



MEMORANDUM

To: Nederland Board of Trustees
From: Alisha Reis
Date: November 8, 2012
Re: Administrator's Report

AMENDMENT 64 IMPACTS ON NEDERLAND

As everyone likely knows, Amendment 64 – which legalized marijuana for recreational use – passed on Election Day. State, local, and undoubtedly, federal, officials are now looking toward what that will mean for local communities. The Colorado Municipal League (CML) has issued some preliminary guidance on the issue (attached), as has Mountain States Employers Council (MSEC) in relation to workforce issues (also attached). Colorado Attorney General John Suthers has indicated he will support the will of voters, though he expects federal action on the initiative, according to various news reports following the Nov. 6 vote. The law won't become effective until the vote is certified, likely not until about mid-December.

The amendment allows for possession of up to one ounce of marijuana by people 21 and older, as well as the ability to grow up to six plants for their use. It does not indicate any change to the existing construct for medical marijuana, and retail spaces for non-medically specific marijuana sales are not expected until at least 2014. The Colorado Department of Revenue will again be tasked with developing regulations to implement Amendment 64's retail sales provisions, and it has until July 1, 2013 to do so. Local communities may opt out of allowing marijuana retail establishments starting in the November 2014 statewide General Election. According to CML, "Municipalities should opt whether to adopt: 1) a prohibition or 2) local restrictions on the time, place, manner and number of retail marijuana operations in their jurisdiction before July 1, 2013."

One issue that is not clarified by Amendment 64, nor the current medical marijuana regulations, is the issue of home grows. Nederland has a substantial presence of these, with many homes being used as grow houses in the community. This has led to a significant tightening of the residential rental market in town, as well as habitability impacts to various neighborhoods. The constitutional nature of both the MMJ amendment and Amendment 64 presents an added challenge to enforcement. I have spoken with CML staff to gauge the tone of enforcement on this issue in the state, and learned that it has not yet been litigated. Town staff has been awaiting litigation of this issue by a larger municipality with the resources to carry the case to decision prior to engaging in active enforcement of grow houses (some of which are

engaged in grow activity in residential areas, counter to Town regulation). We have not yet experienced danger issues with such homes, but the issue is on our radar.

Also on our radar is the phenomenon of “marijuana tourism,” which we have seen increase in town since the 2010 establishment of dispensaries and decriminalization of marijuana possession in town. While increased tourism has boosted the Town’s sales tax receipts in the past two years, we have also experienced an increase in more violent crime in town particularly in 2012. I recognize that tourism has increased for many reasons, not only our laid back approach to marijuana, but we have seen the community become increasingly attractive to folks looking for that lifestyle element. State tourism officials have said they will not promote Colorado as a marijuana tourism destination, but we understand locally that such promotion won’t be necessary to attract folks to visit for that purpose.

Staff will keep the Board informed as we learn more on the impacts of Amendment 64 to our community and as developments occur.

2013 BUDGET

The final review draft of the 2013 Budget is set to go out to the Board on Nov. 9. Please return any questions or comments to Eva by Nov. 21, so she may make any final adjustments for the Dec. 4 final version for adoption. Eva and I are available in person or by phone for any in-depth explanations that might be needed.

Community Thanksgiving



Remember to come out and share a meal with your neighbors! The event will be at the Community Center from noon to 3 p.m. on Sunday, Nov. 18. See ya there!



To: CML Membership
From: Rachel Allen, CML Staff Attorney
Kevin Bommer, CML Deputy Director
Date: November 7, 2012
Subject: Amendment 64 - Use and Regulation of Marijuana Passes

Colorado voters approve marijuana for consumers at least 21 years old

On November 6, 2012, Colorado voters passed Amendment 64 to Use and Regulation of Marijuana. Amendment 64 provides for persons 21-years-of-age or older to legally consume or possess 1 ounce or less of marijuana without a doctor's recommendation and tax marijuana similar to alcohol. Amendment 64 also creates the framework for a regulatory scheme for retail sales of marijuana.

This memo addresses issues of immediate consideration for Colorado's cities and towns. CML will continue to monitor and report on emerging issues and developments, such as workplace issues, rulemaking, and implementation. Please consult with your municipal attorney to address retail marijuana operations in your municipality.

Marijuana retail sales and home grows

Unless specifically prohibited (see below), special retail stores will be allowed to sell marijuana in a system of licensed establishments regulated the by state and local governments.

Amendment 64 also allows for people to grow up to six marijuana plants in their home or other enclosed, locked space. However, it is not clear at this time how this constitutional protection will interact with local land use powers, particularly any ordinances pertaining to home grows.

Amendment 64 does not change existing medical marijuana laws

Retail operations may be licensed as a medical marijuana center or retail marijuana establishment, not both. Medical marijuana centers choosing to convert to a retail marijuana operation will pay a reduced fee for the marijuana application, but otherwise, Amendment 64 has no impact on the existing medical marijuana regulatory scheme. Local governments may choose to prohibit or license retail marijuana or medical marijuana operations. How your municipality has addressed medical marijuana does not dictate how your municipality will or should address retail marijuana establishments.

Timeline for local prohibition or regulation

Amendment 64 tasks the Colorado Department of Revenue with issuing regulations and licenses for retail marijuana stores by July 1, 2013. Municipalities should opt whether to adopt 1) a prohibition or 2) local restrictions on the time, place, manner and number of retail marijuana operations in their jurisdiction before July 1, 2013.

Local governments may prohibit by council action at any time, but the first opportunity to refer a retail marijuana prohibition question to the ballot is the general election on November 4, 2014. Some municipalities may choose to issue a prohibition, moratorium, or regulations until the voters have the opportunity to be heard at the next general election.

Local licenses may be issued October 1, 2013

In the event that the Colorado Department of Revenue does not issue licenses by July 1, 2013, then cities and towns may choose to issue local licenses starting on October 1, 2013, but there is no requirement for local governments to issue retail marijuana licenses in the absence of a state licensing program.

CML will keep you informed

The League will monitor the Colorado Department of Revenue progress and keep municipalities abreast of developments. This is critical because if the Department of Revenue doesn't issue licenses by July 1, 2013, then municipalities that opt to issue local license will have 90 days to enact a regulation, licensing, and enforcement program.

CML will also keep our members informed on employee-employer issues, as it relates to the use and possession of marijuana in the workplace.

Finally, CML will investigate and report on the complex federal issues that are likely to arise as Amendment 64 is implemented in Colorado. Marijuana continues to be illegal under federal law, and it is possible that a lawsuit challenging the legality of Amendment 64 is forthcoming. That would set up a dynamic discussion of the 10th Amendment and the extent of state sovereignty on this issue.

For additional information, please go to www.cml.org, call (303) 831-6411 / (866) 578-0936 toll free or contact:

- Rachel Allen, CML staff attorney - rallen@cml.org
- Kevin Bommer, CML Deputy Director – kbommer@cml.org



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For Employers, Amendment 64 Raises Many Questions, but Provides few Answers

Employers are justifiably concerned about the passage of Colorado Amendment 64, legalizing marijuana. To understand its impact on employers, it is important to consider how Amendment 64 relates to medical marijuana in Colorado.

Colorado's medical marijuana law has been in effect since 2001. That law states that nothing shall require any employer to accommodate the medical use of marijuana in any workplace. Similarly, Amendment 64 is not intended to require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or growing of marijuana in the workplace.

Relying on a series of cases in other jurisdictions, as well as federal regulations pertaining to the Americans with Disabilities Act, Colorado employers have been able to enforce their drug policies against employees testing positive for marijuana—medical or otherwise—even without direct evidence of on-the-job use or impairment. This is because Colorado's medical marijuana law only decriminalized marijuana for those registered with the state; it did not legalize it.

The distinction between decriminalization and legalization is critical, because Colorado also has a legal off-duty activities law (CLODA) that protects employees from being fired for engaging in legal conduct while off-duty.

With the passage of Amendment 64, it is foreseeable that an employee terminated for marijuana use will argue that CLODA protects them from discharge unless an employer can prove they used—medical or otherwise—marijuana in the workplace. (In fact, at least one case, *Coats v. DISH Network* (2012CA0595), arguing that medical marijuana use is protected by CLODA, has already been filed.)

The problem is compounded by the fact that neither urine nor saliva testing are good indicators of present marijuana impairment.

Employers should take heart in the fact that there are recent court decisions in their favor. For example, in *Haeberle v. Blue Sky Care Connection, LLC* (2011CV709), a Colorado State District Court determined that contracts for the sale of marijuana are against public policy and therefore void, because marijuana remains a Schedule I controlled substance under federal law. It is likely that a similar argument will be made on behalf of employers; i.e., that CLODA does not protect employees against discharge for conduct that is legal under state law but illegal under federal law.

CLODA also provides exceptions when a termination is necessary to avoid a conflict of interest with any responsibilities to the employer or the appearance of such a conflict of interest. These exceptions may play a major role once a lawsuit is brought.

Colorado Attorney General John Suthers has called on the federal government to make known its intentions regarding prosecution of activities sanctioned by Amendment 64 (particularly large wholesale grow operations) as soon as possible in order to assist state regulators and the citizens of Colorado in making decisions about the implementation of Amendment 64. Since the new law may not go into effect until sometime in December, and since the federal government could intervene in the meantime, employers are advised to do nothing differently for the time being. Also, keep in mind that Amendment 64's regulations will be in effect for some time, and if properly drafted, they could provide adequate safeguards to Colorado's businesses.

MSEC will continue to monitor and advise on this issue as more information becomes available.