



Regulating Nuisance Businesses at the Municipal Level

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Legal Authority – CRS 31-15-501 – Powers to regulate businesses

- Allows Municipalities to regulate businesses in the following ways:
 - License, regulate, and tax
 - Subject to any law of Colorado
 - And to fix the amount, terms, and manner of issuing and revoking licenses
 - Look to code/ordinances/charter to ensure that your municipality has licensing authority that complies with state statute
 - Ensure that Licensing scheme is constitutional
 - Allows for due process
 - Decision making authority
 - Vagueness

Why License Businesses

- Ensures safe, responsible operation
- Supports business transparency
 - Massage, gray casino, liquor establishment, etc.
- Allows for community involvement
 - Complaints, questions, general policies and practices
- Most importantly – Ending illegal activity
 - Sex trafficking, drug dealing, money laundering, etc.

Ordinance Considerations for Licensing Businesses

- Before you begin even writing an ordinance make sure enforcement infrastructure is in place
 - Who will issue applications, who will inspect, who will enforce, etc.
- Once you begin writing the ordinance, decide what you want enforcement to look like
 - Criminal? Civil/Administrative? Hybrid?
- Get stakeholders involved early, keep them involved throughout the process
 - Inspectors, administrators, officers/agents, etc.
- Community involvement

What to include in your ordinance

- Easily defined and measured metrics
 - Applicants should not be confused about how they obtain and keep a license
 - Similarly, licensing administrator should not be confused as to when they issue, deny, or revoke a license
- Consider due process
 - Administrative hearings, fair timelines, avenue for appeal
- Penalties
 - Fine schedule, license probation, license suspension, and finally revocation (sunset period?)
- Understand the business you're regulating and hire the right Hearing Officer



Licensing Massage Businesses

Lakewood's Massage Business Licensing Journey



- Our massage business licensing scheme went into effect in July, 2022
- Main goals associated with licensing these businesses were to stop human trafficking and sex work in the city
- Prior to drafting and passing the ordinance, local massage business owners were consulted
- Lakewood was becoming a haven for Illicit Massage Businesses

Additional Background Information

- We created an exception for solo practitioners
- We enacted a four-month moratorium on enforcement to give business owners time to come into compliance
- We sent warning letters to businesses who did not apply for a license by the time the moratorium lapsed
- Our goal is always compliance – have patience

Massage Ordinance Highlights



- Provides specific, easily measured bases for denial of applications
 - Specific prior convictions prohibit applicants from obtaining licenses (subject to C.R.S. 24-5-101)
 - If an applicant has had a similar license revoked or voluntarily surrendered while under investigation they are prohibited from being licensed
 - We restrict locations where prior massage business licenses have been revoked
 - Mandatory denial if it is determined that the applicant gave false information on the application

Highlights Continued

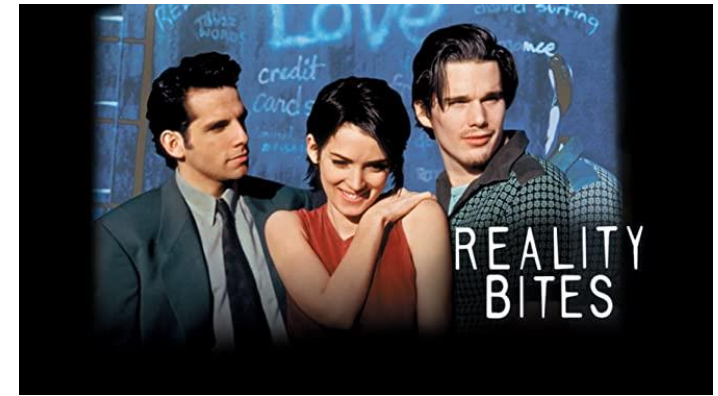
- Ordinance allows for revocation of license based on credible facts establishing that the business is operating a prostitution enterprise
- Ordinance requires massage businesses to implement basic business practices such as:
 - Having a licensed manager or owner on site when the business is open
 - Maintaining a list of employees and contractors on site
 - Maintaining copies of all employees' Colorado massage therapy licenses
 - Maintaining records of massages given and by whom
- Ordinance Prohibits massage businesses from performing specific acts

Other Ordinance Considerations



- Prohibition on sexually suggestive advertisements
- Consider whether your city/town will benefit from a solo practitioner exception, and if not, exclude this
- Always keep in mind the purpose of your ordinance
- Do you want licenses to be transferrable?

When Reality Sets In



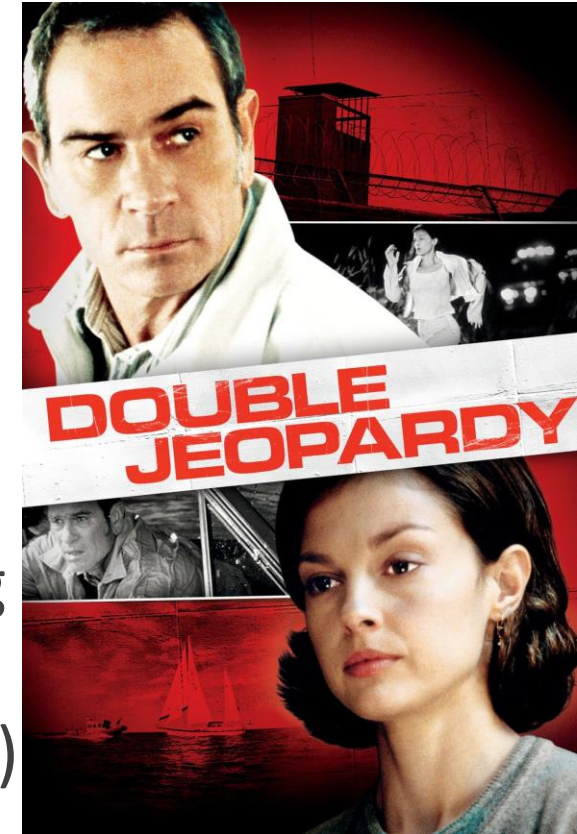
- Attempt to prepare for staffing issues beforehand (don't be surprised if you were wrong)
- Create collaborative partnerships early – our enforcement required assistance from the Lakewood Police Department and the City Attorney's Office
- Budget staff time accordingly:
 - Application review
 - Review of criminal histories (need CCIC/NCIC access)
 - Communication with applicants
 - Taking enforcement action against unlicensed businesses
 - Drafting denial letters
 - Scheduling administrative hearings
 - Discussing “close calls”

Double Jeopardy?

- The government is allowed to subject an individual to both criminal and civil sanctions with respect to the same acts or omissions. *Helvering v. Mitchell*, 303 U.S. 391, 399, 82 L. Ed. 917, 58 S. Ct. 630 (1938).
- Whether a particular punishment is criminal or civil is, at least initially, a matter of statutory construction. *Id.* at 399.
- Three factors to determine whether a sanction is a civil penalty or is really a criminal penalty *Hudson v. United States*, 522 U.S. 93, 139 L.Ed. 2d 450, 118 S. Ct. 488 (1997) citing *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-169, 9 L.Ed. 2d 644, 83 S.Ct. 554 (1963)
- All of the foregoing factors must be considered in relation to the statute on its face, and only the clearest proof will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty. *United States v. Ward*, 448 U.S. 242, 65 L.Ed. 2d 742, 100 S.Ct. 2636 (1980).

Double Jeopardy Continued

- License revocation proceedings are administrative civil proceedings and are not criminal in nature. *Colorado Dep't of Revenue v. Kirke*, 743 P.2d 16, 20 (Colo. 1987)
- License revocation proceedings serve remedial, rather than punitive purposes. *People v. Marmon*, 903 P.2d 651, 655 (Colo. 1995).
- *Deutschendorf v. People*, 920 P.2d 53, 60 (Colo. 1996)-Driver's license revocation hearing followed by DUI criminal proceeding does not violate Double Jeopardy
- *People v. Marmon, In re Cardwell*, 50 P.3d 897, 901 (Colo. 2002) Attorneys' disbarments following criminal conviction did not violate Double Jeopardy



You Found a Violation, What Now?

- Enforcement can take dual paths: criminal and civil/administrative
- Some violations need to be charged into municipal court, such as operating a massage business without a license
 - You cannot civilly/administratively revoke a license that has not been issued
- If you enforce civilly/administratively, a whole new world of evidence is available to you
 - Per *Indus. Claims Appeals Office v. Flower Stop Mktg. Corp.*, 782 P.2d 13,18 (Colo. 1989), certain hearsay is admissible in administrative hearings

License Revoked But Business Remains Open

- We have seen this more in the world of massage business licensing than in any of our other licensing programs
- Use the municipal court to your advantage
 - Issue a summons for operating without a license
 - Stay on top of the violators; word gets out about lack of enforcement



Last Resort

- If a business persists in remaining open after the above, consider an injunction from the district court.
- Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398 P.2d 998 (Colo. 1957)
 - It is a general rule that a court of equity will grant an injunction only where there is imminent danger of irreparable injury or damage to the plaintiff; however, in order to restrain an unlicensed person from practicing a profession it is not necessary to prove irreparable injury or the threat thereof, where the suit is in behalf of the public

Summary of Lakewood's Massage Business Experience

- 39 licenses issued
- 46 solo practitioners
- 9 licenses denied upon application
 - Zero evidentiary appeal hearings
- 7 licenses granted and revoked due to violations
 - Zero evidentiary show cause hearings
- We find a new unlicensed massage business every few weeks
 - Generally, a denied/revoked business owner will sell to an unwitting new owner who is not aware of our ordinance

Lodging Licensing Program



Why License Hotels/Motels?

- In Lakewood we determined that the “calls for service” at hotels/motels was disproportionately high
 - 2952 calls for service at motels in 2017 with 1135 criminal reports written
- Lakewood’s ordinance focuses on calls for service because of the burden hotels/motels put on the police department was so high
- Goal of program was to reduce criminality and the need for emergency services at hotels/motels

Calls for Service

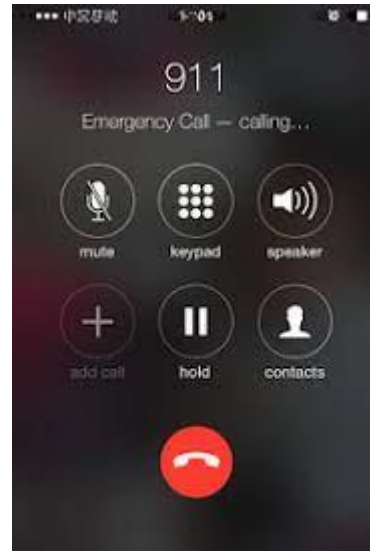
Calls for service (CFS) means and includes, but is not limited to, any and all calls to law enforcement that result in a representative being dispatched or directed to the lodging facility, either in person, by telephone, or through any other electronic medium.

1. Calls for service includes:

- a. A call to emergency services that results in a response, either in person, by telephone, or through any other electronic medium, by a law enforcement representative to the lodging facility.
- b. Any police-initiated call for service to the lodging facility that results in a criminal report.
- c. Any call to emergency services or police-initiated call for service within the lodging facility's surrounding neighborhood regarding activity that results in a criminal report, when such activity is associated with lodging facility staff and/or lodging facility guests and/or visitors.

Calls for Service Ratio

- Lakewood determined that a ratio of 1.89 calls per service per room per year was an acceptable level, so anything over is a violation
- We landed on the 1.89 ratio by compiling the data for all of Lakewood's motel
 - 1.89 was the median CFS number, so half of the businesses were above and half were below, which indicated this was a fair baseline



Ordinance Preparation and Roll-Out

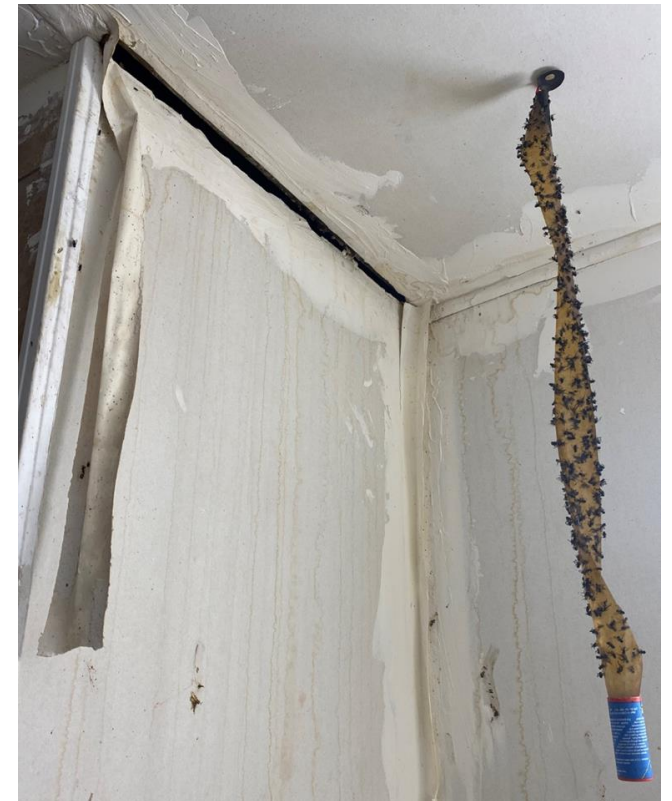
- City staff (predominately PD) participated in significant outreach efforts with hotel and motel owners
- Sought to increase buy-in before the ordinance was brought to council
- Wanted hotel/motel owners to understand that our goal was never to shut anyone down; rather, our goal was and continues to be remediation of issues at hotels/motels
- After the Ordinance was passed, each hotel/motel was required to apply for a license
- All hotels/motels were required to meet with an agent of the police department to discuss ideas for reducing the CFS ratio
- Ordinance contains a provision that the first time any hotel/motel is over the CFS limit for a 12 months period, their license is mandatorily renewed subject to sanctions

How Does it Work?

- Every lodging facility license is valid for one year, and at the end of that year, a crime analyst runs all of the calls for service for the facility
- Each call needs to be reviewed to ensure it fits under the ordinance
 - Also want to ensure a call fits the spirit of the ordinance-COVID eviction moratoriums
- If the motel's CFS ratio is under 1.89, a new license is issued
- If over, the CAO files a complaint to bring the facility to a show-cause hearing
- If over, the building department, code enforcement, and PD perform a building inspection
 - We do not charge for violations uncovered at the inspection

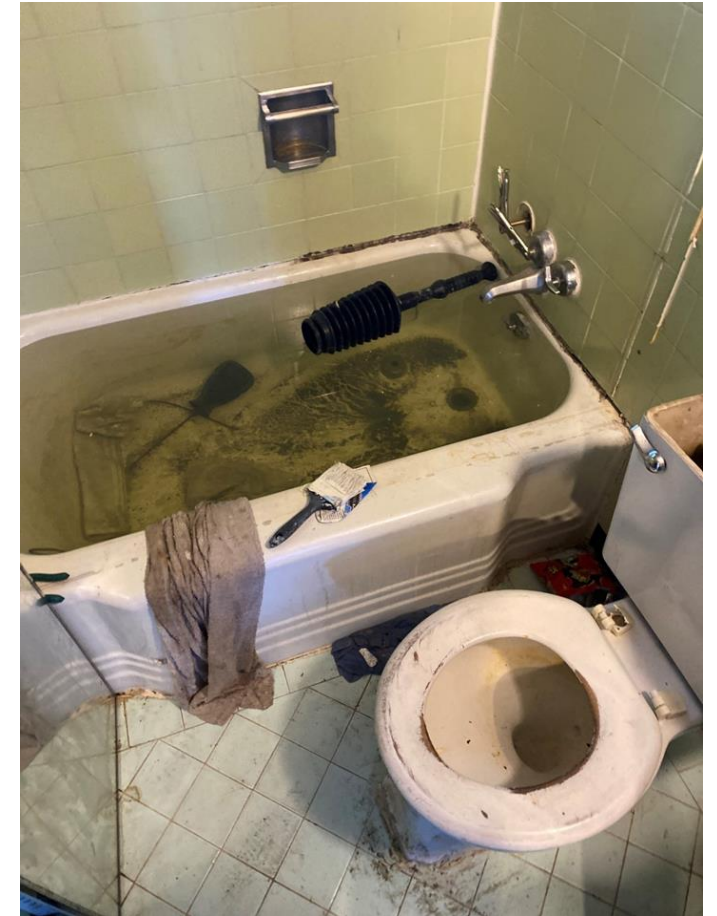
Impacts

- 10 lodging facilities were over the CFS limit in the first year
 - This was a first-time violation for each, so licenses were renewed subject to sanctions
- Sanction examples:
 - Mandatory guest vehicle registration
 - Posting motel rules and providing copies to guests
 - Create comprehensive electronic records keeping system
 - Create “do not rent” list of problem tenants
 - Requiring armed security on site
 - Improving lighting
 - Adding peep holes to doors



Impacts

	(Pre-Licensing)	2019-2020 (1st License Year)
• Motel 1	5.89	2.54
• Motel 2	4.70	4.50
• Motel 3	4.49	2.09
• Motel 4	3.96	6.42
• Motel 5	3.84	2.52
• Motel 6	3.71	2.25
• Motel 7	2.92	1.04
• Motel 8	2.84	1.76
• Motel 9	2.82	1.81
• Motel 10	2.55	3.40
• Motel 11	2.33	4.75
• Motel 12	2.24	5.24
• Motel 13	2.11	2.31
• Motel 14	1.89	1.22



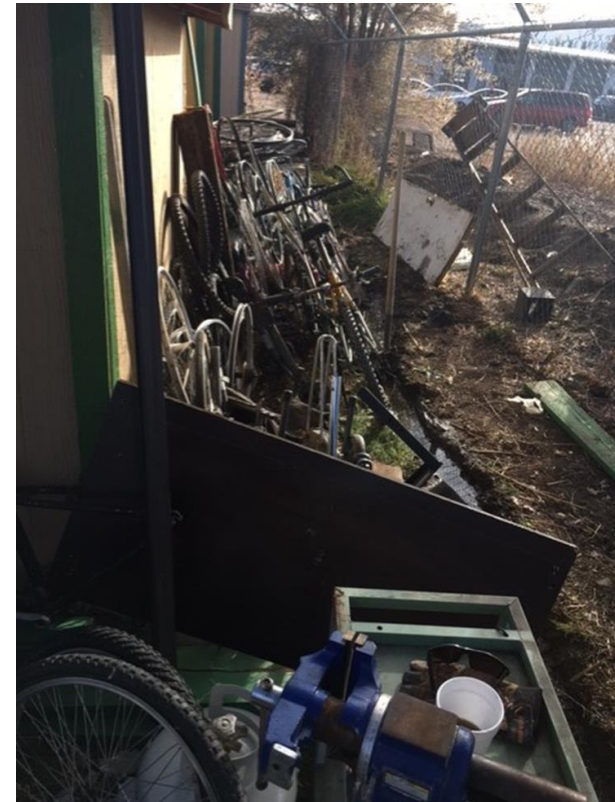
Impacts

- 9 out of the 14 top lodging facility offenders saw significant decreases in CFS in the first year
 - The drops were anywhere from 39% to 64%
- In fact, the motel with the highest CFS ratio before the ordinance came down 57% in the first year (also new ownership)
- The second year saw the previous year's two highest CFS come down by 58% and 64%



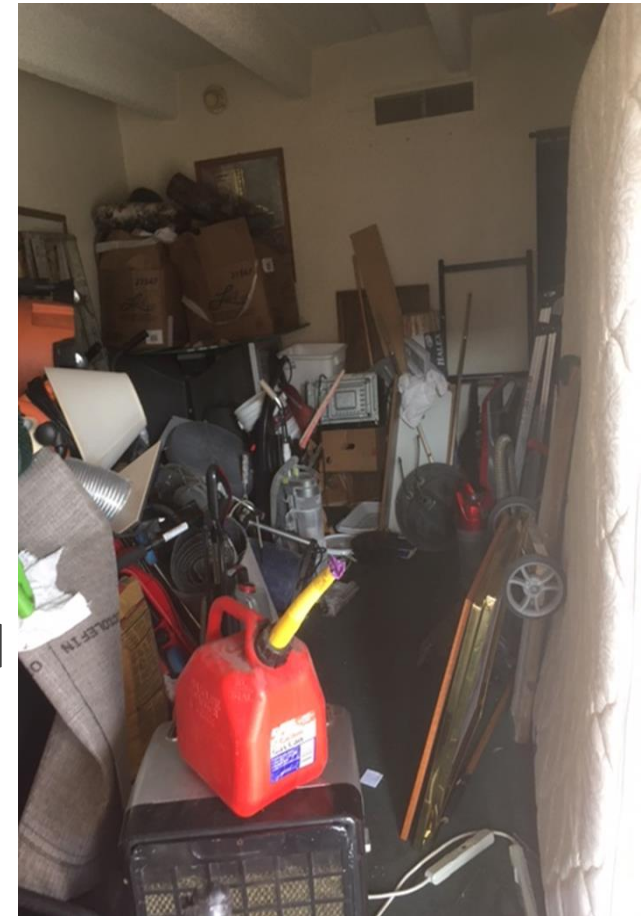
Important Considerations

- The ultimate goal with this program is to remediate the issues rather than to close a motel down
- Don't want to discourage legitimate calls to emergency services
- In the three years the program has been running we have seen repeat offenders of the CFS limit that we continue to work with as long as they show good faith efforts being made toward improvement
- City staff recommends sanctions and is responsible for supervision, so a lodging facility's failure is a reflection on us

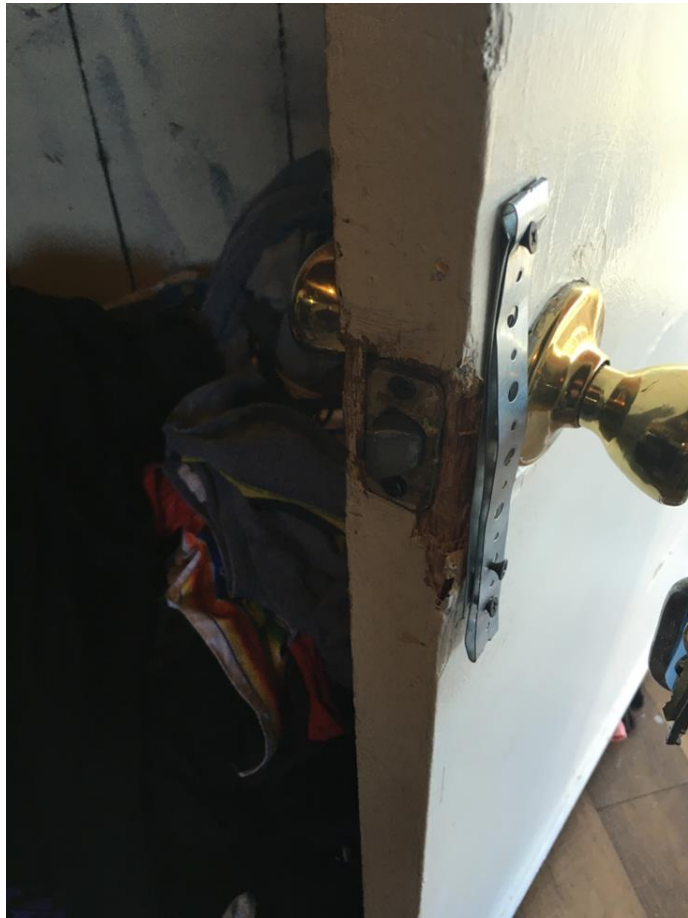


They Tried to Make Me Go to Rehab

- Sometimes revoking a license is the only reasonable sanction, which operates as a closure of the motel
- We have revoked two licenses so far.
 - The first involved a lodging facility that would not follow the probationary sanctions during its second year of being over the limit.
 - This motel remains vacant and has led to numerous nuisance violations
 - The second was related to significant criminal incidents at the motel
 - This motel reopened under new management and came in at a CFS ratio of 1.02 for the past year



Picture This



Overall Takeaways

- You need staff who are invested, responsive, and willing to go outside of their comfort zones
- Never discourage legitimate calls to emergency services
 - I give owners my contact information and invite them to call/email/set up a meeting to discuss issues they are seeing
- Overall, the response from lodging facilities has been great, but issues do arise with both mom and pop and corporate chain facilities
- Start the conversation with “the last thing we want to do is shut you down”
- Be willing to share in the blame when a lodging facility fails and heap on the praise when one succeeds

Grey Casinos

- Newer phenomenon-these are typically businesses masquerading as arcades but are in fact illegal gambling premises



What Constitutes Gambling?

- C.R.S. 18-10-102: Gambling means risking any money, credit, deposit, or other thing of value for gain contingent in whole or in part upon lot, chance, the operation of a gambling device, or the happening or outcome of an event, including a sporting event, over which the person taking a risk has no control...
 - However, you can win a prize worth not more than \$20 for any single game play but you can't win anything monetary or that could be monetary (crypto)



Why Do We Care?

- In a legal casino, the Colorado Gaming Division ensures that machines pay out at a certain rate
 - Grey Casino machines are not regulated so they may not pay out at all
- Money Laundering
 - Legal casinos have systems in place to prevent money laundering, grey casinos do not

We're on Our Own – for now

- When I learned we had five suspected grey casinos the first thing I did was call the State Gaming Division
- The state regulates Black Hawk, Central City, and Cripple Creek
 - Outside of these, state gaming officers do not typically investigate or enforce
 - State Gaming Division is still a good place to start-they can provide helpful information
- State Gaming Officers I spoke with were frustrated that they couldn't help
- Review HB 18-1234 to understand the basics of gaming laws in Colorado

How We Solved the Problem

- We looked at what our code offered and determined that a zoning violation would be the strongest charge we could bring because “gambling premises/casinos” are not permitted uses anywhere in Lakewood
- We needed to confirm that illegal gambling was occurring
- Sgt. Valdez and his team set up a number of undercover operations at each suspected “grey casino”
- If the “grey casino” allowed the undercover officers to risk money for a monetary payout (including crypto) then the facility was operating as an illegal gambling premises



Go to the Landlords

- For each confirmed illegal gambling operation we sent a letter to the landlord explaining:
 1. What gambling is pursuant to C.R.S. 18-10-102
 2. That allowing gambling to take place on their premises is illegal pursuant to C.R.S. 18-10-107(1)
 - Whoever as owner, lessee, agent, employee, operator, or occupant knowingly maintains, aids, or permits the maintaining of gambling premises commits maintaining gambling premises.
 3. That C.R.S. 18-10-107(2) declares illegal gambling operations as common nuisances
 - “All gambling premises are common nuisances which shall be subject to abatement as provided by law.”

Go to the Landlords

- Our letter explained:

- 4. The landlords face significant liability if they allow the conduct to continue pursuant to C.R.S. 16-13-303(1)(b)

- Every building or part of a building including the ground upon which it is situate and all fixtures and contents thereof, every vehicle, and any real property shall be deemed a class 1 public nuisance when: [u]sed, or designed and intended to be used, as gambling premises, as defined in section 18-10-105(5) C.R.S., or as a place where any gambling device or gambling record, as such terms are defined in section 18-10-102(3) and (7), C.R.S. is kept...”

Go to the Landlords

- Our letter explained:

5. That our letter served as notice to the landlord and that now the landlord can lose his/her property due to the operation of an illegal gambling premises pursuant to C.R.S. 16-13-314:

- In an action to abate a class 1 public nuisance, if the court finds that such class 1 public nuisance exists and that the same has been conducted, used, or maintained by the owner of a building, place, or any real property seized and closed as a class 1 public nuisance, or that the nuisance has been conducted, used, **or maintained by any person with the actual knowledge and consent of the owner**, a permanent order of abatement shall be entered as a part of the judgment in the case. **The order of abatement shall direct the sheriff to sell such building or place and the ground upon which such building or place is situate or any other real property**, to the extent of the interest of such owner therein, at public sale in the manner provided for sales of property upon execution. In no event shall real property that is neither proceeds of nor part of the same lot or tract of land used for the public nuisance act that was the underlying subject matter of the public nuisance action, be subject to seizure and forfeiture, excepting access and egress routes.”

Problem Solved

- In Lakewood we confirmed there were five illegal grey casinos operating
- Within two weeks of learning about the issue, we completed undercover investigations, and sent the letters out
- Within these same two weeks, every single one of the grey casinos had ceased operating
- Most landlords were shocked to learn their tenants were running illegal gambling operations



THANK YOU

A closing message
and contact information
can go right here