

MARIJUANA REGULATION WORKING GROUP REPORT

League of California Cities Policy Committees

June 2011

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Overview of Marijuana Regulation Working Group

Marijuana regulation in California is an issue of growing interest from many stakeholders in the fields of public safety, land use, licensing and taxation, and employee/employer rights. Cities, counties, state representatives and California voters are increasingly engaged in discussions about, and taking action on, regulations in these areas.

The League of California Cities (League) created a small advisory group, the Marijuana Regulation Working Group (working group), to examine and make recommendations on current state legislation involving marijuana regulation in a condensed time frame and in accordance with the League's policy review structure. The goal of the working group was to review both specific legislation as well as broader principles to help guide the efforts of the League staff. They reviewed a total of eight bills and developed three policy guidelines and one area for future League study and possible action.

The potential conflict between federal and state laws regulating medical marijuana was included in each of the working groups' discussions. The federal government's shifting position about federal enforcement has left California's cities, counties and state agencies in a challenging place when seeking clarification on permissible marijuana regulation. The uncertain legal status of medical marijuana is reflected in several of the working group's recommendations.

The following report provides these recommendations, background on the working group, and next steps for League activity in the area of marijuana regulation policy.

Recommendations from Marijuana Regulation Working Group

The working group has offered the following policy guidelines that will be considered in January 2012 when the League policy committees revise the "Summary of Existing Policy and Guiding Principles" booklet. The policy guideline recommendations are based on common themes that arose during discussions on current legislation, existing League policy, and prior League action on marijuana regulation legislation or ballot measures. (Please refer to Appendix A for a summary of recent League action on marijuana related regulations.)

- 1) Reaffirming that local control is paramount, cities should have the authority to regulate medical marijuana dispensaries, cooperatives, collectives or other distribution points as it relates to location, operation, and establishment to best suit the needs of the community.
- 2) Revenue or other financial benefits from creating a statewide tax structure on medical marijuana should be considered only after the public safety and health ramifications are fully evaluated.
- 3) While the value of marijuana as a physical or mental health treatment option is uncertain, the League recognizes the need for proactive steps to mitigate the proliferation of unlawful medical marijuana dispensaries, cooperatives, collectives and other access points acting outside state or local regulation.

In addition, the working group has asked for further study on:

- 1) Residential cultivation and its impacts on energy consumption and housing stock. The proliferation of residential cultivation represents a considerable drain on utilities, increasing costs for providers and ratepayers. It can also reduce availability of existing housing, which is magnified when considering affordable housing units.

In addition to making these guideline and future study suggestions, the working group provided comments on eight specific bills, guided by previous League action on marijuana policy and League existing policy and guiding principles applicable to all/other policy areas. Those recommendations are provided below.

No Action Recommended

Failed legislative deadline

- AB 223 (Ammiano). Compassionate Use Act findings and declarations: Declares legislative intent to improve the Compassionate Use Act of 1996 and makes findings and declarations to the potential benefits of medical marijuana.
- AB 1017 (Ammiano). Reduced penalties for cultivation: Makes cultivation of marijuana a “wobbler” offense instead of a felony, reducing the penalty to one year in county jail or a fine from a state prison term of 16 to 36 months.
- SB 626 (Calderon). State Board of Equalization licensing and taxation task force: Establishes a task force consisting of representatives from law enforcement, drug enforcement, cannabis cooperatives and dispensaries, and the State Board of Equalization to determine how medical marijuana sales could be licensed and taxed on a statewide level, similar to tobacco products.

Defer to California Police Chiefs Association

- SB 420 (Hernandez). Synthetic cannabinoid compound penalties: Establishes penalty structure for possession of cannabinoid chemical compounds to match those of marijuana under current state law. The California Police Chiefs Association has a registered support position.

Action Recommended

- AB 1300 (Blumenfield). Medical marijuana local ordinances: *Based on League existing policy and past action, recommend that League staff work with author’s office to clarify and strengthen local control provisions.*
This bill clarifies authority for cities or other local governing bodies to adopt and enforce local ordinances that regulate the location, operation or establishment of a medical marijuana cooperative or collective.
- SB 129 (Leno). Employment discrimination for medical marijuana: *Based on existing League employee relations policy, the League formally opposed this measure. It failed passage on the Senate floor.*
This bill creates a protected class for individuals with medical marijuana patient status from workplace discrimination based on this status. Poses a conflict with federal Drug-Free Workplace Act but provides exemptions from protected status for employees in “safety-sensitive” positions.
- SB 676 (Leno). Industrial hemp cultivation: *Refer to policy committees to consider challenges for local law enforcement to regulate the law and potential threat to city*

autonomy within those five counties. (Referred to Public Safety Committee as an action item).

This bill establishes a five county pilot program for the legal cultivation of hemp as an agricultural product until 2020. Includes testing requirements to ensure product maintains low THC levels. Also requires two reports to legislature with data on the number of violations from growers and potential fiscal benefits of hemp growing and related product sales for the state.

- **SB 847 (Correa) Zoning restrictions on medical marijuana dispensaries/cooperatives:**
Based on League existing policy and past action, recommend that League staff work with author's office to ensure local control provisions are maintained.

This bill creates a statewide prohibition of a medical marijuana dispensary, collective, cooperative or other establishment from being located within 600 feet of a residential zone or residential use area, unless a local ordinance is adopted by a city or county that creates a more or less restrictive prohibition specific to residential zoning or residential use areas.

Background on Marijuana Regulation Working Group

The working group was formed to provide guidance on legislation on a condensed timeline and within the frame work of the eight policy committees to allow for timely action, if needed, on bills related to marijuana regulation.

The working group met via conference call and webinar three times between mid-May and early June, in addition to individual one-on-one communication with League staff. They reviewed the history of League action on marijuana regulation issues, current legislative proposals, and the League's existing policies and guiding principles as a foundation for their recommendations. Following League procedures, the legislative/policy recommendations were sent to the relevant policy committees in June, who will provide their recommendations to the League board for a vote in July.

The membership of the working group was based on League policy committee assignments, professional department involvement, regional divisions, and prior League involvement on marijuana related issues, such as Proposition 19 (2010) or educational sessions at League conferences. They provided invaluable information and perspective on how the various proposals would impact local control and quality of life issues for residents in California cities. (Please see Appendix A for roster of members).

Next Steps

The next steps for the League in the area of marijuana regulation legislation will follow the standard process for policy review by committees in June and the board of directors in July.

In January, the appropriate policy committees will review the recommended policy guidelines for incorporation in the "Summary of Existing Policy and Guiding Principles" booklet. Individual committees may also wish to incorporate areas of marijuana regulation into their 2012 work plan.

At a future date, and with pending ballot measures on this topic, the League may reconvene this or a similar working group to provide specific feedback and recommendations as needed.

APPENDIX A
Recent History of League Action on Marijuana Related Regulations

2010

AB 2650 (Buchanan) – Medical marijuana. (Chapter 603, Statutes of 2010)

Summary: This measure prohibits any medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana from being located within 600 feet of a school (defined as grades K – 12, public or private) unless a local jurisdiction has adopted an ordinance providing a lesser/no restriction prior to January 2011. Also permits more restrictive local ordinances.

League Action: The League took an “oppose unless amended” position and requested specific amendments to remove the preemption of local ordinances and also allow the complete prohibition of dispensaries upon local approval. This position was recommended by the League Housing, Community, and Economic Development Policy Committee and approved by the League board of directors.

Proposition 19 - The Regulate, Control and Tax Cannabis Act of 2010.

Summary: Would have authorized the personal consumption of marijuana for persons ages 21 and older in a non-public place. Also allowed for a person to:

- possess, process, or transport up to one ounce of marijuana for personal consumption;
- cultivate marijuana on private property in an area up to 25 sq. feet;
- possess harvested and living marijuana plants cultivated in such an area;
- possess any items or equipment associated with these activities.

Allowed for sale of marijuana in public establishments licensed for marijuana consumption and related transport. Established associated sanctions for underage sales or activities where prohibited by this proposition.

Prop 19 also allowed local governments to adopt ordinances and regulations regarding the cultivation, processing, distribution, transportation, sale or possession for sale of marijuana by licensed marijuana sales establishments. Local governments would have been able to license businesses that could sell up to one ounce of marijuana (per transaction) to a person 21 years or older, including the regulation of the location, size, hours of operation, and signs and displays of the business. Local governments would have also been authorized to impose general, excise, or transfer taxes, as well as benefit assessments and fees, on authorized marijuana-related activities in order to raise revenue or offset any costs associated with marijuana regulation. Required that licensed marijuana establishments pay all applicable federal, state, and local taxes and fees currently imposed on other similar businesses.

In addition, Prop 19 stated that no person could be punished, fined, or discriminated against for engaging in any conduct permitted by the measure. Also maintained employers’ existing rights to address on-the-job consumption of marijuana that affects an employee’s “job performance.”

League Action: This measure was referred to the League Public Safety Policy Committee and the Revenue and Taxation Policy Committee. Both committees recommended an “oppose” position. This was based on concerns with potential increases in crime, the unsatisfactory experience with medical marijuana implementation, and that any benefit that cities realize from additional revenue would not outweigh the potential public safety risks. The board approved the “oppose” position.

2008

Proposition 5 – Nonviolent Offender Rehabilitation Act (NORA)

Summary: Sought to expand drug treatment diversion programs for nonviolent offenders; modify parole supervision procedures and expand prison and parole rehabilitation programs; allow for additional early release credits for participation and performance in rehabilitation programs; change the penalties for marijuana possession; and make various changes to the organization of rehabilitation programs in the California Department of Corrections and Rehabilitation (CDCR). Specific to marijuana, this ballot measure would have reduced penalties for marijuana possession (less than 28.5 grams) for adults and minors, as follows: reduce first offense for adults from a misdemeanor to an infraction and maintain the fine of up to \$100; reduce the first offense for minors from a fine to mandatory participation in a drug education program; maintain \$250 fine for repeat offenses by a minor in addition to mandatory participation in a drug education program.

League Action: This ballot measure was referred to the Public Safety Policy Committee, who recommended an “oppose” position to the League board based on the reduced penalties and fines for marijuana use/possession, and redundancy of rehabilitation services offered. The League board approved the “oppose” position.

SB 1098 (Migden). Medical marijuana.

Summary: Defined in state law a “medical cannabis dispensary” and offered these dispensaries a one-time opportunity to comply with the Board of Equalization’s sales and use tax program by March 31, 2009, and receive relief from back tax liability, penalties and interests on its sales of tangible property made prior to October 1, 2005. The dispensary’s obligation would be to pay unpaid sales taxes between 2005 and 2009 and continue paying sales taxes moving forward.

League Action: This bill was referred to the League Revenue and Taxation Policy Committee for review because of the potential revenue local governments would receive from back tax payments. The committee recommended “no position” to the League board because of the questionable status of revenues received from tax payments. However, the bill did not move out of the Senate Revenue and Taxation Committee and therefore the League board did not take action to adopt a formal position on the bill.

2005

League Public Safety Policy Committee Medical Marijuana Subcommittee

Summary: The Public Safety Policy Committee Medical Marijuana Subcommittee convened two meetings to review the prevalence of medical marijuana dispensaries in California’s cities and the implications of Proposition 215 (Compassionate Use of Act of 1996) and Senate Bill 420 (Chapter 875, Statutes of 2003), which established within the Department of Health Services the voluntary identification card and implementation guidelines, as well as pending litigation.

League Action: This Subcommittee was formed as an informational body, who heard from various state and local agencies on the implementation of medical marijuana regulations. No action was taken or recommended to the League board.

APPENDIX B
Roster of Marijuana Regulation Working Group Members

First	Last	Title	City	League Affiliation
Jan	Arbuckle	Mayor	Grass Valley	Vice Chair, Public Safety Committee
Tom	Brown	City Attorney	Berkeley, others	City Attorneys Department
Sonia	Carvalho	City Attorney	Asuza, Claremont	City Attorneys Department
Ed	Dadisho	Police Chief	Suisun	Member, HCED Committee
Jeff	Dunn	City Attorney	Various southern California cities	City Attorneys Department
Marc	Fox	Assistant City Manager	Pittsburg	President, Personnel & Employee Relations Department; Member, TCPW Policy Committee
Dennis	Gillette	Council Member	Thousand Oaks	Member, Public Safety Committee; Past Public Safety Committee chair
Bob	Johnson	Mayor	Lodi	Vice Chair, Employee Relations Committee
Carlos	Mestas	Police Chief	Hanford	Board of Directors, Police Chiefs Dept
Kelly	Morariu	Assistant City Manager	Hayward	Proxy for Fran David, Member, Revenue and Taxation Committee
Scott	Nassif	Council Member	Apple Valley	Vice Chair, HCED Committee
Steve	Quintanilla	City Attorney	Rancho Mirage, Cathedral City, others	City Attorneys Department
Mark	Wheetley	Council Member	Arcata	Board of Directors, Redwood Empire Division; Member, Community Services Committee; Member, Environmental Quality Committee