

## **Emerging Issue: Medical Marijuana Local Government Authority**

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### Background

With the number of medical marijuana patients and caregivers increasing statewide, several cities and counties have taken steps recently to place limits on medical marijuana businesses. However, without specific legislative authority, many other city and county governments are unable to establish regulatory measures to deal with medical marijuana issues at the local level.

This briefing paper provides information on local government provisions of laws in some other medical marijuana states, as well as examples of Montana laws that give local governments authority to enact standards that differ from state law.

### Local Government Provisions in Other Medical Marijuana States

Three of the four states with state-regulated medical marijuana distribution systems have given local governments the ability to take action on dispensary-related issues.

Colorado earlier this year enacted a new regulatory system for licensing medical marijuana businesses. The law allows cities and counties to:

- before July 1, 2010, adopt and enforce a resolution or ordinance to license, regulate, or prohibit the growth or sale of medical marijuana;
- set specific standards for the issuance of a local license for a medical marijuana business, including distance restrictions between medical marijuana businesses and restrictions on the size of a licensed premise; and
- approve or disapprove a license application before the application is considered by the state, which also must approve it.

In addition, a city, county, or town may — by either a vote of the people or a vote of the governing body — prohibit the operation of dispensaries, growing operations, or businesses that manufacture medical marijuana-infused products.

Maine allows cities and counties to limit the number of dispensaries that may operate in the city or county and to enact "reasonable" zoning regulations that apply to dispensaries.

Rhode Island's law allows the Department of Health to solicit comment from the city or town where the dispensary would be located and allows the department to consider the wishes of the local government in determining whether to approve an application. In addition, the department's administrative rules require applicants to provide evidence that they are complying with local zoning laws for each building that would be used as a dispensary.

### Montana Law and Local Governments

In Montana, local governments have either self-governing powers or general powers. A local government with general powers may exercise only those powers that are expressly given or implied by state law. Most cities, towns, and counties have general government powers.

Local governments with self-governing powers have more latitude in adopting ordinances and regulations. Under 7-1-101, MCA, these governments may exercise "any power not prohibited by [the] constitution, law, or charter." In recent months, some self-governing cities have enacted business licensing requirements or regulations involving the sale or use of medical marijuana.

The Medical Marijuana Act does not expressly allow local governments to take action on issues related to the law. As a result, the authority of a city, town, or county with general governing to regulate medical marijuana is unclear. Some local government officials have suggested that the Act be amended to allow local governments to place some restrictions on the industry.

A number of state laws illustrate how a local government with general government powers obtains specific authority to act in an area over which it would otherwise have little control. For example:

- 3-1-126, MCA, gives a local government the authority to provide additional funds to supplement a district court budget;
- 7-32-211, MCA, allows local governments to authorize reserve peace officers;
- 7-32-212, MCA, prohibits local governments from reducing the authorized number of full-time law enforcement officers through the appointment or use of reserve officers;
- 23-5-171, MCA, allows an incorporated city or town, through its zoning ordinances, to prohibit gambling in certain areas; and
- three different statutes in Title 23, chapter 5, allow local governments to allow various types of gambling to occur between 2 a.m. and 8 a.m. State law otherwise prohibits gambling between those hours.