



**DENVER**  
THE MILE HIGH CITY

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## MEMORANDUM

TO: Denver City Council, Special Issues (Amendment 64) Committee

FROM: David W. Broadwell, Assistant City Attorney

RE: Amendment 64 Implementing Legislation

DATE: May 6, 2013

With the Colorado General Assembly set to adjourn on May 8, presumably having adopted several pieces of legislation implementing Amendment 64 on a statewide basis, the Denver City Council must now mobilize to determine how Amendment 64 will be implemented locally. This memorandum is designed to assist the City Council in framing and drafting local ordinances in response to Amendment 64 and new state statutes on three fronts: licensing and regulation of marijuana businesses; taxation and budgetary matters; and miscellaneous criminal law matters related to personal possession and use of marijuana.

This memorandum primarily invites the Denver City Council to answer a series of YES/NO questions in order to reach consensus on exactly how marijuana will be regulated in Denver going forward.

### Licensing and Regulation of Retail Marijuana Establishments

The main legislation from the 2013 session addressing state and local authority to regulate retail marijuana establishments is HB 13-1317. Adoption of this legislation, in conjunction with the language of Amendment 64 itself, leaves Denver with the following primary questions to answer:

1. Whether to allow retail marijuana establishments to exist in Denver at all?

2. Which of the four distinct types of retail marijuana establishments will be allowed to exist in Denver?
  - a. Retail marijuana stores.
  - b. Retail marijuana cultivation facilities.
  - c. Retail marijuana products manufacturers.
  - d. Retail marijuana testing facilities.
3. Whether to provide a phase-in period during which only current medical marijuana licensees may be allowed to convert to retail marijuana establishments or add a retail marijuana license to their current operations?
  - a. If so, for how long?
  - b. Allow changes of ownership during the phase-in period?
  - c. Allow changes in location during the phase in period?
4. Whether to allow collocation (i.e. dual use of the same location) for medical marijuana businesses and retail marijuana businesses?
5. Whether to limit the number of businesses allowed in Denver in any of the four classes of state licensing and, if so, determine how to prioritize those who would compete for the limited number of approvals.
6. Whether to establish and administer a separate local *licensing* requirement, *per se*, or instead depend entirely on other laws (e.g. zoning and land use laws) to enforce “time, place and manner” restrictions on retail marijuana establishments in Denver?
7. Whether to adopt counterpart local regulations addressing some or all of the same subject matter being addressed in state regulations (see attached Appendix detailing matters of state regulation), or instead focus local regulations entirely on aspects of “time, place and manner” that are not being regulated by the state?
  - a. Character and background checks for state license applicants?
  - b. Business operational standards?
  - c. Product standards?
8. Whether to establish hearing procedures and approval criteria for retail marijuana establishments in Denver?
  - a. Whether to do so only for retail marijuana stores, or for other classes of state licensing as well?
  - b. Whether to mandate public hearing requirements?
  - c. Criteria for approval? (Will the criteria be “needs and desires” and “reasonable requirements of the neighborhood” as it is for liquor licensing, or will the criteria be something else?)

- d. Should the same approval procedures and criteria be equally applied to existing medical marijuana licensees who seek to convert to or add a retail marijuana license?
9. Whether to impose spacing restrictions?
  - a. Whether to do so for retail marijuana stores, or for other classes of state licensing as well?
  - b. Whether to carry forward all existing spacing requirements currently imposed upon medical marijuana centers? (1000-foot rule from schools, colleges, licensed child care centers, and between the centers themselves.)
  - c. Whether to carry forward all existing grandfathering provisions currently enjoyed by medical marijuana centers and cultivators under previous city licensing and zoning laws?
  - d. Whether to adopt new forms of spacing requirements to be applied to retail marijuana establishments?
10. Whether to impose other location restriction on retail marijuana establishments through zoning or otherwise, e.g. by identifying specific zone districts in which retail marijuana establishments are or are not allowed?
11. Whether to impose special restrictions on signs and advertising?
  - a. Stand pat on state restrictions?
  - b. Carry forward restrictions previously imposed on medical marijuana centers and apply the same to retail marijuana establishments?
  - c. Adopt new restrictions?
12. To the extent the city establishes a local licensing and regulatory regime, what is an appropriate annual “operating fee” to impose upon licensed retail marijuana establishments operating in Denver?
13. Whether Denver wants to allow retail marijuana businesses to exist in the city at all if the state defaults on its licensing and regulatory responsibility by: (A) failing to adopt necessary regulations by July 1, 2013; or (B) failing to act on any license application the state licensing authority receives within 90-days?
14. In general, any implementing ordinance allowing retail marijuana establishments to exist in Denver should establish “civil penalties” for violation of city requirements.
15. Any implementing ordinance allowing retail marijuana establishments to exist in Denver should:
  - a. Clearly identify a single Denver point of contact with whom the state licensing authority will interact in order to determine whether or not a

particular license application or other licensing action complies with Denver requirements.

- b. Specify deadlines for responding to the state regarding new license approvals and other licensing actions.

## **Taxation and Budgetary Matters**

The major marijuana taxation bill of the session was HB 13-1318, which refers a tax increase question to the November, 2013 statewide ballot with two components: (A) a wholesale 15% excise tax on cultivated marijuana earmarked for school capital construction as promised in Amendment 64; and (B) a special 10% sales tax on to be imposed over and above the state's normal 2.9% sales tax. Fifteen percent of the revenue derived from the 10% sales tax will be shared back with the local jurisdictions in which the tax is collected.

Both HB 1318 as well as HB 1317 capture sales tax and fee revenue derived from retail marijuana businesses, and dedicate these revenues to the "direct and indirect costs" of administering the state regulatory regimes for both medical and retail marijuana. However, the local share-back of revenue derived from the special 10% sales tax is not earmarked by HB 1318 for any particular purpose.

### Questions for Denver policy-makers:

1. Whether to refer to the ballot an additional local sales or excise tax on marijuana and, if so, at what rate?
2. Whether to reserve and earmark marijuana-related revenues, and if so for what purpose?
  - a. State share-back revenues?
  - b. Existing city sales tax revenues derived from medical or retail marijuana establishments?
  - c. Any additional city sales or excise tax?
  - d. "Operating fees" imposed on retail marijuana establishments?
3. Whether to budget and appropriate monies to provide additional resources for marijuana-related regulatory enforcement and services?
4. Whether to require posting of a marijuana tax bond to better ensure the payment of city taxes by retail marijuana establishments?

## **Additional Regulation of Personal Use and Possession of Marijuana**

The state originally intended to adopt various amendments to the Colorado Criminal Code to conform the state's Uniform Controlled Substances Act to Amendment 64, and more clearly define what is or is not now legal in Colorado in terms of marijuana possession, use and distribution. However, most of the conforming amendments originally proposed in SB 13-283 were completely stripped from the bill, and the entire subject of conforming amendments to state criminal laws was referred to the Colorado Commission on Criminal and Juvenile Justice for recommendations to be made back to the General Assembly by December 15, 2013 for consideration in the next session.

In light of the state's inaction on this important issue, Denver policy-makers should now decide:

- Whether to amend the city's existing ordinance prohibiting "open and public" consumption of marijuana in order to better define the meaning of "open and public."
- Whether to ban other business models not expressly contemplated by Amendment 64, regardless of whether or not these businesses purport to be for-profit or nonprofit, when these businesses are designed to promote or facilitate marijuana consumption, e.g. cannabis clubs, cooperatives, etc.?
- Whether to clarify that exemption from prosecution under state and local marijuana laws is enjoyed only on an individual and personal basis by an adult in actual possession of one ounce or less of marijuana or six or fewer marijuana plants, and this "right" cannot be delegated by the individual to any other person or entity to cultivate or hold the marijuana on the individual's behalf.
- Whether to adopt any additional restrictions on home cultivation of marijuana plants either through zoning or otherwise?
- Whether there are any other suggestions from the Denver Police Department for any short-term clarification to city marijuana laws while awaiting conforming amendments to the Colorado Criminal Code?

*Appendix*

**REQUIRED SUBJECTS FOR STATE RULE-MAKING  
ACCORDING TO HB 13-1317**

*Except where otherwise indicated, HB 13-1317 requires rulemaking by the Marijuana Enforcement Division of the Colorado Department of Revenue (i.e. the “state licensing authority”) on the following subjects by July 1, 2013.*

1. Establishment of a “seed to sale tracking system.” §§ 12-43.4-202 (1); 12-43.4-403 (2)(d), C.R.S. (*Not expressly tied to July 1, 2013 deadline.*)
2. State licensing procedures generally. §§ 12-43.3-203 (3)(a)(I) and (b)(8), C.R.S.
3. Schedule of licensing and renewal fees. § 12-43.3-203 (3)(a)(II), C.R.S.
4. Qualifications and background checks. § 12-43.3-203 (3)(a)(III), C.R.S.
5. Health testing and certification of marijuana (in conjunction with CDPHE) for purity, adulteration, THC content, etc. § 12-43.3-203 (3)(a)(IV), C.R.S.
6. Premises security requirements. § 12-43.3-203 (3)(a)(V), C.R.S.
7. “Requirements to prevent underage diversion.” § 12-43.3-203 (3)(a)(VI), C.R.S.
8. Labeling requirements. § 12-43.3-203 (3)(a)(VII), C.R.S.
9. “Health and safety regulations” for cultivators and manufacturers. § 12-43.3-203 (3)(a)(VIII), C.R.S.
10. Marketing, advertising, signage, and display. § 12-43.3-203 (3)(a)(IX) and (c)(I), C.R.S.
11. Storage, warehousing and transportation. § 12-43.3-203 (3)(a)(X), C.R.S.
12. Sanitary requirements for marijuana establishments. § 12-43.3-203 (3)(a)(XI), C.R.S.
13. Record-keeping by licensees. § 12-43.3-203 (3)(a)(XII), C.R.S.
14. Sales and excise tax reporting and transmittal. § 12-43.3-203 (3)(a)(XIII), C.R.S.

15. Access to information and records for state tax collectors. § 12-43.3-203 (3)(a)(XIV), C.R.S.
16. Miscellaneous compliance and enforcement procedures. § 12-43.3-203 (3)(a)(XV), C.R.S.
17. Specification of duties of officers and employees of the state licensing authority. § 12-43.3-203 (3)(b)(I), C.R.S.
18. "Instructions for local jurisdictions and local law enforcement officers." § 12-43.3-203 (3)(b)(II), C.R.S.
19. "Requirements for inspections, investigations, searches, seizures, forfeitures . . . ." § 12-43.3-203 (3)(b)(III), C.R.S.
20. "Prohibition of misrepresentation and unfair practices." § 12-43.3-203 (3)(b)(IV), C.R.S.
21. Individual identification cards for owners, managers and employees of businesses. § 12-43.3-203 (3)(b)(V), C.R.S.
22. Identification of state licenses. § 12-43.3-203 (3)(b)(VI), C.R.S.
23. Specifications for acceptable forms of customer identification. § 12-43.3-203 (3)(b)(VII), C.R.S.
24. Schedule of penalties and administrative citations procedures. § 12-43.3-203 (3)(b)(IX), C.R.S.
25. Packaging. § 12-43.3-203 (3)(c)(II), C.R.S.
26. Transportation of marijuana between businesses and testing laboratories. § 12-43.3-203 (3)(c)(III), C.R.S.
27. Limits on THC in marijuana products per serving size. § 12-43.3-203 (3)(c)(IV), C.R.S.
28. Additives. § 12-43.3-203 (3)(c)(VI), C.R.S.
29. Annual local fire inspections of cultivation facilities. C.R.S. § 12-43.3-203 (3)(c)(VII), C.R.S.

30. Creation of “statewide licensure classification system” for cultivation facilities, with an associated “fee structure.” (*Not expressly tied to July 1, 2013 deadline.*) § 12-43.3-203 (4)(a), C.R.S.
31. Statewide limit on total number of licenses. (*Permissive, not mandatory, and not expressly tied to July 1, 2013 deadline.*) § 12-43.3-203 (4)(b)(I)(A), C.R.S.
32. Statewide limit on size and number of cultivation facilities. (*Permissive, not mandatory, and not expressly tied to July 1, 2013 deadline.*) § 12-43.3-203 (4)(b)(I)(B) and (C), C.R.S.
33. Premises standards for collocation of medical marijuana centers and retail marijuana stores at same location. § 12-43.4-401 (2)(c), C.R.S.
34. “Automatic dispensing machines.” § 12-43.4-402 (9), C.R.S.
35. “Acceptable testing and research practices” utilized by a licensed marijuana testing facility. § 12-43.4-405 (2), C.R.S.
36. Disposal of unauthorized marijuana. § 12-43.4-602 (7), C.R.S. (*Rule-making required by January 1, 2014.*)