

Initiative 300 - Neighborhood Supported Social Use
Task Force Report
November 2018

INTRODUCTION

In November of 2016, Denver voters approved Initiative 300, the Neighborhood Supported Cannabis Consumption Pilot Program with a 53.7% majority and 168,995 votes in favor. In the spring of 2017, the Social Consumption Advisory Committee met six times to advise the Department of Excise & Licenses on the Rules Governing Marijuana Designated Consumption Areas. The Neighborhood Supported Cannabis Consumption Initiative was intended to address the problem of illegal cannabis consumption in parks, on the 16th Street Mall, in cars and other public places by allowing approved businesses to provide a space for people to consume marijuana socially but out of public view. Without safe and legal places for consumption, visible and illegal public consumption will likely continue.

#6, Confluence Park, #5 City Park, #4 Red Rocks Amphitheatre
“10 Best Places to Smoke Weed in Denver” – *Green Rush Daily*, September 1, 2017
(cannabis-oriented online publication)

The ballot initiative called for City Council to create a Social Consumption Area Task Force to study the impacts of cannabis consumption permits on the city and to report its findings to the Council by November 22, 2018, two years from the date the ordinance went into effect. The fact that only one business is operating 24 months after the voters approved the initiative compelled the task force to ask why there are so few. One other business has received a permit, but is not expected to open until the end of 2018. No applications for a special event permit have been submitted.

Key Features of I-300:

- **Evidence of community support (Sec. 6-304):** Applicants are required to provide evidence of community support or non-opposition from an eligible neighborhood organization.
- **Zoning, location, and setback requirements (Sec. 6-311):**
 - Consumption areas may not be located within 1000 feet of any school.
 - Specific zoning permits not required for consumption areas.
 - Consumption areas should be permitted in any zone lot where the underlying business or event is permitted.
- **Fees (Sec. 6-315):** Application and annual permitting fees are set at \$1000 each until City Council sets a new fee.
- **Sunset (Sec. 6-319):** The initiative was passed as a pilot program to be repealed on December 31, 2020 or when the city passes comprehensive regulations for cannabis consumption.

- **Sec. 6-317. Duties of the city council.** *(language from the voter-approved initiative)*
 - a. The city council shall create a cannabis consumption task force to study the impacts of cannabis consumption permits on the city. The cannabis consumption task force shall report its findings to the city council within two years of the effective date of this article.
 - b. The city council may create additional ordinances to implement the article provided such ordinances do not frustrate the intent of this article to permit all types of businesses or events that otherwise meet the requirements of this article to receive a cannabis consumption permit with the support of an eligible neighborhood organization.

Key Features of Rules Governing Marijuana Designated Consumption Areas:

- **Application Requirements (Article II):** In addition to standard application requirements, social consumption applications must include the following to be considered complete:
 - A description and supporting evidence detailing compliance with the Colorado Clean Indoor Air Act
 - Evidence of community support, including additional restrictions on advertising and operational requirements as provided by an Eligible Neighborhood Organization
 - A responsible operations plan
 - A documented employee training program
 - A health and sanitation plan (if applicable)
 - A marijuana waste plan
 - A Community Engagement Plan as provided in D.R.M.C. § 6-210(b)
 - An Odor Control Plan as provided in D.R.M.C. § 4-10 (if applicable)
- **Restrictions on Applications for New Permits (Article III):**
 - Consumption cannot be visible to the public.
 - A Cannabis Consumption Special Event permit cannot be issued for an event that also has a special event liquor permit.
 - Permits cannot be issued within 1000 feet of any school, child care establishment, alcohol or drug treatment facility, or city-owned recreation center or city-owned outdoor pool.
 - Permits cannot be issued for any school, child care establishment, alcohol or drug treatment facility, licensed marijuana establishment, any location deemed public property and owned by the City, and any location in a residential zone district.
- **Operational Requirements (Article V):**
 - Entrances to consumption areas must be monitored at all times when being used for cannabis consumption.
 - Social consumption businesses cannot advertise consumption areas anywhere in the city where the advertisement is visible to the public from a Public Place.
 - Businesses with consumption areas must be clearly marked with a standardized placard designed by Excise & Licenses.

- Consumption areas must be clearly marked with signs stating, “NO ENTRY UNDER 21.”
- **Public Hearing Requirement (Article VI):**
 - Upon completion and submission of an application, a public hearing will be scheduled not less than thirty (30) days from the date of submission.
 - Parties-of-interest may request a public hearing for a Cannabis Consumption Special Event Permit at least thirty (30) days prior to the event with ten (10) valid signatures.

The Task Force met five times: May 10, June 14, July 12, August 9 and September 13. Public comment was available at the first, second, fourth and fifth meetings.

Task Force Members:

Councilwoman Kendra Black (Chair)
 Carrie Atiyeh, Director of Government & Community Affairs for Visit Denver
 Councilman Jolon Clark
 Tom Downey, Attorney at Ireland/Stapleton
 Andrew Gehauf, Overland Registered Neighborhood Organization (RNO) Representative
 Logan Goolsby, Chief Compliance Officer for Eufloa
 Dean Heizer, Principal Attorney for LivWell
 Wanda James, Owner of Simply Pure
 Sam Kamin, Vicente Sederberg Professor of Marijuana Law & Policy at the University of Denver Sturm College of Law
 Aubrey Lavizzo, La Alma/Lincoln Park Registered Neighborhood Organization (RNO) Representative
 Christian Sederberg, Founding Partner & Attorney at Vicente Sederberg and author of Initiative 300
 Cindy Sovine, Owner of Utopia All Natural Spa & Lounge and Sovine Consulting
 Christopher Stefan, Principal for Desarollo Real Estate
 Councilwoman Mary Beth Susman
 Leslie Twarogowski, Executive Director of the Federal Boulevard Business Improvement District
 Margie Valdez, Inter-Neighborhood Cooperation (INC) Representative
 Liz Zukowski, District 4 Senior Council Aide (Support Staff)

FINDINGS

To date, no impacts on the city have been reported. One permitted business, The Coffee Joint, operates in the La Alma/Lincoln Park neighborhood. The RNO president, Christine Sprague, reported that there are no impacts on the neighborhood. A second permit has been issued for Vape and Play. It is expected to open on South Broadway in November.

Multiple challenges are preventing the successful implementation of I-300. These challenges include: distance requirements that restrict available locations; limited opportunities for

businesses to earn revenue; the 2020 sunset on the pilot; and the state rule prohibiting social consumption in a venue with a liquor license. Each of these challenges is addressed below.

Values: Honoring the intent of the initiative and the will of the voters is of paramount importance, as is finding a way to mitigate illegal public consumption. Equally important is protecting the health, safety and welfare of residents, visitors and neighborhoods. Serious consideration of what and who the rules intend to protect must be considered as well as business fairness. Regulations should not be based on fears of bad behavior that might occur.

Distance Requirements: I-300 mandates a 1000-foot distance requirement from schools measured “as the crow flies”. (A typical city block in Denver is 600 x 300 feet.) The Department of Excise & Licenses added additional set back requirements, including a 1000-foot setback from day care centers, drug and alcohol treatment facilities, and city-owned recreation centers and outdoor pools. These additional distance requirements restrict where neighborhood-approved businesses may locate and are more onerous than the approved initiative intended. They prevent social consumption permits from being considered in some neighborhoods where they are desired and supported by neighborhood organizations and business improvement districts. The distance requirements may perpetuate the concentration of marijuana-related businesses in neighborhoods where there is already a high number of marijuana businesses.

Through interviews with interested potential applicants and a careful study of maps showing the impacts of distance requirements, it is evident that the additional distance requirements set by Excise & Licenses are thwarting the intent of the voter-approved initiative by restricting available locations.

Business Model: The initiative allows for non-marijuana businesses to apply for social consumption permits. Examples of the types of business that proponents mentioned include art galleries, yoga studios, salons and coffee shops. To date, no pre-existing business has applied for a permit. The two permitted businesses are both new businesses created to take advantage of the opportunity to have social consumption.

In February 2018, the State Marijuana Enforcement Division and the Denver Departments of Excise & Licenses and Community Planning & Development approved The Coffee Joint for operation. In August 2018, The Coffee Joint and 1136 Yuma, the dispensary adjacent to the Coffee Joint, submitted ‘modification of premises’ applications to construct a door adjoining the consumption business to the dispensary. Both applications were submitted to Excise & Licenses and the State’s Marijuana Enforcement Division. Appropriate applications for permits were also made to Community Planning & Development for the construction. The applicants successfully passed inspections by Denver Fire, Public Health, Building, Zoning, and Excise & Licenses. They received state approval for the modification, at which point their applications were considered complete.

While some business models are viable, multiple challenges inhibit the opportunity to earn revenue, thereby impacting potential investment. These challenges include: state rule prohibiting product sales at consumption establishments (R. 402. K. Retail Marijuana Sales: General Limitations or Prohibited Acts); state rule prohibiting social consumption in a venue with a liquor license (R. 47-900. E. Conduct of Establishment); and the Colorado Clean Indoor Air Act prohibiting smoking indoors at public places, with few exceptions (C.R.S. 25-14-202). Additionally, regulations from the Departments of Community Planning & Development, Public Health & Environment, and Fire are costly, time consuming and burdensome.

“...many entrepreneurs say they have no choice but to stay away from social cannabis consumption in order to keep their alcohol revenue.”

**“Social Cannabis Use Areas: If Weed Really Were Treated Like Alcohol” – Westword,
June 18, 2018**

Special Event Permits: Anecdotal reports suggest that event organizers are not willing to give up their liquor permit and potential liquor sales. Additional concerns were expressed about the length of time it takes to receive a special event permit, especially as compared to liquor special event permits.

- Social Consumption Special Event applications: Due at least 120 days in advance of the event.
- Liquor Special Event applications: Due at least 30 days in advance of the event.

Sunset: I-300 is a four-year pilot and will sunset on December 31, 2020. The temporary nature inhibits investment, particularly given the time and expense associated with Excise & Licenses applications, zoning and building permit applications, build out and associated inspections.

Fees: I-300 set the application fee at \$1000 and the annual permit fee at \$1000, which the task force considers reasonable for businesses applying for a social consumption business permit. The Task Force discussed lowering the fees for a Special Event permit so the fees align with Liquor Special Event permit fees (\$100 application fee, \$25/day permit fee).

Other Mitigating Factors:

- There is no legal definition for “open and public,” which has resulted in confusion and enforcement issues.
- Smoking is the most popular form of consumption. The Colorado Clean Indoor Air Act prohibits indoor smoking, and the Rules also make it challenging for a business to allow outdoor smoking.
- The state Liquor Enforcement Division rule prohibiting marijuana use in business with a liquor license has prevented some interested business owners from applying.

RECOMMENDATIONS

The Task Force agreed that distance requirements do not necessarily protect the health, safety and welfare of the community, and there are multiple provisions in the law and rules that do protect the community. They include:

- Requirement for neighborhood support or non-opposition.
- Requirement for a public hearing.
- Ability to request an additional hearing to address concerns about an operating business.
- Requirement for a Community Engagement Plan as provided in D.R.M.C. § 6-210(b)
- Ability to add conditions to the permit through a Good Neighbor Agreement.
- Consumption cannot be visible to the public from a place where children congregate or from any public place.
- Business and consumption area must be clearly marked with appropriate signage.
- Consumption area must be monitored at all times while in use.

To honor the intent of I-300 and provide more opportunities for businesses to operate legal social consumption areas, the following recommendations are offered:

Distance Requirements: Multiple suggestions were discussed to reduce the burden of the setbacks. The Task Force reached consensus on two recommendations and requests that the Council consider them:

- **Recommendation 1:** Maintain all the current 1000-foot setbacks, but allow applicants to seek an exception to a distance requirement by showing support from the subject of the setback. For example, if an applicant meets all requirements, but falls short of the 1000-foot setback from a daycare, the applicant can seek a letter of support or non-opposition from the daycare thereby granting an exception. The letter would remain on file with Excise & Licenses and would not need to be resubmitted on an annual basis.

OR

- **Recommendation 2:** Honor the will of the voters by adhering to the distance requirements that were set forth in the ballot language (1000 feet from schools) and removing the additional distance requirements added by Excise & Licenses (1000 feet from day cares, treatment centers and pools/recreation centers.)

Sec. 6-311. Zoning, location, and setback requirements. *(language from the voter-approved initiative)*

- a. A designated consumption area may not be located or operated within one thousand (1000) feet of any school, with the distance computed by direct measurement in a straight line from the nearest property line of the land used for school to the nearest portion of the building, structure, or enclosure in which the designated consumption area is located.

Business Models: Businesses need investment and the ability to earn revenue. Rules should not stand in the way. I-300 allows for business models that are allowable under state rules, but earning revenue is challenging. Different business models should be contemplated, made legal, and permitted and regulated:

- **On-site consumption at stores (also known as tasting rooms)** would allow for consumption at an existing dispensary, but would not increase the “marijuana footprint” in Denver by opening an additional location. Governor Hickenlooper vetoed a 2018 bill that would have legalized tasting rooms. Other legal options include installing a door between a licensed dispensary and a licensed social consumption business. The Coffee Joint and 1136 Yuma recently completed this process. Alternatively, it is possible for an existing marijuana business to modify its premises by dividing an existing dispensary and creating an adjacent area for consumption. This would require the two businesses to have distinctly separate addresses. To date, no business has done this, in part because many existing businesses were “grandfathered” into their existing zoning, and it is unclear whether the issuance of a new license at the location would jeopardize the existing dispensary license. This option would not increase the “marijuana footprint” by creating an additional location.
- **Private clubs** are already in operation, but are not licensed or regulated. These clubs should be regulated to protect the health, safety and welfare of residents, employees and patrons and to bolster the viability of legally operating I-300 businesses.
- **Bus tours** should be licensed and regulated. Bus tours fulfill a need for tourists and other interested consumers.
- **A hotel specific business model or solution for hotel guests** should be explored in cooperation with the hotel industry.

Special Events: Reduce the permitting and application fees for special events to be consistent with the fees for Liquor Special Events permits (\$100 application fee plus modest daily fees.) Align permit application window with special event liquor license timeline within 30 days of the event rather than 120 days. All other rules should remain consistent for social consumption establishments and special events.

Sunset: Eliminate the 2020 sunset to increase opportunities for investment. With only two permits being issued in two years, the pilot program has not had the opportunity to succeed. If the program is deemed unsuccessful or harmful, the Council can repeal.

Fees: I-300 set the application fee at \$1000 and the annual permit fee at \$1000, which the task force considers reasonable. As with special event liquor licenses, special event permit fees should be lower than brick and mortar businesses and permanent establishments.

Other Outstanding Issues:

- For clarity in developing policy and rules, the state needs to define “open and public.”
- Should there be any exemptions from the Colorado Clean Indoor Air Act for private clubs?
- Should the state reconsider the Liquor Enforcement Division rule prohibiting marijuana use in business with a liquor license?

CONCLUSION

Denver and Colorado have been the leaders on marijuana policy in the United States for the last six years since Amendment 64 passed legalizing recreational marijuana possession, growth, and use. No longer a social experiment, the legalization of marijuana will continue to stretch across the country and the world. Other cities and states will first look to the work completed in Denver and Colorado to implement a proper regulatory framework along with legalization. As a leader, Denver must send a strong, bold message that we are protecting the health, safety and welfare of residents, neighborhoods, tourists, and creating a positive environment for businesses with robust policies and rules that empower communities to determine the parameters for protection.

Additionally, the public and private sectors should not be adversaries. Local government should function as a partner of local businesses, not create overly burdensome regulatory processes based on fears of what might happen. The legal industry must be able to function and prosper so that the illegal market is diminished.

This task force evaluated the initiative language and the Rules Governing Designated Marijuana Consumption Areas (Rules). After proper evaluation and discussion, the task force deemed that some of the Rules, specifically the distance requirements, created an overly burdensome regulatory process that is not experienced by other types of businesses permitted by the City and County of Denver.

With a new governor and state legislators taking office in 2019, there will likely be changes at the state level. Now is the time for Denver to lead and decide the appropriate course of action that will honor the will of 168,995 Denver residents who voted in favor of this ordinance two years ago.