

**CML Annual Seminar On Municipal Law**  
**October 6, 2017**  
**Municipal Reefer Madness**  
**Blunt Talk About Marijuana Regulations**

*Joint*  
  
*Blunt*


A joint effort by **Corey Hoffmann**, Director at **Hoffmann, Parker, Wilson & Carberry, P.C.**  
 and **Rachel Allen**, Senior Assistant City Attorney for the **City of Commerce City**



The contents of this presentation reflect the view of the presenter, not of CML.

**The Highlighted Cases (“THC”)**


- **People v. Crouse**, 388 P.3d 39 (Colo. 2017)
  - Crouse arrested and later acquitted for felony cultivation. Requested return of marijuana under Colo. Const. § 14(2)(e) and denied because the return provision necessarily required officers to violate the CSA
- **Young v. Larimer County**, 356 P.3d 939 (Colo. App. 2014)
  - Defendant found not guilty; cannot sue for damages when medical marijuana destroyed under § 1983, constitutional takings, no cause of action created by § 14(2)(e), and no liability under CGIA
  - Blunt Talk: Adopt a policy that PD doesn't have to return weed confiscated from defendants



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**THC**


- **Rocky Mountain Retail Management, LLC v. City of Northglenn**, 393 P.3d 533 (Colo. 2017)
  - Licensing Statute as adopted by Northglenn and consistent with State Marijuana Code (retail and medical) contains objective standards that reasonably constrain the exercise of City Council discretion
  - Consideration of “need” is simply a different way of expressing number, type and availability of existing businesses near the proposed location
  - Importance of detailed written findings



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**THC**


- **Coats v. Dish Network**, 350 P.3d 849 (Colo. 2015)
  - Employers can discipline employees for marijuana use, even red card holders using outside workplace and work hours
- **Other jurisdictions reached different outcomes**
  - e.g. **Barbuto v. Advantage Sales & Marketing, LLC**, 477 Mass. 456 (Mass. 2017)
  - Blunt Talk: You may terminate an employee in Colorado for failing a drug test




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**THC**

- **Northglenn v. Adams County BOCC**, 2016 WL 7241424 (Colo. App. 2016) cert. denied 6/18/17
  - County (and statutory entities) need specific authority to impose special sales tax




House Bill 17-1203 (codified at C.R.S. § 29-1-115) now provides specific statutory authority



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**What “Weed” Like to Know**


- **Open and Public**
  - Article XVIII, Section 16(3)(d) provides as follows:
    - (3) **Personal use of marijuana.** Notwithstanding any other provisions of law, the following acts are not unlawful and shall not be an offense under Colorado law or the law of any locality within Colorado or be a basis for seizure or forfeiture of assets under Colorado law for persons twenty-one years of age or older:
    - \*\*\*
    - (d) Consumption of marijuana, provided that nothing in this section shall permit consumption that is conducted openly and publicly or in a manner that endangers others.
  - “Openly and publicly” still undefined under Colorado law.



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## What “Weed” Like to Know

- Open and Public
  - SB 17-184: Open and public consumption of marijuana died in conference committee because neither house could agree on how far the prohibition should actually extend beyond a public place even when still plainly visible



- Municipalities may define openly & publicly in their Municipal Codes


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## What “Weed” Like to Know

- Social Clubs –
  - SB 17-063 - Not passed into law
  - Would have allowed:
    - Sale and consumption of marijuana with state and local approval
    - All consumed on site
    - Cannot sell alcohol
    - Cannot prepare (non-edibles) food on site, but food may be brought in
    - Exempt from Colorado Clean Indoor Act
  - SB 17-184 – Not passed into law
    - Same as above with no on-site sale


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## What “Weed” Like to Know

- Social Clubs
  - Local Social Club Legislation
    - City and County of Denver
      - Cannabis Consumption Pilot Program-Ballot Initiative 300
      - Rules Governing Marijuana Designated Areas July 1, 2017
        - No permits within 1000 feet of schools, childcare establishments, alcohol or drug treatment facilities, or city-owned recreation centers or outdoor pools
        - No permits for premises licensed pursuant to Title 12, Articles 46, 47, or 48
        - No permits on city-owned public property or within residentially zoned districts

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## What “Weed” Like to Know

- Social Clubs
  - Local Social Club Legislation
    - City of Black Hawk
      - “Rent a vape” or edibles (+) smoking outside
      - No on-site sale
      - Bring your own alcohol and/or marijuana



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## What “Weed” Like to Know

- Home and Personal Grows
  - HB 17-1220: Establishes cap for 12 plants that can be possessed or grown on a residential property unless a local jurisdiction permits more. Growers must comply with Municipal Codes.



- Local Regulation of Personal Marijuana Grows, 94 DENV. L. REV. ONLINE (Jan. 25, 2017), available at <http://www.denverlawreview.org/dlr-onlinearticle/2017/1/25/local-government-regulation-of-personal-marijuana-grows.html>


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## What “Weed” Like to Know

- Distance Requirements and Caps
  - Measurement
  - Caps authorized
  - Number, type and availability
  - Pre-Screening

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## What “Weed” Like to Know



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## Questions... now's your chance to pipe up

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