Inspections & Compliance

*Multi-Agency Experts’ Panel*
Marijuana Management Symposium
October 28, 2016
There are several agencies that are involved with Marijuana Inspection, Compliance and Enforcement in Denver:

- Excise and License
- Fire Department
- Environmental Health (Public Health Inspections & Environmental Quality)
- Community Planning & Development
- City Attorney’s Office
- Police Department

Additionally, Marijuana entities are audited by the State through the Marijuana Enforcement Division ("MED")
Marijuana Business Licenses

• Denver has 8 distinct Marijuana Licenses:

<table>
<thead>
<tr>
<th>Retail Stores</th>
<th>Medical Centers</th>
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<tbody>
<tr>
<td>Retail Cultivation</td>
<td>Medical Cultivation</td>
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<tr>
<td>Retail Infused Products</td>
<td>Medical Infused Products</td>
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<tr>
<td>Retail Testing Facility</td>
<td>Medical Testing Facility</td>
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• Denver has approximately 1091 licenses operating out of 481 unique locations.
## Denver Marijuana Landscape – Inspections

### Number of Annual Compliance Inspections Performed

**By Each City Agency per License Type**

<table>
<thead>
<tr>
<th></th>
<th>Environmental Quality</th>
<th>Excise and Licenses</th>
<th>Fire Department</th>
<th>Public Health Inspections</th>
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<td>Retail Stores</td>
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<tr>
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<td>Manufacturers</td>
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<td>Medical Infused Products</td>
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<td>Manufacturers</td>
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Operational Impact of Legalization

- Additional Staff to help absorb the increase workload
- Lean Process Improvements
- Cross-Training of various agencies inspectors
- Development of Education for Industry Members & the Community
Colorado Department of Revenue
Marijuana Enforcement Division ("MED")

David Miller
Chief of Investigations
The Executive Director for the Department of Revenue is the State Licensing Authority.

Powers and duties of the State Licensing Authority:

- Grant or refuse state licenses for the cultivation, manufacture, distribution, sale and testing of medical/retail marijuana and medical/retail marijuana products;
- Suspend, fine, restrict or revoke such licenses upon a violation of the Medical/Retail Code or any rule promulgated thereunder;
- Impose any penalty authorized by the medical/retail code or any rule promulgated thereunder;
- Hear and determine at a public hearing any contested state license denial and any complaints against the licensee;
- Maintain the confidentiality of reports or other information obtained from a licensee showing the sales volume or quantity of medical/retail marijuana or medical/retail marijuana products;
- Promulgate rules and regulations.

Duties of Employees of the State Licensing Authority:

Authority for investigators and employees of the Marijuana Enforcement Division to investigate all aspects of the Medical and Retail Marijuana Licensees to ensure the fair, impartial, stringent, and comprehensive administration of the Medical/Retail Code and rules promulgated pursuant to it.
• The Marijuana Enforcement Division is responsible for regulating and controlling the licensing of the cultivation, manufacture, testing, distribution and sale of medical/retail marijuana in Colorado.

• Maintain effective and collaborative stakeholder partnerships

• Operable compliance and enforcement strategies

• Marijuana Inventory Tracking System (Metrc™)

• Efficient Complaint Management System

• Targeted Inspection program (Sales to non-qualified persons)

• Risk Based Investigation System (RBIS)

• Ensure compliance with terms of Administrative Actions
Issues and Concerns

• Sales to underage
• Continued pesticide use in the industry
• Production management
• Illegal ownership
• Burglaries
• Operating without both state and local license
• Video surveillance
Marijuana Trends in Colorado

- Robust packaging and labeling requirements
- Shift towards complex corporate structuring and financing of marijuana businesses to include out of state investors
- Employee theft
Denver Fire Department

Mark Rudolph
Nicole Skoumal
Inspection Process Overview

- Inspections Overview
  - All commercial properties inspected annually by DFD
  - MJ Compliance inspections: 625 twice per year
  - Additional MJ Inspection types: Certificate of Occupancy, License, Permits (CO2 Acceptance, Extraction Acceptance)
  - Inspections provide an opportunity to ensure compliance with building and fire code, as well as discuss and address other safety concerns.
  - Inspectors use a general checklist to inspect for common fire code violations. Not comprehensive, checklist ensures consistency, can lead to other observations, questions, etc.
Inspection Challenges

- Marijuana Industry changes that affect Inspections and Compliance
  - Extraction Changes and Innovations (Class 1, Division 1 Requirements)
  - Pesticides
  - New lighting, Reusing Old Lights (missing lenses, bad bulbs)
  - Equipment challenges, NRTL, ensuring equipment safety
• Red Flags/Common Violations
  – Locking
  – Access denied
  – Electrical concerns
  – Unpermitted construction, hidden occupancies
Issues and Concerns
Issues and Concerns
Best Practice for Inspections

- Best practice for inspections
  - Checklist
  - Detailed Operational Permits (CO2 quantity)
  - Inspection Equipment (iPad, mobile printer, 5 gas meter)
  - Network of SMEs (City agencies, Government agencies)
  - Training for Inspectors
  - Education, Communication
Environmental Health: Public Health Inspections

Kara Lavaux, CP-FS
Public Health Investigator
Division of Public Health Inspections (PHI)

- Food Safety & Marijuana Section: 27 employees
  - 17 FTE food/MJ Investigators
  - 2 FTE MJ Investigators
  - 1 on-call
  - 3 supervisors
  - 1 program manager
- 3 Admin & 1 Director for PHI

FOR CITY SERVICES VISIT DenverGov.org | CALL 311
Inspection Process Overview

Role of Food Safety Section with MJ Food Operations

- Conduct plan reviews
- Approve business licenses
- Inspect food businesses & apply Denver Food Establishment Regulations
- Investigate complaints
- Timeline:
  - 2011: Started routine inspections of MJ food operations
  - 2012 & 2013: Complaint investigations only
  - 2014-present: Routine inspections at least twice per year & contamination investigations as needed
• Denver is a home-rule jurisdiction- only CO locality with own food safety regs

Denver Revised Municipal Code:
• Chapter 23: Food & Food Handlers
• Chapter 24: Health & Sanitation
  – Enforcement authority for hindering an investigation
MJ Products Regulated by PHI

• All marijuana products that are consumed via non-smoking oral consumption:
  – Infused baked goods, candies, etc.
  – Infused pizza, ice cream, drinks, peanut butter
  – Concentrated extractions if consumed as food
  – Infusions such as tinctures, butters, honey, oils, etc.
1. Retailers (dispensaries)
2. Manufacturers

- Many sites have both medical and recreational licenses for multiple operations
Retailers:
• Unapproved source
• Unwholesome products
• Refrigeration of PHFs
• Labeling

Manufacturers:
• Some have a lack of food safety knowledge
• Little research and few precedents
• Absence of GMPs and Federal oversight that guide other industries
• Unwholesome plant material
• Food safety risks of variable, complicated extraction processes have not been established
• Unapproved equipment
• Staff safety
• Pesticide contamination
C. botulinum concerns with hash oil extractions

- C. bot spores ubiquitous on plants
- Thermal resistance of spores
- Unknown whether spores can germinate/produce toxin in extractions that create anaerobic environments without temperature control (like garlic/oil mixtures)
- No risk of C. bot intoxication (botulism) when extraction is smoked
- More research needed...
Denver requirements for shelf-stability of hash oil extractions

Must be treated as PHF unless one of the following:

• Plant irradiated
• Extract is suspended in alcohol
• Heat critical limit
• pH/water activity is low to prevent growth
• Product is labeled for smoking only
• Scientific research demonstrating safety of another critical limit is provided and approved

HACCP-type plan must be submitted and approved
• New regulatory realm; research has not yet established critical limits for safe processing of hash oils
• It is industry’s responsibility to understand regulations and to demonstrate safety of their processes
• We do not regulate dosage under food safety regulations
• We are applying existing regs, not new ones
• As with any foods, there are food safety concerns
• All unsafe product identified has been removed from shelves
Lessons Learned

• Establish partnerships proactively
  – With other City & State agencies
• Strong external communications needed
  – High volume of media requests
• Establish subject matter experts on staff; capitalize on strengths of staff
• Base policies on PH principles & risk-based methodology
• Carefully track MJ-related data
• Establish strong relationships with industry leaders
Excise and Licenses

Anthony Arneach
Inspection Process Overview

- E&L Inspection Overview
  - What is your focus?
    - E&L inspects the license premises for a valid Alarm Permit, Proper use of video equipment, Limited and Restricted Access areas are marked, Licensed Security Guards are properly licensed and badged, Hours of Operation, Diagram of the Licensed Premises Matches the Building Layout and Proximity Measurement Completed.
    - When conducting an inspection our primary focus is the security of the location and the Diagram of the licensed premises match the Building layout that was submitted.
    - E&L Inspectors will ensure that when our inspection is completed and approved this location is ready for License Issuance and in good standing with the City and County of Denver.
Issues and Concerns

• Red Flags
  – Operating a Marijuana establishment without a Valid City or State License
  – Diagram of the licensed premises is not a match
  – Worker’s do not have the proper ID to work in a Marijuana Establishment
  – Can not get the DVR to work

• Examples – No tags on the Plants.
How is the Marijuana Industry changing that affects Inspection and Compliance efforts with your Department?

– The mind set of the owners has changed over time that this business can be successful. You don’t have to grow Marijuana in your basement any more.

– Transfer of Ownership and Transfer of Location are on a high end. We complete about 3-6 inspection per week because owners are selling the business or they need to find bigger locations.

– Compliance Inspection have not changed we will visit each location one time this year and some times 2 if they failed a compliance inspection.
Best Practice for Inspections

• Identify Excise and License best practice for inspection and compliance
  – E&L inspectors help people understand what is needed to pass an inspection.
  – Open communication, If any questions should come up please call, email or text us. We would rather you ask before we find it during a compliance check.
  – E&L Inspectors are here to help keep you in Business not put you out of Business!
Why the Police?

-MJ is a Controlled Substance

-The Cole Memo

-Regulatory and Criminal Enforcement
City Ordinances, MED Rules and State Statutes (Title 12)

-Public Safety
Common Violations/Investigations

- MJ Product Overages (Medical)
- Age Compliance (Retail)
- Operating without a License
- Advertising Violations
- Waste Disposal
Case Example
Denver City Attorney’s Office

Brian Snow
Prosecution & Code Enforcement Division
Administrative Enforcement

• Disciplinary action can stem from any law violation on the premises of a licensed facility
  – Fire Department ➔ Permits for Marijuana Extraction; fire code violations
  – Building Department ➔ Electrical & Structural Violations
  – Zoning ➔ Unpermitted uses
  – Police Department ➔ Underage Violations – diversion
  – Environmental Health ➔ Pesticide Contamination
  – Colorado Marijuana Enforcement Division

• Law Violation ➔ Disciplinary Action on license
Types of Enforcement

- Oral Recommendations
- Notice of Violation (Order to Correct)
- General Violations
- Criminal Charges

DRMC 32-1: The director of excise and licenses shall have full power to grant, renew, suspend during investigation and revoke after notice and hearing thereon, all licenses issued under authority of this chapter 32.
Show Cause Enforcement

- Complaint and Show Cause issued to licensee to show cause why licensee’s business license should not be suspended or revoked for violations of law or regulations.
- Burden on the City to prove by a preponderance of the evidence that the licensee violated the law
- Held in front of a hearing officer
- Active compliance program through the DPD vice team – semi-monthly stings
- Examples of types of Show Cause enforcement:
  - Lost Premises
  - No State License
  - Underage Sales
  - Diversion
- Settlement: Liquor vs Marijuana
LESSONS LEARNED

• Coordination
  – requires open lines of communication
  – what do they know that you don’t?

• Don’t get LAX!
  – have regular meetings so processes don’t fall apart

• From the CAO
  – your job is transfer their other agencies’ expertise into disciplinary action
Thank You!

Questions can be emailed to:
MarijuanaInfo@Denvergov.org