



DENVER
THE MILE HIGH CITY

I-300 Update

Social Marijuana Use

City Attorney's Office
Excise and Licenses
Office of Marijuana Policy

- No immediate action by Council required. The ordinance is “self-executing”
- Except that I-300 requires city council to “create a cannabis consumption **task force** to study the impact of cannabis consumption permits on the city.”
 - This task force shall report its findings to council within two years of the effective date
- Six-month blackout on Council action
 - Per Charter, the city council is prohibited from amending or repealing any initiated ordinance for a period of six months from its adoption
 - After 6 months, any Council changes would require 2/3 vote
- Rulemaking. EXL can adopt additional rules to administer and enforce the provisions of I-300, but such rules cannot “frustrate the intent” of the initiative.

- Amendment 64 allows MJ consumption, but states that “nothing in this section shall permit consumption that is conducted openly and publicly or in a manner that endangers others.”
- State criminal law prohibits “open and public” consumption or use of marijuana. *CRS §18-18-406(5)(b)(II)*
- Denver law prohibits the display or consumption of MJ that is done “openly and publicly.” *DRMC §38-175*
 - I-300 excludes from the definition of the term “openly” any MJ consumption that occurs in a “designated consumption area” (DCA)
 - I-300 does not exclude MJ consumption that occurs in a DCA from the definition of the term “publicly”

- Both state and local law define a “**public place**” as a place to which the public, or a substantial number of the public, has access.” *CRS §18-1-901(n) and DRMC §38-175(b)(3)*
 - Includes streets and highways, transportation facilities, schools, places of amusement, parks, playgrounds, and the common areas of public and private buildings or facilities.
 - Includes any outdoor location where the MJ consumption is clearly observable from a public place.
- **Serious conflict with state law** unless “cannabis consumption permits” are limited only to those locations that are not a “public place” and are not open to a substantial number of the public.

- In 2013, the DOJ issued the [“Cole Memo”](#) that provided guidance to federal prosecutors to focus resources on MJ cases that implicate one of the 8 federal priorities, which include,
- Preventing the distribution of MJ to minors
 - Preventing state-authorized MJ activity to be used as a cover or pretext for other illegal activity
 - Preventing drugged driving and the exacerbation of other public health consequences associated with MJ use

- Any rules/regulations would need to address the concerns of the federal government
- To create safeguards to prevent minors from having access to the increased accessibility of MJ that is inherent in this ordinance
- And to create further safety measures to reduce the potential for impaired driving

- I-300 provides that a “designated consumption area” **may** “**overlap** with the premises of any other license or permit *issued pursuant to the Revised Municipal Code.*”
 - Liquor licenses in Colorado are issued pursuant to State law
 - The authority of a local jurisdiction to issue local liquor licenses is also derived from state statute.
 - Local licensing authorities only have as much regulatory authority as the state allows, and there are no local liquor licenses issued solely “pursuant to the Revised Municipal Code”
- The terms of I-300 itself would have allowed Denver to refuse to issue permits for liquor-licensed premises

Social Cannabis Consumption

Legal Issues: “Liquor-licensed Premises”

- On November 18, 2016, the Colorado Liquor Enforcement Division adopted an amendment to [Rule 47-900](#) which provides: “No person or entity licensed under Article 46, 47, or 48 of Title 12, C.R.S. shall permit the consumption of MJ and/or MJ products as defined in sections 14 and 16 of the constitution of Colorado on any licensed premises.”
 - Liquor regulation has long been considered a matter of “statewide concern” by the courts
 - Any contradiction between city and state laws must be resolved in favor of the state
 - Given the adoption of Rule 47-900, it is now clear that state law bans MJ consumption on liquor-licensed premises.

Social Cannabis Consumption

Legal Issues: “Illegal Sale of Marijuana”

- Under Amendment 64 and state law, it is lawful to give away up to 1 ounce of MJ to an adult over the age of 21 without remuneration
- However, it is **illegal to sell MJ** outside of a licensed RMJ store or a licensed MMJ center
- **Regulatory challenge** to guard against illegal MJ sales in this permitted consumption setting, which could take one of a variety of forms:
 - Proprietors purporting to “give” or “share” free MJ as an inducement or a “perk” of membership
 - Patrons (or proprietors) actively selling or distributing MJ within the establishment

- In general, the CCIAA prohibits smoking MJ in “any indoor area”
- Does not prohibit “vaping” or consuming MJ edibles indoors
- I-300 itself recognizes that designated MJ consumption areas must comply with the requirements of the CCIAA
- CCIAA allows local jurisdictions to adopt more stringent smoking restrictions

➤ “Indoor area” includes:

- Public places & buildings
- Restaurants and bars
- Grocery stores
- Taxis and limos
- 75% of the rooms in any hotel/motel
- Common areas in public and private buildings
- Public transport
- Gyms, Courthouses, Theaters, Museums, Libraries
- Private homes/cars used for child care or day care

➤ “Indoor area” does NOT include:

- Private homes/cars
- Retail tobacco stores
- Cigar-tobacco bars:
 - Liquor-Licensed since 2005
 - \$50,000 in annual sales from on-site sale of tobacco products in 2005 and thereafter
- Designated smoking rooms in motels/hotels (max of 25%)
- Airport smoking concessions
- Outdoor area of any business
- Places of employment that are not open to the public with three or fewer employees
- Limos under private hire
- Ventilated, enclosed smoking areas in assisted living facilities that are restricted to residents & their guests

Implementation of Initiative 300- DRAFT Timeline*

December

- Initial draft of Social Consumption Rules and Regulations
- Develop and Assemble the Social Consumption Advisory Committee Comprised of city, community and industry members.

January - March

- Hold 4-6 Social Consumption Advisory Committee meetings to review and revise the draft of rules and regulations
- January 21st - Make application forms available
 - ✓ Including ENO approval verification forms

April - May

- Present draft rules for review to Policy Review Committee
- Post notice for Public Hearing and file rules with City Clerk
- Conduct Public Hearing

June – August

- Finalize and adopt Social Consumption rules and regulations
- Start accepting applications and permit fees
- Begin issuing permits
- Internal preparation:
 - ✓ Develop cross-departmental business processes for regulation and enforcement
 - ✓ Create Accela record
 - ✓ Training
 - ✓ 311 and public outreach

Next...

- Internal progress review
 - ✓ City Council: create “cannabis consumption task force”
- Gather data about implementation
- SCAC progress check-in
- Develop education materials for the community, including information available on the website

*Preliminary timeline, subject to change dependent upon a number of variables



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Questions?

www.Denvergov.org/BusinessLicensing