



6/7/2010

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“Let’s Get Together and Feel Alright”

- Bob Marley

Zone Consistently and We Will Be Alright



- A consistent approach was taken. We put these uses in the right spot and encouraged the State to regulate the industry.
- Counties were very uniform in asking that either the State regulate this business or give us the power to do it locally.
- They delivered. Big leap from Colorado Department of Public Health and Environment ("CDPHE") earlier rules relating to the same.
 - no limits to the amount of patients a care-giver can serve.
 - required no other responsibility for the patient's well being other than the provision of marijuana.
- Now have a legitimized and regulated industry.



Legislative Activity

- HB 10-1284 – Rep. Massey and Sen. Romer
- Counties possess only such powers as are given by the State.
- Counties given authority to regulate and license only limited, eclectic mix of businesses.
 - Transporting of Ashes and Trash
 - Escort Services
 - Second Hand Dealers and Pawnbrokers
 - Door-to- Door Salesman
 - Nude Entertainment
 - Alarm Companies
 - Liquor Licenses
 - **Medical Marijuana**



Legislative Activity

- Similar to Liquor but much broader. More than just licensing. Can regulate and prohibit at the local level. Local licensing comes first.
- Can no longer avoid the passionate debates on legitimacy of marijuana.
- Email examples:
 - “Medical Marijuana is not medicine.”
 - “Patients do not smoke medicine.”
 - “Maybe you should be called to the ER when we get overdoses and marijuana problem patients.”
 - “Consider my children.”
 - “How ridiculous can you be. Stop this crazy idea.”
 - “We do not need medical marijuana in Eagle County. If you even consider it, we will consider you are on it.”

State Highlights

- Creates the Medical Marijuana Licensing Authority in the Department of Revenue.
 - Grants or refuses licenses, suspends, restricts, revokes, and assesses fines.
 - Inspects and investigates businesses.
 - Promulgates rules such as security of premises, sanitary requirements for preparing products, labeling standards, etc.
- After July 1, 2011, all medical marijuana businesses must have a license to operate. Can continue to operate if previously in business upon completion of forms and payment of fee.



State Highlights

- Types of licenses:
 - 1) Medical Marijuana Center License
 - Similar to existing dispensaries.
 - Must produce 70% of its own product. All must be grown in licensed cultivation facility. Will restrict rogue growing operations.
 - Requires \$5,000 bond for a license to ensure sales tax collections.
 - 2) Optional Premises Cultivation License
 - Cannot possess without holding a medical marijuana center license.
 - No more exclusive commercial growers.
 - May or may not be contiguous to the medical marijuana center.
 - Still limited to six plants per registered patient.



State Highlights

- Types of licenses (continued):
 - 3) Medical Marijuana-Infused Products and Manufacturing License
 - Exclusively for manufacturing.
 - Must have contract with Center to obtain marijuana for manufacturing.
 - May only sell to Medical Marijuana Centers.
 - Must comply with State sanitation standards.
 - 4) Occupational Licenses and registration for owners, managers, and staff.



State Highlights

- Licenses can be denied by the State for many reasons.
 - Business operated in a manner adversely affecting public welfare.
 - Unacceptable criminal history (felony drug charge conviction).
 - Under 21 years of age, a physician, or employee of licensing authority.
 - Failure to pay school loans, government debt, taxes, or child support.
 - Must be a Colorado resident for at least two years prior.
 - If premise is within 1000 feet of a school, an alcohol drug or alcohol treatment facility, or the principal campus of a college, university, or seminary, or a residential child care facility.
 - If premise is for a location currently licensed as a retail or wholesale food establishment.



State Highlights

- Can only be open from 8 am to 7 pm.
- No consumption on site.
- Cannot deliver product except to pre-approved homebound patient.
- Caregivers who do not possess these licenses must register with the CDPHE and are limited to five patients at a time. Must do more than simply provide marijuana (TBD). May only charge the actual cost of cultivating or purchasing the marijuana.
- Physician cannot be paid from a license holder.
- Medical Marijuana cards must be renewed annually.



County Highlights

- HB 1284 sets up a dual state and local licensing system. State system goes live in July 2011.
- Expressly contemplates that counties will adopt their own local licensing requirements that can supplement (be more or less strict) than the State's. Does allow counties to adopt and enforce their own regulations prior.
 - Should still strive for consistency for those counties that will allow them.
 - State will be doing extensive rule making in the upcoming year (applications, forms, guidance to local license authorities).
 - Benefit in waiting for this guidance. Moratorium is expressly authorized until such time as the State has adopted these guidelines and rules.



County Highlights

- HB 1284 allows local governments to completely opt-out and effectively ban commercial growth, manufacturing, or sale of medical marijuana.
 - Opt-out can be by majority vote of BoCC or registered voters.
- Had previously said you could not ban a legal business simply because you did not like it. Bill now gives you that power. Would still cite valid government purpose for exclusion (limited staff time, availability elsewhere, etc.).



County Highlights

- HB 1284 leaves it up to the local government to:
 - determine if these uses will be allowed locally;
 - determine if it will adopt State or local licensing standards;
 - continue or adopt moratorium;
 - identify the person who will act as the local licensing authority;
 - set its own licensing fees;
 - determine if it will conduct public hearings prior to issuing or renewing licenses (Due Process concerns);
 - zone the appropriate locations for medical marijuana businesses;
 - vary the distance requirements set by the State (i.e. 1000 feet from schools);
 - determine other uses to protect (i.e. residences);
 - apply other terms, conditions, or reasonable restrictions on a license (strongly encourage Special Use Permits).



What Do You Do Next - Zoning

- Determine the appropriate zone districts and special use standards to apply.
- Determine whether you need additional zoning regulations for primary care-givers operations.
 - HB 1284 does not deal with allowable locations.
 - Still entitled to grow up to thirty plants. Should this be done in a residential setting? Eagle County is saying no.



- So Where Does Zoning Fit In?
 - Licensure must consider zoning
 - Biggest concern is typically pre-emption, but not present here
 - Local zoning and land use authority can be exercised independent of licensing



Zoning After House Bill 1284

- Counties will be given wide latitude to restrict commercial operations through land use
- Zoning of caregiver growing operations



- Existing Facilities

- As of July 1, 2010, an established, existing, locally-approved marijuana business can continue to operate if compliant with applicable state law
- Continued operation if local government subsequently approves an application existing on July 1, 2010
- Requires payment of fees and paperwork to be filled out by August 1, 2010
- Requires current business or operations to show that it is cultivating 70% of product
- Existing moratoria may be extended until licensure rules adopted by state

Scenarios and Options

- Under current moratorium
- Under current zoning / licensing scheme – continue or suspend
- No zoning / no moratorium – enact zoning, moratorium, or temporary zoning regulations



- Upcoming Land Use Policy Decisions / Actions for Local Government

- Short Term

- Enact / extend moratoria
- Continue to grant local permits
- Do nothing

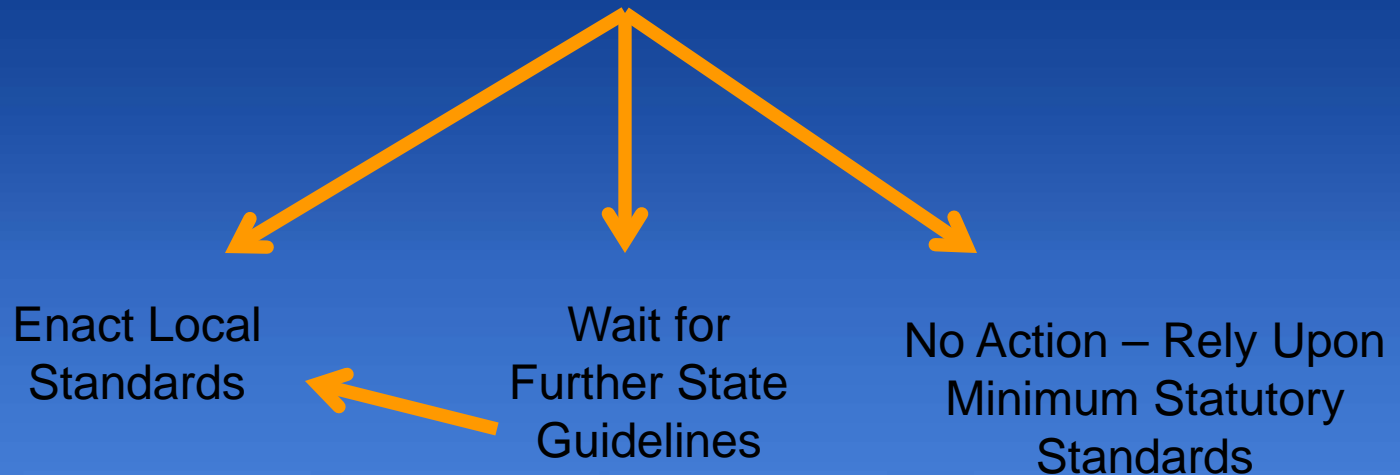
- Policy Decisions / Actions (Cont.)

- Longer Term

- Decide On Licensing Options

Move to opt out

Create Local License Authority



- Zoning – Long-Term Decisions
 - Create regulations or rely upon licensing schemes – existing facilities
 - Use of straight zoning or conditional permitting
 - Use of special regulations or use standards specific
 - Caregiver operations



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