



City of San Fernando

**Marijuana Policy
Workshop**

February 6, 2017



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

New State Initiatives

Recreational

California

Maine

Massachusetts

Nevada

Medical

Arkansas

Florida

Montana

North Dakota

Proposition 64 Election Results

- Statewide 56% of the voters supported Proposition 64 and 44% opposed
- Los Angeles County 59.24% of the voters supported the initiative and 40.76% opposed

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



Paradigm Shifts and Cultural Changes

- Types of cultural behavior changes
 - Prohibition of Alcohol (1930-40's) Silent Generation
 - Cigarettes (1950-60's) Baby Boomers
 - Gambling Indian Casino's (1970-80's) Generation X
 - Marijuana Decriminalization (1996-2016) Centennials



Marijuana Policy Development

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

-HdL Companies

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**

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)

General Understanding of the Marijuana Industry

- Cultivation
- Manufacturing and Extractions
- Packing and Labeling Standards
- Testing of Commercial Sales

Development of Regulatory Ordinance

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

Time, Place and Manner

- Local agencies need to ensure that they have proper policies in place to address time, place and manner issues associated with marijuana businesses
- The goals should be to develop and maintain an enforceable, robust regulatory structure designed to ensure public safety
- Public safety needs to continue to evolve as legislation, technology and the environment continues to change

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

Background Checks

- Live Scan-Must have a unique ORI# can not use agencies current ORI # that is used for criminal investigations and personnel checks
 - State requirement (DOJ) requires new ordinance language
 - Federal requirement (FBI) requires new ordinance language
 - Challenges with time lag from Live Scan results
 - Third party criminal investigation checks for principals and employees
 - MCRSA/Prop 64 does not require local government to conduct Live Scans only the State agency (B&P 19320)
 - Local agency still needs to conduct due diligence redundancy will be key to success

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 well impaired

Regulated vs Unregulated

- In California the top five most regulated counties generate 60% 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% of the sales tax revenue but make up 58% of the dispensary permits in the State.
- Take control of the regulations before the industry takes matters into their own hands.

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.

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.

Land Use Considerations

- Definitions for uses, activities, etc. (Agriculture Product) B&P 26067
- Permissive zoning vs. explicit bans.
- The source of water that will be used for the licensed activity.
- Electricity source issues (Edison)
- Prohibits marijuana businesses from being within 600 feet of schools, day care centers or youth centers.

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 or grown in a contiguous area
- 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

Application Process Options

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

Entitlement Process Options

- Conditional Use Permit (CUP)
- Development Agreements (DA)
- Special Regulatory Permit (SRP)
- Cost of Developing Regulatory Fees associated with each type of option

Application Criteria

The criteria to be used in the decision process will include the following but not limited solely on these categories:

- Location of the proposed facility
- Articles of incorporation
- Live scan submissions
- Proof of capitalization
- Proof of insurance
- Business plan (includes building & construction, security plan and fire plan)
- Industry experience

Permit Evaluation

- Key elements in the permit evaluation:
 - Final Location
 - Business Plan
 - Community Benefits
 - Enhanced Product Safety
 - Environmental Benefits
 - Labor & Employment
 - Local Enterprise
 - Neighborhood Compatibility Plan
 - Qualifications of Principals
 - Safety and Security Plan

Application Merit Process

- Phase I- Minimum Qualifications Verified
- Phase II- Review of Proposal by a qualified subject matter consultant
- Phase III- Selection Committee from Internal Subject Matter Experts
- Phase IV- City Council Approval or Delegated to City Administration

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.

Predicted Valuations in 2017 If Business Were Fully Funded

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

Cannabis Annual Sales vs Other Industry Goods & Services

- Beer \$101 Billion
- Cannabis \$44 Billion
- Wine \$37 Billion
- Organic Food \$36 Billion

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

Annual Revenue Scenario Estimates

- Very Conservative \$440,000
- Conservative \$600,000
- Aggressive \$760,000

*These figures are based on two cultivation facilities with 10,000 square feet of canopy space taxed at \$10, \$15, \$20 per square foot each and two manufacturers who on average each generate \$3 millions in gross receipts which are taxed at 4%, 5% and 6% 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.

Tax & Fee Revenues



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. San Bernardino County currently has on average three hundred seventy-two (372) 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.

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

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.

Prop 64 Tax and Local Options

- Enacts an excise tax of 15 percent. Rev & Tax 34012
- Include a cultivation tax of \$9.25/ounce for flowers and \$2.75/ounce for leaves, with exceptions for qualifying medical marijuana sales and cultivation.
- Designed to prevent licenses for corporate or large-scale marijuana businesses for five years in order to deter the “unreasonable restraints on competition by creation or maintenance of unlawful monopoly power.”
- Allows local agencies to develop local taxes. Rev & Tax Code 34021.5

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

- 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.
- 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.

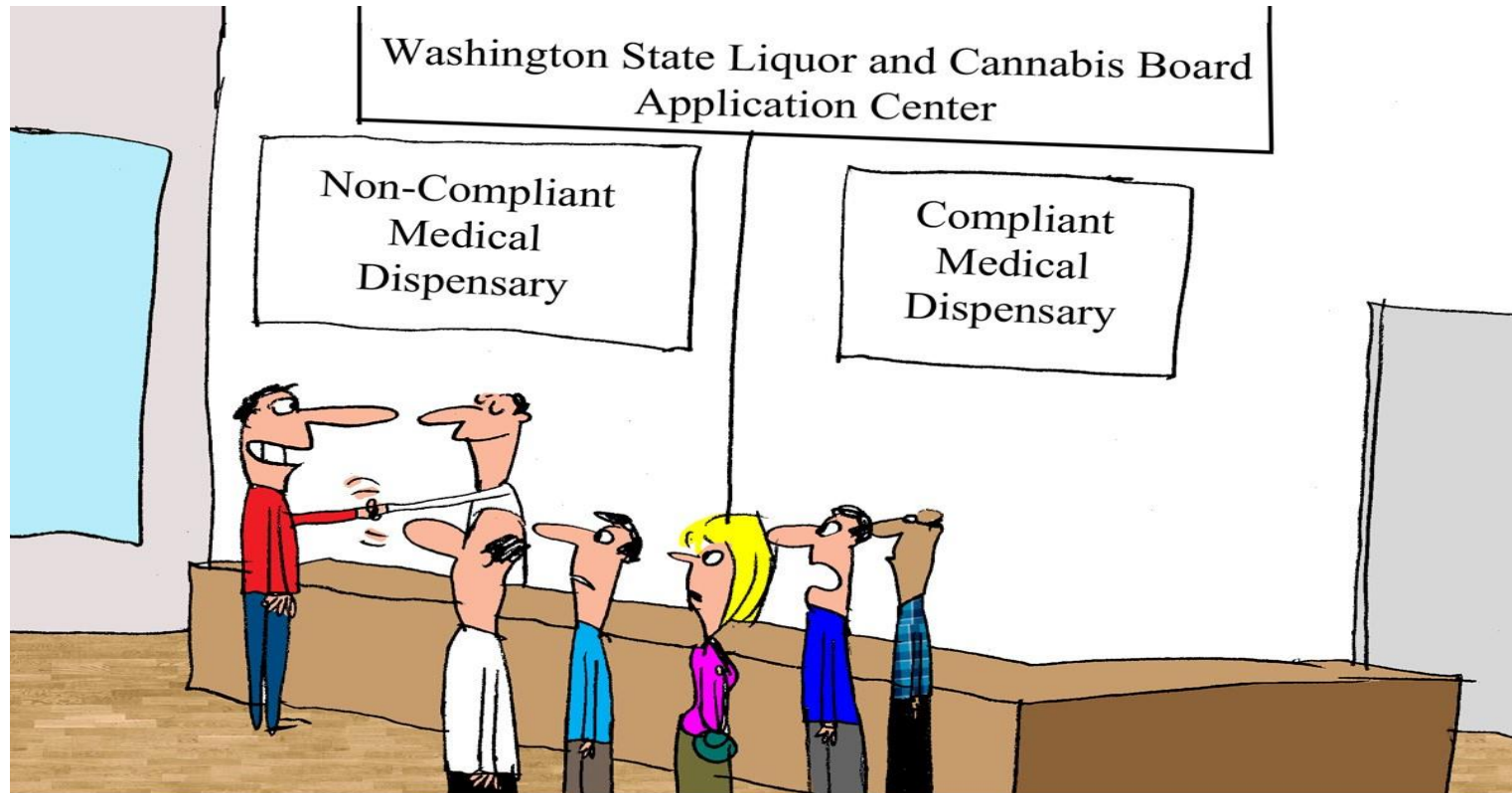
Options to Consider

- 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?"

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