

BY AUTHORITY

ORDINANCE NO. 07
SERIES OF 2023

COUNCIL BILL NO. 03
INTRODUCED BY COUNCIL
MEMBER WINK

AN ORDINANCE AMENDING SECTIONS 1-4-1, 1-7-2, 7-6A-5, 7-6B-10, 7-6C-1, 7-6C-2, 7-6C-3, 7-6D-1, 7-6D-10, 7-6D-12 OF ENGLEWOOD MUNICIPAL CODE TO ENSURE COMPLIANCE WITH APPLICABLE LAW, CURRENT PRACTICES.

WHEREAS, the City of Englewood, as a home-rule city, has authority to enact ordinances on and regulate matters of both local and statewide concern when the ordinances and state statutes do not conflict; and

WHEREAS, many sections under Title 1, Title 6, and Title 7 of the Englewood Municipal Code are generally reflective of statutes under Title 18 “Criminal Code” of the Colorado Revised Statutes; and

WHEREAS, many statutes under Title 18 “Criminal Code” of the Colorado Revised Statutes have been amended by the state legislature and though case law, including reclassification of certain crimes as felonies or civil offenses that must be filed in state county court; and

WHEREAS, municipal courts do not have jurisdiction over felonies or civil offenses that must be filed in state county court; and

WHEREAS, various sections of Englewood Municipal Code should be amended to mirror revisions in state law, to provide language that is clear, succinct, and consistent, to remove offenses that can no longer be prosecuted in Englewood Municipal Court, and to reflect current and best practices.

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

Section 1. Amendment of Englewood Municipal Code

Title 1, Chapter 4, Section 1-4-1 of Englewood Municipal Code is hereby amended to read as follows (new provisions in *italics*, deleted provisions ~~struck through~~):

1-4-1: -General Penalty.

A. Fine; Imprisonment: *No person shall* ~~It shall be unlawful for any person to~~ violate, disobey, omit, neglect, refuse or fail to comply with or resist the enforcement of any provision of this Code or any secondary code adopted herein (*collectively “violation”*). Except as otherwise specifically provided for in this Code, the violations of any provisions of this Code or of any ~~secondary code adopted herein~~ shall be punished by a fine not exceeding two thousand six hundred and fifty dollars (\$2,650.00) or imprisonment for a term not exceeding three hundred sixty (360) days or by both such fine and imprisonment. The imposition of one (1) penalty shall not excuse any violation nor permit it to continue. Unless otherwise indicated, a separate offense

shall be deemed committed upon each day or portion thereof during or on which any violation of ~~any provision of this Code or any secondary code adopted herein~~ occurs or continues.

B. No Jail Sentence for Juveniles: No jail sentence shall be imposed upon persons under the age of eighteen (18) years.

C. Trial By Jury for Juveniles: No child under the age of eighteen (18) years shall be entitled to a trial by jury, ~~for a violation of a municipal ordinance for which imprisonment in jail is not a possible penalty~~; except that such a child is entitled to a trial by jury for any offense *classified as which would be a Class 1 misdemeanor under a State counterpart statute.*

D. Every person convicted of a ~~violation of any provision stated or adopted which is designated as a "traffic infraction" and for which a penalty is paid or payable at the "Traffic Violations Bureau"~~ shall be punished by a *fine* ~~penalty~~ not exceeding two thousand six hundred and fifty dollars (\$2,650.00), ~~but. There shall be no imprisonment for traffic infractions.~~

Section 2. Amendment of Englewood Municipal Code

Title 1, Chapter 7, Section 1-7-2 of Englewood Municipal Code is hereby amended to read as follows (new provisions in *italics*, deleted provisions ~~struck through~~):

1-7-2: -Jurisdiction, Power.

A. The Municipal Court shall have: original jurisdiction of all cases arising under *Englewood Municipal* ~~the Code of Ordinances of the City with full power to carry the same into effect to enforce~~ and to punish violations thereof ~~by the imposition of such fines and penalties as in such Code provided~~; it shall have all powers incident to a court of record, *including in relation to the attendance of witnesses, the punishment of contempt, issuance of warrants and enforcement of court orders of the court.* ~~The court's jurisdiction does not extend to felonies, civil infractions, or other matters over which Colorado municipal courts are prohibited by law from asserting jurisdiction.~~

B. Contempt

1. *Definition: Contempt means disobedience of a court order; conduct tending* ~~Definition: Misbehavior of any person in the presence of the court, or misbehavior so near thereto as to obstruct or interfere with the orderly administration of justice; misbehavior of any officer of the court in his official transactions and disobedience or resistance of any person or interference with any lawful process, order, rule, or command of the Englewood Municipal Court or any act or omission designated as contempt by this Code or the Colorado Municipal Court Rules of Procedure shall constitute contempt.~~

2. **C. In Presence of Court:** When contempt is committed in the presence of the Englewood Municipal Court, *the Judge presiding over the proceeding shall it may be punished summarily. In such a case, issue an order shall be made on the record or in writing reciting the facts constituting the contempt, adjudging the contemner guilty of contempt and prescribing the punishment therefor. including a description of the person's conduct, and findings that the conduct was so extreme that no warning was necessary or the conduct was repeated after the*

court's warning to desist and that the conduct is offensive to the authority and dignity of the court.

~~3D. Out of Presence of Court: When it appears to the court by a motion supported by affidavit establishes that a contempt was has been committed outside of the presence of the court, or if a person fails to appear in court after being ordered to return either in person or in writing, the court may ex parte order a citation to issue to the alleged offender person so charged to appear and show cause at a date, time, and place designated why the person should he/she shall not be punished for contempt of court therefor. However, in the case where a person fails to appear at a court hearing after being ordered to do so by a properly executed document, either the court sua sponte or on motion, may order such citation supported by a copy of the executed document requiring attendance in lieu of the affidavit. The order to appear and show cause, along with a copy of any motion, affidavit or other citation and a copy of the supporting documents, shall be served upon such person at least 21 days a reasonable time before the time designated.~~

a. If the person fails to appear at the time designated (or any continuance thereof), and the person was either properly served with the order and supporting documentation or the contempt arises out of the person's failure to appear in Court after being ordered to return either in person or in writing, a warrant for the person's arrest may issue. The warrant shall fix the date, time and place for the production of the person in court, and the amount and kind of bond required for release. , or, if the court so orders, when the citation is issued or thereafter, a warrant for his/her arrest may issue to any peace officer. Such warrant shall fix the time for production of the person into court. The court shall direct by endorsement thereon the amount of bail or bond required. Such person shall be discharged upon delivery to and approval of any peace officer or clerk of a court of record, so designated by a Police Chief, Sheriff, or Judge of a Court of Record of a bond corresponding to the requirements established by the court. If he/she fails to make bond, he/she shall be kept in custody subject to an order of the court.

b. Any bond may be forfeited upon proper notice of hearing to the surety, if any, and may be paid to the City or any aggrieved party by order of the court.

c. Nothing herein affects the court's authority to issue a bench warrant arising out of a failure to appear in court, to secure an in-person appearance.

~~4E. Contempt Hearings: The court shall hear evidence for and against the person charged with contempt, and prior to the imposition of sanctions, any person charged with contempt shall have the right to make a statement in mitigation. Upon a finding or admission of guilt, the court may impose costs of contempt proceedings and sanctions as provided in EMC § 1-4-1. and it may find him/her guilty of contempt and by order prescribe the punishment therefor. The maximum punishment that can be imposed is as is set forth in Section 1-4-1 of this Code. However, in imposing punishment for contempt on minors, the court is not limited to the restrictions of subsection 1-4-1B of this Code but cannot adjudge confinement in excess of forty-eight (48) hours. Also, the court may impose costs of the contempt proceedings.~~

~~CF. No Contact Orders Prior to Trial~~

~~1. For the purpose of this section the following definition applies: No Contact Order – an order issued by the Judge of the Englewood Municipal Court prohibiting a person from~~

~~initiating any contact with another person at any place or through any means designated in the order for a period of time designated in the order. However, a restricted contact can be provided for in such order under limited conditions, times, places, and circumstances.~~

2. ~~The Judge of the Englewood Municipal cCourt may, in his/her discretion for good cause shown, issue a No Contact Order against a defendants before trial when the issuance of such order is to protect the safety of persons or prevent damage to property, including a prohibition or limited restriction against initiating any contact with another person.~~

23. ~~The Municipal cCourt Judge may require a cash or surety bond to ensure at that said defendant shall obeys the No Contact Order, and may order forfeiture of the bond. U upon a violation of the No Contact oOrder by the defendant, the court can order forfeiture of the bond.~~

34. ~~Each violation of a No Contact Order is a separate contempt and may ean be punished as provided herein in subsection E of this section.~~

DG. Restraining Orders. Englewood Municipal Court may issue temporary or permanent civil protection orders pursuant to C.R.S. § 13-14-104.5.

1. ~~The Judge of the Englewood Municipal Court may, in his/her discretion, issue temporary and permanent restraining orders to prevent domestic abuse whether or not such relief could be obtained in a domestic relations action filed in a District Court.~~

2. ~~Action to obtain such relief is initiated by filing a complaint, duly verified, alleging that the defendant has committed acts constituting domestic abuse against the plaintiff or a minor child of either of the parties.~~

2. ~~Upon the filing of such complaint after hearing the evidence and, being fully satisfied therein that sufficient cause exists, the Municipal Court Judge may issue a temporary restraining order to prevent domestic abuse and a citation directed to the defendant, commanding the person to appear before the court at a specific time and date, to show cause, if any, why said temporary restraining order should not be made permanent.~~

3. ~~If, at the hearing held by the Municipal Court Judge upon the filing of such complaint, the defendant is present and participates in the hearing, the Municipal Court Judge if otherwise satisfied proper cause is shown, may issue a permanent restraining order.~~

EH. Juvenile Evaluation.-

1. ~~The Judge of the Englewood Municipal cCourt may, in his/her discretion, order a juvenile to obtain an evaluation from the 18th Judicial District Juvenile Assessment Center or other qualified provider, upon receipt of a verified complaint -~~

2. ~~Action to obtain such relief is initiated by filing a complaint, duly verified, alleging that the defendant is a juvenile defendant that is at risk and/or a delinquent and finding after hearing .- Upon the filing of such complaint after hearing the evidence and being fully satisfied therein that sufficient cause exists to support the allegations within the complaint, the Municipal Court Judge may issue an order to have the juvenile obtain such an evaluation.~~

Section 3. Amendment of Englewood Municipal Code

Title 7, Chapter 6, Article A, Section 7-6A-5 of Englewood Municipal Code is hereby amended to read as follows (new provisions in *italics*, deleted provisions ~~struck through~~):

7-6A-5: - Resist, Interfere with Municipal Officers.

A. ~~No person shall~~ *It shall be unlawful for any person to* resist a peace officer, under color of official authority, from effecting the arrest of any person, by the use or threat of physical force or violence, or any other means which creates a substantial risk of physical injury.

B. ~~No person shall~~ *It shall be unlawful to* knowingly obstruct or interfere with or hinder a peace officer ~~(including those persons described in C.R.S. § 18-3-201(2)), City employee designated by EMC § 6-5-1, emergency medical service provider, or firefighter~~ *man* in the discharge of ~~their~~ *his* duties, *but remaining silent or stating verbal opposition to an order does not constitute a violation of this section.*

C. ~~City of Englewood employees who do not have to be certified under the provisions of part 3 of Article 33.5 of Title 24, Colorado Revised Statutes, as a condition of employment, shall be included within the definition of "peace officers engaged in the performance of their duties" within the meaning of Section 18-3-201(2) C.R.S., even though such personnel, by their limited appointments as specified in Section 6-5-1 of this Code, are without the certification requirements of part 3 of Article 33.5 of Title 24, Colorado Revised Statutes.~~

D. ~~Code Enforcement Officers, with respect to Titles 5, 6, 8, 9, 10, 11, 12, 15, 16, and Title 7, Chapter 1, Sections 1A, 1B, 1C and 2 Englewood Municipal Code of 1985, and also the adopted secondary codes applicable thereto are also "peace officers" within the meaning of this section.~~

~~The aforementioned limited appointments do not permit these designated appointees to carry firearms, make arrests, and exercise any other duties of law enforcement officers, except as herein provided.~~

Section 4. Amendment of Englewood Municipal Code

Title 7, Chapter 6, Article B, Section 7-6B-10 of Englewood Municipal Code is hereby amended to read as follows (new provisions in *italics*, deleted provisions ~~struck through~~):

7-6B-10: - False Reports and Alarms.

A. To Law Enforcement Authorities.

1. Falsely Incriminating Another. ~~No person shall~~ *It shall be unlawful for a person to* knowingly give false information to any law enforcement officer with purpose to implicate another.

2. Fictitious Reports. ~~No person shall~~ *It shall be unlawful for a person to:*

a. Report to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or

b. Pretend to furnish such authorities with information relating to an offense or incident when ~~he~~ *the person* knows ~~he~~ *they have* ~~has~~ no information relating to such offense or incident *or knows that the information is false.*

3. Fictitious Names and Addresses. ~~No person shall~~ *It shall be unlawful for a person to* give a false name or address or age to a ~~peace law enforcement~~ officer with the intent of concealing or hiding one's own real name, ~~and/or~~ address, *or* ~~and/or~~ age.

B. To Agencies of Public Safety. *No person shall* ~~It shall be unlawful for a person to~~ knowingly cause a false alarm of fire or other emergency to be transmitted to or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property.

Section 5. Amendment of Englewood Municipal Code

Title 7, Chapter 6, Article C, Section 7-6C-1 of Englewood Municipal Code is hereby amended to read as follows (new provisions in *italics*, deleted provisions ~~struck through~~):

7-6C-1: - Concealed Weapons.

A. *No person shall* ~~It shall be unlawful for any person, within the limits of Englewood,~~ knowingly ~~to carry on their person any~~ concealed ~~upon his/her person any~~ knife or firearm, *except as follows:*

B. ~~It shall be an affirmative defense that the defendant was:~~

1. A person in *their* ~~his/her~~ own dwelling or place of business or on property owned or under ~~their~~ ~~his/her~~ control at the time of the act of carrying; or
2. A person in a private automobile or other private means of conveyance who carries a weapon for lawful protection of *their* ~~his/her~~ or another's person or property while traveling; or
3. ~~A person who, prior to the time of carrying a concealed weapon, has been issued a written permit pursuant to Section 18-12-105.1, Colorado Revised Statutes, to carry the weapon by the chief of police of a city or city and county, or the sheriff of a county~~ *A person who, at the time of carrying a concealed weapon, was authorized to do so by applicable law;* or
4. A peace officer as defined in *C.R.S. § 16-2.5-101*, or a United States probation officer, pretrial services officer, or member of the armed forces, when carrying a weapon as authorized by the employing agency ~~Section 18-1-901(3)(1), Colorado Revised Statutes;~~ or
5. A member of the Armed Forces of the United States or the Colorado National Guard acting in the lawful discharge of his/her duties

Section 6. Amendment of Englewood Municipal Code

Title 7, Chapter 6, Article C, Section 7-6C-2 of Englewood Municipal Code is hereby amended to read as follows (new provisions in *italics*, deleted provisions ~~struck through~~):

7-6C-2: Possession of Illegal Weapons.

A. *No person shall* ~~It shall be unlawful for any person to~~ possess an illegal weapon, *unless they are authorized to do so by applicable law; or a peace officer as defined in C.R.S. § 16-2.5-101, a United States probation officer, pretrial services officer, or member of the armed forces, when carrying the weapon as authorized by the employing agency.*

B. As used in this Section, the term "illegal weapon" means a blackjack, ~~bomb~~, gas gun, ~~zip gun~~, or metallic knuckles., ~~gravity knife, or switchblade knife.~~

C. ~~It shall be an affirmative defense to this Section that a person has a valid permit and license pursuant to the United States Code for such weapon, or that a person is a peace officer,~~

or a member of the United States Armed Forces, or the Colorado National Guard acting in the lawful discharge of his/her duties.

Section 7. Amendment of Englewood Municipal Code

Title 7, Chapter 6, Article C, Section 7-6C-3 of Englewood Municipal Code is hereby amended to read as follows (new provisions in *italics*, deleted provisions ~~struck through~~):

7-6C-3: - Prohibited Use of Weapons.

A. *No person shall* ~~It shall be illegal for:~~

1. ~~Any person to~~ Knowingly and unlawfully aim a firearm at another person;-
2. ~~Any person to~~ Recklessly or with criminal negligence discharge a firearm or shoot a bow and arrow or blow-dart weapon;-
3. ~~Any person to Have in his/her possession~~ *Possess* a firearm while under the influence of intoxicating liquor or of a controlled substance, as defined in *C.R.S. § 18-18-102(5);* ~~Section 12-22-303(7), Colorado Revised Statutes. Possession of a permit issued under Section 18-12-105.1, Colorado Revised Statutes no defense to a violation of this subsection A.~~
4. *Knowingly set a loaded gun, trap, or device designed to cause an explosion upon being tripped or approached, and leave it unattended by a competent person immediately present;*
4. 5. ~~Any person to~~ Knowingly aim, swing, or throw a nunchaku (nunchakus) or a throwing star, ~~as defined in Section 7-6C-0 of this Chapter,~~ at another person, or ~~any person to~~ knowingly possess a throwing star or nunchaku (nunchakus) in a public place except for *a City-authorized the purpose of presenting a public demonstration or exhibition authorized by the City, or for organized school or class pursuant to instruction in conjunction with an organized school or* ~~class. When transporting for an authorized purpose, throwing stars or nunchaku (nunchakus) for a public demonstration or exhibition or for a school or class, they shall be transported in a closed, non-accessible container;-~~
- 5 6. ~~Any person to~~ Hit, swing, or use any device composed of leather or other materials impregnated with spikes at another person, or ~~any person to~~ knowingly possess any device composed of leather or other material impregnated with spikes as defined in Section 7-6C-0 in a public place except for *a City-authorized the purpose of presenting a demonstration or exhibition authorized by the City. When transporting for an authorized purpose, any device composed of leather or other material impregnated with spikes for a public demonstration or exhibition, they shall be transported in a closed, non-accessible container; or-*
- 6 7. ~~Any person to~~ Discharge an air gun anywhere in this City except in *a manner that cannot endanger persons or property within a shooting galleryies or on any private grounds or structures in which in any residence where such instrument can be fired, discharged or operated in such a manner that the projectile cannot does not travel beyond the property limits outside the limits of such gallery, grounds, or residence; and, provided further, that the instrument shall not be discharged or operated in such a manner as to endanger persons or property. Nothing herein contained shall be construed to prevent the concealed carrying of any air gun when unloaded and properly eased to and from any range or gallery.*
- B. Possession of a permit *authorizing the concealed carry of a firearm* ~~issued under Section 18-12-105.1, Colorado Revised Statutes~~ is no defense to a violation of this ~~Sections~~ *subsection A.*

Section 8. Amendment of Englewood Municipal Code

Title 7, Chapter 6, Article D, Section 7-6D-1 of Englewood Municipal Code is hereby amended to read as follows (new provisions in *italics*, deleted provisions ~~struck through~~):

7-6D-1: - Prostitution.

A. Definitions:

~~Anal Intercourse: Contact between human beings of the genital organs of one and the anus of another.~~

~~Anilingus: Any act of oral stimulation of the anus.~~

~~Cunnilingus: Any act of oral stimulation of the vulva or clitoris.~~

~~Fellatio: Any act of oral stimulation of the penis.~~

~~Masturbation: Stimulation of the genital organs by manual or other bodily contact exclusive of sexual intercourse.~~

~~Sexual Intercourse: Real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal, between human beings of the opposite or same sex, or with an artificial genital organ.~~

B.A. Prostitution: *No person shall*

1. ~~Defined: Any person who performs or offers or agrees to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse as defined by C.R.S. § 18-7-201 (collectively "sexual act"), or anilingus in exchange for money or other thing of value commits prostitution.~~

2. ~~Prohibited: Prostitution is prohibited and shall be a violation of the Englewood Municipal Code.~~

BC. Soliciting for Prostitution: *No person shall, for the purpose of Prostitution,*

1. ~~Defined: A person commits soliciting for prostitution if he or she:~~

- a. ~~solicits another, for the purpose of prostitution; or~~
- b. ~~arranges or offers to arrange a meeting of persons, for the purpose of prostitution; or~~
- c. ~~directs another to a place knowing such direction is for the purpose of prostitution; or~~
- d. ~~offers to exchange money or other thing of value for sexual intercourse, fellatio, cunnilingus, masturbation, anal intercourse, or anilingus.~~

2. ~~Prohibited: Soliciting for prostitution is prohibited and shall be a violation of the Englewood Municipal Code.~~

CD. Pandering:

1. ~~Defined: *No person shall* Any person who does any of the following knowingly arrange or offer to arrange a situation in which a person may practice Prostitution for money or other thing of value commits pandering:~~

- a. ~~Inducing a person by menacing or criminal intimidation to commit prostitution; or~~
- b. ~~Knowingly arranging or offering to arrange a situation in which a person may practice prostitution.~~

2. ~~Prohibited: Pandering is prohibited and shall be a violation of the Englewood Municipal Code.~~

DE. Keeping a Place of Prostitution: *No person, having*

1. ~~Defined: Any person who has or exercisinges control over the use of any place which offers seclusion or shelter for the practice of Prostitution, shall and who performs any one or more of the following commits keeping a place of prostitution if that person:~~
 - 1a. Knowingly grants or permits the use of such place for the purpose of Prostitution; or
 - 2b. Permits the continued use of such place for the purpose of Prostitution after becoming aware of facts or circumstances from which ~~they~~he/she should reasonably know that the place is being used for purposes of Prostitution.
2. ~~Prohibited: Keeping a place of prostitution is prohibited and shall be a violation of the Englewood Municipal Code.~~

EF. Patronizing a Prostitute: No person shall:

1. ~~Defined: Any person who performs any of the following commits patronizing a prostitute:~~
 - a. Engages in *a sexual act with a person violating subsection A above* ~~an act of sexual intercourse, fellatio, cunnilingus, masturbation, anal intercourse, or anilingus with a prostitute;~~ or
 - 2b. Enters or remains in a place of prostitution with intent to engage in *a sexual act* ~~an act of sexual intercourse, fellatio, cunnilingus, masturbation, anal intercourse, or anilingus.~~
2. ~~Prohibited: Patronizing a prostitute is prohibited and shall be a violation of the Englewood Municipal Code.~~

FG. Pimping: No person shall

1. ~~Defined: Any person who knowingly lives on or be is supported or maintained in whole or in part by money or other thing of value earned, received, procured, or realized by any other person through Prostitution commits pimping.~~
2. ~~Prohibited: Pimping is prohibited and shall be a violation of the Englewood Municipal Code.~~

GH. Prostitute Making Display: No person shall,

1. ~~Defined: Any person who by word, gesture, or action, endeavors to further the practice of Prostitution in any public place or within public view.~~
2. ~~Prohibited: Prostitute making display is prohibited and shall be a violation of the Englewood Municipal Code.~~

HI. Promoting Sexual Immorality: No person shall

1. ~~Defined: Any person who, for pecuniary gain and knowing the intended purpose, furnishes or makes available to another person any place or thing providing seclusion, privacy, opportunity, protection, comfort, or assistance to or for engaging or intending to engage in Prostitution facility, knowing that the same is to be used for prostitution, or who advertises in any manner that they she or he furnishes or are is willing to furnish or make available any such place or thing facility for Prostitution such purposes, commits promoting sexual immorality.~~
2. ~~Facility: As used in this subsection, means any place or thing which provides seclusion, privacy, opportunity, protection, comfort, or assistance to or for a person or persons engaging or intending to engage in prostitution.~~
3. ~~Prohibited: Promoting sexual immorality is prohibited and shall be a violation of the Englewood Municipal Code.~~

Section 9. Amendment of Englewood Municipal Code

Title 7, Chapter 6, Article D, Section 7-6D-10 of Englewood Municipal Code is hereby amended to read as follows (new provisions in *italics*, deleted provisions struck through):

7-6D-10: - Gambling.

A. *No person shall* ~~Definitions:~~

~~Gain: The direct realization of winnings; "profit" means any other realized or unrealized benefit, direct or indirect, including without limitation benefits from proprietorship, management, or unequal advantage in a series of transactions.~~

~~Gambling: risking any money, credit, deposit, or other thing of value for gain contingent in whole or in part upon lot, chance, the operation of a gambling device, or the happening or outcome of an event, including a sporting event, over which the person taking a risk has no control, but does not include:~~

1. ~~Bona fide contests of skill, speed, strength, or endurance in which awards are made only to entrants or the owners of entries; or~~
2. ~~Bona fide business transactions which are valid under the law of contractors; or~~
3. ~~Participation in any lottery authorized by the State of Colorado; or~~
4. ~~Other acts or transactions now or hereafter expressly authorized by law, *including lawful sports betting and a crane game under CRS § 44-30-103*; or~~
5. ~~Any game, wager, or transaction which is incidental to a bona fide social relationship, is participated in by natural persons only, and in which no person is participating, directly or indirectly, in professional gambling.~~

~~Gambling Device: Any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any prohibited gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine.~~

~~Gambling Information: A communication with respect to any wager made in the course of, and any information intended to be used for, professional gambling. In the application of this definition the following shall be presumed to be intended for use in professional gambling: information as to wagers, betting odds, or changes in betting odds. Legitimate news reporting of an event for public dissemination is not gambling information within the meaning of this Section.~~

~~Gambling Premises: Any building, room, enclosure, vehicle, vessel, or other place, whether open or enclosed, used or intended to be used for professional gambling. In the application of this definition, any place where a gambling device is found is presumed to be intended to be used for professional gambling.~~

~~Gambling Proceeds: All money or other things of value at stake or displayed in or in connection with professional gambling.~~

~~Gambling Record: Any record, receipt, ticket, certificate, token, slip, or notation given, made, used, or intended to be used in connection with professional gambling.~~

~~Professional Gambling:~~

1. ~~Aiding or inducing another to engage in gambling, with the intent to derive a profit therefrom; or~~
2. ~~Participating in gambling and having, other than by virtue of skill or luck, a lesser chance of losing or a greater chance of winning than one or more of the other participants.~~

B. ~~It is unlawful for any person to engage in gambling in this City.~~

~~BC.~~ Gambling Devices. All gambling devices, gambling records, and gambling proceeds are subject to any seizure by any peace officer and may be confiscated and destroyed by order of a court acquiring jurisdiction.

~~CD.~~—Possession of a Gambling Device or Record. *Except as specifically authorized by law, no person shall a person who owns, manufactures, sells, transports, possesses, or engages in any transaction designed to affect the ownership, custody, or use of a gambling device or gambling record, knowing that it is to be used for professional gambling., commits possession of a gambling device or record.*

~~DE.~~ Gambling Premises. *No*

~~1.~~—~~Whoever as owner, lessee, agent, employee, operator, or occupant shall knowingly maintains, aids, or permits the maintaining of gambling premises commits maintaining gambling premises.~~

~~12.~~ All gambling premises are common nuisances which shall be subject to abatement as provided by law.

E. *For purposes of this section, terms shall be defined as follows:*

1. *Gain: The direct realization of winnings.*

2. *Gambling Device: Any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any prohibited or professional gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine, but not including a crane game defined in C.R.S. § 44-30-103(9).*

3. *Gambling Information: A communication with respect to any wager made in the course of, and any information intended to be used for, professional gambling including information as to wagers, betting odds, or changes in betting odds, but excluding legitimate news reporting of an event for public dissemination.*

4. *Gambling Premises: Any building, room, enclosure, vehicle, vessel, or other place, whether open or enclosed, used or intended to be used for professional gambling. Any place where a gambling device is found is presumed to be Gambling Premises.*

5. *Gambling Proceeds: All money or other things of value at stake or displayed in or in connection with professional gambling.*

6. *Gambling Record: Any record, receipt, ticket, certificate, token, slip, or notation given, made, used, or intended to be used in connection with professional gambling.*

7. *Professional Gambling:*

a. *Aiding or inducing another to engage in gambling, with the intent to derive a profit therefrom; or*

b. *Participating in gambling and having, other than by virtue of skill or luck, a lesser chance of losing or a greater chance of winning than one or more of the other participants.*

8. *Profit: any realized or unrealized benefit, direct or indirect, including without limitation benefits from proprietorship, management, or unequal advantage in a series of transactions.*

Section 10. Amendment of Englewood Municipal Code

Title 7, Chapter 6, Article D, Section 7-6D-12 of Englewood Municipal Code is hereby amended to read as follows (new provisions in *italics*, deleted provisions ~~struck through~~):

7-6D-12: - Possession, Use or Consumption of Marijuana Prohibited.

A. Definitions. *Terms shall be defined in Colorado Constitution Article XVIII, Section 16, the Colorado Marijuana Code, CRS § 44-10-103, and as follows: Any word or term used that is defined in Article XVIII, Sections 14, or 16 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.*

1. Consumption or Use of Marijuana: Shall be deemed possession thereof.

~~Marihuana or Marijuana: All parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, or preparation of the plant, its seeds, or its resin, including marihuana concentrate. "Marijuana" or "Marihuana" does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other product.~~

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

~~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.~~

2. Passenger area: means the area designed to seat the driver and passengers while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in ~~their~~his or her seating position, including, but not limited to, the glove compartment.

B. *No person shall:*

1. ~~It is unlawful for any person to Possess, use or consume one ounce or less of Marijuana, except as authorized by law; in accordance with Sections 14, and 16 of Article XVIII of the Colorado Constitution.~~

1. ~~It shall be unlawful for anyone under twenty-one (21) years of age to possess, use or consume one (1) ounce or less of Marijuana.~~

(a) ~~Exeeption—Medical Marijuana as authorized by E.M.C. 5-3D-1~~

2. ~~It shall be unlawful to Sell, distribute or transfer Marijuana to a person except as authorized by law; who is under twenty-one (21) years of age.~~

(a) ~~Exception—Medical Marijuana as authorized by E.M.C. 5-3D-1.~~

3.C. ~~It shall be unlawful to Cultivate or permit to be cultivated, more than the following maximum number of Marijuana plants authorized by law;:~~

1. ~~Six (6) Marijuana plants with three (3) or fewer being mature, flowering plants.~~

4. *Use or consume Marijuana in the passenger area of a motor vehicle that is on a public street, highway or public right-of-way, unless a passenger, other than the driver or a front seat passenger, of: a motor vehicle designed, maintained or used primarily for the transportation of persons for compensation; or in the living quarters of a house coach, house trailer, motor home as defined in C.R.S. § 42-1-102(57), or trailer coach as defined in C.R.S. § 42-1-102(106); or*
5. *Use or consume Marijuana in any public place.*

~~CD. Restrictions on locations for eCultivating Marijuana.~~

1. ~~Growing of Marijuana shall take place in an enclosed, locked space and shall not be conducted openly or publicly.~~
2. ~~No person shall cultivate or grow Marijuana:~~
 - a. ~~openly, publicly, or in the common areas of residential property;~~
 - b. ~~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;~~
 - c3. ~~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;~~
34. ~~No person shall 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; or-~~
 - (d) ~~Noise from fans in excess of the limits established under EMC § set in Section 6-2-5(F) E.M.C., as amended.~~
5. ~~It shall be unlawful to cultivate Marijuana in the common areas of residential property;~~

~~E. Concerning Marijuana in Motor Vehicles:~~

1. ~~A person while in the passenger area of a motor vehicle that is on a public street, highway or public right-of-way may not use or consume Marijuana.~~
2. ~~The provisions of this Section (E) shall not apply to:~~
 - (a) ~~Passengers, other than the driver or a front seat passenger, located in the passenger area of a motor vehicle designed, maintained or used primarily for the transportation of persons for compensation.~~
 - (b) ~~Marijuana use or consumption by a passenger, other than the driver or front seat passenger, in the living quarters of a house coach, house trailer, motor home, as defined in C.R.S. § 42-1-102(57), or trailer coach, as defined in C.R.S. § 42-1-102(106)(a).~~

~~F. Restrictions on use or the consumption of Marijuana that is conducted openly and publicly or in a manner that endangers others.~~

1. ~~It shall be unlawful for any person to use or consume Marijuana in any public place.~~

Section 11. General Provisions Applicable to this Ordinance

The following general provisions and findings are applicable to the interpretation and application of this Ordinance:

A. 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.

B. 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.

C. 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.

D. 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. This Safety Clause is not intended to affect a Citizen right to challenge this Ordinance through referendum pursuant to City of Englewood Charter 47.

E. Publication. Publication of this Ordinance may be in the City's official newspaper, the City's official website, or both. Publication shall be effective upon the first publication by either authorized method.

F. Actions Authorized to Effectuate this Ordinance. The Mayor is hereby authorized and directed to execute all documents necessary to effectuate the approval authorized by this Ordinance, and the City Clerk is hereby authorized and directed to attest to such execution by the Mayor where necessary. In the absence of the Mayor, the Mayor Pro Tem is hereby authorized to execute the above-referenced documents. The execution of any documents by said officials shall be conclusive evidence of the approval by the City of such documents in accordance with the terms thereof and this Ordinance. City staff is further authorized to take additional actions as may be necessary to implement the provisions of this Ordinance.

G. Enforcement. To the extent this ordinance establishes a required or prohibited action punishable by law, unless otherwise specifically provided in Englewood Municipal Code or applicable law, violations shall be subject to the General Penalty provisions contained within EMC § 1-4-1.

Introduced, read in full, and passed on first reading on the 3rd day of January, 2023.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 5th day of January, 2023.

Published as a Bill for an Ordinance on the City's official website beginning on the 4th day of January, 2023. for thirty (30) days.

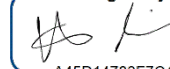
Read by Title and passed on final reading on the 6th day of February, 2023.

Published by Title in the City's official newspaper as Ordinance No. 07, Series of 2023, on the 9th day of February, 2023.

Published by title on the City's official website beginning on the 8th day of February, 2023 for thirty (30) days.

This Ordinance shall take effect thirty (30) days after publication following final passage.

DocuSigned by:



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Othoniel Sierra, Mayor

ATTEST:

DocuSigned by:



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Stephanie Carlile, City Clerk

I, Stephanie Carlile, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by Title as Ordinance No. 07, Series of 2023.

DocuSigned by:



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Stephanie Carlile