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“Cannabis Consumption Pilot Program”

Analysis of Initiated Ordinance 300

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Question as it will appear on November 8 ballot

Shall the voters of the City and County of Denver adopt an ordinance that creates a cannabis consumption pilot program where: the City and County of Denver (the "City") may permit a business or a person with evidence of support of an eligible neighborhood association or business improvement district to allow the consumption of marijuana ("cannabis") in a designated consumption area; such associations or districts may set forth conditions on the operation of a designated consumption area, including permitting or restricting concurrent uses, consumptions, or services offered, if any; the designated consumption area is limited to those over the age of twenty-one, must comply with the Colorado Clean Indoor Air Act, may overlap with any other type of business or licensed premise, and cannot be located within 1000 feet of a school; a designated consumption area that is located outside cannot be visible from a public right-of-way or a place where children congregate; the City shall create a task force to study the impacts of cannabis consumption permits on the city; the City may enact additional regulations and ordinances to further regulate designated consumption areas that are not in conflict with this ordinance; and the cannabis consumption pilot program expires on December 31, 2020 or earlier if the City passes comprehensive regulations governing cannabis consumption?

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Comparison to last year's initiative (withdrawn)

- A similar initiated ordinance allowing commercial property owners to unilaterally designate marijuana consumption areas on their property was proposed last year in Denver, but was withdrawn at the last minute by the proponents

- The main difference in this year's initiative: "designated consumption areas" would require a permit from the Department of Excise and Licenses

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Key Dates

- The initiated ordinance would apparently become effective upon adoption
- The Director of E&L must have application forms for permits available no later than 60 days after adoption
- Per charter, city council could not amend or clarify the ordinance until May, 2017
- The “pilot” program will sunset December 31, 2020, with no obligation to extend

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Relationship to state law—On-premises MJ consumption

- Although Amendment 64 purported to regulate marijuana "in a manner similar to alcohol," the constitutional amendment did not contain any provision for state or local on-premises consumption licenses or permits

- So far, the state has not adopted any statutory provision for on-premises marijuana consumption licenses or permits

- State law explicitly prohibits MJ consumption on the licensed premises of any other type of MJ business

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Relationship to state law—"open and public" consumption of MJ

- Amendment 64 says: *"nothing in this section shall permit consumption that is conducted openly and publicly*."
- Amendment 20 says: *"No patient shall engage in the medical use of marijuana in plain view of, or in a place open to, the general public."*
- State criminal laws continue to prohibit any open and public consumption of marijuana
- As a general proposition, municipal ordinances cannot permit what the state prohibits

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Designated consumption areas open to the general public

- The authors of the initiated ordinance consciously chose *not* to play the "private cannabis club" card to avoid conflict with state law
- "Designated consumption areas" are expressly allowed to be superimposed on businesses that are otherwise open to the general public, e.g. bars and restaurants
- Other than a 21+ age restriction, the initiated ordinance does not impose any other restriction on the ability of the general public to access a designated consumption area

Unique roles assigned to "eligible neighborhood organizations" in the licensing process

- Applications for permits must be accompanied by a letter of support (or "non-opposition") from *one* "eligible neighborhood organization" (defined to mean a BID or RNO)

- The ENO may stipulate conditions to be placed on the permit, and apparently may condition their support on such conditions

- No authority for the Director of E&L to modify the conditions stipulated by the ENO; ambiguous as to whether the Director can attach additional conditions

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No standards or procedures for <u>opposition</u> to a permit application

- No public hearing; no “needs and desires” requirement
- No express criteria for denial
- No provision for reconciling differences between overlapping ENOs that may or may not support the application
- Arguably an application which is accompanied by a letter of support from one ENO, and which otherwise meets the requirements of the ordinance (e.g. 1000-foot spacing from schools) must be approved

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Limitations on city zoning authority

- No ability to regulate designated consumption areas through zoning
- No authority to require a zoning use permit for marijuana consumption areas
- No ability to differentiate through zoning businesses where MJ consumption may or may not be allowed

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Mobilization and enforcement challenges for Department of Excise and Licenses

- E&L likely to receive a large number of applications, beginning as early as January, 2017
- Promulgation of application forms and internal business processes must begin immediately if approved by the voters
- Emergency rulemaking likely required to address gaps and ambiguities in the law

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Mobilization and enforcement challenges (cont.)

- Interpreting and enforcing Colorado Clean Indoor Air Act as applied to MJ smoking in interior locations and fugitive odors from MJ smoking
- Enforcement of limitations in any outdoor designated consumption areas (i.e. prohibited in areas “viewable by the public” or from a “place where children congregate”)
- Enforcement of 21+ age restriction for entry into a designated consumption area
- Enforcement of laws prohibiting any sale or any direct or indirect transfer of MJ for “remuneration” in a designated consumption area, either by the owner or by the patrons