

Greenlighting Cannabis — What Every Planning Department Needs to Know

Momentum for cannabis legalization is growing nationwide. For communities in states that might be next, the best time to start preparing is now.



In Denver, cannabis production facilities, including the warehouse pictured above, are only allowed in areas zoned for industrial land use. Photo by David Kidd/[Governing](#)

By Daniel C. Vock

The heart of Denver's legal-cannabis production is in dozens of unmarked warehouses, ringed with barbed wire and security cameras, and located amid factories, railyards, construction rental lots, and other industrial buildings. Sometimes these pot-producing facilities sit quite near, and in some cases across the street from, rows of modest single-family houses in predominantly Black and Hispanic neighborhoods.

The reason? Denver recreational cannabis regulations limit cultivation facilities to areas that are already zoned for industrial use. That essentially pushes all the growing activity into a few areas of town — and neighborhoods. The highest concentration of cannabis growing facilities in Denver, for example, is in the predominantly Hispanic neighborhood of Elyria-Swansea on the

Recreational cannabis is currently legal in 15 states. Cannabis is only fully illegal in a total of six states; all others have decriminalized it, allow it for medical use, or have legalized it entirely. Source: [Disa Global Solutions, Inc.](#) Data as of January 2021.

Many other states have decriminalized the drug or authorized its use for medical purposes. Democratic governors in states such as Connecticut, Kansas, Pennsylvania, and Wisconsin are pushing for legalization in their states, too. Meanwhile, in December — for the first time ever — the U.S. House of Representatives passed a cannabis legalization bill. Now that Democrats control both chambers of Congress and the White House, the prospects of similar proposals becoming law has increased, but is by [no means certain](#).

With that kind of trajectory, policy experts say communities everywhere should be thinking about and planning for the eventuality of legalized recreational cannabis. Fortunately, they can look to local jurisdictions in states that have gone before them for lessons on what works — and what doesn't.

Regulatory roulette

From the land-use side, each state has handled the transition differently, giving municipalities different powers to control the placement of the new facilities. Some, like California, allow cities to ban the facilities outright. Others have curbed the powers of local governments, to make sure the new industry is allowed to thrive.

Alan Weinstein, a law professor at Cleveland State University who specializes in land use, says cannabis facilities raise some of the same land-use questions as drug stores or liquor stores.

But there are unique aspects to the cannabis industry as well. One of the biggest is that nobody worries about the crops — like grains or potatoes — that produce alcoholic beverages, but people do have concerns about how and where cannabis plants are cultivated. The fact that cannabis is still illegal at the federal level also means that retail facilities that sell cannabis products by and large cannot use credit cards or anything tied with traditional banks, so they operate almost entirely in cash. While there is little evidence that pot dispensaries have higher crime rates than other types of retail establishments, many localities have required them to install more security features, such as fences and cameras, to prevent crime in the area.

Overall, though, Weinstein says the owners of cannabis businesses are willing to agree to many conditions about where they can locate and what features their facilities must have. That's because many are trying to get a toehold in places where the industry is not already established. They will compete for the ability to set up a medical dispensary knowing that companies that have licenses for medical cannabis are often first in line when a state expands to allow recreational use.

"They're willing to go along with pretty much anything, as long as it isn't going to sort of drive them totally out of business or make it unreasonably impractical to operate," Weinstein says.

At the ready

On the other hand, local planners in places where recreational cannabis is coming need to prepare for a big surge in applications. Planning departments need to be ready to accept, review, and process applications. They need to develop a way to renew and transfer licenses. They need to write their requirements for the building, set up inspection teams, prepare for hearings, and consider what local fees and taxes they can implement.

"The local government has to be prepared to take on a whole new regulatory regime," Weinstein warns. "And yes, you can use the new [tax and fee] dollars to help offset the costs of the administration, but the costs are going to lead the revenue."

Corinne Celko, a land-use attorney for Emerge Law Group in Portland, Oregon, says the spread of the cannabis industry presents a unique challenge for planners and localities.

"If I went on *Shark Tank* today because I had invented a gadget and it was successful, and I wanted to go ahead and sell the gadget and make more of the gadget, it would just fit within local jurisdictions' existing development codes and their use categories," she says. "This is the first time in my career where many local jurisdictions treated cannabis as a completely, totally new use."

Not every jurisdiction has taken that approach, but those that do want to create whole new use categories need to understand how the cannabis industry actually works.



There are 54 cannabis production facilities in the Elyria-Swansea, a primarily Hispanic neighborhood of Denver. Most are unmarked warehouses, ringed with fencing and security cameras, some just across the street from residential homes. Photo by David Kidd/Governing.

For example, if a local government wanted to zone an area for agricultural use to grow cannabis, officials and planners should anticipate warehouses and greenhouses, not fields of row crops. That might make it a better fit for industrial zones in addition to farming areas. One locality where Celko was working wanted to allow the manufacture of cannabis edibles and topicals, but it wanted to prohibit extract processing. Celko had to explain to the planning director that banning extract processing would effectively ban companies from making edibles. "Nobody wants to pick out pieces of grass from their teeth," she says.

But — apart from use designation — planners do have plenty of tools to ensure a smooth rollout, Celko notes. For example, they can work on restrictions on how and when properties are used, such as "dark sky" rules to reduce light pollution in rural areas or odor control regulations that require filtering systems.

Local officials should also be willing to revise policies that aren't working how they intended. One Oregon county, for example, wanted to block cannabis farms from being located near "youth activity centers." But the county did not define what that meant and did not amend the code to provide more clarity. Instead, the Deschutes County Board of Commissioners fought the applicant — one of Celko's clients, a grower — and lost at the Oregon Land Use Board of Appeals and at the Oregon Court of Appeals.

In California, attorney Joanna Hossack says, the rollout of recreational cannabis has been slowed by municipalities that chose not to allow cannabis businesses within their borders. Meanwhile, many business licenses have stalled in cities with long approval processes, especially ones that involve public hearings rather than just administrative decisions, she says. And state environmental reviews have taken longer than expected.

There have been bright spots in the rollout, Hossack notes. San Francisco has done a good job helping stores open quickly, and, across the bay, Oakland has helped businesses get licensed quickly, even as it dedicates half of its licenses for [equity applicants](#) who have either lived in certain parts of the city or been convicted of a cannabis-related crime in Oakland.

But across the state, 70 percent of municipalities have opted not to license cannabis businesses, creating large "dry pockets" outside of urban areas like Los Angeles County and the Bay Area, she says. That means even patients who use medical cannabis in those areas now have to drive long stretches to find cannabis products. "That is a shame," Hossack says. "Given that California is a leader, you would think we would have more cities that are online.... Prohibiting it isn't reaching the goals people want, and prohibition doesn't work."

One key for successfully introducing a recreational cannabis facility in Evanston, Illinois, says Johanna Nyden, the city's community development director, was educating the general public about the changes that were afoot. Residents had many worries about the implications of legalizing recreational cannabis, such as whether it would lead to an increase in crime or long lines outside the downtown dispensary that would go from selling medical cannabis to selling recreational cannabis. (Neither of those things happened.) City officials tried to share information before rumors could take hold, Nyden says, and many of the state lawmakers from

the area who authored Illinois's recreational cannabis law appeared at community events to answer questions.

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Evanston, a Chicago suburb that is home to the main campus of Northwestern University, has only one dispensary, and it's on city property. The store sits across from an art supply store and a movie theater, and is so "innocuous" that you might not even notice it, she says.

But Evanston did attract [national attention](#) for how it plans to use its tax revenues on cannabis sales — by using up to \$10 million as reparations for the Black community that had been disproportionately harmed by the war on drugs. City officials have not yet decided how to use the money, but [possibilities](#) include grants to help Black residents who lived in Evanston between 1919 and 1969 (or descendants of those residents) buy homes or building a new school in the historically Black area of town.

While the reparations proposal came after the land-use changes, Nyden says it has been a good way to acknowledge some of the "inherent hypocrisy" in allowing cannabis use now after decades of punishing people, especially Black residents, for possessing small amounts of the drug.

Unintended consequences

Back in Denver, city council member CdeBaca says many of the current problems with industrial cannabis sites were the result of poor planning early on. The city has put restrictions on where facilities can be located, but many of the sites in Elyria-Swansea don't conform to those rules because the structures predate them. What's more, the licenses of nonconforming sites can be transferred to new owners and continue to operate, so there's no easy way to reduce the number of facilities in the area.

The saturation of sites did eventually lead the city to stop issuing new licenses in 2016. Before it starts giving out new ones, CdeBaca hopes to pass legislation that will encourage more Black and Hispanic people to get those licenses, because the current owners are overwhelmingly white.



City council member Candi CdeBaca can see four industrial cannabis grow operations from her house in the Elyria-Swansea neighborhood of Denver. Photo by David Kidd/Governing.

In fact, Denver's excise and license department is preparing the biggest update to its cannabis licensing regulation since Colorado's first cannabis retailers opened in 2014. The "Marijuana 2.0" revisions are expected to come before the council in March. They include new regulations to allow delivery services and hospitality sales (where customers can use cannabis on their premises), says department spokesperson Eric Escudero. Those regulations will also try to address equity concerns, he says. "People who were most disproportionately negatively impacted by marijuana prohibition should benefit from legalization," he says. "That means creating a market where more people get benefit, whether through ownership or management or employment opportunities."

The rules would also try to prevent further saturation of neighborhoods with cannabis businesses by not allowing any more licenses in the five most saturated areas of the city.

But the issue of concentration of existing facilities is complicated by Denver's approach to treat cannabis as just another industry in terms of zoning. From a land-use perspective, you can currently grow cannabis plants anywhere in the city where you can grow tomato plants. Any special requirements regarding signage or security are part of the city's cannabis licensing process, not its zoning process.

"In terms of control and management, there's a lot of upside to regulating the business, as opposed to the land use," says Tina Axelrad, the zoning administrator for the City and County of Denver. She called the approach "brilliant," because it helps government agencies keep track of who owns the businesses and whether they are fit for that role. It also easier to make sure that businesses comply with regulations the city wants to impose, because business owners tend to react more quickly when their annual license is at stake than when they have been cited for zoning violations.

"Zoning is just a tool to implement policy," Axelrad says, "and if policy changes regarding where marijuana growers should be located or should not be located in the city, the zoning will be adjusted." But she says that the problems with the cannabis facilities are located are just part of a bigger problem of how industrial activities affect some residential neighborhoods much more than others.

"Industrial zones, just like anywhere else in the U.S., tend to be a dumping ground for a lot of things that we don't want in our commercial corridors," she says.

Escudero, from the licensing agency, says Denver's regulatory scheme focused primarily on public safety, whether that was ensuring that youth weren't exposed to cannabis or making sure that the possibility of fires from manufacturing cannabis products was limited to industrial areas. "We're proud of our success in doing that," he says, "because if Denver would have screwed this up, you would not have seen legalization spreading to other communities across the U.S."

In the meantime, CdeBaca says the concentration of industry sites in her neighborhood is causing all sorts of issues. The warehouses themselves "look like jails." With all the security features, residents rarely interact with the people who work in the grow houses, and the owners of the facilities are rarely around.

"It's a little dystopian in some sense, because it's this neighbor that we never meet," she said. "It's like a fortress, but an ugly one."

As unsightly as the warehouses are, they are also driving up the price of the land that they sit on, because there are limited areas within the city where those types of facilities can be located. The more expensive land makes it harder to attract other kinds of businesses to the area and leads to higher property taxes for nearby residents, which fuels displacement, CdeBaca says.

"Our property values are being driven up very high very fast, without the typical, visible gentrification improvements," she says. "It looks exactly the same."

She says it's unfair to burden Black and Brown neighborhoods with the costs of hosting the industry for the whole city or region. "Whiter, wealthier people want to buy their edibles, but they just don't want the grows in their neighborhood," CdeBaca says.

She believes Denver should assess impact fees on the industry to improve the neighborhoods its facilities are located in. "We're carrying this industry on our back, and it's creating such a revenue stream, but we don't [get funds for the neighborhood]. It goes to the whole city to use how they want, when only a small slice of the city is carrying the burden," she says.

That, she stressed, is an important factor for planners to keep that in mind as they decide where facilities ought to be located as the cannabis industry expands.

"Don't layer on to the legacies of redlining," she says.

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