

Policy Surveillance Report

March 2015

City & County Response to Marijuana Legalization in Washington: 2013-2014

About this public health policy report:

Public Health – Seattle & King County coded ordinances from 141 Washington cities with more than 3000 residents, and all 39 counties, examining marijuana business zoning, conditions of operation, and other regulatory tools for medical and recreational marijuana-related businesses. This report identifies baseline local legislative activity. Changes in laws can be viewed in King County's system, LawAtlas PolicyTracker.

Key Findings

⇒ By mid-2014, **fewer than half of** WA's larger local jurisdictions had **zoned** explicitly for medical or recreational marijuana businesses.*

- ♦ **Recreational:** Forty percent (72 cities or counties) zoned for recreational marijuana.

- ♦ **Medical:** Only 34 cities or counties (19%) zoned for medical marijuana. (WA's state law currently allows non-commercial collective gardens.)

*Note: Jurisdictions may instead follow non-marijuana specific use designations (such as general 'retail' or 'processing').

⇒ Local jurisdictions more frequently allow marijuana **retail and medical** establishments **near housing** (in mixed use zones) rather than commercial-only zones.

- ♦ **Size** is the most frequent **restriction**; **no density** restrictions (i.e., number of marijuana businesses per square block or mile) were found.

⇒ **Bans** on medical marijuana collective gardens (sometimes operating as dispensaries) **increased dramatically** between 2013 and 2014—from 21 local bans to 39 bans.

- ♦ There were **more bans in Western WA** than in Eastern WA.

⇒ Some cities are addressing **medical collective gardens/dispensaries** through adopting 1000 foot buffers around **youth-serving spaces**, similar to the state's recreational store buffers, but most have no specific local restrictions. Fifteen of twenty-six cities (fewer than 10% of all cities included in the study) have 1000 foot buffers for medical dispensaries.

⇒ **No jurisdictions** were found to **regulate "medibles"** or private recreational "edibles" lounges, though it is illegal under state law to consume marijuana "in view of the *general public*".

- ♦ **Vaping lounges** for marijuana concentrate were not **explicitly regulated**, but may fall under more local general prohibitions related to electronic smoking devices.

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Background

Washington State is a marijuana pioneer: In 1998, WA voters decriminalized medical marijuana and in 2012, voters approved the legalization of recreational marijuana, including growing, processing and selling it within state boundaries. Siting rules are part of the state-wide recreational marijuana law, including a prohibition on placement of a marijuana business within 1000 feet of a youth-frequented area, such as a school or park. No similar state-level siting or youth access state regulations exist for medical marijuana establishments. Anecdotally, collective gardens operating as commercial medical dispensaries have proliferated in some neighborhoods. The newly legal recreational system has prompted local cities and counties to enact siting and zoning rules for both types of marijuana businesses. Between March and December 2014, 326 producer, 287 processor, and 97 retailer WA recreational marijuana licenses were issued.

Marijuana is the primary drug for 72% of youth in publicly-funded treatment in WA.¹ One survey of school-aged youth in WA shows that 27% of high school seniors reported using marijuana in the last 30 days, as did 18% of sophomores.² The Washington Poison Control Center reported a 33% increase in calls about children exposed to marijuana edibles in 2014 compared to 2013.³ As legal marijuana becomes more widely available, local authorities must decide whether to regulate the industry beyond state law, how to address patient use, and how local governments may act to curb youth access and potential impacts on neighborhoods or populations. This debate will take place within the context of unclear state preemption of local activity, which is currently being litigated. Without clear evidence or evaluation of effectiveness of targeted policies or the public health impacts of marijuana legalization, however, jurisdictions are having to act without a strong evidence base.

The purpose of this study is to identify baseline local legislative activity and create a system to monitor change over time through policy surveillance. The system allows for future research to combine policy context with population health and other data, such as educational outcomes, property values and other measures of community health.

Policy “data” (types of ordinances, specific provisions, land use zones, public versus private use, distance requirements from youth-serving entities, advertising regulation that could limit normalization for youth, and other local regulatory tools) will be monitored through an interactive online system on King County’s website called LawAtlasSM Policy Tracker.

Zoning for Marijuana Businesses/ Establishments

Zoning, Moratoria, Bans

Local jurisdictions typically employed local police powers⁴ to address recreational businesses and collective gardens/dispensaries in 2013-14.

- ♦ **Recreational.** Seventy-two of 180 local jurisdictions studied in WA **zoned** for recreational marijuana businesses (producers, processors, retailers) in 2014, up from 3 in 2013. An additional 56 jurisdictions implemented **moratoria** while studying whether to zone before allowing additional businesses.

Only 14 jurisdictions **banned** recreational businesses outright. More bans occurred in Western WA, which includes the largest urban centers and population. Bans were uniform across all types of businesses, not just producer or retail, for example.

In jurisdictions that zoned, **retail** stores were typically allowed in **mixed use or commercial-only zones**, with 52 allowing in mixed use zones.

- ♦ **Medical.** By contrast with recreational laws, in 2014, only 31 of 180 jurisdictions **zoned** for medical collective gardens/dispensaries, up from 18 in 2013. Thirty-nine jurisdictions **banned** medical marijuana establishments. An additional 35 jurisdictions imposed **moratoria**.

Zoning Conditions

For both recreational and medical marijuana operations, **size of operation** was the primary explicit condition in land use codes. No jurisdiction established **density restrictions** (on marijuana businesses within local areas). Few jurisdictions established **local set-backs** from other non-marijuana

uses (such as residential zones or uses) aside from youth uses.

- ♦ **Recreational.** The state recreational law requires a 1000 foot buffer between marijuana businesses and youth use areas, which are defined as schools, child care, parks, recreation centers, arcades, libraries and transit hubs. Six jurisdictions added **new youth areas beyond state law to be buffered**, including churches, trails, public open spaces, and “establishments providing services to youth.”

- ♦ **Medical.** Fifteen of 26 cities with medical marijuana regulation have a 1000 foot buffer from youth-serving uses similar to state law. (One hundred twenty-six cities do not.) Marijuana collective gardens are allowed as **home businesses** in one jurisdiction and **personal medical growing** is allowed in two.

Other Local Regulatory Tools

- ♦ **Recreational.** Sixteen local jurisdictions make consumption in public a **civil infraction**, either adopting state law by reference or adding their own penalty. Twenty-two establish **nuisance and abatement requirements**.
- ♦ **Medical.** Notwithstanding lack of state regulation of medical collective gardens or dispensaries, no jurisdiction currently imposes

advertising or imposes other conditions on medical operation. Sixteen jurisdictions note applicability or impose specific **public nuisance abatement** requirements.

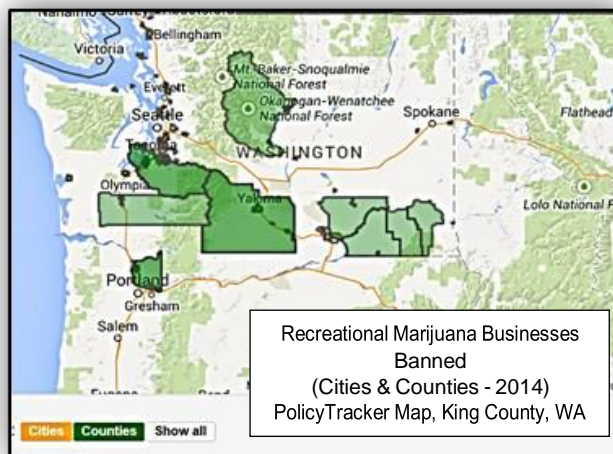
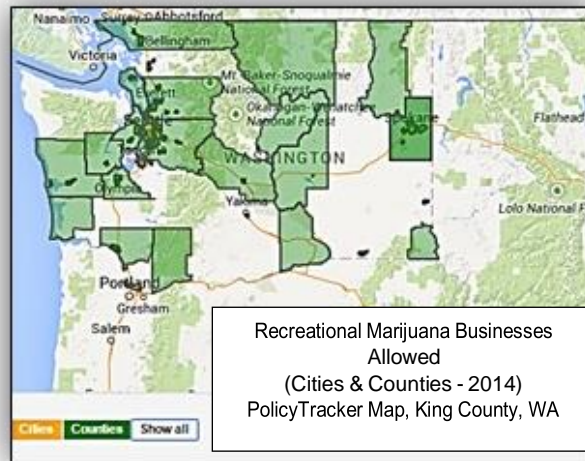
Other local regulatory tools, such as **local excise taxes**, criminal **sanctions**, or **private lounges’ restrictions** for medical dispensaries did not exist when ordinances were reviewed in July 2013 and July 2014 for this study.

Conclusions

Collective gardens are unclearly defined in state law, resulting in evolution of patient dispensaries in many jurisdictions of WA. Local zoning regulation of recreational marijuana businesses, along with a legal statewide system for recreational use, appears to correlate with increasing bans and zoning of medical establishments in the past year. Jurisdictions could be responding to the apparent proliferation of

unregulated dispensaries, as more businesses apparently enter the market space. A recent WA survey of young adults demonstrated that over 37% of young adults who had used marijuana at least once in the past 30 days had gotten it directly from a dispensary or from someone with a medical marijuana card.⁵

Over half of larger (with populations above 3000) jurisdictions in the state had not yet passed zoning ordinances for recreational marijuana businesses by 2014, though a third of jurisdictions included in this research were studying the issue and others may allow businesses under general zoning. (Many jurisdictions may treat marijuana uses no differently from other uses under their land use codes, without marijuana-specific requirements, if a state license is granted.)



As of mid-2014, jurisdictions were not yet employing specific local regulatory tools to address potential public health effects of both medical and recreational legalization on youth use or adult dependence, nor utilizing density restrictions or other tools to mitigate potential disproportionate impacts on certain neighborhoods. It should be noted that adding buffer zones between marijuana businesses and additional types of land uses may contrastingly have detrimental effects on overall legalization by significantly diminishing available parcels for marijuana operations.⁶ Understanding effects of local legal bans on youth use, driving while drugged, and rates of use in neighboring jurisdictions will be important. If the state legislature fails to act to regulate medical marijuana establishments in 2015, watching local government activity in this area can be instructive.

Policy surveillance can be an effective way to continue to monitor the activities and effects of local government regulation of marijuana businesses and legalization.

Methods

All jurisdictions with populations of 3000 or more in Washington (141 cities and 39 counties) were included. Using the pre-set search terms “cannabis” and “marijuana,” we collected all ordinances in effect as of July 1, 2013, and July 1, 2014, utilizing the Municipal Research Services Center, cross-checking with other statewide efforts to monitor local legislative activity (e.g., Association of Washington Cities, Washington State Liquor Control Board, and the Washington State Institute of Public Policy), and a general web search. We developed a codebook, informed by public health interventions for alcohol and tobacco and a national policy dataset on state-level medical marijuana regulation hosted in the national LawAtlasSM system. As we reviewed ordinances, we classified local zoning into seven broad categories (residential single family & residential multi-family, mixed use, urban commercial, office park/business park, light industrial/manufacturing & heavy industrial/manufacturing, rural, and agricultural) for purposes of cross-

jurisdictional comparison. We test-coded a sample of ordinances to confirm that question language was appropriate, made necessary revisions, and then coded the remainder of the policies. Inter-rater reliability testing was conducted. Divergences were discussed and addressed by again revising questions for clarity, and the agreed-upon codes were entered into King County’s LawAtlasSM PolicyTracker system.

Acknowledgments

This Policy Surveillance Report was produced by Public Health, Seattle & King County’s Assessment, Policy Development & Evaluation Unit, by Laura Hitchcock, JD, with support from Amy Laurent, MSPH, and Nancy McGroder, BA. For more information and data updates, contact

data.request@kingcounty.gov or visit

www.kingcounty.gov/healthservices/health/data,

where you can subscribe to e-alerts to receive future policy and other reports and announcements and to utilize King County’s online LawAtlasSM PolicyTracker system to make additional queries and download data from this report.

References

1. Banta-Green, CJ. Marijuana Use: Impact in Washington State. Alcohol & Drug Abuse Institute, University of Washington, June 2013. <http://adai.uw.edu/pubs/infobriefs/ADAI-IB-2012-05.pdf>
2. 2014 Washington State Healthy Youth Survey Facts about Teens and Marijuana. Washington State Department of Social and Health Services. <http://www.askhys.net/Docs/HYS%202014%20Facts%20Marijuana%20mp.pdf> Accessed 3/11/2015.
3. Toxic Trends Report Cannabis January 22nd, 2015. Washington Poison Center. <http://www.wapc.org/toxic-trends-report-cannabis-january-22nd-2015/> Accessed 3/11/2015.
4. The broad powers enjoyed by both public health and planning officials are grounded in a legal principle called the “police power.” The police power is the inherent authority of a government to impose restrictions on private rights in the interest of the general security, health, safety, morals, and welfare. To achieve these communal benefits, the state retains the power to restrict (within federal and state constitutional limits) private and economic interests, including freedom in uses of property.) See e.g., Marice Ashe et al., Land Use Planning and the Control of Alcohol, Tobacco, Firearms, and Fast Food Restaurants, Vol. 93, American Journal of Public Health, 1404-05 (2003).
5. Kilmer, J. Young Adult Health Survey: Marijuana. Young Adult Center for Study of Health and Risk Behaviors at the University of Washington, with support from the Department of Social and Health Services. (2015)
6. L. Smith, oral communication, March, 2015.

About public health policy reports:

Public Health – Seattle & King County monitors the local policy environment to identify what policies are in place and how they vary across jurisdictions and institutions, and to identify opportunities for further policy development or research. This brief is part of an occasional series. See our online [LawAtlasSM Policy Tracker](#) for additional reports, briefs and interactive policy maps and to download the research protocol, data, and codebook (forthcoming) for this project.