

**TO:** Honorable Mayor Smith Hymes and Council  
**FROM:** Matt Pielsticker, AICP Planning Director  
**RE:** Retail Marijuana Businesses  
**DATE:** May 5, 2022



**INTRODUCTION:** The purpose of this report is to summarize land use, taxing, and development standards regarding potential marijuana sales in the Town. Last fall the Town Council and Planning and Zoning Commission (“PZC”) held a work session to discuss this topic. Direction was provided to proceed with exploring a ballot question to Avon voters for recreational marijuana sales. There was less support for pursuing cultivation or testing facilities.

One to two retail stores in Town can be expected if a ballot question is approved by voters and common distancing parameters are implemented. If a 5% excise tax was approved and sales volume was comparable to other Eagle County retail stores, between \$250,000 and \$500,000 per year in additional revenue is projected. Final action to pursue ballot question(s) or not in 2022 is being requested at the meeting.

**BACKGROUND:** At the national level, Colorado went from being the first adopter of marijuana legalization to one among many states with some sort of marijuana liberalization policy. Federally, marijuana is still a controlled substance, subject to penalties for production, transport, and sales.

Colorado voters approved Amendment 64 in 2012, which resulted in the legalization of marijuana and recreational marijuana sales in the state, beginning in 2014. Amendment 64 passed Statewide with a vote of 55% in favor; in Eagle County the result was 66% in favor; and in Avon, 71%. Amendment 64 allowed local jurisdictions to prohibit marijuana sales and associated businesses within their borders.

In 2014 the Town Council passed Ordinance 14-06, which bans marijuana businesses within the Town. After several years of legalization, there are fewer unanswered questions as to the impact of marijuana businesses on communities. Since 2014, the number of Colorado communities allowing marijuana businesses has grown substantially. The attached status report (“**Attachment A**”) prepared by Colorado Municipal League summarizes marijuana business allowance by type of facility, with tax information by jurisdiction. Eagle County tax collections are summarized (“**Attachment B**”) to provide local context with tax revenues.

One of the Finance Department’s 2022 goals includes:

***Research and Support Consideration of Use Tax and Marijuana Tax:*** Council expressed interest in researching and considering both a Use Tax and Marijuana Tax for potential referral to the November 2022 general election.

**EAGLE COUNTY REGULATIONS:** Eagle County regulates retail marijuana businesses, predominantly using distancing requirements. More specifically, Eagle County, medical and retail cannabis businesses are prohibited within 200 feet of residential, drug rehabilitation facilities, community centers, schools, parks, playgrounds, or family care facilities. Retail businesses are also prohibited within 500 feet of high schools in this unincorporated area. Distancing results in defining the resulting areas outside of this parameter that allow recreational marijuana sales, like Eagle-Vail’s commercial corridor illustrated below.



*Eagle-Vail commercial corridor allows recreational marijuana sales and production based on the County's regulations. Locational buffers from houses, parks, etc., appear in yellow.*

**STATE OF COLORADO REGULATIONS:** At the state level, the Colorado Senate passed House Bill 21-1317. The bill was signed into law and seeks to limit high-potency THC products (i.e. concentrates) from being available to young people. Products are now being tracked with a software system to limit younger medical card carriers from buying more than is allowed per day for products available at various outlets.. The state cannabis [WEBSITE](#) contains a wealth of information on the topic, including resources related to health and the responsible use of cannabis.

**FEDERAL DISTANCING:** Consideration should be given to federal-level penalties related to marijuana, which is still listed as a controlled substance. The federal standards are cited here for convenience:

*21 USCS § 860*

*(a) Penalty. Any person who violates section 401(a)(1) or section 416 [21 USCS § 841(a)(1) or 856] by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within **one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility, is (except as provided in subsection (b)) subject to (1) twice the maximum punishment authorized by section 401(b) [21 USCS § 841(b)], and (2) at least twice any term of supervised release authorized by section 401(b) [21 USCS § 841(b)] for a first offense. A fine up to twice that authorized by section 401(b) [21 USCS § 841(b)] may be imposed in addition to any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section 401(b) [21 USCS § 841(b)], a person shall be sentenced under this subsection to a term of imprisonment of not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marijuana.***

**TAXES/STATE OF COLORADO:** There are three taxes for retail marijuana in Colorado: a 2.9% state sales tax, a 15% marijuana retail sales tax (not applicable to medical marijuana), and a 15% excise tax. These monies are distributed to local entities, public schools, the state's general fund, and a Marijuana Tax Cash Fund (funding health care, monitoring marijuana health effects, health education, substance abuse prevention and treatment programs, and law enforcement).

**Colorado marijuana tax revenue, in millions**

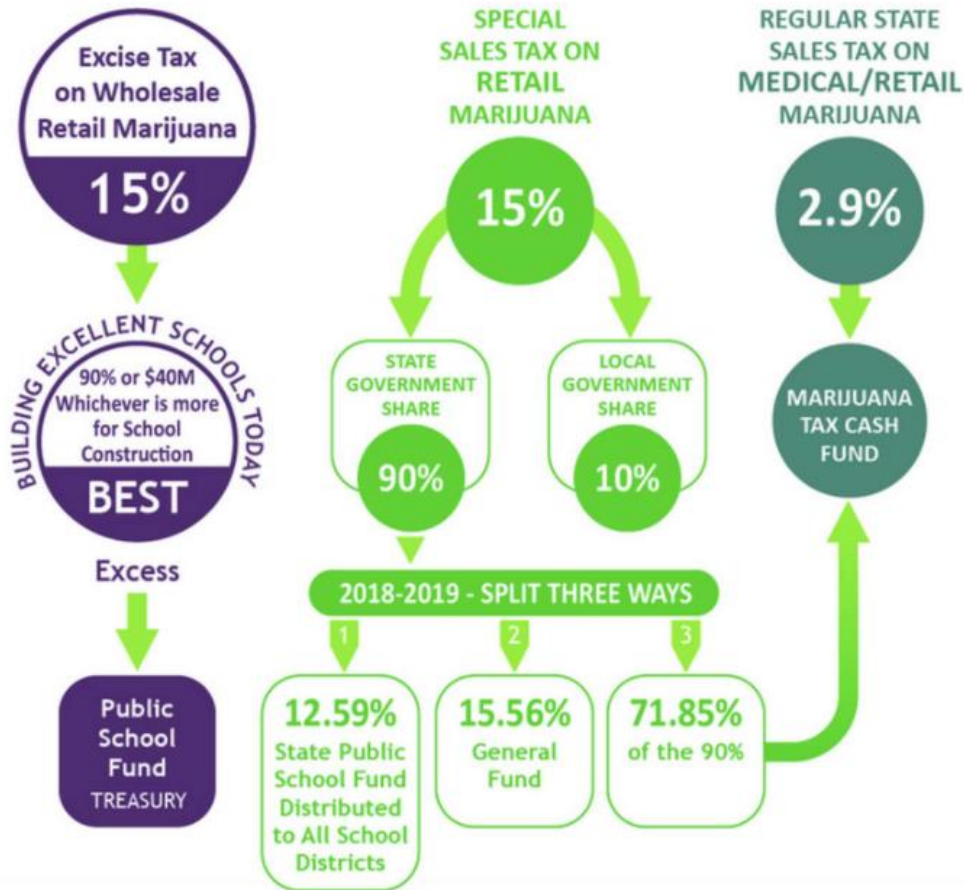
2021	\$423.46
2020	\$387.50
2019	\$302.50
2018	\$266.50
2017	\$247.40
2016	\$193.60
2015	\$130.40
2014	\$67.6

**County retail marijuana sales in 2020, in millions**

Eagle	\$22.80
Garfield	\$29.20
Pitkin	\$14.40

Source: Colorado Department of Revenue

Source: Colorado Department of Revenue



Source: Colorado Department of Education

**TAXES/PEER MUNICIPALITIES:** There are diverse tax structures in the area. Below is a breakdown of tax burdens for a \$100 purchase in various nearby communities. Staff found a 5% local marijuana tax to be the most common rate for municipalities within the state.

	Breckenridge	Town of Eagle	Carbondale	Silverthorne	Basalt
<b>TOTAL TAX</b>	\$ 25.98	\$ 23.50	\$ 25.50	\$ 25.48	\$ 25.30
<b>TAX BREAK DOWN</b>					
<b>STATE</b>	\$ 15.00	\$ 15.00	\$ 15.00	\$ 15.00	\$ 15.00
<b>COUNTY</b>	\$ 2.00	\$ 1.50	\$ 1.00	\$ 2.00	\$ 1.00
<b>SPECIAL DISTRICT</b>					
<b>Mass Transportation</b>	\$ 0.75		\$ 1.00	\$ 0.75	\$ 1.30
<b>Housing Authority</b>	\$ 0.73			\$ 0.73	
<b>TOWN-SALES</b>	\$ 2.50	\$ 4.50	\$ 3.50	\$ 2.00	\$ 3.00
<b>TOWN-MARIJUANA</b>	\$ 5.00	\$ 2.50	\$ 5.00	\$ 5.00	\$ 5.00

**TAXES/EAGLE COUNTY:** Eagle County has six (6) sales tax filers and five (5) excise (production) tax filers. Total marijuana sales and excise collections for 2020 was \$773,113 at a rate of 2.5%. Assuming one to two retail locations in Avon, staff estimates \$250,000 to \$500,000 in sales tax contributions based on a 5% Marijuana and 4% retail sales tax rate respectively. See the attached (“Attachment B”) Eagle County report for more detailed analysis of month-over-month sales data for Eagle County collections.

**ANALYSIS:** With a high concentration of marijuana businesses Eagle-Vail, it is not conspicuous to visitors that the Town of Avon prohibits marijuana businesses. Assuming Beaver Creek vacationers make up a large share of retail marijuana sales, many shoppers already pass-through Avon and shop at addresses labeled “Avon”, in Eagle-Vail.

Avon’s valley floor includes many custom zone districts called Planned Unit Developments (“**PUD**”). If the Town allows marijuana businesses, any location with PUD zoning (i.e. Chapel Square) that is eligible for marijuana businesses would need to be custom modified to accommodate the use. That is, a Minor PUD amendment would need to be processed and approved by Town Council prior to any marijuana business opening in a PUD-zoned property.

Additional locational requirements should include:

- Special Review Use regulations, whereby aesthetic and community characteristics could be considered
- Distancing between marijuana businesses
- Distance from schools
- Distance from other uses
- Distance from public facilities
- Cap of the number of licenses issued (e.g., only 2 marijuana dispensaries and only 2 production facilities allowed)

Additional aesthetic requirements could include:

- Design requirements for signage
- Lighting standards
- Store names
- Storefront design



*Example of store without strong design controls*



*Aesthetically pleasing storefront with design standards*

**BUFFERS:** Federal penalty regulations applying to schools and playgrounds require 1,000 feet of separation, although as noted above in Eagle County’s regulations, local jurisdictions have control over those requirements. Assuming a 500-foot buffer (commonly accepted in other Colorado Municipalities) from schools and playgrounds is deemed appropriate for Avon, the attached map (“**Attachment C**”) illustrates that there are commercially zoned parcels with potential to host marijuana businesses between Avon Road and Chapel square in “East Avon”, and the small area of Neighborhood Commercial (“**NC**”) zoned parcels near the Interstate 70 Interchange.

**PROCESS:** The Town Council has the option to modify land use regulations to permit retail marijuana by Ordinance. If there are changes to taxes, the Taxpayers Bill of Rights (“**TABOR**”) requires a vote of the electorate. It is common and convenient to ask voters for consideration of **use and tax** at the same time. If a ballot question were pursued, the following dates are worth noting:

- August 9            Last regularly scheduled Town Council meeting to introduce first reading of an ordinance to refer ballot question and self-execute implementation of use tax upon approval.
- August 23        Last regularly scheduled Town Council meeting in which to adopt a resolution certifying ballot content to the County Clerk and Recorder.
- September 7     Last day to certify the ballot content to the County Clerk and Recorder.
- November 8      General Election.

**RECCOMENDATION:** I recommend pursuing a ballot question and specific language on how the excise tax funds would be utilized. Public health and education programs are the most common uses of marijuana tax funds.

**OPTIONS:**

- Delay action until next year
- Proceed with Ordinance to introduce land use controls and licensing regulations with no ballot question on use and/or tax
- Proceed with Ballot process this summer for fall election to determine 1) voter acceptance of use, and 2) excise tax

*Thank you, Matt*

**ATTACHMENT A:** Municipal Retail Marijuana Status Summary  
**ATTACHMENT B:** Eagle County Tax Report  
**ATTACHMENT C:** Avon Buffer Analysis for Marijuana Businesses