



Community-level policy responses to state marijuana legalization in Washington State



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ABSTRACT

Background: Washington State (WA) legalized a recreational marijuana market – including growing, processing and retail sales – through voter initiative 502 in November 2012. Legalized recreational marijuana retail sales began in July 2014.

In response to state legalization of recreational marijuana, some cities and counties within the state have passed local ordinances that either further regulated marijuana markets, or banned them completely. The purpose of this study is to describe local-level marijuana regulations on recreational retail sales within the context of a state that had legalized a recreational marijuana market.

Methods: Marijuana-related ordinances were collected from all 142 cities in the state with more than 3000 residents and from all 39 counties. Policies that were in place as of June 30, 2016 – two years after the state's recreational market opening – to regulate recreational marijuana retail sales within communities were systematically coded.

Results: A total of 125 cities and 30 counties had passed local ordinances to address recreational marijuana retail sales. Multiple communities implemented retail market bans, including some temporary bans (moratoria) while studying whether to pursue other policy options. As of June 30, 2016, 30% of the state population lived in places that had temporarily or permanently banned retail sales. Communities most frequently enacted zoning policies explicitly regulating where marijuana businesses could be established. Other policies included in ordinances placed limits on business hours and distance requirements (buffers) between marijuana businesses and youth-related land use types or other sensitive areas.

Conclusions: State legalization does not necessarily result in uniform community environments that regulate recreational marijuana markets. Local ordinances vary among communities within Washington following statewide legalization. Further study is needed to describe how such local policies affect variation in public health and social outcomes.

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Background

Washington State was one of the first two states in the United States (U.S.) to legalize a retail non-medical (also called “recreational”) marijuana market, including growing, processing and sales, and decriminalization of individual possession of small amounts of product, through voter initiative 502 (I-502) in November 2012. Possession or use by individuals under age 21,

or by adults in amounts greater than specified by the law, driving under the influence of marijuana, home growing for recreational use, and use of marijuana in public remain illegal.

The state was also one of the first to decriminalize possession of limited amounts of marijuana for medical purposes in 1998 (Washington State voter initiative 692); however, there was no state regulatory system to oversee the activity of collectives, medical marijuana authorizers or patients. Industry interpretation of the state's Medical Cannabis Law (ESSB 5073) that was passed in 2011, as well as a partial gubernatorial veto, resulted in hundreds of collective gardens with medical marijuana sales (also sometimes

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called “dispensaries”) operating in Washington as storefronts for personal access without oversight.

Washington's Liquor and Cannabis Board (LCB) agency developed rules for licensing and oversight of recreational marijuana growers, processors and retailers. The LCB determined a maximum number of marijuana retail sales licenses that would be allowed in each city or county area, based on projected demand and with an original statewide maximum of 334 licenses. Recreational marijuana retail sales markets opened beginning in July 2014. Evolving state regulation of the recreational marijuana market was also associated with development of a stronger statewide system to regulate the previously loose medical market. The newly regulated medical market opened in July 2016, integrated within the recreational market system, and with sales of medical marijuana products allowed in recreational marijuana retail stores that have a medical marijuana endorsement.

In response to state legalization of recreational marijuana (and increased regulation of the previously loose legal medical market), some local government entities pursued policies through passage of local municipal ordinances that banned or further regulated marijuana businesses. In fact, local governments in the U.S. should be expected to have some control over and play a role in regulation of marijuana market activities. For example, one common local government function is land use regulation. Typically, local governments establish “zones” to regulate the types of activities that are allowed in given land areas, and allowable densities of activities. Local governments define specific zone types (e.g., residential, industrial, park), classify their geographic areas by zone type, and approve or disapprove proposed activities for those areas based on the zoning, sometimes outright, and sometimes through implied restrictions by limiting land use activity. Additional conditions may also be imposed when a land use is allowed in a particular zone. Therefore, local governments could use zoning to control where and how marijuana businesses can be established (sited), by making it potentially more difficult for those businesses to open. It is possible that a state could preempt this type of traditional local regulatory activity by pre-establishing siting requirements or prohibiting siting of a particular use in specific land use zones.

Washington's land area is divided into 39 contiguous counties with county governments. Typically, multiple cities are located within counties. Article XI, Section 11 of the State of Washington's Constitution authorizes any city, county, town or township to make and enforce within its limit all such local police, sanitation or other regulations as are not in conflict with state general laws. Generally, city governments have legal authority to regulate businesses and other activity through zoning within their boundaries, as well as other activities where explicitly granted the authority by the legislature (Revised Code of Washington [RCW] 70.05.030). County governments have authority to regulate businesses and other activity through zoning in the unincorporated areas (e.g., county areas that are not included in any city boundary) (RCW 70.05.035). Also, county-based public health authorities (e.g., Boards of Health or Health Commissions) have authority to regulate county-wide – including within city boundaries – for designated public health activities (for example, inspection of food service establishments) and county governments can regulate other activities where specifically granted authority by the legislature (RCW 70.05.060). Thus, both county and city governments may have a role to play in the regulation of marijuana businesses under zoning, public health and broad police powers delegated to them by the legislature, as long as their regulation is not in conflict with state law.

A state law preempts the field and makes a local ordinance invalid if the statute or regulation expressly states its intent to preempt the entire field (subject) of the regulation, or if such intent can be implied from the law. This means that local cities and counties cannot pass or enforce ordinances that provide additional

regulations on that subject. The ability of local entities to regulate recreational marijuana (e.g., the degree of “field preemption”) was not explicitly described in the Washington State I-502, and has required clarification. In January 2014, the Washington State Attorney General issued an opinion that the state law passed by voters in 2012 did not preempt Washington's local governments from banning or regulating local marijuana businesses (Ferguson, 2014). As the state continues to add regulatory requirements, there may be questions of implied preemption of the field for aspects of marijuana regulation, or whether local government ordinances conflict with state law, but for now, the Attorney General's opinion stands, leaving much flexibility to local governments.

There are many potential models for regulating marijuana markets. As authors of a recent study analyzing U.S. state laws that legalized medical marijuana (n = 20) noted, “legalization” does not result in a uniform legal environment and there are many variations demonstrated in how states have regulated medical marijuana (Pacula, Hunt, & Boustead, 2014). In other words, “marijuana legalization” should not be considered as a dichotomous condition, but rather a continuum of possibilities for the availability and acceptability of marijuana. Communities within states that have legalized recreational marijuana may similarly have multiple options for regulation when those local entities have authority to regulate marijuana business activity to some degree. As a result, implementation of marijuana legalization may vary from community to community within the state.

Local entities may be motivated to regulate marijuana based on several factors. First, although 55.7% of Washington State voters passed I-502 statewide, the majority of voters in 19 of Washington's 39 counties did not pass the measure, with up to 62% in those counties voting against it (Washington Secretary of State, 2012). Therefore, policymakers in areas of the state that did not pass the measure might wish to more restrictively control the marijuana market based on the preferences of their citizens. Second, legalization of marijuana for recreational use is very new, and the impacts on public health are unknown, but lessons from regulation of alcohol and tobacco suggests that public health – including preventing use among youth, minimizing harms to adult users – is better protected by policies that are often local in nature, such as restricting time, place and manner of operations, limiting youth access, and restricting advertising (Pacula, KilmerWagenaar, Chaloupka, & Caulkins, 2014). Communities that are concerned about mitigating potential negative public health impacts of a recreational marijuana market might wish to take a conservative approach, and support more restrictive policies as the markets open. Finally, Washington's previously loosely regulated but legal medical market could have influenced local decisions on recreational marijuana: many communities saw an explosive growth of dispensaries unlicensed by the state in the two years following recreational marijuana legalization but prior to the recreational market opening, which could have motivated community interest in limiting marijuana-related business activities.

The purpose of this study is to describe local marijuana policy actions within the context of a “legalized recreational marijuana” state environment in Washington State, and to assess the proportion of the state's population that is covered by different regulatory environments at a time period of two years after the opening of the market. The term “policy” can refer to laws, rules or procedures that regulate recreational marijuana business activity; this study focuses on describing city or county ordinances as a key type of policy at the local level.

Methods

A framework for assessing the content of local ordinances (“policy surveillance”) was developed based on an initial marijuana

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