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TO: Denver City Council

FROM: David W. Broadwell, Asst. City Attorney

RE: **Marijuana Legislation in the 2017 session of the Colorado General Assembly**

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Over twenty bills touching upon the subject of marijuana regulation and taxation were introduced in the 2017 regular session of the General Assembly, of which thirteen were adopted. None of the new legislation requires immediate action by the city, because none of it altered local government powers or the mechanics of the local licensing process. This memo contains a brief summary of what was and was not accomplished in 2017.

Marijuana Taxation

When Colorado voters allowed the state to assess a retail marijuana tax in 2013, the measure allowed the state to start at a 10% rate of taxation but float the rate between 0% and 15% at any time. By virtue of a law adopted just last year, the rate was supposed to decline to 8% on July 1 of this year, but the legislature has now decided to reverse course. First a JBC bill (**HB 17-1435**) was introduced to hold the rate steady at 10%. Then in the massive omnibus budgetary fix adopted at the very end of the session, **SB 17-267,** the rate was raised to the full 15% allowed by the voters in 2013, but at the same time the bill exempted retail marijuana from the state's standard 2.9% sales tax.

SB 17-267 also made various adjustments to how the state allocates MJ tax revenue, none of which directly affects the city. Denver and other local governments were held harmless on the state's commitment to share-back MJ tax revenue with the local jurisdictions where the tax is collected, although the formula was tweaked slightly. Denver is on course to garner approximately $5 million in revenue from the state share-back this year.

Governor Hickenlooper's commitment to devote a portion of the revenue in the state's MJ cash fund to affordable housing was realized by a line item in the budget and the Long Bill: $15.3 million for permanent supportive housing for the homeless and housing assistance for those at risk of becoming homeless.

Finally, **HB 17-1207** was adopted to more clearly give statutory local governments, particularly counties, the authority to adopt special marijuana sales taxes. Earlier in the year in a dispute involving Adams County, the Colorado Court of Appeals had held that counties lacked the authority to impose such taxes under prior law.

"Grey Market" Concerns

Another announced objective of the Hickenlooper administration was to address persistent problems related to the "grey market," i.e. situations where MJ tends to leak out of the highly-regulated MMJ and RMJ systems and be sold or re-sold illicitly, particularly across state lines.

HB 17-1220 emulates an approach Denver took several years ago. The bill imposes a standard statewide cap of 12 plants in residences (while preserving the authority of local governments to allow a greater amount).

HB 17-1221 attacks the grey market problem from two different directions. The first, again very similar to something Denver has already addressed, tackles the "co-op" dodge where a person or an unregulated business claims be growing massive numbers of MJ plants on behalf of third parties. Denver addressed this by capping the number of MJ plants that could exist on any unlicensed zone lot at thirty plants. Now, state law will flatly state that it is never lawful for one person to possess massive numbers of MJ plants on behalf of anybody else, unless the person is a legitimate MMJ "primary caregiver" operating in full compliance with state law. HB 17-1221 also set up a new "Grey and Black Market Marijuana Enforcement Grant Program" supported by a $6 million appropriation from MJ cash funds in FY 17-18. Rural jurisdictions are apparently intended to be the primary beneficiaries of these grants.

On June 9, the Governor vetoed **SB 17-111**, a bill that would have loosened the "vertical integration" model that his existed for MMJ since 2010 and has always required MMJ dispensaries to source at least 70% of their MMJ from cultivation operation under common ownership with the dispensary. The Governor noted that the vertical integration model was critical for the MED to maintain oversight over MMJ sourcing and supply in proportion to the number of registered MMJ patients in Colorado.

On-premises MJ consumption business models; defining "open and public" consumption

We can expect that, from now on, bills will be introduced in the General Assembly each year to provide authority for some sort of business opportunity for RMJ to be consumed on-premises in a commercial or social setting, whether the setting is defined as a "private club" or something else. Even though Amendment 64 itself did not include a category of licensing for on-premises consumption, there is a rising clamor for this alternative, as evidenced by the adoption of I-300 by Denver voters last November.

Nothing was accomplished in the 2017 session after much debate, however.

SB 17-63 would have allowed "marijuana consumption clubs" which would be operationally linked to RMJ stores and MMJ centers, essentially allowing the MJ to be purchased and consumed on the associated premises. The bill was short-lived. **SB 17-184** was CML's effort to provide a uniform statewide understanding of what kind of business could or could not be considered a legitimate "private" club, such that marijuana consumption would not be considered "open and public" under the Colorado Criminal Code. The bill would have presumptively banned "private clubs" throughout the state unless a local government affirmatively voted to allow them.

In the end, SB 17-184 was reduced to an effort to clarify the meaning of "open and public" consumption of MJ in the Criminal Code. The bill failed in conference committee at the very end of the session, as no consensus definition could be achieved.

Another important gambit associated with public MJ consumption failed earlier in the session. The joint Legislative Council Committee refused to advance legislation that would have overturned a DOR rule banning MJ consumption on liquor-licensed premises. This rule continues to have major importance for the implementation of Denver's I-300, ironic because our local initiative was billed throughout the campaign as allowing "bars and restaurants" to entertain MJ consumption.

MJ Testing and Research

A major concern of the DDEH and state health officials in recent years has been the use of potentially harmful pesticides in MJ cultivation, leading to an ongoing series of product recalls. Some elements of the industry have responded by proposing legislation that would limit the city's ability to use exiting MJ testing laboratories to assess the presence of harmful pesticides. This year, **SB 17-267** included a provision that would have foreclosed virtually any opportunity for testing unless and until existing labs obtained additional certifications. Although the bill was killed, its contents were slipped into another bill, **HB 17-1367**, introduced and adopted at the tail-end of the session. Governor Hickenlooper allowed HB 1367 to go into law without his signature, and implored the sponsors to fix the testing lab provisions of the bill at the beginning of the 2018 session.

HB 17-1367 also included provisions of an entirely new kind of license (two licenses maximum) to be issued by state and local licensing authorities: a "Marijuana Research and Development Cultivation License."

Other Notable Marijuana Bills in 2017

Fear of a Trump administration crackdown? Uncertain about whether or not the new administration was going to strike back against "legalized" marijuana nationwide, legislation was proposed this year in anticipation of just such an eventuality. **HB 17-1331** would have prohibited state and local law enforcement offices from assisting the Feds if a crackdown occurred. The bill did not make it out of the House. Another legislative proposal was floated as an element of **SB 17-192** to allow a one-time mass transfer of RMJ plants and products to MMJ businesses, in the event the Feds moved against recreational marijuana while allowing medical marijuana to stand. This provision was later stripped from the bill.

MJ home deliveries. The original version of SB 192 also included a proposal to broadly authorize home delivery of MJ from centers and stores to customers. This idea received a strong rebuke from the Hickenlooper administration and was removed from the bill.

Sealing of criminal records. Two bills were introduced again this session to again address marijuana offenses that occurred before the adoption of Amendment 64. The narrower of the two, ***HB 17-1266***, allows persons to petition to seal the record of conviction of a misdemeanor marijuana offense committed prior to December 31, 2012, if the behavior is no longer illegal under Amendment 64.

MMJ-specific bills. Since the MMJ code and the RMJ code were adopted at two different points in time, under two different constitutional amendments, serving two different populations, there continue to be numerous differences between the two codes. ***HB 17-1034*** contained a number of technical conforming amendments between the two codes to make them a little more consistent for state regulators. Much more high profile was ***SB 17-17***, finally recognizing PTSD as a category of "debilitating medical condition" that could qualify a "patient" for MMJ. This is the first time since the adoption of Amendment 20 in 2000 that CDPHE has added a category of medical condition other than the ones listed in the constitution itself.

Restrictions on MJ advertising. **SB 17-017** broadly prohibits anyone who is not a licensed MMJ or RMJ business or and MMJ caregiver to advertise the sale of MJ Colorado. Reportedly, the bill was introduced in response to illicit re-sale of MJ on platforms like Craigslist.

Repeal of Governor's Office of Marijuana Coordination. Same as the way Mayor Hancock eliminated his distinct Office of Marijuana Policy and folded its functions into the our main regulatory agency (Excise and License), the state is doing the same via the adoption of **HB 17-1295.**