

# **Boulder Police Department Marijuana Information**

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(current as of April 2019)

Our city has created a Marijuana Enforcement Team which meets every other week and is responsible for inspecting and licensing marijuana businesses. The team includes a representative from Licensing, the City Attorney's Office, Planning and Zoning, the Fire Department, and the Police Department. The Marijuana Enforcement Team inspects marijuana businesses for annual license renewals, new licenses and major/minor modifications.

We currently have ninety-one medical and recreational marijuana business licenses in the city. Those licenses include dispensaries, grows, MIPs (marijuana infused product manufacturer) and testing facilities. The number of licenses fluctuates periodically as some businesses surrender licenses and as we receive new license applications. Our city does not have a cap on the number of marijuana businesses allowed but the number seems to hover somewhere between 90-100 licenses.

Our zoning codes have density limits for marijuana business licenses, and we are close to capacity for the number of marijuana business licenses we can issue in the city based on our density codes. The density limits are based on how close a marijuana business can be to other marijuana businesses, the square footage of the business and how close a marijuana business can be to schools, daycare centers and addiction recovery centers. Marijuana business licenses are never issued in residentially zoned areas.

Of importance is that our city created its own criminal codes (not just zoning codes) to address marijuana business violations, residential grows and public consumption. Most cities rely on zoning codes to enforce marijuana violations and/or rely exclusively on state law.

Over half the municipalities in Colorado declined issuing any type of marijuana business license in their city. In 2017, the cost of licensing marijuana businesses in our city was approximately \$500,000 and our City Council instructed our Licensing Department to pay for licensing costs through licensing fees. In addition, our City Council has authorized recreational marijuana tax dollars to pay for certain special requests such as my position on the team and the Ford F150 pick-up truck assigned to me.

In 2016, our City Manager ordered the creation of a Marijuana Advisory Panel (MAP) which includes representatives from the school district, the university, the county health department, marijuana industry members and the chamber of commerce. The Marijuana Enforcement Team participates in MAP meetings on an advisory basis. The intention of MAP was to create a forum for input that would be brought forth before City Council after consensus was reached by the panel about specific issues. MAP meets quarterly and discusses issues such as penalty schedules and state legislative changes. Often, marijuana industry members on the panel lobby for a softening of regulations and fees. And sometimes there are unintended consequences or discrepancies in the municipal code that need to be addressed by MAP. MAP meetings are time-intensive and require patience to reach consensus.

Our Licensing Department's marijuana information is located at:

<https://bouldercolorado.gov/pages/marijuana-city-updates>

Our marijuana business inspection checklists give a fair idea about our expectations of the licensed marijuana businesses and the minimum requirements they need to meet to receive an annual renewal of their license. Our checklists are located at:

**Police Inspection Checklist:** [https://www-static.bouldercolorado.gov/docs/Inspections\\_-\\_Police\\_Marijuana\\_Inspection\\_Report\\_Template-1-201703301334.pdf?\\_ga=2.61291567.223661991.1505748185-657429914.1447790546](https://www-static.bouldercolorado.gov/docs/Inspections_-_Police_Marijuana_Inspection_Report_Template-1-201703301334.pdf?_ga=2.61291567.223661991.1505748185-657429914.1447790546)

**Planning and Zoning Inspection Checklist:** [https://www-static.bouldercolorado.gov/docs/Inspections\\_-\\_Building\\_Planning\\_Checklist\\_for\\_MMB\\_and\\_RMB\\_Inspections-1-201703301331.pdf?\\_ga=2.35585058.223661991.1505748185-657429914.1447790546](https://www-static.bouldercolorado.gov/docs/Inspections_-_Building_Planning_Checklist_for_MMB_and_RMB_Inspections-1-201703301331.pdf?_ga=2.35585058.223661991.1505748185-657429914.1447790546)

**Fire Department Inspection Checklist:** [https://www-static.bouldercolorado.gov/docs/Inspections\\_-\\_Fire\\_Inspection\\_Checklist\\_for\\_MMB\\_and\\_RMB\\_Inspections-1-201703301332.pdf?\\_ga=2.35585058.223661991.1505748185-657429914.1447790546](https://www-static.bouldercolorado.gov/docs/Inspections_-_Fire_Inspection_Checklist_for_MMB_and_RMB_Inspections-1-201703301332.pdf?_ga=2.35585058.223661991.1505748185-657429914.1447790546)

Our tax chart is located at: [https://www-static.bouldercolorado.gov/docs/Marijuana\\_Business\\_City\\_Tax\\_Summary\\_Chart-10-1-12-31-2017-1-201712151455.pdf?\\_ga=2.207289360.2053729015.1515511591-117174888.1454632848](https://www-static.bouldercolorado.gov/docs/Marijuana_Business_City_Tax_Summary_Chart-10-1-12-31-2017-1-201712151455.pdf?_ga=2.207289360.2053729015.1515511591-117174888.1454632848)

Our tax rates are located at: [https://www-static.bouldercolorado.gov/docs/City\\_of\\_Boulder\\_Marijuana\\_Taxes-January\\_2017-1-201701090837.pdf?\\_ga=1.225259422.542100897.1473787865](https://www-static.bouldercolorado.gov/docs/City_of_Boulder_Marijuana_Taxes-January_2017-1-201701090837.pdf?_ga=1.225259422.542100897.1473787865)<<https://protect-us.mimecast.com/s/9XA2BMfV0k5SD?domain=www-static.bouldercolorado.gov>>.

2016 revenue report (see page 3 and 4):

[https://www-static.bouldercolorado.gov/docs/December\\_2016\\_Report\\_-\\_R.-1-201705011127.pdf?\\_ga=2.139039408.2053729015.1515511591-117174888.1454632848](https://www-static.bouldercolorado.gov/docs/December_2016_Report_-_R.-1-201705011127.pdf?_ga=2.139039408.2053729015.1515511591-117174888.1454632848)

2017 revenue report (see pages 3 and 4):

[https://www-static.bouldercolorado.gov/docs/October\\_2017-1-201712151209.pdf?\\_ga=2.113398788.2053729015.1515511591-117174888.1454632848](https://www-static.bouldercolorado.gov/docs/October_2017-1-201712151209.pdf?_ga=2.113398788.2053729015.1515511591-117174888.1454632848)

The City of Boulder Revised Code is located at:

[https://www.municode.com/library/co/boulder/codes/municipal\\_code](https://www.municode.com/library/co/boulder/codes/municipal_code)<<https://protect-us.mimecast.com/s/xNZ8BWszgRQh6?domain=municode.com>>.

The specific chapters for medical and recreational marijuana are located under **Title 6 Health, Safety and Sanitation, Chapter 14 (medical) and Chapter 16 (recreational)**. Title 6 marijuana chapters are directed towards our licensed marijuana businesses. General marijuana offenses are located under **Title 5 General Offenses, Chapter 10**.

As part of my role representing the police department on the Marijuana Enforcement Team, I conduct periodic compliance operations using underage operatives at the recreational marijuana businesses to ensure they do not sell to minors or allow minors into restricted areas. I provide quarterly "Safe Sales" classes that teach the business employees how to identify fraudulent IDs.

I work closely with the State of Colorado's Marijuana Enforcement Division because our city violations (administrative and criminal) often overlap with state violations. Our Licensing Department issues fines for administrative business violations that I write, and I issue summonses for criminal violations that occur at the businesses.

I provide training to our patrol officers and dispatchers to keep them updated on new legislation, enforcement of illegal grows and to help them understand the City's expectations of the licensed marijuana businesses.

Our department's report writing/dispatch systems do not collect marijuana specific statistics. If you would like to call me, I can provide anecdotal observations about marijuana impacts in our city. Data gathering throughout the State of Colorado is catching up to legalization so within the next five years we should have better data. Rocky Mountain HIDTA completes statewide reports each year which outline certain marijuana impacts throughout the state (found at [www.rmhidta.org](http://www.rmhidta.org)).

The number one complaint in our city about marijuana is odor, both from marijuana businesses and from home grows. The odor issue is addressed in our municipal code as both an administrative and a criminal violation. The criminal code is typically used for residential areas. We are currently revising our criminal code to make it easier for patrol officers to enforce residential odor complaints. The building inspector on our team takes the lead on odor complaints about licensed marijuana businesses because of the issues involved with ventilation and filtration. At our dispensaries, we limit processing of marijuana to pre-rolling joints to help control odor so that we do not have to require the dispensaries to make the same large financial investments in filtration that the grows make. We did not originally allow pre-rolls, but the dispensaries complained they were wasting shake left at the bottom of jars, so the code was changed to allow pre-rolls.

Our Marijuana Enforcement Team recently discussed that if we could go back, we would have limited marijuana grows to one grow per building instead of allowing our zoning codes to read that three marijuana businesses can exist within 500 feet of each other which allows three grows to exist in one building. Industrial warehouse buildings are often old and not designed to contain the odor of thousands of marijuana plants, so adjacent businesses and residential areas often complain about odor. One complainant has gone to our local newspaper twice with her complaints and initiated a civil lawsuit which was just settled.

Odor complaints come in to multiple departments throughout the city including Dispatch, Licensing, City Council and Building. When we try to enforce our odor code, we run into the complication of trying to determine exactly which business in one building is responsible for the odor because we are often investigating after the fact and the wind blows odor around or it dissipates completely. Complainants never know exactly what time the odor was occurring or which unit it was emanating from. Even though we check cameras to see if doors are being left open during harvest or shredding of waste is occurring outside (which it is not supposed to), we still have problems developing probable cause for one business and we cannot write a violation to all of them if we don't know they are specifically responsible for the problem.

Even if the employees are not leaving business doors open or engaging in other odor-leaking activities, older warehouse buildings leak odor around bay doors, through vents and around entrance doors. We have spent a considerable amount of time teaching marijuana grows about best practices to contain odor such as putting spring loaded hinges on doors so they don't have to remind employees to close doors, covering bay doors with fire rated plastic sheets, covering vents, installing carbon filters throughout the grows and constructing "man traps" at entrance doors to contain odor. Our biggest tip to employees is to turn the lights off and anywhere that light is coming through from the outside then odor is leaking out and those areas need to be sealed. Even when these practices are followed, we still have problems with odor.

Our most frequent complainants are car mechanics whose customers complain because their cars come back smelling of marijuana and they suspect employees of smoking marijuana in their cars while they are working. When we investigate, we know that the odor is plant odor not smoke odor and it is coming from adjacent grows. The car mechanics usually pay to have their customers' cars detailed to remove the odor. In addition, businesses next to grows tell us that their employees complain of headaches and nausea from the strong smell.

## Questions from other cities:

1. Are there things that Police absolutely do not want as part of the ordinance?

Affirmative defenses or exceptions can be difficult for patrol officers to remember when they do not have the luxury of reading through the laws while they are trying to determine whether a law is enforceable in a certain situation. Sometimes an affirmative defense or exception is buried in a portion of the law that is difficult to locate on a normal reading.

2. How should cash be stored on site?

Our code requires cash (including petty cash) and finished product to be stored in gun safes overnight or in a vault constructed to DEA standards. We consider finished product to be any product that is weighed, packaged and labeled. At a grow, if marijuana is still being dried then it is not considered finished product. Metal job boxes are not considered acceptable overnight storage of cash or finished product. We do allow secure money drop boxes. For refrigerated overnight storage of finished product, the refrigerator or freezer must have a hasp and lock and be affixed to the structure with at least two "L" brackets or an eyebolt and chain. The reason for storage of cash and finished product in a safe or vault overnight is that sometimes employees will give insider information to criminals about business practices, and the above requirements deter burglaries.

3. Should parking be secured?

We do not require secure parking or secure delivery areas because parking often involves public streets, but we do require cameras to be located anywhere marijuana or cash can be accessed including dumpsters, points-of-sale and showing the inside of safes when the safe door is only partially open.

4. What requirements do you recommend for security plans for any cannabis business?

At a minimum; operable cameras, alarm systems and gun safes. Our code (and state law) requires marijuana waste to be made "unusable and unrecognizable" (pulverized and mixed with dirt) before leaving the business walls and the waste must be placed in a locked dumpster. This is intended to discourage dumpster thefts. Our businesses are required to report any crime within 12 hours so they cannot hide crime. In addition, many dispensaries hire armed security to check IDs and patrol parking lots overnight. Many of our marijuana businesses also have a doorbell system in which a person must be buzzed into the business after being identified on camera or through an ID check. No "tours" of marijuana businesses are allowed so the public has no opportunity to randomly walk through and case the business. I request that marijuana businesses place a floor plan at every door with a large red arrow and "You are Here" written on the floor plan so that if police officers respond to a burglary alarm, they can quickly assess the layout of the business prior to completing a building search. Emergency contacts are also readily displayed for police officers. Our Community Services Officer provides Robbery Awareness training for free to our businesses which helps the businesses know what to expect from the police during a robbery.

5. What would you change now if you could go back?

Yearly, the marijuana team brings issues before City Council to request changes to our code. We have robust regulations for marijuana businesses but enforcing illegal grows on private property is more difficult. The first criminal municipal search warrant I wrote for an illegal grow was denied by a municipal judge because he thought the probable cause I cited could be indicative of a legal grow of six plants or less (our municipal code only allows six plants per residence regardless of a doctor's recommendation or number of people living in the household). Marijuana legalization has made it more difficult to enforce illegal grows on private property because it means marijuana odor or other signs of a grow are not necessarily indicative of an illegal number of plants. It is helpful to have a robust set of codes governing private property as well as the businesses.

A second issue is that grows and MIPs do not have customers so they do not usually have a landline or "dedicated" phone in the business so if an employee activates a panic alarm, dispatch has no landline phone to call into the business.

In addition, because marijuana business windows are required to be covered in our city, patrol cannot stand off and see inside the business. Also, since grows and MIPs do not have customers, patrol will not see customers coming and going ("business as usual"). We now require marijuana businesses with panic alarms to have a dedicated phone that stays in the business.

6. What are the top 3 things we in public safety should be most prepared for?

1) Hemp/CBD oil. Hemp is the same plant as marijuana (Cannabis) but defined differently by the Colorado Department of Agriculture based on THC content (less than .3% THC). The federal government matched this definition of hemp in their most recent Farm Bill. Marijuana grows do not like hemp because they do not want it cross contaminating their plants and lowering THC levels. In addition, patrol officers have no method in the field to determine the difference between hemp plants and marijuana plants because determining THC levels requires chromatography testing. CBD oil is a recent trend that involves extracting oil from either a marijuana or hemp plant and becomes complicated when determining if the plant was hemp or marijuana and whether the CBD oil needs to be defined as a hemp product which minors can purchase or a marijuana product. Even if CBD oil is extracted from a hemp plant with low THC levels, the oil is a concentrate which can increase THC levels above the original plant it was extracted from.

2) Marijuana businesses will try to find loopholes in the laws and are creative in operating in gray areas. The laws must be continually revisited and refined.

3) Citizen complaints of odor from the marijuana businesses and citizen complaints of illegal grows at their neighbors' houses.

7. What increases/decreases did your agency specifically (not all of Colorado) see in the following areas after the legalization of MJ?

Homelessness – I am not aware of any data showing an increase in homelessness related to marijuana in our city because our homeless shelters are wary of releasing information to law enforcement; however, our patrol officers report that conversations with transients indicate marijuana was a factor in their decision to travel to our city. Boulder already has a large homeless population because of the services we provide so it is difficult to determine if officer contacts with the homeless population have increased due to marijuana. The homeless population has always drawn a significant portion of our patrol resources.

Mental Illness related calls for service – I am not aware of an increase in this area; however, I do not have access to data that would provide a comparison to pre-legalization.

Extraction labs – Illegal extraction labs have caused explosions in our city but I do not have data to make a comparison to pre-legalization. The comparison would require a hand search of officer reports pre- and post-legalization.

Diversion – Since legalization, our District Attorney's Office does not wish to prosecute low level marijuana cases so our county wide Drug Task Force has not focused on investigating marijuana cases. I am not aware of any cases of medical marijuana being diverted to the black market in our city although our state Marijuana Enforcement Division is investigation cases of "looping" or "smurfing" in other cities. I am not aware of any DEA cases in our city involving distribution across state lines, although, recently, there have been major distribution cases across other parts of the state.

Public use – I have noticed an increase in municipal summons from patrol officers for public consumption.

DUI's – I have noticed an increase in DUID (Driving Under the Influence of Drugs) reports related to marijuana; however, patrol officers are also more aware of marijuana as an issue since legalization, so it is difficult to determine if the increase is due to more awareness, more training or more actual DUIDs.

Traffic collisions injury and fatal – Rocky Mountain HIDTA produced a report about traffic statistics related to marijuana which has helpful information but I do not have statistics specific to our city.

Any other crimes you tracked specific to MJ – Illegal grows and marijuana odor complaints. Marijuana odor is the number one complaint the city receives about marijuana.

8. How many officers are dedicated to marijuana regulation and black-market enforcement in your city?

One. Me.

9. Have crimes around your retail establishments increased the burden on your department?

Yes. Primarily dumpster thefts, odor complaints and the occasional burglary. We have strict municipal codes intended to deter burglaries and which are supposed to deter dumpster thefts but sometimes the businesses do not dispose of their waste in the manner they are supposed to so transients still break into the locked dumpsters.

10. Do you receive odor complaints for outdoor grows?

Outdoor grows are not allowed in our city but we receive odor complaints about licensed indoor grows because they are often leased in older warehouse buildings and have inadequate filtration systems and seals. We recently administratively fined a licensed grow \$19,000 for not being able to control its odor. The cost of trying to upgrade filtration systems and seals in older warehouse buildings can cost up to \$120,000. Sometimes the licensed grows violate our municipal codes and shred waste outside or engage in other activities that release odor.

11. Is black market enforcement a priority for your department? (Californians made it so everything marijuana is only a misdemeanor, unless you're a juvenile then it is an infraction).

My position was designed primarily for regulation of the licensed marijuana businesses although I absorb most marijuana investigations unrelated to the businesses.

12. Feel free to share anything that you feel might be important for me to know as I embark upon this process with the City Council.

The marijuana industry is lucrative. Two of our dispensaries bring in over one million dollars (cash) every month. It is not unusual for a marijuana business to have \$100,000 in cash on hand on any given day. It is a mistake not to start with very strict codes to regulate the industry. Also, it is very important to have zoning codes with density limits or a cap regulating the number of marijuana business licenses that can be issued.

### Miscellaneous information I think will be helpful to you:

In my opinion, the most forward-thinking portion of our municipal code relates to Right of Entry and Disclosure of Records. A marijuana business in our city is required to allow inspection of the business upon request by any city employee and the business is required to disclose any of their records, including camera surveillance and medical patient records, to us without a search warrant. Colorado state regulations also have these requirements for licensed marijuana businesses.

Our county health department and school district lobbied hard to protect minors from a reduced "perception of harm" that occurs after being exposed to marijuana and marijuana advertising so our marijuana businesses must have their

windows covered so that marijuana cannot be seen from outside the business. In addition, our marijuana businesses are only allowed to have their name and address on their business signs (no green crosses, no pot leaves, etc.) and they are not allowed to advertise in general with very few exceptions. They cannot give anything away for free except for water.

Our Community Services Officer provides Robbery Awareness training for free to our businesses. The Robbery Awareness training is intended to teach employees how to handle a robbery, how to avoid being followed home at night, how to watch for vehicles and people casing the business and what to expect from the police response to a robbery call.

Our city has excelled in marijuana business licensing and management; however, I am the only marijuana enforcement officer in our city so we are behind some larger cities in the enforcement of illegal grows. For instance, our property/evidence room does not have space to dry and hold plants cut down from an illegal grow and municipal rules of evidence require evidence to be preserved until trial. I must rely on a voluntary surrender from the owner to destroy the plants. I haul the plants to a landfill in a pick-up truck. Recreational marijuana tax dollars pay for the landfill costs. In contrast, the Aurora Police Department has a team of five officers dedicated to marijuana enforcement. Their illegal grow ordinance is robust so they have more to pull from for a search warrant. Their team regularly writes and serves municipal search warrants on illegal grows. Aurora PD has purchased two semi-trailers that are outfitted to dry, package and store marijuana plants seized from illegal grows. The Denver Police Department has a team of ten officers dedicated to marijuana enforcement. Denver PD was able to get their municipal judges to order the destruction of seized plants based on a Jewish National study which outlined the negative health effects of marijuana plants caused by mold and other contaminants.

I often work in conjunction with the building inspector on illegal grows because of the structural and electrical modifications that occur. Sometimes I request the fire department to assist because of hazardous chemicals such as CO2, butane, fertilizers and pesticides. Home grows over six marijuana plants are considered an unlicensed marijuana business in our city. Our six-plant limit is per household regardless of a doctor's recommendation for a higher number of plants and regardless of the number of people living in the household. The State of Colorado just reduced the number of plants that are legal per household because illegal grows have become a problem state-wide.

A doctor's recommendation for an elevated number of marijuana plants is not a prescription because physicians cannot prescribe Schedule I drugs.

Several clues are indicative of an illegal grow including melting snow off one area of a roof, an excessive number of A/C units, venting, discarded pots, fan noise, marijuana odor, security cameras, robberies, rental cars coming and going, and, occasionally, green Christmas tree lights on the porch or light pole outside because buyers cannot remember an address, but they can remember to look for green Christmas tree lights.

### Interesting Information:

At the beginning of 2017 our city had 82 licensed marijuana businesses. By the end of 2017 our city had 96 licensed marijuana businesses. Our city staffing has not increased.

Our City Council approved some of our recreational marijuana tax money to pay for my position on our marijuana enforcement team and a vehicle for my position (a Ford F150 pick-up truck for transporting marijuana for destruction). A portion of our city's recreational marijuana tax money also pays for landfill costs for destruction of marijuana and some of the other department's members on the marijuana enforcement team.

At the end of 2017, our Licensing Department requested a budgetary study of fees/costs related to the regulation of our city's licensed marijuana businesses in 2017 and our city fell \$3000 short of the cost of regulating the licensed marijuana businesses because fees were dropped the previous year at the request of the marijuana industry.

The Denver Police Department estimates that 25-30% of their homicides are marijuana related to include Craigslist buys that end in shootings, etc.... Denver averages 60 homicides per year.

The average THC content of a joint at Woodstock was 3-5%. The average THC content of a joint in 2017 was 25-30%. Marijuana concentrates now have THC content as high as 99%.

### Helpful Events to Attend:

**Marijuana Symposium** in Denver in which they offer walk throughs of different marijuana businesses on the first day.

**Annual Colorado Drug Investigators Association (CDIA)** conference which draws narcotics detectives from across the state and has a significant amount of information about marijuana.

You are welcome to visit me and observe our city's inspections of marijuana businesses.