



DENVER
THE MILE HIGH CITY

Exploring the differences between marijuana and alcohol regulation and taxation

David W. Broadwell, Asst. City Attorney

Special Issues Marijuana Committee

July 10, 2017



The promise of Amendment 64

“In the interest of the efficient use of law enforcement resources, enhancing revenue for public purposes, and individual freedom, the people of the state of Colorado find and declare that the use of marijuana should be legal for persons twenty-one years of age or older ***and taxed in a manner similar to alcohol.***

“In the interest of the health and public safety of our citizenry, the people of the state of Colorado further find and declare that marijuana should be ***regulated in a manner similar to alcohol . . .***”

Art. XVIII, Sec. 16 (1)(a) and (b), Colo. Const.

The Reality:

Many fundamental differences

- The following slides will demonstrate:
 - Nine fundamental ways MJ is regulated more strictly than alcohol
 - Nine fundamental ways MJ is regulated less strictly than alcohol
 - Basic differences between the type and amount of taxes that apply to the two industries

1. Conflict with Federal Law

- Since MJ remains illegal under federal law, much more difficult to operate an MJ business than a liquor business:
 - Banking
 - Patents and trademarks.
 - No deductibility of business expenses
 - Landlord-tenant and insurance issues
 - Harsher regulations on commercial speech
 - No recognized property interest in MJ in federal courts

2. Stronger Local Control for MJ

- Local governments regulating liquor businesses must do so in strict compliance with the state Liquor Code
- Both the MMJ and the RMJ Code broadly allow local governments to impose stricter regulations
- Example: Numerical caps on MJ businesses

3. No on-premises MJ consumption licenses

- The Liquor Code authorizes numerous categories of on-premises consumption licenses and special events permits
- Amendment 64 did not authorize on-premises consumption licenses for MJ
- Neither the MMJ or the RMJ code provide licensing for on-premises consumption or special events permitting

4. Public consumption

- Amendment 20 said: “No patient shall . . . Engage in the medical use of marijuana in plain view of, or in a place open to, the general public.”
- Amendment 64 said: “nothing in this section shall permit consumption that is conducted openly and publicly . . .”
- No similar constitutional restriction applies to alcohol; public use of alcohol is regulated but not prohibited.

5. Premises security

- Marijuana stores are subject to more rigorous security requirements (locks, cameras, etc.) compared to liquor stores.
- Many MJ store owners go even further than state requirements to secure the premises, limit access to product, etc., due to high value of MJ inventory

6. Employee registration

- The MMJ and RMJ codes subject MJ store employees to registration and background check requirements, borrowed from the world of gaming regulation.
- For liquor stores, registration and character are regulated only for owners and managers

7. Caps on purchase quantities

- Customers at MJ stores are strictly limited in terms of purchase quantities in any one transaction: 1oz. at RMJ stores, 2 oz. for MMJ patients (although no system tracks multiple purchases).
- Customers at liquor stores are not restricted in terms of how much alcohol they may purchase in any single transaction.

8. Residency restrictions

- From the beginning, both the MMJ code and the RMJ code imposed residency restrictions on licensees.
- State laws have recently been liberalized to allow investment in MJ business by out-of-staters
- There are no residency requirements under the Liquor Code

9. Seed-to-sale tracking

- The RMJ code requires a fairly elaborate system of plant tagging and tracking, designed to prevent leakage into the black market.
- The MMJ code imposes inventory controls based on number of “patients”
- No similar provisions exist in the Liquor Code

- The following slides illustrate some of the ways marijuana is regulated less strictly than alcohol.
- Many of these examples derive from the unique way the MJ industry exploded on the scene in 2009, and the way the industry exists notwithstanding federal prohibition.

1. Constitutional imprimatur

- The state is required to allow a marijuana industry to exist by virtue of the adoption of Amendment 64. And the constitution prohibits the state from adopting regulations that “prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable.”
- The alcohol industry does not enjoy any similar constitutional mandate or protection.

2. Vertical Integration

- Vertical integration of the MJ supply chain is entirely permitted for RMJ, and actually required for MMJ.
- Vertical integration has traditionally been strictly prohibited in the alcohol industry. Manufacturing, wholesale, and retail must be under separate ownership.
- Some recent tolerance for vertical integration in the world of “craft” beer, wine and spirits.

3. Horizontal integration

- No cap on the number of MJ stores a particular person may own. State codes merely allow adverse effects on competition to be a “consideration” when the state approves multiple licenses to the same owner.
- Until recently, it has been impossible for any single person or entity to own more than one liquor store anywhere in Colorado.

4. Federal regulation

- No overlay of federal regulation for MJ businesses.
- Alcohol (particularly alcohol manufacturing) is highly regulated under federal law as well as state law.
- As a consequence, the state has been required to create MJ regulations from whole cloth for matters that would normally be regulated under federal law for other industries: Example: Pesticides and other matter related to food and drug efficacy, purity, adulteration, etc.

5. Dual state-local licensing

- Amendment 64 did not expressly provide for a system of dual state-local licensing authority. Implementing legislation allowed, but did not mandate, local licenses.
- State legislation permits state MJ licensing before local license is approved.
- Liquor Code has traditionally required dual licensing for all retail licenses, with local licensing process generally coming first.

6. Needs and desires hearings

- State law does not require neighborhood needs and desires hearings for new RMJ store or MMC center licenses.
- State law uniformly requires such a hearing for all new liquor stores and other retail licenses.
- Denver only recently adopted a requirement for such hearings. Most MJ stores in Denver were allowed to be licensed without a demonstration of needs and desires.

7. Potency and dosage

- Due to the fundamental differences between the way THC and alcohol are ingested, regulation of the potency of MJ and MJ products has lagged behind the explosion of the industry, and regulatory gaps still exist.
- Alcohol content of a liquid is easier to regulate and label than is the THC content of myriad MJ products.



- Marijuana stores are permitted by state and city law to serve two distinct clienteles with the same products—medical “patients” plus the larger adult population. Most stores have opted for this dual business model.
- Liquor stores enjoy no similar opportunity. Generally prohibited by law from selling pharmaceuticals as well as liquor.

- Loopholes in state marijuana laws have allowed MJ entrepreneurs to exploit “grey market” opportunities that circumvent state regulations by purporting to act as MMJ “care-givers” or “assisting” others through “co-op” business models to exercise their constitutional right to access RMJ under Amendment 64.
- No similar loopholes exist in the highly regulated alcohol industry.

- As with regulation, there are numerous differences in the way MJ and alcohol are taxed.
- Once again, in some ways MJ is taxed more harshly, in other ways it is taxed more favorably than alcohol

- Alcohol manufacturing is subject to a host of federal excise taxes. Examples
 - Beer: \$18/barrel (\$0.05 per can)
 - Wine: \$1.07/gallon (\$0.21 per standard bottle)
 - Spirits: \$13.50/proof gallon (\$2.14/standard bottle)
- *Marijuana is not subject to any federal excise tax*

- Alcohol manufacturing is subject to state excise taxes based on quantity:
 - Beer: \$0.08 cents per gallon
 - Wine: \$0.07.33 cents per gallon
 - Liquor: \$0.60.26 cents per liter
- Marijuana cultivation is subject to a state excise tax based on wholesale value of raw product when it is transferred to manufacturers or stores. Tax rate: 15%

- Beginning July 1, 2017:
 - State special sales tax of 15% charged to consumers of RMJ
 - RMJ exempted from standard 2.9% state sales tax rate
- MMJ remains subject only to the standard state sales tax of 2.9%
- Alcohol subject to standard state sales tax rate of 2.9%
- 10% of state sales tax revenue on MJ collected in Denver shared with Denver; no sharing of any state tax revenue derived from alcohol

- Standard city sales tax rate of 3.65% applies to all MMJ and RMJ sales
- Special additional tax of 3.5% applies to RMJ sales only
- Alcohol sold in liquor stores is subject to the city's special rate of 4% which applies to all "prepared food and beverage"

- These are the combined tax rates* charged to the customer at the cash register as of July 1, 2017:
 - Retail/recreational MJ: 23.25%
 - Medical MJ: 7.65%
 - Alcohol: 8%

*Includes state, city, RTD, and SCFD