



City Council Memorandum

City of Arts & Innovation

TO: HONORABLE MAYOR AND CITY COUNCIL **DATE: MARCH 7, 2017**
FROM: CITY ATTORNEY **WARD: ALL**
SUBJECT: WORKSHOP ON PROPOSITION 64

ISSUE:

Conduct a workshop on the potential impacts of Proposition 64 on the City of Riverside.

RECOMMENDATIONS:

That the City Council provide direction to staff regarding any proposed policy, plan, and/or regulation of recreation and medical marijuana in the City.

LEGISLATIVE HISTORY:

On November 8, 2016, the Control, Regulate and Tax Adult Use of Marijuana Initiative (Prop 64) was on the California Ballot. It passed statewide by 64% and by 54% in the City. Prop. 64 became effective as of November 9, 2016.

DISCUSSION:




This workshop will provide, among other things:

1. An overview of Prop 64;
2. How Prop 64 and the Medical Cannabis Regulation and Safety Act interact;
3. How it will affect the City; and
4. The City's options.

FISCAL IMPACT:

There is no fiscal impact associated with this workshop.

Prepared by: Gary G. Geuss, City Attorney



City of Riverside


Marijuana Policy Workshop

March 7, 2017

Delivering Revenue, Insight and Efficiency to Local Government

HdL Companies

- Serves 300 cities, 44 counties and 79 transactions districts in six states
- HdL has worked with over 50 local agencies providing outreach and education on developing marijuana policies
- HdL staff is comprised of former policymakers and law enforcement personnel with marijuana expertise which has conducted over 10,000 compliance reviews and criminal investigations for state, county, and local government



Delivering Revenue, Insight and Efficiency to Local Government

Legal Timeline

- 1970 Marijuana List as a Class 1 Drug
- 1996 Prop 215 Compassionate Use Act (CUA)
- 2003 SB 420 Medical Marijuana Program
- 2011 City of Oakland Taxes Medical Marijuana
- 2012 CO and WA pass Recreational Use
- 2013 US Attorney General -Cole Memo Guidelines
- 2014 Congress defunds DEA Prosecutions
- 2015 CA Adopts (MMRSA/MCRSA)
- 2016 Prop 64 (AUMA) Nov 8, 2016 Voters Approved

Cole Memo

- Preventing the distribution of marijuana to minors
- Preventing the revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states
- Preventing state-authorized marijuana activity from being used as cover or pretext for the trafficking of other illegal drugs or other illegal activity

Cole Memo (cont'd)

- Preventing violence and the use of **firearms** in the cultivation and distribution of marijuana
- Preventing **drugged driving** and the exacerbation of other adverse public health consequences associated with marijuana use
- Preventing the growing of marijuana on **public lands** and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on **federal property**

Paradigm Shifts and Cultural Changes

- Types of cultural behavior changes
 - Prohibition of Alcohol (1920-30's) Silent Generation
 - Cigarettes (1950-60's) Baby Boomers
 - Gambling Indian Casino's (1970-80's) Generation X
 - Marijuana Decriminalization (1996-2016) Centennials

Ohio

Proposition 64 Election Results

- Statewide 56% of the voters supported Proposition 64 and 44% opposed
- Riverside County 53.92% of the voters supported the initiative and 47.68% opposed



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City of Riverside Prop 64 Results by Ward

	<u>YES</u>	<u>NO</u>
Ward 1	61%	39%
Ward 2	59%	41%
Ward 3	52%	48%
Ward 4	48%	52%
Ward 5	51%	49%
Ward 6	54%	46%
Ward 7	53%	47%
Total	54%	46%



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Efficiency to Local Government

Local Marijuana Ballot Measures

- There were 63 Local Marijuana Measures on the ballot related to legalization, taxes and sensitive boundaries
- California had 39 marijuana tax measures on the ballot of which only one failed-Colfax
- The Northern part of the State had a 83% passing rate
- The Southern part of the State had a 76% passing rate

Marijuana Policy Development

“Policies designed today will help shape how the industry will look like in your community tomorrow.”

-HdL Companies

Balancing Policy Issues



Path To Success

- Educate
- Collaborate
- Legislate
- Regulate

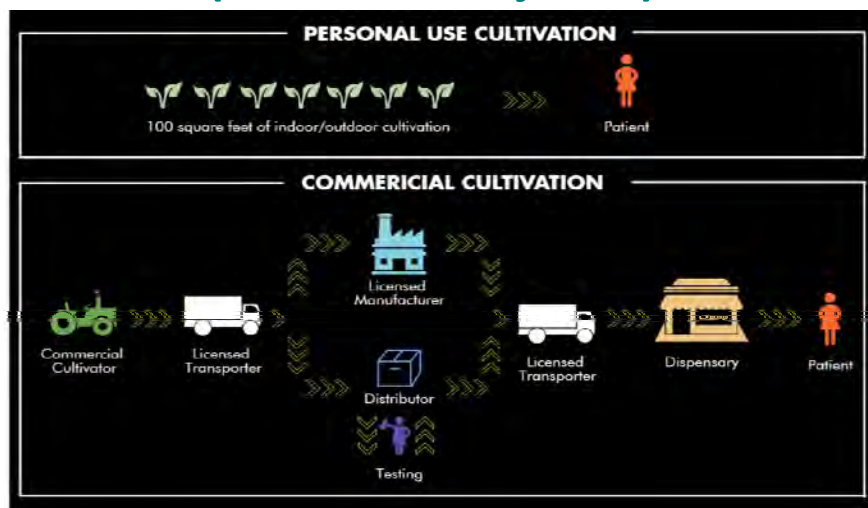
Medical Cannabis Regulation and Safety Act (MCRSA)*

This legislation protects local control in the following ways:

- **Dual licensing:** A requirement in statute that all marijuana businesses must have both a state license, and a local license or permit, to operate legally in California. Jurisdictions that regulate or ban medical marijuana will be able to retain their regulations or ban.
- **Enforcement:** Local governments may enforce state law in addition to local ordinances, if they request that authority and if it is granted by the relevant state agency.

* Formerly known as Medical Marijuana Regulation and Safety Act

Patient Access Under MCRSA (Medical Marijuana)



Businesses/Permits in MCRSA (Medical Marijuana)

17 Types of Permits:

- Ten types of cultivation permits
- Dispensaries (single or multiple locations)
- Manufactures
- Testing Labs
- Transporters
- Distributors

* Delivery services may occur if permitted by the local agency or if it is not explicitly not permitted by them and must be associated with a dispensary.

Adult Use of Marijuana Act Proposition 64 (AUMA) (Recreational)

- The Control, Regulate and Tax Adult Use of Marijuana Initiative (#15-0103) appeared on the California ballot on November 8, 2016.

Prop 64 Timing

- Prop 64 took effect November 9, 2016.
- As of November 9, 2016, Prop 64 legalized the nonmedical use of marijuana by persons 21 years of age and over, and the personal cultivation of up to six marijuana plants.
- Prop 64 requires a state license to engage in commercial nonmedical marijuana activity and licensing authorities are required to begin issuing licenses by January 1, 2018 and the issuance of licenses will not occur much in advance of January 1, 2018.

Prop 64 Finding and Declarations

- Taxes the growth and sale of marijuana
- Funds will be used to invest in public health programs that educate the youth to prevent serious substance abuse
- Trains local law enforcement to enforce the new law with a focus on DUI enforcement
- Invest in communities to reduce illicit market and create jobs
- Exempts medical marijuana from taxation

Prop 64 Finding and Declarations (Cont'd)

- It establishes strict packaging and labeling requirements for marijuana products (Not to exceed 10 milligrams per dosage)
- Mandates that marijuana products can not be advertised or marketed towards children
- Provides for environmental cleanup and restoration of public lands damaged by illegal marijuana cultivation

Prop 64 Provisions and Local Control Options

- Personal Use and Cultivation
- Public Consumption
- Land Use
- Commercial Businesses

Prop 64 Personal Use

- Legalize marijuana under state law:
 - Must be 21 years of age or older
 - Allows for regular possession of up to 28.5 grams of marijuana and 8 grams of marijuana product
 - Permits the giving away of up to 28.5 grams of marijuana and 8 grams of marijuana product
- Allows for cultivation of six (6) plants per residential property and reasonable local regulations
- No conduct deemed lawful by this law shall constitute the basis for detention, search or arrest

Personal Use Regulations and Challenges

- Local control are optional
- Local banning of outdoor cultivation specifically allowed for, or as with indoor cultivation, can be “reasonably regulated”
- Examples of what some jurisdictions have deemed “reasonable”
 - Establish a personal cultivation permit with an appropriate fee
 - Require an annual inspection to verify the following:
 - Utilizing more electricity than the house or structure is designed to use which can create a fire hazard
 - Make sure that it does not create an odor nuisance or develop mold or other health hazards
 - Does not use more water than needed for the cultivation of 6 plants

Personal Use Regulations and Challenges (cont'd)

- Can prohibit growing in common areas such as living rooms, hallways, and bathrooms
- Proof of ownership or landlord approval
- May consider restricting indoor growing area to 100 square feet
- Must be grown in a contiguous space
- Will be required to demonstrate sufficient HVAC
- May consider restricting the size of the plant
- Can require set backs from neighboring properties such as 10ft/25/ft. etc.



Public Consumption

- No smoking in public places
- No smoking where smoking tobacco is also prohibited
- No smoking while driving or riding in a vehicle
- Employers may maintain drug-free workplaces
- Local jurisdictions may authorize smoking or ingesting in marijuana retail or microbusinesses, with limitations
- Cities may prohibit smoking and possession in buildings owned, leased, or occupied by the City

Land Use Considerations

- Definitions for uses, activities, etc. (Agriculture Product) B&P 26067
- Permissive zoning vs. explicit bans.
- Prohibits marijuana businesses from being within 600 feet of certain sensitive use areas (schools, day care centers or youth centers).

Commercial Businesses

Licensed/Permitted By The State
(Recreational)

19 Types of Permits:

- Thirteen types of cultivation permits-includes Microbusinesses and Type 5 Permits
- Retailer (Not Dispensaries)
- Manufactures
- Testing Labs
- Transporter
- Distributors

Local Control Of Commercial Businesses

- May prohibit or regulate any of the 19 permit activities/business licensed by the State: Examples:
 - Prohibition of outdoor cultivation for commercial and personal use.
 - Prohibition of Type 5 (large) Permits or Microbusinesses
 - Prohibition or additional regulation of a variety of land uses such as distances from sensitive areas.
 - Prohibition or additional regulation of delivery, but cannot prohibit use of city roads B&P 26090 (C).
- Prop 64 does not properly define premise or canopy space local agencies may need to clarify this in the code.

Local Control Of Commercial Businesses

- May prohibit or regulate any of the 19 permit activities/business licensed by the State:

Examples:

- Prohibition of outdoor cultivation for commercial and personal use.
- Prohibition of Type 5 (large) Permits or Microbusinesses

Prop 64 Benefits

- **Research and Evaluation** - \$10 million.
- **California Highway Patrol** - \$3 million to establish and adopt protocols to determine if a driver is under the influence or impaired by the use of Marijuana.
- **Community Benefits** - \$10 million for job placement, mental health treatment, substance use disorder, and for communities affected by past federal & state drug policies.
- **Further Studies** - \$2 million to further study the enhanced understanding of the efficacy and adverse effects of MJ as a pharmacological agent.
- **Education, Prevention and Early Intervention** – 60%.

Prop 64 Taxes

Taxation	Non-Medical	Medical
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. Currently there are approximately eight hundred twenty four (824) participants in the program in the last three years.

¹ Rev & Tax 34021

² Excise Tax will be 15% on purchasers shared with public safety agencies.

Complexity of Marijuana Legislation

- Colorado Legislative changes in 2016
 - There were 44 legislative bills introduced
 - There were 22 legislative bills that passed
 - Bill changes caused 124 rule or statute changes in one year
 - Public safety issues were 90% of changes introduced into law
 - California will experience similar situations as it progresses through the rule making process
 - Look how Proposition 64 has already undermined some of the compromises made under MCRSA (Type 5 Permit)

Development of Regulatory Ordinance

- A regulatory ordinance being developed should address the following:
 - Time
 - Place
 - Manner

Regulatory Ordinance

Regulated Business Environment

- Business location
- Hours of operation
- Signage/advertisement
- Physical security
- Smell, sight, noise
- Reporting requirements
- Employee badge requirements

Regulatory Ordinance (cont'd)

- Unpermitted construction activity
- Vendors and consultants
- Access control requirements
- Law enforcement access
- Record reporting/retention requirements (Track n Trace)
- Investigation and inspection protocols
- Good neighbor policy mitigation
- Suspension, fines and revocation of the permit

Non-Licensed Activity

- Business models created around marijuana tour groups
- Hospitality (Bud & Breakfast)
- Special or social events
- Public consumption
- Rental cars/hotels
- Youth exposed to grow sites in residential property

Non-Licensed Activity (cont'd)

- Diversion black market
- None qualified sales activity
- Illegal business activities
- Overdose and public health impacts
- Driving while impaired



Regulated vs Unregulated

- In California the top five most regulated counties generate 60% (\$628,965,300) of the sales tax revenue but only have 15% of all the retail permits in the State.
- In comparison the top five counties which have bans and actively enforce them only generate 3.2% (\$79,784,900) of the sales tax revenue but make up 58% of the dispensary permits in the State.

Regulated Programs

- License granted by the local agency
- Applicants must comply with more robust requirements
- More accountability for security and product safety
- Reduces intervention from the Federal Government

Unregulated Programs

- Squatter businesses operating without local, state and federal agencies authorization.
- Obtained local business license under false pretense.
- Does not invest in infrastructure and just tries to get by before being evicted by landlord or local agency.
- High security risk and red flag for public safety.
- Most likely not in compliance with Cole Memo.

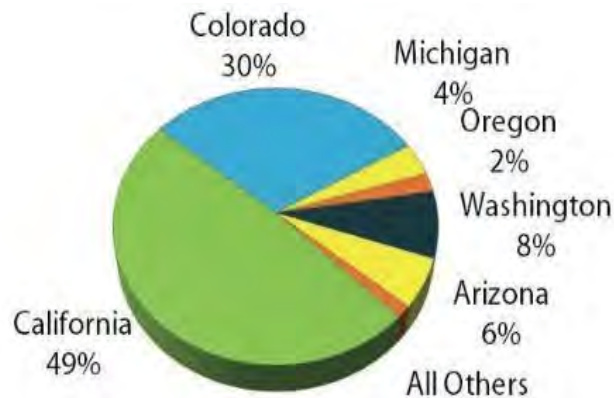
Application Process Options

- First Come First Serve
- Lottery
- Qualified lottery
- Competitive process with limited number of permits
- Open ended process with minimum standards

Cannabis Economic Trends

- It is predicted that the Cannabis Industry will generate \$7.6 Billion in California by 2020.
- Local economy is growing in some communities as a result of the Cannabis Industry.
- Commercial companies have been here for decades but not necessary in the light and the local agency is not benefitting financially.
- Residential growers have been able to compete in the market and will until MCRSA and AUMA is implemented.

CALIFORNIA'S MARKET SHARE



Predicted Profitability in 2017

- Edibles Maker 18X
- Wholesale Grower 12X
- Ancillary Services 10X
- Testing Lab 10X
- Ancillary Products 6X
- Processors 5X
- Dispensary 3X

Average Annual Revenue Per Square Foot

- Apple Retail Stores \$4,799
- Luxury Jewelry Stores \$3,132
- Costco Wholesale Stores \$1,032
- MMJ Dispensary Stores \$974
- Department Stores \$180

Cash Crops Valuation

• Avocados per acre	\$ 8,300
• Grapes per acre	\$ 8,500
• Lemons per acre	\$ 11,800
• Vegetables per acre	\$ 24,000
• Strawberry per acre	\$ 68,500
• Cannabis per acre	\$4,200,000

Tax & Fee Revenues



Tax and Fee Strategies

- General Tax vs Special Tax
- Square Footage vs Gross Receipts
- Tax Rate \$XX to be established per Sq. Ft.
- Tax Rate percent (%) to be established
- Collection method and frequency
- Development of cost recovery fees

Annual Revenue Estimates 98 Permits Issued

- Very Conservative \$8,560,000
- Conservative \$12,840,000
- Aggressive \$16,180,000
- Staffing cost would be approximately \$1,750,000 which would require each permittee to pay an annual regulatory fee of \$17,500 to cover all city cost.

*These figures are based on forty (40) cultivation facilities with 10,000 square feet of canopy space taxed at \$4, \$6, \$10 per square foot each and forty (40) manufacturers and eighteen (18) dispensaries who on average each generates \$2.5 million in gross receipts which are taxed at 4%, 6% and 7% respectively.

Annual Revenue Estimates 75 Permits Issued

- Very Conservative \$ 6,600,000
- Conservative \$ 9,900,000
- Aggressive \$12,450,000
- Staffing cost would be approximately \$1,312,500 which would require each permittee to pay an annual regulatory fee of \$17,500 to cover all city cost.

*These figures are based on thirty (30) cultivation facilities with 10,000 square feet of canopy space taxed at \$4, \$6, \$10 per square foot each and thirty (30) manufacturers and eighteen (15) dispensaries who on average each generates \$3 million in gross receipts which are taxed at 4%, 6% and 7% respectively.

Annual Revenue Estimates 50 Permits Issued

- Very Conservative \$ 5,600,000
- Conservative \$ 8,400,000
- Aggressive \$10,400,000
- Staffing cost would be approximately \$875,000 which would require each permittee to pay an annual regulatory fee of \$17,500 to cover all city cost.

*These figures are based on twenty (20) cultivation facilities with 10,000 square feet of canopy space taxed at \$4, \$6, \$10 per square foot each and twenty (20) manufacturers and ten (10) dispensaries who on average each generates \$4 million in gross receipts which are taxed at 4%, 6% and 7% respectively.

Dealing with Cash Businesses



Banking Issues

- Cash transactions due to nature of business.
- Limited banking options due to Federal law.
- Underpayment of taxes are hard to detect using traditional audit methods.
- Safety issues related to transportation of cash for operators and city staff.

Cannabis Banking Group

- Representatives from law enforcement, regulators, banks, taxing authorities, local government and the cannabis industry
- Established to address the issue since Prop 64 and MCRSA implementation could be hampered if a practical solution is not developed to address the state-federal conflict

Banks, Credit Unions Serving Cannabis Companies

- Banks have the ability to certify businesses to determine if they want to do business with them.
- Determining which banks are doing business with Cannabis operators is difficult due to confidentiality agreements.
- The number of banks/credit unions serving the Cannabis Industry has grown in the last 24 months.

○ March 2014	51
○ March 2016	301
○ December 2016	500

Five Trends

- Significant increases in Venture Capital investments.
- Shakeouts are starting to play out in certain cities.
- Demand for concentrates and edibles are increasing.
- The cost to secure licenses and establish operations are beginning to increase.
- The State now has medical and retail cannabis regulations to implement which will change the dynamics of local agencies.

Things to Consider in Developing Tax

- Adult Use Marijuana Act (AUMA) 15% Excise Tax.
- Distribution/Transportation Processing cost of 15% to 30%.
- State permit cost to be implemented.
- City regulatory permit fees may offset staff costs to manage the program.
- Cost of wages, health insurance, unemployment insurance are new cost to the Cannabis Industry.

If a Policy Decision is Made To Regulate or Tax Locally Create A Strategic Plan

- Establish a Marijuana Management Program.
- Create an ordinance which is well thought out and creates good policies for the long term.
- Develop regulatory fees which address all your staffing resources and complies with Prop 26.

Create A Strategic Plan (Cont'd)

- Take baby steps to full implementation.
- Making sure that you have good actors in your city.
- Develop good regulatory and taxing policies.
- Don't get so focused on the economic benefits that you end up with the unintended consequences.
- Create a progressive strategy which maintains best practices for land use and public safety.

Key Points to Consider

- Develop taxing strategies which comply with Prop 218 that provide you flexibility and properly identifies the best options for your city.
- Make sure that you have professional staff and/or consultant that understands Federal Guidelines, MCRSA & Prop 64 requirements and the Cannabis Industry.

Key Points to Consider (cont'd)

- Collaborate with the Internal and External stakeholders.
- Keep in mind how land use policies will effect other businesses/residents of your community.
- Address City staffing demands and capacity to meet the needs of the emerging industry and its impact on City services.

Options to Consider

- Prop 64 personal use provisions:
 - Adopt reasonable regulations for indoor cultivation.
 - Ban or adopt reasonable regulations for outdoor cultivation.
- Medical marijuana businesses:
 - Explicitly prohibit some or all medical marijuana businesses, in accordance with MCRSA; or
 - Explicitly allow and license some or all medical marijuana businesses, in accordance with MCRSA.

Options to Consider (cont'd)

- Non-medical marijuana businesses:
 - Explicitly prohibit some or all non-medical marijuana businesses, in accordance with Prop 64; or
 - Explicitly allow and regulate some or all non-medical marijuana businesses, in accordance with Prop 64.
- Develop tax strategies for permitted non-medical and/or medical marijuana activities.

Questions?



"What are we, invisible?"

Contact Information

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