MARIJUANA Regulation in COLORADO



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Colorado Legalization

- **2000**: Voters approve Amendment 20, legalizing medical marijuana
- **2012**: Voters approve Amendment 64, legalizing recreational marijuana
- **January 1, 2014**: Recreational sales of marijuana began in Colorado, the first in the country.

What we've learned so far…

- Think about your **regulatory structure** sooner rather than later! Learn from others and anticipate the issues.
- **Collaborate** with as many different stakeholders as possible:
  - State agencies (agriculture, state licensing, state health)
  - City agencies (inspectors, public health, fire, police)
  - Industry members
  - Neighborhood and community organizations
  - Tourism and business associations
- It's easier to **start slow** with a measured approach, than to reel things in down the road.
- **Communication** goes a long way (working groups, industry bulletins, regular meetings).
- Be prepared – once marijuana is legalized, people want it **now**.

What we wish we had known…

- **The numbers** – wide-open licensing or limit the number of licenses
- **Location** – where should these business live in your city?
  - Potential impacts on neighborhoods
  - Will some neighborhoods feel a greater portion of the burden
- **Public Safety** issues
  - Hash oil – open-blast and closed-loop systems
  - Home grows
  - Commercial grows
  - Pesticides
  - Other ingredients – CBDs and Terpenes
- **Crime** – how will you approach MJ crime now?
- **Social Consumption** – where are you going to allow people to consume?

What zone districts do you want marijuana businesses in?

1. Marijuana businesses have the ability to raise rental rights and gobble up space. This can be great for the local economy, but can squeeze out other businesses.
2. **Retail in Commercial Zone Districts.**
3. **Grows or Manufacturing in Industrial Zone Districts.**
4. **Prohibit**
    3. Residential districts?
    4. Mixed Use?
    5. Neighborhood business districts?

Marijuana Landscape

What did all of this mean for Colorado cities?

- Licensed

  (medical and retail, taxed and regulated)
  - Grows
  - Stores
  - MIPS
  - Testing Facilities
  - Transporters

- Non-licensed

  (locations mostly unknown, not supposed to be for profit, not taxed)
  - Illegal Operations
  - Medical MJ Collectives
  - Retail MJ Collectives
  - Caregivers
  - Home Grows

- Crime
  - Public Consumption
  - Burglaries
  - Minors
  - Diversion

Colorado Legalization

- The State regulates matters of **statewide concern**

  Such as licensee requirements, operational requirements, consumer safety, packaging, labeling, testing, cultivation handling and packaging, etc.

- Local municipalities regulate matters of **local concern**

  Can provide additional requirements related to time, place, manner and number

- Local municipalities can **opt in or opt out**

  Denver and Boulder both opted in and added a local licensing scheme, distance requirements, public hearing process, a phase-in period, specific agency regulations, special sales tax, etc.

  Many communities that had opted out have subsequently opted in.

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.

- Local governments regulate for their communities:
  - Patchwork of local regulation.
  - Businesses can seek the lowest bar.
  - Unincorporated areas must rely on county regulation

Last year, Denver city council concluded that the City is ***saturated***

MARIJUANA IN DENVER: SOME AREAS SATURATED

A Denver Post analysis of marijuana-related business license records shows there are more than 600 entities operating within city limits, including medical and retail stores, cultivation centers, edible manufacturers and testing facilities. Businesses are concentrated in the northern and western areas of the city, mainly due to zoning restrictions and available warehouse space for cultivation operations. The three neighborhoods that house the highest number of businesses are Elyria Swansea (78), Northeast Park Hill (67) and Montbello (52).

Unbalanced pot landscape in Denver raises concerns

After two years of retail marijuana sales, Denver communities of color and lower income say they bear disproportionate number of pot licensees

DENVER AND THE WEST

Marijuana business caps could help neighborhoods, council members say

Denver City Council considers proposals to replace moratorium on new players in industry

Boulder's Separation and Size Requirements

- No Retail or Wellness center within 1000 feet of
  - Schools
  - State-licensed day care centers
  - Addiction recovery facilities
- No business can be located within 500 feet of three other businesses
- Business size
  - Wellness centers and retail – 3000 square feet
  - MIPs – 15,000 square feet
  - Cultivation 15,000 square feet

The importance of numbers and location

- Decisions made in 2013 about zoning and licensing of marijuana business had huge negative consequences for poorer neighborhoods in our city.
- In the first four months of 2016, we passed three different marijuana bills to address some of the issues.
- Denver now has a CAP on the number of marijuana grow and store locations that can exist in the city.
  - 467 Total
  - 311 Grows
  - 226 Stores

…we're already over the cap….

Caps

- Difficult to administer
  - First come, first served?
  - Lottery?
  - Do you want elected officials deciding?

Other licensing issues:

Do you allow transfer of licenses?

- Should the license have value?

Do you restrict who can hold a license?

- Felons?
- People with criminal drug history?

Do you limit financing?

- Organized criminal activity

Licensed Marijuana
What else have we learned about the impacts?

- Marijuana stinks.
  - Denver passed a law, effective this year, that all marijuana grows and MIPS will have to install odor mitigation equipment (carbon filtration systems)
  - Boulder had this requirement beginning in 2012 – require filtration sufficient to prevent detection outside of the facility
  - Odor is the biggest source of community complaints.
- Extracting oil from marijuana is dangerous
- The industry is creative and innovative.
  - Omnibus bill (50 pages long) closed some of the loopholes that were being exploited by the industry.
  - Additives (terpenes and CBD oils) need to be monitored closely
  - Regulators can learn from the industry, so keep the lines of communication open

Some terpenes shouldn't be smoked, and some CBD oils are coming from "somewhere in China" with no regulatory oversight

Boulder Marijuana Advisory Panel

Composed of community members and industry representatives

- Representatives from the school district, the public health district, two universities, the chamber of commerce as well as marijuana businesses

Makes recommendations to the city council for legislation

Has helped to de-politicize the amendment process

Helps give the community a voice on regulation

Colorado Marijuana Landscape

Unforeseen Problems in the Realm of <u>Non-Licensed</u> 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

DENVER
THE MILE HIGH CITY

Solvent-based Extractions



- Given the amount of flammable solvents being used in these extraction processes, these operations are more properly suited for a "Manufacturing – Heavy" zone district





- And should never be allowed in residential or unregulated locations
- Denver is currently revising its zoning code to address this problem

HASH OIL EXPLOSIONS

What about making hash oil in non-licensed places?

- Since January 2014, there have been 35+ hash oil explosions throughout Colorado
- Ten explosions in Denver
- Most have been in unlicensed facilities



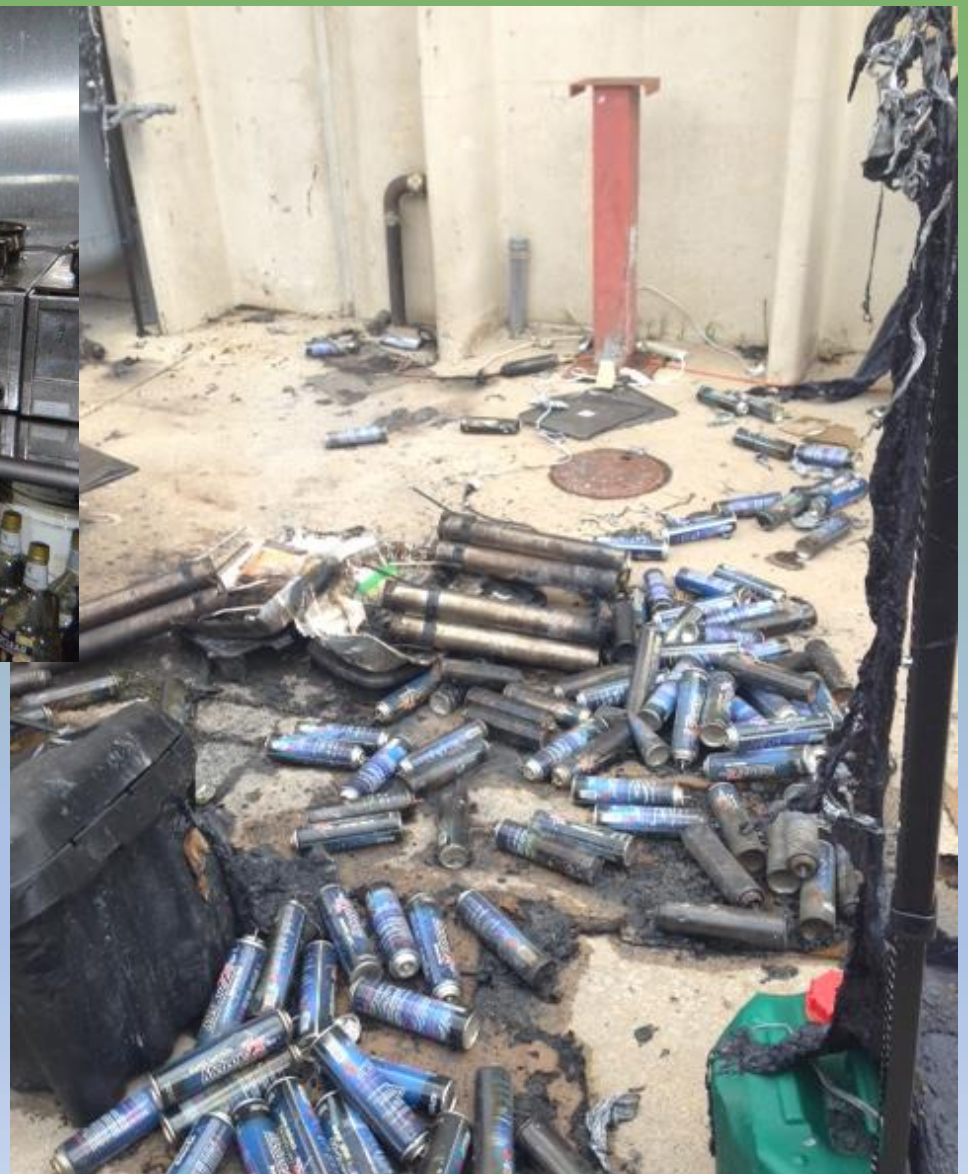


HASH OIL EXPLOSIONS

The dangers of open-blast extraction….

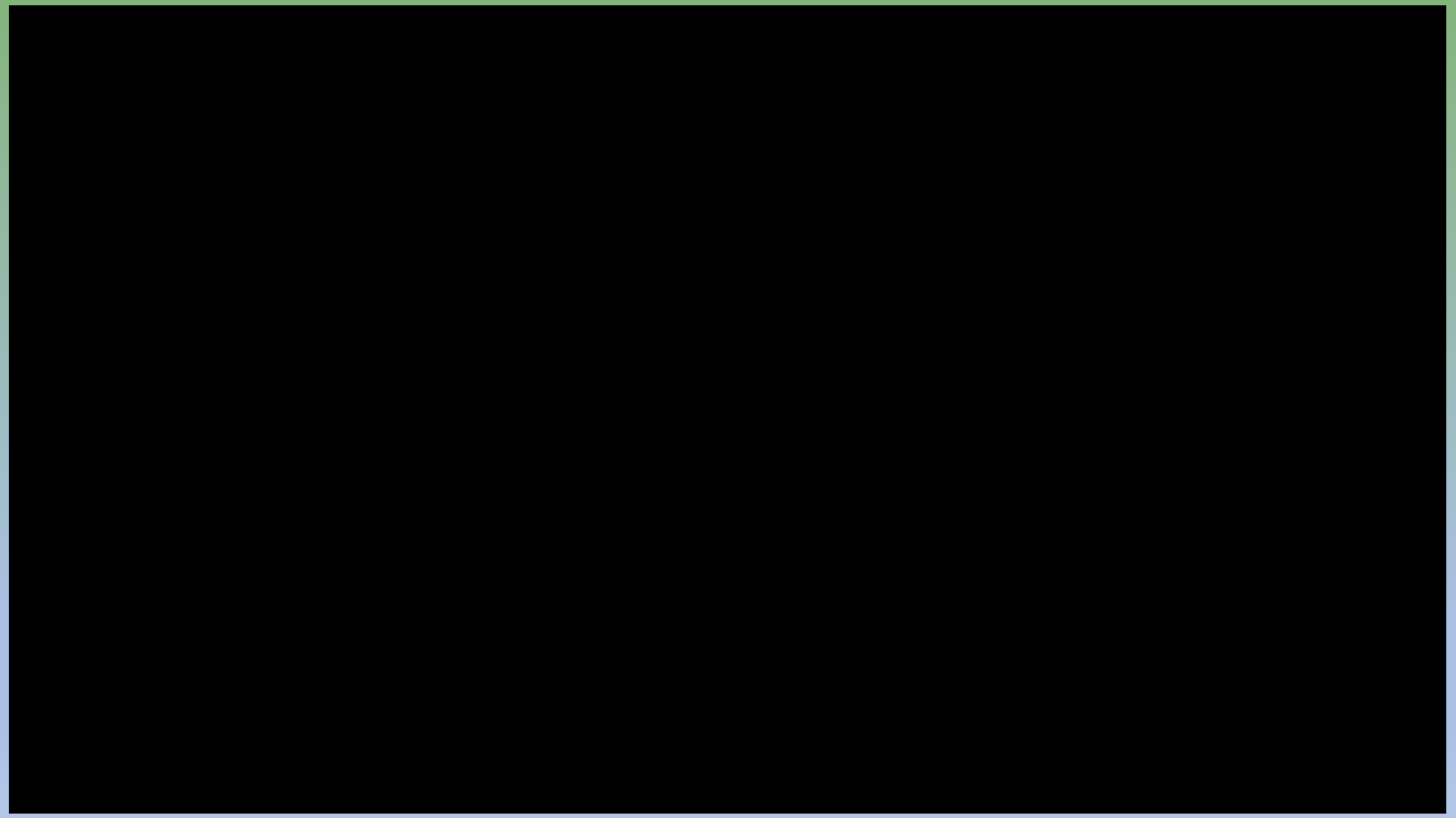






HASH OIL EXPLOSIONS

The dangers of open blast BHO extractions



Hash Oil Extractions

Denver -

It shall be unlawful for any person to process or manufacture marijuana concentrate in the city **by any means other than** water-based or food-based extraction**, except in a licensed medical marijuana-infused products manufacturing facility** or in a licensed retail marijuana products manufacturing facility.

Boulder -

Unlawful to Possess *extraction* vessels, and butane, propane, compressed CO_2, ethanol, isopropanol, acetone, heptane, hexane, or any other volatile materials used in the production of solvent-based marijuana concentrate, in the same premise as marijuana without a license from the city as a marijuana-infused product manufacturer or a marijuana testing facility.









Hash Oil Extractions
New State Statute

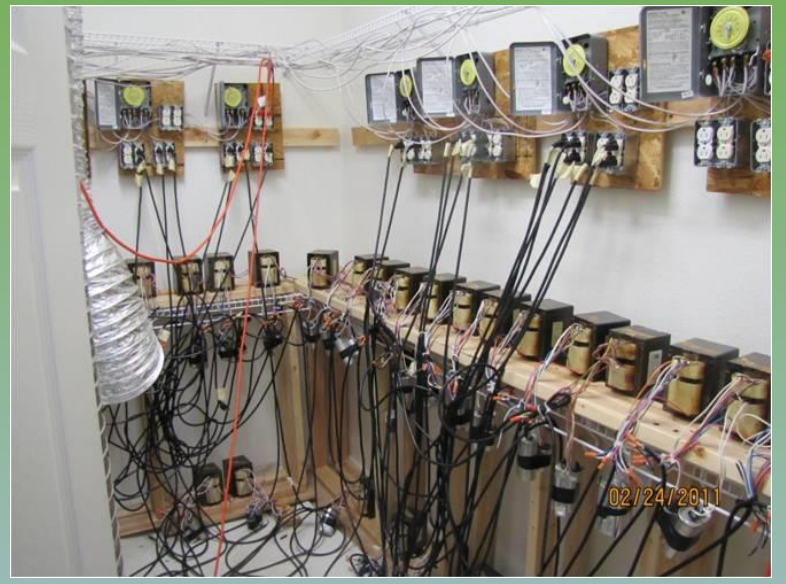
- It shall be **unlawful** for any person who is **not licensed** to knowingly manufacture marijuana concentrate using an inherently hazardous substance *(18-18-406.6, C.R.S.)*
- It shall be unlawful for anyone who owns, manages, or otherwise controls the use of any premises to allow MJ concentrate to be manufactured on the premises using an inherently hazardous substance"
- **"Inherently hazardous substance"** includes butane and propane, but *excludes ethanol*
- Created a class 2 drug felony
- Effective July 2015

Non-licensed Marijuana Grows
What's this all about?

- Amendment 20
  - Patient can grow up to 6 plants (but more if….)
  - Caregiver can grow up to 6 plants for up to 5 patients (but more if….)
- Amendment 64
  - Person over 21 can grow up to 6 plants
  - Person over 21 can assist another person grow their plants
- Denver's experience
  - Warehouse space being converted into **massive, non-licensed grows**
  - Electrical, building, structural, fire, sulfur burns
  - Huge potential for criminal activity and diversion to black market

MASSIVE NON-LICENSED GROWS
What are we seeing?

- Illegal Operations
- Crime and Safety Issues
- Physical Hazards
  - Fire
  - Electrical
- Chemical/Environmental Hazards
  - Hash oil explosions
  - Air Quality (SO_2, CO_2)
  - Mold
  - Pesticides
  - Odors



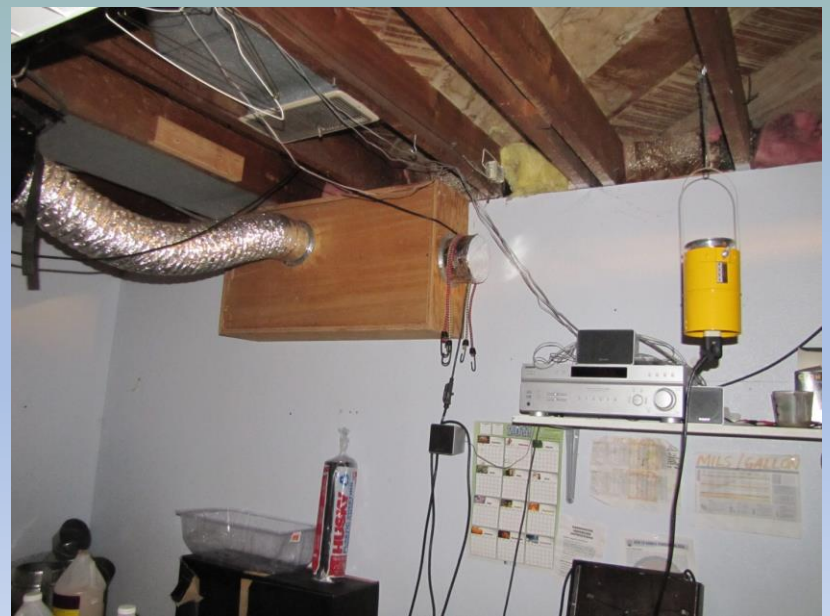


COMPLICATIONS

Dangers in Unlicensed Grows

- Water – large amounts (damage)
  - Water + heat + humidity = MOLD
- CO2 – 4 times the CO2 can result in 4 times the yield
  - Detached venting
  - CO2 generators/burners/bottles
- Mold – problem for landlords





- Sulfur – burned to control insects
- When sulfur is burned, it creates sulfur dioxide
- When sulfur dioxide mixes with enriched CO2, it creates hydrogen sulfide

Massive Non-Licensed Grows
How did Denver respond?

- Limit the size of non-licensed, non-residential grows to **36 plants** within one zone lot

- It shall be unlawful for any person, alone or in concert with other persons, to possess or cultivate more than thirty-six (36) marijuana plants on any zone lot in the city, except in a licensed marijuana cultivation facility

- It shall be unlawful for **any person who owns, manages, operates or otherwise controls** the use of any zone lot to allow more than thirty-six (36) marijuana plants to be possessed or cultivated on the zone lot, except in a licensed marijuana cultivation facility
- Defines a zone lot as a minimum of 3,000 square feet
    - To prevent artificial creation of additional zone lots to get around intent of ordinance

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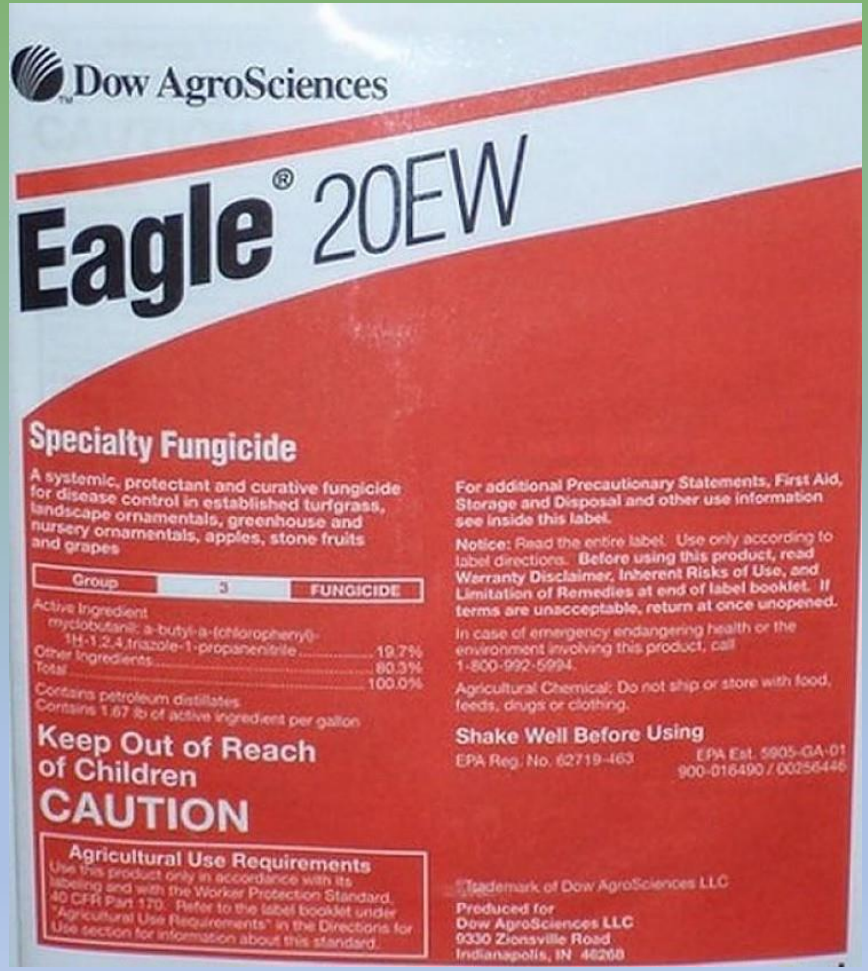
What about pesticides?

- Denver Fire became aware of pesticides in cultivation facilities
- Department of Environmental Health began investigating these concerns and put holds on marijuana plants/product in 11 grows
- Concern about pesticide contamination that could pose a risk to public health
- Denver reached out to the state for guidance and found that no one on the state level was doing anything



Pesticides

- Holds – not immediate condemnation
- Denver worked closely with pesticide program at Department of Agriculture
- Two grows filed lawsuits
- Finally EPA came to the table



- EPA testified from Washington DC at our hearing
- Judge ruled in favor of Denver – we were “absolutely within our authority” to protect public health by placing the holds on this potentially contaminated crop

Pesticides

- With no action by the state, Denver continues to take action to protect the public health
- Many challenges on both the state and federal level
- State preemption issues
- Jurisdictional challenges
- Laboratory issues

Boulder require MIPs to
meet food regulations
for ingredients and handling



Social Consumption



- Both Amendment 64 and state law do not allow the open and public consumption of marijuana
- I-300: Denver voters passed an ordinance last fall to allow businesses to create marijuana "designated consumption areas" (DCA)
- The state liquor enforcement division simultaneously passed a rule prohibiting the consumption of marijuana on liquor-licensed premises
- Denver created a "Social Consumption Advisory Committee" for the first six months of 2017 and created rules for implementing the ordinance
  - Proximity restrictions
  - Colorado Clean Indoor Air Act
- Bud and Breakfasts

BUD and BREAKFAST™
CANNABIS FRIENDLY ACCOMMODATIONS WORLDWIDE

Social Consumption

- Denver began accepting Marijuana consumption applications at the end of August, and we've been meeting with potential applicants about their models:
  - Book stores/lounges/cafes
  - Yoga studios
  - Arcades
  - Art studios



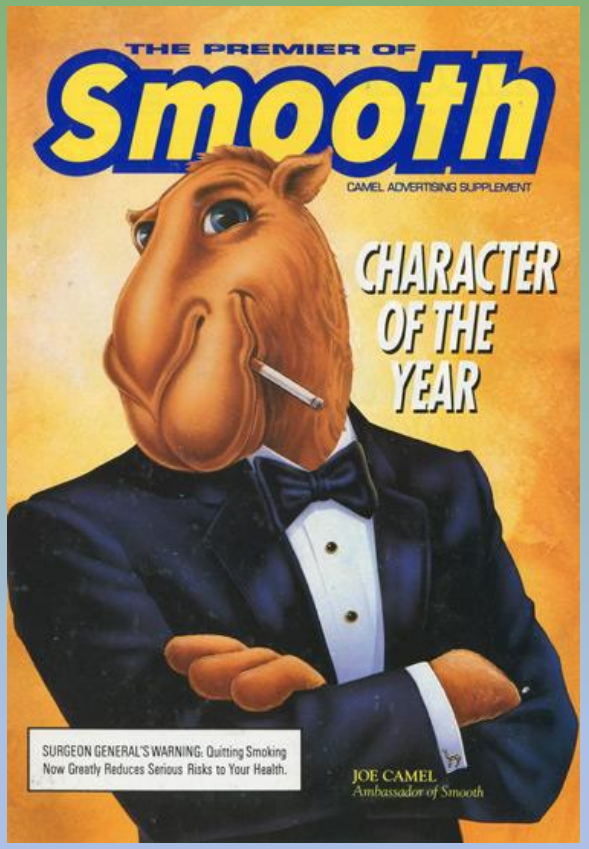






Advertising - Issues

- Advertising to Children
- Competition based on price – encourages use
- Public advertising
- Analogy to alcohol and cigarette advertising
- Support for non-profits



Security Issues

Issues

- Drugs and Money
- Burglary
- Dumpster Diving
- Diversion



Responses

- Require Safes
- Require making marijuana unusable
- Require background checks

Issues with Adjacent Unincorporated Areas

- Regulation tends to be more lax
- Attracts businesses that do not want to comply
- Annexation after the fact presents real political challenges.
- Boulder had 73 licenses in the city and 23 in an one block square unincorporated area adjacent to the city.

Inspections require a multi-disciplinary approach

Building

Fire

Zoning

Police

Licensing

Health Department







Conclusions

- Marijuana was legalized and the world did not end
- Creating a comprehensive and effective regulatory scheme requires a cooperative approach among different levels of government and with the community
- Legalization does not eliminate all criminal activity
- Legalization doe not produce a tax windfall
- Municipal attorneys from states with legalization hear a lot of marijuana jokes at IMLA conferences