

Welcome to
COLORADO



MEANWHILE IN COLORADO..







Agenda

- Some History. How we got here.
 - Medical Marijuana
 - Federal Response
- Amendment 64 Basics.
 - Task Force & Working Groups
- Colorado Laws and Rulemaking
 - What they do and do not do
 - Outstanding issues for Alaska
- Questions

Dude, How Did We Get Here?

- Amendment 20 in 2000.
- A patient or primary care giver charged with a violation of the state's criminal laws related to the patient's medical use of marijuana will be deemed to have established an affirmative defense to such allegation where:
 - The patient was previously diagnosed by a physician as having a debilitating medical condition;
 - The patient was advised by his or her physician that the patient might benefit from the medical use of marijuana; and
 - The patient and his or her primary caregiver where collectively in possession of amounts of generally two ounces and six plants.
- No mention of Dispensaries.

Dude, How Did We Get Here?

- Gonzales v. Raich, 545 U.S. 1, 29 (2005).
- United States Supreme Court held that under the Supremacy Clause of the US Constitution, where federal law and state law conflict, federal law prevails.
- Challenge to DEA's destruction of 6 marijuana plants in California grown pursuant to California's MMJ laws.
- Court said the Commerce Clause gave the federal government the power to pass and enforce the CSA as "production of the commodity meant for home consumption, be it wheat or marijuana, has a substantial effect on supply and demand in the national market for that commodity."
- "A single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." O'Connor dissent.
- "This makes a mockery of Madison's assurance that the powers delegated to the Federal Government are few and defined, while those of the States are numerous and indefinite." Thomas dissent.

Dude, How Did We Get Here?

- Ogden Memo in 2009.
- Deputy US Attorney General David Ogden advised federal law enforcement officials that federal resources should not be used to prosecute those in “clear and unambiguous” compliance with state medical marijuana laws.
- Still a federal crime but would not use its limited prosecutorial resources under this circumstance.
- “We are not at war with the people in this country.” drug czar Gil Kerlikowske.

Dude, How Did We Get Here?

- Dispensaries grow like weeds.
- More dispensaries in Denver than Starbucks and McDonalds combined.
- Legislative response needed.





“Let’s Get Together and Feel Alright”

- Bob Marley

Dude, How Did We Get Here?

- Zone consistently and we will be alright.
- A consistent approach was taken. Counties and Towns put these uses in the right spot and encouraged the State to regulate the industry.
- Counties were very uniform in asking that either the State regulate this business or give us the power to do it locally.
- They delivered a legitimized and regulated industry.
- Set up a dual state and local licensing system.
- Expressly contemplated that counties will adopt their own local licensing requirements that can supplement (be more or less strict) than the State's.
- Allowed local governments to completely opt-out and effectively ban commercial growth, manufacturing, or sale of medical marijuana.

Dude, How Did We Get Here?

- Eagle County MMJ regulations example:
- Allowed in commercial general and commercial limited zone districts as a use-by-right with minimum 200 foot buffers from residences, schools, community centers, etc.
- Development Standards requiring enclosure, security, ventilation, signage limitations, hour of operations limitations, etc.
- Licensing Standards requiring application fee, certification of compliance with building codes, certification of state licensing, certification of zoning compliance, odor mitigation, law enforcement notification, etc.
- 4 or 5 existing MMJ dispensaries.

Dude, How Did We Get Here?

- United States v. Bartkowicz, 10-cr-00118-PAB (D.Colo. 2010).
- United State District Court for the District of Colorado reaffirmed that a state cannot authorize a violation of federal law.
- Bartkowicz was a state-licensed MMJ caregiver who was raided and arrested by DEA in February, 2010.
- Was on 9News the day earlier bragging about his profits.
- DEA agent said they intent to arrest everybody. Colorado Representative Jared Polis writes Attorney General Holder and President Obama requesting them to follow the Ogden memo.
 - “Agent Sweetin's comment that "we arrest everybody" is of great concern to me and to the people of Colorado, who overwhelmingly voted to allow medical marijuana. Coloradans suffering from debilitating medical conditions, many of them disabled, elderly, veterans, or otherwise vulnerable people, have expressed their concern to me that the DEA will come into medical marijuana dispensaries, which are legal under Colorado law, and "arrest everybody" present. Although Agent Sweetin reportedly has backed away from his comments, he has yet to issue a written clarification or resign, thus the widespread panic in Colorado continues.”

Dude, How Did We Get Here?

- Cole Memo in 2011.
- “Clarified” the Ogden memo by stating it was limited to individuals with cancer and other serious illnesses and their caregivers. Was never intended to apply to commercial operations cultivating, selling or distributing marijuana.
- “Persons who are in the business of cultivating, selling or distributing marijuana, and those who knowingly facilitate such activities, are in violation of the Controlled Substances Act, regardless of state law.”

Dude, How Did We Get Here?

- Subsequent US Attorney letters.
- Stated the U.S. Attorneys do not consider state employees who conduct activities under state medical marijuana laws to be immune from liability under federal law.
- “As the Attorney General has repeatedly stated, the Department of Justice remains firmly committed to enforcing the federal law and the Controlled Substances Act in all States.”
- No subsequent action taken however in Colorado to enjoin or prosecute MMJ dispensaries until last year.



Federal/State Dynamic for Amendment 64

- Amendment 64 passes 55%-45%. More people vote for this question than Presidential race. In Eagle County it passes 66%-34%.
- Rep. Diana DeGette introduces Respect States' and Citizens' Rights Act exempting states from federal laws dealing with adult marijuana usage. Joined by Jared Polis, Mike Coffman, and Ed Perlmutter.
- "Today I am proud to join with colleagues from both sides of the aisle to protect states' rights and immediately resolve any conflict with the federal government." Rep DeGette.
- Died in committee.
- "The voters have spoken and we have to respect their will. This will be a complicated process, but we intend to follow through. That said, federal law still says marijuana is an illegal drug so don't break out the Cheetos or gold fish too quickly." Governor John Hickenlooper.



Federal/State Dynamic for Amendment 64

- United States Department of Justice Memo dated August 29, 2013:
 - Clarified that it will continue to enforce the Controlled Substances Act in Colorado, but that it will not challenge Colorado's ability to regulate the Retail Marijuana industry in accordance with State law provided Colorado implements strong and effective regulatory and enforcement systems that address public safety, public health and other law enforcement interests.
 - Federal enforcement priorities include preventing distribution to minors, preventing the diversion to states where it is illegal, preventing revenue to criminal enterprises and cartel, preventing the exacerbation of adverse public health consequences associated with marijuana use.

Amendment 64



Amendment 64 Highlights

- Declares purpose to be in the “interest of the efficient use of law enforcement resources, enhancing revenue for public purposes, and individual freedom.”
- For Individuals:
- May possess, use, show, buy and transport 1 ounce or less of marijuana and marijuana accessories if over 21.
- May possess, grown, and transport up to 6 marijuana plants (3 or fewer flowering) if over 21.
 - Growing must take place in enclosed lock space and not conducted openly and is not made available for sale.
- May not be consumed openly or in public.

Amendment 64 Highlights

- For Commercial Activities:
- Requires anyone manufacturing or selling MJ or MJ products to have a license.
 - MJ Cultivation Facility – an entity licensed to cultivate, prepare, cultivate and package MJ and sell to retail MJ stores, to MJ product manufacturing facilities, and to other cultivation facilities, but not to consumers.
 - MJ Product Manufacturing Facility – an entity licensed to purchase MJ, manufacture, prepare, and package MJ products; and sell other manufacturing facilities and retail MJ stores, but not to consumers.
 - MJ Testing Facility – an entity licensed to analyze and certify the Safety and Potency of Marijuana.
 - Retail MJ Store – an entity licensed to purchase MJ from cultivation facilities and product manufacturing facilities and to sell to consumers.

Amendment 64 Highlights

- For Commercial Activities (Cont):
- Requires the State to adopt regulations for the implementation of this licensing program.
 - Requires rules that do not expressly prohibit or make operation “unreasonably impracticable”.
 - Can set qualifications, security requirements, labeling requirements, requirements preventing sales to minors, health and safety regulations regarding manufacturing, restrictions on advertising, and fees for applications.
 - License Fees capped at \$5000 for new licenses and renewals. Fees capped at \$500 for MMJ license holders applying. Half goes to counties allowing operations.

Amendment 64 Highlights

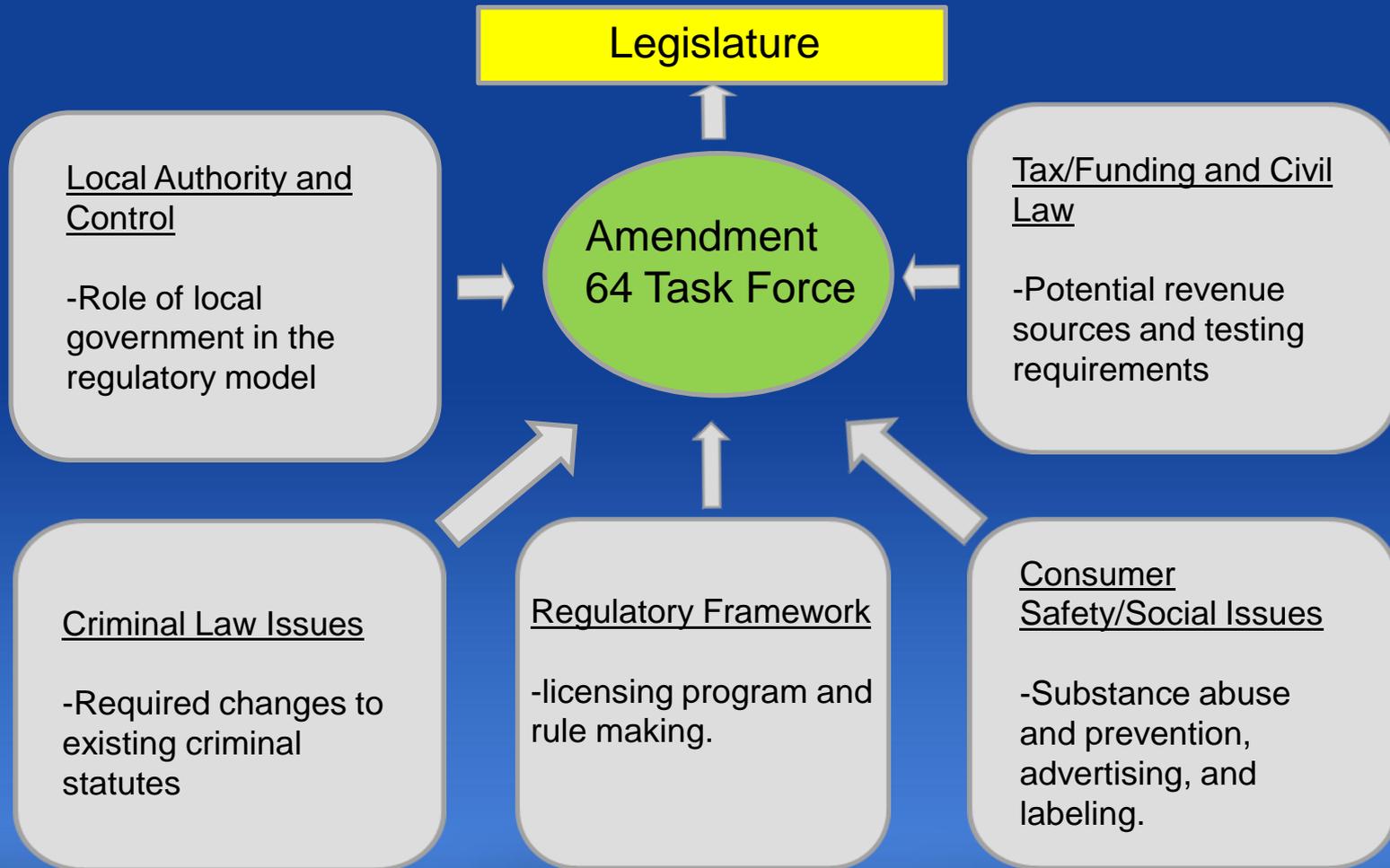
- For Commercial Activities (Cont):
- Requires the State Legislature to enact an excise tax to be levied upon MMJ sold or transferred by a cultivation facility to a retail store at a rate not to exceed 15% with the first 40 million raised annually going to the public school capital construction assistance fund.
TABOR?
- Requires the State to accept applications. If not, local jurisdictions have to.
- Counties may opt out.
- Counties may adopt time, place, and manner restrictions.

Amendment 64 Highlights

- Carve Outs:
- Does not require employer to permit or accommodate use or possession in the workplace.
- Does not allow driving under the influence or while impaired.
- Does not prohibit an employer or person from controls a property from prohibiting or regulating the use or possession on such property. Greenwood Village.
- Does not affect medical MJ laws or establishments.

Amendment 64 Task Force

- Governor creates task force to make recommendations to legislature on implementing Amendment 64. Comprised of 5 Working Groups.



Amendment 64 Task Force Recommendations

- Dual state/local approval system similar to MMJ (not liquor code). Allows for control through zoning rather than licensing if we so choose.
- Determined funding. Defined operating fees to mean fees charged by local governments to offset costs of administration and enforcement.
- Vertical Integration will remain for at least two years.
- First year or two of licenses limited to existing MMJ holders.
- Sales tax in addition to the 15% excise tax set forth in Amendment 64.
- Per transaction limits lower for visitors than residents.
- Allowing local jurisdictions to adopt stricter signing, marketing and advertising guidelines.
- Precluding combining marijuana with alcohol in manufacture or sale.



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State Law Highlights

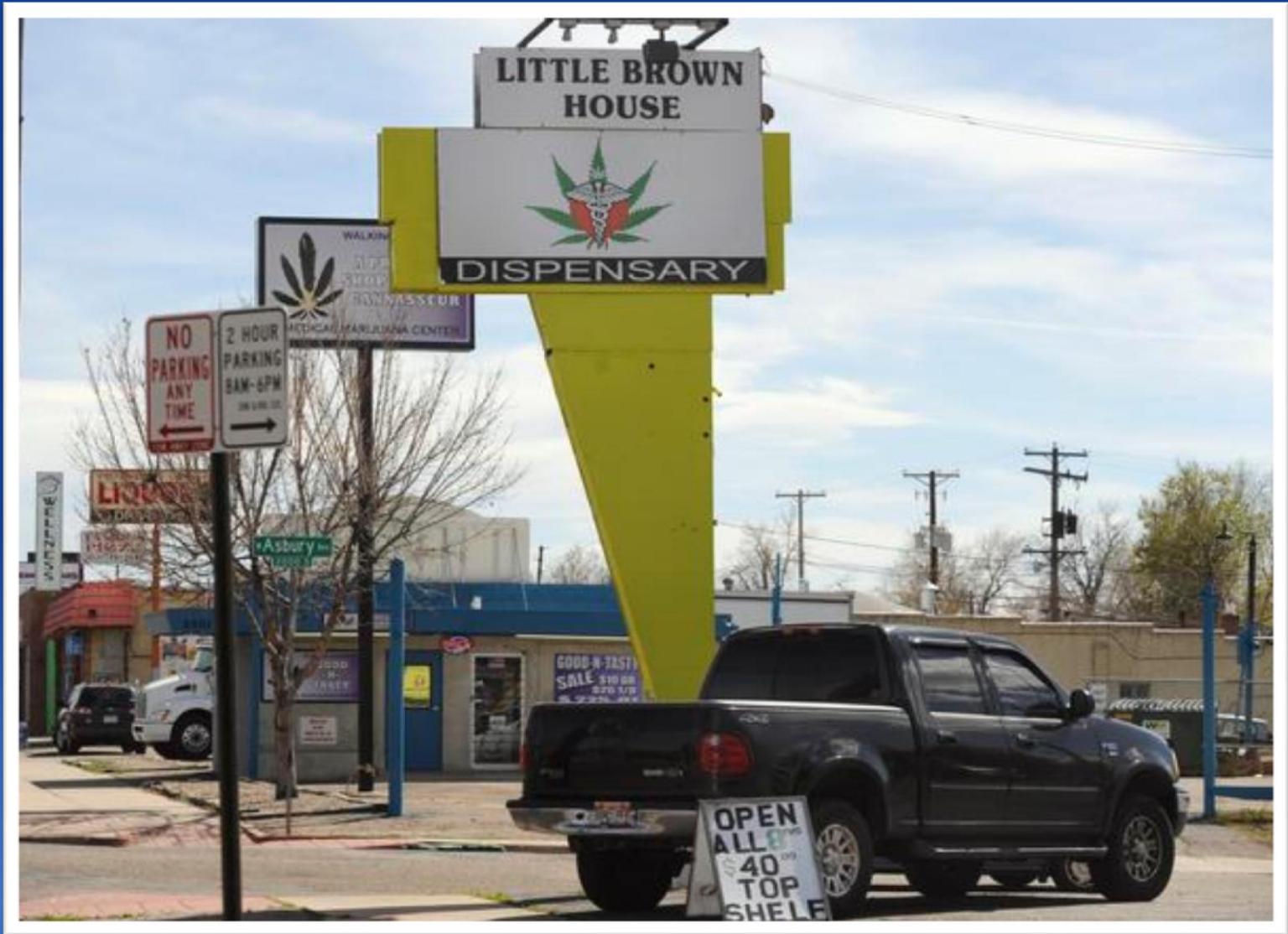
- What it does:
- Creates 4 types of licenses for RMJ:
 - Retail Marijuana Store
 - Retail Marijuana Cultivation
 - Retail Marijuana products manufacturing
 - Retail Marijuana testing
- Requires compliance with local rules, zoning, and licensing for State approval. Any local jurisdiction may enact regulations governing the time, place, manner, and number of establishments. May opt out of the commercial like MMJ.
- Specifically retains our power to enact ordinance or resolutions concerning matters authorized to local governments (building codes, fire codes, sign codes, etc.)
- Local licensing hearings are permissive but not mandatory.

State Law Highlights

- What it does:
- Provides for a splitting of licensing fees and allows local jurisdictions to charge additional fees for inspection, administration, and enforcement.
- Must be a Colorado resident for two years prior to application.
- Nonresidents limited to ¼ ounce. Residents limited to 1 ounce.
- Adopts the 1000 foot school buffer but allows local jurisdictions to vary the distance restriction.
- Allows MMJ and RMJ to be sold in the same location (dual operation) if allowed by local jurisdiction.
- Makes labeling a matter of statewide concern.
- Adds drug content to DUI or DWAI statutes and creates permissible inference that a defendant is under the influence if the driver's blood contained five nanograms or more of delta 9-tetrahydrocannabinol per milliliter of blood.

State Law Highlights

- What it does:
- Creates state agency to adopt list of banned substances in MJ cultivation and develop good cultivation practices.
- Requires advanced peace officer training for impaired driving.
- Adds MJ to statewide smoking ban.
- Created open container offense similar to alcohol in vehicles.



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State Law Highlights

- What it does NOT do:
- Created State Licensing Authority (“Club Med”) and required them to promulgate rules (get into the weeds) on the following subjects:
 - Schedule of fees that may be charged.
 - Qualifications for license holders.
 - Security and surveillance requirements for any licensed premises.
 - Requirements to prevent the sale or diversion to those under 21.
 - Labeling requirements (THC content, pesticides, warnings, etc.).
 - Limitations on advertising and displays.
 - List of prohibited chemicals in cultivation.
 - Health Inspection standards for product manufacturing licenses.
 - Requirement for or child proof container and can’t package in a way that appeals to minors (cartoon characters).
 - Waste disposal standards.

State Law Highlights

- What statutes do NOT do:
 - Preclusion on internet sales. All sales must occur with the licensee's premise. No deliveries. No over-the-phone sales.
 - Cannot give away non-MMJ consumable product (cigarettes, alcohol, or food products).
 - Cannot combine nicotine or alcohol in MMJ products.
 - Limits on THC in edibles (100 milligrams) and requirement of serving size labeling.
 - Detailed inventory tracking system requirements.
 - Prohibition on television, radio, print, and internet unless no more than 30 percent of the audience is reasonably expected to be under the age of 21.
 - Cannot have outdoor advertising visible to the public (billboards, vehicle mounted sign, hand held portable sign, leaflets handed out or left on a vehicle, etc.) except for fixed sign for the business.

Other Issues/Unintended Consequences/Foul Pitches

- Social Clubs
- Home Grows
- Butane Extractions
- Employment Law
- Law Enforcement Issues
- Landlord Tenant Law
- Nuisance Cases
- Offspring Industries – 420 rallies, weed tours, parades
- Colorado Current law suits.
- Parallel medical and recreational industries

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