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Sunday, October 4, 2015

Panel Discussion: Legalized Marijuana: Islands in A Sea of Federal Prohibition. How to Solve The Problems of Legalization

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MARIJUANA
IN THE MILE-HIGH CITY



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HOW DID WE GET HERE?

MEDICAL MARIJUANA IN COLORADO

- 2000: Voters passed Amendment 20 to the Colorado Constitution
- Amendment 20 allowed for the medical use of marijuana to persons suffering from debilitating medical conditions and their primary caregivers
- Authorized patients or primary caregivers to possess limited amounts of marijuana
- Distribution of marijuana was still illegal in Colorado
- The world of medical marijuana remained unregulated for another 10 years



HOW DID WE GET HERE?

MEDICAL MARIJUANA IN COLORADO

- In July 2014, there were **111,804** registered medical marijuana patients
- In September 2014, that number rose to **116,287**
- In July 2014, **251** of those patients were minors under 18
- In September 2014, that number rose to **427** under 18



HOW DID WE GET HERE?

MEDICAL MARIJUANA IN COLORADO



- Average age of patients is 42
- 66% of patients are male
- “Severe pain” accounts for 93% of all reported conditions
  - Followed by “muscle spasms” at 14%
- 53% have designated a private caregiver or an MMJ center to grow for them

RECREATIONAL MARIJUANA

HOW DID WE GET FROM MEDICAL TO RECREATIONAL?

- 2012: Amendment 64 was petitioned onto the ballot and added an amendment to the Colorado constitution legalizing the personal, private use of marijuana
- Passed in Colorado by about 55% of the vote & in Denver by 66%
- **Allows adults over 21 to:**
  - Possess up to one ounce of marijuana
  - Possess and grow up to six marijuana plants, only 3 of which can be flowering
  - Transfer up to 1oz of MJ between adults without payment
  - Private consumption of MJ
  - Assist another adult in any of these acts



THE FEDERAL GOVERNMENT

- Within days of the passage of Amendment 64, Colorado Governor Hickenlooper and Colorado Attorney General Suthers asked US Attorney General Holder for guidance as to what the federal response will be.



- But Colorado and Washington were forced to move ahead with implementation of these unprecedented laws in the face of uncertainty
  - 2013: Colorado Retail Marijuana Code
  - 2013: Denver Retail Marijuana Code
  - January 1, 2014: First sales of retail marijuana from licensed facilities

The "Cole Memo"



- On August 29, 2013, the DOJ issued a memo from Deputy Attorney General James Cole providing guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act in light of state legislation

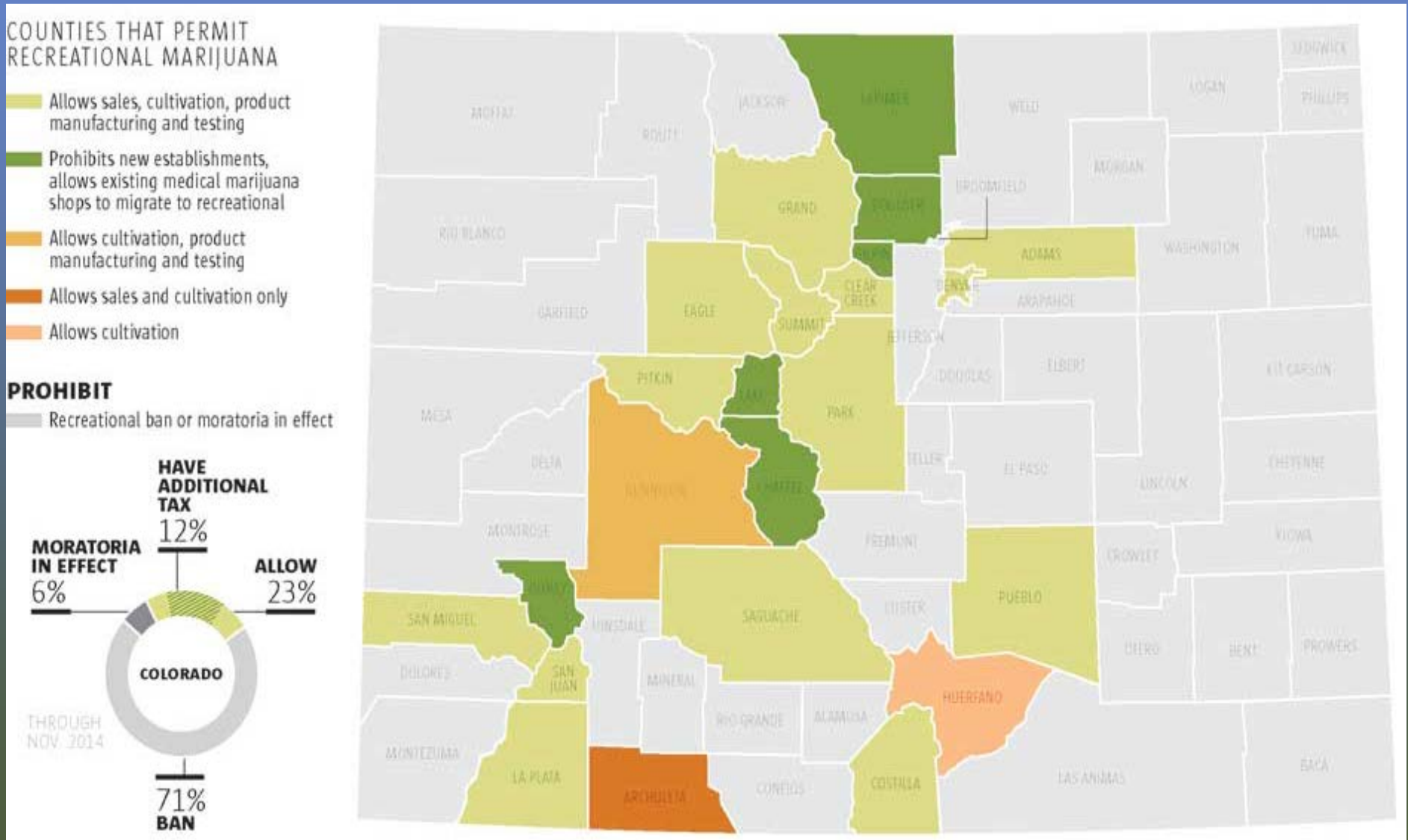
- DOJ announced that they were not going to preempt Colorado and Washington's ballot initiatives, but expected the states to implement strong and effective regulatory and enforcement systems.
- Denver uses these priorities as guidance when establishing regulation and enforcement policies

The "Cole Memo Priorities" = Preventing:

- Distribution to Minors
- Revenue going to criminal enterprises, gangs, and cartels
- Diversion of marijuana from states where it is legal under state law
- State-authorized activity being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity
- Violation and the use of firearms in the cultivation/ distribution of marijuana
- Drugged driving and the exacerbation of adverse public health consequences associated with marijuana use
- Growing of marijuana on public land
- Marijuana possession or use on federal land

Local control provisions

A64 also gave authority for cities and counties to opt-out of commercial marijuana licensing entirely.



Local control provisions

- A64 also gave authority for cities and counties to opt-out of commercial marijuana licensing entirely.
- There were only 72 jurisdictions that allowed RMJ in 2014.

Colorado Local Jurisdiction Status	Total Jurisdictions	Percent of State
Medical and Retail Banned	228	71%
Medical Only	21	7%
Retail Only	5	1%
Both Allowed	67	21%
TOTAL	321	

Colorado Marijuana Licensing

Dual Licensing System

- To operate a licensed marijuana business in Colorado, you must have **BOTH** a state license AND a local license
- The Colorado Marijuana Enforcement Division (MED) licenses and regulates marijuana businesses for the state.
- The Denver Department of Excise and Licenses (EXL) licenses and regulates for the city.

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The Marijuana Enforcement Division (MED)

- **MED was created by state statutes:**
  - Colorado Medical Marijuana Code
    C.R.S. §12-43.3-101
  - Colorado Retail Marijuana Code
    C.R.S. §12-43.4-101





- MED operates within the **Colorado Department of Revenue**
- Promulgated separate rules:
  - Medical (1 C.C.R. 212-1)
  - Retail (1 C.C.R. 212-2)

Denver Marijuana Landscape

What did all of this mean for Denver?

- Mayor Hancock appointed the Executive Director of Marijuana Policy on January 1, 2014.
  - Single point of contact for marijuana policy and to coordinate the agencies working on marijuana, as necessary.
  - Immediate team includes EDMP, Deputy Director of Marijuana Policy, data and business analyst, City Attorney and communications coordinator.
- Hired an additional 37 employees throughout the city in 2014 to perform duties related to the regulation of marijuana and enforcement of policies.

Denver Marijuana Landscape

Multiple City agencies working collaboratively on marijuana issues:

- Citywide Coordinated Marijuana Team:
  - Marijuana Policy Team
  - Community Planning & Development
  - Excise & Licenses
  - Fire Department
  - Police Department
  - Department of Environmental Health
  - City Attorney's Office

- Citywide Partners:
  - Treasury Division
  - Parks & Recreation
  - Denver 3-1-1
  - Technology Services
  - Budget and Management Office
  - Office of Children's Affairs
  - Office of Behavioral Health
  - Denver International Airport



Marijuana in Denver – The Law

Federal priority to keep it out of the hands of youth. Police have conducted "stings" and four stores have been caught selling to minors

In Denver, backyards and patios are considered "private". Parks, bars, and movie theaters are considered public spaces.

Able to "give away" up to 1 ounce but illegal to sell it outside of a licensed facility.



18 or older for medical marijuana

Police have Drug Recognition Experts that can assess the condition of a driver.

Can purchase if you are a non- resident visiting Colorado but you cannot take it home with you (across State lines).

Denver Marijuana Landscape

What did all of this mean for Denver?

- Licensed

  (medical and retail, taxed and regulated)

  - Grows
  - Stores
  - MIPS
  - Testing Facilities

- Non-licensed

  (locations mostly unknown, not supposed to be for profit, not taxed)

  - Illegal Operations
  - Medical MJ Collectives
  - Retail MJ Collectives
  - Caregivers
  - Home Grows

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Denver Department of Excise and Licenses

- **Issues and regulates all local licenses:**
  - Denver Medical Marijuana Code
    D.R.M.C. §24-501
  - Denver Retail Marijuana Code
    D.R.M.C. §6-200

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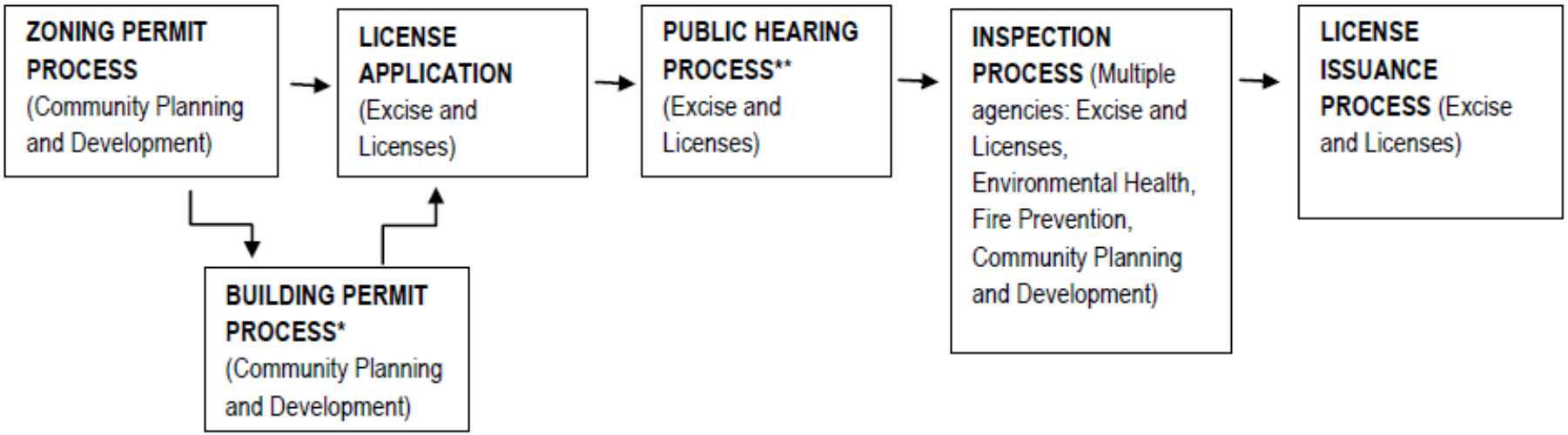
Denver Department of Excise and Licenses



*Building permits are required in order to modify the premises. Building permits must be finalized before a business license can be issued. However, you may apply for building permits and a business license at the same time.

**Public hearings are only required for Medical Marijuana Dispensaries and Retail Marijuana Stores.

Denver Marijuana Landscape

Licensing

There are four types of marijuana licenses:

1. OPC=Cultivation Facilities (retail and medical)
2. Stores & Centers (retail stores and medical dispensaries)
3. Marijuana Infused Products (MIPS) (medical and retail)
4. Marijuana Testing Facilities (retail only – but medical next year)

	Total # of Licenses	Number of Colocated Facilities	Stand-Alone Medical Facilities	Stand-Alone Retail Facilities
Stores & Centers	327	114	87	11
OPCs	566	131	110	19
MIPs	113	38	30	4
Testing Facilities	8	0	0	8

Types of Marijuana Licenses

4 Types

Centers/Stores
(RMJ & MMJ)



Grow Operations
(RMJ & MMJ)



Photo credits: cannibisnews.com; CBS

Types of Marijuana Licenses

4 Types

MIP Kitchens
(RMJ & MMJ)



Testing Labs
(RMJ only)

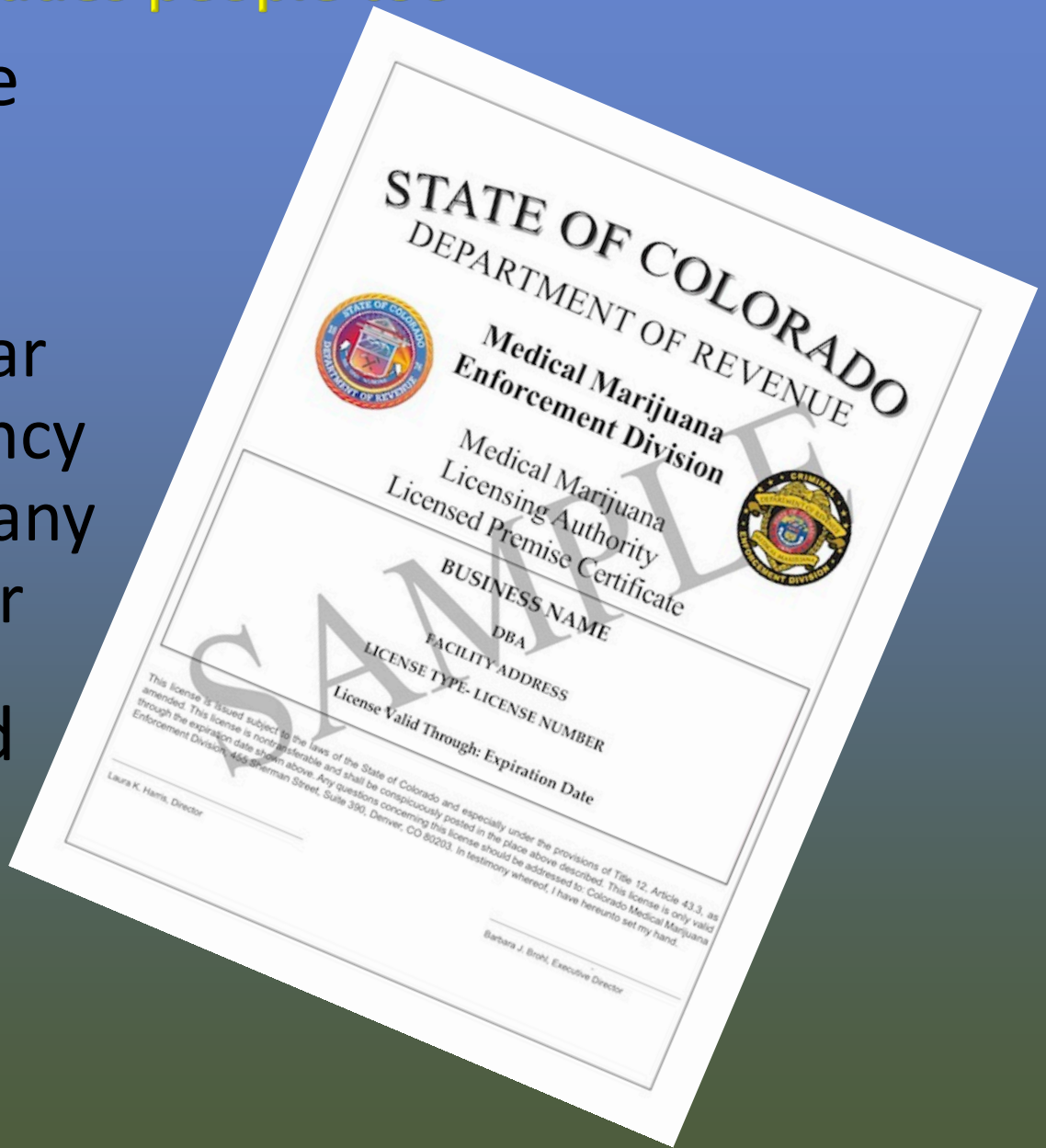


Photo credits: vice.com; denverpost.com

Marijuana Licensing

Includes people too

- "Owners" must be approved
  - Colorado has a stringent two-year minimum residency requirement for any owner or investor
- Licensing required
  - Businesses
  - Employees
  - Lab Directors



Marijuana Licensing

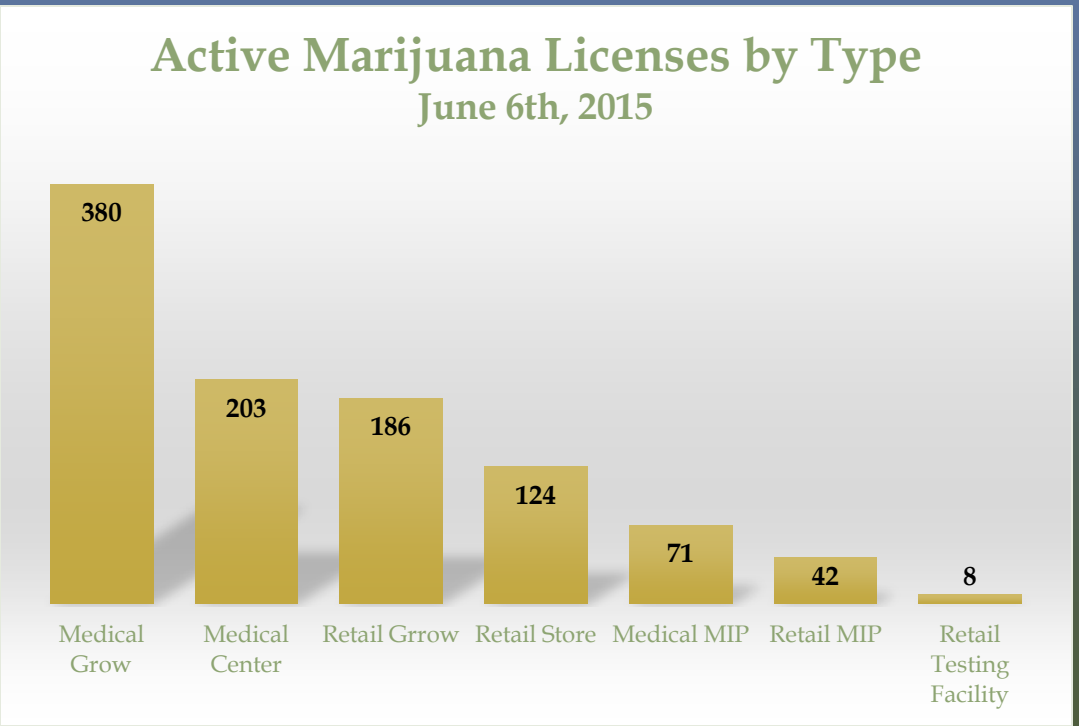
Includes people too

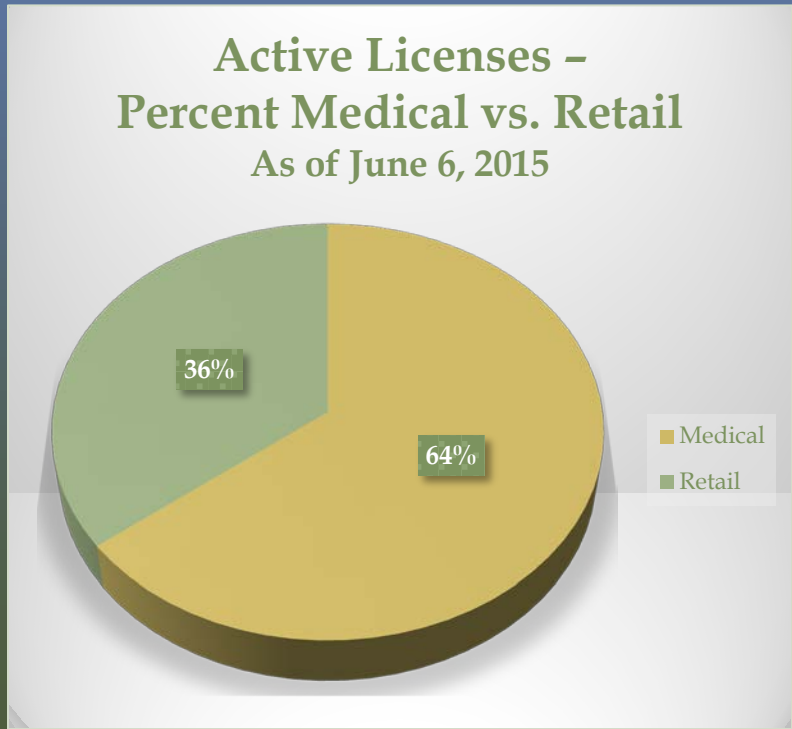
- All owners, employees, vendors, support personnel in the marijuana industry must obtain an occupational license through the MED
- Only badged employees can enter restricted access areas of the marijuana business.



Licensed marijuana in Denver

- As of June, 2015, there were 1014 marijuana business licenses, operating out of 439 unique locations.
  - Some locations have several licenses and license types at one location
  - E.g., One location could have both medical and retail grow licenses, a MIP license, and a retail and medical store license





Retail Marijuana Licensing

Some Denver wrinkles

- Until January 1, 2016, only *medical* MJ businesses that were duly licensed as of October 1, 2013 are eligible for *retail* licensing in Denver



- They can either completely convert or obtain a retail marijuana license in addition to their MMJ license and operate both types of businesses at the same location

Permitted Locations

How has Denver decided to regulate the location of marijuana businesses?

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Department of Excise and Licenses (EXL)

Community Planning & Development (CPD)

LOCATION, LOCATION, LOCATION

- Two key policy decisions have shaped how Denver has defined the lawful location of MJ businesses:
  - (1) Denver made conscious decision not to regulate MJ businesses as a distinct category of land use in the Zoning Code itself.
  - Instead, location restrictions on MJ businesses are entirely reflected in the *licensing laws*, which in turn cross-reference the Zoning Code

LOCATION, LOCATION, LOCATION

- (2) Denver made conscious decision to "grandfather" business locations that existed before licensing regulations were put in place.

- This became necessary because of the 10 years that had elapsed without any formal regulation by either the state or the city.

LOCATION COMPLICATIONS

- 2010-2011: While Colorado and Denver were enacting MJ licensing laws, Denver was coincidentally adopting its new 2010 Zoning Code
- And the updated MMJ licensing ordinance contained zoning restrictions that prohibited MMJ stores in some locations where dispensaries had previously been allowed

"GRANDFATHERING"

- If a business had already received MMJ license under the old 2010 licensing ordinance, the location was "grandfathered" and eligible for licensing as an MMJ business under new state and city licensing laws

- But only if the business "had existed in continuous operation" at the location since the time of original licensing



Marijuana Centers/Stores











PROHIBITED LOCATIONS

Medical and Retail MJ Stores

- Any residential zone district
- Any “embedded retail” districts
- Any location where retail sales are prohibited
- Within 1000’ of any school or child care establishment



- Within 1000’ of any alcohol or drug treatment facility
- Within 1000’ of any other MMJ Center or MMJ Dispensary or any RMJ store

D.R.M.C. 24-508 and 6-211

MJ CULTIVATION FACILITIES

- Both Denver's retail and medical MJ licensing codes allow licensing for cultivation facilities in any location where "plant husbandry" is a permitted use

- **BUT locations are Grandfathered in if:**
- Applied for plant husbandry zoning permit before 7/1/10
- Applied for OPC license with State before 8/1/10
- Evidence that cultivation of MJ started before 1/1/11



Infused Products Manufacturers











MARIJUANA PRODUCTS MANUFACTURERS

- Marijuana Infused Products Manufacturer (MIPS) are the commercial kitchens that are making marijuana edibles like brownies and candy bars
- Both Denver's retail and medical MJ licensing codes allow licensing for MIPS on any zone lot where **"food preparation and sales"** or **"manufacturing, general"** are permitted under the Denver Zoning Code
- This has become a problem….



MJ PRODUCTS MANUFACTURERS (MIPS)

- When Denver first decided to allow MIPS in those two zone districts, it was thinking of kitchens or bakeries
- MJ Brownies being made by chopping up the leaves of MJ plants
- Or MJ plants being pureed in a blender
- **Who knew……?**



MJ PRODUCTS MANUFACTURERS

HOW ARE THOSE BROWNIES REALLY MADE?

- What do we do when a MIP wants to start doing extractions?







- Is that still “food preparation and sales”?

Denver Marijuana Landscape

Denver's Response to Problems in the Realm of Non-Licensed Marijuana

- Non-licensed

  (locations mostly unknown, not supposed to be for profit, not taxed)

  - Illegal Operations
  - Medical MJ Collectives
  - Retail MJ Collectives
  - Caregivers
  - Home Grows

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Why do we continue to have problems?

The Black Market



- "Mexican ditch weed" (3-4% THC) = $300/lb
- Colorado-grown MJ (25%+ THC) = $2500/lb (in Colo)
- Colorado-grown MJ on the East Coast = $6000/lb

Reply x8rks-3660042849@sale.craigslist.org [?] flag [?]: miscategorized prohibited

extra mmj - $1 (lkwd)

Extra meds with donation: $100 halves, $200 Oz.
Paperwork must be current with a valid CO id

Edibles! Yummy caramels!
Call or text3033306097

- Location: lkwd
- it's NOT ok to contact this poster with services or other commercial interests

Posting ID: 3660042849 Posted: 2013-03-05, 6:19AM MST email to a friend

HASH OIL EXPLOSIONS

What about making hash oil in non-licensed places?

- Since January 2014, there have been 32+ hash oil explosions throughout Colorado
- Eight explosions in Denver
- Seven have been in unlicensed facilities






SUPER REFINED
CONTENTS
12 x 300ML
CANISTERS
BUTANE GAS