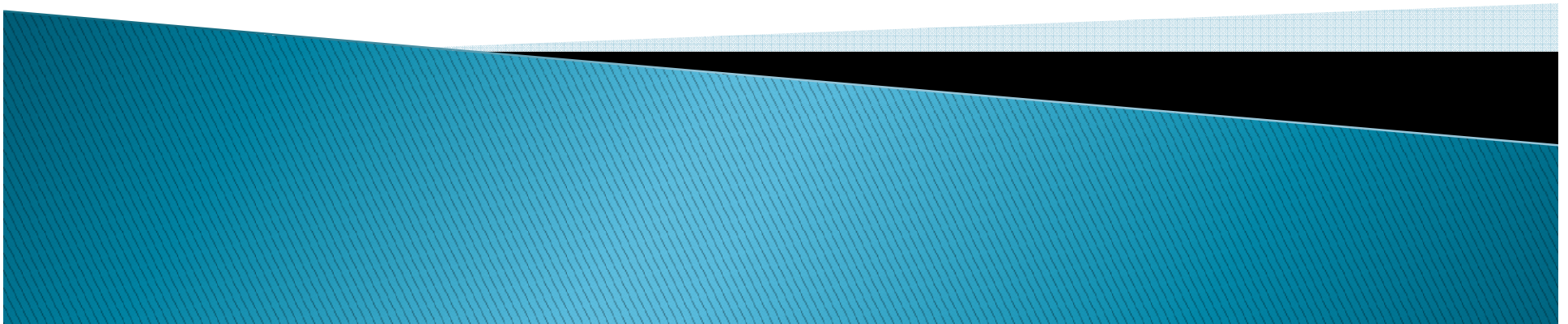


Public Consumption and Possession of Marijuana:

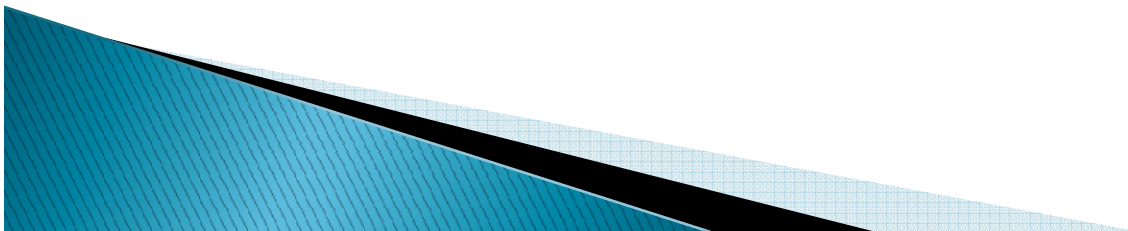
Legal and Policy Options for the Denver City Council

October 14, 2013



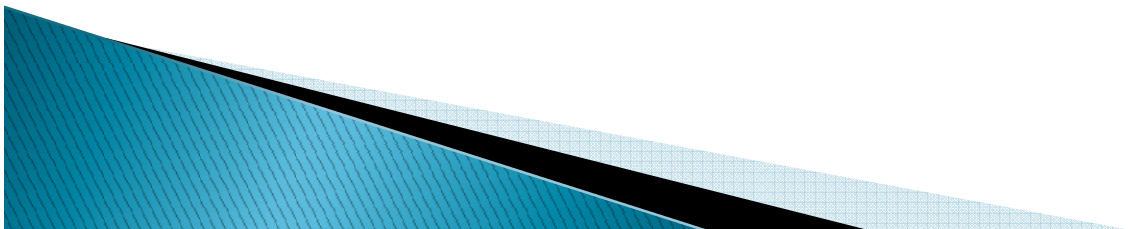
Denver voters have said “YES” to state and local marijuana initiatives five times since the year 2000, but . . .

. . . each time voters were assured that marijuana consumption would be lawful only to the extent it was done discreetly and privately.



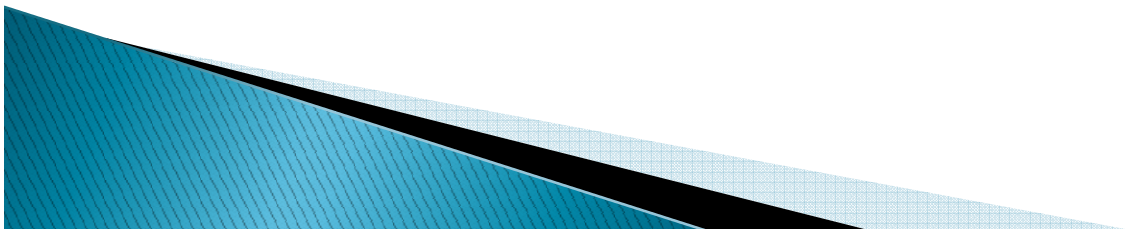
Colorado Amendment 20: Medical Marijuana (2000)

- ▶ *“No patient shall: . . . Engage in the medical use of marijuana in plain view of, or in a place open to, the general public.”*



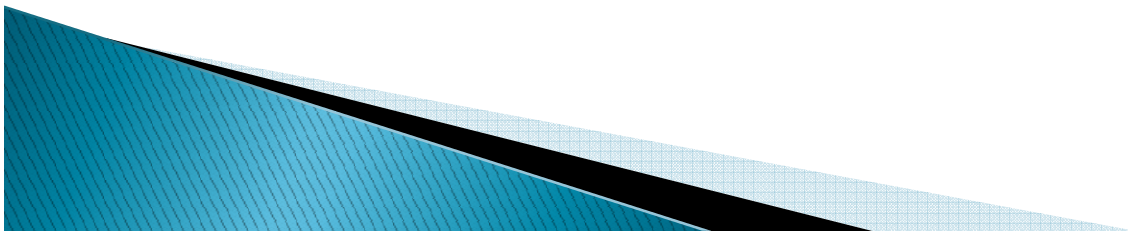
Denver Initiative 100: Decriminalizing Adult 1 oz. possession (2005)

- ▶ *“Shall the voters of the City and County of Denver adopt an amendment to the Denver Revised Municipal Code that would make legal the private use and possession of one ounce or less of marijuana for any person 21 years of age or older?”*



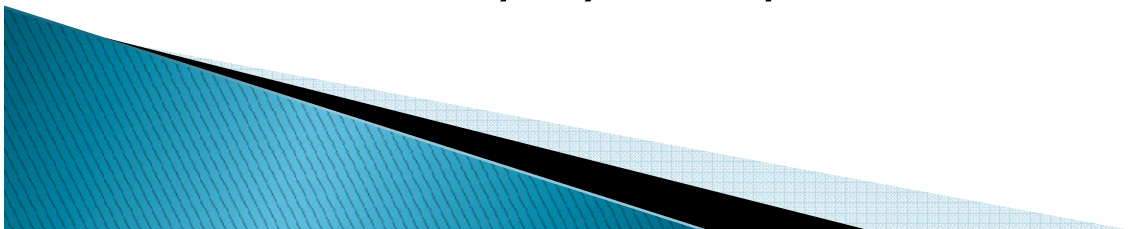
Colorado Amendment 44 (failed): Decriminalizing Adult 1 oz. possession (2006)

- ▶ *From the 2006 Blue Book: “Other marijuana offenses. The following marijuana offenses will continue to be illegal under state law if Amendment 44 passes: . . . open and public display, use, or consumption of marijuana”*

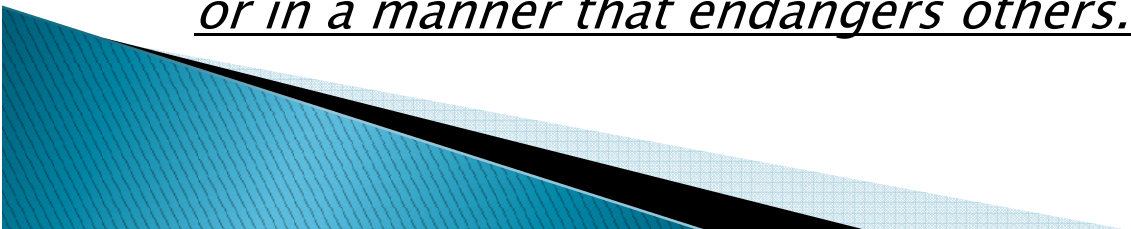


Denver Initiated Ordinance 100: “Lowest law enforcement priority” (2007)

- ▶ *“Shall the voters for the City and County of Denver adopt an ordinance to the Denver Revised Municipal Code that would make the private use and possession of marijuana by persons 21 years of age and older the City’s lowest law-enforcement priority?”*
- ▶ *“The Denver police department and the city attorney’s office shall make the investigation, arrest and prosecution of marijuana offenses, where the marijuana was intended for adult personal use, the city’s lowest law enforcement priority. . . . ‘Adult personal use’ is defined as the possession of less than one ounce of marijuana by an adult at least 21 years of age, where the marijuana is not used or displayed in public.”*

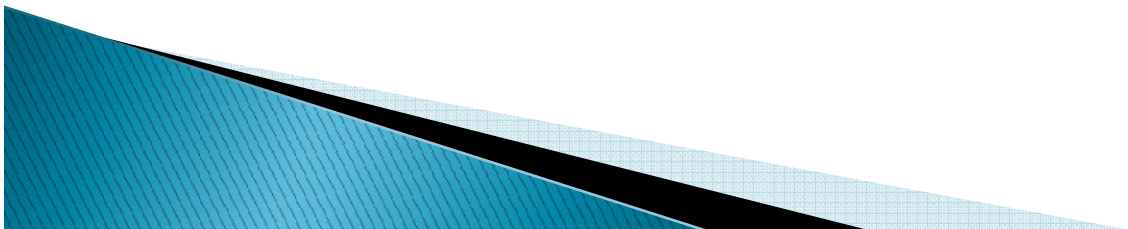


Colorado Amendment 64: Decriminalizing Adult 1 oz. possession; authorizing commercial distribution (2012)

- ▶ “. . . the following acts are not unlawful and shall not be an offense under Colorado law or the law of any locality . . .
 - ▶ *“Possessing, using, displaying, purchasing, or transporting marijuana accessories or one ounce or less of marijuana.”*
 - ▶ *“Possessing, growing, processing, or transporting no more than six marijuana plants, with three or fewer being mature, flowering plants, and possession of the marijuana produced by the plants on the premises where the plants were grown, provided that the growing takes place in an enclosed, locked space, is not conducted openly or publicly, and is not made available for sale.”*
 - ▶ *“Consumption of marijuana, provided that nothing in this section shall permit consumption that is conducted openly and publicly or in a manner that endangers others.”*
- 

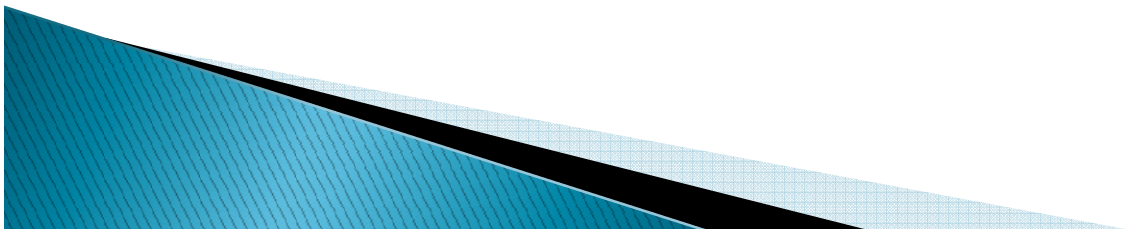
Colorado Amendment 64: Complete prohibition of marijuana on a site-specific basis

- ▶ *“Nothing in this section shall prohibit a person, employer, school, hospital, detention facility, corporation or any other entity who occupies, owns or controls a property from prohibiting or otherwise regulating the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in that property.”*



State and local laws have long prohibited either the display or consumption of marijuana in public

- ▶ C.R.S.: *“a person who openly and publicly displays, consumes, or uses two ounces or less of marijuana commits a drug petty offense and, upon conviction thereof, shall be punished by a fine of up to one hundred dollars and up to twenty-four hours of community service.”*
- ▶ D.R.M.C.: *“It shall be unlawful for any person to openly and publicly display or consume one (1) ounce or less of marihuana.”*
- ▶ Before Amendment 64, a person detected consuming a small quantity of marijuana could be cited for simple possession; now that mere possession is no longer a criminal offense under state and city laws, it is necessary to clarify “open and public.”



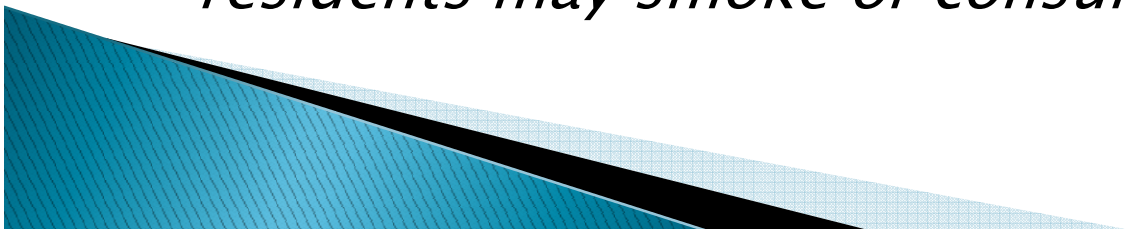
Governor's Task Force Report on the Implementation of Amendment 64 (March 13, 2013)

- ▶ *“The Task Force . . . was unable, within the timeframe of its work, to come to agreement about defining “openly and publicly” as these terms relate to the consumption of marijuana. This is an important omission, as defining these terms provides the basis for allowing or prohibiting consumption of marijuana in various venues.”*
- ▶ *“. . . the Colorado General Assembly must define what is meant by open and public consumption of marijuana in order to allow or prohibit consumption in different venues and give clear guidance to law enforcement officers.”*



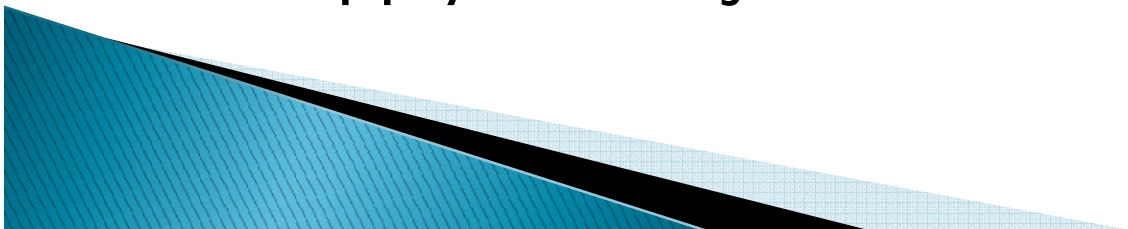
Governor's Task Force Report on the Implementation of Amendment 64

- ▶ *“The Task Force had extensive discussions on possible scenarios where citizens might smoke or ingest marijuana and whether these could be considered open and public, in which case consumption should be prohibited. For some venues, such as front and back porches, decks, and yards in private homes where members of the public could clearly view and smell residents smoking marijuana or consuming edible marijuana products, there was disagreement about whether these venues are both open and public and, consequently, whether residents may smoke or consume marijuana there.”*



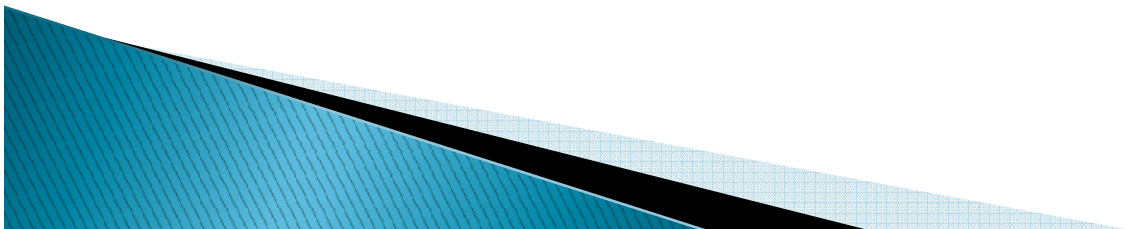
What did the Colorado General Assembly accomplish in 2013 via SB 13-283?

- ▶ The General Assembly did not further define “openly and publicly,” either in terms of marijuana consumption or private marijuana cultivation.
- ▶ They adopted an “open container” law for marijuana in private vehicles (modeled after liquor)
- ▶ They extended the Colorado Clean Indoor Air act to apply to marijuana smoking.



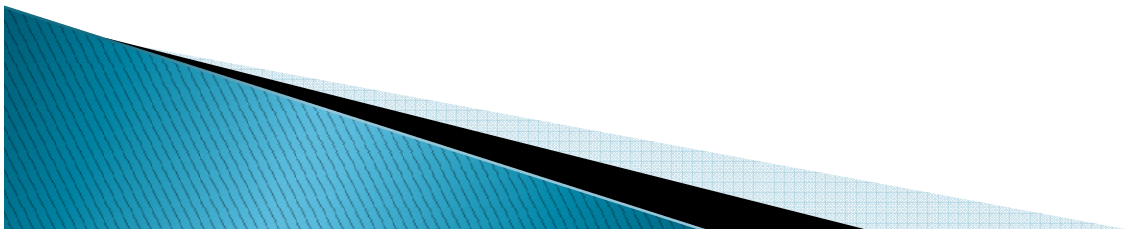
Four distinct approaches to defining when marijuana consumption is considered “open and public”

- ▶ Purely “public” property (government owned facilities such as parks, sidewalks, etc)
- ▶ Public plus “quasi-public” property (private property that is generally open to members of the public such as stores, restaurants, congregate facilities, etc.)
- ▶ Private-to-Public (consumption on private property perceptible to persons on public property.)
- ▶ *Private-to-private” (consumption on private property perceptible to person on other private property)




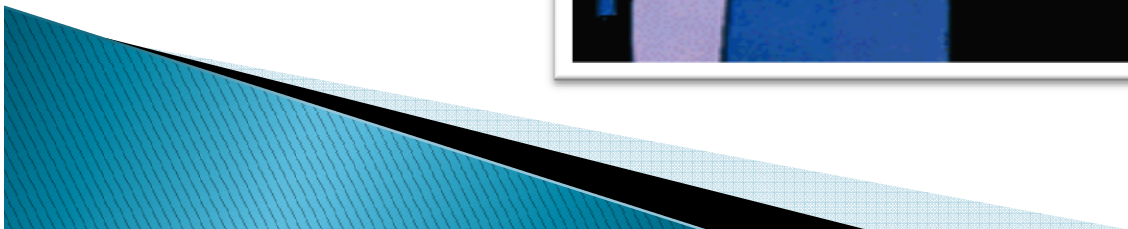
State and local laws routinely regulate behaviors on private property that affect persons on adjacent properties, by:

- ▶ Sight (e.g. aesthetic regulations, sign laws, public indecency laws, etc.)
- ▶ Sound (e.g. noise laws)
- ▶ Smell (e.g., *“It shall be an unlawful nuisance for any person to cause or permit the emission of odorous air contaminants from any source so as to result in detectable odors that leave the premises upon which they originated and interfere with the reasonable and comfortable use and enjoyment of property.”* § 4-10 D.R.M.C.)



Comparisons to regulation of alcohol beverages

- ▶ Unlawful to consume alcohol in any “public place,” except upon licensed premises where on-site consumption is allowed. (Liquor Code does not define “public place.”)
 - ▶ Open container laws prohibit consumption in motor vehicles, with exceptions.
 - ▶ Unlawful to possess or consume in city parks, except where permit has been granted. (Prohibition does not include 3.2 beer.)
 - ▶ Absolutely no restriction on adult consumption of alcohol on residential or other private property.
- 



Three key elements of draft legislation to regulate possession and consumption of marijuana in Denver

- ▶ Codifying a broad definition of “openly and publicly”
- ▶ Outright prohibition of display and possession of marijuana in city parks and on the 16th Street Mall
- ▶ Repeal of obsolete “lowest law enforcement priority” language

