Lessons from the Land of Pot

The Panel

Kyle Dalton, Principal Planner, Denver

Noah Beals, Senior City Planner, Fort Collins

Bronwyn Scurlock, Assistant City Attorney, Fort Collins

Don Elliott, Director, Clarion Associates
Lessons from the Land of Pot

A Short History of Pot

- 2001: CO legalized medical marijuana
- 2012: CO legalized recreation (retail) marijuana
- Through Constitutional amendments that:
  - Are unlikely to be reversed
  - Allow local governments wide latitude to craft local ordinances regulating related activities (or to prohibit them)
- After 17 years, we should have learned something about the land use impacts of legalization
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What is this session IS NOT about

- Whether Amendments 20 and 64 were good ideas
- Impacts on drug use/abuse rates
- Impacts on tax revenues
- Impacts on traffic safety/accident rates

What is this session IS about

- Lessons for planners and land use regulators
- Impacts on the real estate markets that impact planners and land use regulators
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Four Flavors of Pot

1. Cultivation Facility ("Grow Operation")
2. Product Manufacturing Facility
3. Testing Facility
4. Retail Sales Facility
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Denver’s Approach

Kyle Dalton
Lessons from the Land of Pot

A Map of Pot
Denver’s Approach

- Denver uses 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 within the city’s business licensing laws, which in turn cross-reference zoning land uses and zone districts to specify allowed locations
2010–11: Denver decided to “grandfather” business locations that existed before city’s permanent MJ licensing regulations were enacted

- 10 year gap before formal regulation by state or city after Amendment 20’s passage legalizing medical marijuana

Coincidentally nearly 80% of the city was rezoned in 2010, creating “nonconformities” too
Agricultural Loopholes

- Distinction between growing MJ and growing tomatoes?
- Zoning permits issued for “plant husbandry” or “urban farm” never mentioned MJ
- Now, primary grows must be plant husbandry and all grows must be located in enclosed structures
Gaps: Collectives & Caregivers

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

- Street level activation of dispensaries
- Electrical services in accessory buildings
Extractions

- Food-Based
- Water-Based
- Solvent-Based

- Manufacturing:
  - Custom
  - General
  - Heavy

Commercial Food Prep & Sales
Proliferation ...

MARIJUANA IN DENVER: SOME AREAS SATURATED
... led to Caps

Unbalanced pot landscape in Denver raises concerns

After two years of retail marijuana sales, Denver communities of color and lower income say they bear disproportionate number of pot licensees.

Marijuana business caps could help neighborhoods, council members say.
Other Use Types Gain New Life

- Laboratory, Research, Development, and Technological Services
- Terminal, Freight, Air Courier Services
Social Consumption

- No separate zoning permitting

Coffee shop is set to be Denver’s first social-use marijuana business

Associated Press
February 27, 2018 / 8:36 am / Denver news

Share this:

### Images

1. Billboard: "Now that adult use is legal... PERMIT it in some PRIVATE places. PREVENT it in these PUBLIC spaces. VoteYESon300.com"
2. Coffee shop: "Welcome to the Coffee Joint!"
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Fort Collins’ Approach
Noah Beals
Noah – How do we get to here?
A City Marijuana Team

Noah Baals
Senior City Planner-Zoning
City of Fort Collins
970 416-2313
970 224-6134 Fax

MMB Team

MEMBERS | CONTACT | MEMBERSHIP
--- | --- | ---
Ginny Sawyer |  | POLICY AND PROJECT MANAGER
Jerry Schaefer |  | POLICE LIEUTENANT
Jim Lenderts |  | POLICE OFFICER
Kerry Koppes |  | 
Michel Jacques |  | Fire Inspection Coordinator
Mike Trombley |  | POLICE LIEUTENANT
Noah Baals |  | SR CITY PLANNER / ZONING
Rita Knoll |  | CHIEF DEPUTY CITY CLERK
Robert Hippler |  | POLICE REPORT SPECIALIST
Russell Hovland |  | CHIEF BUILDING OFFICIAL
Is it allowed in the Zone District?
## What type of Marijuana Business is allowed?

<table>
<thead>
<tr>
<th>ZONE DISTRICT</th>
<th>Medical Centers (MMC)</th>
<th>Medical Optional Premises Cultivation (OPC)</th>
<th>Medical Marijuana Infused Products (MIP)</th>
<th>Medical Marijuana Testing Facilities (MTF)</th>
<th>Medical Marijuana Research &amp; Development Facility</th>
<th>Medical Marijuana Research &amp; Development Cultivation</th>
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</thead>
<tbody>
<tr>
<td>C-C: Community Commercial</td>
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<tr>
<td>C-C-N: Community Commercial – North College</td>
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<tr>
<td>C-C-R: Community Commercial – Poudre River</td>
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<tr>
<td>C-G: General Commercial</td>
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<td>(Not Permitted in the CAC)</td>
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<tr>
<td>C-L: Limited Commercial</td>
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<td>(Not Permitted in Riverside Area)</td>
<td>(Not Permitted in Riverside Area)</td>
<td>(Not Permitted in Riverside Area)</td>
<td>(Not Permitted in Riverside Area)</td>
<td>(Not Permitted in Riverside Area)</td>
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<tr>
<td>C-S: Service Commercial</td>
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<td>D: Downtown</td>
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<tr>
<td>I: Industrial</td>
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<tr>
<td>R-D-R: River Downtown Redevelopment</td>
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</tbody>
</table>
What type of Development Review?

Division 4.28, Industrial District (I)

(A) **Purpose.** The Industrial District is intended to provide a location for a variety of work processes and work places such as manufacturing, warehousing and distributing, industrial and outdoor storage, and a wide range of commercial and industrial operations. The Industrial District also accommodates complementary and supporting uses such as convenience shopping, child care centers and housing. While these Districts will be linked to the City’s transportation system for multiple modes of travel, some may emphasize efficient commercial trucking and rail traffic, if needed. Industrial and manufacturing processes used in this District may, by necessity, be characteristically incompatible with residential uses.

(B) **Permitted Uses.**

(1) The following uses are permitted in the I District, subject to basic development review provided that such uses are located on lots that are part of an approved site-specific development plan, except that a stationary vendor use must be approved as a minor amendment:

(a) Accessory/Miscellaneous Uses:

1. Accessory buildings.
2. Accessory uses.
3. Outdoor vendor.
4. Stationary vendor.
5. Urban agricultural.
6. Off-site construction staging.

(b) Any use authorized pursuant to a site-specific development plan that was processed and approved either in compliance with the Zoning Code in effect on March 27, 1997, or in compliance with this Code (other than a final subdivision plat, or minor subdivision plat, approved pursuant to Section 29-643 or 29-644 of prior law, for any nonresidential development or any multi-family dwelling containing more than four (4) dwelling units), provided that such use shall be subject to all of the use and density requirements and conditions of said site-specific development plan.

(c) Any use which is not hereafter listed as a permitted use in this zone district but which was permitted for a specific parcel of property pursuant to the zone district regulations in effect for such parcel on March 27, 1997, and which physically existed upon such parcel on March 27, 1997, provided, however, that such existing use shall constitute a permitted use only on such parcel of property.

(d) **Institutional/Civic/Public Uses:**

1. Neighborhood parks as defined by the Parks and Recreation Policy Plan.

(e) **Residential Uses:**

1. Extra occupancy rental houses with five (5) or fewer tenants.
2. Short term rental units.

(f) **Industrial Uses:**

1. Medical marijuana-optional premise cultivation operations.
3. Retail marijuana cultivation facility.
4. Retail marijuana product manufacturing facility.
5. Retail and medical marijuana testing facility.
6. Small-scale and medium-scale solar energy systems.

(2) The following uses are permitted in the I District, subject to administrative review:

(a) **Residential Uses:**

1. Mixed-use dwellings constructed above nonresidential uses, provided that the aggregate floor area of all mixed-use dwellings does not exceed the aggregate floor area of all nonresidential uses in the building.
2. Extra occupancy rental houses with more than five (5) tenants.

(b) **Institutional/Civic/Public Uses:**

1. Public and private schools, including colleges, universities, vocational and technical training.
Vacant Space
Amending an Existing Plan

City of Fort Collins

Minor Amendment Application Form

Date Submitted: 3-3-10
Project Name: 332 Hickory St. - Change of Use
Project Location (Street Address): 332 Hickory Street
Minor Amendment Fee: $192.00
Legal Description: Lots 19 thru 26, blk 20, eden ridge park, pl, with E 60 FT ADD Vac, 594 A.2, and W 10 FT OF Vac ADD, Alley, et al.
General Information: List all property owners having a legal/ equitable interest in the property (attach separate sheets if necessary).
Owner's Name(s):
Street Address: 332 Hickory St.
City/State/Zip: Fort Collins, CO 80521
Telephone: Fax:

Applicant's/Committee's Name: Troy W. Jones
Name of firm: MTA Planning & Architecture
Street Address: 281 Walnut St. Suite 200
City/State/Zip: Fort Collins, CO 80521
Telephone: Fax:

SUBMITTAL REQUIREMENTS:
1. Six (6) copies of OVERLAPED plan (i.e. site, landscape, elevation, etc. ) when ever is being altered) on 24x36" size (usually available at the Technical Services Department at 281 N. College) - RED-LINE THE CHANGES on the six plans or provide six copies of revised drawings showing the changes in addition to the six originals;
2. Completed and signed application form; and
3. Application fee of $192.00.

MINOR AMENDMENT
Detailed description of the change and reason(s) for the request: This is a request to change the use of the building at 332 Hickory St. from light industrial to an "enter-er" of a combined use of light industrial and medical marijuana cultivation facilities. Included in the application are street improvements design and site improvements to bring the site into compliance with the LDC.

CERTIFICATION
I certify that the information and exhibits submitted are true and correct to the best of my knowledge and that, in filing this application, I am acting with due knowledge, consent, and authority of the owner of the property (including all persons having a legal or equitable interest in the real property, or suffers or intended use of the City Codes which is the subject of this application without whose owner or authority the requested action should be lawfully accomplished. Pursuant to said authority, I hereby grant City officials to enter upon the property for the purpose of inspection, and if necessary, for posting a notice as to the property.

Troy W. Jones
Name (printed):
281 N. College Ave, PO Box 580, Fort Collins, CO 80522
Signature:
281 N. College Ave, PO Box 580, Fort Collins, CO 80522
Where are the Marijuana Businesses?
Approved Development Plan
How do we get a License?

ZONING REPORT
MEDICAL MARIJUANA BUSINESS

Applicant must complete this form for each proposed location. The form must be submitted to the Zoning Department, which will complete the lower portion and return it to the applicant. The applicant must then submit this form as a part of the application packet.

PROPERTY
Street Address: 101 Academy St, Unit 4
Existing Use of Property: Commercial
Property Owner: Gill & Sonner
Property Owner Contact Info: 970-440-9309

PROPOSED USE
\[ \text{X} \] Medical Marijuana Center
\[ \text{X} \] Optional Premise Cultivation
\[ \text{X} \] Infused-Products Manufacturing

Description of proposed use:
Affix location for medical marijuana center.

CONTACT INFORMATION
Name of Applicant: Brandon Burgess
Trade Name of Business: M3L, Inc.
Email Address: winterson@224.91.82.182.com
Phone: 720-214-2551 (home) / 720-214-2553 (cell)

TO BE COMPLETED BY ZONING DEPARTMENT
Application Reviewed By: (Signature) Date: 3-20-13
Zone District: X
Land Use Approval Required: X
Minor Amendment Required
Sign Permit Required
Application Submitted (Date) and Fees Paid (Amt.): 6/1
Estimated Time to Process Land Use Application: 9/1

RECEIVED 6/2/13

APPLICANT/PROPERTY OWNER
Applicant Name: Trade Name of Business (DBA):
Applicant Contact: Email:
Applicant Contact Phone(s):
Property Address: Existing Use of Property:
Property Owner: Property Owner Phone:

PROPOSED USE: Y Check all that are located at above location:
\[ \text{X} \] Medical Marijuana Center
\[ \text{X} \] Medical Marijuana Optional Premises Cultivation
\[ \text{X} \] Medical Marijuana Infused Products Manufacturing
\[ \text{X} \] Medical Marijuana Testing Facility
\[ \text{X} \] Medical Marijuana Research Development Facility

Description of proposed use:
Affix location for medical marijuana center.

TO BE COMPLETED BY ZONING DEPARTMENT
Reviewed By: Date:
Zone District: Allowed?
Land Use Approval Required:
\[ \text{X} \] None
\[ \text{X} \] Minor Amendment Required
\[ \text{X} \] Sign Permit Required

Notes/comments:
Yes, a Building Permit is also Required
Share the Information

Marijuana

General Information → Medical Marijuana → Retail Marijuana → Resources →

It is illegal to use marijuana in public. It is illegal to drive high. You must be 21 or older to have or use retail marijuana. 21+

The City of Fort Collins uses a collaborative approach to the management of marijuana which brings together multiple City departments to develop and enforce regulations, and educate businesses, consumers, and the general public. The information provided here is intended to be an overview of marijuana laws in Fort Collins. It is up to each individual to understand and follow the law. Nothing in the information provided here is intended to offer medical advice about the health and safety risks of marijuana consumption, or to provide legal advice on compliance with applicable laws.

Notice:
The City of Fort Collins has adopted regulations prohibiting THC extractions with flammable materials by anyone other than a licensed marijuana business.

Read the Fort Collins law

Contact Information

General Questions
Ginny Sawyer
gsawyer@fcgov.com
970.224.6094

Licensing
Talissa (Tee) Gula-Yeast
tgula-yeast@fcgov.com
970.416.4206
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Fort Collins’ Approach
Bronwyn Scurlock
CO Voters approve Amendment 20

June 2010

CO Medical Marijuana Code

March 2011

FC Adopted a Medical Marijuana Code

FC Adopted LUC provisions regulating medical marijuana businesses

Nov. 2011

FC Voters approve citizen-initiated ordinance to prohibit Medical marijuana businesses

February 2012

Medical Marijuana Businesses Ceased Operation
FC Voters Approve citizen-initiated ordinance that reinstated medical marijuana businesses

Voters approved a provision allowing City Council to make amendments - additions to the medical marijuana code to stay current with state law
CO Voters approve Amendment 64

May 2013
Colorado Retail Marijuana Code

March 2014
FC adopted LUC provisions regulating retail marijuana businesses
<table>
<thead>
<tr>
<th>MEDICAL</th>
<th>Center</th>
<th>Optional Premises Cultivation</th>
<th>Infused Products Manufacturer</th>
</tr>
</thead>
<tbody>
<tr>
<td># of Licenses</td>
<td>10</td>
<td>10</td>
<td>4</td>
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<tr>
<td>Pending Issuance</td>
<td>1</td>
<td>2</td>
<td>1</td>
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</table>

28 Medical Marijuana Licensees
<table>
<thead>
<tr>
<th>RETAIL</th>
<th>Store</th>
<th>Cultivation Facility</th>
<th>Infused Products Manufacturer</th>
<th>Testing Facility</th>
</tr>
</thead>
<tbody>
<tr>
<td># of Licenses</td>
<td>10</td>
<td>9</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Applications Under Consideration</td>
<td>0</td>
<td>3</td>
<td>4</td>
<td>0</td>
</tr>
</tbody>
</table>

29 Retail Marijuana Licensees
Local Limitations on Marijuana Businesses

- **Medical**
  - limitation on 10 centers (one per every 500 patients in Larimer County)
    - Cap does not apply to businesses licensed prior to Nov 1, 2011 (date voters banned marijuana)

- **Retail**
  - Only licensed medical marijuana centers can have retail marijuana stores
    - Must be co-located on same premises
    - Must be 21 years of age to enter
    - Only a licensed store or MIP may have a cultivation facility in the City
      - Cultivations in FC can sell to MIPS and Stores outside of the City limits
Licensed marijuana businesses

- Fines
  - minimum – $500
  - maximum – $100,000

- Store and Center Penalties
  - Violations
    - provide 90 days of marijuana sales prior to the date of violation
    - calculate the average sales for 30 days
    - 20% of average sales
Cultivation Violations

- Licensee provides spreadsheet of all product including bud, shake and immature plants for the last 90 days
- Determine the average market rate (DOR website) for 90 days of product
  - Multiply the value for 5 days worth of production by 20%
  - Case-by-case basis
Enforcement Issues in Fort Collins

- Unlicensed marijuana grows
  - Local 12 plant limit in homes
  - Litigation – municipal judge issued search warrant
  - January 1, 2018 – state law 12 plant limit
    - Issue for DA’s office

- Odor Issues
  - Cannot leave the property line
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What the Market Did
Don Elliott
Land Use Impacts

The Headlines and Quotes are Amazing

- Portland grower pays $12–$18/annual/sf premium over normal $5 warehouse rate. Sometimes the premium was 10 times the normal warehouse rate (Bloomberg 2016)
- Investors in WA, CO, OR rushed to buy and upgrade warehouses in locations where grow operations were allowed (Bloomberg 2016)
- Because of industry risk, rents for marijuana businesses have sometimes increased 50% per year (Inc. April 2016)
- A $2 million piece of land could go for as much as $10 million if zoned properly (Inc. April 2016)
- A real estate investment trust raised $25 million to buy properties in states where marijuana is legal, including three in Denver and then rent the buildings to marijuana businesses like Strainwise, Medicine Man, and Dixie Elixirs. (Inc. April 2016)
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Land Use Impacts

The Headlines and Quotes are Amazing

- Armstrong Steel, a Denver–based steel building construction company and Inc. 5000 honoree, has seen a 35 percent increase in revenue since January, in part from building grow houses like the one above. (Inc. June 2014)

- You have to find a safe place to store your money. Where else but real estate. (Inc. June 2014)

- Entire new categories of businesses have sprung up around legal weed. One of Bacon's clients is a software company that has built a seed-to-sale tracking system for marijuana growers and dispensaries. (Inc. June 2014)
Land Use Impacts

Let’s Bring it Down to Earth

Q: Is demand for pot locations driving the real estate boom in Colorado or in the Denver metro area?

A: No. At least four other factors also working to drive prices up:

- General recovery from the Great Recession
- RTD acquisition of land along industrial/rail corridors created a unique market in the Denver Metro Area
- The move back to the city
- Generally growing popularity of the Denver metro area in particular
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Land Use Impacts

Let’s Bring it Down to Earth

Q: Where is the demand for marijuana activities and uses being felt

A: Generally:

- In areas where zoning allows them
- In buildings that do not have a mortgage (to avoid RICO claims against the bank, and because many mortgages require businesses to be legal)
- In projects without any direct or indirect federal funds (no LIHTC, no CDBG, no federal tenants)
Q: What types of buildings are most impacted by demand for marijuana activities?

A: Warehouses – particularly B and C class warehouses that do not have mortgages

- The size of the buildings, plus higher requirements for power, lighting, utilities, fire protection, and security require much greater investments than normal warehouses

- In the short run this absorbed an oversupply of poor quality industrial buildings
Q: How big was the impact on the warehouse market?

A: Depends on how you look at it

- Responsible for 35% of warehouse leasing between 2009–2014 (but most of that between 2009 and 2011)
- 3.7 million sq. ft. in Denver
- Vacancy rates in marijuana eligible locations fell further, and rents rose higher, than in other locations
- At lease rates twice or three times the non-marijuana warehouse rates
- But the typical lease was only 10,000–20,000 sq. ft.
- And all that space made up only 2.6% of Denver warehouse space

CBRE 2015
Q: What about the manufacturing and testing facilities?

A: They often co-located in warehouse facilities or occupied light or heavy industrial space

- They may only occupy 10% as much space as the cultivation facilities
- So they are generally accounted for in the warehouse lease rate data.
Q: What about the retail sales facilities?

A: The impact has been relatively small

- Although there are five times as many as freestanding (non-grocery) Starbucks stores, CBRE estimates that each one occupies only about 1,000 sq. ft.
- Total occupied space is estimated at 428,000 sq. ft. = 2.8% of retail market
- Mostly underused Class B and C space
- Revenue from extractives (oils and candies) now exceeds revenue from leaf business.
Q: What Does the Future Hold?

A: Changes in the warehouse market as more states legalize grow operations

- Prices for marijuana are already falling
- Some grow operations are actually serving out of state customers, and will lose those customers when closer grow operations are available
- It is much cheaper to grow in greenhouses rather than warehouses, so legalization in warmer states will create competition
Q: What Does the Future Hold?

A: Changes in the warehouse market as more states legalize grow operations

- Building owners used to receiving twice to five times normal warehouse rents will be reluctant to lower rents quickly

- The need to recoup costs of very high intensity lighting, very heavy duty HVAC, security systems, and visibility barriers in already aged B and C class buildings will further slow down rent adjustments – and could result in more vacancies
Q: What Does the Future Hold?

A: Changes in the warehouse market as more states legalize grow operations

- It is not clear what it will cost to address pollen and/or odor issues in grow warehouses, because none have yet been retrofitted back to non-marijuana uses to date.
- Those costs will also slow down market adjustments, and may also contribute to vacancies.
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Q: What Does the Future Hold?

A: Possible adjustments in tourism and related retail facilities

- In 2015, Hotels.com ranked Colorado as its 14th most popular tourism destination – up five spots from the prior year.

- In 2014, 44% of retail marijuana sales were made to out-of-state visitors. In mountain towns that figure may be closer to 90%.

- Those numbers will probably weaken as more states legalize.

- However, marijuana sales are less subject to competition from on-line retailers than other types of retail.
Questions and Discussion

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