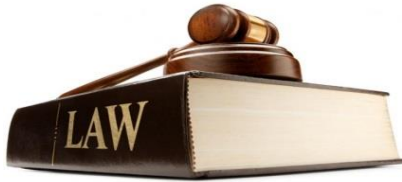


PROPOSITION 64 AND MARIJUANA LAW WORKSHOP



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PROPOSITION 64 AND MARIJUANA LAW WORKSHOP SUMMARY (2)



TOPICS COVERED



1. Action Items Moving Forward
2. Brief History of Marijuana Laws
3. Personal Marijuana Cultivation
4. Personal Marijuana Use
5. Marijuana Commercial Operations
6. Taxation and Fees

ACTION ITEMS MOVING FORWARD (3)

Consider possible further action on following topics concerning Proposition 64 and marijuana law, including community outreach and feedback, for development of local ordinances governing:

1. Personal marijuana cultivation (indoor and outdoor);
2. Personal marijuana use;
3. Commercial marijuana operations (medical and recreational) which include dispensaries, cultivation sites, testing, manufacturing and delivery; and
4. Marijuana taxation and fees.



ACTION ITEMS MOVING FORWARD (4)

Consider likely definite further action to address following issues which involve loss of local control if no action taken:

1. Regulation of indoor personal marijuana cultivation;
2. Before January 1, 2018 determine whether to regulate or ban commercial marijuana operations which otherwise will be eligible for state licenses; and
3. Before January 1, 2018 determine whether marijuana deliveries into the City, from lawful operations outside the City, will be allowed or prohibited.



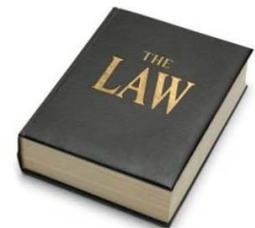
BRIEF HISTORY OF MARIJUANA LAWS (5)

1. 1970 - Federal Controlled Substances Act (CSA)
2. 1996 - CA Compassionate Use Act (CUA) (Proposition 64)
3. 2003 - CA Medical Marijuana Program Act (MMPA)
4. 2013 - Federal Justice Dept. deprioritizes CSA enforcement against medical marijuana in states which regulate
5. 2014 - Congress defunds federal enforcement of CSA against medical marijuana in states which regulate
6. 2015 - *USA v. Marin All. For Med. Marijuana* N.D. Cal., 2015 No. C 98-00086 CRB
7. 2015 - CA Medical Marijuana Regulation and Safety Act (MMRSA)



BRIEF HISTORY OF MARIJUANA LAWS (6)

8. 2016 - *United States v. McIntosh* 833 F.3d 1163 (9th Cir. 2016)
9. 2016 - Gallop Poll shows 60% of Americans support legalization of marijuana
10. 2016 - CA Adult Use of Marijuana Act (AUMA) (Proposition 215)
11. 2016 - New Presidential administration creates uncertainty
12. 2017 - CSA remains valid law; 29 states (and DC) legalized medical marijuana; eight states (and DC) legalized recreational marijuana use
13. 2018 - AUMA (Proposition 64) and MMRSA provide for state licenses for commercial marijuana businesses



PERSONAL MARIJUANA CULTIVATION (7)

LAW BEFORE PASSAGE OF PROPOSITION 64

Before the passage of Proposition 64:



1. The personal cultivation of marijuana for recreational purposes was completely illegal throughout California.
2. The personal cultivation of marijuana for medical purposes was generally lawful unless a city banned the activity.
3. Morro Bay Municipal Code § 9.06.040(B) provides “marijuana cultivation by any person... is prohibited in all zones throughout the City” (with a limited exception for personal medical marijuana cultivation).

PERSONAL MARIJUANA CULTIVATION (8)

CURRENT LAW AFTER PASSAGE OF PROPOSITION 64

California residents may cultivate up to six living marijuana plants within a single private residence

1. Outdoor Personal Cultivation

- Cities may ban outdoor personal cultivation at residence.
- However, unless outdoor personal cultivation is expressly prohibited, then individuals under State law have the right to cultivate at residence up to six plants outdoors.



2. Indoor Personal Cultivation

- Cities preempted from prohibiting personal cultivation of up to six living marijuana plants inside a private residence.
- However, cities may “enact and enforce reasonable regulations to reasonably regulate” indoor cultivation which do not act to effectively prohibit indoor cultivation.

PERSONAL MARIJUANA CULTIVATION (9)

CITY REGULATORY OPTIONS



Status Quo in Morro Bay:

- **Outdoor** - Outdoor recreational marijuana cultivation is illegal.
- **Indoor** - Individuals may grow unregulated up to six recreational marijuana plants inside a private residence.

Possible Options for Morro Bay:

- **Outdoor** - Allow regulated or unregulated outdoor recreational marijuana cultivation. Possible regulations are property owner approval of cultivation and less than six plants.
- **Indoor** - Impose “reasonable” regulations on indoor cultivation of recreational marijuana. Common types of regulation include odor control, security requirements, permits, fire department inspections and/or electrical use regulations.

PERSONAL MARIJUANA CULTIVATION (10)

OTHER CITIES



- In Pismo Beach, Grover Beach and San Jose, review indicates that the indoor cultivation of up to six recreational marijuana plants remains unregulated.
- In Paso Robles, indoor cultivation requires a permit and is only allowed in “accessory structures” separate from a primary residence such as a greenhouse.
- In Indian Wells (Riverside County) indoor cultivation requires registering for a \$141 per year permit, as well as authorization for officials to allow a home inspection to determine no more than six plants being grown, there is adequate ventilation, and cultivation is in a designated locked area.

PERSONAL MARIJUANA CULTIVATION (11)

OTHER CITIES



- San Jacinto (Riverside County) allows indoor cultivation only if a resident has no recent felony drug convictions or pending code enforcement actions.
- In Montebello (Los Angeles County) indoor cultivation requires a permit which is only issued to residents who cannot owe city fees and must agree not to use any more water than needed to keep six plants alive.

Whether some of these more restrictive indoor cultivation regulations will effectively act to prohibit indoor cultivation, and thus violate Proposition 64, may be the subject of future litigation.

PERSONAL MARIJUANA USE (12)

1. **Before Proposition 64**: personal use of recreational marijuana (i.e., for a nonmedical purpose) was illegal under California law (while medical use decriminalized)
2. **After Proposition 64**: personal use legal statewide
3. **Possible City Options**
 - City Employee Policy
 - City Property Policy
 - City No Smoking Policy



MARIJUANA COMMERCIAL OPERATIONS (13)

LAW BEFORE PASSAGE OF PROPOSITION 64



1. **Recreational Marijuana** - all recreational marijuana commercial operations and uses illegal under California law.
2. **Medical Marijuana** - medical dispensaries and medical cultivation allowed but cities can prohibit and/or regulate.
3. **Morro Bay Municipal Code**
 - Prohibits medical marijuana dispensaries. (MBMC § 9.06.040(A).)
 - Prohibits all marijuana cultivation (with exception for personal medical marijuana cultivation). (MBMC § 9.06.040(B).)
 - Prohibits issuance of a license or permit for “marijuana processing” which includes creation of marijuana products and concentrates (e.g., edibles). (MBMC § 9.06.040(C).)

MARIJUANA COMMERCIAL OPERATIONS (14)

CURRENT LAW AFTER PASSAGE OF PROPOSITION 64



1. **Recreational Marijuana** - By January 1, 2018 the State of California will begin issuing nineteen different types of recreational marijuana commercial operation licenses. City should pass ordinance if desire to prohibit or regulate.
2. **Medical Marijuana** - By January 1, 2018 the State of California will begin issuing seventeen different types of medical marijuana commercial operation licenses. City may prohibit or regulate through ordinance.
3. **Morro Bay Municipal Code**
 - Current ban on medical marijuana commercial dispensaries.
 - Silent on recreational marijuana commercial dispensaries.
 - Current marijuana cultivation ban (medical and recreational) may prohibit all commercial marijuana cultivation.
 - Silent on delivery and testing.
 - Arguably currently prohibits manufacturing operations.

MARIJUANA COMMERCIAL OPERATIONS (15)

OVERVIEW OF CITY REGULATORY OPTIONS



On or about January 1, 2018, multiple categories of state licenses will be available from state for operation of both medical, and recreational, commercial marijuana businesses.

Recommended City expressly decide before January 1, 2018 the status of each type of medical and recreational commercial marijuana businesses to be lawfully permitted by the state.

- Grover Beach to establish 70 acre “marijuana district” in industrial zone for medical and recreational marijuana dispensaries, nurseries, manufacturing and testing.
- Carmel and Pismo Beach have proposed a ban on all commercial recreational marijuana operations.

MARIJUANA COMMERCIAL OPERATIONS (16)

CITY REGULATORY OPTIONS: DISPENSARIES



TYPES OF DISPENSARIES

1. Medical - Current prohibition. City may decide to allow.
2. Recreational - When state licenses issued in 2018, if City does not prohibit, then reasonably can operate in City.

NUMBER OF DISPENSARIES

1. Market demand; or
2. Limit number by lottery, selection process, or “first come, first processed.”

MARIJUANA COMMERCIAL OPERATIONS (17)

CITY REGULATORY OPTIONS: DISPENSARIES

LOCATION OF DISPENSARIES

1. Specific zones
2. Distance requirements from schools, parks, houses of worship and/or other dispensaries

TYPES OF REGULATIONS: Record keeping requirements; Use of security cameras; Lighting; Hours of operation; Employee training; Insurance requirements; Alarm systems; Guards; Odor control; Indemnification of City



MARIJUANA COMMERCIAL OPERATIONS (18)

CITY REGULATORY OPTIONS: DELIVERIES

LOCAL CONTROL

1. City can ban/regulate deliveries of marijuana (both medical and recreational) into the City from outside of the City.
2. City can ban/regulate deliveries from a lawful dispensary in the City to a resident in the City.
3. City cannot prohibit the use of its public streets by delivery services simply passing through Morro Bay.



OPTIONS TO CONSIDER

1. Current local law does not expressly prohibit deliveries.
2. If City does not want out-of-area marijuana operations delivering into City, then before Sacramento issues delivery licenses (by 2018) the City should adopt an express ban.
3. City can prohibit recreational and/or medical deliveries.

MARIJUANA COMMERCIAL OPERATIONS (19)

CITY REGULATORY OPTIONS: CULTIVATION

TYPES OF CULTIVATION OPERATIONS



1. Ten different types of commercial medical marijuana cultivation state licenses.
2. Thirteen different types of commercial recreational marijuana cultivation state licenses.
3. Differences in licenses are concerned with both size of the cultivation operation, and whether the cultivation occurs indoors, outdoors, or in mixed light.

MARIJUANA COMMERCIAL OPERATIONS (20)

CITY REGULATORY OPTIONS: CULTIVATION

LOCAL CONTROL



1. Current local law prohibits marijuana cultivation in all zones (with a limited exception for medical).
2. City may permit only commercial medical marijuana cultivation, or may also allow commercial recreational marijuana cultivation.
3. City may restrict and/or prohibit all types of commercial cultivation operations, and/or restrict commercial cultivation operations to certain zones, limit their number, and/or impose regulations.

MARIJUANA COMMERCIAL OPERATIONS (21)

CITY REGULATORY OPTIONS: MANUFACTURING AND TESTING



Manufacture of both medical and recreational marijuana products licensed by state in or about January 1, 2018.

- 1. City may allow certain types of manufacturing (e.g., edibles, oils, creams and pills), or completely ban all manufacturing.**
- 2. Two types of state manufacturer licenses: use of non-volatile solvents or no solvents, another for use of volatile solvents.**
- 3. City may define zones where these businesses are allowed.**
- 4. Subject to state laws regulating their manufacture, content, labeling and packaging.**

Testing of marijuana for contaminants and “conformance to label content of compounds” before retail sales are allowed will begin by January 1, 2018. City may allow or completely prohibit.

TAXATION AND FEES (22)

NEW TAXES AND CITY OPTIONS

NEW PROPOSITION 64 MARIJUANA TAXES

- Statewide 15% excise tax on purchasers of marijuana.
- Statewide cultivation tax (\$9.25 dry-weight ounce marijuana flowers / \$2.75 dry-weight ounce marijuana leaves).
- Medical marijuana retail sales exempt from state sales tax.

CITY TAX OPTIONS (Need voter approval)

- Gross receipts tax
- Cultivation tax

FEE OPTIONS

- Recover licensing and regulatory costs
- Development agreement





TAXATION AND FEES (23)

EXAMPLES

- 1. Palm Springs** - tax rate 10% gross receipts (up to 15% tax approved) for 6 permitted dispensaries; population 46,000; 2014-15 FY Estimated Revenue: \$1,143,144
- 2. Desert Hot Springs** - tax rate 10% gross receipts with 3 dispensaries approved in September, 2015; population 28,000; 2015-2016 FY Estimated Revenue: \$200,000
- 3. Santa Ana** - tax rate up to 10% gross receipts, starts at 5%; 20 allowed dispensaries; population 335,000; 2015-2016 FY Estimated Revenue: \$1,500,000
- 4. San Jose** - tax rate 10% gross receipts on 16 permitted dispensaries; population 1,000,000; 2015-2016 FY Estimated Revenue: \$4,500,000

TAXATION AND FEES (24)

PROJECTIONS AND LOCAL EXAMPLE



Whether City would realize same revenues depends on specific local circumstances including competition from neighboring cities, availability of business locations, and local demand.

1. **King City** (Monterey County / population 14,000) - Projected future marijuana tax revenues \$1-2 million annually.
2. **City of Gonzales** (Monterey County / population 8,400) - Proposed marijuana taxes projected to reach \$1.6 million.

City of Grover Beach: voters approved marijuana taxes

1. 5% tax on gross receipts of medical marijuana businesses.
2. 10% tax on gross receipts of recreational marijuana businesses.
3. \$25 per square foot of canopy on the first 5,000 square feet. and \$10 per square foot thereafter on marijuana cultivation.

QUESTIONS

