



CANNABIS

Framework, Considerations, Proposed Policy, and Resources for Local Government

Compliance with the Medical Marijuana Regulation and Safety Act (MMRSA) continues to evolve. The Governor's proposed 2016-17 State Budget includes additional implementing provisions for MMRSA and at the time of this report signature verification is pending for a Statewide Ballot Measure for recreational use of cannabis.

MuniServices has collaborated with municipalities for various projects with regard to medical marijuana dispensaries. This report captures components and issues clients often seek additional information for. We've included a section that focuses on considerations for local governments when exploring a cannabis ordinance. Note that the use of "cannabis" and "marijuana" is interchanged. There are pending legislative and budget proposals that would change numerous related code sections of California law, including replacing the word "marijuana" with "cannabis."

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**SECTION 1: GENERAL BACKGROUND AND HISTORY**

Proposition 215 (1996): California voters passed Proposition 215, also known as the Compassionate Use Act of 1996, which allows patients and their primary caregivers to cultivate or possess marijuana for personal medical treatment with the recommendation of a physician.

Guidelines for Proposition 215 Implementation:

Chapter 875, Statutes of 2003 established statewide guidelines for Proposition 215 enforcement and allows non-profit distribution in certain cases for patient cultivation cooperatives, small-scale caregiver gardens, and dispensing collectives. Despite the fact that numerous medical marijuana dispensaries currently do business in California, the sale of medical cannabis is illegal under federal law.

“Cole Memo”: An August 29, 2013 U.S. Department of Justice memo to federal prosecutors regarding cannabis enforcement under the Controlled Substance Act (CSA) reiterated the Department’s commitment to enforcing the CSA consistent with Congress’ determination that cannabis is a dangerous drug that serves as a significant source of revenue to large-scale criminal enterprises, gangs, and cartels.

Bank Secrecy Act: On February 14, 2014, the Department of Treasury’s Financial Crimes Enforcement Network issued guidance to clarify Bank Secrecy Act expectations for financial institutions seeking to provide services to marijuana-related businesses and to provide direction for Cole Memo compliance. The guidance allows banks to work with marijuana-related businesses that operate in compliance with state laws and regulations. Many financial institutions elect not to bank cannabis-related businesses. This forces medicinal cannabis-related businesses to operate on a cash-basis.

Access to Financial Institutions: AJR 25 (Lackey) a 2015 non-binding California resolution that urges the President and Congress to support legislation that allows banks & credit unions to perform financial services for marijuana businesses was signed by the Governor.

SECTION 2: FRAMEWORK FOR MMRSA

The 2015 package of MMRSA bills (AB 266, SB 643 and AB 243) and new California law protects local control and is protected by dual licensing. MMRSA includes the authority for the revocation of a local license or permit, enforcement and provides for civil penalties. Jurisdictions that currently ban or may wish to ban cultivation and deliveries or mobile dispensaries under this new law need to have an ordinance in place that affirmatively prohibits this activity.

- **(AB 266/Bonta)** Enacts MMRSA; includes provisions with respect to ordinances, permits, licensing requirements, establishes the Bureau of Medical Marijuana Regulation, and more.
- **(SB 643/ McGuire)** Creates a regulatory framework for cultivating, selling and transporting medical cannabis by the Bureau of Medical Marijuana Regulation, Department of Food and Agriculture and other state entities.
- **(AB 243/ Wood)** Establishes a regulatory program for cultivation of medical cannabis; includes local provisions with respect to ordinances and issuing or denying permits for cultivation. Note that AB 21 (Wood) from 2016 was critical clean up legislation signed by the Governor that removed the provisions from AB 243 that would have granted the Department of Food and Agriculture the sole licensing authority for medical marijuana authority cultivation applicants in a city or county. Without this bill, the provision would have pre-empted local governments from enacting any kind of local cultivation regulation if they did not have one in effect as of March 1, 2016.



SECTION 3: RESPONSIBLE STATE AGENCIES

The Division of Inspection Service's Medical Cannabis Cultivation Program was established within the Department of Food and Agriculture when Governor Brown signed the MMRSA into law effective, January 1, 2016. The MMRSA tasked the following agencies to establish regulations for the cannabis industry:

Department of Consumer Affairs: Responsible for licensing transporters, distributors, and dispensaries.

Department of Food and Agriculture: Responsible for licensing cultivators.

Department of Public Health: Responsible for licensing laboratories and manufacturers of products, such as edibles.

SECTION 4: BOE TAX GUIDE FOR CANNABIS BUSINESSES

All business establishments that make retail sales of medical cannabis and cannabis-related items in California must register with the BOE for a seller's permit. Multiple locations must register each location. Itinerant or mobile dispensaries are required to register.

Policy Regarding the Sale of Medical Marijuana:
http://www.boe.ca.gov/industry/medical_cannabis.htm
#Overview

BOE Publication 557, Tax Help for the Cannabis Industry: <http://www.boe.ca.gov/pdf/pub557.pdf>

SECTION 5: PROPOSED 2016 LEGISLATION

- **Tax amnesty:** A tax penalty amnesty program for April 1, 2017 to September 30, 2017 (or any other six-month period ending December 31, 2017) for medical cannabis dispensaries to begin to comply with the tax laws. **Revenue impact:** Depending on the participation rate, estimated one-time revenue increase of \$52.8 million (50% compliance); \$79.2 million (75% compliance); or \$105.6 million (100% compliance). **(AB 567/Gipson)**
- **Changes the term 'marijuana' to cannabis' in the MMRSA and California codes; advisory group provisions:** Proposed term change in the MMRSA. Requires the BOE to create a group to examine strategies including point-of-sale systems to improve financial monitoring of cannabis businesses and would create an enhanced financial monitoring certification for entities licensed under the MMRSA; Specifies an ordinance that regulates cannabis or medical cannabis shall not require the consent of the Department of Food and Agriculture. **(AB 1575/Bonta)**
- **Policing authority for medical marijuana cultivation:** An exemption from the medical marijuana licensing requirements; does not limit or prevent local government from exercising its police power authority. **(SB 435/Pan)**
- **Excise tax of 15 percent on medical marijuana.** For the consumption or use of medical marijuana purchased from any retailer in California. **Revenue allocation:** 30% to the General Fund; 30% to the Bureau for grant program administration to distribute grants to local agencies that are affected by the regulation of medical marijuana activities pertaining to the cultivation of marijuana in violation of state law or local ordinance (upon appropriation by the Legislature); 20% to the Department of Parks and Recreation for the stewardship, operation, maintenance, and preservation of state park units, including units operated on behalf of the state by local or regional agencies or by nonprofit organizations (upon appropriation by the Legislature); 20% to counties for drug and alcohol treatment programs. **Revenue impact:** Annual revenue of \$251 million. With an operative date of January 1, 2018, this revenue would be reduced by half to \$125.5 million in fiscal year 2018-19. **(SB 987/McGuire)**
- **Training for licensee agents and employees:** Requires a state licensee to institute and maintain a training program for the licensee's agents and employees regarding compliance with the MMRSA. **(AB 26/Jones-Sawyer)**
- **Taxing medical marijuana:** Imposes a per-ounce medical cannabis tax on the distribution of medical marijuana by licensed cultivators; requires distributors to collect the tax from cultivators and remit to the BOE. **Revenue impact:** \$77 million annually (30% for local law enforcement pertaining to illegal cultivation; 30% for a fund for environmental related grants; 30% to various agencies for environmental related activities and 10% to the Bureau of Medical Marijuana Regulation for studies). **(AB 2243/Wood)**



- **Payments made at the BOE:** Allows the BOE to accept cash, check or credit card payments for cannabis businesses. **(AB 821/ Gipson)**
- **Cash payments:** Authorizes the BOE to enter into agreements with specified state agencies to collect cash payments from medical marijuana-related businesses. **(AB 2149/ Bonilla)**

SECTION 6: PENDING 2016-17 STATE BUDGET ITEMS

The Governor's proposed budget "trailer" legislation includes policy and programmatic changes to the MMRSA. The 2016-17 State Budget must be passed by the Legislature by June 15. The selected proposed changes noted below will be weighed against the proposed ballot initiative to legalize recreational marijuana should it be passed by voters in November.

Funding and Positions: Provides a total of \$24.6 million and 126 positions across the following six state departments: Department of Consumer Affairs, California Department of Food and Agriculture, Department of Public Health, Department of Fish and Wildlife, State Water Resources Control Board, and Department of Pesticide Regulation.

Marijuana Study: Department of Public Health requested \$500,000 from the 2016-17 GF to provide funding for the Institute of Medicine to perform a comprehensive review of existing scientific evidence about the health consequences of marijuana use. The study is expected to be completed in early 2017.

Licensing Authority and Requirements: Clarifies that implementing departments have the authority to create license types, set license fees, and conduct enforcement against licensees. Adds conditions for licensure and grounds for disciplinary actions against licensees and authorizes implementing departments to provide conditional licenses & deadlines to apply for licensure.

Additional Requirements: Requires the Department of Public Health (DPH) to establish minimum security requirements for the storage of medical cannabis products at a manufacturing site; gives DPH the authority to conduct mandatory recall when a medical cannabis product creates or poses a threat to human life; allows DPH to embargo manufactured medical cannabis products that violates the law to prevent its distribution and sale to protect the public health and safety.

SECTION 7: PROPOSED NOVEMBER 2016 BALLOT INITIATIVE

Official Title: Control, Regulate and Tax Adult Use of Marijuana Act (Pending 1762. (15-0103)).

Common Reference: "Sean Parker Initiative."

Status: Initiatives and Referenda Pending Signature Verification. The Random Sample Deadline is 06/30/16.

What the Initiative Does: Legalizes marijuana and hemp under state law and designates state agencies to license and regulate marijuana industries. Allows adults, age 21+, to possess, transport, purchase, consume and share up to one ounce of nonmedical marijuana and eight grams of nonmedical marijuana concentrates.

What is Taxed: Imposes state and excise tax on retail sales of marijuana equal to 15% of sales price, and cultivation taxes on marijuana of \$9.25 per ounce of flowers; \$2.75 per ounce of leaves.

Projected Annual Revenue from 15% Excise Tax: Upwards of \$1 billion annually (this is in addition to the sales and use tax imposed by the State and locals).

Cultivation: Adults can grow up to six plants at their household for nonmedical use; plants must be out of public view and secure from children; local s may ban outdoor home cultivation; cities however could not ban small, secure personal indoor gardens.

Licenses: Establishes a number of license types, with small, medium and large-scale cultivation; delays issuance of large cultivation licenses, 22,000 square feet or greater, for the first five years.

On-Site Consumption: Permits licensed businesses, subject to local approval, to sell marijuana for on-site consumption.

Tracking: Establishes a unique identifier program to track marijuana from seed to sale.

Agency Role: Expands the scope of a task force of environmental agencies to respond to environmental damage.



Local Government Regulation: Allows local governments to regulate nonmedical marijuana business through zoning and local law. Requires businesses to obtain local permits or licenses in addition to state license; requires an affirmative action by local governments to ban any marijuana activities.

Local Taxation: Empowers local governments to establish their own taxes on medical and nonmedical marijuana consistent with existing state laws; explicit authority to do so is granted to counties (further clarification is need to verify that cities have the same authority). Counties already have taxing authority on medicinal marijuana under the recently passed package of bills. The initiative expands the tax authority under the “recreational” use legalization.

Revenue Flow and Role of the BOE and Controller: The BOE will collect the special marijuana taxes from the retailer or business that is responsible for collecting the revenue (the BOE will develop procedures); and the Controller will allocate the revenue to administer the new law and provide the funds to critical investments.

Reference: <http://www.sos.ca.gov/elections/ballot-measures/initiative-and-referendum-status/initiatives-and-referenda-pending-signature-verification>.

SECTION 8: CONSIDERATIONS FOR LOCAL GOVERNMENT

This section is an initial list of issues locals may want to consider when implementing a tax on cannabis operations. Additional considerations will be presented as new issues are identified.

Revenue estimates are very subjective: Initial revenues estimates generally do not account for low compliance levels due to black-market sales.

Local “competition”: Competition from other cities and counties will eventually reduce the price of marijuana and reduce the amount of tax.

Taxing multiple business activities: Increases the complexity and costs of administering the tax; imposing a tax on multiple business activities can have a negative impact on sales and reducing tax revenues.

Imposition a tax on storefronts: It is less complicated to impose a tax on storefront medical marijuana dispensaries as compared to cultivation, brokers and delivery activities; cultivator, broker and delivery operations do not generally have permanent business locations and are more difficult to regulate.

Flexibility with tax language in a local ordinance: Flexibility should be incorporated in the tax language to allow for the imposition of tax on other business activities in the future as the industry matures.

Tax measure language: Existing tax language can be utilized to simplify the process of developing new tax language.

Best practices: Lessons can be learned from best practices from other cities to avoid pitfalls.

SECTION 9: LOCAL CANNABIS /MARIJUANA TAX LAWS

Many local jurisdictions have implemented or are considering cannabis/ marijuana taxes. The following illustrates the wide variation of tax ordinances from a sample of cities. A detailed database is being developed and will be made available.

Cathedral City: Up to 15% Cannabis and Marijuana Tax (CMT) on proceeds on marijuana collectives and dispensaries (Measure N, November 2014). Revenue information was not readily available.

Palm Springs: 10% Cannabis and Marijuana Tax. Proceeds are from cannabis or marijuana collectives with a valid City Council-issued permit. 15% tax on proceeds from cannabis or marijuana collectives that do not have City Council-issued permit (Measure B, December 2103). As of 2015, 6 cannabis or marijuana collectives have been permitted. A media article reports the City received \$1,034,346 in 2014. The article stated the City expects revenues to dip when dispensaries open in other cities.



San Jose: A 10% Marijuana Business Tax on gross receipts from dispensaries (Measure U, November 2010). As of 12/18/2015, sixteen (16) dispensaries had received a Notice of Completed Registration from the City. The most recent General Fund Forecast document stated for FY 2012-13, collections is anticipated to reach \$3.9 million. Collections for FY 2013-14 are expected to remain the same as the prior year. A media report indicated that over the past 5 years the City has collected \$19 million.

City of Santa Cruz: A 7% Cannabis Business Tax when enacted on gross receipts from dispensaries (Measure K, November 2014). Council has the authority to raise the Business Tax to 10%. The City projected revenues of \$66,000 to \$93,000. There are 1 to 2 dispensaries operating within the City.

City of Sacramento: 4% Business Tax on gross receipts from dispensaries. Media reports that for FY 2014-15 the City collected \$2.86 million from the 4% Business Tax. The City Council in February 2016 voted to approve cannabis cultivation. There have also been discussions to increase the tax on retail sales to 10%. Currently, 30 dispensaries are operating in the City. See next the section regarding the City's June 2016 Measure Y ballot measure.

Desert Hot Springs: A monthly 10% Medical Marijuana Tax on the proceeds from the sale / provision of medical marijuana. The tax is due on or before the last day of each calendar month for the total gross receipts. (Measure II, November 2014). Cultivation tax of \$25 per square foot for the first 3,000 square feet; then \$10 per square foot for any additional square foot use to grow marijuana (Measure HH, November 2014).

City of Shasta Lake: 6% Sales Tax on the retail sale of medical marijuana (Measure C, November 2014). Collectives will also be required to apply for a license. Tax started at 6% but can be increased to 10% at the City Council's discretion. The City estimated revenues at \$175,000 to \$200,000 annually.

SECTION 10: JUNE 2016 LOCAL BALLOT MEASURES

City of Davis: Measure C (Business License Tax – 10% Gross Receipts). For non-medical (recreational) marijuana businesses within the City of no more than 10% of annual gross receipts of the business. The measure is estimated to raise \$200,000 annually if recreational marijuana sales are legalized and the City amends zoning to authorize marijuana businesses within City limits.

City of Alturas: Measure G (Business License Tax – 10% Gross Receipts). For a Business Tax of 10% of gross receipts for every person engaged in operating or conducting a marijuana collective/ cooperative in the City. The Business Tax would be enacted solely to raise revenue for general purposes and shall be placed in the City's General Fund.

City of Sacramento: Measure Y (Business License Tax – 5% Gross Receipts). The tax would be on the gross receipts on marijuana cultivation and manufacturing businesses to create a funding source dedicated to children and youth services, including homeless and foster youth.



SECTION 11: RELEVANT RESOURCES

- **California Department of Food and Agriculture: Medical Cannabis Cultivation Program**
<https://www.cdfa.ca.gov/is/mccp/>
- **California Department of Pesticide Regulation: California's Environmental Laws as they Relate to Pesticide Use**
<http://www.cdpr.ca.gov/docs/county/cacltrs/penfltrs/penf2015/2015atch/attach1502.pdf>
- **Bureau of Medical Marijuana Regulation Common Questions**
http://bmmr.dca.ca.gov/about_us/faq.shtml
- **California Department of Public Health: Medical Marijuana Program Resources**
<http://www.cdph.ca.gov/programs/MMP/Pages/default.aspx>
- **Sales Tax Permits**
<https://www.boe.ca.gov/news/marijuana.htm>
- **"Cole Memo" / Federal Enforcement**
<https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>
- **Governor's Proposed 2016-17 State Budget / LAO Analysis**
<http://www.lao.ca.gov/reports/2016/3464/med-marijuana-reg-act-051616.pdf>
- **Pros and Cons of Controversial Issues: Compendium of Use Data and Research**
<http://medicalmarijuana.procon.org/>
- **Marijuana Policy Project**
<https://www.mpp.org/>

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