate the fee in lieu amount. This equates to an
approximate fee of $1,150 per residential unit. The Commission further recommended that the dedication standard in the UDC be reduced to 5.0 acres per 1,000 population.

The Parks and Recreation Commission recommendation is more defensible from a rational standpoint. It is easier to defend a lower land value than a higher one. While it is a reasonable amount compared to other cities’ fees, it probably doesn’t come close to the actual amount needed per acre to acquire or develop park land.

Both Commissions felt it was important to assess some level of fee because the impacts of new residents on parks and recreation facilities are real and can be substantial. Neither Commission considered deleting the requirement altogether from the Code, nor a temporary suspension on the enforcement of the requirement as viable options.

Options

Courses of action for City Council to consider are outlined below and staff is seeking direction on which policy direction Council wishes to pursue.

1. **Amend UDC.** Modify the acreage dedication requirement by reducing it from 10.7 acres/1,000 population to 5.1 acres/1,000 population. The lower figure is used in the Parks and Recreation Master Plan to assess future park needs and approximates the average requirement of other cities in the metro area. This would result in the dedication requirement (and fee) being reduced by about half. This option would require an ordinance to amend the Code.

2. **Amend Fee Schedule.** Retain the acreage requirement, but establish a land value (per acre or square foot) to be used in the calculation of the fee in lieu. Establishing a land value could be accomplished by Council amending the Department’s fee schedule by resolution.

3. **Create An Impact Fee.** A per unit fee could be established. In essence this would be a park impact fee. The establishment of an impact fee requires careful analysis of costs incurred by the City in developing the park system over the years. Open space acquisition and trail development would complicate the task. A consultant with experience in developing legally defensible impact fees is recommended if this course of action is chosen. An ordinance repealing the current regulations and establishing the impact fee would be necessary.

4. **Amend UDC and Fee Schedule.** Modify the dedication requirement and establish a land value or fee. (Combine 1 and 2 above.) This would require both an ordinance and resolution.

5. **Establish Moratorium.** Temporarily suspend the enforcement of this requirement for new or previously approved developments that may be subject to the requirement. This action could be accomplished by Council resolution. This action does not permanently resolve the issue. Typically suspensions are found to be legally defensible if they are for a period of no more than 6 months, and are usually employed while
developing new regulations. In addition, a decision would need to be made about how the suspension is applied. For example, if a PUD is approved while the suspension is in place, and plating doesn't occur for another two years when the suspension is lifted, does the requirement apply?

6. **Consider Waiver Requests.** Allow applicants to request waivers to the dedication requirement on a case-by-case basis. This approach would be cumbersome and time consuming for projects not otherwise required to obtain Council approval. It also introduces a fairly high degree of financial uncertainty for an applicant who may be undertaking a rezoning or PUD approval process to wait until final approval to know if the fee will be waived or not.

7. **Require Appraisals or Use Assessor Data.** Do not change the code and base the fee in lieu of dedication on an appraisal of the property in question. This approach would add time to the review process for a project because a developer would want to know the appraised value prior to receiving approval. Alternatively, the fee could be based on the value of the land as determined by the Assessor's current appraised value. This could be accomplished by amending the Department’s fee schedule by resolution. However, both such values would be within the ranges of values used in the examples in Attachment A.

Ultimately, establishing an impact fee is probably the best course of action, but hiring a consultant to do the necessary research to create a defensible fee, obtaining stakeholder input and amending the UDC would take a **minimum** of 10 months.

A combination of options also could be considered, for example, establishing a land value and considering waiver requests.

Attachments:

Attachment A – Englewood Dedication Requirements
Attachment B – Examples of Applying the Dedication Requirement
Attachment C – Other Cities’ Approaches and Requirements
Attachment A
Englewood Dedication Requirements

The dedication requirements are set out in section 16-8-5-C as follows:

1. General Requirement. Within an area subject to these regulations, open spaces suitably located and of adequate size, as determined by the City Manager or designee, for public parks, playgrounds, and passive and active open spaces may be required to reduce the impact on neighboring facilities or if similar facilities do not exist in the area. Said spaces shall be dedicated for the common use of the public or be established by covenants or other conditions in deed or deeds for the use of the public.

2. Inclusion of Significant Features in Land Dedications. To the maximum extent feasible, outstanding natural and cultural features including but not limited to waterways and other bodies of water, significant stands of existing trees or vegetation, or historic or archeological resources, shall be included in land areas dedicated for public parks, trails, and open space and reserved for public use.

3. Land Dedication Amount Required. The owner or developer of land to which these provisions apply shall, at the option of the City, either:
   a. Convey to the City in fee simple not less than ten and seven-tenths (10.7) acres per thousand (1,000) population projected for the development of such land, as determined in accordance with the provisions of this subsection;
   b. Pay to the City the cash equivalent of the fair market value of the land otherwise required to be dedicated pursuant to this subsection; or
   c. Satisfy such combination of dedication and payment in lieu of dedication that, consistent with the provisions of this subsection, the City determines appropriate.

4. Applicable Population Density Standards. For purposes of determining park/open space land dedication requirements pursuant to this subsection, the projected population of the residential development subject to this Section shall be established by utilization of the following density factors:
   a. 2.15 persons per one-unit dwelling;
   b. 1.8 persons per multi-unit dwelling;
   c. 1.5 persons per unit within a development intended for, and qualifying as, "housing for older persons" pursuant to the Federal Fair Housing Act (42 U.S.C. Section 3607(b)(2), as amended). In the event that a development intended for "housing for older persons" fails to qualify for such status under the applicable provisions of the Fair Housing Act or pertinent regulations, or having achieved such status thereafter relinquishes or otherwise fails to maintain such status, additional land dedication or cash-in-lieu payment shall be required, based upon the appropriate density factor set forth in this subsection.
Attachment B
Examples of Applying the Dedication Requirement

The park dedication to be provided or the fee to be paid in lieu of dedication is calculated as follows:

\[ \text{Population} \times 10.7 \text{ acres/1,000 population} = \# \text{ acres of park land to be provided} \]

\[ \# \text{ of acres of park land to be provided} \times \text{value of land/acre} = \text{fee in lieu of dedication} \]

The key variables in the calculation are the acres to be provided per 1,000 populations and the value of land per acre. The fee has not been included in recent requests to update the fee schedule for land use applications. The issue comes up so infrequently that a land value to use in this calculation has not been established.

The origin of the 10.7 acres/1,000 population dedication standard used in the Code is not known. The Parks and Open Space Master Plan uses an average of approximately 5.1 acres/1,000 population to assess future needs based on an average standard of metro area cities. The amount of park land being provided at the time the Master Plan was adopted would equate to a standard of 5.5 acres/1,000 population (based on an estimated population of 32,154 – it has since declined to 30,255).

There is a wide variation in the value of land in the City. A “typical” residential lot of 6,250 square feet has an appraised value (according to the Assessor) of $40,000. That equates to a per-acre value of approximately $280,000. Assessor’s records show one example of industrial land to be appraised at $370,300 per acre.

The following examples are provided to illustrate the impact of this dedication requirement on three hypothetical projects.

**Example 1:**

- Project site: 10 acres
- Dwelling Units: 300 Multi-Unit
- Density: 30 unit/acre (well within MU-R-3-B limits)

Population = 300 x 1.8 = 540
540 x 10.7 acres/1,000 = 5.778 acres to be dedicated
Fee = 5.778 x $280,000/acre = $1.6 million OR 5.778 x $370,300/acre = $2.1 million

The developer is faced with dedicating nearly 60% of the development site or paying the City between $1.6 and $2.1 million in fee in-lieu. This is a cost of $5,333 to $7,000 per unit.
Example 2:

Project Site: 24,000 s.f.
Dwelling Units: 8
Density: 14.5 units/acre (allowed under R-2-B zoning)

Population = 8 x 1.8 = 14.4
14.4 x 10.7 acres/1,000 = .154 acre
Fee = .154 x $280,000/acre = $43,100 OR .154 x $370,300/acre = $57,000

The developer is faced with dedicating 6,700 square feet (and losing the ability to build 2 units) or paying the City between $43,100 and $57,000 in fee in lieu. The per unit cost is as noted in the example above.

Example 3:

A simple two lot subdivision with two single family homes would require the dedication of .047 acre of land, or a fee of between $13,200 and $17,400. This is a per unit cost of $6,600 to $8,700.
The Planning and Zoning Commission requested that staff research the approaches taken by other communities in the region. Attached is a table summarizing the results of that research. It should be noted that in instances where a city requires an appraisal to be completed, we requested land values or per unit fee for a recent payment. In some instances, the recent example was dated by a few years.

Cities have varying approaches and requirements and there is not a lot of standardization. Dedication requirements, land values and fees vary widely.

Of the cities contacted, nearly every one has a dedication requirement and nearly every one has an option for payment of a fee in lieu of dedication. About half the jurisdictions contacted applied a dedication standard to non-residential developments. There is a wide range in dedication requirements and a wide range in the land values and per unit fees that are assessed. Some cities require a park development fee in addition to the dedication of land or in-lieu payment.

Dedication standards range from 4.1 acres/1,000 population (in Aurora for an infill project) to 12.0 acres/1,000 population in Westminster. Lakewood has exempted the entire city from the regional park dedication requirement. Longmont does not have a dedication standard. They identify sites in their comprehensive planning process and purchase the sites. Standards based on a percentage of land proposed for development range from 3% to 15% in residential projects and from 3% to 12% in non-residential projects.

Land values established by resolution or ordinance used in calculating fees in lieu of dedication range from $40,000 to $87,120 per acre. This value increases to $130,680 per acre for non-residential projects. Values established by appraisals range from $194,000 to $370,260 per acre. Per unit fees range from $700 to $4,650.

Park development fees range from $1,384 to $1,547 for single family units, depending upon the type of unit. Multi-family per unit fees range from $1,031 to $1,162. Longmont assesses a park development fee of $5,105 for all units.

This information is summarized in the following Table.
# PARK DEDICATION STANDARDS

## AND

## FEES IN LIEU OF DEDICATION

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Dedication Standard</th>
<th>Fee in Lieu Amount or Impact Fee</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arvada</td>
<td>10.0 ac/1,000 pop.</td>
<td>Land value is determined by appraisal. Additional park development fee: SF $1,383.82/unit; MF $1,162.41/unit</td>
<td>Land values vary widely, resulting in per unit fees ranging from $2,300 - $4,650 for SF; $2,100 - $4,200 MF (Based on 2-year old data.)</td>
</tr>
<tr>
<td>Aurora</td>
<td>3.0 ac/1,000 pop. neighborhood parks 1.1 ac/1,000 pop. community parks 7.8 ac/1,000 pop. open space, other parks &amp; trails (infill development exempt)</td>
<td>Land value based on fair market value determined by appraisal. Additional park development fee: $108,400/ac neighborhood park; $86,300/ac community park</td>
<td>Developer required to provide land and fees for development. Land value has ranged from $194,000/ac to $255,000/ac for infill development (Figures are prior to economic downturn)</td>
</tr>
<tr>
<td>Centennial</td>
<td>6.0 ac/1,000 pop. (Does not apply to replacement units.)</td>
<td>Fee is based on land value of $40,000/ac</td>
<td>Developer may challenge value. Credit given for certain private improvements up to 35% of the required dedication. Parks are provided by districts, not the City.</td>
</tr>
<tr>
<td>Commerce City</td>
<td>3% of usable land in res and non-res developments for parks and open space</td>
<td>Park fee in lieu is calculated: $45,364/12,000 x .09 x sf of usable land in res $45,364/12,000 x .05 x sf of usable land in non-res</td>
<td>Fee in lieu is based on land market value of $45,364/ac. (Fee would equal $2,041 for a 6,000 sf lot.)</td>
</tr>
<tr>
<td>Englewood</td>
<td>10.7 ac/1,000 pop.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Golden</td>
<td>5% of land area</td>
<td>Land value is based on purchase price of property</td>
<td>No recent experience in collecting fee in lieu</td>
</tr>
<tr>
<td>Greenwood Village</td>
<td></td>
<td></td>
<td>Staff indicated they had moved away from fees in lieu. A follow-up report was not received.</td>
</tr>
<tr>
<td>Jurisdiction</td>
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<td>Comments</td>
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<td>--------------</td>
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</tr>
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</table>
| Lafayette    | 12% of land in residential project  
6% of land in commercial project | $2.00/sf of land to be dedicated | Fee equals $87,120/ac. Don't accept any dedications of less than 3 acres. |
| Lakewood     | 10.5 ac/1,000 pop. total  
5.0 ac/1,000 pop. regional  
3.0 ac/1,000 pop. community  
2.5 ac/1,000 neighborhood | Fair market value as agreed upon by developer and staff or appraisal if no agreement is reached. | Fee shall not exceed $700 per unit. Entire City exempted from regional park dedication requirement. |
| Littleton    |                     | Fair market value determined by 2 appraisals |  |
| Longmont     | None – City buys all land it develops for parks based on locations recommended in Comprehensive Plan | Park Improvement Fee: $5,105/unit | $28,000/ac is used to calculate acquisition cost |
| Louisville  | 15% of land in residential project; 12% of land in non-residential project | Land value is determined by appraisal | A project in 2009 paid $8.50/sf of land (medium density residential project) or $370,260/ac |
| Lone Tree    | 5.0 ac/1,000 pop (Local park standard only) | Acreage required x $75,000/ac for residential  
$75,000/ac for non-residential | The only residential development occurring is in RidgeGate where this dedication standard applies. Credit is given for private amenities provided. |
| Northglenn   | Not Provided | 10% of fair market value after zoning | In practice they don’t assess any fees in lieu of dedication |
| Thornton     | 10 ac/1,000 pop. for residential  
8% of land for non-residential | $1.50/sf residential  
$3.00/sf non-residential | Fees are applied to the square footage of land to be dedicated. ($65,340/ac for residential; $130,680/ac for non-residential) |
| Westminster  | 12.0 ac/1,000 pop. | Land value is based on fair market value determined by appraisal  
Additional park development | Recent land value on a fee in lieu of dedication was $154,194 per acre, resulting in a fee of $5,551 per unit. |
<table>
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<tbody>
<tr>
<td>Westminster, cont.</td>
<td></td>
<td>fee: SFA $1,547/unit; SFD $1,256/unit; MF $1,031/unit; Assisted Living $358/bed</td>
<td>Recently had a project where fee of ±$600,000 was waived</td>
</tr>
<tr>
<td>Wheat Ridge</td>
<td>.016 ac/unit</td>
<td>Land value is the assessed value from Assessor</td>
<td></td>
</tr>
</tbody>
</table>
MEMORANDUM

TO: Gary Sears, City Manager
FROM: Katie Fowler, Recording Secretary, Parks and Recreation Commission
DATE: February 16, 2012
RE: Recommendation regarding Park Land Dedication Requirement.

At the February 9, 2012 Parks and Recreation Commission meeting, Community Development Director Alan White presented an update on the Park Land Dedication Standard and Fee-in-Lieu. After discussion, the Board made the following recommendation to City Council:

A motion was made by Commission Member Waldman and seconded by Commission Member Miller to accept the recommendation from Community Development for interim action regarding Park and Land Dedication requiring a Fee-in-Lieu of Estimated Land Value of $60,000 per acre based on the required 5 acres per 1,000 population.

Ayes: Gomes, Waldman, Miller, McCaslin, Garrett

Nayes: None

The motion carried.

kdf/MB

CC: Jerrell Black, Director of Park and Recreation
    Mike Flaherty, Deputy City Manager
    Dan Brotzman, City Attorney
    Alan White, Director of Community Development