

SOUTH BAY CITIES COUNCIL OF  
GOVERNMENTS

WORKSHOP ON CANNABIS RULES  
AND REGULATIONS

THURSDAY, AUGUST 24, 2017

**Lauren Langer**

Jenkins & Hogin, LLP

Assistant City Attorney

Lomita, Hermosa Beach and West Hollywood



# WARNING!

State and Local lawmakers  
are trying to regulate a brand  
new industry and economy in  
California while it is shaping  
and evolving

*Sounds like an impossible  
task, right?*

# 1996-COMPASSIONATE USE ACT (CUA)



- ⊙ Proposition 215: Passed by voters in 1996
- ⊙ To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes
- ⊙ Must have physician's recommendation
- ⊙ The CUA exempts patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for personal medical use.

# 2003-MEDICAL MARIJUANA PROGRAM

- ◎ Senate Bill 420 - codified a Health and Safety Section 11362.7, et seq.
- ◎ To clarify the scope of the Compassionate Use Act and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420. The MMPA created a state-approved voluntary medical marijuana identification card program and provided for certain additional immunities from state marijuana laws





# CUA AND MMPA

The CUA and MMPA do not “legalize” marijuana, but provide limited defenses to certain categories of individuals with respect to certain conduct and certain state criminal offenses.

# 2008-ATTORNEY GENERAL GUIDELINES FOR MEDICAL MARIJUANA COLLECTIVES

- ⊙ Limit lawful distribution activities to true agricultural co-ops and collectives that provide crops to their members.
- ⊙ Prohibit collectives and cooperatives from profiting from the sale of marijuana
- ⊙ Allow reimbursement for certain services (including cultivation), provided it is limited to the amount to cover costs and expenses
- ⊙ Allow members to reimburse the collective for marijuana that has been allocated to them, or it may be provided for free to members, provided in exchange for services, allocated based on fees for reimbursement only, or any combination
- ⊙ Distribution of medical marijuana is subject to sales tax and requires a seller's permit from the State Board of Equalization
- ⊙ "Storefront dispensaries that deviate from these guidelines are likely outside the scope of state law"

# 2015-Medical Cannabis Regulation and Safety Act (MCRSA)

- ◎ In 2015, the California legislature adopted AB 243, AB 266, and SB 643, identified collectively as the Medical Cannabis Regulation and Safety Act (MCRSA), to comprehensively regulate medical marijuana.
- ◎ Addresses issues such as cultivation, processing, manufacture of medical cannabis products, quality control, testing, inspection, transportation, distribution, and dispensing of medical cannabis.
- ◎ The MCRSA recognizes and preserves local control to regulate or ban medical cannabis cultivation, delivery, dispensing, and distribution.
- ◎ State starts drafting licensing regulations... to be continued!

# 2016-Proposition 64 (AUMA)

- ⊙ On November 8, 2016, voters passed Proposition 64 the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA).
- ⊙ Adults 21 years of age or older can legally grow, possess, and use cannabis for non-medicinal purposes, with certain restrictions.
- ⊙ Beginning on January 1, 2018, AUMA makes it legal to sell and distribute cannabis through a regulated business.
- ⊙ The AUMA also contains provisions allowing for local regulation and taxation of commercial marijuana activities and outdoor cultivation.

# AUMA-ADULT USE

- ⊙ As of November 9, 2016, adults 21 years of age or older are allowed to:
  - (1) Smoke or ingest marijuana or marijuana products (subject to location restrictions- where smoking is allowed, away from schools and day cares, etc.);
  - (2) Possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older up to 28.5 grams of un-concentrated recreational marijuana and up to 8 grams of concentrated marijuana; and
  - (3) Possess, plant, cultivate, harvest, dry, or process up to six (6) living marijuana plants per residence for personal use.

# AUMA- PERSONAL CULTIVATION

- ⦿ Private individuals can now cultivate at home, indoors (includes a green house)- up to six living marijuana plants
- ⦿ Cities can adopt reasonable regulations – to make sure the cultivation is within these parameters
- ⦿ Cities cannot prohibit
- ⦿ No state license required

# AUMA-OUTDOOR CULTIVATION AND MARIJUANA BUSINESSES

- ③ Under AUMA, cities retain the authority to regulate and ban all other cultivation and all recreational marijuana businesses.
- ③ Can ban deliveries but cannot prevent the transport of marijuana through their jurisdiction using public roads if the transport originates from and ends in a location outside the jurisdiction.
- ③ Subject to taxation
- ③ Requires a state, and in some cases, a local license



# AUMA-LICENSING

- ⦿ Additionally, the AUMA divides state licensing and enforcement into three agencies:
  - ⦿ The Department of Consumer Affairs, which will issue licenses for the transportation, storage, distribution and sale of marijuana
  - ⦿ The Department of Food and Agriculture, which will issue marijuana cultivation licenses
  - ⦿ The Department of Public Health, which will issue licenses for marijuana manufacturers and testing laboratories.

# AUMA-LICENSING

- ◎ Each of these state licensing authorities is tasked with creating regulations governing their respective areas of responsibility, and will begin issuing licenses by *January 1, 2018*.
- ◎ Cities are working to get their regulations in place before state begins issuing licenses
- ◎ Local license requirements, zoning and location requirements, business regs, local taxes (require voter approval), etc.

# AUMA-TAXATION

- ◎ State excise tax on the purchase and cultivation of marijuana (15% on the gross receipt of retail sale and a cultivation tax based on the weight of flowers and leaves produced).
  - ◎ Cultivation tax is \$9.25 per dry weight ounce and the leaf tax is \$2.75 per dry weight ounce
- ◎ State and local sales taxes also apply to the sale of cannabis, except that medical marijuana is exempt from state and local sales taxes.

# THE TRAILER BILL

- ① AUMA left California with two separate licensing and regulatory schemes for medical and adult (or recreational) use of cannabis.
- ① In June 2017, the Governor signed AB 64, a “Trailer Bill” to consolidate the provisions providing for the licensure and regulation of commercial medicinal cannabis activity and commercial adult-use cannabis activity under a single regulatory scheme
- ① Medicinal and Adult-Use Regulation and Safety Act (MAUCRSA), repealing MCRSA, and incorporating certain provisions of MCRSA into the licensing provisions of AUMA.

# THE TRAILER BILL

- ⦿ Intended to create one regulatory structure for medical and nonmedical cannabis use and commercial cannabis activities
- ⦿ Some notable parts:
  - ⦿ reiterates local authority to regulate or ban these activities
  - ⦿ explains that cannabis activities must comply with current building and fire safety standards (including any local amendments to the building code that cities adopt based on climatic, geologic or topographic conditions)

# THE TRAILER BILL

- ① Creates a more streamlined system for state licensing agencies to work with local governments to ensure that licensees are operating in compliance with local laws.
- ① The types of licenses for adult and medical use are the same, and applicants will have to get Type M licenses or Type A licenses, but each license must be located on “separate and distinct” “premises.”
- ① Retailers and microbusinesses can have “on-site consumption” facilities if city permits that use.
- ① Retailers can deliver from non-storefront facilities (i.e., delivery only)



# THE TRAILER BILL

- ⦿ Changes the way the state excise is calculated on retail sales (average market price)
- ⦿ Approx. 20 different license types
- ⦿ One important difference that remains between the medical and recreational cannabis activities is that recreational cannabis can only be sold to and consumed by adults over 21 years of age.
- ⦿ The medical cannabis program allows patients over 18 years of age to buy and use cannabis.



# STATE REGULATION UPDATES

- ⦿ <http://cannabis.cdfa.ca.gov>
- ⦿ California Department of Food and Agriculture will issue regulations governing medical and non-medical cannabis cultivation
- ⦿ Regulatory licensing program to ensure that commercial cannabis cultivation operations protects the environment, cannabis cultivation workers, and the general public from the individual and cumulative effects of these operations.
- ⦿ Establish a track-and-trace system to ensure the movement of cannabis and cannabis products is tracked throughout the production chain.

# STATE REGULATION UPDATES

- ③ State intends to exercise emergency rule-making authority for the MAUCRSA regulations and *expects* these regulations to be similar to the medical cannabis cultivation regulations.
- ③ Medical Regulations *WITHDRAWN*
- ③ TO BE REPLACED BY NEW STATE REGULATIONS EXPECTED THIS FALL
- ③ 5 day comment period



# Tips for Local Regulation

1. Banning- Do not rely on old medical marijuana bans. Need to update your codes!
  1. MAUCRSA *appears* to have improved the system for Cities to report whether uses are permitted and whether any existing medical uses are existing and in good standing (to receive a temporary license)-- but who knows!
2. Medical- there is still a market for medical cannabis
  1. Exempt from sales tax and accessible at 18 years old
3. Retail (cannabis and cannabis infused products)
  1. Can limit the number by distancing requirements or placing a cap or let market factors control the number
  2. Consider a merit based application process to ensure responsible operators
  3. Consider consumption lounges (and at hotels for city's with big tourism presence)



# Tips for Local Regulation

4. Banking- still a major issue- CA trying to resolve
  1. Still a major cash business
  2. Businesses are finding ways to accept credit cards
  3. Can be an issue if you create a tax
5. Manufacturing- proper zoning, extraction and infusion.
  1. In manufacturing zones or accessory to other uses
  2. Extraction- Volatile vs. non-volatile
  3. Infusion can be similar to catering/cooking
6. Consider Testing Labs
7. Cultivation-
  1. Likely indoors but consider odor
8. Delivery
9. Smoking regulations- revisit them!
10. No set it and forget it!

# QUESTIONS?

Lauren Langer

Jenkins & Hogin

[Llanger@localgovlaw.com](mailto:Llanger@localgovlaw.com)