## Early litigation over Denver's Dispensary Licensing Ordinance.

1. *Roe v. May*, Case No. 10CV5304, Denver District Court, decided July 14, 2010 (Judge Hood).

   Preliminary injunction denied to applicant for a dispensary license in an R-4 residential zone district, notwithstanding the fact that the plaintiff had previously obtained a zoning "use permit" for that location prior to the time the licensing ordinance went into effect. Among other things the court held that the applicant did not have a protected property interest, and that Amendment 20 did not create a fundamental right to distribute marijuana that would cause the licensing ordinance to be subject to "strict scrutiny."

2. *MaryJayz Natural Therapeutics v. City and County of Denver*, 10CV2186, Denver District Court, decided July 30th, 2010 (Judge Rappaport).

   Preliminary injunction denied to applicant for a dispensary license in an R-2 residential zone district, notwithstanding the fact that the applicant had previously obtained a "building use structure exception" for that location prior to the time the licensing ordinance went into effect. "The Court notes that the Plaintiff was aware of the new licensing requirements prior to his investing in and opening the MMD. Certainly, he is not precluded from acquiring the necessary local and state licenses in the future."

3. *Rocky Mountain Farmacy, Inc. v. Department of Excise and License*, 10CV6129, Denver District Court, decided September 20, 2010 (Judge Hyatt).

   Preliminary injunction denied to applicant for a dispensary license in an R-4 residential zone district, notwithstanding the fact that the applicant had previously obtained a "zoning use permit . . . allowing for retail services" for that location prior to the time the licensing ordinance went into effect. This decision contains a good analysis of retroactive application of laws and vested rights, and the court concluded that the plaintiff had no vested right to be immune from Denver's prohibition against licensed dispensaries in residential zones.

4. *Smith v. City and County of Denver*, 10CV7341, Denver District Court, decided October 1, 2010 (Judge Madden)

   Request for stay of agency decision denied to applicant for dispensary license within 1000-feet of a location where a different applicant had applied for a dispensary license the week before. First, the court rejected the applicant's equitable estoppel argument. The applicant claimed to have relied on maps supplied by the city showing existing dispensary locations in selecting the location for his own dispensary. The court held that this reliance was not reasonable because the city had specifically disclaimed on the face of the maps

that they could be relied upon for any purpose. Second, the court upheld that city's procedure of enforcing the 1000-foot spacing requirement in the order of the applications received, regardless of whether or when the dispensaries actually have commenced or will commence operation.

5. *Cure Medical Pharm, Inc. v. City and County of Denver*, 10 CV 7842, decided October 13, 2010 (Judge Madden)

Preliminary injunction denied to applicant for dispensary license who claimed a right to sell medical marijuana before the license is approved and issued. The court held that the only dispensaries that are allowed to sell MMJ while their application is pending are those who were already doing so before March 1, 2010 and who had submitted their license application to the city prior to that date. The court rejected the argument that anything in HB 10-1284, or in the city ordinances initially implementing HB 10-1284, that gives a license applicant a right to sell medical marijuana unless and until a license is actually issued during the period July 1, 2010 to July 1, 2011.

6. *Mile High Remedies, Inc. v. Department of Excise and Licenses,* 10 CV 6131, decided November 2, 2010 (Judge Whitney)

City's motion to dismiss granted after plaintiff was denied a dispensary license and sued challenging the denial and the facial constitutionality of the licensing ordinance. Prior to the effective date of the licensing ordinance, plaintiffs were already operating a dispensary; however, their application for a license was denied because the dispensary was located in a residential zone district. First, the district court dismissed the appeal of the license denial because the plaintiffs failed to file their complaint within thirty days of the denial in accordance with C.R.C.P. 106 (a)(4). Second, the court dismissed the plaintiff's facial challenges upon a finding that the plaintiff's had not obtained a "vested right" to continue operating in their prior location. "At best, Plaintiffs were operating under a grey area of the law caused by the limited scope of Amendment 20 and should have expected the possibility of additional future regulation as a risk of conducting such a business."

7. *Hawaiian Herbal Health Center v. City and County of Denver*, 10CV9881, decided February 14, 2011 (Judge Frick)

Motion for preliminary injunction was denied to applicant for a dispensary license within 1000 feet of another dispensary. While the city's licensing ordinance as adopted in January 2010 required dispensaries to be spaced 1000 feet apart, the ordinance contained an exception for businesses that had applied for and received a city sales tax license as of December 15, 2009. The director of Excise and License had denied the application in this case because the evidence clearly showed that the applicant applied for a sales tax license on December 21, 2009, and thus did not enjoy the benefit of the

exception from the spacing requirement. The applicant sought a preliminary injunction to stay the denial and remain in business, but the court, applying the plain language of the ordinance, held that the applicant did not have a reasonable probability of success on the merits.

8. *Rocky Mountain Caregivers of Colorado v. City and County of Denver*, 10CV8936, decided Feb. 28, 2011 (Judge Hood)

Applicant for a dispensary license appealed after the application was denied on the grounds that the proposed dispensary was within 1000 feet of another dispensary. City's motion to dismiss was granted, based upon the plain and unambiguous language of the law. The law grants an exemption from the spacing requirement for applicants who previously obtained a sales tax license for the same location prior to December 15, 2009. Although the applicant in this case had obtained a sales tax license for an MMJ business, that license was for a completely different address in a different part of town. Thus the applicant did not enjoy the benefit of the grandfathering provision and the application for a dispensary license was properly denied. The court also upheld the spacing requirement against a claim that the requirement lacked a rational basis. Finally, the court rejected the plaintiff's argument that the denial of the dispensary license "amounts to an improper retroactive taking of property," finding that the plaintiff had not established any vested right to conduct business at the location in question.

***Prepared by David W. Broadwell, Denver Asst. City Attorney, February 28, 2011***