

Proposition 64

The Adult Use of Marijuana Act

Wednesday, March 1, 2017



Presenters

Tim Cromartie

Legislative Representative, League of California Cities

Michael Coleman

Fiscal Policy Advisor, League of California Cities

Stephen A. McEwen

Partner, Burke, Williams & Sorensen, LLP

Agenda

- **Summary of Proposition 64 (AUMA)**
 - Key Differences: AUMA vs. MMRSA
- **Proposition 64 (AUMA) and Regulation**
 - Personal Use and Personal Cultivation
 - State Licensing of Commercial Operations
 - Local Regulation of Commercial Operations
- **Proposition 64 and Taxation**
 - Allocation of Revenues
 - Local Taxes and Fees
 - State and Local Sales Tax Exemptions
- **Local Policy Issues**
- **Questions and Answers**

Summary: Proposition 64

The Adult Use of Marijuana Act (AUMA)

- Legalizes the nonmedical use of marijuana by persons 21 years of age and over and the personal cultivation of six (6) marijuana plants
- Creates state regulatory and licensing system for the commercial cultivation, testing, and distribution of nonmedical marijuana, and the manufacturing of nonmedical marijuana products
- Allows local governments to prohibit or regulate and license commercial nonmedical marijuana
- Takes effect November 9, 2016

Key Differences: MMRSA and AUMA

Medical Marijuana Regulation & Safety Act (MMRSA) v Adult Use of Marijuana Act (AUMA)

	Medical Marijuana Regulation & Safety Act (MMRSA)	Adult Use of Marijuana Act (AUMA)
Focus	Regulates medical marijuana	Regulates nonmedical marijuana
Taxation	Authorizes counties to impose excise taxes	<ul style="list-style-type: none"> • Exempts medical marijuana from state/local sales tax • Imposes state taxes on purchase and cultivation marijuana • Local taxation is not pre-empted, except for sales tax.
Local Regulations	Local governments may allow, regulate, or prohibit commercial marijuana businesses within their jurisdictions. This should be reflected in an ordinance that contains express language.	
Personal Cultivation	Does not alter local authority to prohibit all personal cultivation	<ul style="list-style-type: none"> • Locals can reasonably regulate but cannot ban indoor cultivation for personal use. • Local government may still regulate or prohibit commercial indoor cultivation. 5

Personal Use

- AGE: 21 years of age or older
- POSSESSION: May possess, process, transport, purchase, obtain, or give away
 - 28.5 grams of non-concentrated non-medical marijuana, or
 - 8 grams of concentrated marijuana products
- USE: May smoke or ingest marijuana or marijuana products
- CULTIVATION: May possess, plant, cultivate, harvest, dry or process up to 6 plants per residence for personal use

Restrictions on Personal Use

- No smoking in a public place (except where authorized locally)
- No smoking where smoking tobacco is prohibited
- No smoking within 1,000 feet of a school, day care center or youth center
- No smoking while driving or riding in a vehicle
- Cities may prohibit smoking and possession in buildings owned, leased, or occupied by the city
- Employers may maintain drug-free workplaces

Personal Cultivation

- Local governments may “reasonably regulate” but not prohibit personal indoor cultivation of up to 6 marijuana plants within a private residence.
- Includes cultivation within a greenhouse or other structure on the same parcel of property that is not visible from a public space.
- Local governments may regulate or prohibit personal outdoor cultivation.

Questions about Personal Cultivation

- What are “reasonable regulations” on personal cultivation of 6 plants within a personal residence?
- Examples:
 - A local requirement for a residential cultivation permit, with an appropriate fee;
 - Requiring as a condition of the permit, that the permit holder agree to periodic inspections (upon appropriate notice), to ensure that cultivation is not:
 - In excess of the six-plant limit
 - Drawing more electrical power from the grid that the structure/house is designed to withstand, thereby causing a fire hazard
 - Presenting a health hazard such as mold accumulation
 - Using more water than is reasonably required to cultivate six plants
 - Express local regulations requiring cultivation to comply with the Fire Code, Building Code and reasonable limitations on the use of water

State Licensing of Commercial Operations

- All nonmedical marijuana businesses must have a state license
- State license cannot be issued to an applicant whose operations would violate the provisions of any local ordinance or regulations
- State license will be valid for one year.
- Separate state license required for each business location.

Local regulation/prohibition of Commercial Operations

- **Cities/counties may regulate or completely prohibit state-licensed marijuana businesses (recreational and medical)**
 - but may not prohibit use of public roads for deliveries in another jurisdiction
- **State standards are minimum standards.**

Cities/counties may establish additional standards, regulations re: health & safety, environmental protection, testing, security, food safety, and worker protections

Local regulation/prohibition of Commercial Operations

- Proposition 64 does not require a city to enact a regulatory scheme or prohibition by certain date.
- League anticipates that State will not begin issuing licenses before January 1, 2018.
- If city prohibition or regulations in place before business applies for state license, state license either will not issue or be subject to local regulations.

Excise Taxes, Sales & Use Taxes

- **Excise Tax:** All taxes are either property taxes or excise taxes.
 - Property tax = tax on ownership of (real or personal) property
 - is triggered by the mere ownership of property.
 - Excise tax = tax on the *privilege* of using, doing something with property.
 - Examples of local excise taxes:
 - ✓ business license tax
 - ✓ transient occupancy tax
 - ✓ parcel tax
- **State and Local Sales and Use Tax**
 - The sales tax is a tax on the “privilege of selling tangible personal property at retail” (Calif Rev&TaxCode §6051).
 - The use tax is imposed on the storage, use or other consumption of tangible personal property purchased from a retailer (R&TCode § 6201).

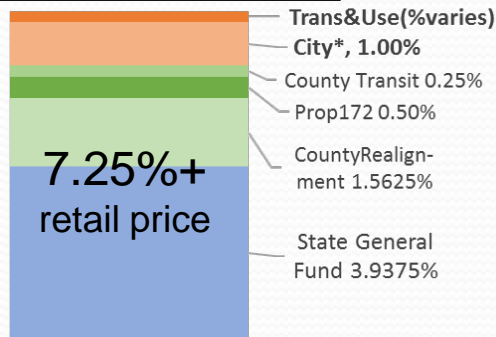
Prop. 64 and Taxation of Marijuana

- Adds state excise tax of 15% on the privilege of purchasing marijuana at retail (Section 34011(a)). *Effective January 1, 2018*
- Adds excise tax of \$9.25/dry-weight ounce (flowers) and \$2.75/dry-weight ounce leaves on the privilege of cultivating marijuana. *Effective January 1, 2018*
- Prop. 64 does not affect local governments' authority to impose taxes on medical or non-medical marijuana.
- Exemptions:
 - Marijuana cultivated for personal use is exempt from cultivation tax.
 - Medical marijuana is exempt from state/local *sales tax* but NOT other state or local taxes. *Effective November 9, 2016*

Taxes and Fees on Marijuana under Proposition 64

Applies to non-medical only

Sales and Use Tax



Effective November 9, 2016

Applies to medical and non-medical

State Marijuana Excise Tax

15%
gross receipts
of retail sale

State Cultivation Taxes

\$9.25/oz flowers
\$2.75/oz leaves

Effective January 1, 2018

Allocation* of State Excise Taxes on Marijuana under Proposition 64

*may be altered by majority vote of the Legislature after 2027

60%

youth programs, substance abuse education, prevention and treatment

20%

environmental cleanup, remediation

20%

Reduce DUI, reduce negative health impacts re: marijuana legalization

- A city (or county) that bans cultivation, including outside personal cultivation, or the retail sale of marijuana, is not eligible for some grants.

Local Taxes and Fees on Marijuana

- Prop. 64: The new state excise taxes are “in addition to any other tax imposed by a city, county or city and county” (Calif Rev&TaxCode §34021)
- New, increased, or extended local taxes require voter approval (2/3 for special tax; majority vote for general tax)
- The most common local excise tax is a **business license tax**:
 - Dispensing
 - Manufacturing
 - Cultivation
 - Transportation
- Local governments’ sales tax may not differ from Bradley-Burns Uniform Sales and Use Tax Law in either what is taxed or the rate of the tax.

Local Taxes and Fees on Marijuana

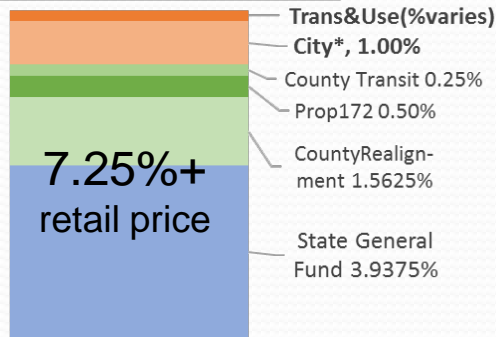
Taxes vs. Fees

- **Business License Taxes** allow revenue to be appropriated for any municipal purpose unless the tax has been approved as a “special tax” for a specific purpose.
- **Business Regulatory Fees** may recover the reasonable regulatory costs for issuing licenses and permits, performing investigations, inspections, and audits and enforcing these regulations – and should be scaled appropriately.

Taxes and Fees on Marijuana under Proposition 64

Applies to non-medical only

Sales and Use Tax



Effective November 9, 2016

Applies to medical and non-medical

State Marijuana Excise Tax

15%
gross receipts
of retail sale

State Cultivation Taxes

\$9.25/oz flowers
\$2.75/oz leaves

Effective January 1, 2018

City* Marijuana Excise Tax

if enacted/approved by voters

XX%
gross receipts
or other basis

(not a sales tax)

City* Marijuana Business

Regulatory Fee *if enacted*

To pay for regulation.
Limited to cost recovery.

Exemptions from Taxation of Marijuana

Proposition 64 exempts:

- marijuana cultivated for personal use from the new state cultivation tax.
- medical marijuana from state/local sales tax.
... but not state or local excise taxes.

State and Local Sales Tax Exemption

- Exempts medical marijuana sales to a patient (or primary caregiver) who has an identification card and a valid government-issued identification from state and local sales and use taxes:

***H & S 34011 (g).** The sales and use tax imposed by Part 1 of this division shall not apply to retail sales of medical cannabis, medical cannabis concentrate, edible medical cannabis products or topical cannabis as those terms are defined in Chapter 3.5 of Division 8 of the Business and Professions Code when a qualified patient (or primary caregiver for a qualified patient) provides **his or her card issued under Section 11362.71 of the Health and Safety Code** and a **valid government-issued identification card**.*

- **NOTE:** Physician's recommendation is not sufficient but is required by Prop.64.
- Effective November 9, 2016.

State and Local Sales Tax Exemption

- State Department of Public Health required under existing law to establish voluntary program for issuance of identification cards to “qualified patients.”
- County health departments process applications and issue identification cards
- Prop. 64: All identification cards must be supported by a physician’s recommendation
- Prop. 64: Identification card application system/database may not contain personal information of qualified patients (unique user ID number)
- Prop. 64: County fees limited to \$100 per application. Reimbursement from State is available.

State and Local Sales Tax Exemption

- State Board of Equalization, ***Tax Guide for Medical Cannabis Businesses***
 - intended for the industry but may be helpful to local governments.
 - http://www.boe.ca.gov/industry/medical_cannabis.html
- Statewide, the top five cities levying a sales tax on medical marijuana yield \$6,158,000. (Source: HdL Companies)
- Offsetting sales tax revenue gain from sales of non-medical marijuana: unknown.
- Cities will first experience a reduction in revenues from this source for the fourth quarter of 2016 as of March 2017.

State and Local Sales Tax Exemption Mitigating Sales Tax Revenue Losses

Engage with dispensaries and enforce the terms under which the sales tax exemption applies.

1. Patients who wish to claim the sales tax exemption must display a valid medical marijuana card and government-issued identification card.
2. The card should be issued by either the California Dept. of Public Health or your county's health department.
3. A physician's recommendation alone is not sufficient to obtain the sales tax exemption but is required in support of the application for a card.
4. Cities may wish to consider adopting a regulation requiring dispensaries to check for card compliance.

Loss of sales tax revenue from medical marijuana sales will be offset to some degree by sales tax revenue from non-medical marijuana sales.

Local policy issues

Does your city want to:

- Take steps to mitigate anticipated loss of sales tax revenue from medical marijuana in the short term?
- Enact business regulations of non-medical marijuana businesses?
- Require retailers of medical marijuana to enforce eligibility for medical marijuana sales tax exemption?
- Impose local taxes on marijuana?

Issues of Concern

- Local approval in licensing process
- Drugged driving, need for sobriety test
- Banking issues
- Taxation

Contact Information

Tim Cromartie

Legislative Representative
League of California Cities

tcromartie@cacities.org

(916) 658-8252

Michael Coleman

League Fiscal Policy Advisor
CaliforniaCityFinance.com

coleman@muniwest.com

(530) 758-3952

Stephen A. McEwen

Partner

Burke, Williams & Sorensen, LLP

SMcEwen@bwslaw.com