

Amendment 64 Implementation Task Force  
Local Authority and Control Working Group  
January 25, 2013

DRAFT Minutes—have not been approved

Colorado Municipal League  
1144 Sherman Street  
Denver, CO, 80203

Meeting convened 12:05pm

Members Present:

Kevin Bommer-Deputy Director, Colorado Municipal League (Co-Chair)

Eric Bergman, Colorado Counties, Inc. (Co-Chair)

Lew Gaiter III, Larimer County Commissioner (via phone)

Lewis Koski, Colorado Medical Marijuana Enforcement Division

Bryan Treu, Eagle County Attorney

Mike Rozycki, San Miguel Planning Director

Cheri Hackett, Associated Cannabis Trades

Mishawn Cook, Tax & License Manager, City of Boulder

Harris Kenny, Reason Foundation

Adam Paul, Lakewood City Council as represented by Janet Young

Wanda James, Owner of Simply Pure

Jason Warf, Colorado Springs Medical Cannabis Council

David Baumgarten, Gunnison County Attorney

James Eklund, Governor's Office of Legal Counsel

Tom Downey, Director, Office of Excise and License, City and County of Denver

Vicki Marble, Colorado State Senator

Gina Carbone, Citizen

Wayne Cauthen, Citizen

Also present: Brandy DeLange, Colorado Counties, Inc.

Not Present: Andy Hill, Department of Local Affairs

As a reminder, the purpose of the workgroup/discussion group is to bring forth items for discussion to the full task force. However, items that may not be met with consensus from this group will still be brought forward to the task force.

Additionally, public comments will be held within the last few minutes of the meeting.

January 11, 2012 minutes approved by acclamation

All recommendations submitted should follow the template sent out to the working group and sent back to Kevin ([kbommer@cml.org](mailto:kbommer@cml.org)) or Eric ([ebergman@ccionline.org](mailto:ebergman@ccionline.org)) in order to minimize offline discussions and ensure compliance with open meetings laws.

**Recommendation #1 Adopt a dual licensing system similar to 12-43.3-301** (all changes can be found on each respective document)

Allows local jurisdictions to deal with implementation of marijuana through either local zoning regulations or through formal licensing.

Question #3

- a. Lewis: County opt-out, would they still have licensing authority if the state fails to act (under this recommendation)?
- b. Bryan: They would have to if the state fails.
- c. Tom: Wordsmith the title to reflect: Double local option—reflecting that localities would be allowed to do the follow:
  - i. Ban or not ban → license or not → defer to the state
- d. Kevin: Remember that even if a locality bans, this can be overturned by a voter initiative in 2014, therefore it's important to have framework in place.

Question #4

- a. Kevin: How does (e) of Section 5(e) and (f) play into the recommendation?
- b. Bryan: This is in the case that the state does nothing, localities can't NOT do anything—something has to be done affirmatively.
- c. Kevin: I think that (e) is potentially being misinterpreted—key language can be found on line 30, where local governments are required to license if the state does nothing (but localities are not obligated to license, etc if the states does follow through).
- d. Bryan: 1284 created a check and balance (that has not been addressed through Amendment 64).
- e. Kevin: 1284 is a good starting point, but I don't think that local license recommendation have to tie into the language of 5 (e). Counties and municipalities are going to follow the constitution if nothing happens. Lines 32 through 34 provided that if satisfied, licensing will be separate.
- f. **Remove (e) reference from recommendation.**
- g. Tom: Under MMJ localities still receive the physical license even when dealt with local zoning regulations—under the second opt out option, would the state still have to deliver the license to the locality? Or would the locality still have to designate someone as the local licensing authority under 5(e)?
- h. Bryan: Someone would still have to approve at the local level.

- i. Lewis: Would the local government support the state license even if the business hasn't finished zoning reviews? I would propose that the license be sent to (e) as a form of communication.
- j. Kevin: Don't send it to (e), that's only IF the state doesn't meet the deadline stipulated in the amendment.
- k. Wanda: We need to create some kind of timeline for business; with medical marijuana, the process is very confusing and delayed; the state approves an application but local governments may not have—we need something in place to make them move forward.
- l. Kevin: That was largely due to the yearlong moratorium that was put in place—with Amendment 64 there won't be a moratorium to deal with, additionally the amendment has a timeframe set in place.
- m. Lewis: De-coupling will also make things a lot easier—state licensing will be independent, then the money that will be sent to local governments will engage them in the process. Further, this will reduce the burden on businesses, creating an end point.
- n. Cheri: Do you think that they will allow a two year renewal (scheme for recreational marijuana) instead of annually?
- o. Eric: It is unlikely that localities would want to do something like that—they'd probably lean towards annually.
- p. Harris: I don't think localities that haven't set up local licensing authorities should be allowed to accept their designated half of the application money from the state.
- q. Mishawn: Incentive would be (to the business) non-compliant and only have state approval, in the event that the state approves first and the locality doesn't (or doesn't issue a license)?
- r. Jason: Could it become conditional at the state level?
- s. Mishawn: Apply to renewals?
- t. Kevin: Apply to background checks, etc?
- u. Senator Marble: Would they (localities) still need just cause for not approving an application?
- v. Kevin: In following the Liquor Code, if there was a dispute about the cause, it would go to the district court.
- w. Wanda: There also needs to be an allotted amount of time to fix whatever the business is not in compliance with.
- x. Mishawn: In Boulder, businesses have the opportunity to fix the small things (things that can be easily changed, etc). The rules and regulations are clear and if the business doesn't comply after inspection, then we have a larger problem.
- y. Tom: Denver operates similar to Boulder in this regard. There are a number of reasons that the business may not be approved — this applies to all businesses, not just medical marijuana. For example, if a check bounces, failed a property inspection, etc. It doesn't matter if the state approved the business, if they don't meet our regulations, we can't approve their application.
- z. Kevin: It's unfortunate that the state processes applications first—the amendment creates a problem with a language trigger.
  - aa. Wanda: Businesses still need time to rectify any of these issues.
  - bb. Tom: That's in place with the dual-licensing process. Really, I would think that businesses would want to avoid some timelines, as it would speed up the time they would need to comply with the smaller things.
  - cc. Lewis: With concurrent review there is some time to rectify built in. Also, with too many time restraints, localities may be more compelled to take negative actions (i.e. more restrictive, etc).
  - dd. Mishawn: Amendment 64 is counterintuitive to medical marijuana—we don't want to change the application fee until we know that the business is good to go.
  - ee. Cheri: What about when businesses are trying to proceed and are waiting on things out of everyone's control (fingerprints)?

- ff. Eric: Wouldn't the 90 day timeline require there be action?
- gg. Lewis: If localities want to accept requirements like fingerprints on merit, they can.

Mike: Accept the proposal—defer to state if necessary.

Question #5: approved with the addition of "i" indicating the use of the criminal code.

Question #6: approved      Question #7: approved

Question # 8: approved      Question #9: approved

Question #10: Revenue highlighted

Question #11: approved      Question #12: approved

Question #13: approved

**Recommendation #2 Adopt legislation that clarifies availability and limitations to funding mechanisms for local jurisdictions licensing recreational marijuana businesses.**

Question #3

- a. Bryan: We want to know that if the state charges more than \$5,000, will localities still get half of that money or will they be capped at the \$2,500 amount? 5(f) needs more clarity. Further, we need to know how much an operating fee may be/cost.
- b. Kevin: Regulatory group is working on this issue.
- c. Lewis: The Department [of Revenue] will articulate any increases in fees—the amendment stipulates half of that amount goes to the locality—if this is not enough at the local level, they can raise application/licensing fees to offset costs.
- d. Kevin: Fees can only cover the costs of operation, as defined by TABOR. Once this exceeds the operating cost it becomes a tax and has to go to the vote of the people.
- e. Tom: Denver's application fee is higher than prescribed in Amendment 64, we want to be sure nothing precludes us from collecting these.
- f. Mishawn: Boulder anticipates a higher cost to the city with the implementation of recreational marijuana.
- g. Bryan: No clear restriction on licensing fees, regardless of the state moving forward.
- h. Tom: Some place may turn their application fees into operating fees if they can't exceed the state application fee. However, does this open them up to a lawsuit?
- i. Mike: We just need to make sure that we (local governments) are able to defray the costs of permitting.

Question #4: approved with the addition of 5(g)

Question #5: approved      Question #6: approved

Question #7: approved      Question # 8: approved

Question #9: approved      Question #10: approved

Question #11: approved      Question #12: approved

Question #13: approved

### **Recommendation #3 Separate but coordinated authority**

Will be reworked and submitted via recommendation template.

- a. David: We wanted to address open and public use at the local level—allowing them to regulate as they see fit.
- b. Harris: We see the state as the principle actor.
- c. Kevin: In regards to public consumption, it's tied to personal use and would probably be similar to open container laws.
- d. How would the state vs. local concerns be applicable in the face of vertical integration?
- e. Mishawn: I understand leaving labeling up to the state, etc, but things such as background checks can't be shared between localities and the state. Additionally, security requirements vary at the local level; for example, we require locks on refrigerators and safes. Finally, building and safety codes vary.
- f. David: We see the state providing the floor, and then allowing localities to go above as they see fit. Overall, we want to limit the authority of the state.
- g. Tom: I would agree—dual licensing would lean heavy on local authority.
- h. Bryan: But if they [localities] want to rely on the state, they can.
- i. With regards to licensing—some localities don't want to license all aspects, they want to pick specific areas—let's amend the proposal to be per license.
- j. Lewis: Who would enforce those codes?
- k. David: This all would be done under separate authorities.
- l. Mishawn: The ability to enforce locally would be supported by Boulder—leaving it up to the locality to decide how much they want/can enforce.
- m. Eric: I see that you listed “taxes” under the state controlled issues but wouldn't “sales tax” fall to the local level?
- n. David: Only those things identified in 64 as state issues should be state issues, the others should remain at the local level.

### **Recommendation #4 Restrictions on advertising –assigned to Consumer Safety and Social Issues and Working Group**

- a. Jason: Advertising and signage should be left up to the local level and not the state.
- b. Gina: Advertising affects kids—we don't need a full throttle of ads.
- c. Mishawn: Recreational marijuana will probably go more center, but sign codes for all businesses are restrictive.
- d. Bryan: Localities should be able to set how restrictive or not they want their signs.
- e. Senator Marble: Business associations already have a process in place that stipulates certain criteria.
- f. Kevin: This is the other working groups' issue, we will take the identified issues to the task force.

Public Comment:

Chris Tanaka: Retail on-site licenses—would allow localities to address the private club issue and limit the chance for a black market. A model needs to be created to address this issue.

Jessica LeRoux, Edibles: Defrayed costs with advertising would be spread evenly with the other type of businesses. Concerned about the labeling standards and the costs faced with in regards to sin tax.

Teri Robnett: Agree that there needs to be a balance between state and local control. Pass-thru jurisdictions also need to be considered. Disposal of waste needs to be considered as well.

Mike Elliot, MMIG: Teen drug use has gone down dramatically since medical marijuana has been passed in Colorado—gone up nationally.

Genifer Murry, Cannlabs: Labs test for potency of cannabis. More education should be available to parents to prevent kids from doing drugs—with dispensaries, kids are less likely or opened to drug use.

\*Minutes from all previous meetings will need to be approved at the start of the following meeting.

Meeting Agenda:

**Next work group meeting will be held on February 8<sup>th</sup>, 12-4 p.m., at CML**

Future meeting dates:

(Tentative) February 1<sup>st</sup>: Possible joint meeting with the Regulatory Working Group

February 15, 12-4 p.m., at CML

Meeting adjourned 3:55pm