

Is Your Community Ready for Marijuana?

by Karla Chaffee, Esq.

Karla Chaffee is a member of Robinson + Cole, LLP's LandLaw Section. Her practice includes reviewing and commenting on municipal regulations, as well as litigating land use and environmental matters. She also is a co-author of the blog, www.rluipa-defense.com.

In November 2016, residents in nine states voted on whether to legalize medical or recreational marijuana use. In the months leading to the election, [Mother Jones](#) reported that at least 54% of Americans were in favor of legalization. [NBC News](#) put that number at 57%, up from 32% in favor of legalization just a decade ago. Regardless of the individual voting outcome in these states, the national trend is clear. As the [Pew Research Center](#) notes, Millennials (ages 18-35) overwhelmingly support legalization, with 71% of the generation in favor.

In a handful of states, the legalized marijuana industry is just starting to bloom; in others the national trend toward social acceptance has made legalization a potential, albeit hazy, reality. The increasing liberal attitude toward medical and recreational sales may have communities wondering, what does this mean for us? How should we, at the local level, prepare? Although state regulatory schemes do – and will – vary, we can learn from states with the longest-standing programs, as well as consider common land use impacts to help us answer the question: is our community ready for marijuana?

Land use impacts: Why should your community plan for marijuana facilities? There are several types of facilities with differing land use impacts associated with the marijuana industry: grow facilities, medical dispensaries, and recreational storefronts. Odor and increased traffic are often the top concerns with grow facilities. Additionally these facilities



generally require a very large input of energy to run, given the need for artificial lighting and cooling fans. While the impact of grow facilities can be large, they are not wholly dissimilar from other industrial uses and some undefined agro-industry facilities.

Of course, both medical and recreational use of marijuana can prove to be a flash point of conflict between residents with strong feelings on both sides of the debate. Politics aside, and assuming that either recreational or medical sales are on the way, what specific land use impacts should communities plan for?

For example, medical dispensaries and recreational sales raise many issues. Local communities are often concerned with safety, traffic, security of an all-cash business with high-value product, and signage. Often fear of attracting a “criminal” element causes municipalities to locate dispensaries in nonresidential and even industrial areas. On the other hand, the [Council on Responsible Cannabis Regulation](#) points out that a University of Colorado-Denver, study found that “medical cannabis dispensaries in

Denver have no more impact on the surrounding neighborhood than a coffee shop or drugstore.”

What can municipalities regulate? Recognizing that marijuana is still a Schedule I Drug under the Controlled Substances Act of 1970 (“CSA”), and Congress has, according to the Supreme Court, the power to prohibit the local cultivation and use of marijuana, there are still limitations on local regulation of, at least, medical marijuana facilities. This is because state law may preempt local regulation that directly conflicts with state law authorizing marijuana sales. Massachusetts and Washington State provide some insight into how state judiciaries may view the, local regulation versus state law, conundrum.

Massachusetts. In Massachusetts, the issue of how extensively a municipality may regulate a medical marijuana facility has yet to be decided in a court of law. However, the state [Attorney General has found](#) that a “municipality may not completely ban such centers within its borders....” The overriding purpose of

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the state's medical marijuana law is to ensure that "qualifying patients, who have been diagnosed with a debilitating medical condition, will have reasonable access to medical marijuana treatment centers." Denying such access conflicts with this legislative purpose, and thus local zoning that excludes or severely limits the ability of medical dispensaries to locate within a municipality's borders is likely preempted by state law. The question remains, however: would a local, complete ban on recreational sales meet the same fate? Arguably, recreational sales would not be supported by the same strong public policy justification (patient access), so a complete recreational ban may be more likely to survive a preemption challenge. Colorado, by statute, enables local option and many local governments have opted out of recreational marijuana sales.

Washington. Three years after recreational sales were approved, and close to eighteen years after medical sales were allowed, Washington State finally clarified the extent of local authority to limit marijuana sales. In 2012, Washington voted to pass [ballot initiative 502](#), legalizing recreational marijuana use. In 2015, the state made some drastic changes, through Senate Bill 5052, including combining the recreational and medical regulatory systems. Until the passage of House Bill 2136 in the same year, there was no clear answer to the question of whether municipalities could adopt a full ban on marijuana-related businesses. [HB 2136](#), effective July 1, 2015, finally supplied an answer by stating that a city, town, or county may adopt an ordinance prohibiting a marijuana producer or processor from locating within its jurisdiction. The catch, of course, is that said jurisdiction will not

receive any revenue from the state marijuana tax fund.

Now that Washington has combined its recreational and medical programs, its purpose –the purpose behind many state laws authorizing the sale of medical marijuana: safe access to therapeutic marijuana – is diminished. In other words, as patient access to

marijuana increases, state justifications for prohibiting the ban of medical marijuana facilities diminishes. If legalized recreational marijuana becomes the new norm, will a municipality's authority to impose

regulation increase? Perhaps, but even in states where local police power is limited by a state's primary policy objective, some form of local regulation is likely universally accepted. For instance, so long as there is no direct conflict with similar state-level regulation, a municipality should have the authority to regulate the marijuana industry in at least the following categories:

- Hours of operation
- Buffers
- Dimensional requirements
- Allowed zones (by right or special permit)
- Traffic & circulation
- Design review
- Signage & lighting
- Security
- Consumption on premises.

So, what is a municipal lawyer to do? Dwight H. Merriam, in commenting on Connecticut's Act Concerning the Palliative Use of Marijuana in the [Connecticut Lawyer](#), provides the

following tips for communities that want a say in local marijuana regulation:

Adopt a Strong Purpose Section and Detailed Findings. Merriam writes, "Local planners shouldn't scrimp here: lay out what the state law requires and allows, and describe what you wish to accomplish with the regulations." Ask, what are the secondary effects the community is most concerned about and what studies support your findings?

Define Everything. Inconsistent or unclear definitions and undefined terms cause nothing but future headaches. Examine and restate any definitions from state law and add any provisions that can clarify the intent of your ordinance. For example, how will you measure any imposed buffer zones? Spend the time now to develop clear definitions instead of struggling with interpretation when a marijuana dispensary comes knocking.

Identify Locations. What sites are most appropriate for a facility? Consider, would directing dispensaries to a particular zone or area actually increase community safety? Patient access and visibility in terms of law enforcement may be factors that influence the decision.

Cap the Number of Facilities. Consider the number of facilities that your community could reasonably support (or tolerate). Does a cap on the number of facilities make sense given local population size and jurisdictional boundaries?

So, is your community ready for marijuana? 2017 might be the year to at least ask the question. ♦

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