Marijuana Regulation – Implications for Real Estate and Construction

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Stages of Marijuana Regulation

• Federal prohibition (1937-present)
  • Marijuana prohibited by federal law (Controlled Substances Act (1970))
  • Most states pass parallel provisions

• Medical Marijuana 1996-present
  • Starting in CA now includes 23 states plus DC

• Legalization (Nov 2012-present)
  • Colorado and Washington pass legalization (2012)
  • Eliminates prohibition on possessing small amounts
  • OR, AK pass similar provisions in 2014. CA is the next big one.
Colorado Timeline

- 1970 – Controlled Substances Act
- 2000 – Amendment XX – Medical Marijuana
- 2010 – Medical Marijuana Regulation
- 2012 – Amendment 64 – Recreational Marijuana
- 2013 – Task Force/Implementing Legislation
- 2014 – Recreational Marijuana Opens for Business
- 2014-present – Tinkering
Key Features of Amendment 64 – Decriminalization

- Possession of up to one ounce
- Homegrow
  - 6 Plants +
  - Marijuana traceable to those plants
- Public possession, display, but not use
- Can be given away but not sold
- Owners/Operators of property may prohibit it on their premises
  - Greenwood Village Example
Key Features of Amendment 64 – Regulation
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• 70/30 Vertical Integration Requirement
  • Disappeared Oct. 1, 2014

• 4 Kinds of Licenses
  • Grow, Retail, Infused Product, Testing

• Seed-to-Sale Surveillance

• Excise Tax and Special Sales Tax

• Background Checks/Residency Requirements

• Smaller Amounts for Out of State Buyers

• Joint State/Local Authority to Regulate
Local Authority

• Can Ban Businesses Outright
  • But can’t recriminalize
• Can have separate licensing requirements
• Can regulate time, place, and manner
• Denver Example
  • Moratorium on new licenses until January 1
  • 12 plant limit for houses
  • 36 plant limit for offsite, non-licensed premises
  • Outdoor advertising ban
• CML has an excellent resource:
Aside – Where could new businesses go?

Where can retail marijuana dispensaries legally locate in Denver, CO?

Prohibited land uses

- 1000 ft. from drug/alcohol treatment centers
- 1000 ft. from child care centers
- 1000 ft. from schools
- 1000 ft. from existing retail & medical marijuana dispensaries
- Residential zoning districts

Areas where retail marijuana dispensaries can legally open

- Can locate
- Cannot locate
- Non-developable land (parks, hydrology, etc.)

Number of times prohibited land uses overlap

- 1
- 2
- 3
- 4
- 5

The unprecedented decision to legalize recreational marijuana in Colorado also led to unprecedented new land use regulations aimed at balancing constituent concerns over safety with lawmakers’ own perceptions of how marijuana might disrupt surrounding neighborhoods. When a moratorium on new retail marijuana establishments in Denver is lifted in 2016, according to the City’s updated zoning code and new City Council legislation, the current law will prohibit new retail establishments from locating in nearly two-thirds of the city (not including airport zoning).

Sources:
OpenColorado - http://opencolorado.org/
Denver Open Data Catalog - data.denvergov.org
Denver Zoning Code, April 2014 - denvergov.org
Denver City Council Bill CB13-0570 - denvergov.org

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Federal Illegality Colors Everything

• Banking
  • Most banks won’t take MJ clients (for long).
  • Any assets used by MJ businesses are subject to seizure.

• Contract
  • Enforceability of contracts under CO law is pretty clear.
  • Elsewhere less so.

• Bankruptcy
  • As a federal benefit, it’s unavailable.

• Employment
  • Still waiting to hear on Coates v. Dish Network

• Lawyers
Lawsuits

• Oklahoma and Nebraska v. Colorado
  • Filed in the Supreme Court
  • Justices asked the feds to weigh in.

• Sheriffs v. Hickenlooper
  • Challenges both legalization and regulation

• Safe Streets Alliance v. Hickenlooper
  • RICO Charges
  • Brought against MJ businesses and...
    • Banks, builders, insurers, etc.
What’s at Stake?

A year of retail marijuana in Colorado

[Map and charts showing marijuana sales by county and month, as well as tax revenues by month. Source: Colorado Department of Revenue.]
Numbers to Watch

- Youth Usage Rates
- Interaction Effects
  - With Alcohol
  - With Other Drugs
- Drugged Driving
- Revenue
- Medical Cards/Sales
  - Flat/Up Since A64