

Assembly
California Legislature
Committee on Local Government

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CHAIR

INFORMATIONAL HEARING: HOW LOCAL GOVERNMENTS ARE
IMPLEMENTING PROPOSITION 64 – THE ADULT USE OF MARIJUANA
ACT (AUMA)

WEDNESDAY, FEBRUARY 22, 2:00 PM, ROOM 447

AGENDA

1) **Welcome and Opening Remarks**

Assemblymember Cecilia M. Aguiar-Curry, Chair, Assembly Local Government Committee

2) **Overview of Prop 64 and Medical Marijuana Regulation at the Local Level**

Helen Kerstein, Principal Fiscal and Policy Analyst, Legislative Analyst's Office

3) **Case Studies on Implementing Prop 64**

a) Supervisor Rex Bohn, and Jeff Dolf, Agricultural Commissioner, Humboldt County

b) Treasurer-Tax Collector Mary Zeeb, Monterey County

c) John Young, Agricultural Commissioner, Yolo County

d) Councilman Mark Wheatley, City of Arcata

e) Randi L. Knott, Director of Government Affairs, City of Sacramento

4) **Challenges Ahead**

a) Cara Martinson, Federal Affairs Manager and Legislative Representative, California State Association of Counties

b) Paul Smith, Vice President, Governmental Affairs, Rural County Representatives of California

c) Tim Cromartie, Legislative Representative, League of California Cities

d) Kate A. Cook, Senior Associate, and Denise S. Bazzano, Senior Associate, Meyers Nave

5) **Public Testimony**

6) **Closing Remarks and Adjournment**



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Informational Hearing: How Local Governments are Implementing
Proposition 64 – The Adult Use of Marijuana Act (AUMA)

Background Paper

Hearing Goal

The goal of this hearing is to provide information to members about Proposition 64 – the Adult use of Marijuana Act (AUMA) – as it pertains to local governments, to learn how cities and counties throughout the state are responding to passage of Prop 64 and preparing for its implementation, and to discuss issues that pose possible challenges in the future as local governments continue to develop and administer their own rules for marijuana activities in their jurisdictions.

Background on Marijuana Regulation in California

California voters approved Prop 64 in November 2016, significantly expanding the scope of marijuana regulation at both the state and local levels. After 20 years of legalized medical use of marijuana in the state, Prop 64 legalized the possession and use of marijuana for non-medical purposes for adults 21 and older and created a state regulatory framework for commercial activity surrounding recreational marijuana.

Prop 64 followed on the heels of the Legislature's approval in 2015 the Medical Cannabis Regulation and Safety Act (MCRSA). The MCRSA established, for the first time, a comprehensive statewide licensing and regulatory framework for the cultivation, manufacture, transportation, testing, distribution, and sale of medical marijuana to be administered primarily by the Department of Consumer Affairs, the Department of Food and Agriculture, and the Department of Public Health.

Prop 64 replicated most – but not all – of the provisions of MCRSA to apply to recreational marijuana. Both measures require the state to begin implementing marijuana regulations on January 1, 2018, and contain a number of identical or similar provisions. The stated purpose of both Prop 64 and the MCRSA is to bring California's marijuana industry out of the black market and into a regulated arena to improve patient and public safety, alleviate environmental damage from illegal marijuana grows, and impose taxes to support these goals.

Compassionate Use Act and the Medical Marijuana Program. Prior to passage of Prop 64 and the MCRSA, California had been operating under the provisions of two primary measures governing the use of marijuana exclusively for medical purposes: the Compassionate Use Act (CUA), approved by voters in 1996 as Proposition 215; and, the Medical Marijuana Program (MMP), which the Legislature created by enacting SB 420 (Vasconcellos), Chapter 875, Statutes of 2003.

The CUA prohibited criminal prosecution of qualified patients with specified illnesses or their primary caregivers for possessing or using medical marijuana upon the written or oral recommendation or approval of an attending physician. The MMP exempted qualified patients and caregivers from prosecution for collectively or cooperatively cultivating medical marijuana, and established a medical marijuana card program for patients to use on a voluntary basis to verify their authorization to possess, grow, transport or use medical marijuana. Medical marijuana cards were issued by counties, and a statewide database system of registered cardholders was created for use by law enforcement to verify whether a card was valid.

Local Regulation of Medical Marijuana. After the passage of the CUA and the MMP, medical marijuana dispensaries and cultivation sites proliferated in many communities throughout the state. In response, local governments exercised their police powers to regulate or ban activities relating to medical marijuana.

The California Constitution provides that "a county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." These are commonly referred to as "police powers" and are the basis for local governments' authority to protect public health, safety and welfare through land use planning and zoning. Under this power, many local jurisdictions in California banned marijuana activities altogether, particularly medical marijuana dispensaries. Others adopted temporary land use moratoria, approved regulations permitting a limited number of dispensaries, or otherwise regulated the cultivation, sale, storage, and delivery of medical marijuana. Some jurisdictions established "permissive" zoning ordinances, which prohibit any land use – such as cultivation of medical marijuana – that is not explicitly authorized by the ordinance.

The issue of local control has been addressed by the courts, which have largely supported local agencies against claims that ordinances regulating or banning medical marijuana activities conflict with the CUA or the MMP. For example, in 2013, the California Supreme Court held that medical marijuana statutes do not preempt a local ban on facilities that distribute medical marijuana, and that municipalities may prohibit such conduct as a public nuisance (*City of Riverside v. Inland Empire Patients Health and Welfare Center*). Also in 2013, the Third Appellate District Court upheld local bans against cultivation (*Maral v. City of Live Oak*). In general, courts have reasoned that nothing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medical marijuana will not be permitted to operate within its borders.

The MCRSA and Prop 64: Some Key Differences. The police powers of local governments were reiterated in the MCRSA, which prohibits licensees from commencing activity under the

authority of a state license until the applicant has obtained a license or permit pursuant to the applicable local ordinance. The MCRSA also maintained the ability of local governments to pass and enforce laws, licensing requirements, and zoning ordinances for medical marijuana activities.

While Prop 64 largely replicated the state regulatory framework for recreational marijuana that was established by MCRSA for medical marijuana, there are some key differences between the two measures. Of those differences, there are several that impact local governments specifically. For example, under Prop 64, local governments may restrict the location of recreational marijuana businesses or may completely ban recreational marijuana sales or other commercial activity, as well as outdoor growing on personal property. However, local jurisdictions may no longer ban personal indoor cultivation, although they may "reasonably regulate" this activity. In addition, Prop 64 requires recreational marijuana businesses to obtain only a state license to operate. Although Prop 64 provides that a state licensing authority may not issue a license to an applicant whose operations would violate the provisions of any local ordinance or regulation, local agencies have expressed concerns about how state licensing authorities will carry out this requirement. Local governments and other stakeholders have expressed a need to reconcile the provisions of the MCRSA and Prop 64, a sentiment echoed in the Governor's budget proposal, which includes \$52.2 million to implement both measures.

Local Responses to the MCRSA and Prop 64. With the passage of each major change in state law governing marijuana regulation, local governments have been responding to the evolving regulatory environment with ordinances that are as unique as the communities they govern. Since 2015, cities and counties have been updating existing ordinances or enacting new ones in response to the MCRSA and, now, Prop 64. Last year's November election alone included 63 local measures taxing or regulating marijuana. One-third of these measures were placed on the ballot by the voters, with the remainder placed on the ballot by city councils or county boards of supervisors. Some allowed for medical marijuana business only, while others sought to establish rules for recreational marijuana businesses.

Prop 64 created a state tax on commercial cultivation based on weight and a retail sales tax of 15%, and allowed local governments to levy additional taxes (except for sales taxes on medical marijuana). Of 39 local ballot measures that sought to impose local taxes, 37 were successful. The proposed tax rates for sales ranged from 2.5% to 20%, while cultivation taxes also ran the gamut with the greatest proposal topping out at \$50 per square foot. Estimated revenue for local jurisdictions ranged from \$100,000 to \$22 million a year. Statewide, local agencies received about \$60 million in 2015 in medical marijuana revenue, a figure that is projected to jump to \$1 billion as a result of Prop 64.

Cities and counties clearly face a daunting balancing act as they consider a wide range of regulatory and tax issues affecting the regulation of medical and recreational marijuana in their communities, issues that are likely to change as the marijuana industry transforms in the years to come.

Other Resources

California City Finance, *Local Revenue Measure Results for November 2016*, including local excise taxes for marijuana (see page 15):

<http://www.californiacityfinance.com/Votes1611final.pdf>

Legislative Analyst's Office, *Key Differences Between Recent Medical Cannabis Laws and Proposition 64: A Preliminary Review*: <http://www.lao.ca.gov/Publications/Report/3517>

League of California Cities, *What Cities Should Know about Proposition 64*:

<https://www.cacities.org/Resources-Documents/Policy-Advocacy-Section/Hot-Issues/Adult-Use-of-Marijuana-Act/Prop-64-Article>

California State Association of Counties, Medical Marijuana web page:

<http://www.counties.org/medical-marijuana>