



DATE: November 12, 2012

TO: County commissioners, council members, mayors and staff

FROM: Eric Bergman, Policy and Research Supervisor

RE: Implications of Amendment 64

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On November 6, the voters of Colorado passed Amendment 64 which amended the Colorado Constitution by decriminalizing the personal cultivation, possession and use of recreational marijuana by persons 21 years or older and regulating it in the same manner as alcohol.

The amendment sets up a regulatory scheme for retail sales of marijuana, which will necessitate additional rulemaking by the state Department of Revenue and enabling legislation by the Colorado General Assembly. The amendment does **not** alter the existing medical marijuana regulatory framework in Colorado, although it remains to be seen what effect the amendment might have on the medical marijuana industry in the state.

It is important to remember that under federal law, possession and use of marijuana is still a crime. Governor Hickenlooper has been in contact with US Attorney General Eric Holder in an attempt to determine what—if any—action the federal government might take in reaction to the passage of Amendment 64. These talks are continuing and CCI will keep counties apprised as to the progress.

Amendment 64 also directs the General Assembly to enact legislation by July 1, 2014, governing the cultivation, processing and sale of industrial hemp – something that is also currently prohibited by federal law.

#### **County Regulatory Options Under Amendment 64**

Under Amendment 64, counties may choose to prohibit or license marijuana cultivation facilities, product manufacturing centers and retail stores. If a county opts to prohibit these facilities, it may do so by ordinance **or** through an initiated or referred ballot measure (similar to the medical marijuana industry). However, if a county wants to put the measure to a vote, it has to wait until the fall of 2014 to do so—well after the licensing of these facilities has begun. As with medical marijuana, a local ban does **not** extend to personal cultivation, possession and use; it only prohibits retail grow operations, product manufacturing facilities and stores from operating.

**All counties in the state will need to decide on a course of action by the fall of 2013.** If a county intends to license these facilities, it must designate a local licensing authority and have licensing regulations in place by October 1, 2013. Once an application is accepted, the state and/or locality will have 90 days to act on the application. Accordingly, the state could see marijuana facilities opening for business by January 1, 2014.

Application fees are capped in the constitutional amendment at \$5,000 and this fee is shared by the state and local jurisdiction. This fee is much lower than the average medical marijuana application fee currently in place in licensing jurisdictions around the state. The measure does allow the Department of Revenue (but not local governments) to increase this fee if it can show that it is insufficient to cover the cost of carrying out this regulatory program. Furthermore, if a medical marijuana facility wishes to convert to recreational sales/cultivation, it will pay a much-reduced application fee.

### **Taxation Under Amendment 64**

Recreational marijuana will be subject to existing state and local sales taxes. Amendment 64 specifically directs the General Assembly to enact a new excise tax (not to exceed 15% initially) upon all marijuana sold. Under TABOR, however, this excise tax will have to be approved by the voters statewide. If established, the first \$40 million generated by this excise tax would be credited to the Public School Capital Construction Assistance Fund.

Marijuana regulation continues to evolve and local elected officials are urged to confer with their county attorneys for more specific legal counsel on how to proceed. CCI will be supplementing this memorandum with additional information as it becomes available and counties are urged to go to the CCI website at [www.ccionline.org](http://www.ccionline.org) for updates. If you have questions in the meantime, please do not hesitate to contact Eric Bergman at 303.861.4076 or by e-mail at [ebergman@ccionline.org](mailto:ebergman@ccionline.org).