

Proposition 64 Priorities for Finance Officers

December 14, 2017

Prop. 64: Priorities for Finance Officers

Presenters

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Overview of the Initiative

What: Legalizes adult use of non-medical cannabis

What About Locals: Does not change local governments' ability to regulate commercial businesses, or to enact taxes on non-medical cannabis. Sales taxes on medical cannabis are prohibited. Other excise taxes on medical allowed. Local bans on indoor cultivation for personal use are now invalid.

Effective Date: November 9, 2016

When Will Recreational Cannabis Businesses Activities Begin: January 1, 2018

RESTRICTIONS:

- Consumption of cannabis
- Cultivation of cannabis
- Giving away cannabis
- Taxation (Medical)

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• Local regulatory and enforcement issues

- Range of licensed activities (cultivation, retail, distribution, testing, microbusinesses)
- Local land use and police power remains intact
- Temporary licenses and local control
- Adult Use vs. Medical: Sales Tax
- Indoor Cultivation – Personal and Commercial
 - Permitting indoor personal cultivation
 - Regulating commercial indoor cultivation
- City and County Roles

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- **State Regulation and Enforcement**

- Independent auditor/inspectors
- Will Track-and-Trace be ready?
- Database and IT issues
- Local regulation to fill any gaps
 - Codification of local regulatory authority in state law
 - Inspections
 - Audits
 - Building Code and Fire Safety issues
 - Health and Safety issues

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What Activity is Allowed:

Consumption: Can occur in a private residence or in a business licensed for on-site cannabis consumption. Generally it is allowed where tobacco consumption is permitted by state law and local ordinance.

Legal Limits on Possession: Up to 28.5 grams (1 ounce) of cannabis and up to 8 grams of concentrated cannabis.

Cultivation for Personal Use: The law allows six plants per residence – not six plants per adult. Cultivation area must be secure and not visible from a public space.

Not Allowed: Consuming cannabis while riding in a car as a driver or passenger, or anywhere tobacco consumption is prohibited by state law/local ordinance. Providing to minors under 21 prohibited.

Who is Subject to the Cannabis Tax?

- A Commercial Cannabis Tax is a tax on the business entity:
 - Authorized to conduct these activities
 - That holds a Commercial Cannabis Permit
 - It is **not** a tax on the consumer.

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Taxation Issues

- Local Taxes Measures Prop 218 vs. Fees Prop 26
- Cultivation Tax and Excise Tax: Is the state tax rate too high?
- Local taxes and black market stimulation
- Variables in the Revenue Equation – Supply, Demand, and the cumulative tax rate

PROP 64 TAXES

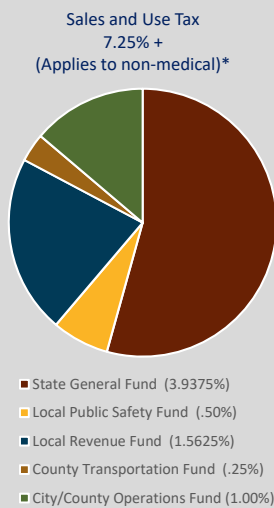
Taxation	Adult-Use	Medicinal
State Sales Tax	Yes	No*
Local Sales Tax	Yes	No*
Other Local Tax ¹	Yes	Yes
State Excise Tax ²	Yes	Yes
State Cultivation Tax	Yes	Yes

* H&S 11362.71 Exempts individuals from paying state and local sales tax if they have a State issued patient identification card. In 2016 there were 6,800 individuals participating in the program.

¹ Rev & Tax 34021

² Excise Tax and other taxes effective tax rate will be 25%

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State Cannabis Excise Taxes
(Applies to medical and non-medical)

Retail Tax
15%
Gross
Receipts of
Retail Sales

Cultivation Tax
\$9.25/oz.
Flowers
\$2.75/oz.
Leaves

City Excise Taxes
(Can apply to medical and/or non-medical)

Cultivation/Retail/
Manufacturing/ Broker,
Testing
XX% of Gross Receipts
\$XX per Square Footage
\$XX per Quantity

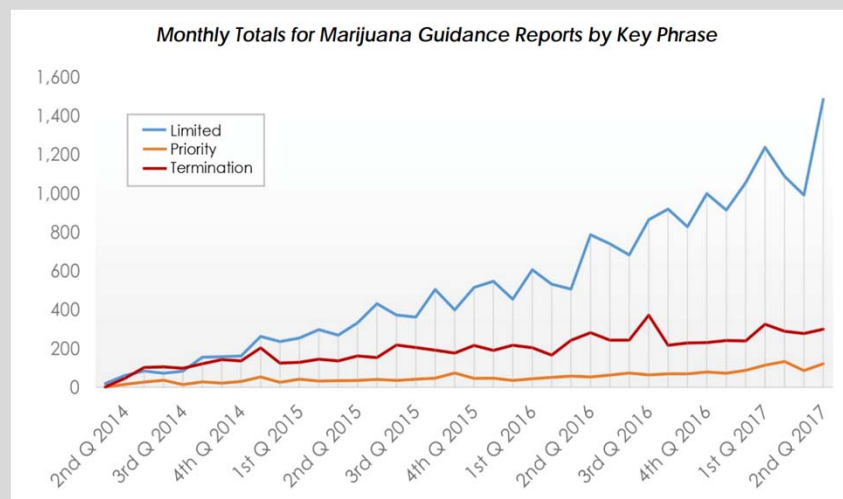
City Administrative Fees
(Can apply to medical and non-medical)
\$XX Application Fee
\$XX License Fee
\$XX Renewal Fee
\$XX Administration Fee
(Cost Recovery)

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Taxation Issues (continued)

- Lessons from Colorado
- Money: The Challenge of Cash Payments
 - Security Issues
 - Banking Relationships
- Audits
 - Why they're essential
 - Local capacity
 - Selection of contracting third party auditors
 - Trends

Cannabis Industry Bank Accounts (FinCEN)



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Local Government Approaches

- Oakland's Regulatory Structure
- Grants: Myths vs. Realities
- Cultivation: How its regulated
- Deliveries
- Personal Indoor Cultivation: Should there be Permits?
- Retailer vs. Non-Storefront Retailer (Delivery Only)

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Local Government Approaches (continued)

- Weedmaps, EAZE and Local Regulations
- Agricultural Cities
- Cities in Fiscal Crisis (the Revenue Window)
- Entrepreneurial Cities
- Lessons Learned: Best Practices and Success Stories
 - Local Ordinances: Be explicit and comprehensive
 - Strategic Planning: Involve all relevant departments on the front end
 - Plan to Handle Large Amounts of Cash
 - Scale Fees to cover 100% of Foreseeable Local Regulatory Activities

Prop 64 Grant Funding Myths vs Realty

- What kind of cannabis permits must my agency allow in the City in order to be eligible for the funding?
 - Personal use outdoor
 - Retail Sales
 - Does it have to allow other commercial activities? Yes or No?
- How will the grant funds be distributed?
 - They will be disbursed based on population of those eligible cities in the pool.
- When will the funds be available?
 - Estimated time for funds to be distributed would be in August of 2018.

Development Agreements Do They Circumvent Prop 218?

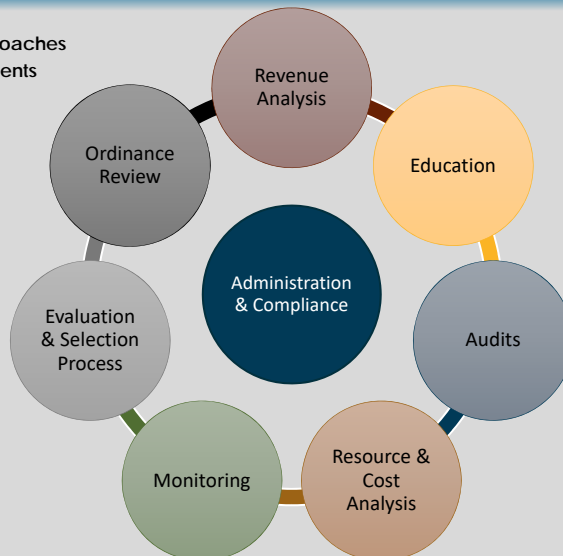
- What is the purpose of Development Agreements (Government Code 65864)
 - Lack of certainty in the approval of a development project can result in a waste of resources, escalate the cost of housing and other developments to the consumer
 - The lack of public facilities such as streets, sewage, transportation, drinking water, schools and utility facilities
- Who has right to the property for Development Agreements? (Government Code 65865 (c))
 - The property owner or other persons having a legal or equitable interest in the property

Development Agreements (Cont'd)

- What limitations does the City/County have on the agreement? (Government Code 65865.2)
 - The development agreement may include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such actions shall not prevent development of the land for the uses and to the density or intensity of the development set forth in the agreement.
- Can development agreements be challenged? (Government Code 65867.5 (a))
 - A development agreement is a legislative act that shall be approved by ordinance and is subject to referendum.

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Local Government Approaches
Administrative Components



A Quick History of Cannabis in Oakland

- July 2009, voters approved Measure F:
 - Making Oakland the first City in the nation to impose a tax on medicinal cannabis businesses.
 - The tax rate was at \$18 per \$1,000, or 1.8% of gross receipts.
 - The City was home to 4 approved medical cannabis businesses at the time.
- November 2010, voters approved Measure V:
 - Increasing the tax rate on medicinal cannabis businesses to 5% of gross receipts; and
 - Adding 10%, of gross receipts on non-medical cannabis businesses, aka. recreational.
 - This additional tax rate was put forth in anticipation of Proposition 19 passing, but it failed. Therefore, the recreational tax rate was not implemented, until 2018.
 - The City approved 4 additional dispensaries.

A Quick History of Cannabis in Oakland (cont.)

- November 2017:
 - Oakland Council approved a maximum of eight additional store-front dispensaries,
 - With four reserved for Equity Permit Applicants, each calendar year.
 - No limit on delivery-only dispensaries.
- Equity Permit Program is designed to "promote equitable business ownership and employment opportunities in the cannabis industry in order to decrease disparities in life outcomes for marginalized communities and address the disproportionate impacts of the war on drugs in those communities."
- The City is home to possibly the biggest dispensary in the nation.
- Oakland is also home to the self-declared university, as in teaching anyone who wants to know everything about cannabis industry, from growing cannabis to operating a cannabis business.

Oakland's Regulatory Structure

- No holder of ABC licenses.
- Staffing: 50% Oakland residents, of which 25% residing in high unemployment rates or low household income.
- Receive credits or fee reduction if hire and retain formerly incarcerated but current residents.
- Employees must be paid a living wage (\$13.23/hr. in January 2018).
- Must have a track and trace program, as prescribed by State, in place.
- On-site Consumption is authorized with conditions.
- Equity Permit Program:
 - Oakland resident
 - Annual income less than 80% of Oakland Average Median Income (\$57,778 for 2016 according to US Census)
 - Live in one of 21 Police Beats or arrested after 11/5/1996 and convicted of cannabis crime committed in Oakland

Tax Requirements

The tax requirement is straight forward, much like what many cities already have on the books, and that is....

"If you are in the business, whether sanctioned by the City or not, you are subject to pay the tax."

Tax Audits and the Process

- The focus is to have a general assurance, not absolute assurance, that we are receiving the tax that we are supposed to receive.
- The work plan is to complete an audit of a cannabis business once every three years.
- The actual audit process is through the use of sampling techniques, which represent an effective method by which we carry out the duty of tax administration.

Tax Audits and the Process (cont.)

- The use of sampling techniques is appropriate if any of the following conditions exist:
 - The taxpayer's records are so detailed, complex or voluminous that an audit of all detailed records would be unreasonable or impractical.
 - The taxpayer's records are inadequate or insufficient, so that a complete and thorough audit for the period in question is not otherwise feasible; or
 - The cost of an audit of all detailed records to the taxpayer or to the City will be unreasonable in relation to the benefits derived, and sampling procedures will produce a reasonable result.

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State Regulatory Entities

Bureau of Cannabis Control

Licenses: Retail, Microbusiness, Distribution, Testing

<https://cannabis.ca.gov/>

<http://www.bmcr.ca.gov/meetings/index.shtml>

Contact: bcc.localgov.submit@dca.ca.gov

California Department of Food and Agriculture

Licenses: Cultivation

<https://www.cdfa.ca.gov/is/mccp>

Contact: calcannabis@cdfa.ca.gov

California Department of Public Health

Licenses: Manufacturing

<https://www.cdph.ca.gov/Programs/CEH/DFDCS/Pages/OMCS.aspx>

Contact: omcs@cdph.ca.gov

California Department of Tax and Fee Administration

<http://www.cdtfa.ca.gov/>