
LDC20-003 Arapahoe County Land Development Code – Recreational Marijuana (limited to an expansion of sales at existing dispensaries to include recreation marijuana)

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June 28, 2020

This county-initiated application to amend the Land Development Code includes new language that would allow the sale of recreational marijuana at four existing medical marijuana dispensaries located in unincorporated Arapahoe County.

Request and Recommendation

The Board of County Commissioners has asked staff to prepare an ordinance that would allow the four existing medical marijuana dispensaries to sell recreational marijuana. Staff recommends developing LDC regulations to implement a potential Board of County Commissioners ordinance. A multidisciplinary staff team has conducted research on neighboring jurisdictions' practices, attended a study session with the Board of County Commissioners, developed draft regulations, and referred the draft regulations to industry stakeholders. Staff requests feedback from the Planning Commissioners on these potential changes.

Background

Section 3-3.5 of the Arapahoe County Land Development Code provides direction regarding marijuana land uses in Arapahoe County. Marijuana land uses are prohibited in Arapahoe County except as allowed in the *Section 3-3.5 Exceptions*.

Section 3-3.5 C.1.a allows medical dispensaries operating prior to December 15, 2009 to continue operating as legal non-conforming uses. When *Section 3-3.5 C.1.a* was adopted there were four medical marijuana dispensaries operating in unincorporated Arapahoe County. These four dispensaries remain in operation as of the date of this report. The four unincorporated Arapahoe County medical dispensaries are located at

- 3431 S Federal Blvd
- 6250 E Yale Ave
- 1842 S Parker Rd
- 2280 S Quebec St Unit G

In 2019 the operators of the four existing medical marijuana dispensaries approached the Board of County Commissioners and requested changes to County regulations that would allow these dispensaries to add recreational marijuana sales to their operations. These dispensary operators feel they are competitively disadvantaged when compared to dispensaries located in incorporated jurisdictions, which do not have prohibitions restricting the sale of recreational marijuana.

On January 21, 2020, a multidisciplinary staff team comprised of representatives from the county attorney's office, public works & development department, sheriff's office, and finance department

met with the Board of County Commissioners to discuss potential changes to Arapahoe County's marijuana regulations. The five page Board Summary Report written for this discussion is attached to this report. The January 21, 2020 board summary report includes information pertaining to the following topics: policy background, options for local control, industry & market trends, Arapahoe County's experience with medical marijuana, alternatives available to the board, and fiscal impacts to the county should the Board take action on this matter.

The Board of County Commissioners provided suggestions and feedback, and directed staff to develop a draft ordinance and LDC regulations for the Board to consider.

Discussion and Recommended Regulations

Code Elements

Staff will present a summary of the proposed Land Development Code changes at the study session. As noted elsewhere, the proposed change would only allow the existing four medical dispensaries to sell recreational marijuana. It would not allow additional recreational dispensaries, cultivation, testing, manufacturing, or other marijuana uses.

Outreach

Staff is conducting a referral of the proposed regulations to receive feedback from referral agencies. A summary of comments will be provided to the Planning Commissioners at the public hearing for the LDC changes.

Fiscal Impact

Arapahoe County currently receives approximately \$15,000 annually in open space sales and use tax from current medical marijuana centers. If Arapahoe County was to allow recreational sales from the four existing centers, the county could receive an increase in open space sales and use tax revenue and additional funds generated by the portion of the state marijuana sales tax that is forward to the jurisdiction in which the point of sale is located.

Attachments

- BOCC BSR – Jan 20-2020 Study Session



Board Summary Report

Date: January 21, 2020

To: Board of County Commissioners

From: Michelle Halstead, director of communication and administrative services, Bryan Weimer, director of public works and development; Todd Weaver, budget manager; John Christofferson, deputy county attorney; Captain Jared Rowilson, sheriff's office; Lieutenant Robert Hedrick, sheriff's office

Subject: Revising Arapahoe County Marijuana Regulations

Request and Recommendation

Last year, the Board of County Commissioners asked county staff to identify a process for considering changes to Arapahoe County's recreational (retail) marijuana regulations. An interdisciplinary team has begun reviewing information responsive to this request.

This study session provides background information on the current regulatory environment, industry trends, and options for potential policy changes. Staff is seeking input from the Board of County Commissioners relative to desired next steps.

Policy Background

Colorado's regulatory relationship with marijuana began more than two decades ago, with a series of voter-approved measures and legislative actions:

- Amendment 20, passed in November 2000, created an affirmative defense to the criminal charge of marijuana possession/use for medical marijuana patients and primary caregivers.
- In Spring 2009, former President Obama's administration announced its policy not to prosecute possession, sale, and use of marijuana when used to treat a medical condition in states that adopted medical marijuana laws.
- Colorado's [Medical Marijuana Code](#) was adopted during the 2010 legislative session, which restricted the number of patients a primary caregiver could serve, created a licensing model for medical marijuana businesses, and permitted local jurisdictions to prohibit medical marijuana businesses within their jurisdictions.
- Amendment 64 approved in 2012, made the personal use and the possession of up to an ounce of marijuana (for those over 21 years of age) lawful and provided for the licensing of commercial marijuana facilities in a manner similar to liquor. Under Amendment 64, local jurisdictions were given the authority to decide whether to regulate or prohibit commercial recreational marijuana facilities in their communities.
- The federal government issued the Cole [memorandum](#) outlining its position on recreational marijuana in August 2013.

- The State of Colorado begins issuing licenses for recreational marijuana businesses in January 2014.
- Colorado annually updates the marijuana industry's [regulatory framework](#) through legislative and rulemaking processes.

Options for Local Control

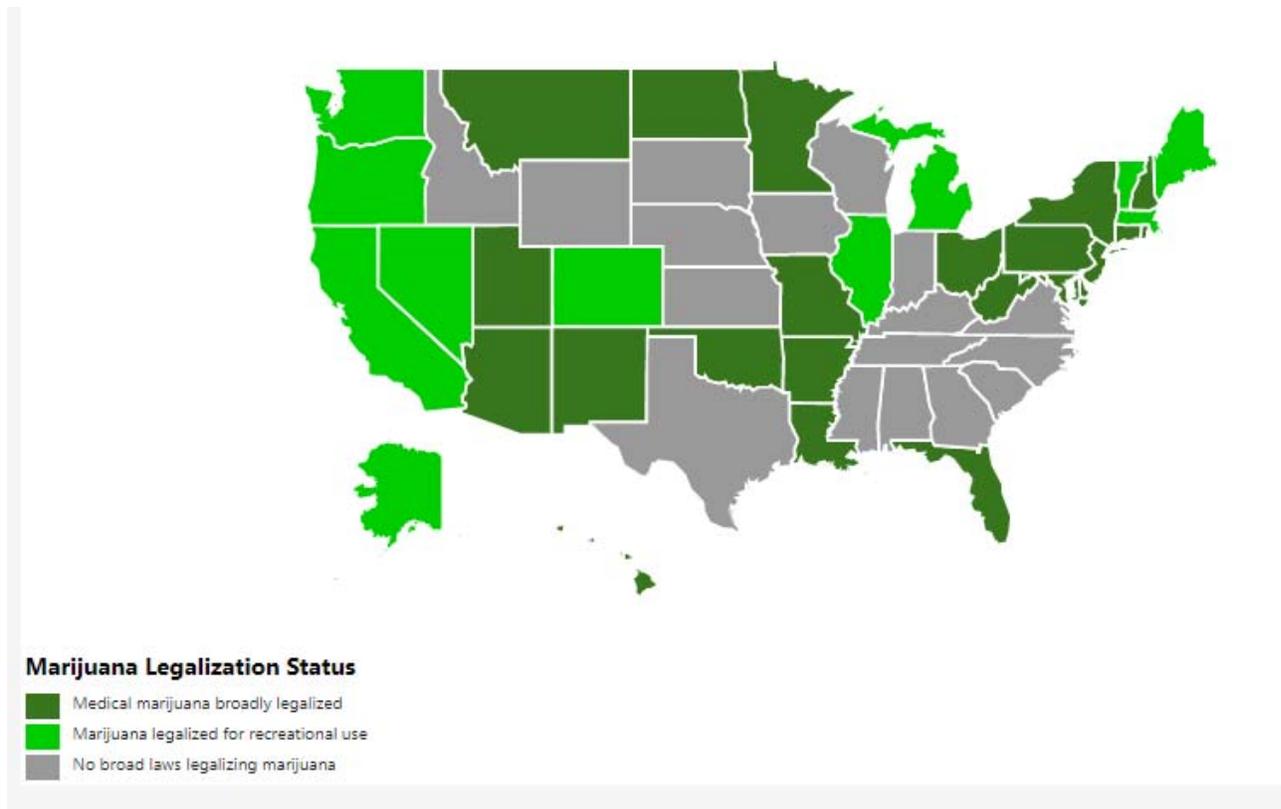
Consistent with state law, local governments can prohibit marijuana within their communities or choose to regulate the following items:

- Operation types
- Operation locations
- Operation hours
- Determine approval model and fees

Local governments that allow retail sales receive a portion of a 10 percent of a special state sales tax and can also levy additional sales/excise taxes (pending voter approval) as well as fees.

Industry & Market Trends

According to [Governing](#), 33 states and the District of Columbia have laws broadly legalizing marijuana.



Under federal law, marijuana is still a Schedule 1 illegal substance, although the [National Conference of State Legislators](#) notes 26 states and the District of Columbia have decriminalized small amounts of marijuana, while others have reduced criminal penalties for marijuana convictions. Changes in marijuana laws have resulted in the establishment of a robust industry and

regulatory framework, including licensing, enforcement, taxation, banking, education, and research.

In 2019, U.S. retail marijuana sales were on pace to eclipse \$12 billion, with \$30 billion in sales by 2023. According to [Marijuana Business Daily](#), market growth is a result of continued gains in recreational markets as well as the rapid development of medical marijuana programs in newly legalized states. However, medical marijuana sales are expected to slow significantly over the long-term, with precipitous declines in large, previously medical-only markets as recreational programs are implemented. This is because the same products are sold medicinally as are recreationally, so there is less need for medicinal-only companies.

Colorado cannabis sales topped \$1 billion in 2019; the first state in the nation to reach that milestone, reported [CNBC](#). Marijuana legalization revenue accounts for approximately three percent of the state's budget. The industry employs approximately 41,000 individuals in nearly 3,000 licensed businesses across Colorado. Colorado is also seeing a decline in medicinal-only sales consistent with nationwide trends, as recreational sales continue to climb.

The Arapahoe County Experience

In 2009, four medical marijuana centers began operation within Arapahoe County within Districts 1 and 4. With a lack of county regulations, the centers were permitted in a zoning district that allowed "retail" sales and land uses.

On March 15, 2011, Arapahoe County approved a new Medical Marijuana Land Uses (12-1800) through Resolution 11-0257. In 2012, the Board of County Commissioners adopted Land Use Resolution 12-1803, which allowed medical marijuana centers in operation prior to December 15, 2009, to continue operation as a non-conforming commercial use, provided facilities were and are in compliance with applicable building/fire codes, Colorado constitution, and the rules and regulations adopted by Colorado Department of Revenue.

Arapahoe County voters supported Amendment 64 (54 to 46 percent), giving local governments the authority to decide whether to regulate or prohibit commercial recreational marijuana facilities in their communities.

Arapahoe County [Ordinance 2013-01](#) prohibited the establishment, maintenance, and operation of marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store within the county, while confirming that "the operation of licensed medical marijuana centers that are in compliance with the provisions of the Colorado Medical Marijuana Code and Arapahoe County Land Development Code shall be unaffected by this Ordinance."

In November 2015, the County amended section 12-1800 to become Marijuana Land Uses, making additional changes to definitions and provisions of the code through Resolution 15-0618. Neither the 2011 nor 2015 [land use regulations](#) permitted recreational sales or commercial grows. Both restricted the number of medical marijuana plants that could be grown in a residence by a patient or caregivers.

Five municipalities within the county have adopted local marijuana regulations, including:

- Aurora (recreational only)
- Englewood (medical/limited recreational)
- Glendale (medical/recreational)

- Littleton (medical only)
- Sheridan (recreational only)

Within the 10-County region, six counties regulate marijuana, including:

- Adams (recreational only)
- Boulder (medical/recreational)
- Denver (medical/recreational)
- El Paso (medical only; banned transporter licenses)
- Larimer (medical/recreational)
- Pueblo (medical/recreational)

Current business owners have had a good operational history since 2009, as evidenced by annual approval of local licenses by the Board of County Commissioners. As more municipalities within the county have allowed recreational stores, the current medicinal centers are unable to compete, resulting in economic hardship.

Alternatives

A multidisciplinary staff team comprised of representatives from the county attorney’s office, public works & development department, sheriff’s office, and finance department has identified three options to answer the question what types of recreational businesses the county may want to consider licensing:

Option	Description	Pros	Cons
1.	Retain status quo regulatory environment	<ul style="list-style-type: none"> • Regulatory certainty • Known providers and issues 	<ul style="list-style-type: none"> • Business impacts
2.	Allow only existing providers to convert to dual licensing (21+)	<ul style="list-style-type: none"> • Known providers • Address business concerns • Limits youth exposure • Small revenue increase 	<ul style="list-style-type: none"> • Pre-selects winners • Expands accessibility/potential social impacts • Potential increased regulatory/compliance/oversight • Limits potential revenue increases
3.	Option 2 plus unincorporated areas based on land use controls	<ul style="list-style-type: none"> • Market driven • Addresses business concerns • Larger small revenue increase 	<ul style="list-style-type: none"> • Expands accessibility/potential social impacts • Potential increased regulatory/compliance/oversight • Location impacts • Unknown providers/history

Depending on which option the board desires to explore, there are several policy questions for consideration that would inform any changes to the regulatory framework. For example:

- Should businesses only be dual license (medical and retail, securing 21+ only clientele)?
- Where should businesses be located?
- What is the appropriate approval model?

- What expectations should there be oversight/review (i.e. backgrounds, site inspections, enforcement)?
- Should there be a limit to the number of businesses?
- What should the hours of operation be?
- Should there be additional taxes (voter approval) and fees?
- Should policy changes be dependent on additional taxes and fees?
- Should any current policy direction be retained (i.e. no marijuana clubs, residential zone district protections, delivery prohibition)?

Fiscal Impact

Arapahoe County currently receives approximately \$15,000 annually in open space sales and use tax from current medical marijuana centers. If Arapahoe County was to allow recreational sales from the four existing centers, industry estimates the county could immediately receive an estimated \$26,000 in additional open space sales and use tax and an additional \$120,000 from the special state sales tax.

The Board also could refer an additional sales tax to voters; assuming a 7.15% additional sales tax (consistent with other jurisdictions), the county could receive an additional \$572,000. Depending on the Board's desired option, staff can do additional analysis to provide a more confident estimate. Regardless, allowing the sale of recreational marijuana within unincorporated Arapahoe County would not be enough to address the county's structural financial challenges and current fiscal reality.

Next Steps & Recommendations

Depending on desired approach, the staff team would seek policy direction on the questions listed above and present additional data on public safety, economics, traffic, health, as well as regulatory best practices from peer agencies to help inform any draft policies for review and comment.

Attachments

- Land Use Development Code [Chapter 3 Permitted Uses, Subparagraph 3-3.5 Marijuana Land Uses](#)
- [Ordinance 2013-01](#)
- Map of current medical marijuana centers