

THE GREENING OF COLORADO: EFFECTIVE COMMUNITY PLANNING STRATEGIES  
AROUND THE LEGALIZATION OF RECREATIONAL MARIJUANA

by

COLIN VICTORY

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Approved by:

Major Professor  
Dr. Katherine Nesse

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## **Abstract**

In November of 2012, the state of Colorado officially ended an 80 year national prohibition of recreational marijuana by voting to pass Amendment 64. This shift in state policy generated a multitude of economic opportunities for jurisdictions throughout the state. However, the location and volume of production and sale that is authorized is ultimately determined at the city and county level. Localities in Colorado are charged with regulating the new industry in the same manner as they do other locally unwanted land uses (LULUs) such as sex-oriented businesses, halfway houses and liquor stores. This paper examines community planning approaches involving the legalization of recreational marijuana in rural Colorado. The goal of this report is to serve as a document that can be used by jurisdictions that are poised to legalize in the future, as a reference when examining best practice for the regulation of a new recreational marijuana industry.

I collected data through one-on-one interviews with city and county planners throughout Colorado. The focus of the research is two-fold: to determine what approach the planning staff took towards managing recreational marijuana in their jurisdiction and to determine why the planning staff chose the approach that they did. Through the course of this research, I have found that conservative communities are treating recreational marijuana shops as nuisance or vice businesses and are using their zoning and regulatory powers to push the shops outside of city limits. Progressive communities have taken a more inclusive approach and in return are profiting from the new market. The struggle between state law and local public perception in these jurisdictions may be the major reason why some communities are not benefiting from the public revenue being generated by Amendment 64.

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## **Dedication**

To Timothy Esparza, a noble confidant and fellow Jessup. Thank you for your note-taking and research assistance throughout this project. May you continue to cross-fit your way into recreation center folklore.

## **Chapter 1 - Introduction**

*This paper examines community planning approaches involving the legalization of recreational marijuana throughout rural Colorado.*

Recent state policy changes regarding the legalization of recreational marijuana in Colorado, Oregon, and Washington has created a need for research about the manner in which local jurisdictions are handling the legalization, zoning, and licensing of recreational marijuana retail outlets and cultivation centers. Research over medical marijuana facility siting and controversial land uses (Ashe et al. 2003; Freithsler et al. 2012; Boggess et al. 2014) and a study over the policy content of municipal land use ordinances relating to recreational marijuana uses in Washington State (Hollenhorst, 2014) currently exist. However, little research is available over recreational marijuana in non-metropolitan or micropolitan regions. The goal of this research is to address this gap by examining municipal and county land use ordinances and planning approaches relating to recreational marijuana use in micropolitan counties within the state of Colorado.

Undergoing such a substantial change in policy has most certainly created an issue for city and county planners, private developers, and other citizens that might be affected by future land use decisions. The legalization of medical marijuana in the early 2000s left many local planners unprepared for the land use implications of medical marijuana dispensaries (Nemeth & Ross, 2014). With the legalization of marijuana continually gaining political favor, many states may find themselves dealing with this issue sooner than later (Stebbins, et al., 2015). This research delivers an analysis of common land use regulatory models, licensing structures and



community planning approaches to the sale and cultivation of recreational marijuana that have been implemented throughout rural Colorado.

The focus of this study is to gain a better understanding of how planning approaches differ within the eight micropolitan regions in the state of Colorado. This was accomplished by conducting a comparative analysis of county and city ordinances and land use policies concerning recreational marijuana. The data was gathered through interviews with city and county planners and reviews of the local policies and ordinances that have been enacted since the state amendment was passed. This research will inform practitioners developing ordinances that are suitable for their own communities' goals, values and individual characteristics in response to the legalization of recreational marijuana.

## Chapter 2 - History of Marijuana Legalization in Colorado

In November of 2012, the state of Colorado officially ended an 80 year national prohibition of recreational marijuana by voting 55 percent to 45 percent in favor of Amendment 64 (Denver Post, 2012). Governor Hickenlooper, the Governor of Colorado in 2012, has called the movement, “The great social experiment of the 21<sup>st</sup> century” (Wilson, 2014). The legislation follows Amendment 20 (also known as Initiative 20) which was passed in November of 2000 (Ballot History, 2000). Amendment 20 permitted the use, cultivation, and sale of medical marijuana. Amendment 64 permits persons 21 years of age or older to consume or possess limited amounts of marijuana; and provides for the licensing of cultivation facilities, product manufacturing facilities, testing facilities, and retail stores. The primary difference between the two is that Amendment 20 required a Medical Marijuana Registry Identification Card, which is essentially a medical prescription for marijuana (Kamin, 2013).

Possession of up to one ounce of marijuana became legal on January 6, 2013 (Colorado Dept. of Revenue, 2016). However, the legal sale of recreational marijuana did not go into effect until January 1, 2014 (Colorado Dept. of Revenue, 2016). Subsequent to the approval of Amendment 64, the state of Colorado charged the Department of Revenue with the task of designing a statewide framework for the licensing and regulation of retail marijuana sales and cultivation. The Marijuana Enforcement Division (M.E.D.) implements legislation, develops rules, conducts background investigations, and issues business licenses in order to maintain a healthy regulatory structure (Colorado Dept. of Revenue, 2016). The M.E.D. developed the *Retail Marijuana Code 1 CCR 2-12* in order to disseminate rules governing businesses that cultivate and sell retail marijuana. The document provides local jurisdictions with

a statute to fall back on if there are questions or concerns with their own locally designed regulations.

Retail marijuana is classified and licensed under four separate types of uses: Retail Marijuana Stores, Retail Marijuana Product Manufacturing, Retail Marijuana Cultivation, and Retail Marijuana Testing Facilities. Local jurisdictions have the option of issuing licenses for any combination of these four uses or prohibiting any combination of these four uses. Localities are charged with developing their own fee schedule for applications or operating fees, licensing, and renewals. A state license is also required, and this is contingent upon the issuance of a local license.

The *Retail Marijuana Code* sets minimum requirements and standards for the retail marijuana industry. Local governments are permitted to add to, but must not take away from these regulations. Examples of these regulations include requirements for security alarm systems, lock standards, video surveillance, waste disposal, transportation of marijuana and marijuana products, hours of operation, inventory tracking, age verification process, quantity limits on sales, health and safety standards, packaging and labeling limitations, signage and advertisement regulations, and THC testing procedures.

The state of Colorado placed a special 10 percent sales tax on all retail marijuana sales and a 15 percent excise tax on retail marijuana cultivation. This is in addition to the state's 2.9 percent general sales tax. Local jurisdictions are permitted to enforce additional local taxes at their own discretion. These taxes can be in the form of a city sales tax, excise tax, or an occupation tax. When these taxes are added up, they average around a 30 percent tax. This means that a \$30 marijuana purchase will have roughly \$9 in taxes. In comparison, tobacco sales

in Colorado are taxed at about 31 percent and alcohol is taxed at 8 percent (Tax Foundation, 2014).

The development of the *Retail Marijuana Code* relied heavily on the recommendations from the Implementation Task Force. Recommendations from the task force covered everything from how marijuana cultivators should be regulated to how products should be labeled and packaged. It has been suggested that the official report produced by the Task Force will not only serve Colorado, but will most likely end up directly or indirectly influencing future marijuana legalization laws and regulations in other states (Walker, 2013).

#### *The Implementation Task Force*

The legalization of recreational marijuana in Colorado has led to many novel city planning and land use issues across the state. Prior to the adoption of Amendment 64, Governor Hickenlooper established the Amendment 64 Implementation Task Force. The governor charged the task force with identifying the legal, policy, and procedural issues that must be resolved, and to offer suggestions and proposals for legislative, regulatory, and executive actions that need to be taken, for the effective and efficient implementation of Amendment 64 (State of Colorado, 2013). The task force made recommendations that were to be reviewed and adapted by the Governor, the Colorado General Assembly, the Attorney General, state agencies, local governments and the general public. These recommendations were instituted as legislation was enacted and regulatory devices were put into place for the implementation of Amendment 64 (State of Colorado, 2013).

The Amendment 64 Implementation Task Force was broken down into five working groups: Regulatory Framework; Local Authority and Control; Tax, Funding, and Civil Law; Consumer Safety and Social Issues; and Criminal Law (State of Colorado, 2013). The five groups worked on individually assigned issues under a set of nine guiding principles that are outlined on page seven of the, “*Task Force Report on the Implementation of Amendment 64.*” Each group was tasked with defining the roles and responsibilities at the local and state levels, licensing procedures at the local level, the role of local government in the regulatory model, identifying state and local mandates, and identifying potential sources of revenue at the state and local level (State of Colorado, 2013).

Altogether, the five groups produced nearly 100 recommendations, 73 were then approved, and after consolidation 58 total recommendations were presented for consideration to the Governor (State of Colorado, 2013). Both state and local governments were encouraged to use these recommendations when crafting their own regulatory models. Several of these recommendations apply directly to planning at the local level. These include: The ability of a local county or municipality to either defer to state standards, choose to adopt their own standards or ban adult-use marijuana establishments within their jurisdictions; and the power of local government to charge fees for costs of inspection, administration and enforcement of authorized businesses (State of Colorado, 2013).

## **Impacts**

Impacts from Amendment 64 have been overwhelmingly positive for the State of Colorado thus far. Most notably, the increase in statewide tax and fee collection. In the 2015

fiscal year, the state collected a total of \$66.1 million dollars in taxes from the combined marijuana industry (Colorado Dept. of Revenue, 2016). This nearly doubled the \$42 million that were collected from alcohol taxes in 2015 (Colorado Dept. of Revenue, 2016). \$40 million of the \$66.1 million was dedicated to new school construction, \$12 million to other various other programs, and \$14.1 million was not dedicated (Colorado Dept. of Revenue, 2016). Also in 2015, the Colorado Department of Education, “Building Excellent Schools Program” was awarded \$16 million in funds directly from taxes generated from the retail marijuana industry (Colorado Dept. of revenue, 2016).

In 2014, the Marijuana Industry Group reported that the retail marijuana industry was responsible for the creation of over 10,000 new jobs throughout the state (Marijuana Industry Group, 2016). Colorado’s unemployment rate has dramatically declined since the legalization of marijuana. In January 2011 a year before Amendment 64 was passed, the state’s unemployment rate was 8.8 percent (Colorado Dept. of Labor & Employment, 2016). The most recent reports, from February of 2016, show Colorado’s unemployment rate at 3.0 percent (Colorado Dept. of Labor & Employment, 2016). From 2013 to 2014, Colorado had the greatest unemployment drop in the country. Whether or not this was a direct result of the marijuana industry is unknown.

Other positive impacts include the proliferation of the state’s tourist sector. Popular tourist pulls include: retail marijuana shops, cannabis infused massage therapy, wake and bake breakfasts, 4:20 happy hours, and the Cannabis Cup which is held in Denver every year since 2010. The demand for retail marijuana by out-of-state visitors represents a significant amount of all retail marijuana purchases state-wide. The Colorado Department of Revenue estimates that for metropolitan areas 44 percent of all retail sales are from out of state visitors, and 90 percent for rural counties (Colorado Dept. of Revenue, 2016). One additional result from the legalization

of marijuana is the reduction of marijuana cases that are tried by the state courts. Between 2012 and 2013, marijuana-related cases in the Colorado state courts plummeted by 77 percent (Colorado Dept. of Revenue, 2016).

Although Amendment 64 has had several positive impacts, there have also been negative impacts from the legislation. These are primarily related to safety and health concerns. The National Highway Transportation Safety Administration reported a 10 percent increase in the percent of highway fatalities where the operator tested positive for marijuana from 2009 to 2014 (NHTS, 2014). Hospitalizations related to marijuana increased from 4,694 in 2009 to 11,439 in 2014 (Colorado Health & Hospital Association, 2015). Concerns with high school related marijuana incidents has also risen. From 2009 to 2014, the percentage of drug related referrals within the public school systems increased from 24.1 percent to 37.2 percent (Colorado Dept. of Education, 2015). Legal concerns have also come up at the national level. In 2014, Nebraska and Oklahoma both filed lawsuits against the State of Colorado. The Supreme Court recently declined to hear the lawsuits (Farias, 2016)

In conclusion, the state of Colorado's marijuana taxing and fee structures appear to be operating appropriately and with little discrepancy from retail marijuana business owners thus far. Since the approval of Amendment 64, Washington State, Oregon, and Washington, D.C. have all passed legislation allowing for the sale, tax, and regulation of recreational marijuana. In its inaugural year, the marijuana industry generated far less taxes than initially projected (Frank, 2015). However, Sen. Pat Steadman believes that this is only a first-year problem and that the state will never have this problem again (Frank, 2015). Retail marijuana taxes are scheduled to be permanently lowered from 10 percent to 8 percent in July of 2017 (Colorado Dept. of Revenue, 2016).

## **Chapter 3 - Literature Review**

Literature on the regulatory structures and community planning strategies around the retail marijuana industry is relatively limited to date. This is because the industry is less than three years old and is completely unprecedented through the history of the U.S. Although literature focusing directly on the industry is sparse, there have been several papers and reports written about planning for other vice businesses. In addition, there are several papers available discussing whether marijuana should be classified as a public nuisance or not. This section works to provide a nexus between existing literature around the regulation of vice businesses and marijuana as a public nuisance and community planning strategies involving the novel retail marijuana industry.

### **The NIMBY and LULU phenomenon**

For city planners and administrators the shift in policy has brought up the interesting question of, how and where to allow dispensaries for marijuana use. Several land use regulation questions have also been raised, such as: whether or not distance requirements, similar to those used in the regulation of other vice businesses, can be modified to regulate the use of recreational marijuana; what types of special use permit considerations are appropriate for the regulation of recreational marijuana; and whether or not marijuana should be labeled as an agricultural crop (Salkin & Kansler, 2010). These types of questions then lead to zoning concerns, such as whether marijuana, designated as an agricultural crop, should be allowed to be grown in agricultural zones (Salkin & Kansler, 2010).

Although the legal war on marijuana has ended in many states, the war on legal marijuana businesses has just begun. While Amendment 64 passed, 45.1 percent of Colorado



voters voted against the change (Denver Post, 2012). This has led to a ‘Not in My Backyard’ or NIMBY attitude towards the siting of many retail shops and cultivation facilities. Many residents do not want marijuana-related businesses anywhere within their community; while others are more concerned with creating a buffer between the businesses and their homes, churches, parks and day care centers (Kaiser, 2011). A poll conducted by Pew Research showed that 73 percent of adults support making medical marijuana legal, while 44 percent would be, “somewhat or very concerned if a dispensary opened near their home” (Pew Research, 2010). This general national data, concerning medical marijuana, almost directly parallels the voting outcome of Amendment 64 in 2010.

The NIMBY occurrence has been extensively studied over the years and a wide variety of opinions have been developed regarding the phenomenon. “To comprehend and overcome the NIMBY syndrome, planners should understand the nature of typical opposition arguments, the factors that determine community attitudes, and the range of alternative community relations strategies available to them” (Dear, 1992, P. 288). The strategy that a governing body chooses to employ should depend entirely upon the character of the community that they are serving. However, due to local politics and institutionalized practices this may not be the case in every locality. In addition, there are few models available to draw from, so locales are often acting without full knowledge of all the possibilities and consequences associated with regulating the industry.

While it is clear that the NIMBY attitude towards marijuana oriented facilities currently exists, research has yet to determine whether or not marijuana dispensaries should be classified as ‘Locally Unwanted Land Uses’ or LULUs. A LULU is described as a facility that provides some recognized public benefit, even though the vast majority of people do not want them in

their neighborhood (Nemeth & Ross, 2014). Examples of these include: landfills, nuclear power plants, strip clubs, and airports. Potential impacts that can give rise to a LULU are odors, emissions, associated rises in crime rates, anticipated drops in nearby land values (Filippini, 2010). According to Filippini, “the most important aspect when managing a LULU dispute between two parties is for the local officials and the disputants to be informed of all of the regulatory tools available to the local zoning authority” (Filippini, 2010, p.21). LULU disputes are often subjective and personal in nature, it is vital for local officials to be knowledgeable of what actually constitutes a LULU.

### **Marijuana as a public nuisance**

From a planning standpoint, defining a LULU can be difficult when personal agendas or values become the driving force of the opposition. In the case of marijuana facilities, the lack of empirical evidence necessary to classify a dispensary as a LULU remains a major debate among planners (Nemeth & Ross, 2014). Anticipated nuisances that have been cited concerning marijuana facilities include: rises in crime rates, reductions in nearby property values, and an overall threat to the quality of life of nearby residents (Nemeth & Ross, 2014). Nemeth & Ross go on to question whether dispensaries should be regarded as LULUs at all, considering that municipalities collect millions in sales taxes, as well as licensing and applications fees (Nemeth & Ross, 2014).

When determining whether a particular land use constitutes a LULU, it is vital that local officials be able to differentiate between what is a legal nuisance and what is a matter of personal opinion or value. The presence of a marijuana retail shop may be against an individual resident’s personal values, but that does not necessarily mean that the shop is acting as a public nuisance.

Nuisances today are classified as either public or private. “A public nuisance occurs when an indefinite number of people or the general public are negatively affected; a private nuisance occurs when a small group of property owners, in a manner different from its impact to the general public, are negatively affected by a land use.” (Shelson, 2011 p.197). Most nuisance cases today fall into a mixed category, encompassing elements of both public and private nuisances (Shelson, 2011).

Understanding how and why existing vice businesses are perceived and regulated in the manner in which they are, can be important when determining how to regulate the retail marijuana industry. However, promptly categorizing marijuana production and sales with the existing alcohol and tobacco industries can be detrimental to local success of the industry. Objectively determining whether or not the marijuana industry constitutes a LULU or if marijuana truly acts as a public nuisance, should be a top priority of planners who are determining how to proceed with the regulation of retail marijuana within their locale. This literature review focuses on the current treatment of other vice businesses as well as existing notions concerning marijuana operations. The question is raised as to whether or not marijuana sales and production fit into these existing parameters, and whether or not marijuana businesses should be classified in the same fashion as alcohol, tobacco, or sexually-oriented businesses.

## Chapter 4 - Methodology

### Goals of the research

The goal of this project is to provide planners with a document that can serve as a 'best practice' guide and reference to past planning approaches that have been adopted to manage retail marijuana operations. This report will provide planners with a framework for possible regulatory options and licensing formats that are available to them. The comparative analysis will allow for a better evaluation of recreational marijuana planning procedures; which will lead to the development of more appropriate, complete, and fair ordinances and regulations.

### *Interview Questions*

To develop a comprehensive guide of planning actions and ordinances around retail marijuana businesses in rural Colorado, two research questions were established. These questions served as a filter during the interview and comparative analysis processes. I collected data to answer the following research questions:

- 1.) *How have jurisdictions, within the eight micropolitan regions in Colorado, responded to recreational marijuana legalization in their land use policies?*
- 2.) *What factors describe the similarities and differences that exist in their fiscal and legal recreational marijuana policies?*

## Research Design

I conducted interviews with city and county planners, administrators and other government officials that have worked on recreational marijuana planning strategies within the defined sample boundaries. The focus of the interviews were two-fold: 1) To determine *what* approach the planning staff took towards managing recreational marijuana in their jurisdiction; and 2) To determine *why* the planning staff chose the approach that they chose. Along with the data gathered from the interview process, I also collected data by reviewing current legislation, ordinances, fee schedules, and other government documents from the localities within the sample.

I conducted a comparative analysis of city and county ordinances using a series of common measures found within all of the retail marijuana ordinances. Below is a list of the measures used in the comparative analysis.

- Legalization versus prohibition by industry sector
- Use of a moratorium
- Licensing fees
- Operating or application fees
- Renewal fees
- Type of local taxes enforced
- Operational hours
- Safety requirements
- Signage regulations
- Distance requirements and buffers
- Caps on number of licenses issued

I categorized jurisdictions into 1) Counties 2) Municipalities with a population between 1,000 and 4,999 and 3) Municipalities with a population above 5,000. I excluded municipalities with less than 1,000 people from the study. The final analysis uses a combination of quantitative data gathered from the ordinance comparison and qualitative data collected from the interview process.

### **Description of sample**

Non-metro counties are defined as counties that are outside the boundaries of metro areas (U.S.D.A. Economic Research Service, March, 2015). The classification is further divided into two subcategories:

1. Micropolitan (micro) areas, which are non-metro labor-market areas centered on urban clusters of 10,000-49,999 persons and defined with the same criteria used to define metro areas.
2. All remaining counties, often labeled “noncore” counties because they are not part of “core-based” metro or micro areas (U.S.D.A. Economic Research Service, 2015).

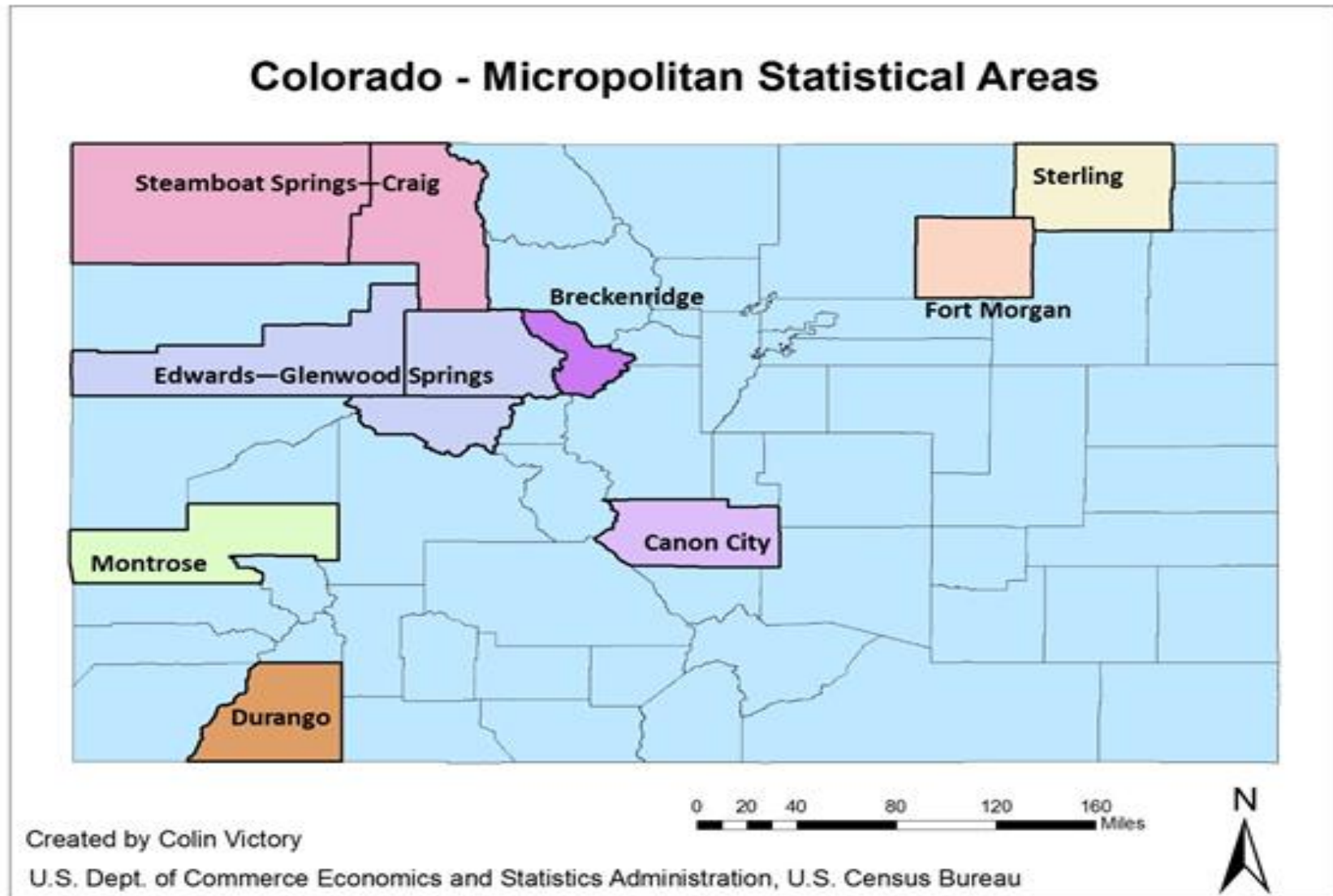
I examine only counties that fall within a designated micropolitan statistical area within the state of Colorado. Several of the micropolitan areas in Colorado contain more than the above designated 49,999 cap. This is because a micropolitan area may contain an urban cluster of up to 49,999 people as well as a surrounding rural population. So an area may have an urban cluster of 40,000 people and then an additional 30,000 people scattered throughout the county or counties. As of February 2013, the U.S. Department of Commerce defined 8 micropolitan statistical areas in the state of Colorado, encompassing 11 separate counties. On the following page is a table showing the eight micropolitan statistical areas, total populations, and included counties in Colorado.

**Table 4.1 – Micropolitan Statistical Areas in Colorado**

<i><b>Micropolitan Statistical Areas</b></i>	<i><b>Population</b></i>	<i><b>Counties Included</b></i>
Steamboat Springs - Craig	3,6793	Moffat & Rout
Edwards - Glenwood Springs	128,008	Garfield, Eagle & Pitkin
Montrose	40,873	Montrose
Durango	53,989	La Plata
Breckenridge	29,404	Summit
Canon City	46,502	Fremont
Fort Morgan	28,382	Morgan
Sterling	22,524	Logan

U.S. Department of Commerce, Economics and Statistics Administration U.S. Census Bureau. (February, 2013). U.S. Census Bureau: State and County QuickFacts. (2014)

Figure 4.1 – Micropolitan Statistical Areas in Colorado





## **Interview process**

I selected interviewees by their location and the willingness of the candidates to participate in the research. I began by drafting a comprehensive list of all planners and city managers within the study area. I then sent out emails requesting interviews to everyone on the list. Those who responded positively to the request were interviewed. The goal was to interview twelve to fifteen county and city planners from the designated sample and at least one from each MSA. Subjects were interviewed via phone and email. Phone interviews typically averaged between 20 and 35 minutes. The interviews were free-flowing, although a list of interview guiding questions were used (see Appendix 1).

I conducted fourteen interviews were conducted covering five of the eight MSAs. Four county planners, nine city planners, and one city attorney were interviewed. Below is a list of jurisdictions where I conducted interviews.

**Table 4.2 – Jurisdictions Interviewed**

<b>Jurisdiction</b>	<b>Position</b>
Routt County	County Planner
Moffat County	County Planner
LaPlata County	County Planner
Morgan County	County Planner
Glenwood Springs	Community Planner
Eagle	City Planner
Rifle	City Planner
Durango	City Planner
Steamboat Springs	City Planner
Oak Creek	City Planner
Carbondale	City Planner
Frisco	City Planner
Fort Morgan	City Attorney
Parachute	City Planner

## **Ordinance Comparison - Data Collection Process**

The data required for the ordinance comparison was collected by reviewing retail marijuana city ordinances from the 11 counties and 31 municipalities (over 1,000 in total population) within the eight designated micropolitan statistical area. All 42 ordinances were located online via city and county websites. Roughly half of the licensing fee schedules were located from county and city websites; the other half was acquired from phone calls and emails to the respective jurisdictions. Local tax information was found on city and county websites.

A combination of summaries and tables are used to report the quantifiable data gathered from ordinances and the qualitative data collected from interviews. Results are organized by the common measures listed on page 14. Each measure is discussed individually with supportive data from the interviews and the comparative analysis of ordinances. During the research portion of the project, I remained focused on what approaches were taken and how the decision making process was conducted. I catalogued similarities and differences between jurisdictions and these factors were the foundation of the data analysis.

## **Chapter 5 - Comparative Analysis of Ordinances**

### **Introduction**

Subsequent to the approval of Amendment 64, local governments were faced with the decision to regulate and tax the retail marijuana industry or to place a ban on the industry. For jurisdictions that chose to allow the retail marijuana industry, the first step was to design a city ordinance and a set of land use codes that would work to protect communities from potential negative impacts associated with the industry. Some of the jurisdictions that were studied chose to simply adjust their existing medical marijuana ordinances to function for the new retail industry. However, some cities and counties decided to write new ordinances that would best suit their community. Jurisdictions that did not allow medical marijuana facilities, but wanted to allow the retail businesses, were faced with the task of developing brand new ordinances. The following section is a comparison of community planning approaches, retail marijuana ordinances, and licensing fee structures that were implemented by all of the counties and towns (over 1,000 population) within the study area.

### **Prohibition versus Legalization**

The initial condition that was analyzed from the ordinances was jurisdictions under prohibition versus those that are regulating and taxing the retail marijuana industry. Jurisdictions have the power to prohibit or permit any combination of the four sectors of the recreational marijuana industry. On the following page is a table showing all of the jurisdictions within the sample area (over 1,000 population) that are under prohibition and those that have legalized a combination of or all sectors of the retail marijuana industry.

**Table 5.1 – Type of Legalization by Jurisdiction**

<b>Jurisdictions</b>	<b>Retail</b>	<b>Cultivation</b>	<b>Product Manufacturing</b>	<b>Testing Facilities</b>
<b>Counties</b>				
Moffat County				
Routt County				
Garfield County				
Eagle County	X	X	X	X
Pitkin County	X	X	X	X
Montrose County				
LaPlata County	X	X	X	X
Summit County	X	X	X	X
Fremont County				
Morgan County				
Logan County				
<b>Total out of 11</b>	<b>04</b>	<b>04</b>	<b>04</b>	<b>04</b>
<b>Cities between 1,000 - 4,999 Tot. Pop.</b>				
Oak Creek	X	X	X	X
Hayden		X		
New Castle				
Silt	X	X	X	X
Basalt	X			
Minturn				
Snowmass Village				
Olathe				
Bayfield				
Breckenridge	X	X	X	
Frisco	X	X	X	
Dillon - Keystone	X	X	X	
Silverthorne	X	X		
Florence				
<b>Total out of 14</b>	<b>07</b>	<b>07</b>	<b>05</b>	<b>02</b>
<b>Cities above 5,000 Tot. Pop.</b>				
Craig				
Steamboat Springs	X	X	X	X
Glenwood Springs	X	X	X	X
Parachute / Battlement Mesa	X	X	X	X
Carbondale	X	X	X	X
Rifle		X		
Avon				
Eagle	X	X	X	X
Gypsum				
Vail				
Aspen	X	X	X	X
Montrose				
Durango	X			X
Canon City				
Brush				
Fort Morgan				
Sterling				
<b>Total out of 17</b>	<b>07</b>	<b>07</b>	<b>06</b>	<b>07</b>


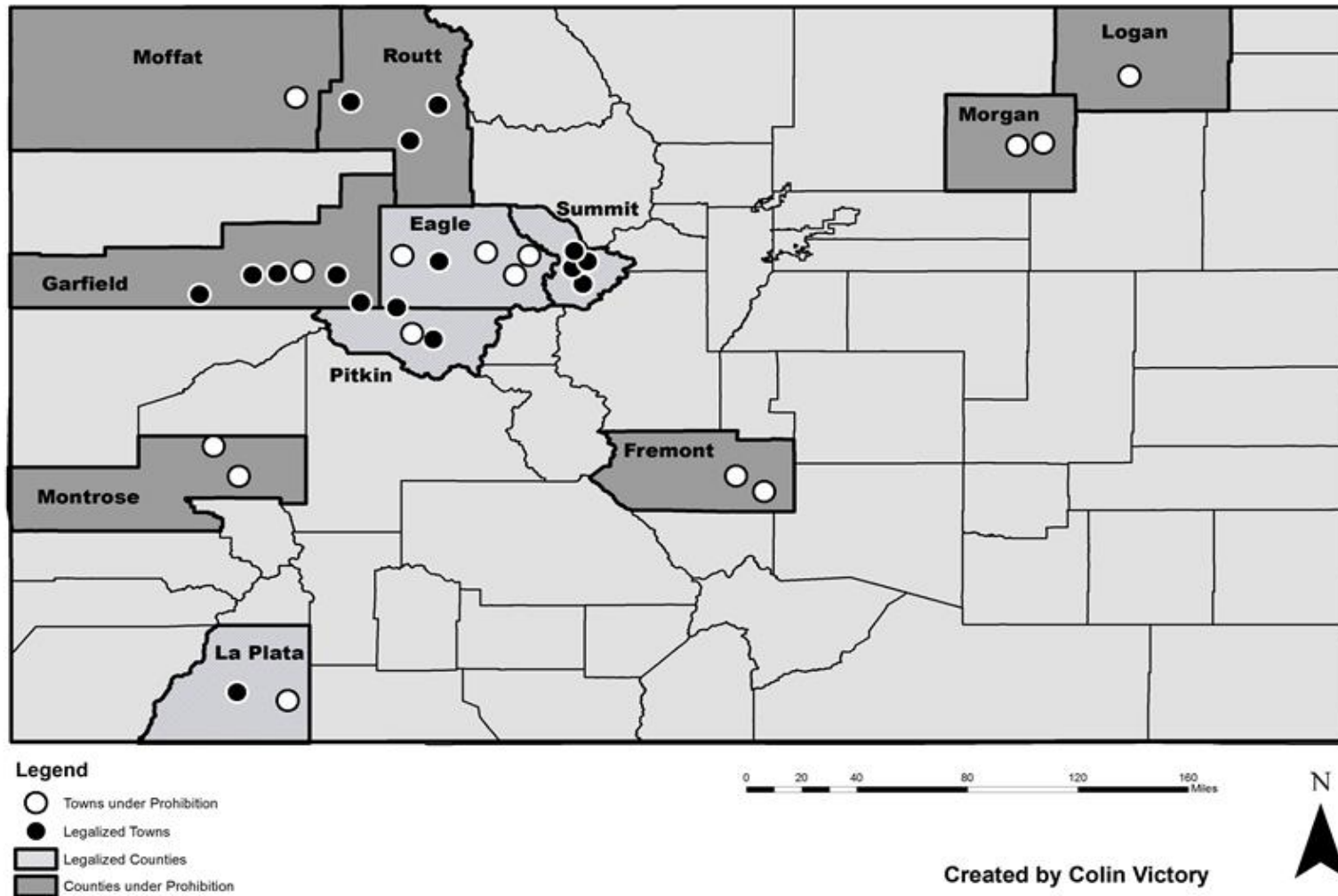
 Sectors of Industry Under Prohibition

Figure 5.1 – Legalization vs. Prohibition by County and City



At the county level prohibition proved to be the most popular action. Seven counties are currently under an exclusive retail marijuana ban and only four are sanctioning recreational marijuana operations. Garfield and Routt counties have a prohibition on recreational marijuana at the county level, but each contain multiple cities that do permit retail marijuana operations. One reason for the popularity of prohibition at the county level, may be that counties feel that they are not equipped for marijuana sales or marijuana cultivation because of a lack of commercial space or a shortage of water supply. A large portion of the county lands within the study use well water. A planner from Moffat County said that many residents were initially concerned that the amount of water required for marijuana cultivation would cause shortages and compromise the existing agricultural lands.

At the municipal level findings varied greatly. Out of the thirty-one towns and cities that were studied; fifteen have enacted an exclusive ban prohibiting all four sectors of the retail marijuana industry, eight have permitted all four sectors, and eight are allowing some sectors but not all. Out of the sixteen municipalities that are permitting some type of recreational marijuana operations; fourteen are allowing retail shops, fourteen are allowing cultivation centers, eleven are allowing product manufacturing, and nine are allowing testing facilities. In five of the seven counties under prohibition there is no city (over 1,000 population) that is permitting retail marijuana operations.

For the fourteen jurisdictions that were interviewed, the decision regarding which sectors of the industry to permit and which sectors to ban often came down to physical constraints, rather than political or community sentiment. For example, the city of Durango does not allow cultivation centers or product manufacturing facilities, but does allow retail shops and testing facilities. This is because the city felt that it did not have the warehouse or industrial space to

cater to the cultivation and manufacturing industry. As an example of good intergovernmental collaboration, the county of La Plata chose to allow for cultivation centers. This type of cooperation ensured, that both the county of La Plata and the city of Durango, are both maximizing the benefits available to them from the recreational marijuana industry.

One interesting occurrence, is the popularity of testing facility bans at the municipal level. Out of the sixteen cities that allow for recreational marijuana facilities, seven have decided not to license recreational marijuana testing facilities. This result came as a surprise, because of the perceived nature of marijuana testing facilities. In theory, testing facilities are clean, environmentally friendly business that employ highly skilled, white-collared workers. One city planner, said during an interview, that they were warned by a state employee not to allow marijuana testing facilities. However, he was unsure why the warning was given.

### **Initial Actions Taken at the Local Level**

The most common response to Amendment 64 was to enact emergency moratoriums that prevented the licensing of retail marijuana operations. All of the fourteen jurisdictions interviewed used a moratorium. For jurisdictions that chose to permit the industry, it afforded them a sufficient amount of time to develop proper ordinances and land use regulations. Moratoriums were generally used to allow local governments more time to come to a decision regarding whether to permit or prohibit the retail marijuana industry. However, at least four of the interviewees stated that they knew beforehand which decision their respective jurisdiction was going to take. Moratoriums varied in length from two months to two years; with the average moratorium lasting approximately one year. A planner from La Plata County expressed concerns

with the hasty legislative decisions made at the state level stating, “Jurisdictions in Colorado are always playing catch-up, because of the inability of the state to respond to its own legislation.”

For the majority of local governments, the most frequently stated factor that influenced a community’s decision to prohibit or permit the industry was the local results from the state’s general election ballot on Amendment 64. All fourteen jurisdictions that were interviewed followed the ‘voter mandate.’ Eleven out of the fourteen communities chose to use the local results from the state’s vote on Amendment 64. Two towns (Rifle and Eagle) held subsequent town votes to determine their community’s desires. In all fourteen cases at least one public meeting was held; but more commonly, three public meetings were held.

Ballot results varied greatly across the study sample. For example, Logan County in Northeast Colorado, voted 56.5 percent against the legalization of retail marijuana (Denver Post, 2012). Conversely, La Plata County, in Southwest Colorado, voted 61.7 percent in favor of legalization (Denver Post, 2012). Although most jurisdictions followed the voter mandate, there were a few instances of counties choosing to prohibit the industry against the general election results. For example, Garfield County and Routt County both voted in favor of Amendment 64. Garfield County voted 56.8 percent in favor and Routt County voted 62.9 percent. Despite the results, these two counties ultimately chose to exclusively prohibit the retail industry (Denver Post, 2012).

An interview with a planner from Routt County revealed that the primary reason for the county-wide prohibition was a petition that was filed by county residents following the opening of a retail shop in 2014 in the town of Milner. Initially, the county had decided to treat retail marijuana as a ‘use by right’, but once the petition was filed the county immediately enacted an



emergency moratorium, effectively prohibiting retail marijuana. The county then placed a two year ban on retail marijuana operations.

During the preliminary decision making process several concerns regarding the retail marijuana industry were raised, both within local governments and at the public levels. Concerns included the health of the community, rises in crime rates, zoning issues, declines in land values, strains on community resources (for example: staff hours spent on application reviews, and local water supplies), the background of potential business owners, and potential negative impacts to the community's image. These issues were addressed during planning board and city commission meetings, as well as town hall and public meetings.

Sentiment regarding these concerns varied greatly from jurisdiction to jurisdiction. A planner from Routt County said, "The planning board did not have many concerns with Amendment 64 because of the rural nature of the county, and also because there are very few commercial properties within the county." On the other hand, a planner from La Plata County noted that there were several concerns during the decision making process. Most of these concerns focused on potential staff resources that might be expended handling and processing retail marijuana applications. The interviewee felt that the application process for retail marijuana businesses would be substantially more time consuming than other land use applications.

In Morgan County, the planning commission was primarily worried about negative effects on land values. At the time, Morgan County allowed for hemp production. The county planner said that the hemp production facilities had been historically treated as NIMBYs by the community. As soon as a hemp business would open up, stores around the location would sell

out as fast as they could. The county felt that this same trend would hold true for the retail marijuana businesses, resulting in a continued decrease in land values within the county.

In the city of Rifle, the city council was very outspoken against retail marijuana shops. The council was mostly concerned with the health and safety of the city's residents and the potential negative impact that recreational marijuana businesses would have on Rifle's image. However, the city council argued in favor of cultivation centers, because of the potential for economic gains. The city council felt that cultivation centers would produce higher tax gains and remain more discreet, due their industrial nature. These arguments resulted in the city of Rifle permitting retail cultivation centers and prohibiting retail shops. Rifle is the only municipality in the study to allow for cultivation, but prohibit the other three sectors of the industry.

Out of the fourteen jurisdictions that were interviewed, the decision making process varied greatly. For example, the planner from Moffat County said that county commissioners were firm on their decision to prohibit the industry from the very beginning. The planner said that he believed that the political and moral atmosphere of the county was the main reason for the ban. However, he believed that the county acted a little hastily when deciding to place the ban on all recreational marijuana activities. The interviewee from Fort Morgan also believed that prohibition was inevitable. This was due to the high percentage of residents that voted against Amendment 64.

Other localities acted on the opposite end of the spectrum. Interviewees from the towns of Carbondale, Durango, Rifle, and Glenwood Springs stated that they had knew from the beginning that retail marijuana was desired by the community and that it would be allowed within their jurisdictions. Moratoriums were enacted simply as a tool to allow for the

development of appropriate regulations and ordinances. For the remaining jurisdictions interviewed, the decision-making process appeared to be much less pre-determined.

### **Community Opposition and Support**

Data gathered from the interviews provided a wide range of examples, of both support and opposition to Amendment 64, in rural communities throughout Colorado. Although both sides were represented, the voices of the opposition appeared to be much more conspicuous. All fourteen of the jurisdictions interviewed cited at least one case of community backlash towards the legalization of recreational marijuana. Several of the interviewees said that they believed that there were government members in support of retail marijuana; however, these employees were often apprehensive to speak in favor of recreational marijuana, because of the negative connotation associated with the industry.

Community opposition occurred at various stages of the application process. Planners from Routt County, Eagle, Durango, Glenwood Springs and Steamboat Springs all stated that opposition has been mainly in the form of NIMBY situations. Essentially, the jurisdictions have reported very few public complaints, concerning retail marijuana establishments, until one is approved by the planning commission. Following the approval of an operation, the local government is then bombarded with community backlash.

In Durango, all seven retail marijuana businesses have been accompanied by complaints from surrounding residents. The planner interviewed stated that there was no community push-back until the applications began coming through, and that she believes the majority of complaints are localized issues. In all seven cases, there were complaints immediately following the approval of the licenses, but zero complaints afterwards.

The town of Eagle experienced the same type of localized NIMBY situation. In this example, a retail store wanted to move into a shared building space, but the neighboring businesses opposed the new shop. The complainants were concerned that the odor of marijuana would leak into their business (the business would have a shared wall). They were also worried that the ‘type of people’ that would be frequenting the marijuana retail shop would make their clientele feel uncomfortable. 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.”

In Steamboat Springs a very unique set of complaints have arisen. At the beginning of the interview, the planner for Steamboat Springs, made it clear that the city council is very pro-business and that they did not want to limit anyone’s ability to make money. Also, that the residents of Steamboat Springs have been one-sided in favor of retail marijuana operations. However, there have been a large number of complaints from incoming tourists and owners of vacation homes that do not permanently reside in the city. Opposition has also come from the Triple Crown Debates (a nationwide youth sports organization). Steamboat Springs serves as a regional hub for youth baseball and softball tournaments. The city receives money from this organization to host tournaments. The Triple Crown Debates have repeatedly filed complaints with the city, but to date they continue to host tournaments there.

The city planner for Carbondale, stated that the community has been overwhelmingly supportive of the new industry; going as far as to call the Carbondale a, “hippy town.” Regardless of the high levels of community support, there has still been instances of NIMBY-like opposition. In Carbondale, landlords have refused to rent to retail marijuana facilities and home-owner associations have started to place bans on recreational marijuana activities within

their covenants. As a result, most of the facilities have been forced to cluster in the city's industrial park. The city planner stated that this has led to the creation of Carbondale's own version of Denver's famed, "Green Mile". The Green Mile is the nickname of a concentration of marijuana businesses along South Broadway in Denver. The nickname was a result of a marketing campaign initiated by the owners of marijuana dispensaries in the area (Raabe, 2014).

Not all opposition has been reactionary. In an interview with a city planner from Rifle, the occurrence of preemptive complaints were discussed. In one example, the city planner received a series of complaints from a residential neighborhood roughly one mile away from a newly licensed, 43,000 sf. cultivation center. The residents complained that they could smell marijuana from the cultivation center. Upon immediate investigation, the planner discovered that the cultivation center had yet to move a single plant into the warehouse. After explaining this to the complainants, they said that they wanted to go ahead and file a preemptive complaint about the odors produced from the cultivation center.

The planner says that the vast majority of recreational marijuana facility complaints deal with the odor of marijuana. To resolve these complaints, they are forced to go to the site and stand outside and smell the air for possible odors. The interviewee believes that the volume of complaints is an attempt to get the city council to reverse the decision on the cultivation centers, and that no actual nuisance is being generated from these operations.

In La Plata County, a major concern for the local government was the amount of water that would have to be committed to the recreational marijuana industry. The county planner stated that there was community opposition regarding concerns over the high intensity water usage that would be required for the industry. La Plata County runs off of well-water, and because of this water supplies are in constant danger of being exhausted.

## Licensing

All four sectors of the retail marijuana industry require both a local license and a state license. Localities are in charge of creating their own fee schedules for initial licensing fees, license renewal fees, and operating or application fees. The licensing fee is a one-time payment that localities charge to new business applicants for the privilege of operating certain businesses within the jurisdiction. The license renewal fee is annual fee that is charged to maintain the business licensure. The application fee is generally a one-time payment, however places such as Durango require an annual application fee. Application fees are used to pay for the staff time and resources that are required for processing marijuana business applications.

**Table 5.2 – Licensing and Application Fees**

<b>Jurisdictions</b>	<b>Type of Fee Charged</b>		
	<b>License Fee</b>	<b>Annual Renewal Fee</b>	<b>Application Fee</b>
<b>Counties</b>			
Eagle	\$2,000	\$1,500	-
LaPlata	\$3,000	\$3,000	\$1,000
Pitkin	\$3,000	\$1,500	-
Summit	\$2,250 [Retail \$3,065]	\$1,125 [Retail \$1,533]	\$1,825
<b>Cities Above 5,000 Population</b>			
Glenwood Springs	\$1,000	\$1,000	\$2,000
Aspen	\$2,000	\$1,000	\$2,000
Carbondale	\$2,000	\$500	\$2,000
Durango	\$2,500	\$3,000	\$5,000 (annually)
Eagle	\$2,000	\$500	-
Parachute / Battlement Mesa	\$5,000	\$2,000	\$5,000
Rifle	\$5,000	\$5,000	-
Steamboat Springs	\$9,165	\$9,165	-
<b>Cities Between 1,000 - 4,999 Population</b>			
Oak Creek	\$5,910	\$5,910	\$250
Hayden	\$2,000	\$250	\$2,500
Silt	\$1,500	\$500	-
Basalt	\$2,000	\$1,000	\$5,000
Breckenridge	\$2,063	\$1,031.25	-
Frisco	\$3,000	\$3,000	-
Dillon - Keystone	\$3,000	\$1,500	-
Silverthorne	\$3,000	\$1,500	-

The licensing fee structures were quite diverse between the jurisdictions in the sample area. The average initial licensing costs \$3,069, the average annual license renewal costs \$2,167, and the average operating or application fee (for jurisdictions that require one) costs \$2,658. These figures are slightly skewed by the relatively high licensing fees that the city of Steamboat Springs charges. Steamboat Springs requires a \$9,165 initial licensing fee, as well as a \$9,165 annual renewal fee. Steamboat Springs is charging \$3,255 more than the next highest jurisdiction, which is Oak Creek at \$5,910.

Three irregularities stood out from the licensing fee comparison. The city of Durango is the only jurisdiction to charge both an annual renewal fee and an annual operating fee. Summit County is the only jurisdiction to charge different amounts for retail licenses than they do for cultivation, product manufacturing, and testing facility licenses. Summit County charges \$3,065 for an initial license for retail marijuana shops and only \$2,250 for cultivation, product manufacturing, and testing facility licenses. Out of the twenty localities that issue retail marijuana licenses, only half charge an application or operating fee.

## **Local Taxes**

The state of Colorado permits incorporated localities to charge three types of local taxes, separate from the state required taxes. Jurisdictions can charge excise taxes, sales taxes, and occupation taxes on retail marijuana at their own discretion. Excise taxes are indirect taxes that are charged as a fixed percentage on the amount of marijuana that is being sold. The excise tax is calculated by multiplying the quantity of retail marijuana by the average market rate at the time, then multiplying by 15 percent. Excise taxes are only imposed on the first transfer of sale from the cultivator to the retail marijuana store. The cost of marijuana at the store will include the

excise taxes. Sales taxes are directly imposed taxes on sales from a retail marijuana store to the consumer. Occupation taxes are imposed to compensate jurisdictions for the use of its services and facilities. Occupation taxes are levied at a fixed rate and imposed on every individual transfer. Below is a table showing the types of local taxes that jurisdictions within the study area impose on the retail marijuana industry.

**Table 5.3 – Local Taxes Enforced on Retail Marijuana Sales**

<b>Jurisdictions</b>	<b>Type of Tax</b>		
	<i>Excise Tax</i>	<i>Sales Tax</i>	<i>Occupation Tax</i>
<i>Counties</i>			
Eagle	-	-	\$5.00 per transaction
LaPlata	-	-	-
Pitkin	-	-	-
Summit	-	-	-
<i>Cities Above 5,000 Population</i>			
Glenwood Springs	-	-	-
Aspen	-	-	-
Carbondale	5%	5%	-
Durango	-	-	-
Eagle	-	-	\$5.00 per transaction
Parachute / Battlement Mesa	5%	-	-
Rifle	5%	5%	-
Steamboat Springs	-	-	-
<i>Cities Between 1,000 - 4,999 Population</i>			
Oak Creek	-	-	-
Hayden	7.5%	-	-
Silt	-	-	-
Basalt	-	5%	-
Breckenridge	-	5%	-
Frisco	-	5%	-
Dillon - Keystone	-	-	-
Silverthorne	-	5%	-



A comparison of licensing fees shows that out of the twenty legalized jurisdictions, ten are imposing some type of additional local tax on retail marijuana sales. Six municipalities have imposed a 5 percent local sales tax, making it the most popular form of taxation. The town of Eagle and Eagle County are the only two jurisdictions that are charging an occupation tax (\$5 per transaction). Three municipalities are charging a 5 percent excise tax and one is charging a 7.5 percent excise tax.

An interesting occurrence, is the resistance of communities to impose taxes on the retail marijuana industry. In response to this question, a city planner from Oak Creek said, “When we decided to go ahead and permit the retail marijuana industry we wanted to go all in, we didn’t want to inhibit the businesses from making money.” A planner from Parachute stated that they did not want to impose additional local taxes, because they wanted the retail marijuana industry within the town of Parachute to have a competitive advantage in comparison to nearby communities. Parachute is located along Interstate 70 near two other towns that allow marijuana sales: De Beque and Silt.

## **Land Use – Distance Buffers and Caps on Licenses**

### *Distance Buffers*

When developing land use regulations for the retail marijuana industry, most jurisdictions approached it in the same manner that they would liquor stores or sexually-oriented businesses. Localities were charged with developing their own distance regulations that best suited their individual community. The focus of the distance buffers were to keep marijuana operations at appropriate distances from conflicting land uses such as schools, churches, parks, half-way

houses, residential neighborhoods, and other marijuana facilities. An emphasis was placed on the well-being of school-aged children.

Originally, the Implementation Task Force recommended placing 1,000 ft. buffers from all schools and parks; however, this led to a myriad of local spot zoning issues. Spot zoning occurs when retail marijuana businesses are allowed to operate in a zone that is not designated for their use. An example of this is retail marijuana stores in Eagle being allowed to operate in industrial zones where no other commercial activities are occurring. The retail stores are often allowed to operate in these zones because of the shortage of land that is left available for marijuana facilities after the distance buffers are applied. On the following page is a table showing the distance requirements for marijuana businesses in relation to schools, parks, and other marijuana businesses within the study area.

**Table 5.4– Distance Buffers for Retail Marijuana Operations**

<b>Jurisdictions</b>	<b>Land Use</b>			
	<b>Counties</b>	<b>Parks</b>	<b>Schools</b>	<b>Other Retail Businesses</b>
Eagle	200 ft.	500 ft.	200 ft.	
LaPlata	1,000 ft.	1,000 ft.	-	
Pitkin	1,000 ft.	1,000 ft.	-	
Summit	-	1,000 ft.	500 ft.	
<b>Cities Above 5,000 Tot. Pop.</b>				
Glenwood Springs	500 ft.	500 ft.	900 ft.	
Aspen	-	500 ft.	-	
Carbondale	500 ft.	500 ft.	400 ft.	
Durango	250 ft. *	1,000 ft.	1 per block	
Eagle	1,000 ft.	1,000 ft.	-	
Parachute / Battlement Mesa	500 ft.	500 ft.	150 ft.	
Rifle	1,000 ft.	1,000 ft.	-	
Steamboat Springs	1,000 ft.	1,000 ft.	1,000 ft.	
<b>Cities Between 1,000 - 4,999 Tot. Pop.</b>				
Oak Creek	-	1,000 ft.	-	
Hayden	500 ft.	500 ft.	-	
Silt	500 ft.	500 ft.	500 ft.	
Basalt	500 ft.	1,000 ft.	-	
Breckenridge	500 ft.	500 ft.	-	
Frisco	500 ft.	500 ft.	700 ft.	
Dillon - Keystone	300 ft.	1,000 ft.	-	
Silverthorne	500 ft.	500 ft.	1,000 ft.	

\* Durango - 250 ft. buffer from parks with playground equipment only.

A comparison of distance requirements shows that the most commonly used distances for schools are 1,000 and 500 ft. Out of the twenty jurisdictions listed ten require 1,000 ft. buffers and ten require 500 ft. buffers around all types of schools. For parks, the most commonly used distance is 500 ft. All twenty jurisdictions require a buffer around schools; however, three do not require any type of buffer around parks. The city of Durango only requires buffers around parks that contain playground equipment. Ten jurisdictions enforce a distance buffer around other retail marijuana businesses. These distances range from 150 ft. to 1,000 ft. The city of Durango allows only one retail business per city block, within the central business district.

Distance requirements are often customized to best fit the community that they are serving. With regards to the sample area, there are two styles of distance buffers that are used: absolute distance buffers and direct pedestrian path buffers. Absolute distance buffers use direct distances from the businesses, without regard to pedestrian paths or relative locations. Buffers that use direct pedestrian paths take into account actual physical barriers to pedestrian access, such as: tree lines, highways, bodies of water, and other natural and man-made barriers.

The issue of spot zoning and the lack of commercial and warehouse space, available for retail marijuana use, were a common themes throughout the interview process. Planners repeatedly stated that the 1,000 ft. state recommended buffers often resulted in spot zoning, which forced retail marijuana facilities to cluster in industrial zones or wherever land was available. Many municipalities blame this on a lack of physical space within their city limits. For example, the town of Oak Creek is only 2 square miles. To account for the lack of land, the town decided to only place buffers around the schools and not parks or other marijuana businesses.

The town of Carbondale also faced spot zoning issues. Carbondale initially used the 1,000 ft. state recommended distance buffers. Due to a lack of available space for retail marijuana businesses, the town decided to decrease the distance buffers to 500 ft. By using this custom or ‘smart buffer’ design, the town was afforded more wiggle room to provide space for the industry. Carbondale also adjusted their buffers by using direct pedestrian paths, instead of the absolute distances from the facilities.

Although many jurisdictions expressed concern regarding the clustering of retail marijuana facilities, some localities encouraged it through their land use regulations. The towns of Eagle, Rifle, and Steamboat Springs have limited retail marijuana operations to certain parts of town. Eagle limits retail facilities to one heavy industrial zone on the outskirts of town. This

was done intentionally to keep the businesses hidden and isolated. A planner from Eagle stated, “The area of town that we designated for recreational marijuana is kind of like our incognito red light district.”

In Steamboat Springs, keeping marijuana businesses away from parks and the downtown district was a focal point for the city. As a result, the city zoned retail marijuana in an industrial area on the opposite end of town, where tourists seldom visit. The planner interviewed expressed concern over the spot zoning of retail marijuana facilities. The zoning designation along with the absolute 1,000 ft. buffers around schools and parks, greatly limit the available space for marijuana operations. The interviewee stated that they would like to see the city utilize a more rational buffer system that would take into account direct pedestrian paths, which would allow for more properties to become available for recreational marijuana facilities.

By limiting available properties through zoning and distance buffers, communities are essentially treating retail marijuana businesses as LULUs. Out of the nine jurisdictions interviewed, which allowed for recreational marijuana licensing, seven of the nine interviewees stated that the marijuana businesses have been treated as LULUs. At least two planners voiced concern about the unfair treatment of retail marijuana land uses. Both interviewees felt that their community could benefit economically by allowing marijuana retail stores in the downtown districts, instead of constraining them to industrial zones.

### *Caps on Number of Licenses*

In addition to distance regulations, jurisdictions can also limit the number of retail marijuana operations by placing caps on the number of available licenses that can be issued. Caps on licenses is a tool that municipalities can use to appease community members that are

against the marijuana industry. It is also used to preserve the character of certain communities by ensuring that towns do not become clustered with recreational marijuana businesses. Below is a list of localities that have placed hard caps on the number of permitted licenses for retail marijuana operations, within the study area.

**Table 5.5 – Caps on Number of Permitted Licenses**

<b>Jurisdictions</b>	<b># of Licenses Permitted</b>
Steamboat Springs	3
Carbondale	5
Rifle	4
Eagle County	8
Basalt	2
Eagle	1 per 5,000 residents
Silverthorne	4

A comparison of jurisdictions that have placed caps on the number of available licenses that can be issued, shows that caps range from two to eight. Each jurisdiction has their own reasoning for limiting the number of retail operations within their locale. During the interview process, three interviewees stated that at least one of the reasons for the hard cap was to prevent negative impacts on the community’s image. The town of Eagle has limited the number of licenses to one per every 5,000 residents. Eagle currently has a population of 6,503. This cap essentially limits the town to one retail marijuana facility. In an interview with a planner from Eagle, the planner stated that the cap was initially used as a precautionary tool, while the town tested the impacts that the first facility would have on the community. The interviewee suggested that the town’s planning board is looking to remove or raise the cap in the future.

## **Operational Regulations**

An analysis of retail marijuana ordinances showed that several exclusive operational regulations are being imposed on retail marijuana facilities. Categories of regulations include: restrictions on signage and advertisement, requirements for odor mitigation devices, restrictions to operational hours, twenty-four hour required surveillance, exterior lighting requirements and requirements on the amount of produced marijuana in relation to sold marijuana for retail shops. The majority of reviewed ordinances followed the state of Colorado's recommended regulations. However, there were instances of localities imposing special restrictions that went beyond the state's requirements.

The Colorado Marijuana Enforcement Division places required regulations on retail marijuana signage, such as: rules forbidding marketing towards minors, rules forbidding the marketing of the safety of the product, and rules forbidding marketing on any street, sidewalk, park, or public place (Colorado Dept. of Revenue, 2013). Out of the twenty legalized jurisdictions studied, nine placed an additional regulation outlawing the use of any graphic or image that depicts any part of the marijuana plant on any signage or storefronts. Other additions to the state's required signage regulations include requiring warning signs for loitering, signs stating that possession and distribution of marijuana is a violation of a federal law, signs stating that the smoking of marijuana within certain distances of facilities is unlawful, and signs stating that the consumption of marijuana in public is prohibited by state law.

### *Operational Hours*

One operational regulation that varied greatly between jurisdictions was the permitted operational hours for retail marijuana stores. Colorado state law forbids establishments to sell,

serve, distribute, or initiate the transport of retail marijuana between the hours of 12:00 AM and 8:00 AM (Colorado Dept. of Revenue, 2013). Local jurisdictions are permitted to further restrict these hours. Most locales approached retail marijuana operational hours in the same manner that they approached liquor stores or sexually-oriented businesses. Regulations were put in place primarily for the safety of the community and to prevent a potential rise in crime during night-time hours. Below is a table showing the permitted operational hours for retail marijuana shops in the jurisdictions within the study area.

**Table 5.6 – Restrictions on Operational Hours**

<b>Jurisdictions</b>	<b>Operational Regulation</b>
<b><i>Counties</i></b>	
Eagle	9:00 AM to 7:00 PM
LaPlata	8:00 AM to 8:00 PM
Pitkin	9:00 AM to 9:00 PM
Summit	8:00 AM to 7:00 PM
<b><i>Cities Above 5,000 Tot. Pop.</i></b>	
Glenwood Springs	8:00 AM to 7:00 PM
Aspen	-
Carbondale	11:00 AM to 10:00 PM
Durango	8:00 AM to 8:00 PM
Eagle	11:00 AM to 7:00 PM
Parachute / Battlement Mesa	9:00 AM to 9:00 PM
Rifle	-
Steamboat Springs	8:00 AM to 7:00 PM
<b><i>Cities Between 1,000 - 4,999 Tot. Pop.</i></b>	
Oak Creek	8:00 AM to 8:00 PM
Hayden	-
Silt	10:00 AM to 10:00 PM
Basalt	8:00 AM to 12:00 AM
Breckenridge	8:00 AM to 10:00 PM
Frisco	8:00 AM to 10:00 PM
Dillon - Keystone	8:00 AM to 9:00 PM
Silverthorne	9:00 AM to 10:00 PM



The permitted opening times for retail marijuana shops ranged from 8:00 AM at the earliest to 11:00 AM at the latest; permitted closing times ranged from 7:00 PM at the earliest to 12:00 AM at the latest. Three Jurisdictions (Aspen, Rifle, and Hayden) do not have an operational hour regulation within their retail marijuana ordinances. In an interview with a planner from the city of Carbondale, the planner stated that although the town's regulation allows for retail shops to remain open until 10:00 PM, the businesses owners informally agreed to close their stores by 7:00 PM. The interviewee said that this was a decision made by the business owners in attempt to avoid discrepancies within the community.

#### *Odor Mitigation*

Upon a review of the Marijuana Enforcement Division's, *Permanent Rules to the Colorado Retail Marijuana Code*, I discovered that no requirement for odor mitigation plans or mandatory devices are cited (Colorado Dept. of Revenue, 2013). However, during the analysis of local ordinances I found that out of the twenty legalized jurisdictions, thirteen require some type of odor mitigation plan during the application process. In an interview with a planner from Glenwood Springs, the interviewee said that the mitigation of odor from the cultivation facilities was one of the top concerns of the planning board, during the development of the city's recreational marijuana ordinance.

These odor mitigation requirements most likely resulted from complaints by local residents about the smell that is associated with marijuana facilities. The Denver Pollution Prevention Partners – Best Management Practices states, “Offensive odors can easily migrate in and around the marijuana cultivation site and some strains produce odors that are detectable in the surrounding neighborhoods as well as adjacent tenants. All marijuana cultivation operations

should employ ventilation and odor control that is adequate for the size of the operation” (D.P.P.P., 2011). The group goes on to list three odor control technologies that have been proven to control odors from grow operations. These are activated carbon filtration systems, negative ion generation machines and masking agents (D.P.P.P., 2011).

The majority of ordinances analyzed require a general odor mitigation plan to be attached with the initial license application. For example, the city 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 design for the purification of air and odor is approved by a professional licensed mechanical engineer to the standards contained in the local regulations requiring proper ventilation systems so that odors are filtered and do not interfere with adjoining businesses. Although odor mitigation systems are required, smell remains an objectionable aspect. Complainants may truly believe that they smell marijuana odors from a facility, but upon investigation planners or other residents may not smell the odor.

### **Reported Impacts from Amendment 64 in Interviewed Jurisdictions**

This section uses only data gathered from responses to the interview question, “*Has your jurisdiction noticed any positive or negative results from the legalization of recreational marijuana?*” Many of these answers are simply anecdotal observations from interviewees and may not be representative of the experience by others in that location or across rural Colorado. Although some of these responses have the potential to be biased in nature, the data collected can still serve to inform jurisdictions of potential negative and positive impacts from the retail marijuana industry.

### *Positive Impacts*

The most commonly cited impact from the approval of Amendment 64 was the positive effects that the industry has had on local revenues through the collection of taxes and licensing fees. Out of the nine legalized jurisdictions interviewed, all nine stated that they have noticed an increase in sales tax revenues following Amendment 64. A planner from the town of Eagle stated, “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 recreational marijuana operations. Oak Creek charges a “Plant Investment Fee”, which is assessed based on the size of transformer that is powering the facility. These fees average \$50,000 per cultivation center. The town used this money to employ an additional police officer. A planner from Moffat County (which has prohibited marijuana sales) said about marijuana sales taxes, “The negative impacts from the decision to ban all recreational marijuana activities, is the loss of potential tax revenue and the loss of revenue from cultivation permit fees that would have been accessed.”

Five of the nine legalized jurisdictions interviewed stated that the retail marijuana industry has positively affected their community by helping to fill vacant warehouse, commercial buildings and downtown storefronts. “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 town of Rifle. In the town of 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.”

### *Negative Impacts*

Seven out of the fourteen jurisdictions interviewed reported no negative impacts from the legalization of recreational marijuana. Three interviewees reported increases in the amount of homeless people in their communities. Planners from La Plata County and Glenwood Springs stated that they were unsure if the rise in the homeless population was directly related to the legalization of marijuana. A city attorney from Fort Morgan stated that Riverside Park, a local park, has turned into ‘tent city’ and become a gathering place for homeless people. The city attorney believed that this was directly related to the marijuana industry.

Interviews from Carbondale, Fort Morgan, and Rifle revealed that there has been increases in marijuana usage at the youth level. Fort Morgan does not permit the sale of marijuana; however, the small highway town of Log Lane, only one mile away does. As a result, the average number of minors in possession of marijuana has increased from six per year to sixty per year, since the legalization of retail marijuana. The city attorney stated that the average age of conviction has dropped from the mid-twenties to around seventeen years of age. “As a city prosecutor, seeing the average age of possession charges drop from mid-twenties to the high school ages is very concerning.” The interviewee felt that most of the products coming into Fort Morgan could be traced back to the shop in Log Lane.

Planners from La Plata County and the city of Durango expressed concerns over the amount of government staff time that has been spent processing and reviewing retail marijuana applications. In La Plata County, the planner interviewed said that they were forced to hire an additional staff member, whose primary duty is to process and review marijuana applications. Lastly, the planner from Oak Creek stated that board members have complained about the lack of industrial diversity that has developed due to the marijuana industry. However, the interviewee

then joked that there was a lack of any type of industry in the town before the legalization of recreational marijuana.

In an interview with a planner from the town of Parachute, negative consequences from the legalization of recreational marijuana were discussed. The planner stated that an anti-marijuana activist group called, “Let the People Vote”, had recently filed a lawsuit against the city of Parachute. The group was also actively boycotting businesses that supported the marijuana industry. The interviewee felt that this group was dividing the community and stated that the local church community had been hit the hardest. Parachute, unlike the majority of jurisdictions within the study area, chose not to follow the voter mandate. The city originally had a ban on marijuana operations, until the board of trustees voted to lift the ban in June of 2015. The planner said that the potential for economic development was the sole reason for the reversal of the ban.

Impacts from the recreational marijuana facilities are difficult to quantify for several reasons. The first is the relative infancy of the industry. Recreational marijuana has only been permitted in Colorado for a little over two years. This means that there has not been a sufficient amount of time to develop statistics regarding negative and positive impacts. A second issue when determining impacts is the individual nature of the results. Every community possess different characteristics, values and perceptions regarding the legalization of marijuana. Negative or positive impacts reported by one community, may not be viewed in the same manner in other towns across the state. Lastly, reported impacts do not always have a clear nexus to the marijuana industry. For example, increases in homeless populations were noted in several communities, but these observations may or may not be related to the presence of marijuana businesses. The connection is still unclear.

In many interviewed jurisdictions there were reports of both positive and negative impacts. However, during the interview process I noted that planners were far more likely to elaborate and provide additional data on positive impacts, while they were more inclined to merely glaze over the negative impacts. Interviewees tended to dismiss the negative impacts, suggesting that these may have been derived solely from anti-marijuana constituents. Due to the qualitative nature of the reported impacts, it is important to take each case individually and refrain from generalizing any of the reported results.

## **Chapter 6 - Discussion**

### **Introduction**

The following chapter contains a dialog over the reported findings during this research. The discussion connects elements of the literature review to the results of the research. Land use responses to marijuana facility siting is discussed through the NIMBY and LULU and proximity issues that were found throughout the majority of the study area. Potential policy responses to the legalization of recreational marijuana are discussed. The taxation of recreational marijuana serves as the focal point of the debate regarding the future of retail marijuana policy in rural Colorado.

### **Land Use Response**

#### *The NIMBY and LULU Discussion*

A significant outcome from the interview process came from the discussion with city and county planners concerning the treatment of retail marijuana facilities as NIMBYs or LULUs. All fourteen interviewees reported that marijuana businesses had been treated as NIMBYs by certain segments of the communities. Interviewees were often less willing to say that their local governments considered marijuana businesses as LULUs. However, the common use of distance buffers, license caps, and operational regulations would indicate otherwise.

Planners are often the first line of communication when dealing with NIMBY complaints. They are charged with handling the challenges of responding to public opposition, promoting inclusive participation processes, participating in project reviews, assisting LULU developers, and in some cases gathering evidence to challenge development proposals (Schively, 2007). The

most common objections when citing LULU facilities are health impacts, declines in property values, declines in quality of life due to noise or odor, the decline of the overall image of the community and the overburdening of community services.

Upon investigation of the recreational marijuana industry in Colorado, the question is raised as to whether or not retail marijuana facilities are actually LULUs. In the jurisdictions interviewed, NIMBY complaints were generally associated with declines in property values, potential health impacts and marijuana odors. However, interviewees were quick to dismiss many of the complaints as irrational or undeserved. In several of the municipalities studied the retail marijuana industry has actually helped raise property values. This is because marijuana facilities are often infill projects. When permitted in downtown districts, marijuana business owners have reconstructed historic building facades and helped bring additional foot-traffic to neighboring businesses. Cultivation centers have moved into vacant warehouse spaces and helped generate revenue from once-empty industrial parks.

The most common NIMBY complaint was the presence of odor. In five of the interviewed jurisdictions planners noted some type of odor complaints from residents. However, there were few instances of actual odor issues occurring. Most marijuana ordinances require odor mitigation plans that are approved by professional engineers. Only one planner discussed additional stresses on community services, and that complaint was regarding the planning staff hours that are required for processing marijuana business applications. Zero interviewees mentioned detrimental impacts to their community's image. Although very few of the perceived negative impacts, which have served to define marijuana facilities as LULUs, are occurring; the stigma and NIMBY attitude still exists across the study area.



When cross analyzing the regulation of marijuana businesses versus reported impacts by interviewees, it becomes apparent that there is at least some level of disconnect between the perceived and actual impacts of the industry. For example, many communities are using land use regulations and other regulatory tools to essentially ostracize and alienate marijuana businesses, by zoning them as exclusively industrial uses, placing caps on the total number of issuable licenses and imposing taxes on the industry. With that being said, marijuana remains illegal at the federal level, and health and safety implications should be considered very prudently. It is the responsibility of a community's local government and associated planners to determine the degree to which marijuana businesses should be treated as LULUs.

### *Proximity*

For the majority of the municipalities studied, a lack of physical land was a major contributing factor causing spot zoning and NIMBY issues. The shortage of land means that if communities wish to allow retail marijuana businesses then they must either adjust their distance requirements or allow the businesses to operate in zones that they are not permitted in. For example, the town of Oak Creek decided to allow marijuana businesses to operate within city limits. However, the town is only two square miles. In response to this issue, the city decided to only impose a distance buffer around schools and not parks or other facilities.

During the interview process smart distance buffers were discussed as a possible solution to spatial issues that resulted from using more rigid distance buffers. Planners suggested customizing the buffers to fit their individual community. For example, the town of Durango decided to only impose distance requirements of 250 feet on parks with playground equipment and no buffers around other types of parks. This is because Durango contains a high

concentration of passive open space or parks without specific programming within the city limits. Placing buffers around every type of park would extremely limit the space left available for retail marijuana facilities.

Proximity and spatial requirements should be one of the first factors discussed when developing retail marijuana land use policies. If the policy requires rigid distance buffers or only permits marijuana businesses in special zones, then there is a much higher chance of adverse clustering and spot zoning issues. From the research gathered from interviews throughout rural Colorado, the consensus is that in order to effectively design proximity buffers a community must customize the distance requirements to fit their individual community needs. When designed effectively distance buffers can prevent stores from opening up near children-friendly areas, clustering next to one another and they can serve as a mechanism to preserve the character of certain parts of a town.

## **Policy Implications**

### *Taxation*

An important and debatable component of retail marijuana policy development is the decision whether or not to impose local taxes on the industry. Taxes can be levied via local sales tax, occupation tax, or excise tax. Jurisdictions within the study area varied greatly in their approach to taxation. Of the twenty jurisdictions allowing retail marijuana operations ten chose not to impose any form of additional local taxation, six jurisdictions assess a 5 percent sales tax and two jurisdictions chose to impose a \$5 transaction or occupation tax.

During the study the question as to why ten of the jurisdictions were choosing to not tax the industry arose. During an interview with a planner from Parachute, a town that does not

impose any additional local taxes, the planner stated that the board decided not to tax marijuana businesses because they wanted to create a competitive advantage for the marijuana industry within Parachute. The interviewee explained that there are several retail stores located on Highway 70 only miles from Parachute. When the town decided to allow for retail marijuana operations they wanted the industry to have every opportunity to flourish, and felt that adding additional local taxes could stifle economic growth.

Durango, another town that does not impose local taxes, stated that public infrastructure projects should not be funded by one industry. The planner from Durango went on to say that the board decided not to put the tax option to a public vote, because they were sure that it would be approved. The suggested 5 percent local sales tax would have generated about \$900,000 annually for improvements to city buildings. Despite this, the city stood firm on their stance that additional taxation would be unfair to the industry, considering the high amount of taxes that are already placed on recreational marijuana operations by the state.

Imposing local taxes can help generate much needed revenue for rural communities. For example, the town of Oak Creek was able to hire an additional police officer with the money collected from local taxes on marijuana cultivation centers. However, selecting the proper level and type of taxation is vital for success of the industry. In places like Breckenridge and Denver, the application of local taxes may be less of a burden to marijuana business owners because of the high amounts of out-of-state consumers that frequent ski-towns such as Breckenridge and the Denver metropolitan area. Rural towns like Parachute may be only catering to a local consumer base and therefore additional taxes could have detrimental effects on the local industry. Determining how to best tax retail marijuana operations should be well thought out and tailored to fit the individual character of the community the taxes would serve.

## **Chapter 7 - Conclusion**

This report aimed to answer two questions: 1) How have jurisdictions, within the eight micropolitan regions in the state of Colorado, responded to recreational marijuana legalization in their land use ordinances and policies and 2) What factors describe the similarities and differences that exist in their fiscal and legal recreational marijuana policies? By answering these questions, the report has provided a reference for rural jurisdictions that could possibly be charged with the task of developing their own ordinances and land use policies for the regulation of recreational marijuana operations in the future. The decision to prohibit or legalize retail marijuana and the choice of best regulatory practices, will inevitably come down to the politics and community sentiment of the individual locale. This document simply serves as a tool that can be used to inform community planning decisions.

Jurisdictions within the eight micropolitan statistical areas in Colorado have responded to Amendment 64 in a variety of ways. Although the state of Colorado has issued minimum regulations regarding retail marijuana operations, many jurisdictions have taken it into their own hands to design ordinances that best suit the physical and moral character of their respective community. Similarities and differences have been found in the development of licensing fee schedules and licensing caps, distance regulations, types of taxes enforced, operational regulations, and the impacts that have been reported. The same is true concerning the manner in which the initial decision-making process was conducted.

Rural counties and cities that have chosen to regulate and tax the retail marijuana industry have been faced with several difficulties along the way. However, the communities that were interviewed seemed to indicate that the labor has been well worth the benefits gained. Localities

that have chosen to prohibit the industry stand by their decision in the name of their constituents. While these jurisdictions may be missing out on potential tax revenues, the local governments have remained true to the voter mandate. This report has demonstrated that there is no one-size-fits-all solution to the development of marijuana ordinances and regulations. Best practice dictates that local government should work in harmony with the people, to develop custom marijuana regulations that best suit the physical and moral character of their individual community.

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## Appendix A -

### *Attachment 1*

#### **Interview Questions**

- 1.) How did your respective jurisdiction initially respond in the months following the approval of Amendment 64?
- 2.) Would you say that your local government has welcomed or resisted the new recreational marijuana business?
- 3.) As a city planner what are the major issues that you have encountered when working with Amendment 64?
- 4.) Since the approval of Amendment 64, what land use policies has your jurisdiction enacted concerning the location of recreational marijuana shops?
- 5.) What specific criteria led to the decisions that were made by the planning board? (i.e. public or political opposition, public or political favor, market demands, effects on crime rates, effects on land values)
- 6.) How have future land use strategies and comprehensive plans been altered to accommodate or prohibit the new industry?
- 7.) Would you say that recreational marijuana businesses are being treated as 'Locally Undesirable Land Uses' (L.U.L.U.) or 'not in my backyard' (N.I.M.B.Y.) uses by the local government or the community?
- 8.) How has the community overall responded to these ordinances and/or policies?  
Negatively? Positively?
- 9.) Has your jurisdiction noticed any positive or negative results from the legalization of recreational marijuana? (I.E. changes in crime rates, sales taxes, land values, etc.)
- 10.) What was behind the city of Frisco's decision to not allow Marijuana Testing Facilities?

