

Symposium Submission 2020

Legal, Ethical, and Compliance Issues in Emerging Markets: Cannabis in the States

Using Land Use to “Regulate” Cannabis Dispensaries

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ABSTRACT

Cannabis dispensaries represent an entirely new land use in many cities across the United States. This Article provides a general survey of different land use restrictions, including zoning ordinances, related to the establishment of cannabis retail stores or production facilities and examines how municipalities have attempted to use such restrictions to control where this new land use can locate. Several of the zoning ordinances have been challenged in court, and this Article provides a brief survey of these cases, evaluating the extent to which businesses have been successful in curtailing legislative attempts to restrict this emerging market through zoning. An informal empirical analysis is also provided, where the authors use spatial technologies to map the location of cannabis dispensaries in various municipalities. To the extent that cannabis dispensaries have been excluded from certain neighborhoods, this distribution suggests important ethical issues with respect to equality and access to the medical benefits of cannabis.

Given an uncertain statutory and legal environment, this Article considers different legal and ethical strategies that businesses might pursue when opening a cannabis dispensary in a jurisdiction that is likely to implement land use restrictions in response, and it proposes solutions for businesses to position themselves optimally in this space. Importantly, even if cannabis is no longer illegal at the federal level, individual municipalities may continue to attempt to limit access through restrictive zoning ordinances and building codes. Analogies are drawn with abortion clinics and the prohibition of alcohol in terms of how cities use land use law to restrict such activities. Recently, several cities have used zoning ordinances, building codes, and licensing to prevent abortion providers from operating existing facilities. While some abortion providers have succeeded in blocking such restrictions as an undue burden, state and federal courts continue to rule inconsistently in this area. This Article contends that zoning ordinances related to cannabis illustrates how local politicians more broadly and increasingly use land-use laws as an indirect tool to promote social or ideological issues.

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