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Pot Report

Highs and lows in the wake of legalization.

By Allen Best

Euflorea operates in an upscale neighborhood of Aurora, Colorado's third-largest city, selling goods that would be illegal in most other states. Customers must be 21, but no doctor's prescription is required to buy the marijuana or, more precisely, the psychoactive constituent tetrahydrocannabinol.

You can buy the THC in beverages, chocolate bars, hard candies, tinctures, and balms. There's also hashish and concentrate, the latter in the form of oil, wax, and shatter, which is 70 to 90 percent THC. You "dab" this concentrate onto a hot surface to inhale the vapor. Budtenders say a little dab will do you.

Unlike the "nickel" bags of the 1960s and '70s, though, the contemporary products are explained in detail and the content of THC calibrated in milligrams. Start low and go slow, signs advise shoppers.

More remarkable than Euflora's goods is its location among a small sea of chain franchises on the edge of the Southlands Lifestyle Center. Euflora itself occupies a former bank building, tan and faux brick on the exterior, an American flag flying overhead. Inside, except for the former bank vault, it looks like a smartphone store.

Jars of cannabis sit on the tables. I stop to sniff the Pineapple Express. The adjoining tablet identifies it as a "hard-hitting Sativa that provides an energetic high that tends to last." Scrolling down the tablet's display, I am told I will be "happy, uplifted, energetic, euphoric and relaxed." Side effects? No mention of murderous urges here, unlike the warnings of drug crusaders who persuaded Congress to launch the U.S. war on drugs in 1937; what I could expect from Pineapple Express was only "dry mouth and dry eyes."

Then I start to wonder: Might a purchase of Black Bubba, Jilly Bean, or some other product discovered while researching this story be considered a business-related expense? *[Editor's note: Nice try, Allen.]*



Upright nation

In fact, the U.S. government still classifies cannabis as a controlled substance, its sale or possession punishable by extended prison sentences. Federal drug agents have left Colorado alone since 55 percent of Colorado voters approved a constitutional amendment in November 2012 to legalize the production, sale, and use of the drug.

Reflecting the federal stance, financial institutions involved in the federal banking system — virtually all of them are — steer clear of marijuana. Banks won't loan money for start-up ventures or property purchases, nor will they accommodate checks or credit card transactions overtly identified with the cannabis trade.

Legislation has been introduced in Congress to provide a path for cannabis to enter the financial mainstream. "The federal government can't keep an eye on business practices if they are forcing them offline and underground," says Rep. Denny Heck (D-Wash.), cosponsor of a bill introduced in April. It may not even get a committee hearing, though, says Taylor West, deputy director of the National Cannabis Industry Association. "But we do feel the forward progress even as we fight with the process."

Without access to the federal banking system, the 364 other stores across Colorado licensed to sell recreational marijuana as of April 30 have either shielded their income from banks or operate in a cash-only economy. You see lots of ATMs.

Both Colorado and Washington State voters approved recreational or "retail" sales in 2012. Washington's sales began in July 2014, six months after Colorado's.

"We were starting ... from scratch," says Brennon Staley, the planner in Seattle's Department of Planning and Development who chiefly works on marijuana issues. Complicated regulations have made it difficult for pot entrepreneurs to find locations, he adds. Seattle, like Denver, has led the rest of the state. It has 100 dispensaries, of which 90 were previously medical dispensaries.

Voters in Alaska and Oregon last year also approved production, sales, and consumption of recreational cannabis. In Alaska, smoking, growing, and owning small amounts of marijuana became legal in February. State regulators are drafting rules at the moment; no applications for business licenses will be accepted until February 2016.

Washington, D.C., voters authorized a different format, called "grow and give." Sales are not allowed. D.C. residents will be allowed to grow a limited number of plants, possess a limited amount, and give away what they can't use. Mark Kleiman, a professor of public policy at the University of California, Los Angeles, argues that this and other alternative models should be examined.

"The path already laid out by Colorado and Washington State is the obvious one," he wrote in an essay posted on *Slate* last November. "Since alcohol is the only intoxicating and sometimes habit-forming drug now legally available without a prescription, the alcohol system — regulated [for] for-profit commerce — seems like the natural model to adopt when legalizing another intoxicating and sometimes habit-forming drug. But are we really satisfied with the results of the current alcohol system?"

Legalization proponents point to rising support for legalization reflected in polls. A Pew Research Center poll conducted in March found 53 percent of Americans supporting full legalization, and a Fox News poll in April reported 51 percent. This compares with just 12 percent in 1969, says Keith Stroup, a lawyer who founded the advocacy group NORML in 1969.

Ballot initiatives proposing to legalize cannabis are being readied in Arizona, California, Nevada, Maine, and Massachusetts, which are among the 23 states, plus Washington, D.C., that allow cannabis sales for medicinal purposes. "If California legalizes it, it's over," says Russ Belville, who does a daily two-hour show on 420 Radio, which calls itself the NPR of THC.



Seeking answers

Colorado Gov. John Hickenlooper famously called marijuana legalization the great social experiment of the 21st century. Little outwardly has changed in Colorado, though. Tourists still come, and they don't see people standing on street corners vaping on pipes. Crime rates are stable. There have been rough edges, but for the most part, the experiment has gone better in the early stages than many expected. However, the core question that has been asked since the 1970s remains to be answered: Will legalized use of a drug cause more public health problems than it solves?

After voter approval in 2012, Hickenlooper appointed a task force that took just two months to create a 300-page road map for legislators to consider in regulation of cultivation facilities, product manufacturers, and retail testing centers. There are still some issues.

Ron Kammerzell, senior director of the Colorado Department of Revenue's Division of Enforcement, says legalized marijuana remains divisive but that disagreements about rule making "often lead us to better public policy."

Particularly divisive, he says, has been the debate about how to keep cannabis products away from children. A report issued by the Colorado Department of Public Health and Environment in January flagged a "three-fold increase" in hospitalization rates for children with possible marijuana exposure during the six months of legalization. But the data behind that statement was slim.

Rough edges

Another sore point has been packaging of edibles. Somewhat surprisingly, about 40 percent of all THC has been sold in the form of edibles. New York Times columnist Maureen Dowd didn't get hospitalized, but she famously wrote about her night curled on a hotel bed in downtown Denver, unable to move, after overindulging her mood-altering sweet tooth during the first weeks of legalized sales.

Dowd wasn't alone. With up to 100 mg per serving, some early customers wolfed down a whole cookie. Others, ingesting one portion and feeling no effect, would take another and then another. Compared to smoking, the effects of edibles ingestion are delayed but no less powerful.

Now, packages are better marked and portions clearly divided, with no more than 10 mg per portion. New rules that went into effect in October require individual packaging of edible marijuana products in a child-resistant container that is child-resistant for multiple openings. Retailers have also gotten more careful, with trade groups stressing the start-low and go-slow approach.

Pets, too, are occasionally getting addled. Mountain towns have had reports of dogs dazed after finding edibles or, in one case, a THC-infused apple that had been used as a smoking device. Cats tend to be more persnickety, say veterinarians.

Tax revenues were a guess. The state projected \$70 million for 2014 but realized \$63.4 million. Of that, \$52.6 was for recreational cannabis and the remaining \$10.8 million for medical. Of this, \$17 million was allocated to school capital construction projects, as the constitutional amendment dictated, with the balance going into the state's general treasury or returned to local governments. Many local governments also enacted sales taxes.

Kammerzell says a key lesson from Colorado is to leave plenty of time to adopt rules. "It will be a lot harder, it will cost a lot more, and it will take a lot more time than you think it will," he says, adding that Colorado officials tell their counterparts from other states and nations to "make sure you have the financial resources to build a regulatory framework in the proper way."



Local scene

Local governments can set other rules, including locations and operating hours. In metropolitan Denver, stores close somewhere between 7 p.m. and midnight, depending on the jurisdiction. They also have the option of just saying no. Two-thirds

of county governments took that route. Among municipalities, 53 allowed and 181 prohibited or had moratoria in place as of December 2014, according to *Knowledge Now*, a newsletter of the Colorado Municipal League.

"Not every city or town has the resources to support this industry, and not all of them want to support this industry," says Rachel Allen, staff attorney for the Colorado Municipal League.

Denver opened the gate widely and quickly, treating marijuana like alcohol and letting the free market determine the number of sales outlets. As of April 1, Denver had 103 of Colorado's 356 cannabis retail stores. It also had 198 of the state's 500-plus medical dispensaries, according to state Department of Revenue sources. Denver has more cannabis outlets and dispensaries than McDonald's and Starbucks stores combined.

Early on, some business leaders warned that legalization would drive off visitors. The fears appear unfounded. Still, the mountain town of Breckenridge last winter booted a cannabis dispensary off its Victorian-themed Main Street for fear of sullyng the town's family-friendly image. Visitors intent on securing a stash need go just a short distance to the town's "green-light district," where they can find a string of cannabis shops amid the likes of a Crossfit gym, a woodworking shop, and an auto-repair business.

Cannabis shops get plenty of business. A study conducted after the first winter of sales found that out-of-state visitors made up 90 percent of recreational sales in mountain resort communities and nearly 50 percent in metropolitan Denver.

In Aurora, elected officials steered a middle course. They waited to see the evidence from Denver and other pioneering cities before allowing up to 24 dispensaries in a slow rollout, divided evenly among the city's six council wards. Rather than delegate to any one department, city officials chose to create an interdisciplinary team from five departments. Kim Kreimeyer, a senior planner, represents the planning department.

Aurora, says Kreimeyer, required dispensaries to stay beyond 1,000 feet of a school and 500 feet of a hospital or any inpatient treatment center. Stores must be at least 300 feet from residential and open-space zones. That doesn't leave all that much space, but dispensaries can be next to one another, if they wish.

In fact, dispensaries have brightened Aurora's streetscapes. The Green Solution, a chain retailer, opened in early April in a former McDonald's that had been empty for several years. Now, the site is dressed up, and inside, it's like a well-lit jewelry store, the goods kept behind glass cases except for gift items such as a marijuana-themed clocks, jigsaw puzzles, T-shirts, and caps.

But the federal prohibition remains a sticking point along Colfax Avenue, Aurora's original main street. An overlay district specifies higher design standards, and other businesses benefit from federal community development block grant assistance to meet them. Marijuana retailers aren't eligible. "They're kind of left holding the bag, if you will, because the city applies the regulations to all applications and can't waive requirements for the cannabis businesses," says Kreimeyer.

But in one key respect, all the cannabis stores differ from liquor, shoe, or most every other store: All are required by state regulations to have maximum security.

Growing it

Grow operations are legal in Colorado. The marijuana plants are almost entirely grown inside buildings under intense lights in tightly controlled environments. In Denver, grow operations of up to 100,000 square feet are not uncommon, and there are rumors of a one-million-square-foot grow operation being planned.

The power needs are enormous. Gabriel Romero, a spokesman for Xcel Energy, the largest single supplier in Colorado, says the industry uses 150 to 200 gigawatt-hours per year of electricity.

Touring a small grow operation one night in February, I could understand why. Inside a 7,300-square-foot building on Denver's east side, half the space was devoted to round-the-clock cannabis cultivation under high-pressure sodium lights. This generates so much heat, even in mid-winter, that air conditioning must also be employed, as the plants grow best at 70 to 76 degrees, explained Bruys Henderson, our guide.

This creates a tremendous electrical demand, with a bill of up to \$15,000 per month. One of Henderson's jobs is to figure out how to reduce that demand, which he is trying to do with LED lighting.

But in some jurisdictions, smell has been a major issue. What to one person is a slightly sweet, skunky aroma of flowering cannabis plants is all skunk to someone else.

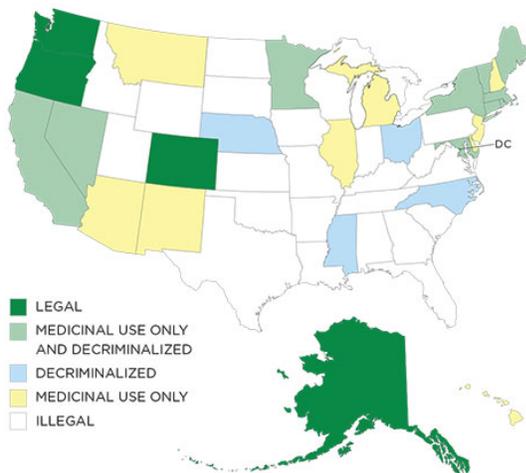
Odor has been among the issues fielded by Joan Armstrong, the director of the Pueblo County Department of Planning and Development. Located two hours south of Denver, the county has an economy based on a steel mill, retirees drawn by cheap land, and agriculture. Hot weather and plentiful sunshine allow production of chili peppers — and now cannabis. Controversy has followed. "Every hearing is a mini-forum," says Armstrong. "People are getting on their soapboxes."

But farther south, sparsely populated Huerfano County has welcomed grow operations along the Cucharas River to help restore an economy that has faltered since the last coal mines closed 60 years ago. Steven B. Channel, the county's planner and code enforcement officer, reports seven applications and two approvals as of April. The county has approved no testing operations or retail sales, however. It is leaving that to other jurisdictions.

Going legit?

Marijuana Laws in 50 States

Marijuana is now legal in some form or decriminalized in 27 states and the District of Columbia.



NOTE: Federal law prohibits the possession, sale, or harvesting of marijuana. Decriminalization laws reduce the penalties associated with the use or possession of small amounts of marijuana.

SOURCES: PEW RESEARCH CENTER (APRIL 2015); NATIONAL CONFERENCE OF STATE LEGISLATURES; NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS

After nearly a year and a half of legalization in Colorado and a year in Washington State, many questions linger. One is whether regulations and taxes have brought the former underground economy above ground. Tax rates may hinder that. Colorado consumers can pay upward of 30 percent, when all state and local taxes are included, on recreational cannabis. As a result, many state residents who were "medical" users before have remained medical patients, simply to avoid the higher tax on recreational pot.

Seattle's Staley sees a more complex calculus. "If everything — the tax issues, the regulatory burden, the locational criteria — don't work together to create a legal market, then the black market will still thrive," he says. "It's not all lined up yet in Washington State."

There are also questions about public health impacts. Reviewing existing scientific literature, Colorado's Retail Marijuana Public Health Advisory Committee in January issued a report that found the risk of motor vehicle crash doubles among drivers with recent marijuana uses, and that using alcohol and marijuana together increases the risk of a motor vehicle crash more than using either substance alone. Too, regular marijuana use by adolescents and young adults is associated with impaired learning, memory, and math and reading achievement, even 28 days after the previous use. The report also pointed to the need to fill in myriad research gaps: "More research is needed on the potential therapeutic benefits of marijuana."

In the cannabis shops I visited, there was no residual skepticism. "An overdose is called a nap," one budtender said with a smile. Another declared she would never use pain pills when she got older; cannabis was nature's remedy.

Tim Byers, associate dean for public health practice at the Colorado School of Public Health, points out that growers have been creating new strains that isolate cannabinoid with properties that produce beneficial neurological effects without making people high. He wants to see more research, but adds that the federal government doesn't make it easy. He describes "a bunch of hoops and various federal permits."

"We need to get marijuana to not be a schedule 1-controlled drug, and we need to get the Drug Enforcement Administration and the Food and Drug Administration to loosen up," he says.

Colorado legislators have appropriated \$9 million for "objective scientific research regarding the efficacy of marijuana and its component parts as part of medical treatment." The state Department of Public Health and Environment has budgeted \$6 million for marijuana-related education campaigns.

Do Colorado and Washington State really represent a step forward? Or do other models make more sense? We now have several laboratories to examine those questions.

Allen Best is based in Denver, where he edits the e-zine Mountain Town News. He is a frequent contributor to Planning.

Oregon Gets Ready

By Erick Mertz

When Oregon's Measure 91 passed the public vote by a 56–44 margin in November 2014, legalizing marijuana for recreational use, it was yet another step in a national trend toward decriminalization. In March, Tom Towslee, the acting director of communications for the Oregon Liquor Control Commission, answered questions about the challenges facing state staff.

Q: How much did Oregon's proposed legalization copy Colorado's and other states'?

A: Like Oregon, Colorado had an existing medical marijuana program prior to the legalization of recreational marijuana. For that reason, it has been a much better model for us as we move forward. Officials from the OLCC have been in touch with their counterparts in Colorado and Washington to learn from their experiences and determine the best practices.

Q: How much of the existing medical marijuana legislation was carried over?

A: The ballot measure that legalized recreational marijuana in Oregon made it clear that the existing medical marijuana program would remain separate and not fall under regulation by the OLCC. Also, Oregon's medical marijuana program is largely unregulated, while the recreational marijuana program will regulate marijuana from seed to sale.

Q: Explain some of the external pressures, perhaps from counties and municipalities, to form legislation that takes their specific needs into account.

A: The voter-approved measure that legalized recreational marijuana expressly prohibited local taxes on marijuana. There are efforts by cities and counties in Oregon to lift that ban and allow for local taxation. That is something that the state legislature will need to sort out. The OLCC will begin writing rules based on the law that exists today. If the law is changed then we will adapt accordingly.

Q: Legalized possession begins this month (July 2015); license application review will start next January. How will the state planning agency use that time?

A: The OLCC will use that time in three ways. First and foremost is writing the rules necessary to implement the new law by January 4, 2016, the deadline to begin accepting applications for commercial recreational marijuana outlets and getting public input on those rules. Second will be an

educational campaign before the July 1, 2015, legalization date to help Oregonians understand what is legal under the new law and what isn't. Third will be hiring the staff necessary to run the program and getting the technology up and running.

Q: How much of your planning has been affected by the public's marijuana misconceptions? Is the state looking at this as an informative opportunity?

A: Thanks in part to the existence of a medical marijuana program, Oregon has a well-established and sophisticated marijuana industry that many Oregonians are already familiar with. The biggest challenge facing the commission is to ensure that Oregonians understand what is allowed and what is not allowed under the new recreational marijuana law.

Q: The state's call for applicants to a marijuana advisory committee closed in March. How will you employ that board?

A: The Rules Advisory Committee is an integral part of the process. The committee will spend the time between now and November writing the rules necessary to implement the new law and present them to the commission for approval. What the agency learned during a public participation process that started in January with a survey of Oregonians and included 11 listening sessions throughout the state will play a key part in guiding the committee's work.

Erick Mertz is a writer originally from Portland, Oregon. His background is in case management and working to effectively operate nonprofit organizations serving persons with mental health and developmental disabilities.

RESOURCES

Images: With 40,000 square feet of cultivation space and two stores in Denver and Aurora, Medicine Man Inc. is one of Colorado's largest marijuana dispensaries. Dubbed "the Costco of cannabis" by the media, the company grows enough pot to fully stock both retail locations. Photos by Theo Stroemer.

"Planning for Marijuana: The Cannabis Conundrum," by Jeremy Németha and Eric Rossa, in *JAPA*, Volume 80, Issue 1, 2014.

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