



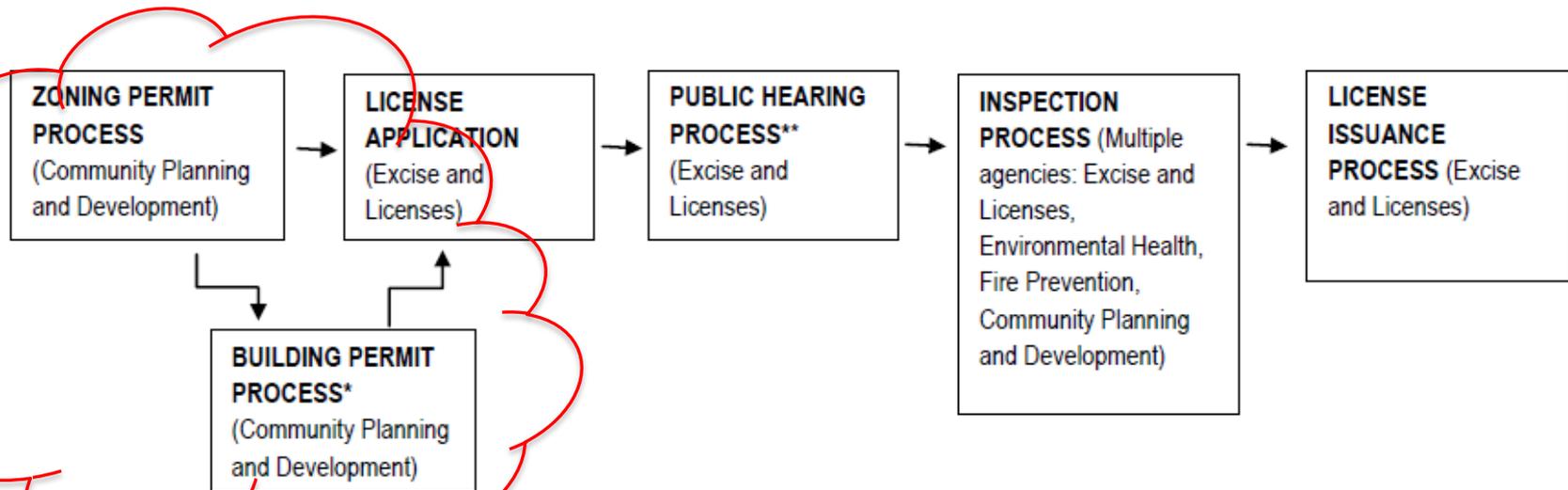
DENVER
THE MILE HIGH CITY

Land Use and Building Review for the Marijuana Industry

November 2015

- 2014 Established an internal framework and coordinated regulation and enforcement efforts through:
 - Monthly marijuana team meetings
 - Operations dashboard
 - Inspector cross-trainings
 - Education to industry regarding city processes and regulations
 - Work groups for particular topics
- Most efforts regularly include representatives from 7 different city agencies

How Land Use and Building fit into the Licensing Process



*Building permits are required in order to modify the premises. Building permits must be finalized before a business license can be issued. However, you may apply for building permits and a business license at the same time.

**Public hearings are only required for Medical Marijuana Dispensaries and Retail Marijuana Stores.

Overall Planning and Zoning

Impact of Marijuana

- Implemented a city-wide new zoning code in 2010 to better implement city and neighborhood plans
 - Context-based approach as framework for new zones
 - Creation of new “Industrial Mixed-Use” zone districts
- Decision in 2010...Which regulatory approach to govern the location and operation of MJ businesses?

How does Denver Regulate Marijuana Businesses?

- Denver Departments Involved in Policy Direction on regulating MJ businesses:
 - Department of Excise and Licenses (EXL)
 - Community Planning & Development (CPD)



Location of Marijuana Businesses

- Denver decided to use its licensing laws as the primary regulatory tool for MJ businesses
- Conscious decision not to create distinct land uses just for MJ businesses in the zoning code
- MJ businesses are regulated entirely within the city's business licensing laws, which in turn cross-reference zoning land uses and zone districts to specify allowed locations

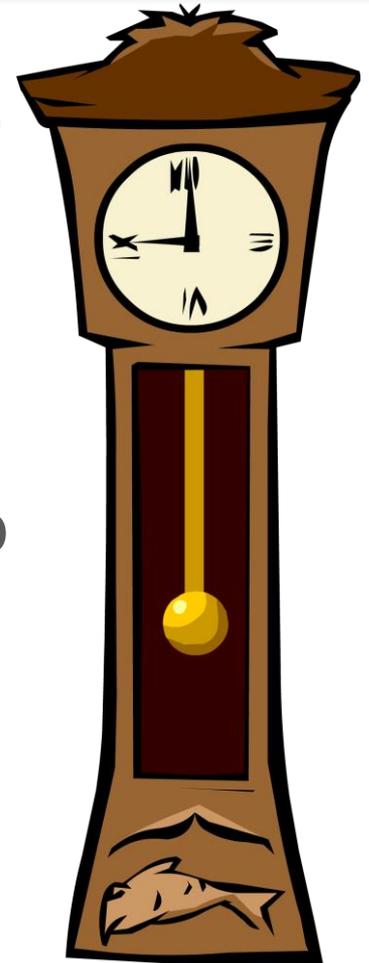
- Marijuana businesses are regulated via licensing laws, which state business must be permitted as one of the following specific zoning uses:
 - “Plant Husbandry” (MJ optional premises/grow license)
 - “Commercial Food Preparation & Sales,” “General Manufacturing,” “Heavy Manufacturing, or “Laboratory, Research, Development and Technological Services” (MJ infused products manuf’g license)
 - “Retail Sales” (MMJ dispensary and MJ retail store licenses)
- Marijuana must always be grown in a “completely enclosed structure” (as defined in zoning code)

- Zoning doesn't recognize any difference between medical and recreational MJ
- Licensing code prohibits dispensaries in certain low-scale neighborhood zone districts, even though those districts allow general retail sales



Complications: Timing is Everything

- 2010 and 2011: Denver made a conscious decision to “grandfather” business locations that existed before city’s permanent licensing regulations were enacted
 - Necessary because of the 10 year gap before any formal regulation by either the state or the city after Amendment 20’s passage legalizing medical marijuana



Complications: Timing is Everything

- **2010:** While Denver was enacting new MMJ licensing laws, Denver adopted its new Zoning Code
 - Some previously mapped industrial areas were rezoned to less intensive mixed use zone districts
 - Some previously mapped general business areas were remapped to more limited neighborhood commercial zones
- **Result:** Creation of “nonconforming” MJ businesses permitted by zoning before 2010 (growing, manufacturing, and selling)
- **Now:** Both “grandfathered” businesses under licensing laws and “nonconforming” businesses under zoning laws

Non-Licensed Operations: Home Grows

- Zoning allows an accessory “garden” with a primary residential use – City needed to address non-licensed growing of MJ at home:
 - No more than 6 plants may be grown for each medical MJ card holder or each adult 21 years or older residing in the dwelling unit
 - Must be grown in a completed enclosed structure
 - Cannot occur in a common area associated with the dwelling unit (e.g., lobby or laundry area in an apartment bldg.)
 - Growing is for personal use only and conducted only by persons living in the dwelling unit. No sales allowed.

Non-Licensed Operations: Collectives & Caregivers

- 2015: Criminalized growing of more than 36 plants on a single zone lot in a non-licensed facility



Continuing Refinements: Marijuana Extraction

- With legalization of recreational marijuana, MJ edibles market exploded and continues to grow
- Licensing *originally* allowed “MIPs” under only 2 zoning land uses:
 - Food preparation & sales, commercial
 - General manufacturing



Continuing Refinements: Marijuana Extraction

- Extractions occurring under licensed-recognized “food prep” zoning use – too intense?
- Solvent-based MJ extraction activities were classified as “heavy manufacturing” under zoning (like perfume factories) because of use of toxic and explosive materials
 - MIPs licensing scheme did not recognize this zoning use



Continuing Refinements: Marijuana Extraction

- **Result:** New definitions of MJ extraction-related terms added to zoning (below). Incorporated different scales/intensities of MJ extraction into existing zoning definitions of food prep and manufacturing.
 - “Extraction, food-based”
 - “Extraction, solvent-based”
 - “Marijuana concentrate”
 - “Marijuana-infused product”
 - “Food” does not include marijuana concentrate

Continuing Refinements: Marijuana Extraction

- Result: Zoning “Commercial food preparation & sales” use limits types of extraction that can occur under that use
- Result: Refined General/Heavy Manufacturing use definitions to account for different scales/intensities of extractions:
 - General (allowed in more parts of city): Solvent-based extraction activity capped at 3,000 sf of gross floor area in any 1 building
 - Heavy (restricted to city’s purely industrial areas): Greater than 3000 sf of solvent-based extraction gross floor area in any 1 building

- Coordinate with Excise & License to have a zoning-approved floor plan as part of license application submittal
- Transfer of MJ business ownership, which requires a new license, creates zoning rework that is not mandated by zoning laws



- After receiving a zoning use permit, plans are then logged in for building permit review by a number of disciplines, including:
 - Architectural/Structural
 - Mechanical/Plumbing
 - Electrical
 - Fire
 - Transportation
 - Zoning for structure
 - Environmental Health (some uses)

- Electrical – Carol Pafford
 - Continuous load
 - Lighting coordination with other disciplines as plans often different
 - Listed equipment
- Mechanical/Plumbing – Danny Boncich
 - Plumbing fixtures
 - Providing ventilation as if it's an occupied space
 - Extraction facilities
 - CO2 enrichment
- Architectural/Structural – Eric Browning
 - Plumbing fixtures
 - Accessibility
 - Egress
 - Fire rated corridors in non-sprinklered buildings

- Grow pods are not a listed assembly for the use of growing marijuana – electrical contractors often won't touch the equipment provided with the pod
- Often not shown on plans and just placed in facilities
- Not manufactured in certified facilities
- Manufacturers selling them like an approved room but there are code concerns related to:



1. Construction
2. Accessibility and egress
3. MEP often covered up already without specific listing for devices

Occupancy Classification for Dispensaries

- Medical dispensaries are treated as a B occupancy and regulated similar to other doctor office/clinic
- Recreational dispensaries often sell other goods and should be treated like a M occupancy
- However, conversion of medical to recreational handled at licensing and often doesn't cause a change to what was originally permitted
- Outstanding question is should there should an occupancy distinction between medical or recreational?

- Requirements for listing of equipment with the NEC differ from those of Denver Fire – DFD listing does not include testing of any electrical components as an assembly
- Equipment requiring power is to be listed as an assembly to an appropriate standard to comply with NEC 110.3
- Two ways to list equipment
 - Listed by a nationally approved testing lab and tested to the appropriate standards
 - Be tested and inspected in the field by a 3rd party company that is certified

- Investors buying homes and wanting to add services to convert garages into grow facilities for rental tenants
- Zoning implications
 - Accessory garden is allowed, but accessory structure must be subordinate to the primary structure
 - Adding the same size electrical service to the garage as feeds the house makes it no longer accessory
 - Must show how parking is provided when required
 - Electrical being added will easily accommodate more than the # of plants allowed by zoning

- Electrical implications:
 - Potential for electrical fires from overloaded electrical services or subpanels due to lighting loads
 - Separate service to the garage would have a separate meter increasing the possibility that the garage could be rented separately from the house
 - Poor installation of wiring, i.e. extension cords, running through holes in walls, plugs cut off, etc.
- Modified an existing policy to require plan review for new services to accessory structures

- 2015 Base IRC
 - One- and two-family dwellings shall be supplied by only one service. (230.2)
- 2015 Proposed Amendment for Denver
 - Section E3601.2 Number of services. One- and two-family dwellings and any associated structures shall be supplied by one set of service entrance conductors, as defined in the National Electric Code, whether overhead or underground, unless otherwise approved by the Building Official. (230.2)

- Extraction segment of the industry continues to grow
 - Decision on Class 1, Div 1 rooms for butane extraction
- Equipment from other industries being used by marijuana but not listed for such
 - Paint booths – good from M/P perspective but challenging from DEH as require sink if handling food
- Unsafe conditions & work done without permits – enforcement/compliance problems (DEH, DFD, CPD)
- Greenhouses



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Thank You!

Questions?