



Local Land Use Tools to Address Retail Marijuana (“RMJ”) by Rachel Allen, staff attorney

Amendment 64

Regulate the growth, manufacture, and sale of marijuana in a system of licensed establishments overseen by state and local governments;

Allow individuals who are 21 years old or older to possess, use, display, purchase, transport, and transfer (without remuneration), to individuals who are 21 years old or older—one ounce or less of marijuana

RMJ Timeline

- **July 1, 2013** – Department of Revenue (“DOR”) shall adopt necessary regulations
- **October 1, 2013** – DOR shall begin accepting and processing license applications
- **October 1, 2013** – Localities must enact an ordinance or regulation specifying the entity within the locality that will be responsible for licensing
- **January 1, 2014** – DOR must begin issuing licenses
- **January 1, 2014** through October 1, 2014 additional triggers under HB 13-1317

Local Options for RMJ

- Each locality shall enact an ordinance identifying the entity responsible for licensing
- Local governments can, at any time, prohibit the operation of marijuana enterprises within their local limits by passing an ordinance

Local Options for RMJ

- Local governments may establish civil penalties for violation of ordinances or regulations governing time, place, manner, and number of operations
- Local governments may establish a schedule of operating fees for marijuana establishments

HB13-1317, HB13-1318 and SB 13-283



4 License types established by HB13-1317

- Marijuana Cultivation Facility
- Marijuana Product Manufacturing Facility
- Marijuana Testing Facility
- Retail Marijuana Store

Marijuana Licensing Options

- Applicant may surrender the medical marijuana license upon issuance of retail marijuana license
- Applicant may opt to operate both retail and medical establishments
 - May only have both establishments at same location if the local jurisdiction permits it.
 - Retail and medical stores must have a physical separation between the two establishments unless both establishments intend only to sell to persons 21 years or older.

Additional Consideration for Local Governments

- However you address retail establishments, home grows are a whole different animal
 - May possess, use, show, buy and transport 1 oz. or less and marijuana accessories if over 21.
 - May possess, grow, and transport up to 6 marijuana plants (3 or fewer flowering) if over 21.
 - Growing must take place in an “*enclosed locked space*” and not conducted openly and is not made available for sale. Term will be defined by HB14-1122.
 - May not be consumed “*openly and publicly*”.

Additional Consideration for Local Governments

- Initiative & Referendum

- Nothing precludes proponents or opponents of RMJ from circulating a petition to refer a question to voters in an effort to overturn the Council's decision.
- Initiated or referred measure to opt-out can only appear on the ballot during an even numbered election year (i.e. Nov. 2014)

What's Everyone Else Doing?

Complete table is available at <http://www.cml.org/Marijuana.aspx>

Type of Issue

Board/Council Action to Prohibit	88
Board/Council Action to Regulate	29
Totals	97
Moratoria	26

Considerations for local regulation

- Whether to impose spacing restrictions?
 - For retail marijuana stores, or for other classes of state licensing as well?
 - Carry forward any existing spacing requirements currently imposed upon medical marijuana centers?
 - Carry forward any existing grandfathering provisions currently enjoyed by medical marijuana centers and cultivators under previous city licensing and zoning laws?
 - Adopt new forms of spacing requirements to be applied to retail marijuana establishments?

Case Study

- A Cannabis Club opened in a metro municipality.
- The City deemed the business as a private/public membership club, which in accordance with the property's underlying zoning requires a special use permit.
- Since the Club did not acquire a special use permit prior to opening the business, City advised owner that she was in violation of the City's zoning regulations to shut down.

Considerations for local regulation

- Whether to establish hearing procedures and approval criteria for retail marijuana establishments?
 - Only for retail marijuana stores, or for other classes of state licensing as well?
 - Mandate public hearing requirements?
 - Criteria for approval: “needs and desires” and “reasonable requirements of the neighborhood” as it is for liquor licensing or something else?
 - Apply same approval procedures and criteria equally to existing medical marijuana licensees who seek to convert to or add a retail marijuana license?

Considerations for local regulation

- Whether to limit the number of businesses allowed in any of the four classes of state licensing and, if so, determine how to prioritize those who would compete for the limited number of approvals.

Considerations for local regulation

- Whether to establish and administer a separate local licensing requirement, or instead depend entirely on other laws (e.g., zoning and land use laws) to enforce “time, place, and manner” restrictions on retail marijuana establishments?

Considerations for local regulation

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Considerations for local regulation

- Whether to impose other location restrictions on retail marijuana establishments through zoning or otherwise, e.g., by identifying specific zone districts in which retail marijuana establishments are or are not allowed?

Considerations for local regulation

- Whether to impose special restrictions on signs and advertising?
 - Defer to state restrictions?
 - Carry forward restrictions previously imposed on medical marijuana centers and apply the same to retail marijuana establishments?
 - Adopt new restrictions?

Additional questions?

visit <http://www.cml.org/Marijuana.aspx>

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