

# Medical Marijuana: Coming to a location near you



WEISS SEROTA HELFMAN  
COLE & BIERMAN

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

# Florida Constitution

- ❖ November 4, 2014 – ballot question
- ❖ Amendment 2 “**Use of Marijuana for Certain Medical Conditions**” – Failed
- ❖ **58% voter approval**
  - ❖ 60 % required to approve a Constitutional Amendment

# Florida Legislation

- ❖ **SB 1030**, modified in 2016 (§ 381.986 Fla. Statutes)  
**“Compassionate Use  
of Low-THC and Medical Cannabis”**
- ❖ No smoking
- ❖ Limited qualifying illnesses (broadened in 2016) – cancer, or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms

# Florida Legislation

- ❖ Low THC Cannabis (Non-euphoric)
- ❖ Medical Cannabis (Euphoric) for patients, with a terminal condition that “will result in death within 1 year after diagnosis if the condition runs its normal course” (§ 499.0295 Fla. Statutes)

# Florida Legislation

- ❖ No provision for local government revenue
- ❖ Cultivation and processing of medical or low-THC cannabis preempted to the state
- ❖ A county or municipality could adopt criteria for the number and location of dispensaries and other permitting requirements that did not conflict with state law or department rule

# Florida Legislation

- ❖ Under the 2014/2016 legislation, the State approved 7 dispensing organizations
- ❖ Truelieve opened the State's first retail location in Tallahassee on July 26, 2016

# Florida Constitution

- ❖ November 8, 2016 – ballot question
- ❖ Amendment 2

**“Use of Marijuana  
for Debilitating Medical Conditions”**

**PASSED**

- ❖ **71.32% voter approval**

# Florida Legislation

- ❖ Cancer
- ❖ Epilepsy
- ❖ Glaucoma
- ❖ HIV
- ❖ AIDS
- ❖ Post-traumatic stress disorder (PTSD)
- ❖ Amyotrophic lateral sclerosis (ALS)
- ❖ Crohn's disease
- ❖ Parkinson's disease
- ❖ Multiple sclerosis (MS)



# Florida Legislation

- ❖ Medical conditions of the same kind or class as or comparable to those on the previous slide
- ❖ A terminal condition diagnosed by a physician other than the qualified physician issuing the physician certification

# Florida Legislation

- ❖ Chronic nonmalignant pain caused by a qualifying medical condition or that originates from a qualifying medical condition and persists beyond the usual course of that qualifying medical condition
- ❖ No required period of treatment prior to registration (up to 30 day DOH processing)

# Florida Legislation

- ❖ State Legislature may adopt laws to implement the Constitutional Amendment
- ❖ Department of Health charged with regulation

# Florida Legislation

- ❖ SB 8A – 2017 Special Legislative Session
- ❖ Signed by Governor Scott June 23, 2017
- ❖ Effective immediately

## Florida Legislation – SB 8A

- ❖ Recognized existing 7 Medical Marijuana Treatment Centers (MMTCs) licensed (growers) and authorized licensure of up to 10 more by October 3, 2017.
- ❖ There are **currently 12 licensed MMTCs**
- ❖ Vertically integrated structure

# Florida Legislation – SB 8A

- ❖ Each of the licensees may have up to 25 dispensaries statewide (425 dispensaries total)
- ❖ 5 regions (Northwest (18 Counties), Northeast (18), Central (15), Southwest (11), Southeast(5))
- ❖ Each MMTC's Dispensaries are dispersed by region based on population

## Florida Legislation – SB 8A

- ❖ 4 more growers and 5 new dispensaries per grower with every additional 100,000 registered medical marijuana users
- ❖ Cap on the number of dispensaries goes away altogether April 1, 2020.

# Florida Legislation – SB 8A

- ❖ There are currently 16 open dispensaries
- ❖ Dozens more in the works
- ❖ Delivery is occurring throughout the state



# Florida Legislation – SB 8A

- ❖ **Preempted** to the State:
  - ❖ **Cultivation**
  - ❖ **Processing**
  - ❖ **Manufacturing**
  - ❖ **Delivery**
- ❖ **Smoking** is still prohibited

# Florida Legislation – SB 8A

- ❖ Prohibits location of dispensaries within **500 feet of a public or private elementary, middle or secondary school**
  - ❖ Pre-schools are not protected
  - ❖ Colleges are not protected
  - ❖ Local government can waive distance requirements with a public hearing
- ❖ Imposes additional restrictions on **signage** beyond those regulations imposed by local governments.

# Florida Legislation – SB 8A

- ❖ **Fees** – Cannot charge a license or permit fee greater than the fees charged to pharmacies.
- ❖ Nothing in SB 8A exempts these facilities from the **Florida Building Code, Florida Fire Prevention Code**, and local amendments to these codes.

## SB 8A – Local Options

- ❖ Gives specific authority to local governments:
  - ❖ Municipalities within their borders
  - ❖ Counties in the unincorporated areas of the County.

## SB 8A - Local Options

- ❖ Specifically permits local governments to ban medical marijuana dispensaries
  - ❖ Express, Explicit Ban, by ordinance
  - ❖ As opposed to “Uses not specifically listed as permitted or conditional uses are prohibited”

## SB 8A – Local Options

- ❖ If the local government does not ban, then they can regulate them no more strictly than pharmacies
- ❖ What are your current pharmacies regulations?
  - ❖ Location, conditional use, distance requirements
- ❖ Revisions to pharmacy regulations should be weighed cautiously and include evaluation of impacts on existing pharmacies

# Hanging Chads

## ❖ **Federal Preemption**

- ❖ Controlled Substances Act - marijuana and THC are Schedule 1 controlled substances
- ❖ Schedule 1 - legal presumption of no medical benefit.
- ❖ prohibits production, distribution and use of marijuana, for medical or recreational use
- ❖ Last summer, the Attorney General declined to remove marijuana from the list of Schedule 1 drugs.

# Hanging Chads

- ❖ Banking
- ❖ What happens to a medical marijuana dispensary if the state someday allows recreational marijuana



# Hanging Chads

- ❖ Labs
- ❖ Doctor's offices
- ❖ *Required* safety regulations
- ❖ Revenues
- ❖ Local Government regulatory options

# Pill Mill vs. Pot Shop Docs

- ❖ Medical Marijuana Use Registry
  - ❖ Qualified Ordering Physician
    - ❖ Specific statutory requirements in how they treat and register a patient
- BUT
- ❖ No statutory location regulations
  - ❖ Just a doctor's office
  - ❖ No statutory sign restrictions (unlike medical marijuana dispensaries)

# City of Lake Wales

One City's Experience

# One City's Experience



- ▶ When the Legislature authorized the production of low-THC marijuana for medical use, the City of Lake Wales was approached by a firm planning to apply for one of the available licenses
- ▶ This firm, Grow Healthy, Inc. purchased an abandoned factory building within the city limits and began rehabilitating it for use as a growing facility
- ▶ This will be a \$6.5 million investment to bring back a facility that had been unoccupied for several years. And will employ approximately 40 people when fully operational



- ▶ While Grow Healthy did not receive one of the initial licenses, they continued rehabilitation work as they appealed the state's decision
- ▶ A license was granted for the facility in December 2016 and Grow Healthy has completed phase 1 of its building renovations and equipment installation at an estimated total investment of between \$1 and \$2 million
- ▶ Grow Healthy and their contractor worked closely with the Building Division to make sure all code requirements were met



- ▶ Lake Wales is one of just a few municipalities to have this type of facility within our city limits. Most are located in unincorporated county settings
- ▶ Elected Officials have been supportive of the project for the economic impact of a building come back to life and an additional 20-40 jobs coming to our community
- ▶ Our Police and Fire Departments have been given tours of the facility and have engaged in proactive conversations regarding potential issues

# Zoning Considerations



- ▶ The facility is located in the I-1 zoning district. This nursery aspect and production process are both permitted uses in this district
- ▶ Lake Wales proactively passed an ordinance for dispensaries prior to formal legislative action
- ▶ Dispensaries are a conditional use in the C-3 Highway commercial and PF Professional zoning districts
- ▶ There is a requirement to be within 1500 feet of a hospital or urgent care facility and to be 500 feet away from any school or rehabilitation facility

# Conclusion



- ▶ The city has found Grow Healthy to be an asset to our community
- ▶ QUESTIONS





*Medical Marijuana – It Is Coming to a Location Near You*  
*Marijuana Issues and Trends*



# Medical Marijuana Treatment Centers (MMTC's)

Regulatory

- Pursuant to Florida Senate Bill 8-A:
  - a medical marijuana treatment center is licensed to cultivate, process, transport and dispense medical cannabis.
  - a jurisdiction cannot regulate the location of cultivation and processing facilities.
  - the Department of Health is required to conduct “at least a biennial inspection of each medical marijuana treatment center to evaluate the medical marijuana treatment center’s records, personnel, equipment, processes, security measures, sanitation practices, and quality assurance practices.”



Through an internet-based tracking system, states require licensed businesses to enter the number of plants processed along with daily sales. All plants must have a radio frequency tracking band from seed to sale.

Fact



# Grow House Hazards

## Potential Hazards

- Carbon dioxide - used in combination with oxygen for faster growth and increased yields, but detached venting can release deadly CO gas levels);
- Sulfur ignition - when mixed with CO<sub>2</sub>, the potential for a highly combustible gas creation (hydrogen sulfide) exists;
- Fires from electrical overloads and improper wiring of lighting ballasts; and
- Mold caused by inadequate climate control.



In several states, individuals can maintain their own plants. Florida requires the growing of plants in a licensed facility.

Fact



# Extraction Methods

Potential Hazards

Below are the most common methods of THC extraction:

- Commercial solvent extraction;
- Cold water/dry ice; and



Boil Off or Distillation



Butane  
Extraction



CO2 Extraction

Colorado permits require the disclosure of the extraction method.

Fact



# Extraction Hazards

Potential Hazards

- Vacuum oven explosions;
- Exploding freezers (residential); and
- Butane hash oil fires.



Because marijuana is illegal by federal law, the Occupational Safety and Health Administration (OSHA) will not assist in the monitoring of work conditions in growth and processing locations.

Fact



# Marijuana Infused Products (MIP)

Regulatory

Can you tell the difference?

- Edible products are replacing smoking options.
- Almost any edible product can be infused with marijuana.
- The state of Colorado has licensed 528 Marijuana Infused Product Manufacturers.



The state of Colorado has issued 1540 medical marijuana and 1491 recreational business licenses for sale centers, cultivation facilities, infused product manufacturing, testing, and transport.

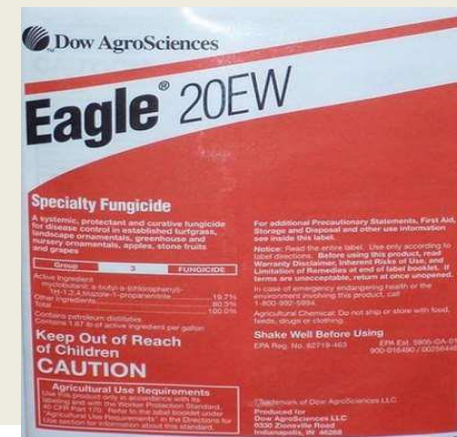
Fact



# Contamination/Pesticides

Potential Hazards

- On November 13, 2015, the Governor of Colorado issued an executive order to declare tainted Marijuana as a threat to the public.
- Since July, 2015, the City of Denver has enforced 36 contamination recalls and advisories on over 400,000 marijuana products.
- A large percentage of the recalls have 2 or more off-label residues found in the product.



Detectable pesticide residues can remain in products for several months. Residues are found to persist in mature plants that were clipped from the sprayed mother plants.

Fact



# How does Colorado regulate?

## Regulatory

### Types of licenses

- Commercial Food preparation and sales, General Manufacturing, Heavy Manufacturing or Laboratory Research and Development (Marijuana infused products manufacturing license);
- Retail sales (Medical Marijuana dispensary and marijuana retail store license);
- Marijuana Testing Facility (Retail and Medicinal)
- Plant husbandry (Marijuana optional premises/Grow license).

### Zoning

- The City of Denver utilizes zoning and distance requirements (1000' feet from a school, child care facility, drug treatment facility, or other marijuana center) in the location of medical and retail Marijuana dispensary stores.
- Cultivation facilities are allowed in any location where “plant husbandry” is a permitted use.
- If an extraction area is above 3,000 sq.ft., a Marijuana Infused Products Manufacturer is required to be located in a manufacturing, heavy zone district.

The City of Denver utilizes its licensing laws as the primary regulatory tool for marijuana businesses. In 2016, the City of Denver had 1141 active marijuana business licenses, operating out of 481 unique locations.

Fact





# How does Colorado regulate?

## Regulatory

### Grow houses

- Must meet F-1 (Moderate Hazard) occupancy standards; and
- Sprinkler requirements.

### Extractions

- Class I Electrical Standards;
- Hazardous Exhaust Systems; and
- Non-Combustible Room requirements with fire suppression.

### Food Safety Regulations

- Local food regulations are applied to all marijuana food businesses (Chapter 23, Denver Revised Municipal Code (D.R.M.C.);
- At least 2 full inspections annually; and
- Broad authority to conduct an investigation and take action with Public Health concerns on a local level (Chapter 24, D.R.M.C.). The City has recently recalled plants and food products that exhibit high levels of pesticide residue.

The City of Denver Fire Department has 1 Lieutenant, 3 Inspectors (Technicians), 1 Fire Protection Engineer, and 1 Program dedicated to Marijuana enforcement.

Fact



# City of Denver Collaborative Model

Regulatory

## The Office of Marijuana Policy/Business and Excise Licensing

- In 2014, the City of Denver created the Office of Marijuana Policy as a single point of contact for marijuana policy and intergovernmental coordination.
- The Denver Collaborative Model, involving 10 separate city departments and 37 employees, was created to address coordination responsibilities.
- In 2016, the Office of Marijuana Policy was integrated into the Office of Excise and Licenses.
- Of the \$36.8 million sales tax revenue collected in 2016, the City of Denver general fund expenditures in 2017 totaled \$11 million.
- To supplant these expenditure needs, in addition to the local sales tax of 3.62%, the City voted for an additional sales tax of 3.5% on retail marijuana.
- In combination with state retail taxes, the commercial marijuana retail tax rate in the City of Denver is 21.15%. Conversely, the medical marijuana tax rate is 7.65%.

Of the \$11 million in expenditures, the City of Denver appropriated \$1.5 million in the FY 17 budget toward affordable housing.

Fact



# Trends

- Nuisance Odor Regulations
- Transporter Licenses
- Licensing of Testing Facilities
- Public Consumption/Pot Clubs
- Community Health and Safety
- Sustainability
- Education Programs



## Evolving Regulations



Nevada Energy Co. estimates that cannabis growing operations can use up to 5 megawatts of energy. That is enough to power to generate 3,000 homes.

## Fact



# Next Steps

Recommendation

***“Anticipate the Unexpected...”***



Outdoor grows in California consume roughly 60 million gallons of water. This usage rate is 50% more than what is utilized by the residents of the City of San Francisco.

Fact





 **DENVER**  
THE MILE HIGH CITY

# MARIJUANA MANAGEMENT SYMPOSIUM 2017

Join us in the Mile High City to share ideas and learn about Denver's collaborative approach to marijuana management.

October 19 & 20, 2017 | Embassy Suites Denver Downtown



Visit [Denvergov.org/MarijuanaInfo](http://Denvergov.org/MarijuanaInfo) – For marijuana information and guidelines.  
\* Special thanks for the City of Denver for assistance with this information.

Fact

