

**LYONS BOT WILL MEET FOR A WORKSHOP AT 6:30 PM, MONDAY, JUNE , 2010 @ THE LYONS TOWN HALL PRIOR TO THE
REGULARLY SCHEDULED MEETING – THE PUBLIC IS WELCOME TO COME BUT NO PUBLIC COMMENT WILL BE TAKEN AT THE
WORKSHOPS**

TOWN OF LYONS
7:30 P.M., MONDAY, JUNE 7, 2010
BOARD OF TRUSTEES MEETING
SHIRLEY F. JOHNSON COUNCIL CHAMBER
LYONS TOWN HALL, 432 5TH AVENUE, LYONS, COLORADO

I. Roll Call and Pledge of Allegiance

Roll Call.

Present: Mayor Julie Van Domelen, Trustee Lavern Johnson, Trustee Sandy Banta, Trustee Ed Bruder, Trustee Kirk Udovich,
Trustee Kathy Carroll, Trustee Kathy Jacobson.

II. Recognition of our Citizens in the Armed Forces – Mayor Van Domelen asked for a moment of silence for those serving in
the Armed Forces.

III. Sgt Kevin Parker, Lyons Substation Supervisor, Report


Sgt Parker stated there were several water rescues over the weekend in the river. We are watching the river; it has been
running at 1,200 cfs but should subside over the next 48 hours. The quick increase in temperatures during the day cause the
river to peak between 1 and 2 am.

As long as we don't get a thunder head that would feed into the drainages everything should be fine. Sheriff Pelle has issued a
tube ban for the St Vrain Rivers, kayaks and water canoes are exempt. Signs will be posted at Bohn and Meadow Parks. I have
been working closely with Parks Director Cosgrove concerning the Lyons Outdoor Games coming up this weekend.

Sgt Parker stated a search warrant was executed on Indian Lookout Road due to an extensive marijuana grow. The owners did
not know about the operation. The product was gone by the time the Sheriff's Dept got there; the homeowner will be left to
clean up.

Sgt Parker stated a deputy made a contact with a vehicle with an unregistered driver. The driver stated he was a supplier for a
Lyons marijuana shop and was delivering to a patient in Denver. The driver was informed 2.5 lbs of marijuana was outside the
amendment/regulations and was issued a summons for possession.

IV. Audience Business –All comments will be limited to 4 minutes per person

1.  Pat Ward, Park Drive – stated I have a question concerning the Monday May 3rd BOT meeting concerning the Venus de
Miles Bike Race, (this portion of the minutes were written by Pat Ward and he asked that they be put in the way he wrote
them) the Venus de Miles Bike run will be using High Street and the Grade School and be there no earlier than 9 am according
to Ms. Laubscher, and will have no more than, 2,500 bike riders. She also stated according to the minutes of this meeting we
should not impact the roads in tow. She also states single file riding is encouraged. Let's see if 2,500 riders leave every 15
seconds in single file $2500 \times 15 = 37,500$ seconds or 625 minutes or 10.42 hours. She also states she will be out by 12:30 pm.
She also states since the churches may be impacted they will be notified and the bikers will walk through the church areas. The
Old Stone Church has not been notified and if 2500 cycle riders are to walk, carrying their bikes down the Grade School hill to
the middle of High Street how is this NOT going to affect my congregation arriving between 9:00 am and 10:00 am on every
Sunday and exiting between 10:45 to noon? This is a question I asked before and it is still not answered the question of law
enforcement was being answered by Sgt Parker when he was interrupted by Mayor Van Domelen shouting "Point of Order."
This is not in the minutes of the meeting, by the way. I did not hear his closing comments therefore. The best thing Lyons has
done concerning our police protection is hiring professional law enforcement officers from the Boulder County Sheriff's
Department and I consider it an insult to him and myself and the audience to interrupt him. Who censors the BOT minutes by
the way? Why was Point of Order not included? This same insult would have been headline material in the newspapers along
the small towns on the Front Range, but not in Lyons Official Newspaper! This along with the laws concerning cycle riders and

how they have more rights than pedestrians was not mentioned in the minutes as well. This is being handled the same way as the Lyons Comp Plan. if you do not have a computer or attend every meeting of the PCDC you simply do not know what it is. I had to borrow a copy of "The Plan" and copy it at my own expense to obtain the sometimes ridiculous aspects of the document. My questions are: 1) How can this possibly not negatively affect my congregations' parking and mobility to the Old Stone Church? 2) Why are there not more venue of information for the Lyons Citizens? 3) Who censors the minutes of the BOT meetings? Respectfully submitted for the minutes of the June 7, BOT Meeting.

Mayor Van Domelen I did not say point of order, I am the time keeper and know when 4 minutes is up, if I was rude I apologize and if Sgt Parker wants to add to add comments he can do so now. Sgt Parker stated he did not have anything else to add unless Mr. Ward had specific questions. Town Administrator Simonsen stated the town would follow up to make sure the churches were being contacted. Town Clerk Anthony stated the minutes are a summary of the meeting, it would take too long to write the minute's verbatim but any time you want specifically word for word what you stated if you give me a copy I will put it in the minutes.

2. Debi Stevenson – Main Street – Ms. Stevenson expressed her concerns about the faded stop sign as you come out of the Oscar Blues parking lot onto Main Street and the need for a directional sign so people understand it is a one way highway. Ms. Stevenson stated this is more of a concern now with the improvements to Main Street that make the street smaller, you have to be more aware of the cyclists. Ms. Stevenson also asked the town to ask the construction workers to pick up their cigarette butts off the street.

3. Michelle Swenn, Lyons Resident questioned why the town is not charging for parking at Bohn Park, if the town has a job description for the Park Hosts and what the compensation is. Ms. Swenn also asked that a park capacity study completed for number of cars and people.

Town Administrator Simonsen stated the function of Bohn Park fall under Parks and Recreation and Parks Director Cosgrove supervises the parks and its employees. We do have a job description for the park host and the Bohn Park Host is compensated at approximately \$500 per month. Sgt Parker stated he was not aware of any numbers for capacity at the parks but the Parks Dept does require large groups to pay a fee to reserve shelters/space. Town Administrator Simonsen stated the towns engineering staff is working on a parking plan now, they will determine what system to use and what to charge, this is not a budgeted expense for 2010. Ms. Swenn stated over the Memorial weekend it did not appear Bohn Park was being monitored, if it is not monitored for capacity the park is going to be damaged. Mayor Van Domelen stated she would follow up with the Town Administrator and the Parks Director.

Motion: Trustee Kirk Udovich moved to close the Board of Trustees Meeting and open as the Liquor Authority

Action: Approve, **Moved by** Trustee Kirk Udovich, **Seconded by** Trustee Lavern Johnson.


Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 7).

Yes: Mayor Julie Van Domelen, Trustee Lavern Johnson, Trustee Sandy Banta, Trustee Ed Bruder, Trustee Kirk Udovich, Trustee Kathy Carroll, Trustee Kathy Jacobson.

V. Liquor Authority

1. Special Events Permit – Colorado Brewer's Guild – June 26, 2010 – Sandstone Park

Deputy Clerk Watson stated the application was submitted May 19th and posted May 20th. Approval is contingent on not

receiving any objections, the town has not received any objections.  Nick Lensing and Anita Gray are here to answer any questions. Mr. Lensing is the event manager. Mr. Lensing explained this is a fund raiser for the brewers, there also will be a band and dunk tank; it will be a fun day and will add to the Good Old Days. All proceeds will go to the Colorado Brewer's. Parks will be charging rent for the space. Deputy Clerk Watson stated the entire area would be closed off with orange fencing; Boulder County Sheriff's Dept has been contacted for security. Discussion included nonprofit organizations, time frame for the event, site plan, attendance expected (300 – 500) and security.

Mayor Van Domelen opened the Public Hearing at 8:17 pm

John OBrien, Cobblestone Ct, stated he was speaking on behalf of the Chamber of Commerce and this was the first time he had heard of this event. The Chamber has been running the beer tent exclusively for a number of years, the proceeds benefits local scholarships. Mr. OBrien stated he violently objects as the Chamber understood they were to be the only beer sales for the weekend.

2. Lavern Johnson (stepped down as Trustee and approached the BOT as a member of the public) Ms. Johnson stated she questions the Colorado Brewers Guild's nonprofit status, do they have a 5013C? Ms. Johnson stated she understands Mr. Obrien's point of view in the matter. Deputy Watson stated this is a separate event from the Chamber's Beer Tent, in order to enter the Colorado Brewer's Guild you must pay a \$35 fee per person, no one under 21 is allowed, the event will only be for 3 hours, this is very different from a Beer Tent. Deputy Watson stated this is not an event for the general public, they are nonprofit and Oscar Blues is hosting the event. Trustee Carroll stated even if there is implied beer exclusivity for the Chamber it seems this will have the effect to draw more people to town. Mayor Van Domelen asked if this had been discussed with the Good Old Days organizing committee. Deputy Clerk Watson stated she has been working independently for the festive atmosphere of Good Old Days. Deputy Watson stated staff recommends approval of the Special Events Permit.

Motion: Trustee Kirk Udovich moved to approve the Colorado Brewers Guilds Special Events Permit

Action: Approve, **Moved by** Trustee Kirk Udovich, **Seconded by** Trustee Kathy Carroll.

Trustee Johnson stated she guesses the extra people would be good but she understands Mr. Obrien's comments , I don't think will people will pay the \$35 if they just want to sit and listen to the music.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 7).

Yes: Mayor Julie Van Domelen, Trustee Lavern Johnson, Trustee Sandy Banta, Trustee Ed Bruder, Trustee Kirk Udovich, Trustee Kathy Carroll, Trustee Kathy Jacobson.

Mayor Van Domelen stated the Special Events Permit passes with concerns duly noted.

2. Modification of Premise and Trade Name Change – La Mariposa

Deputy Clerk Watson stated after checking with the State Mr. Cervantes does not need a name change since he is only adding Margarita House to the name. The modification of premise before you does not require a public hearing this is just to inform you of the changes that will be made.

Rene Cervantes was present to answer any questions. BOT members asked about the entrance and exit changes and signs.

Mayor Van Domelen asked if there was anyone in the public who wished to speak. No one present wished to speak.

Motion: Trustee Jacobson moved to approve the modification of premise.

Action: Approve, **Moved by** Trustee Kathy Jacobson, **Seconded by** Trustee Kathy Carroll.

Trustee Kirk Udovich stated this is another example of what is going on in Lyons we are making things look better it is great.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 7).

Yes: Mayor Julie Van Domelen, Trustee Lavern Johnson, Trustee Sandy Banta, Trustee Ed Bruder, Trustee Kirk Udovich, Trustee Kathy Carroll, Trustee Kathy Jacobson.

Motion: Trustee Kathy Carroll moved to close as the Liquor Authority and open as the Board of Trustees.

Action: Approve, **Moved by** Trustee Kathy Carroll, **Seconded by** Trustee Sandy Banta.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 7).

Yes: Mayor Julie Van Domelen, Trustee Lavern Johnson, Trustee Sandy Banta, Trustee Ed Bruder, Trustee Kirk Udovich, Trustee Kathy Carroll, Trustee Kathy Jacobson.

Town Clerk Anthony stated item #3 was pulled from the Agenda as the presenters are not ready to come before the BOT yet.

VI. General Business

1. James Morton – request to have the BOT hold money from the Lawson Construction

Town Administrator Simonsen stated Mr. Morton has been before the BOT twice before asking the BOT to withhold 10% from the payment to Lawson Construction due to lack of resolution with the insurance claim between Mr. Morton and Lawson. The claim was filed by Mr. Morton last October. Town Administrator Simonsen stated as part of the original contract we have retained 10% per payment for the project plus two separate 10% holdings per the request of Mr. Morton and approved by the BOT. Mr. Morton is asking that the BOT retain an additional amount for a total of \$67,000. Mayor Van Domelen stated the payment coming up looks to be the last of the payments to Lawson. Town Administrator Simonsen stated it would be the last big payment, what is left would be the retainage after Lawson completes the punch list. Discussion concerning the finance charge Lawson is charging the town for holding more than the normal 10% retainage, the fact that we are coming to the end of

the contract and the town is going to have to pay the remainder or be in default of the contract with Lawson and Mr. Morton's loss.

James Morton, owner 400 Main Street stated he appreciates the BOT's time. Mr. Morton stated the initial claim of 80,000 has been turned into Lawson's insurance, this does not include potential damage to the structure. Mr. Morton stated Lawson's insurer has given me the run around, this is the normal for insurance agencies, I have tried to keep the town up to date. Lawson's insurance company Zurick did offer \$39,000 that does not cover all my losses. Every time talk I to them they say I need to talk to someone else, I will get back with you and they never get back with me it is a stall tactic, there is a limit of time in the statutes. Mr. Morton explained the insurance company did not think they should pay the price for new since the sheet rock, carpet, etc was not new in the basement, they offered a percentage, I just want the basement back the way it was so it can be used, I also still have the expense of storing containers for the things that were in the basement and forget restoring the damage to the antiques that were in the basement. Mr. Morton explained his insurance would have covered the losses if the water damage had been from a broken water/sewer pipe but not from outside water. Mr. Morton stated I think I am reasonable and I think the town should stand behind me. Mr. Morton also requested the BOT to have the Mayor send a letter to Lawson in support of my claim. Mr. Morton stated I think they are stalling in hopes I will go away. Town Attorney Cox stated there is nothing in the contract between the town and Lawson that authorizes any other steps than the ones the BOT has already taken. Discussion about how much Mr. Morton would take if offered. Mr. Morton stated he would take \$67,000. The BOT asked Mr. Morton if there had ever been water in the basement before, Mr. Morton stated not from an outside source. Town Administrator Simonsen stated Laswon has charged the town approximately \$1,500 in interest for the money held. Discussion concerning the time frame, if not settled in the next two weeks the town will be out of it and Mr. Morton will be taking the case to court. Mayor Van Domelen also stated if the town does not finish dispensing the payments by a certain date the town could get in trouble for not paying and the end result would be other grants would be held up, we also need to look at what it will do to the town if we continue to withhold. Mr. Morton stated I could close the doors on my business and go home and relax, it is not right that Lawson can ram rod you. Mayor Van Domelen stated we have been on your side but we also need to do our fiduciary duties for the town. Trustee Banta stated she wanted the funds withheld until they settled with Mr. Morton.



Trustee Bruder asked Mr. Morton if he was comfortable with the amount the town has already withheld. Mr. Morton stated I would like to see the town hold more and I need to know the town is behind me. Discussion concerning the number of sq feet, cost to replace, and putting back to brand new without the wear and tear. Mayor Van Domelen asked for a motion.



Motion: Trustee Kirk Udovich moved to continue holding the amount that has already been held for Mr. Morton in addition \$67,000 retainage per the contract for the next two weeks assuming the town does not run into any deadlines for making payments in order to receive the AARA funding. Pending confirmation from staff for the funding and our completion date.

Action: Approve, **Moved by** Trustee Kirk Udovich, **Seconded by** Trustee Lavern Johnson.

Trustee Jacobson asked if a letter from the town could be sent. Mayor Van Domelen stated a letter could be sent. Trustee Banta stated she was be in favor of holding an additional %10 for Mr. Morton.

Trustee Lavern Johnson withdrew her second.

Trustee Bruder seconded the motion.

Trustee Kathy Carroll stated I agree with Trustee Banta.

Vote: Motion failed (summary: Yes = 3, No = 4, Abstain = 0).

Yes: Mayor Julie Van Domelen, Trustee Ed Bruder, Trustee Kirk Udovich.

No: Trustee Kathy Carroll, Trustee Kathy Jacobson, Trustee Lavern Johnson, Trustee Sandy Banta.

Motion: Trustee Kathy Carroll moved to withhold additional money up to a total of \$67,000 to encourage Lawson for two weeks providing it does not jeopardize the AARA Funding, **Action:** Approve, **Moved by** Trustee Kathy Carroll, **Seconded by** Trustee Kathy Jacobson.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 7).

Yes: Mayor Julie Van Domelen, Trustee Ed Bruder, Trustee Kathy Carroll, Trustee Kathy Jacobson, Trustee Kirk Udovich, Trustee Lavern Johnson, Trustee Sandy Banta.

2. Lyons Ditch – Stephen Grant – approval to lease shares of CBT water from Town of Lyons

Town Clerk Anthony stated the BOT approves the lease of 10 CBT shares to the Lyons Ditch every year. The town is the main share holder of the Lyons Ditch. Those who have ditch rights can use the ditch water to water their lawns. Staff recommends approval. Mayor Van Domelen asked the about the status of the ditch repairs. Town Administrator Simonsen stated JLB Engineering is working on the plan and intend to finish the repairs this year. The Lyons Ditch needs BOT approval to lease the shares.

Trustee Banta and Johnson recused themselves as they are members of the Lyons Ditch.

Motion: Trustee Ed Bruder moved to approve leasing 10 CBT shares of water to the Lyons Ditch

Action: Approve, **Moved by** Trustee Ed Bruder, **Seconded by** Trustee Kirk Udovich.

Vote: Motion passed (**summary:** Yes = 5, No = 0, Abstain = 2).


Yes: Mayor Julie Van Domelen, Trustee Ed Bruder, Trustee Kirk Udovich, Trustee Kathy Carroll, Trustee Kathy Jacobson.

Abstain: Trustee Lavern Johnson, Trustee Sandy Banta.

THIS REQUEST TAKEN OFF THE AGENDA PER ARN HAYDEN & SCOTT SHIPLEY

3. Request for Town of Lyons to act as fiscal agent for a grant to study improving multiple diversion dams in and around Town to allow for fish and kayak passage – Arn Hayden & Scott Shipley

4. Summary and discussion of House Bill 1284 –Town Attorney Cox stated this summary and discussion tonight is to identify the next steps for the Town of Lyons. The intent is to inform the BOT and the public of the bill, the BOT will set a schedule tonight

but will not be making any decisions.  Town Attorney Tim Cox asked the BOT if they had all received him memo addressing Medical Marijuana, the Governor did sign HB 1284 and Senate Bill 109 today. The passage of these bills does directly affect what can be done at the local level, we now need the State to react, it is structured basically like the liquor licensing is now, all licensees would have to have a state and local license, the state requires the processes to be put in place and has several bench marks between not and the summer of 2012, local government is expected to do the same. As you know, the Board of Trustees directed staff to prepare a draft ordinance establishing zoning standards for medical marijuana dispensaries in the Town of Lyons, for review by the Planning and Community Development Commission. More recently, staff was alerted that any new ordinance should also include certain operational restrictions, perhaps in the form of a specialized licensing process. Although the temporary moratorium on medical marijuana businesses adopted by the BOT was not directly tied to new legislative developments at the state level, in recent weeks it has become clear that the General Assembly would be approving comprehensive medical marijuana legislation before the end of the current session. Indeed, that legislation, HB 1284, passed last week and awaits action by the Governor, who has said he will sign it. As a result, we have been refraining from finalizing a draft ordinance pending review of the new state law, knowing that HB 1284 would likely result in some revisions, additions and deletions in the ordinance. A preliminary review of the bill is now complete, and the purpose of this memorandum is to summarize the legislation and consider its possible impact on Lyons. This memorandum also includes a refresher on the key provisions of Amendment 20, the Constitutional amendment approved in 2000, and a brief summary of another medical marijuana measure passed earlier this year, Senate Bill 109.

SUMMARY - The newly enacted legislation, if signed as expected by the Governor, significantly changes the legal landscape for towns like Lyons. Because the law includes a comprehensive two-tiered licensing system, which will apparently require the establishment of a Lyons medical marijuana licensing authority, and because of the aggressive deadlines contained in the law, it is advisable for the Board of Trustees to consider a further extension of the current moratorium. While we could proceed with the planned zoning amendments and probably get them in place before the current moratorium ends, it appears that the new legislative requirements cannot be met within the time remaining on the moratorium. A more detailed recommendation can be found at the end of this memorandum.

DISCUSSION - This memorandum summarizes the relevant law the Town of Lyons must consider when deciding the appropriate local regulatory program for medical marijuana. The three major topics are the Existing State Laws (Amendment 20 and SB 109), House Bill 1284 and Municipal Zoning Powers.

Existing State Laws - Amendment 20 - Before we address the newly enacted statute, a brief review of the key provisions of Amendment 20 is in order. In 2000, the state voters approved Amendment 20, which is codified in the Colorado Constitution as Article XVIII, § 14. This Amendment recognizes a limited purpose for the “medical use” of marijuana to address the need by persons suffering from debilitating medical conditions. The Amendment recognizes that certain persons are entitled by the Colorado Constitution to an exception from the state’s criminal laws and an affirmative defense against prosecution for violation of the state’s criminal laws. The exception and the affirmative defense are conferred upon “patients” and “primary caregivers.” This term and phrase are defined as “**Patient**” means a person who has a debilitating medical condition, “**Primary care-giver**” means a person, other than the patient and the patient’s physician, who is eighteen years of age or older and has

significant responsibility for managing the well-being of a patient who has a debilitating medical condition. A Patient is authorized by Amendment 20 to possess and grow medical marijuana for the Patient's own use. A Patient is also authorized by Amendment 20 to identify a person to be the Patient's Primary Caregiver. This Caregiver is authorized to possess and cultivate medical marijuana for one or more Patients. The Colorado Court of Appeals has refined to some degree the meaning of the phrase "primary caregiver." A Primary Caregiver must "do more to manage the well-being of a patient who has a debilitating medical condition than merely supply marijuana. The act of supplying marijuana for medical use, by itself, [is] insufficient to constitute significant management responsibility for a patient's well-being, and consequently [is] insufficient to constitutionally qualify a person doing so as a primary care-giver."¹ Unfortunately, the Court of Appeals did not identify what else, in addition to selling marijuana, is necessary to make someone a primary care-giver. Amendment 20 did not specifically reference or provide a means or method by which Patients and Caregivers could obtain marijuana other than to recognize a limited amount of marijuana that can be lawfully possessed by a Patient or a Caregiver. In other words, there was no express authorization to create a business called a "dispensary," a "grow house," or other commercial operation for the production or distribution of medical marijuana. Notwithstanding the absence of a reference to a specific means or method to produce marijuana, Amendment 20 recognizes that a Patient or Caregiver can possess, produce, grow, or cultivate medical marijuana in limited quantities. A Patient and a Caregiver may possess the following quantities of medical marijuana, No more than 2 oz. of a usable form of marijuana; and No more than six (6) marijuana plants, with three (3) or fewer being mature, flowering plants that are producing a usable form of marijuana. Importantly, Amendment 20 does not define or address where or how a Patient or a Primary Caregiver may produce and cultivate the medical marijuana recognized as lawful by Amendment 20.² This is important and relevant as the PCDC and Board will consider possible zoning approaches to regulating the location and types of facilities for the production of medical marijuana.

In summary and as relevant to the BOT's potential regulation of medical marijuana, Amendment 20 provides Patients and Primary Caregivers have certain largely undefined constitutional rights to possess, use, and grow limited amounts of marijuana without being subject to prosecution for violation of state criminal laws, A Patient may cultivate up to 6 marijuana plants, presumably in the Patient's home, A Primary Caregiver can cultivate up to 6 marijuana plants for each Patient who designates the Caregiver as the Patient's Primary Caregiver, The location or site of a Primary Caregiver's marijuana cultivation is not identified by Amendment 20.

SB 109 - Earlier in this legislative session, another medical marijuana bill passed through the legislature without much fanfare. The bill, Senate Bill 109, attempts to prevent doctors from liberally doling out medical marijuana recommendations to any "patient" who requests one (and who pays the doctor's fee). Under SB 109, the state health agency may only issue a medical marijuana card to a patient if the patient has a "bona fide physician-patient relationship" with a doctor whose license to practice medicine is in good standing in Colorado. For purposes of the statute, "bona fide physician-patient relationship" means that the doctor, has completed a full assessment of the patient's medical history and current medical condition, including an appropriate physical exam; has consulted with the patient regarding the patient's debilitating medical condition before the patient applies for the registry card; and is available to or offers to provide follow-up care and treatment to determine the efficacy of the use of medical marijuana as a treatment of the patient's condition. SB 109 also prohibits physicians from receiving any compensation from any primary caregiver or other provider of medical marijuana, offering any discount or other thing of value to a patient who agrees to procure his/her medical marijuana from a particular caregiver or provider, performing evaluations of patients for possible medical marijuana use at a medical marijuana dispensary, and owning or holding an interest in any business that provides medical marijuana if the physician supplies recommendations to medical marijuana patients. **In summary, SB 109 addresses an important aspect of medical marijuana – the physician-patient relationship – but has little if any impact on local government regulation of medical marijuana businesses.**

House Bill 1284 - House Bill 1284 ("HB 1284") is the state legislature's proposed comprehensive regulatory program to address the issue of medical marijuana in Colorado. As of the date of this memorandum, HB 1284 has passed the House and Senate and is awaiting the Governor's signature. Considering the size of HB 1284 (78 pages), it would be impractical to seek to summarize for the Board,

the following is an outline of key provisions that may impact the Town's approach to medical marijuana regulation.

Generally – New State of Colorado Medical Marijuana Licensing Authority.

HB 1284 creates a new State Medical Marijuana Licensing Authority within the Department of Revenue.

The new State Medical Marijuana Licensing Authority will act in a similar fashion to the State Liquor Licensing Authority.

The State Medical Marijuana Licensing Authority is authorized to issue a state license for three types of operations discussed in more detail, Medical Marijuana Center ("MMC"), Medical Marijuana-Infused Products Manufacturer ("IPM"), "Optional Premises" a/k/a "Growing Facility" (for either a MMC or an IPM)

The State Medical Marijuana Licensing Authority is required to enact regulatory rules governing certain actions and operations of all persons engaging in the possession, use, and production of medical marijuana. These rules will require time to prepare and are not expected to be available until perhaps mid-2011.

The state regulations to be prepared by the State Medical Marijuana Licensing Authority will address, Forms for applications, Violations and enforcement of violations, Penalties for violations, Procedures for license issuance, renewals, reinstatements, fee payment, and revocation of licenses, State procedures for inspections, investigations, searches, etc., Product informational displays, Patient and Caregiver Registration Card programs, Fingerprint and criminal history background check processes, Security requirements for licensed facilities, Regulation of storage, warehouses, and transportation of medical marijuana, Sanitary requirements for licensed businesses, Labeling standards, Processes for reporting and transmitting monthly sales tax payments, Any other matters necessary for the fair and stringent administration.

Generally – Local Medical Marijuana Licensing Authority.

HB 1284 authorizes cities, towns and counties to create a “local” medical marijuana licensing authority.” This local medical marijuana licensing authority would act in a similar fashion to the Lyons Liquor Licensing Authority.

The local medical marijuana licensing authority is authorized to issue a local license for three types of operations discussed in this Memorandum in more detail, Medical Marijuana Center (“MMC”), Medical Marijuana-Infused Products Manufacturer (“IPM”), “Optional Premises” a/k/a “Growing Facility” (for either a MMC or an IPM)

A municipal local medical marijuana licensing authority is required to enact an ordinance with “specific standards” for license issuance before July 1, 2011 (if none enacted, must consider statutory items identified in HB 1284 when issuing a license). The standards must, at a minimum, include, Distance restrictions between licensed premises, Reasonable restrictions on the size of licensed premises, license applicant’s submission of interior business building specifications or, if not existing, a plot plan and detailed sketch with architect’s drawings, other requirements necessary to ensure the control of the licensed premises and ease of enforcement.

The local medical marijuana licensing authority may, create forms for administration, set application and processing fees, set licensing fees, require public hearings for licensing actions (HB 1284 provides for specific forms of notice if hearings are to be conducted), perform background checks and determine the standard for “good cause” to deny a license, perform investigations on license applications, ensure compliance with local regulations before permitting licensed business operations.

HB 1284 recognizes that a municipality is not restricted by HB 1284 from regulating matters that are subjects of local concern. This would necessarily include virtually all matters of business licensing and business operations, taxation, hearing processes, and zoning and land use. The Board should understand that the Town may create a local medical marijuana licensing authority that is possessed with either more or less regulatory authority, control, and oversight than those matters identified in HB 1284. Such regulation must be enacted by ordinance.

Who can Lawfully Possess and Grow Marijuana under HB 1284?

HB 1284 recognizes only five separate possible lawful producers and holders of medical marijuana, Patients, Primary Caregivers, Medical Marijuana Center (“MMC”), Medical Marijuana-Infused Products Manufacturer (“IPM”), “Optional Premises” a/k/a “Growing Facility” (for either a MMC or an IPM). Importantly, only the first two (Patients and Primary Caregivers) are recognized and protected by the Colorado Constitution. The last three (Centers, Growing Facilities, and Products Manufacturer) are newly created by HB 1284.

HB 1284 only requires state and local licensing on the following types of medical marijuana businesses: Medical Marijuana Center (“MMC”), Medical Marijuana-Infused Products Manufacturer (“IPM”), “Optional Premises” a/k/a “Growing Facility” (for either a MMC or an IPM).

Neither Patients nor Primary Caregivers are subject to any form of licensing by either the state or the local governments.

HB 1284 imposes fairly detailed requirements and standards on “who” may hold a license issued by the state or local licensing authorities. These requirements and standards generally include or consider: “Good moral character” review, No physician making Patient recommendations may hold a license, Minimum 21 years of age, Payment of taxes, bonds, student loans, child support, etc., Background check for state and federal criminal history requirements.

Both the State Medical Marijuana Licensing Authority and the local medical marijuana licensing authority may consider the state-enumerated character and qualifications of a licensee for a Medical Marijuana Center, Optional Premises, and Infused Products Manufacturer business.

How are Each of the Marijuana Producers Regulated by HB 1284?

Patients, Must register with state health agency in a confidential database, Must renew registration each year, Must have registry card in possession whenever possessing marijuana, Cannot use medical marijuana in plain view or public place, Cannot use medical marijuana in a jail, automobile, boat, plane, school bus, etc., Must designate whether the Patient will obtain medical marijuana by: Growing it themselves; or designating a specific Primary Caregiver to grow/provide it to them; or designate a specific Medical Marijuana Center from which the Patient will purchase their medical marijuana. Can lawfully have in their possession: 2 oz. of a Usable Form Marijuana, can grow 6 plants (3 or fewer being mature, flowering plants). If the Patient designates someone as the Patient’s Primary Caregiver: Patient can have only one Primary Caregiver; and Patient

cannot be a Primary Caregiver for another Patient. Where can a Patient Grow Medical Marijuana? Neither Amendment 20 nor HB 1284 specifies a place where a Patient may lawfully grow medical marijuana. However, it is implicit in Amendment 20 that the Patient could grow marijuana at the Patient's residence. Recall that a Patient is exempt from the marijuana possession laws and has an affirmative defense to prosecution wherever the Patient is in possession of the limited number of plants authorized by Amendment 20. As a result, this defense is available regardless of the Patient's location when in possession of medical marijuana.

Primary Caregivers: Must register with state health agency, Must pass a state conducted finger-print based criminal history record check and cannot have been convicted of any felony under the Colorado Uniform Controlled Substances Act of 1992 in the prior five (5) years, Must renew registration each year, Must have registry card in possession whenever possessing marijuana, Cannot delegate Caregiver responsibility to another person, Cannot engage others to assist in providing medical marijuana to a Patient, Cannot join together with another Caregiver to cultivate marijuana, Cannot charge a Patient more for medical marijuana than the "cost of cultivation;" however, a Caregiver may charge a Patient for other caregiver services, Must possess at all times a list of all Patients and Patients' registration numbers to prove status as a Caregiver to law enforcement. Can possess only 2 oz. of a Usable Form Marijuana for each Patient, 6 plants (3 or fewer being mature, flowering plants) for each Patient, Can have a maximum of only five (5) Patients. Therefore, could only possess a total of 10 oz. of Medical Marijuana. Therefore, could only grow a maximum of 30 plants.

Medical Marijuana Center: a Medical Marijuana Center is a business enterprise limited to selling medical marijuana and medical marijuana products to a Patient or a Primary Caregiver, Owner cannot be a Primary Caregiver, Owner must be a Colorado resident.

Note that this local option can be exercised at any time and a ban imposed can be repealed at any time by the Board. However, should the Board authorize any one or more of the medical marijuana businesses, and then subsequently decide to later ban one of more of those businesses, the businesses that were lawfully established before the Board's ban would continue to operate in the community as a nonconforming use. Also note that HB 1284 does not authorize a ban on the constitutionally recognized possession, use, and cultivation of marijuana by a "Patient" or a "Primary Caregiver." These two constitutionally recognized persons may exercise their right to the possession, use, and cultivation permitted by the Colorado Constitution and are not subject to a ban by a municipality pursuant to HB 1284.

Does HB 1284 Impact the Town's Moratorium on Medical Marijuana? HB 1284 is silent with regard to its impact or effect on *currently existing* moratoria enacted throughout the State of Colorado by local governments. In effect, local governments' existing moratoria remain valid and effective. Importantly, HB 1284 expressly authorizes local governments to extend their existing moratoria in order to coincide with the adoption of final rules by the State of Colorado: "[the State Marijuana Licensing Authority is authorized to] promulgate such rules and such special rulings and findings as necessary for the proper regulation and control of the cultivation, manufacture, distribution, and sale of medical marijuana and for the enforcement of this article. *A county, municipality, or city and county that has adopted a temporary moratorium regarding the subject matter of this article shall be specifically authorized to extend the moratorium until the effective date of the rules adopted by the Department of Revenue in accordance with this article.*" (emphasis added)

Such a moratorium extension is both reasonable and needed given the subject matter and program established by HB 1284. The state legislature recognizes that a local government is unable to promulgate effective regulations for medical marijuana without understanding the full regulatory landscape to be established by the Department of Revenue and the State Marijuana Licensing Authority. It is imperative that the local medical marijuana licensing program correspond with and consider the State licensing program scheme due to the bifurcated but intertwined state-local licensing scheme created by HB 1284. Unfortunately, a specific deadline for the adoption of rules by the State Medical Marijuana Licensing Authority is not yet set by HB 1284. There is, however, specific reference to the adoption of emergency rules by the State Medical Marijuana Licensing Authority and that the State Medical Marijuana Licensing Authority must conduct a public review hearing for such emergency rules by September 1, 2010. It is fair to surmise that the State Medical Marijuana Licensing Authority will act with some expediency in promulgating emergency rules and in finalizing those rules given the importance of the medical marijuana issue within the State of Colorado. Therefore, should the Board of Trustees desire to authorize Medical Marijuana Centers, Infused Products Manufacturing, and/or Optional Premises (as opposed to banning these uses), the Board should instruct Staff at its earliest convenience to commence the process of drafting local regulations for these new land uses.

Challenges to the Constitutionality of HB 1284 - Before we move on to a discussion of local zoning authority, a brief word is in order on the likelihood of a constitutional challenge to HB 1284. Most observers believe that medical marijuana advocates are already preparing an assault on the bill and intend to launch the attack as soon as the governor signs it. The likely theme of any such challenge is the notion that no legislatively adopted statute can supersede or override a constitutional provision directly approved by the voters. Some advocates have publicly commented that Amendment 20 establishes certain rights relating to the possession, use and sale/distribution of medical marijuana, and that the proposed licensing system, the operational restrictions, and the limit on the number of patients a caregiver may serve all infringe upon those constitutional rights. Notwithstanding the non-binding, preliminary determination made by a district court judge in the Centennial litigation, municipal attorneys are generally in agreement that Amendment 20 only addresses the caregiver-patient relationship and the

ability of each of them to avoid prosecution for marijuana possession under state law; i.e., Amendment 20 does not create a right to open a medical marijuana dispensary, grow operation, or manufacturing facility. Consequently, we expect that a court asked to rule upon any constitutional challenge would find that the legislature is within its authority to regulate the *business* of selling medical marijuana. Nevertheless, the most significant aspect of any such challenge for purposes of this memorandum is its impact on local government regulation. If a challenge is filed it will almost certainly include a request for preliminary injunction to prevent HB 1284 from taking effect pending the outcome of the lawsuit. Even if the court would ultimately uphold the legislation, it is entirely likely that the preliminary injunction would be granted to maintain the status quo while the matter is litigated. The injunction would probably preclude the Town from adopting any ordinances intended to conform to HB 1284, though we will not know for sure until and unless we see the precise language of any injunctive order.

Municipal Zoning Powers - Both Amendment 20 and HB 1284 provide scant direction regarding the exercise of the local zoning powers of a municipality to decide how, from a planning and land use perspective, the various types of medical marijuana business will be regulated. HB 1284 does expressly recognize that a local government reserves certain powers: Prior to July 1, 2011, a . . . municipality may adopt and enforce a resolution or ordinance licensing, regulating, or prohibiting the cultivation or sale of medical marijuana, A local licensing authority shall not issue a local license within a municipality . . . unless the governing body of the municipality . . . has adopted an ordinance . . . contain[ing] specific standards for license issuance, or if no such ordinance . . . is adopted prior to July 1, 2011, any local licensing authority shall consider the minimum licensing requirements of [HB 1284] when issuing a license, In addition to all other standards applicable to the issuance of licenses under this article, the local governing body may adopt additional standards for the issuance of [a] medical marijuana center, optional premises cultivation, or medical marijuana-infused products manufacturer licenses consistent with the intent of this article that may include, but need not be limited to: Distance restrictions between premises for which local licenses are issued, Reasonable restrictions on the size of an applicant's licensed premises; and Any other requirements necessary to ensure the control of the premises and the ease of enforcement of the terms and conditions of the license.

But perhaps most importantly, HB 1284 expressly recognizes that a municipality may be more stringent or restrictive than the provisions of HB 1284: "This article authorizes a . . . municipality . . . to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers licenses and to enact reasonable regulations or other restrictions applicable to medical marijuana centers, optional premises cultivation licenses, and medical marijuana-infused products manufacturers licenses based on local government zoning, health, safety, and public welfare laws for the distribution of medical marijuana that are more restrictive than this article." It is therefore clear that the Town possesses the authority to regulate *where* the business or commercial operations known as a Medical Marijuana Center, Optional Premises Cultivation, and Infused Products Manufacturing may be located. Moreover, the Town also possesses some authority to regulate from a zoning and land use perspective Primary Caregiver operations and, in particular, to regulate this use when its operations are equivalent to a business or commercial enterprise. It is readily recognized that Primary Caregivers can grow medical marijuana and provide care-giving to a spouse, relative, partner, or other Patient residing in the same residential home. However, a Primary Caregiver that grows marijuana and provides services for off-site Patients is a business or commercial enterprise. With the assistance and advice of the PCDC and Staff, the Board will need to consider the point at which a Primary Caregiver operation may constitute a business enterprise and be inconsistent with residential land use and character. As a result, it will be incumbent on the Board to decide, with advice and counsel of the PCDC and Staff, the appropriate locations for all business-related medical marijuana operations.


RECOMMENDATION – Town Attorney Cox recommended that the BOT consider extending the existing moratorium. That the BOT should direct Staff to prepare and place on the June agendas an ordinance extending the Town's current medical marijuana moratorium, for the following reasons: HB 1284 creates a dual licensing program between the new State Medical Marijuana Licensing Authority and a local medical marijuana licensing authority. Issuance of both a state and a local license is required to conduct a medical marijuana business in the Town of Lyons, Neither the state Department of Revenue nor the Town has created their respective medical marijuana licensing authorities that will consider and issue licenses, Neither the state Department of Revenue nor the Town has created their necessary regulatory programs for the issuance of new licenses for medical marijuana businesses, Absent state and local licensing authorities and regulations to govern the application, processing, and approval of licenses, the Town will not be able to process applications following the expiration of the current moratorium, HB 1284 expressly authorizes extensions of existing moratoria until such time that the Department of Revenue/Medical Marijuana Licensing Authority enacts a final regulatory program.

Create Regulatory Program for Patients and Primary Caregivers. Direct Staff and the PCDC to:


- a. Prepare an ordinance and program to address and to best regulate the lawful and limited growing of medical marijuana by Patients in residential homes to ensure compliance with Amendment 20 and HB 1284, protect residential property, and protect the character of residential communities.
- b. Prepare an ordinance and program to address and best regulate the lawful growing of medical marijuana by Primary Caregivers to ensure compliance with Amendment 20, protect residential properties, and protect the character of residential communities. Such program should consider, at a minimum: (i) limited *residential* growing operations for Primary Caregivers for those Patients residing in the same residential dwelling unit as the Patient's Primary Caregiver; and

- (2) authorizing the growing of medical marijuana by Primary Caregivers in accordance with HB 1284 in appropriate commercial, business, or industrially zoned areas subject to appropriate licensing and regulation.
- c. Monitor the ongoing preparation of regulations by the State Department of Revenue/Medical Marijuana Licensing Authority and advise the Board periodically of the progress and content of the proposed regulations.
- Prepare the necessary background information and studies to advise the Board on the impacts, benefits, and detriments of authorizing the following new land uses within the Town, Medical Marijuana Center ("MMC"), Medical Marijuana-Infused Products Manufacturer ("IPM"), "Optional Premises" a/k/a "Growing Facility" (for either a MMC or an IPM).
- Such background information should include input and advice from the Sheriff's Office, building inspector, finance director, and other departments and state and local agencies that may be involved in the ongoing regulation, supervision, and law enforcement associated with such new businesses.
- Possible Alternatives** - In addition to the recommended action, the Board can pursue a variety of different alternatives concerning the implementation of HB 1284 and either the integration or banning of medical marijuana in the Town. These alternatives may include:
- Directing Staff to immediately commence acceptance of applications for medical marijuana businesses and permit such businesses in a manner similar to other land uses, such as retail goods and products stores, medical offices with pharmacy, agriculture, and manufacturing.
 - Direct Staff to prepare an ordinance *banning* one or more of the medical marijuana businesses created by HB 1284 (Medical Marijuana Centers, Infused Products Manufacturing, and Optional Premises-Grow Operations) from the Town.
 - Direct Staff to prepare a regulatory program to allow greater *residential* growing operations by Primary Caregivers for up to five (5) Patients.
 - Reject any further consideration of medical marijuana issues (thereby leaving the field unregulated for the Town and potentially creating confusion regarding the appropriate processing of applications for new land uses).

Mayor Van Domelen stated we did not plan for a Public Hearing this was to be a chance for the BOT to ask questions and hear the implications for Lyons but there are several people present that I feel would like to speak. Mayor Van Domelen asked that

those speaking keep their questions to the new rulings.  Sam Hepner, 5th Ave and Dan Ballard, 5th Ave both asked questions about the requirement for

70 % of the marijuana to be grown in the businesses by September 1st, the minimum for operation, infused marijuana products, dispensaries, patients, caregivers and where to get the forms from DORA to comply with the new regulations. Town Attorney Cox stated 70% of what is sold by the center must be grown in the businesses own growing center, you could purchase up to 30% from another center. Town Attorney Cox stated it is not that easy since the regulations have not been completed yet.

 Mayor Van Domelen we need to mark these questions and get a better answer.

Mayor Van Domelen recommended a separate meeting with the Town Attorney to try to answer questions for everyone; we want to create that format for the businesses in town. Mr. Hepner reminded everyone the deadline of July 2011 was not that far away.

Discussion from the BOT included caregiver, patient, ability to regulate license or tax, is this a protected private activity, home base businesses (limited by cost), having workshops for the dispensaries in place in town (Town Attorney Cox stated CML will be holding classes), whether or not the public could force this to a vote (Town Attorney Cox stated yes if the BOT passes an ordinance or the BOT could put this to a vote), grow operations, license to be locally compliant, existing businesses, moratorium, 1,000 ft limit by state, zoning regulations for town, extending the moratorium, sales tax....

Mayor Van Domelen stated the request from staff is to extend the moratorium for a reasonable time frame to get zoning and supplemental business regulations in place. The BOT agreed there needs to be more time for discussion and to develop guidelines and regulations. Trustee Udovich suggested a workshop and Mayor Van Domelen added a community workshop would be advantageous also.

Decision by the BOT is to have a Public Meeting and Workshop for the BOT, then meet with the PCDC and come up with regulations that will fit the Town of Lyons.

5. Parking discussion and enforcement options.

This ordinance will take care of some of the parking problems between 3rd and 5th Ave and free up parking for people stopping in Lyons to dine or shop.

Debi Stevenson, Main Street stated she felt it should be 3 hour parking vs 2 hour because if you if you are dining and shopping 2 hours is not enough time. The other issue I have is I live on Main Street and I can't always park in the back due to her disability and asked the BOT to give her a sticker that would allow her to park in the front of her home without restrictions. The BOT gave staff direction to bring Ordinance 883 to them for first reading at the next BOT meeting.

526
527 Discussion concerning moving the recycle bins to the triangle across from the Fire Station or the yard for Public Works off 2nd
528 Ave. Moving the bins to the Public Works would free up parking at the Park and Ride. Discussion about using the asphalt
529 grindings on the triangle for close short term parking. Mayor Van Domelen stated these suggestions should stay on the radar
530 screen for the parking study for downtown. If we apply for a grant we could systematically look at the parking. Discussion was
531 that 2 hour parking limits would be the best and the town would need to educate the business owners and get them to park
532 and walk instead of parking in front.

533
534 VII. Staff Reports

535 Town Administrator Simonsen stated Main Street is substantially completed, Town Engineer Blankenship is working with
536 Lawson on some outstanding issues, the next step would be publishing for 30 days to for payments and because it is AARA
537 funds there will have to be an audit of the project.
538 Town Administrator Simonsen stated she is campaigning with Boulder County to try to get the Hwy 36/Stone
539 Canyon/McConnell project moved up on the list of priority projects. Discussion concerning signage, speed limits and
540 pedestrian traffic.
541 Town Administrator Simonsen stated per the direction of the BOT, Staff has looked at refinancing the Post Office and for the
542 amount of time left to pay it would not be work while.
543 Town Administrator Simonsen stated there is a path between 3rd Ave, 4th Ave and the Cemetery the owner of the property do
544 not want any vehicle traffic through their property. The town and homeowner will put up a chain gate, the town has been
545 maintaining the road and will not have to if gated. BOT agreed with the Staff that the road should be chained off.
546 Town Administrator Simonsen went over the increase in the employee health insurance and the option staff came up with to
547 keep the cost down and the benefits as close to what they had as could be. The BOT agreed this was the best option.

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549 VIII. Trustee Reports

550 Trustee Jacobson stated there would be a Library Open House Wednesday at 6:30 pm in the Board Room.
551 Trustee Carroll stated the Sustainable Commission did not get the Community Outreach Grant.
552 Trustee Udovich stated the PCDC did meet and worked on the Comp Plan Work Book and Implementation Plan that will be
553 coming to the BOT.
554 Trustee Johnson stated the Redstone Museum opens on Saturday and Square Dancing starts June 19th.
555 Mayor Van Domelen stated she attended a service in Boulder for 25 residents in Boulder County who were killed in combat on
556 Memorial Day among those were Mickey Hawkins who lived in Lyons.
557 Mayor Van Domelen stated she and Trustee Bruder went to the DRCOG meeting. Mayor Van Domelen stated the TIP schedule
558 and applicant process calls for projects in August and closes in October. Mayor Van Domelen stated she would like to put
559 together a task force to keep on top of the process and projects for the town.

560
561 IX. Consent Agenda

562 1. May 2010 Accounts Payable
563 2. May 17, 2010 BOT Meeting Minutes
564 3. First Reading – Ordinance 822 an Ordinance Amending Ordinance 519 Establishing the Model Traffic Control Schedule by
565 Expanding the Areas Subject to Two Hour Parking. First Reading
566 **Motion:** Trustee Kathy Carroll moved to approve the Consent Agenda
567 Mayor Van Domelen stated she would recuse here self from voting on the Consent Agenda due to a payment to her husbands
568 business in the accounts payable.
569 **Action:** Approve, **Moved by** Trustee Kathy Carroll, **Seconded by** Trustee Sandy Banta.
570 **Vote:** Motion passed (**summary:** Yes = 6, No = 0, Abstain = 1).
571 **Yes:** Trustee Lavern Johnson, Trustee Sandy Banta, Trustee Ed Bruder, Trustee Kirk Udovich, Trustee Kathy Carroll, Trustee
572 Kathy Jacobson.
573 **Abstain:** Mayor Julie Van Domelen.

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575 X. Items Removed from the Consent Agenda - no items were removed from the Consent Agenda

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577 XI. Adjournment - adjourned at 11pm
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579
580 Respectfully submitted by;
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Deb Anthony, CMC – Town Clerk

Mayor Julie Van Domelen

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