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Regulation of Recreational Marijuana in Small Cities and Counties in Colorado

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Abstract. In November 2016 the number of states where recreational marijuana sales are legal increased to eight. Thousands of cities and counties are now on the front lines of regulating these new land uses. Local governments in Colorado, the first state to implement recreational marijuana legalization, are models for jurisdictions in other states. We study counties and municipalities in the eight micropolitan statistical areas in Colorado to learn how they regulate recreational marijuana businesses. We reviewed codes, ordinances, and other documents of 43 local governments and interviewed planners in a third of these jurisdictions. These places were purposefully selected and reflect their specific social, geographic, and economic contexts instead of the average experience of local governments. We found that over half of the jurisdictions prohibit the businesses. Among those that allow them, land use and operational regulations are designed to make these businesses more discreet and shield the population from negative impacts. Public opposition to new businesses by neighbors and people opposed to recreational marijuana was common. Jurisdictions that prohibit the businesses are adjacent to places that allow them, creating the conditions for a geographic monopoly that provides some jurisdictions a disproportionate amount of tax and fee revenue. Local governments should take the time to craft regulations that address community concerns and can withstand public opposition. They need to consider their choices in a regional context. Discussion at the regional level could lead to cooperation that would distribute both the benefits and burdens of the businesses more evenly.

Keywords: Recreational marijuana, land use, regulation, local government, Colorado

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Introduction

Colorado Governor John Hickenlooper called the passage of Amendment 64 to legalize recreational marijuana “the great social experiment of the 21st century” (Wilson, 2014). There are many local jurisdictions looking to learn from Colorado’s “experiment” as more states legalize recreational marijuana. We investigate how small counties and towns in Colorado regulate recreational marijuana cultivation, testing, manufacturing, and retail businesses. Based on the regulation of medical marijuana businesses, we expected that the businesses would be treated as locally unwanted land uses (LULUs) and highly regulated. We found that they are highly regulated. But monopoly conditions can be created by jurisdictions independently choosing to ban or allow the businesses, resulting in potential tax revenue windfalls in some places.

Amendment 64 was approved by voters in Colorado on November 6, 2012, and has allowed the sale of recreational marijuana since January 1, 2014, under regulations in the Retail Marijuana Code (1 CCR 212-2, 2013; codified in 12 CRS 43.4). Washington State passed legislation to legalize recreational marijuana on the same day (Initiative 502, Wash. 2012). Since then, Alaska, California, Oregon, Maine, Massachusetts, and Nevada have legalized the sale of recreational marijuana (Ballot Measure 2, Alaska 2014; Proposition 64, Calif. 2016; Measure 91, Ore. 2014; Question 1, Maine 2016; Question 4, Mass. 2016; and Question 2, Nev. 2016), and Washington, DC, has decriminalized the possession of marijuana (Initiative 71, DC 2014). In addition, 28 states have legalized marijuana for medical use (National Conference of State Legislatures, 2016).

Several studies have found that medical marijuana businesses are treated as LULUs rather than as medical facilities, which are usually desired locally. We think it is likely that

recreational marijuana businesses will also be treated as LULUs and strictly regulated. In a study of recreational marijuana regulations in Washington State, Hollenhorst (2014) found that most jurisdictions had regulations that limited business locations, hours, and signage: types of regulations that are typical for LULUs.

We analyzed the legislative documents of 43 local governments in the eight micropolitan statistical areas (mSAs) in Colorado. The mSAs encompass a variety of places including remote areas, resort areas, and state border areas. We interviewed planners in 14 jurisdictions to understand how and why these regulations were made. This sample reflects the context of these specific local governments and highlights the reasoning behind the regulations. We summarized the regulations of the jurisdictions in the study area in five categories. Almost half of the local governments allow recreational marijuana businesses. In the jurisdictions that allow them, the combination of regulations they employ is tailored to their context and population and often evolves over time.

We find that recreational marijuana businesses are controversial within communities. Local governments regulate the businesses' locations and operations to shield the community from their presence. However, some towns and counties allowed the businesses to benefit from increased public revenue. We see the potential for using regional cooperation to maximize the benefits from monopoly conditions and more evenly distribute the burdens associated with these land uses.

History of Marijuana Legalization in Colorado and its Impacts

The people of the State of Colorado voted 55% to 45% in favor of Amendment 64 (Office of the Secretary of State, 2012, p. 145), legalizing recreational marijuana (medical marijuana has been legal in the state since 2000). Amendment 64 allows people 21 years of age

or older to consume or possess limited amounts of marijuana and allows the sale of recreational marijuana by licensed businesses. The Retail Marijuana Code (1 CCR 212-2; authorized by 12 CRS 43.4) details the state-level regulations for all recreational marijuana businesses. The state established a sales tax and allows local jurisdictions to levy additional taxes and fees on marijuana cultivated, processed, tested, or sold within their borders.

Retail marijuana¹ is classified and licensed under four separate types of uses:

- Retail Marijuana Stores
- Retail Marijuana Product Manufacturing Facilities
- Retail Marijuana Cultivation Facilities
- Retail Marijuana Testing Facilities

Local jurisdictions have the option of allowing any combination of these four uses within their borders or prohibiting retail marijuana entirely. Localities develop their own fee schedules for applications, operating fees, licensing, and renewals. The required state license is contingent upon the issuance of a local license.

The Retail Marijuana Code (1 CCR 212-2) sets minimum requirements and standards for retail marijuana businesses. Examples of these regulations include requirements for security alarm systems, locks, video surveillance, waste disposal, transportation, hours of operation, inventory tracking, and age verification processes, as well as quantity limits on sales, health and safety standards, packaging and labeling requirements, signage and advertisement regulations, and testing procedures. Many of these rules were based on the recommendations of the Amendment 64 Implementation Task Force, created by Governor Hickenlooper before the referendum passed (Colorado Department of Revenue, Marijuana Enforcement Division, 2013; Finlaw & Brohl, 2013).

The State of Colorado places a 10% sales tax on all retail marijuana sales and a 15% excise tax on retail marijuana cultivation (39 CRS 28.8§202). This is in addition to the state's

2.9% general sales tax (39 CRS 26§106). Local jurisdictions are permitted to place additional taxes, fees, and licensing requirements on retail marijuana (12 CRS 43.4§301; 29 CRS 2). In Denver, the combination of state and local taxes adds up to about 29% of the sale price (Henchman, 2014). In comparison, tobacco sales in Denver are taxed at about 31% and alcohol is taxed at 8% (Henchman, 2014). Local jurisdictions receive 15% of revenue from retail marijuana sales tax on sales within their borders (State of Colorado, 2015b). In FY 2014–15, that was \$6.3 million. About 40% of that went to the City of Denver (State of Colorado, 2015a).

Local Regulation of Medical Marijuana

Retail marijuana is new to the United States, but medical marijuana has been allowed for as long as two decades. California was the first state to allow the sale of marijuana for medical purposes, in 1996 (Proposition 215, Calif. 1996). Since then, over half of the states have legalized it. Research on the regulation of medical marijuana may indicate how local jurisdictions will regulate retail marijuana. Although medical marijuana is handled through what are ostensibly medical or pharmaceutical facilities, most places try to protect the population from them through regulation. Cities use a wide variety of regulations, even within the same state. The small amount of research on retail marijuana so far indicates that this has also been true for recreational-focused businesses.

Popper (1985, p. 7) writes that LULUs have two sides, “as a society we want them, but as individuals—and often as communities—we do not want them close to us.” Németh and Ross (2014) suggest that medical marijuana businesses are LULUs in many cities because they have the dual identity typical of LULUs: desired but highly regulated. Colorado voters voted in favor of legalizing medical marijuana in 2000 (Initiative 20, Colo. 2000), and although there have been some legislative measures to tighten regulations, Coloradans as a whole have generally been in

favor of it. It is a desirable land use at a municipal level because the municipality generates money from taxes and licensing fees (Németh & Ross, 2014). At the same time, medical marijuana businesses are highly regulated where they are legal (Morrison, 2013). They are subject to many locational and operational regulations such as moratoriums; buffers around schools, parks, and community facilities; limits on the density of the businesses; prohibitions on operation in residential zones; restriction of operations to certain commercial or industrial zones; caps on licenses; prohibitions on on-site consumption; and regulations on lighting, signage, security, and operating hours (Freisthler, Kepple, Sims, & Martin, 2013; Németh & Ross, 2014; Salkin & Kansler, 2010).

Studies of the degree to which medical marijuana facilities are treated as LULUs have yielded mixed results. Popper (1985) writes that LULUs are disproportionately assigned to disadvantaged areas, in particular areas with many poor people and large racial or ethnic minority populations. Boggess, Pérez, Cope, Root, and Stretesky (2014) tested this in the Denver area and found that poor and nonwhite neighborhoods in Denver did not have more medical marijuana facilities. Instead, the facilities tended to be in neighborhoods with more retail space, probably because they are prohibited in residential districts in Denver (Revised Municipal Code of the City and County of Denver, Colorado §24-508(b)(1)). They conclude that medical marijuana businesses in Denver are not LULUs.

However, Denver may be an anomaly. Kaiser (2011) noted that Denver focused on regulating the medical marijuana businesses through licensing instead of land use, which may explain the particular land use pattern there. Németh and Ross (2014), in comparing four large cities, found that Denver and Los Angeles were the most permissive—allowing medical marijuana businesses to locate on more land, proportionately, than other cities they analyzed.

The distinctive mix of regulations in cities they studied, together with existing land use patterns in those cities, resulted in very different impacts on low-income and high-minority neighborhoods (Németh & Ross, 2014). Even within the same state, jurisdictions can create vastly different policies that result in diverse land use patterns (Heddleston, 2013) because much of the regulation is left to local governments.

It appears from the limited research that has been published on the regulation of retail marijuana that those businesses are being treated similarly to the medical marijuana businesses. Hollenhorst (2014) found that local governments in the Seattle area employed many of the same land use tools that have been used to regulate medical marijuana businesses. Some researchers have even suggested the regulation of medical marijuana could be a model for retail marijuana (Banys & Cermak, 2016; Ghosh et al., 2015).

Gathering Information about Retail Marijuana Regulations

Our goal in gathering information about retail marijuana regulation was to provide a summary of the experiences of places outside of metropolitan areas that can inform the regulation of similar businesses in other states. We study mSAs because they have a mix of small towns and rural areas. Our analysis focuses on planning and budgetary documents that we reviewed for 43 local jurisdictions, 20 of which allow at least one type of recreational marijuana business. Each jurisdiction created its regulations in response to its specific social and economic context. To understand the reasoning and the role of context, we interviewed planners in 14 jurisdictions. The study area was not randomly selected but chosen as a window into the range of regulatory options that small Colorado communities employ and the issues they respond to in regulating retail marijuana.

We focused on municipalities and counties in the eight Colorado mSAs—urbanized clusters with between 10,000 and 49,999 people, as defined in 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas (2010). Most people live in metropolitan areas, but 65% of local governments² are outside of metropolitan counties (2012 Census of Governments, table ORG013, accessed via American FactFinder). These small jurisdictions also grapple with the regulation of retail marijuana, but often with fewer resources. Table 1 lists the local governments we studied in these mSAs. We analyzed counties and municipalities with populations of over 850 in 2010. We excluded municipalities with less than 850 people because they generally lack professional civil service staff and because their planning and legislative documents are more difficult to obtain. Log Lane Village had a population of 873 people in 2010, but we excluded it because its municipal codes were not accessible online.

<Table 1 about here>

We reviewed retail marijuana ordinances from 32 municipalities and the 11 counties within the eight mSAs. All 43 codes of ordinances were online and accessed via city and county websites, as was local tax information. Roughly half of the licensing fee schedules were located on county and city websites. The others were obtained through phone calls and emails to the jurisdictions.

We sent emails to planners or the person most knowledgeable about land use policy in 42 jurisdictions, requesting interviews.³ We interviewed via phone and email those who consented: 13 planners and one city attorney in 14 jurisdictions covering five of the eight mSAs. Table 1 notes the jurisdictions where we interviewed a government official. We only interviewed one person in each jurisdiction. We asked open-ended questions tailored to the jurisdiction about the initial regulatory response, the criteria used to make land use decisions related to retail

marijuana, major issues that they have encountered in implementing land use regulations, the revision of their comprehensive plan or future land use plans, the role of the community in making these decisions (especially in regard to treating the businesses as LULUs), and any impacts that the legalization of retail marijuana has had on the community. We checked that statements of fact were consistent with the code and planning documents but did not otherwise verify statements made in the interviews.

The 43 jurisdictions making up the study area fulfilled our criteria of including a variety of types of jurisdictions outside of metropolitan areas. The data reflect not an average experience but the specific situations of many local governments with limited population and tax base, varying degrees of remoteness from large central cities, and a narrow economic base. Similarly, information gathered in the interviews may not be generalizable to all 43 jurisdictions. We use the interviews as examples of rationales rather than using them to characterize all rationales. It may be that the jurisdictions of the people interviewed are different in some significant way from jurisdictions where we did not interview anyone. We cannot determine this conclusively, but we think the risk is minimal since the interviewees represent a variety of the types of jurisdictions in the study area. It is also possible that representatives from these jurisdictions are putting the best face on the policy decisions that were made. For example, they might cite a lack of warehouse space when the real reason to exclude retail marijuana manufacturing facilities is a fear of public opposition.⁴ Most of the planners spoke candidly about public opposition, fear of community stigma, crime, and property value impacts. We acknowledge deception is possible but believe there were few incentives to engage in it in our interviews.

Comparison of Retail Marijuana Regulations

In this section we summarize the retail marijuana regulations in the 43 jurisdictions in the study area. Just over half of the jurisdictions studied chose to ban the businesses. Those jurisdictions that allow retail marijuana businesses have the authority to issue licenses and impose taxes. They also have the ability to regulate where businesses can locate and under what conditions they operate. We group the regulations into five categories: (1) to ban or allow, (2) licensing, (3) local taxes, (4) separation from other uses, and (5) operational regulations. We use information from the interviews to indicate why a local jurisdiction might choose one policy over another.

To Ban or Allow

Local jurisdictions have the power to prohibit or allow any combination of the four types of retail marijuana businesses. Table 2 shows that 23 jurisdictions ban retail marijuana completely. The reasons for this are varied, but for the most part counties that ban the businesses are those where voters voted against Amendment 64. Each jurisdiction makes the determination on its own, so some counties that ban retail marijuana businesses contain cities that allow them. In addition, regulations have changed over the short time retail marijuana has been legal. Several local governments imposed moratoriums on retail marijuana businesses and later allowed them.

<Table 2 about here>

Many jurisdictions determined whether to allow retail marijuana businesses based on the results of the Amendment 64 ballot. Planners we interviewed in two towns (Rifle and Eagle) said their towns held subsequent local referendums to determine the communities' desires. Although most jurisdictions followed the voter mandate, there were two instances of counties in the study area choosing to prohibit the industry even though this ran counter to the general election results. Garfield County and Routt County both voted in favor of Amendment 64 (Office of the

Secretary of State, 2012, p. 145), but despite the results, these two counties currently ban retail marijuana businesses.

The decision to ban or allow the businesses may be based on other reasons as well. One reason for the prohibition at the county level is that counties are not equipped for retail marijuana businesses. A planner from Moffat County, which uses well water, said that many residents were initially concerned that the amount of water required for marijuana cultivation would cause shortages and compromise existing agriculture. In addition, there is less land that is appropriate for commercial uses because a lot of land is dedicated to agriculture and national forests at the county level.

A ban at the county level, however, does not prevent cities from allowing retail marijuana businesses. For the five cities that allow only some types of retail marijuana businesses, the decision about which types to allow was based primarily on physical constraints, according to planners interviewed. The planner for Durango said it does not allow cultivation centers or manufacturing facilities because the city does not have the warehouse or industrial space to meet their needs. The additional sales and excise tax revenue was cited in interviews as a reason to allow retail marijuana.

Regulations have been changed over time. Table 2 shows that many jurisdictions in the study area also enacted moratoriums or temporary bans. Many jurisdictions that ultimately allowed the businesses initially imposed moratoriums to ensure that all regulations were in place to address their impacts. Interviewees from the communities of Carbondale, Durango, Rifle, and Glenwood Springs said they knew retail marijuana was desired by the community and used moratoriums to ensure they had enough time to craft the appropriate regulations and ordinances. Decisions changed in the opposite direction as well. We interviewed a planner in Routt County

who said that they initially allowed the businesses, but in response to a vocal segment of the community, the county board voted to enact a two-year moratorium which has now been extended indefinitely (Ordinance No. 2016-001, Routt Co., Colo.).

Licensing

Retail marijuana businesses require both a local license and a state license. Localities may create licensing fee schedules for the initial license, renewal, or filing of the application paperwork (12 CRS 43.4§301). The license fee is a one-time payment that localities charge to operate a retail marijuana business. The renewal fee is an annual fee to maintain business licensure. The application fee is generally a one-time payment made when filing licensure paperwork regardless of whether the application is approved. Table 3 shows the fees that jurisdictions charge in each of these categories. Durango is unusual in that it requires an annual application fee. The fees in the City of Denver are included for comparison.

<Table 3 about here>

Licensing fees are diverse in the study area but almost all are lower than Denver's fees. Steamboat Springs charges the highest license and renewal fees, but when Durango's fees are combined with the annual application fee, it is nearly as high. The La Plata County planner said there was concern about the cost of staff time to process applications. Even so, their fees are lower than Denver's. Planners interviewed from other jurisdictions also said staff time for processing licensing applications was the basis for the licensing fees.

Caps are used to place limits on the number of licenses available, which ranged from 1 to 8; 13 jurisdictions have no cap. Popular reasons for limiting the number of retail businesses are to preserve the character of the community and to prevent a negative community image. A

planner for the Town of Eagle said that their cap was initially used as a precautionary tool while the town tested the impacts that the first business would have on the community.

Local Taxes

The State of Colorado allows incorporated jurisdictions to impose local sales and excise taxes on retail marijuana. Sales taxes are imposed at the point of sale to the consumer (29 CRS 2§102). Excise taxes are imposed on the first transfer or sale from the cultivator to the manufacturing facility or retail store (29 CRS 2§114). Jurisdictions receive 15% of the state tax revenue from sales made in their jurisdiction (State of Colorado, 2015a) but local governments can generate more revenue by imposing a local tax as well. Six towns impose a sales tax of 5% (the communities of Basalt, Breckenridge, Carbondale, Frisco, Rifle, and Silverthorne). Hayden and Parachute both impose an excise tax only: Parachute at 5% and Hayden at 7.5%. The Town of Eagle imposes a fee of \$5 per transaction instead of a price-based sales tax (Colorado Municipal League, 2016). Eleven jurisdictions that allow retail marijuana do not impose a local tax.

Those jurisdictions that have imposed a local tax have noticed an increase in sales tax revenues. The planner from the Town of Eagle said, “The sales tax from recreational marijuana is a great source of revenue for our town, but the cap is limiting the amount of money we can generate.” The city planner from the Town of Oak Creek said that the town has taken in over \$100,000 in additional revenue from retail marijuana businesses. Oak Creek charges a Plant Investment Fee, which is assessed based on the size of the transformer that is powering the facility. On the other hand, the planner from Durango said that a local sales tax would have been supported by voters and would likely have brought in around \$900,000, but the city council felt strongly that it would be unfair to fund public infrastructure projects on the back of one industry.

The planner from Parachute said that they didn't want to limit the industry by imposing too many taxes.

Separation from Other Uses

Localities developed a variety of regulations that separated retail marijuana businesses from certain uses and sometimes from each other. Table 4 shows that all 20 jurisdictions that allow retail marijuana impose a buffer around schools and 17 impose a buffer around parks. Distances are generally greater around schools than parks. Ten jurisdictions enforce a distance buffer between retail marijuana businesses. Some jurisdictions use absolute distance while others use pedestrian path distances and take into account barriers such as highways and bodies of water.

<Table 4 about here>

The City of Denver prohibits retail marijuana businesses within 1,000 feet of schools, child care facilities, drug treatment centers, and other retail or medical marijuana businesses (Revised Municipal Code of the City and County of Denver, Colorado §6-221(b)). Planners interviewed repeatedly stated that using a 1,000-foot buffer would result in spot zoning. Spot zoning occurs when retail marijuana businesses are allowed to operate in a zone that is not designated for their use. Many blamed this spot zoning on a lack of physical space within their city limits. The planner for the Town of Carbondale said that the town initially used 1,000-foot buffers but decided to decrease the buffers to 500 feet and used pedestrian paths instead of the absolute distances from the facilities to create more available sites. The reason most planners we interviewed gave for the use of buffers was to protect minors from the businesses.

Some jurisdictions try to prevent clustering by imposing buffers between retail marijuana businesses. Others encourage the clustering of retail marijuana businesses through their land use

regulations. The City of Steamboat Springs zones for retail marijuana in an industrial area on the end of town that tourists seldom visit to keep marijuana businesses away from parks and the downtown district. The Town of Oak Creek, with an area of only two square miles, applies 1,000-foot buffers to the two schools in town. This allows retail marijuana businesses to cluster in the town's business district.

Operational Regulations

There are several kinds of operational regulations imposed on retail marijuana businesses by the state: restrictions on signage, restrictions on operational hours, requirements for twenty-four-hour surveillance and exterior lighting, and limitations on the volume of production and sale. Some localities impose special restrictions that go beyond the state's requirements, especially regarding signage and hours of operation, and some jurisdictions have added requirements for odor mitigation.

The state places restrictions on retail marijuana signage, such as rules forbidding signage that markets to minors and markets the safety of the product. It also prohibits marketing on any street, sidewalk, park, or public place (1 CCR 212-2). Out of the 20 jurisdictions that allow retail marijuana businesses, nine place an additional regulation outlawing the use of any depiction of the marijuana plant on signage and storefronts. Other signage regulations include requiring warning signs addressing loitering, signs stating that possession and distribution of marijuana is a violation of a federal law, signs stating that the smoking of marijuana near the facility is unlawful, and signs stating that the consumption of marijuana in public is prohibited.

Operational hours vary greatly between jurisdictions. Colorado state law forbids establishments to sell, serve, distribute, or initiate the transport of retail marijuana between midnight and 8:00 a.m. (1 CRR 212-2). Table 5 lists the further restrictions local jurisdictions

have made on these hours. Local regulations are motivated primarily by community safety, to deter crime during the evening hours according to the planners we interviewed.

<Table 5 about here>

There is no requirement for odor mitigation plans or devices in Colorado state law. However, of the 20 jurisdictions that allow retail marijuana, 13 require some type of odor mitigation plan during the application process. The planner from Glenwood Springs said that odor mitigation from cultivation facilities was one of the top concerns of the planning board. The Town of Eagle requires an odor mitigation report detailing the effective mitigation of any odors of the proposed operation or the mitigation and rectification of any past odors reported from marijuana activities. Reports must include proof that the air purification system is approved by a professional licensed mechanical engineer to the standards contained in the local regulations.

The Trade-Off Between Local Opposition and Economic Gains

The combination of regulations varies considerably between the 20 jurisdictions in the study area that allow at least one type of retail marijuana business. In one sense, retail marijuana businesses are not LULUs because communities that do not want them can prohibit them without impacting community well-being. But there is still controversy around the siting of businesses in places where retail marijuana has been determined to be a desired land use. Jurisdictions attempt to mitigate potential conflicts through regulation. Retail marijuana businesses are an attractive revenue source for some small jurisdictions. Some places have even exploited the geographic monopoly created by their being close to the state border or by their allowing retail marijuana while the surrounding jurisdictions do not.

Places that ban retail marijuana were guided primarily by the sentiments of the community according to planners we interviewed. In jurisdictions that allow retail marijuana

businesses, the debate about regulations often took place at the local government level until a retail marijuana business was about to open. Then community members who opposed the business would raise their voices. This was the case in Routt County, where the county board did not immediately impose a moratorium. In 2014 a retail marijuana store opened in Milner, an unincorporated town within the county. A group of concerned citizens filed a petition to oust the business and the county imposed an emergency moratorium, which has now been extended indefinitely (Ordinance No. 2016-001, Routt Co., Colo.).

Even in places that are supportive of retail marijuana, there has been opposition. In Durango, all seven retail marijuana businesses began generating complaints from surrounding residents immediately following the approval of their licenses, according to the planner we interviewed. In the town of Eagle, a retail store wanted to move into a shared building space, but the neighboring businesses opposed the new shop because of the clientele and the odor from the marijuana. The planner from Eagle said, “Recreational marijuana shops are often seen as an undesirable land use because of the stigma attached to them. People just hesitate to embrace them.” Carbondale has been supportive of the businesses, but the planner in Carbondale said there has still been opposition. Landlords have refused to rent to retail marijuana businesses and home-owner associations have placed bans on recreational marijuana activities in their covenants.

Some opposition has been more organized. According to the planner in Parachute, an antimarijuana activist group called Let the People Vote filed a lawsuit against the town. The group also actively boycotted businesses that supported the marijuana industry. In Steamboat Springs the planner said there have been complaints from tourists and owners of vacation homes. Triple Crown Sports (a nationwide youth sports organization) has also repeatedly filed

complaints with the city but continues to host tournaments there according to the planner we interviewed.

Land use regulation and regulatory processes are one way that local governments control the development of LULUs (Schively, 2007). The local jurisdictions in the study area recognize that the real or perceived social burden is not carried equally by all people in the jurisdiction but disproportionately impacts neighbors. Having strong regulations in place and using all tools available can deter protests of LULUs (Filippini, 2010). Many of the regulations used by the local governments in our study area are designed to shield the community and the neighbors from the businesses. The use of buffers keeps retail marijuana businesses away from places that need extra protection, such as schools. The communities of Carbondale, Eagle, Rifle, and Steamboat Springs have limited retail marijuana operations to certain parts of town. This can protect residential areas or the main business districts from negative impacts of the businesses.

Other regulations that are added on top of the state regulations are designed to camouflage stores and minimize the distinctive odor of marijuana. Most of the jurisdictions limit their hours of operation. Many try to minimize the visibility of the store by prohibiting the depiction of the plant. The primary complaint that planners reported receiving from neighbors and others in the jurisdiction was odors. It is clearly a major local concern, even though it is not required by state law and many jurisdictions created ordinances to limit odors.

Despite local opposition, towns that allowed retail marijuana businesses benefited economically. The additional tax revenue is helpful for small jurisdictions with limited industry. Oak Creek, for example, used its tax revenue to fund another police officer. Even so, some towns were afraid of limiting the growth of the industry with too many taxes and fees. Parachute wanted to be supportive of retail marijuana businesses in its jurisdiction and help them compete

with others on I-70 and so declined to implement a local tax, although its licensing fees are still relatively high.

In one sense, retail marijuana businesses are the same as any other businesses coming to town. More commercial and industrial space is being occupied by companies creating jobs in the area. The planner in Morgan County, which banned retail marijuana, said that there was some concern that retail marijuana businesses would drive out other businesses, but we did not hear that concern from planners we interviewed in jurisdictions that allow retail marijuana. “Rifle got hit pretty hard by the last recession and as a result we have had a lot of empty warehouse space, this industry has kind of helped to pay the bills,” said a planner with the City of Rifle. In Eagle, the one retail marijuana shop in town is an infill project. The planner from Eagle said, “I think marijuana businesses are easier on the city to get running than other land uses; there is less water, sewer, and other infrastructure requirements. There are also fewer safety requirements than your typical big box store.” Five of the jurisdictions interviewed said that the retail marijuana businesses had filled vacant warehouses, commercial buildings, or downtown storefronts.

Towns on the border appear to have the most to gain because they can easily attract people from out of state. But these border conditions occur throughout the state because local jurisdictions can choose to allow or ban the businesses. For example, Steamboat Springs and Oak Creek allow retail marijuana in an area surrounded by places that do not. They are benefiting from a geographically created monopoly shared among the few retail marijuana businesses located there. Local jurisdictions can prevent retail marijuana businesses from locating in their community but still have access to the product. The local jurisdictions that ban retail marijuana do not have to deal with the negative impacts of the retail marijuana business (although they

would still manage marijuana use within their borders). But neither do they reap any of the gains in jobs or tax and fee revenue that other jurisdictions get from allowing retail marijuana.

Lessons for Local Regulation in Other States

The experience of nonmetropolitan cities and counties in Colorado regulating recreational marijuana is as individual as the towns are. The passage of Amendment 64, legalizing the sale of retail marijuana, by no means led to its universal acceptance. More than half of the jurisdictions we studied ban retail marijuana entirely. Jurisdictions that allow retail marijuana should be prepared for local opposition and “not in my back yard” reactions to the siting of individual businesses. Even as more states legalize recreational marijuana, some places will still have a market advantage because they are located in areas where neighboring jurisdictions ban it.

Even if the majority of voters chose to legalize retail marijuana, there is still considerable opposition to it within the state. In our study area of 11 counties, only four allow retail marijuana sales, cultivation, manufacturing, or testing. Half of the cities that allow retail marijuana businesses restrict the type of business. Some of this may stem from the fact that it is still outlawed at the federal level, but planners we interviewed said the major factor driving these decisions is public sentiment. Even when it is not the opinion held by the majority in the jurisdiction, a vocal minority can sway elected officials to opt to ban or restrict the businesses.

Places that allow these businesses should be prepared for community opposition to the permitting of actual operations. Several planners told us that this is when community opposition would coalesce. Some opponents were not against the businesses in general but did not like a business locating in a particular place. This may be difficult to address in smaller towns with fewer available retail locations. Jurisdictions need to have clear regulations that are thoroughly

vetted. Many jurisdictions have imposed moratoriums on retail marijuana businesses initially to provide time to craft this legislation.

No jurisdiction is creating regulations in a vacuum. A jurisdiction that seeks to ban retail marijuana businesses to preserve its community image needs to recognize the possibility of the businesses opening on the outskirts of town or in a neighboring town. In addition, because each jurisdiction operates independently, some places may be able to engineer a tax revenue windfall by being the only place to allow retail marijuana businesses within a reasonable drive. Some places in the study area count on sales to out-of-state visitors, but other places attract buyers from other counties or towns within Colorado that ban the businesses. There are opportunities for cooperation (for example, harmonizing regulations to permit cultivation in a county and manufacturing and testing in a nearby city), but it will require coordination between jurisdictions and a regional mindset.

With the number of states allowing retail marijuana businesses growing, cities and counties can look to Colorado for models of how to approach the regulation of these businesses at the local level. The local regulatory environment differs between states, but many issues and potential responses will be similar. Opposition by neighbors to potential business sites and by those who are opposed to all retail marijuana can be strong, even in places where the businesses are generally supported. Local jurisdictions must take the time to craft robust ordinances that can weather such opposition. That legislation should be sensitive to community sentiment but also to the regional context. Regional cooperation has the potential to create situations where the community benefits and burdens of these businesses are shared more equally.

Table 1. Micropolitan statistical areas (mSAs) by population size in Colorado with their component counties and the municipalities studied.

Jurisdiction	Population	Interviewed	Jurisdiction	Population	Interviewed
Edwards-Glenwood Springs mSA*	125,734		Montrose mSA	41,276	
Eagle County	52,197		Montrose County	41,276	
* Basalt*	3,857		● Olathe	1,849	
* Minturn	1,027		● Montrose	19,132	
* Avon	6,447		Steamboat Springs-Craig mSA*	37,304	
* Eagle (town)	6,508 ✓		Moffat County	13,795 ✓	
* Gypsum	6,477		▣ Craig	9,464	
* Vail	5,305		Routt County	23,509 ✓	
Garfield County	56,389		▣ Hayden	1,810	
● New Castle	4,518		* Oak Creek	884 ✓	
● Silt	2,930		* Steamboat Springs	12,088 ✓	
* Carbondale	6,427 ✓		Breckenridge mSA	27,994	
● Glenwood Springs	9,614 ✓		Summit County	27,994	
● Parachute	1,085 ✓		* Breckenridge	4,540	
● Rifle	9,172 ✓		* Dillon	904	
Pitkin County	17,148		* Frisco	2,683 ✓	
* Snowmass Village	2,826		* Silverthorne	3,887	
* Aspen	6,658		Fort Morgan mSA	28,159	
Durrango mSA	51,334		Morgan County	28,159 ✓	
La Plata County	51,334 ✓		● Brush	5,463	
▣ Bayfield	2,333		● Fort Morgan	11,315 ✓	
▣ Durango	16,887 ✓		● Wiggins	893	
Cañon City mSA	46,824		Sterling mSA	22,709	
Fremont County	46,824		Logan County	22,709	
● Florence	3,881		▣ Sterling	14,777	
● Cañon City	16,400				

- * Resort town
- ▣ Border town
- Remote town

Resort towns are towns within a 45-minute drive of a ski area. Border towns are towns within a one-hour drive of the state border. Remote towns are all others. Hayden could be either a resort town or a border town.

Decennial Census, Accessed using American FactFinder, Table P1. These mSAs are based on 2013 definitions.

* The southern edge of Basalt is in Pitkin County. Edwards-Glenwood Springs is a Combined Statistical Area: Edwards mSA (Eagle County) and Glenwood Springs mSA (Garfield & Pitkin counties). Steamboat Springs-Craig is a Combined Statistical Area: Steamboat Springs mSA (Routt County) and Craig mSA (Moffat County).

Table 2. Types of retail marijuana businesses allowed by jurisdiction.

Jurisdiction	Retail Store	Cultivation	Manufacturing	Testing	Moratorium
Eagle County	○	○	○	○	✓
* Basalt*	○	✗	✗	✗	✓
* Minturn	✗	✗	✗	✗	✓
* Avon	✗	✗	✗	✗	✓
* Eagle (town)	○	○	○	○	
* Gypsum	✗	✗	✗	✗	
* Vail	✗	✗	✗	✗	✓
Fremont County	✗	✗	✗	✗	
● Florence	✗	✗	✗	✗	
● Cañon City	✗	✗	✗	✗	✓
Garfield County	✗	✗	✗	✗	
● New Castle	✗	✗	✗	✗	✓
● Silt	○	○	○	○	
* Carbondale	○	○	○	○	✓
● Glenwood Springs	○	○	○	○	✓
● Parachute	○	○	○	○	
● Rifle	✗	○	✗	✗	
La Plata County	○	○	○	○	✓
▣ Bayfield	✗	✗	✗	✗	
▣ Durango	○	✗	✗	○	
Logan County	✗	✗	✗	✗	
▣ Sterling	✗	✗	✗	✗	
Moffat County	✗	✗	✗	✗	✓
▣ Craig	✗	✗	✗	✗	✓
Montrose County	✗	✗	✗	✗	
● Olathe	✗	✗	✗	✗	
● Montrose	✗	✗	✗	✗	

Jurisdiction	Retail Store	Cultivation	Manufacturing	Testing	Moratorium
Morgan County	✗	✗	✗	✗	✓
● Brush	✗	✗	✗	✗	
● Fort Morgan	✗	✗	✗	✗	✓
● Wiggins	✗	✗	✗	✗	✓
Pitkin County	○	○	○	○	
* Snowmass Village	✗	✗	✗	✗	✓
* Aspen	○	○	○	○	
Routt County	✗	✗	✗	✗	✓
▣ Hayden	✗	○	✗	✗	
* Oak Creek	○	○	○	○	
* Steamboat Springs	○	○	○	○	
Summit County	○	○	○	○	✓
* Breckenridge	○	○	○	✗	
* Dillon	○	○	○	✗	✓
* Frisco	○	○	○	✗	✓
* Silverthorne	○	○	✗	✗	

* The southern edge of Basalt is in Pitkin County

✗ Banned business type
○ Allowed business type

* Resort town
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● Remote town

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Table 3. Licensing fees in jurisdictions that allow the sale of retail marijuana.

Jurisdiction	License fee (\$)	Renewal fee (\$)	Application fee (\$)	Cap on licenses
Denver (city)	5,000	5,000	2,500 (testing 500)	--
Eagle County	2,000	1,500	--	8
* Basalt*	2,000	1,000	5,000	2
* Eagle (town)	2,000	500	--	1 per 1,500 res.
Garfield County	--	--	--	--
● Silt	1,500	500	--	--
* Carbondale	2,000	500	2,000	5
● Glenwood Springs	1,000	1,000	2,000	--
● Parachute	5,000	2,000	5,000	--
● Rifle	5,000	5,000	--	4
La Plata County	3,000	3,000	1,000	--
▣ Durango	2,500	3,000	5,000 (annual)	--
Pitkin County	3,000	3,000	--	--
* Aspen	2,500	1,000	2,000	--
Routt County	--	--	--	--
▣ Hayden	2,000	250	2,500	--
* Oak Creek	5,910	5,910	250	--
* Steamboat Springs	9,165	9,165	--	3
Summit County	2,250 (store 3,065)	1,125 (store 1,533)	1,825	--
* Breckenridge	2,063	1,031	--	--
* Dillon	3,000	1,500	--	--
* Frisco	3,000	3,000	--	--
* Silverthorne	3,000	1,500	--	4

* The southern edge of Basalt is in Pitkin County

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Table 4. Distance buffers for retail marijuana businesses (in feet).

Jurisdiction	Parks	Schools	Other retail marijuana businesses
Eagle County	200	500	200
* Basalt*	500	1,000	--
* Eagle (town)	1,000	1,000	--
Garfield County	--	--	--
● Silt	500	500	500
* Carbondale	500	500	400
● Glenwood Springs	500	500	900
● Parachute	500	500	150
● Rifle	1,000	1,000	--
La Plata County	1,000	1,000	--
▣ Durango	250**	1,000	1 per block
Pitkin County	1,000	1,000	--
* Aspen	--	500	--
Routt County	--	--	--
▣ Hayden	500	500	--
* Oak Creek	--	1,000	--
* Steamboat Springs	1,000	1,000	1,000
Summit County	--	1,000	500
* Breckenridge	500	500	--
* Dillon	300	1,000	--
* Frisco	500	500	700
* Silverthorne	500	500	1,000

* The southern edge of Basalt is in Pitkin County

** In Durango, the 250-ft buffer is around parks with playground equipment only

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Table 5. Allowed operational hours of marijuana businesses.

Jurisdiction	AM			PM												
State of Colorado	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11
Eagle County		9	10	11	12	1	2	3	4	5	6					
* Basalt*	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11
* Eagle (town)				11	12	1	2	3	4	5	6					
Garfield County																
● Silt				10	11	12	1	2	3	4	5	6	7	8	9	
* Carbondale					11	12	1	2	3	4	5	6	7	8	9	
● Glenwood Springs	8	9	10	11	12	1	2	3	4	5	6					
● Parachute		9	10	11	12	1	2	3	4	5	6	7	8			
● Rifle	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11
La Plata County	8	9	10	11	12	1	2	3	4	5	6	7				
▣ Durango	8	9	10	11	12	1	2	3	4	5	6	7				
Pitkin County		9	10	11	12	1	2	3	4	5	6	7	8			
* Aspen	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11
Routt County																
▣ Hayden	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11
* Oak Creek	8	9	10	11	12	1	2	3	4	5	6	7				
* Steamboat Springs	8	9	10	11	12	1	2	3	4	5	6					
Summit County	8	9	10	11	12	1	2	3	4	5	6					
* Breckenridge	8	9	10	11	12	1	2	3	4	5	6	7	8	9		
* Dillon	8	9	10	11	12	1	2	3	4	5	6	7	8			
* Frisco	8	9	10	11	12	1	2	3	4	5	6	7	8	9		
* Silverthorne	8	9	10	11	12	1	2	3	4	5	6	7	8	9		

* The southern edge of Basalt is in Pitkin County

- * Resort town
- ▣ Border town
- Remote town

Resort towns are towns within a 45-minute drive of a ski area. Border towns are towns within a one-hour drive of the state border. Remote towns are all others. Hayden could be either a resort town or a border town.

References

- 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas, 75 Fed. Reg. 37246 (June 28, 2010).
- Banys, P., & Cermak, T. L. (2016). Marijuana legalization in California: Rational implementation of the Adult Use of Marijuana Act (AUMA). *Journal of Psychoactive Drugs*, 48(1), 63–65. doi:10.1080/02791072.2015.1132350
- Bogges, L. N., Pérez, D. M., Cope, K., Root, C., & Stretesky, P. B. (2014). Do medical marijuana centers behave like locally undesirable land uses? Implications for the geography of health and environmental justice. *Urban Geography*, 35(3), 315–336. doi:10.1080/02723638.2014.881018
- Colorado Department of Revenue, Marijuana Enforcement Division. (2013). *Permanent rules related to the Colorado Retail Marijuana Code*. Denver, CO: State of Colorado. Retrieved from https://www.colorado.gov/pacific/sites/default/files/Retail%20Marijuana%20Rules%2C%20Adopted%20090913%2C%20Effective%20101513%5B1%5D_0.pdf
- Colorado Municipal League. (2016). *Municipal retail marijuana status*. Denver, CO: Author. Retrieved from <https://www.cml.org/issues.aspx?taxid=11076>
- Filippini, V. (2010). Dealing with locally unwanted land uses (LULUs): A municipal perspective. *The Practical Real Estate Lawyer*, 26(2), 21–27. Retrieved from <https://www.ali-cle.org/index.cfm?fuseaction=publications.periodical&pub=PREL>
- Finlaw, J., & Brohl, B. (2013, March 13). *Task force report on the implementation of Amendment 64: Regulation of marijuana in Colorado*. Denver, CO: State of Colorado. Retrieved from <http://www.colorado.gov/cms/forms/dor-tax/A64TaskForceFinalReport.pdf>
- Freisthler, B., Kepple, N., Sims, R., & Martin, S. (2013). Evaluating medical marijuana dispensary policies: Spatial methods for the study of environmentally-based interventions. *American Journal of Community Psychology*, 51, 278–288. doi:10.1007/s10464-012-9542-6
- Ghosh, T. S., Van Dyke, M., Maffey, A., Whitley, E., Erpelding, D., & Wolk, L. (2015). Medical marijuana's public health lessons—Implications for retail marijuana in Colorado. *New England Journal of Medicine*, 372(11), 991–993. doi:10.1056/NEJMp1500043
- Heddleston, T. (2013). A tale of three cities: Medical marijuana, activism, and local regulation in California. *Humboldt Journal of Social Relations*, 35, 123–143.
- Henchman, J. (2014). *Taxing marijuana: The Washington and Colorado experience* (Fiscal Fact No. 437). Washington, DC: Tax Foundation. Retrieved from <http://taxfoundation.org/sites/taxfoundation.org/files/docs/FF437.pdf>
- Hollenhorst, K. F. (2014). *Planning effectively for legalized recreational marijuana: An assessment of community land use ordinances in Washington State* (Master's thesis). University of Washington, Seattle, WA. Retrieved from <https://digital.lib.washington.edu/researchworks/handle/1773/26846>
- Kaiser, L. S. (2011). Canna business comes to town. *Planning*, 77(3), 9–13.
- Morrison, I. (2013). Where to put it? The confusing question of how to deal with marijuana dispensaries. *University of Baltimore Journal of Land and Development*, 3(1), 79–88. Retrieved from <http://scholarworks.law.ubalt.edu/ubjld/vol3/iss1/4>

- National Conference of State Legislatures. (2016, November 9). *State medical marijuana laws*. Retrieved from <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>
- Németh, J., & Ross, E. (2014). Planning for marijuana: The cannabis conundrum. *Journal of the American Planning Association*, 80(1), 6–20. doi:10.1080/01944363.2014.935241
- Office of the Secretary of State. (2012). *2012 abstract of votes cast*. Denver, CO: State of Colorado. Retrieved from <https://www.sos.state.co.us/pubs/elections/Results/Abstract/2012/booklet.pdf>
- Popper, F. J. (1985). The environmentalist and the LULU. *Environment*, 27(2), 6–11.
- Retail Marijuana Code, 1 CCR 212-2 (2013).
- Salkin, P. E., & Kansler, Z. (2010). Medical marijuana meets zoning: Can you grow, sell, and smoke that here? *Planning & Environmental Law*, 62(8), 3–8. doi:10.1080/15480755.2010.507506
- Schively, C. (2007). Understanding the NIMBY and LULU phenomena: Reassessing our knowledge base and informing future research. *Journal of Planning Literature*, 21(3), 255–266. doi:10.1177/0885412206295845
- State of Colorado. (2015a). *Local government distribution: 10% retail marijuana state sales tax May 2015 sales reported in June 2015* [Data file]. Retrieved from <https://www.colorado.gov/pacific/revenue/marijuana-tax-data-archive>
- State of Colorado. (2015b). *Marijuana taxes, licenses, and fees transfers and distribution: May 2015 sales reported in June 2015* [Data file]. Retrieved from <https://www.colorado.gov/pacific/revenue/marijuana-tax-data-archive>
- U.S. Census Bureau. (2012). *Table ORG013, Local Governments in Individual County-Type Areas: 2012 – State, 2012 Census of Governments*. Retrieved from <https://factfinder.census.gov>
- Wilson, R. (2014, August 19). Hickenlooper: Marijuana regulators have done ‘a very good job.’ *The Washington Post*. Retrieved from <https://www.washingtonpost.com/blogs/govbeat/wp/2014/08/19/hickenlooper-marijuana-regulators-have-done-a-very-good-job/>

¹ In this document we use the term *retail marijuana* to refer to all types of recreational marijuana businesses, consistent with the terminology used by the State of Colorado. We distinguish retail stores from manufacturing, cultivation, or testing facilities by calling them *stores*.

² This figure for local governments excludes school districts and special districts.

³ We did not contact anyone from the town of Wiggins. After our interviews were complete, we realized that we had inadvertently left it out.

⁴ Thank you to Reviewer 4 for this example.