



# MEETING OF THE MEDICAL CANNABIS COMMISSION, CULTIVATION AND AUMA SUBCOMMITTEE

Permit Service Center  
2120 Milvia Street  
Magnolia Conference Room (Third Floor)

Thursday, October 27, 2016  
3:00 - 5:00 PM

## AGENDA

- I. **Call to Order**
  - A. Roll Call
  - B. Changes to Order of Agenda
  
- II. **Public Comment**
  
- III. **Discussion and Action Items**
  - A. Update and discuss delivery-only dispensaries. One attachment:
    1. Staff report to Planning Commission (10-19-16)
  - B. Discuss Bureau of Medical Cannabis Regulations (BMCR) and Medical Cannabis Cultivation Program (MCCP) direction for delivery services and cultivation. Four attachments:
    1. MCRSA State Agency Responsibilities
    2. BMCR Dispensary Discussion Topics from pre-regulatory Stakeholder Meeting
    3. MCCP Factsheet regarding cultivation regulations
    4. MCRSA regulations for delivery and cultivation
  - C. Consider City regulations (local ordinances, licensing, zoning, taxes, etc.) that might need to be addressed should AUMA/Prop 64 pass. (These items should be added to Commissioner Rice's memo.) Four attachments:
    1. Commissioner Rice's memo
    2. Questions for local government consideration (from the League of CA Cities)
    3. AUMA considerations
    4. NORML summary of AUMA
  - D. Select dates for future meetings
  
- IV. **Information Items** *(In compliance with Brown Act regulations, no action may be taken on these items. However, discussion may occur at this meeting if the item is moved to the Discussion section.)*  
None.
  
- V. **Adjournment**

Berkeley Medical Cannabis Commission website: <http://www.cityofberkeley.info/medicalcannabis/>)

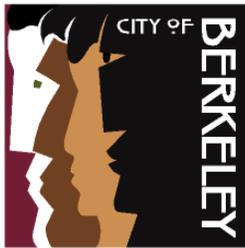
Medical Cannabis Commission Secretary: Elizabeth Greene, 2120 Milvia Street, 2nd Floor, Berkeley CA 94704. Phone: 510-981-7484 [EGreene@cityofberkeley.info](mailto:EGreene@cityofberkeley.info)

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Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Planning and Development Department located at 2120 Milvia

Street, Berkeley CA. Please contact the Commission Secretary for further information.

 This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.



**Item 9**  
**October 19, 2016**

**Planning and Development Department**  
Land Use Planning Division

## **STAFF REPORT**

**DATE:** October 19, 2016

**TO:** Members of the Planning Commission

**FROM:** Elizabeth Greene, Senior Planner

**SUBJECT:** Consider Delivery-Only Dispensaries Regulation: Zoning District  
Locational Requirements and Development Standards.

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### RECOMMENDATION

Staff recommends that the Planning Commission review information from the Medical Cannabis Commission (MCC), consider options for delivery-only dispensaries, and provide direction to staff regarding Zoning District options and development standards for these businesses.

### BACKGROUND

In 2015, Governor Brown signed the Medical Marijuana Regulation and Safety Act (since renamed the Medical Cannabis Regulation and Safety Act (MCRSA)), which established the Bureau of Medical Marijuana Regulation (now the Bureau of Medical Cannabis Regulation (BMCR)). The Bureau will regulate production, transportation and sale of medical cannabis. Any medical cannabis business would be required to be licensed both by the local jurisdiction and the State. Seventeen types of medical cannabis businesses would be permitted under MCRSA.

Dispensaries are one type of business allowed by MCRSA. In the state's definition, a dispensary is a retail business that provides medical cannabis to patients. This covers both "brick and mortar" retail dispensaries which can provide product both on site and via a delivery service, and dispensaries that focus exclusively on delivery of medical cannabis. See Attachment 1 for the MCRSA

The City of Berkeley currently does not have any regulations that control medical cannabis delivery-only services that are based in the city. The six approved retail dispensaries are allowed to deliver product to patients as an incidental use.

In order to address delivery-only dispensaries, amendments to both the Zoning Ordinance and the Berkeley Municipal Code (BMC) are required. The Planning Commission would only address Zoning Ordinance changes such as Zoning District location requirements

and development standards; the MCC is developing recommendations for the City Council related to the BMC changes.

### DISCUSSION

At its June 15, 2016 meeting, the Planning Commission discussed requirements for delivery-only dispensaries. During the discussion, the Commission requested information from the MCC related to potential impacts and activities from delivery only dispensary businesses. In particular they focused on the base location of the delivery businesses and the related activities, since this is what would be addressed in the Zoning Ordinance.

The MCC considered the draft delivery-only dispensary municipal code language (Attachment 2) at its July 21, 2016 meeting. The MCC generally agreed with the proposed language. According to this language, delivery-only dispensaries would also be subject to the same requirements as standard dispensaries, such as security requirements. These requirements are called out in BMC Chapter 12.27 (Attachment 3).

The MCC considered the Planning Commission's request for information at its July 21, 2016 meeting, and developed the following list of activities that could be expected at a delivery-only dispensary:

- Minor odors;
- Secure facility;
- Facility will be used to repackage bulk product that is delivered to the site;
- Would provide anything that could be provided at a standard dispensary (leaves, pre-rolls, tinctures, edibles, etc.); and
- No growing or refining of products on site, only subdividing and packaging of products.

Staff suggests the following other activities that could be expected to occur at a delivery-only business:

- Delivery vehicles of various sizes and types could arrive and depart throughout the hours of operation (8:00 AM to 11:00 PM).

The Commission also asked about job creation and economic development relevant to delivery-only dispensaries. The MCC provided no information on the number or kinds of jobs that could be expected at this kind of facility. The delivery-only businesses would be a new use, so very little data is available about job creation and economic development benefits.

Using the list of anticipated activities and the proposed municipal code language, the Commission should consider location and development standards for delivery-only dispensaries. The following questions are offered to assist the discussion:

1. Applicability – What zoning districts should be considered for these businesses? Staff suggests limiting the businesses to manufacturing districts.
2. Development Standards – Should these businesses have loading requirements or distance requirements from schools and other dispensaries? Staff suggests requiring the same loading requirements as required for Wholesale Trade Uses and not requiring the buffering requirements (600 feet from schools and other dispensaries) required of other dispensaries.

### CONCLUSION

Staff recommends that the Planning Commission give direction to staff regarding delivery-only dispensaries, specifically the zoning districts that should be considered for these businesses and any need for development standards.

#### Attachments:

1. MCRSA excerpt related to delivery-only dispensaries
2. Proposed Municipal Code language for delivery-only dispensaries
3. Adopted Municipal Code language for dispensaries



# MEDICAL CANNABIS REGULATION AND SAFETY ACT (MCRSA) STATE AGENCY RESPONSIBILITIES



**BUREAU OF MEDICAL  
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The following chart is designed to provide an overview of the statutory requirements of state agencies under the Medical Cannabis Regulation and Safety Act (MCRSA). The MCRSA's three licensing authorities (i.e. Bureau of Medical Cannabis Regulation (BMCR), Office of Medical Cannabis Safety (OMCS), and Medical Cannabis Cultivation Program (MCCP)) will be developing regulations in the coming months, with the goal of accepting applications for state licensure of medical commercial cannabis activity by January 1, 2018. For more information on the MCRSA, visit [www.leginfo.legislature.ca.gov](http://www.leginfo.legislature.ca.gov) or [www.bmcr.ca.gov](http://www.bmcr.ca.gov).

GENERAL LICENSING AUTHORITY REQUIREMENTS	STATE LICENSING AUTHORITIES					
<ul style="list-style-type: none"> <li>Licensing authorities required to create regulations for the MCRSA according to the Administrative Procedure Act.</li> <li>Each licensing authority may create, issue, renew, revoke, suspend, and deny licenses under their jurisdiction.</li> <li>Licensing authorities to establish license/renewal fees.</li> <li>Security, inventory, recordkeeping, disciplinary, and enforcement protocols to be established through regulations.</li> <li>MCRSA outlines fundamental requirements for application for state license (e.g., valid seller's permit, background check, landlord approval, proof of bond to cover costs of destruction of product when necessary, etc.); each licensing authority will include additional requirements.</li> </ul>	BUREAU OF MEDICAL CANNABIS REGULATION (BMCR) (LEAD AGENCY)				MEDICAL CANNABIS CULTIVATION PROGRAM (MCCP)	OFFICE OF MEDICAL CANNABIS SAFETY (OMCS)
	DEPARTMENT OF CONSUMER AFFAIRS				DEPARTMENT OF FOOD AND AGRICULTURE	DEPARTMENT OF PUBLIC HEALTH
	Testing Laboratories	Dispensaries	Distribution	Transportation	Cultivation	Manufacturing
	Type 8	Types 10, 10A	Type 11	Type 12	Types 1, 1A, 1B, 2, 2A, 2B, 3, 3A, 3B, 4	Types 6, 7
<p><b>MAJOR LICENSEE RULES &amp; REQUIREMENTS</b></p> <ul style="list-style-type: none"> <li>Engaging in commercial medical cannabis (MC) activity without local and state licenses is subject to civil and criminal penalties.</li> <li>Applicants required to obtain local license, permit, or other authorization before applying for state license.</li> <li>Businesses in operation prior to January 1, 2016, will have priority for review of state applications.</li> <li>All MC and MC products must be packaged in tamper-evident, childproof packaging, use a unique identifier, specific labeling, and not be attractive to children.</li> </ul>	<ul style="list-style-type: none"> <li>Licenses and regulations will be established through BMCR.</li> <li>All MC and MC products must go to testing lab via a distributor prior to sale to dispensary.</li> <li>Licensees must ensure their labs are accredited appropriately.</li> <li>Licensees must issue a certificate of analysis for each sample tested.</li> <li>Testing, calibration and sampling activities must be consistent with ISO/IEC 17025 and any other requirements set by BMCR.</li> <li>Testing must occur prior to sending to dispensary.</li> <li>Testing labs must destroy samples once testing is complete.</li> <li>Primary caregivers and patients with recommendations may have homegrown samples tested at labs for a fee, but it will not be certified for sale to licensee or another party.</li> <li>Cultivators and manufacturers responsible for all costs related to MC and MC product testing.</li> <li>CDPH (OMCS) to assist BMCR in the development of the regulations for testing labs.</li> </ul>	<ul style="list-style-type: none"> <li>Licenses and regulations will be established through BMCR.</li> <li>Dispensaries include retail sale of MC and MC products.</li> <li>Facility where medical cannabis, products, or delivery devices are offered for retail sale.</li> <li>Requires a dispensary to implement specific security measures to deter theft of MC or MC products.</li> <li>BMCR to establish maximum amount of MC and MC product that may be delivered.</li> <li>Deliveries can only be made by a dispensary and include transfer of MC and MC products from licensee to primary caregiver or qualified patient.</li> <li>Deliveries can only be made in local jurisdictions that do not explicitly ban delivery.</li> <li>Counties may tax delivery.</li> <li>Delivery employees and primary caregivers/patients must maintain a physical copy of the delivery request and make available to law enforcement upon request.</li> <li>BMCR to establish storage and security requirements for delivery.</li> </ul>	<ul style="list-style-type: none"> <li>Licenses and regulations will be established through BMCR.</li> <li>May purchase MC and MC products from cultivator or manufacturer for sale to dispensary.</li> <li>Licensees must be bonded and insured.</li> <li>All MC and MC products must go to a distributor for quality assurance review and testing.</li> <li>Cultivators and manufacturers may maintain contracts with dispensaries; not required to sell MC or MC products to distributor.</li> <li>Licensees may collect a fee for services rendered.</li> <li>Licensees required to verify identity and quantity of MC and MC products and ensure a random sample is tested by Type 8 testing lab.</li> <li>Upon receipt of a certificate of analysis by a testing lab, licensees must conduct a quality assurance review on all MC and MC products.</li> <li>Standards for quality assurance will be determined by BMCR through regulations.</li> </ul>	<ul style="list-style-type: none"> <li>Licenses and regulations will be established through BMCR.</li> <li>Transport includes transfer of MC and MC products from licensee to licensee.</li> <li>BMCR to establish the transportation threshold based on product type. If transporting above those amounts, a transporter license would be required.</li> <li>Licensees must be bonded and insured.</li> <li>Licensees must complete an electronic shipping manifest and to transmit to BMCR and recipient licensee.</li> <li>Licensees required to maintain a copy of the manifest while transporting.</li> <li>Requires transmittal of record to Bureau to verify receipt of product.</li> <li>Security and storage requirements for transportation to be established by BMCR.</li> <li>MCRSA does not authorize transport of MC or MC products outside California, unless authorized by federal law.</li> </ul>	<ul style="list-style-type: none"> <li>Licenses and regulations will be established through MCCP.</li> <li>Applications for indoor and outdoor cultivation must identify its water source.</li> <li>CDFA (MCCP) to determine maximum number of Types 3, 3A, and 3B licenses to be issued.</li> <li>CDFA is lead agency for purposes of the California Environmental Quality Act (CEQA) related to licensing cannabis cultivation.</li> <li>Cannabis declared agricultural product under MCRSA.</li> <li>CDFA (MCCP) will develop certified organic designation and organic certification program, if allowed under federal law.</li> <li>MCRSA authorizes CDFA to establish appellations of origin.</li> <li>MC may not be marketed, labeled, or sold as grown in a county in which it is not grown.</li> <li>Applicants required to provide statement declaring they are agricultural employer under Agricultural Labor Relations Act.</li> <li>CDFA (MCCP) lead on track and trace program, with help from BMCR and BOE; all licensing authorities will use the track and trace program for their licensees.</li> </ul>	<ul style="list-style-type: none"> <li>Licenses and regulations will be established through OMCS.</li> <li>Definition of nonvolatile and volatile solvents will be determined through regulatory process.</li> <li>CDPH (OMCS) to determine maximum number of Type 7 licenses to be issued.</li> <li>Edibles declared to be "not a food" and "not a drug."</li> <li>Edibles defined as manufactured cannabis for human consumption.</li> <li>Only generic food names to be used to describe edible medical cannabis products.</li> <li>CDPH (OMCS) may notify the public regarding MC products when necessary to ensure protection of public health.</li> <li>MCRSA has prohibition on misbranded or adulterated MC products; CDPH (OMCS) has authority to cease manufacturing for manufacturers for such actions.</li> <li>CDPH (OMCS) may issue mandatory recalls and embargoes of misbranded and adulterated MC products.</li> </ul>



## Dispensaries Discussion Topics and Background

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The Medical Cannabis Regulation and Safety Act (Act) authorizes the Bureau of Medical Cannabis Regulation (BMCR) to regulate the retail sale of medical cannabis and medical cannabis products from a dispensary.

At the pre-regulatory stakeholder meetings, we will examine these topics with the public and collect feedback on alternative solutions. In the following pages, you will find some critical topics BMCR is examining along with potential regulatory solutions and BMCR's thoughts for regulation. Please review the information and either submit comments at [www.dca.ca.gov/webapps/bmcr/public\\_comment.php](http://www.dca.ca.gov/webapps/bmcr/public_comment.php) (link available at [www.bmcr.ca.gov](http://www.bmcr.ca.gov)) or come prepared to share your ideas at our pre-regulatory meetings! Please note that due to time constraints we will not be able to discuss all aspects of each license type, however you will have many opportunities to submit your comments to BMCR.

### **Topics To Be Covered**

1. Subtypes of dispensary licenses
2. Employee requirements
3. Delivery requirements
4. Transaction limits

### **Action Items for the Public**

BMCR has researched multiple alternatives for the direction of a variety of regulatory concepts. Now we are looking for your feedback!

- Please review the attached documents.
- How do you feel about BMCR's thoughts for the topics attached?
- What are your suggested alternatives and reasons for supporting them?
- Provide us with your feedback in one or both of the following ways:
  - Visit [www.dca.ca.gov/webapps/bmcr/public\\_comment.php](http://www.dca.ca.gov/webapps/bmcr/public_comment.php) or [www.bmcr.ca.gov](http://www.bmcr.ca.gov) to provide comments.
  - Register and participate in one of our pre-regulatory meetings! If you have not registered, please visit [www.bmcr-omcs-prereg.eventbrite.com](http://www.bmcr-omcs-prereg.eventbrite.com).

*For more background, information, and proposals for each topic, please see the following attachments.*

## TOPIC #1: ADDITIONAL DISPENSARY LICENSES

**Objective:** Determine whether additional subtypes of dispensary licenses are necessary for initial implementation of the Act (January 1, 2018).

**Existing Law:** The Act authorizes the licensing authorities to create new licenses for implementation of the Act.

### Options for Regulations

1. Create a subtype of dispensary license for delivery-only dispensaries. The delivery-only dispensary license would require a brick and mortar premises but would allow only for delivery, non-storefront retail sales to qualified patients and primary caregivers. BMCR and law enforcement would maintain the right to inspect the premises at any time.
2. Other subtypes of dispensaries

**BMCR's Thoughts:** Option #1, establish a license delivery-only dispensaries

## TOPIC #2: EMPLOYEE REQUIREMENTS

**Objective:** Determine what requirements there should be for employees.

**Existing Law:** The Act states that protection of the public will be the highest priority for the licensing authorities. The Act requires licensees to maintain accurate records of commercial cannabis activity.

### Options for Regulations:

1. Require all of the following:
  - a. Training for all employees;
  - b. Require licensees to maintain an accurate, up-to-date roster of all employees; and,
  - c. Require licensees to maintain information on each employee as part of their records. The information would include data such as the date the employee started, all applicable training, job description, and any employee information maintained by the licensee
2. Require a different combination of the above items
3. Other alternative

**BMCR's Thoughts:** Option #1, requiring employee training, roster, and general information

**TOPIC #3: DELIVERY REQUIREMENTS**

**Objective #1:** Determine information required for delivery manifests.

**Objective #2:** Determine storage security standards for delivery.

**Existing Law:** The Act requires BMCR to regulate the sale, including the delivery, of medical cannabis and medical cannabis products. Delivery is defined as the commercial transfer of medical cannabis or medical cannabis products from a dispensary to a primary caregiver or qualified patient. The Act requires BMCR to establish a maximum threshold of medical cannabis and medical cannabis products that may be delivered by a licensee. The Act states that protection of the public will be the highest priority for the licensing authorities.

**Options for Regulations for Objective #1 – Delivery Manifests:**

1. Require the following information for all delivery manifests:
  - a. Name and license number of dispensary;
  - b. Name of primary caregiver or qualified patient who ordered the medical cannabis or medical cannabis products;
  - c. Number of units or weight of items being transported;
  - d. Strain and product type of medical cannabis and medical cannabis products in shipment;
  - e. Unique identifiers of all products in shipment;
  - f. Travel route, start and end time; and,
  - g. All planned stops on travel route.
2. Required a different combination of the information above
3. Other alternative

**BMCR's Thoughts:** Option #1, require a variety of information on the delivery manifests (consistent with transport manifest requirements)

**Options for Regulations for Objective #2 – Storage and Security Standards:**

1. Require all delivery vehicles to be equipped with the following:
  - a. Refrigeration;
  - b. Specialized locking system for storage of medical cannabis and medical cannabis products;
  - c. Vehicle alarm system; and,
  - d. Separation between the people in the vehicle (i.e., drivers and passengers) and the shipment
2. A combination of the above requirements
3. Other alternative

**BMCR's Thoughts:** Option #1, refrigeration, security, and separation of driver/passenger and medical cannabis and medical cannabis products

**TOPIC #4: TRANSACTION LIMITS**

**Objective:** To determine what the transaction limits are at dispensaries.

**Existing Law:** The Act requires BMCR to regulate the sale, including the delivery, of medical cannabis and medical cannabis products. The Act states that protection of the public will be the highest priority for the licensing authorities.

**Options for Regulations:**

1. Set the transaction limits for an individual patient within the following range for all dispensaries, based on other states:
  - a. 2.5 oz per month of usable medical cannabis, regardless of product type;
  - b. 5 oz per month of usable medical cannabis, regardless of product type; or,
  - c. Limits based on product type:
    - i. 24 ounces of dried flower;
    - ii. 16 ounces solid or 72 fluid ounces of liquid medical cannabis product;
    - iii. 16 ounces of a cannabinoid concentrate whether sold alone or in an inhalant delivery system;
    - iv. Five grams of a cannabinoid extract whether sold alone or in an inhalant delivery system;
    - v. Four immature medical cannabis plants; and,
    - vi. 50 seeds
2. One of the three choices from above
3. No limit on transaction amounts
4. Other alternative

***BMCR's Thoughts:*** Option #1, range between the transaction limits of other states

## ***Summary of the California Department of Food and Agriculture's Role in Implementing the Medical Cannabis Regulation and Safety Act***

The Medical Cannabis Regulation and Safety Act (MCRSA), comprised of three bills enacted on September 11, 2015 by the California Legislature, directed the California Department of Food and Agriculture to create the Medical Cannabis Cultivation Program (MCCP). The MCRSA further requires the MCCP to carry out specific provisions, including develop a licensing program for medical cannabis cultivation, implement a “track and trace” program, and evaluate the MCCP’s potential environmental impacts in compliance with the California Environmental Quality Act. Below are some details from the MCRSA specific to medical cannabis cultivation licenses and the MCCP’s obligations.

### **Definitions:**

The MCRSA defines many terms such as: applicant, batch, cannabis, cultivation, cultivation site, licensee, licensing authority, lot, and nursery.

## ***Application Requirements***

### **The MCRSA requires cultivators to submit the following for license applications:**

- Board of Equalization seller’s permit number
- Proof of fingerprinting submission to the California Department of Justice
- Copy of a local license, permit or other authorization from a local jurisdiction to cultivate
- A cultivation plan detailing grow site dimensions, chemical use protocols, water source and storage, waste removal plan, security protocols, inventory tracking procedures, quality control procedures, product storage and labeling
- Proof of the legal right to occupy the proposed cultivation site
- Proof of a bond in the amount of \$25,000
- If applicable, a copy of a valid Fish and Game Code section 1602 streambed alteration agreement or written verification from the Department of Fish and Wildlife that a streambed alteration agreement is not required
- If applicable, approval of water diversion and water rights
- If applicable, a certificate of rehabilitation for a conviction

### **The MCRSA also requires an applicant to attest to the following:**

- A license is only valid for the single, identified location
- The proposed location is located beyond a 600-foot radius from a school
- The applicant is not a licensed retailer of alcoholic beverages
- The applicant is an “agricultural employer”
- For an applicant with 20 or more employees, the applicant will enter into a Labor Peace Agreement
- Under penalty of perjury, the information in the application is complete, true and accurate; the applicant has read and is familiar with all applicable laws and regulations

## Summary of the California Department of Food and Agriculture's Role in Implementing the Medical Cannabis Regulation and Safety Act

### License Types

The MCRSA specifies that MCCP develop regulations to license nurseries and indoor, outdoor and mixed-light (light deprivation) grow sites using the following parameters:

	<i>Outdoor</i> (no artificial light)	<i>Indoor</i> (exclusively artificial light)	<i>Mixed-Light*</i> (combo of natural & supplemental artificial light)
<i>Special Cultivator</i>	<b>Type 1</b> Up to 5,000 sq ft, or up to 50 mature plants on noncontiguous plots	<b>Type 1a</b> Up to 5,000 sq ft	<b>Type 1b</b> Up to 5,000 sq ft
<i>Small Cultivator</i>	<b>Type 2</b> 5,001 - 10,000 sq ft	<b>Type 2a</b> 5,001 - 10,000 sq ft	<b>Type 2b</b> 5,001 - 10,000 sq ft
<i>Medium Cultivator**</i>	<b>Type 3</b> 10,001 sq ft to one acre	<b>Type 3a</b> 10,001 - 22,000 sq ft	<b>Type 3b</b> 10,001 - 22,000 sq ft
<i>Nursery</i>	<b>Type 4</b> Up to one acre	<b>Type 4</b> Up to one acre	<b>Type 4</b> Up to one acre

\*MCRSA requires the MCCP to determine the maximum threshold for supplemental artificial lighting. CDFA has not yet established criteria for the limit.

\*\*MCRSA requires the MCCP to limit the number of "medium" sized cultivation licenses. CDFA has not yet established criteria for the limit.

## Summary of the California Department of Food and Agriculture's Role in Implementing the Medical Cannabis Regulation and Safety Act

### Cultivation Requirements

The MCRSA requires that MCCP determine and mitigate environmental impacts from medical cannabis cultivation sites and seek input from several different state departments and agencies for the development of cultivation requirements as follows:

**General Cultivation:** MCCP governs the licensing of indoor, outdoor, and mixed-light commercial cultivation sites. Any relevant mitigation requirements determined by the environmental evaluation shall be included in a license for cultivation.

**Water:** MCRSA requires any cultivation license to include requirements for compliance with applicable principles, guidelines and requirements established by the State Water Resources Control Board and relevant Regional Water Quality Control Boards.

**Pesticides:** MCRSA requires the Department of Pesticide Regulation to develop guidelines for the use of pesticides in the cultivation of cannabis. DPR is also required to ensure that the application of pesticides in connection with indoor or outdoor cannabis cultivation is compliant with existing pesticide use laws.

**Wildlife:** The MCRSA requires the State Water Resources Control Board, in consultation with the Departments of Fish and Wildlife and CDFA, to ensure that individual and cumulative effects of water diversion and discharge do not affect instream flows needed for fish spawning, migration and rearing.

## ***Summary of the California Department of Food and Agriculture's Role in Implementing the Medical Cannabis Regulation and Safety Act***



MCCP will specify the track and trace system cultivators must use; specify the process for tracking product that existed prior to licensing; and identify when cannabis cultivators and nurseries must track/report movement of cannabis.



The MCRSA allows licensing agencies to inspect the licensed premises for compliance with the Act. The licensing agency may examine the records of a licensee. All records related to commercial medical cannabis activity shall be maintained for a minimum of seven years. Failure to provide the records at the request of a licensing agency may be cause for a penalty of \$30,000.



The MCCP is authorized by the MCRSA to revoke, suspend or deny a license that does not comply with the requirements of the Act. The MCCP is directed by the MCRSA to take disciplinary action and assess fines against licenses in violation of cultivation rules.

**Cultivation/ Delivery Summary California Medical Marijuana Regulation and Safety Act October 9, 2015**

The **Medical Marijuana Regulation and Safety Act**- take effect on Jan 1, 2016. State will need several months (probably at least a year)- set up necessary agencies, information systems, regulations to begin issuing licenses. Interim, local governments may adopt new ordinances to permit or license local businesses in preparation for state licensing. Facilities currently operating- accordance state & local laws, continue until license applications- approved / denied. Prospective applicants- strongly advised, apply state Board of Equalization, Resale Permit, and prepare seeking approval local governments.

**SUMMARY:**

**AGENCIES AB 266** establishes **Bureau of Medical Marijuana Regulation** under **Department of Consumer Affairs**. Bureau establish comprehensive internet system, track- licensees, reporting movement commercial cannabis cannabis products.

**SB 643 & AB 243 Dept. of Food and Agriculture**- regulating cultivation; **Dept. of Public Health** developing standards- manufacture, testing, production labeling edibles; **Dept of Pesticide Regulation** developing pesticide standards; **Depts. of Fish and Wildlife & State Water Board**- protecting water quality. (Sec. 19332)

**LICENSE TYPES**- Following license types, established under **AB 266** (19300.7)) and **SB 643** (19331(g)):

- (a) Type 1 = Cultivation; Specialty outdoor. Up to 5,000 sq ft canopy, or up to 50 noncontiguous plants
- (b) Type 1A = Cultivation; Specialty indoor. Up to 5000 sq ft
- (c) Type 1B = Cultivation; Specialty mixed-light. Using exclusively artificial lighting.
- (d) Type 2 = Cultivation; Outdoor. Up to 5000 sq ft, using combination- artificial & natural lighting
- (e) Type 2A = Cultivation; Indoor. 5001 -10,000 sq ft.
- (f) Type 2B = Cultivation; Mixed-light. 5001 -10,000 sq ft
- (g) Type 3 = Cultivation; Outdoor. 10,001 sq ft - 1 Acre
- (h) Type 3A = Cultivation; Indoor. 10,001 - 22,000 sq ft
- (i) Type 3B = Cultivation; Mixed-light. 10,001 - 22,000 sq ft
- (j) Type 4 = Cultivation; Nursery.
- (k) Type 6 = Manufacturer 1 for products not using volatile solvents.
- (l) Type 7 = Manufacturer 2 for products using volatile solvents.
- (m) Type 8 = Testing
- (n) Type 10 = Dispensary; General
- (o) Type 10A = Dispensary; No more than three retail sites
- (p) Type 11 = Distribution
- (q) Type 12 = Transporter

**CULTIVATION SIZE LIMITATIONS** Maximum allowable size- 1 acre (43,560 sq ft) outdoors (Type 3) or 22,000 sq ft indoors (Type 3A and 3B licenses). DFA- directed to limit the number Type 3, 3A & 3B licenses. (AB 243, 19332(g)).

**VERTICAL INTEGRATION** Complicated restrictions to prevent vertical integration (AB 266, 19328). In general, licensees can only hold licenses- 2 separate categories. Small cultivation licensee Types 1 -2 may hold manufacturing or Type 10A retail licenses (limited to three dispensaries). It appears that Types 3-4 licensees can't apply- manufacturing licenses. Type 10A licensees can apply for both manufacturing & cultivation licenses, provided their total cultivation area doesn't exceed 4 acres. Facilities in jurisdictions- require or permit cultivation, manufacture & distribution to be integrated as of July 1, 2015 continue to operate- until Jan 1, 2026.

**DISTRIBUTORS REQUIRED** Type 11 distributors- new kind of entity- created to regulate flow of products. ALL cultivation & manufacturing licensees- required to send their products to Type 11 licensee- quality insurance & inspection before passing them- next stage of manufacturing or retailing. Type 11 licensee- submits product Type 8 laboratory- batch testing & certification. Sample returns- Type 11 distributor, final inspection & execution of contract between cultivator & manufacturer or manufacturer & retailer. Type 11 distributor charges- fee, covers testing plus any applicable taxes (act doesn't impose new taxes, anticipates could happen future) (AB 266, 19326)  
Type 11 distributors & Type 8 testing facilities can't hold- other kind of licenses (licensees- own labs for in-house testing).

**LOCAL PERMITS REQUIRED** No person- engage in commercial activity without BOTH state license & license, permit, or other authorization from local government. (AB 266, 19320(a); AB 243, 11362.777 (b)).

**LAWFUL ACTS** Actions by licensees- permitted by both state license & local government- lawful, protected from arrest, prosecution, other legal sanctions (AB 266, 19317).

**GRANDFATHERING** Facilities operating in compliance with local ordinances & other laws on or before Jan 1, 2018- continue to operate until- license, approved or denied. (AB 266, 19321(c)). Facilities operation before Jan 1, 2016 receive priority. Los Angeles may continue to prosecute violations of Measure D.

**APPLICANT QUALIFICATIONS** (SB 643, 19322): Applicants provide proof- local approval & evidence, legal right to occupy proposed location. Applicants- submit fingerprints for DOJ background check. Cultivation licensees- declare selves "agricultural employers"- defined by Alatore-Zenovich-Dunlap-Berman Agricultural Labor Relations Act.

Licensing authority MAY deny application- applicant, convicted- offense substantially related to qualifications, including ANY felony controlled substance offense, violent or serious felonies, or felonies involving fraud, deceit, embezzlement, or any sanctions, local licensing authority in past 3 years (SB 643, 19323(a)5).

**FOR-PROFIT ENTITIES-** implicitly allowed under qualifications established. Previously "not authorized" under SB 420- new licensing provisions extend- individuals, partnerships, corporations, business trusts, etc. (under definition- "person" in AB266, 19300.5 (aj)). Applicants no longer need be patients.

**CULTIVATION LICENSING DFA-** medical cannabis cultivation program. Cultivation subject- local land use regulations & permits. Cities & counties w/o cultivation regulations, state- sole licensing authority, March 1, 2016 (AB 243, 11362.777 (c)4).

**TRACK & TRACE PROGRAM DFA-** implement unique identification program, marijuana plants at cultivation site, to be attached base of plant. Information- incorporated into, "track & trace" program- each product and transaction. (SB 643, 19335 and AB 243, 11362.777 (e)). Cultivation violation- these provisions subject to civil penalties up to twice amount of license fee, plus applicable criminal penalties. Fines enacted daily for each violation (SB 243, 19360).

**PATIENT EXEMPTION** Qualified patients- exempt from state permit program, cultivating less than 100 square feet for personal medical use. Primary caregivers, five or fewer patients- allowed up to 500 square feet (AB 243, 11362.777(g) and SB 643, 19319). Exemption- does not prevent local government from further restricting, banning cultivation, provision, etc. of medical cannabis by individual patients, caregivers in jurisdiction (AB 243).

**DELIVERIES** Cannabis may be delivered to qualified patients only by dispensaries, only in cities, counties where not prohibited by local ordinance. Deliveries- documented. No locality- bar transport delivered products through its territory. Deliveries may be taxed by local county. (AB 266, 19340). [Separate section (19334 (a) 4) confusingly stated- dispensaries no more than 3 dispensaries (Type 10A)- allowed, deliver "where authorized by local ordinance." It's unclear what conditions if any apply to other, Type 10 licensed dispensers.]

**MANUFACTURERS-** licensed by DPH. DPH limit the number of Type 7 licenses, produce products using volatile solvents.

**TESTING** (AB 266, 19341-6) DPH- ensure all cannabis tested, prior delivery to dispensaries or other businesses. Specify how often testing be conducted. \*\*\* Confusingly, 19346(c)- costs of testing, paid by cultivators, whereas 19326(c) (3)- distributors charge for costs of testing; since distributors serve both manufacturers and cultivators, doesn't make sense testing costs for former, charged to latter. \*\*\* Licensees use standard methods established, International Organization for Standardization approved by accrediting body, signatory- International Laboratory Accreditation Cooperation Mutual Recognition Arrangement (AB 266, 19342). Licensees test cannabinoids, contaminants, microbiological impurities, & other compounds, Section 19344. Licensees, tests for individual qualified patients, not certify for resale transfer to other licensees.

**SCHOOL ZONES** Cultivation & dispensary facilities 600 ft from schools (grandfathered exceptions, HSC 11362.768). (SB 643, 19322 (a) 4).

**TRANSPORTATION** Only licensed transporters- transport cannabis or cannabis products between licensees (AB 266, 19326(a)). Bill doesn't specify whether cultivators, manufacturers, or retailers also have transport licenses, but 19328 (a) generally at most 2 separate license kinds. Licensed transporters- transmit electronic shipping manifest to state & carry physical copy with each shipment (SB643, 19337).

**LABOR PEACE AGREEMENTS** Required of all applicants, 20 employees or more (SB 643, 19322 a (6))

**PACKAGING** Products labeled, tamper-evident packages warning statements & information specified in Section 19347.

**PRIVACY** Identifying names of patients, caregivers, & medical conditions kept confidential. (AB 266, 19355)

**SB 420 COLLECTIVE DEFENSE SUNSET** Provision in SB 420, legal protection to patient collectives and cooperatives, HSC 11362.775, sunset, 1 year after the Bureau posts website notice- licenses have commenced being issued. Cannabis collectives- to be licensed, except for individual patient & caregiver gardens serving no more than 5 patients

**PESTICIDE STANDARDS** Promulgated by DFA and Dept of Pesticide Regulation (SB643, 19332).

**ORGANIC CERTIFICATION** Available by DFA by Jan 1, 2020, federal law permitting. (SB643, 19332.5(a))

**APPELLATIONS OF ORIGIN** Bureau MAY establish appellations, origin- cannabis grown in California. No product-marketed, coming from county where it was not grown. (SB643, 19332.5(b-d)).

**FEES and FUNDING** Each licensing authority- establish scale of application, licensing renewal fees, based upon- cost of enforcement. Fees- scaled dependent on size of business. (AB 243, 19350 (c)). Medical Marijuana Regulation and Safety Act Fund- established in state treasury- receive fees & penalties assessed under act. \$10 million- allocated to DCA to begin operations, possibility, an additional operating loan of \$10 million from General Fund (AB 243, 19352). Bureau- fund for grant program- assist in state & local agencies, enforcement & remediation of environmental impacts, cultivation. (AB 243, 19351)

3

COUNTY TAXATION Counties may

levy tax on cultivating, dispensing, producing, processing, distributing, etc, of medical cannabis subject to standard voter approval requirements. (Many cities already exercise this authority, but authority of counties- has been unclear heretofore). (SB 643, 19348)

**Text of Medical Marijuana Regulation Safety Act (three parts):**

AB 266 (Bonta/Cooley/Jones-Sawyer/Lackey)  
AB 243 (Wood)  
SB 643 (McGuire)

*Sarah Armstrong, Directory of Industry Affairs, Americans for Safe Access, compiled list of **deadlines in the bills**:*

July 1, 2015 – Date- those claiming vertical integration had to be operating vertically integrated business. (AB 266 Section 19328 (c1))

January 1, 2016 – date AB 266, AB 243 & SB 643 take effect. (See: the end of the legislative summaries in all three bills)

January 1, 2016 – Beginning business operating date, cannabis businesses- eligible for priority licensing. “In issuing licenses, licensing authority- prioritize any facility or entity, can demonstrate to authority’s satisfaction- in operation & in good standing with local jurisdiction, January 1, 2016.” (AB 266 Section 19321 (c))

March 1, 2016 – Date cultivation must be regulated by locality: “If city, county, or city and county- not have land use regulations or ordinances regulating or prohibiting cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer conditional permit program pursuant to this section, then March 1, 2016, division- sole licensing authority, mmj cultivation applicants- city, county, or city & county.” (AB 243 Section 19362.777 (c)(4))

January 1, 2017 - By January 1, 2017, Division of Occupational Safety and Health- convene advisory committee, evaluate whether, need to develop industry-specific regulations related activities of facilities issued licensee. (AB 266 Labor Code Amendment Sec. 7 147.5)

July 1, 2017 - By July 1, 2017, Advisory committee- present to board its findings & recommendations for board consideration. (AB 266 Labor Code Amendment Sec. 7 147.5)

July 1, 2017 - By July 1, 2017, Board- render decision regarding adoption of industry-specific regulations pursuant to this section. (AB 266 Labor Code Amendment Sec. 7 147.5)

January 1, 2018 – “facility or entity- operating in compliance with local zoning ordinances, other state & local requirements on or before January 1, 2018, may continue operations until application for licensure approved or denied pursuant to this chapter.” (AB 266 Section 19321 (c))

January 1, 2020 - Not later than January 1, 2020, Department of Food & Agriculture, conjunction with Bureau, make available certified organic designation & organic certification program for medical marijuana, if permitted under federal law and the National Organic Program. (SB 643 Section 19332.5(a))

January 1, 2022 - Date by which loan up to \$10 million from the general fund- establish Medical Marijuana Regulation & Safety Act, to be repaid. If fees collected by that time don’t repay loan, begin using funds, from imposing penalties to repay loan. (AB 243 Section 19351 (b) (1))

March 1, 2023 - Beginning March 1, 2023, & on or before March 1, each following year, each licensing authority- prepare, submit to Legislature, annual report on authority’s activities & post report on authority’s Web Site. (AB 266 Section 19353)

January 1, 2026 – Date Type 10A Paragraph on licensing become inoperative “A Type 10A licensee may apply for a Type 6 or 7 state license and hold a 1, 1A, 1B, 2, 2A, 2B, 3, 3A, 3B, 4 or combination thereof if, under the 1, 1A, 1B, 2, 2A, 2B, 3, 3A, 3B, 4 or combination of licenses thereof, no more, 4 acres total canopy size of cultivation by licensee is occurring statewide during period respective licenses valid. Paragraph become inoperative January 1, 2026.” ((AB 266 Section 19328 (a) (9))

January 1, 2026 – Date vertical integration section of AB 266 is repealed. (AB 266 Section 19328 (d))



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Initial Assessment of City Readiness to Implement Legalization of Recreational Cannabis if Approved  
by California Voters in November 2016 Election  
(Analysis By Berkeley Medical Cannabis Commission (BMCC), per 7/19/16 request from Mayor Bates)

“Legalizing Marijuana is Complicated: Voting Yes or No on marijuana legalization is only the beginning. If marijuana becomes legal, Californians will have to make hundreds of complicated decisions about how to regulate, tax, and sell it.”  
(This statement is on the wall of the Oakland Museum of California cannabis exhibit, June 6, 2016)

“Legalization of marijuana would not be an event that happens in one election.” (This quote is from the report issued by the Blue Ribbon Panel on Marijuana Policy, released 7/22/15)

**MAJOR POINTS to EXPEDITE OPPORTUNITIES to ESTABLISH RECREATIONAL CANNABIS**

1. Cities with robust medical cannabis experience will be best positioned to implement recreational cannabis, once State guidelines have been established, and to generate new tax revenue. Full implementation of medical cannabis (cultivation and dispensary) will provide analysis to make decisions regarding recreational cannabis.
2. The BMCC expects our city medical cannabis regulations will be largely transferrable to recreational cannabis. City adjustment of our medical cannabis regulations to new State laws (e.g., MMRSA) proved easy to accommodate.
3. Berkeley City Council (BCC) needs to approve the medical cannabis cultivation operational guidelines. These guidelines, developed by the BMCC and reviewed by city staff, have been before the BCC since February 2016.
4. The BMCC needs to complete the medical cannabis cultivation license selection criteria. The BMCC hopes to have these criteria to the BCC by November 2016.
6. The City needs to expand allowable cultivation beyond the M-District. The near zero percent vacancy rate in the M District effectively precludes cultivation in Berkeley. This crucial problem, with proposed solutions, was presented by the BMCC to the BCC on June 6, 2014.
7. Note: Prop. 64 allows individual cities to decide if they want to permit recreational cannabis businesses.

**EXPERIENCE IN COLORADO, OREGON, WASHINGTON**

8. “So far, legalization hasn’t affected the number of teenagers who try marijuana in Colorado or Washington.” (This quote is from the Oakland Museum Cannabis exhibit, which the curator reports is based on the federal Monitoring the Future Survey administered by the University of Washington.)
9. Denver Recommends Going Slow. Not A Problem for Berkeley! We Need to Speed Up or We Will Miss Out. The BMCC secretary, Senior Planner Elizabeth Greene, received the “slow” advice from a counterpart in Denver city government. It has been 22 years since California legalized medical cannabis in 1996 and ten years since Berkeley voters passed Msr. T in 2006.
10. State Comparisons Are Difficult. Denver and Colorado Springs do not have an aggregate square foot limit on cultivation (180k SqF in Berkeley), there are few alternatives for industrial space to cultivate outside these city limits, and Colorado doesn’t border a state with legalized cannabis. Colorado Springs does not allow recreational cannabis businesses. The number of medical cultivation licenses and locations in Colorado Springs has declined since 2010.

**OTHER MEDICAL CANNABIS INFORMATION**

11. The State is expected to give priority to awarding required State licenses for medical cultivation to applicants already approved by their local communities. Aspiring Berkeley cultivators stand to fall behind in the State queue, and the city will continue to lose potential tax dollars, if we do not complete these guidelines.
12. Estimated \$1,000,000 in new annual taxes/120 new jobs from cultivation of medical cannabis. (Significantly more tax revenue if the city decides to allow recreational cannabis.) These numbers are in addition to nearly \$1,000,000 in annual taxes from current dispensaries.

Attachments [to support statements in this analysis, e.g., prior BMCC analyses, Fact Sheets]



# Local policy issues

Does your city want to:

- regulate the indoor cultivation of nonmedical marijuana for personal use? [legal beginning 11/9/16]
- regulate or ban the outdoor cultivation of nonmedical marijuana for personal use? [legal beginning 11/9/16]
- enact business regulations of nonmedical marijuana businesses?
- enact land use regulations that apply to nonmedical marijuana businesses?
- impose local taxes on nonmedical marijuana?



**AUMA Considerations and Possible Local Berkeley Implications**

**AUMA- Generally Speaking**

Considered by many if not most, a long winded 62 page ballot measure with several aspects critically viewed, but in the long run worth supporting.

Criticisms include increased taxes for medical cannabis, large amount of tax revenue to law enforcement, small possession amounts- 1 oz/6 plants, smoking in public illegal, under age fines, possible illegal to transport, general feeling of not enough protection for cultivators, transporters, distributors, local jurisdictions maintain too much control - e.g. no outdoor growing.

Further – many provisions will be depended upon Medical Marijuana Regulation and Safety Act and Bureau of Medical Marijuana Regulation determinations, also judicial and legislative amendments are allowed, this ballot measure appears to measure up to the other 4 state legalizations and perhaps better than Washington.

Bottom line – California legalization should be an important step toward federal rescheduling of marijuana, a death knell for the war on drugs.

**AUMA – Berkeley ramifications**

The Mayor / BCC in November will pass an ordinance prohibiting recreational cannabis (business) use until additions are made to current Berkeley Municipal Code. Also, they have asked the Berkeley Medical Cannabis Commission to review AUMA and make recommendations.

Down the road conclusions – Mayoral and City Council election results will determine the alacrity of future changes locally. Perhaps recreational clubs or distributors by late next year? Perhaps medical cannabis dispensaries allowed to distribute recreationally. Presently, delivery services may be registered sooner and perhaps with recreational possibility.



**NORML SUMMARY - ADULT USE OF MARIJUANA ACT:**

PERSONAL USE

**POSSESSION:** In general, AUMA would make it **lawful under both state and local law for adults** or over to **possess, process, transport, obtain, or give away to other adults no more than one ounce** of marijuana. The initiative sets **inconsistent limits for marijuana concentrates**, allowing possession of **up to 8 grams**, but **penalizing more than 4 grams**. This contradiction will have to be resolved by the courts or the legislature.

**CULTIVATION:** Adults could **cultivate up to six plants and possess the marijuana from these plants at their residence for personal use. No more than six plants per residence.** (N.B: this **differs from the new limit for medical users under MMRSA, which allows 100 square feet of growing space per patient**, with collective gardens of up to 5 patients). All plants and harvested marijuana in **excess of one ounce** must be (1) kept with the **person's private residence or on its grounds**, (2) in a **locked space**, and (3) **not visible from a public place**. Violations of (1) –(3) are punishable as **infractions** with a maximum **\$250 fine**. **Cities and counties** may regulate and prohibit cultivation outdoors, but **cannot completely prohibit cultivation inside a private residence or accessory structure that is "fully enclosed and secure."**

**CONSUMPTION:** **The initiative makes it lawful to smoke or ingest marijuana, but forbids consumption in any public place except for licensed dispensaries when authorized by local governments.** "Public place" is commonly construed broadly to include any business or property that is open to the public. This will **greatly reduce the locations where medical patients can inhale their medicine, as they can presently consume legally in streets and public areas where smoking is permitted.** Also forbidden is consumption within 1,000 feet of a school or youth center while children are present, except on residential property or on licensed premises and provided the smoking is not detectable by the kids. (11362.3(a)3).

**VAPORIZERS RESTRICTED:** **The use of cannabis vaporizers and e-cigs is prohibited except in tobacco smoking areas, despite compelling scientific evidence that smokeless electronic vaporizers pose no public health hazard.** The initiative goes on to declare that this section does not override laws regarding medical use; however, no state laws currently protect patients' right to vaporize or consume in non-smoking areas, so this point is moot except in the handful of localities (San Francisco, Sebastopol) that have local ordinances allowing on-site medical marijuana smoking or vaporization in dispensaries.

**USE IN VEHICLES:** **Consumption or possession of an "open container" of marijuana or marijuana products is prohibited while driving or riding as a passenger in a motor vehicle, aircraft, vessel, or other transportation vehicle.** It is not clear what constitutes an "open container" of marijuana, for example, in the case of edibles or e-cigs. (Note: at present, there is no law prohibiting legal Prop 215 patients from possessing medical marijuana in open containers.) **Exception: AUMA permits consumption in the passenger compartment of vehicles specially licensed for on-site consumption.**

**DRIVING WITH MARIJUANA:** states that it is **lawful for adults to transport marijuana.** However, AUMA **leaves standing a contrary existing law** that makes it **illegal to drive in possession of marijuana.** Thus drivers could still be liable for arrest for transporting legally obtained marijuana in their car even if it was in a sealed container. **A court ruling or legislative fix will be needed to resolve** the evident conflict between these two provisions.

**SCHOOL GROUNDS:** **Possession or use on school grounds is banned** while children are present, as is already the case under current law.

**MANUFACTURE WITH VOLATILE SOLVENTS – Unlicensed manufacture of concentrates** using volatile or poisonous solvents (not CO2 or ethanol alcohol) **subject to heavy felony penalties**, as under current law.

**EMPLOYMENT RIGHTS:** The initiative does not interfere with the **right of employers to discriminate** against marijuana users, medical or otherwise, **both on and off the job.**

**PARAPHERNALIA:** **Marijuana accessories would be legal for adult use and manufacture.** (In practice, paraphernalia offenses are rarely prosecuted in California since passage of Prop 215). **MEDICAL USE:** The initiative **does not alter the protections of the Compassionate Use Act of 1996 (Prop 215)** allowing medical use of marijuana. Physician recommendations must conform to minimal standards already established under MMRSA and current medical marijuana legislation.

**ID CARDS:** **Qualified patients must possess state ID cards if they want to be exempted from the 7.5+% sales tax currently imposed on marijuana sales. However, they will be subject to a new 15% excise tax and a \$9.25/ounce cultivation tax.** No card is required to enjoy other legal protections of Prop. 215. The cost of the state patient ID card is limited to \$100, or \$50 for Medi-Cal patients; free of charge for indigent patients; this is a reduction from the prevailing fees in most counties. Identifying information in the ID cards is made subject to the Confidentiality of Medical Information Act.

**CPS/CHILD CUSTODY:** **Qualified patients may not be denied child custody rights** merely because of their status as medical marijuana users.

**REGULATION AND SAFETY**

**OVERSIGHT:** **The Bureau of Medical Marijuana Regulation in the Department of Consumer Affairs is renamed the Bureau of Marijuana Control and given chief authority to regulate the industry. The Bureau/DCA is charged with licensing transport, distribution and sale; the Dept of Food and Agriculture with licensing cultivation; and the Dept of Public Health with licensing manufacturing and testing.** The Bureau is to convene an advisory committee of knowledgeable stakeholders to help develop regulations and issue reports. The Governor is to appoint an independent, three-member Appeals Board to adjudicate appeals subject to standard procedures.

**LICENSE CATEGORIES:** **The initiative establishes 19 different license categories parallel to those in MMRSA, covering cultivation, manufacturing, testing, distributing, retailing, and distributing. Licenses for adult use facilities are distinct from those for medical facilities issued under MMRSA.**

**LARGE CULTIVATORS:** A new category of Type 5 "Large" cultivation licenses is created for farms over the MMRSA limit of 1/2 acre indoors or 1 acre outdoors. **No limit is set on the size of Type 5 gardens. No Type 5 licenses are to be issued before Jan 1,**

2023.

**MICROBUSINESSES: A new category of Type 12 microbusiness licenses is established for small retailers with farms not exceeding 10,000 sq. ft.**

**VERTICAL INTEGRATION: Unlike MMRSA, AUMA does not prohibit vertical integration of licenses.** In general, a licensee may hold any combination of licenses: cultivator, manufacturer, retailer, distributor and tester. **The one exception is type 5 large cultivators, who may not hold distribution or testing licenses.** In contrast, MMRSA allows applicants to have at most two different license types, effectively prohibiting direct farm-to-consumer sales.

**DISTRIBUTORS: Unlike MMRSA, AUMA does not require that cultivators send their product to independent “distributors” (Type 11 licensees).** This requirement, modeled on the alcohol industry, is one of the most controversial features of MMRSA, as it **interjects a whole, new, costly distribution layer between the grower and distributor. Under AUMA, the only licensees not eligible to distribute for themselves are the new, Type 5 large-scale cultivators.**

**LICENSE CONDITIONS: Licenses may be denied based on various factors, including restraints on competition or monopoly power, perpetuation of the illegal market, encouraging abuse or diversion, posing a risk of exposure to minors, environmental violations, and excessive concentration** in any city or county. **“Excessive concentration”** is defined quite loosely to include any concentration in a local census tract that is higher than elsewhere in the county. Taken literally, this would include any new facility in a county that doesn’t already have one. An exception is made for denying applications that would “unduly limit the development of the legal market.” **The overall effect is to give regulators a blank check to determine for themselves what constitutes excessive concentration. Local governments can also impose their own limits on concentration.**

**RESTRAINT OF TRADE: Licensees are barred from price fixing, restraint of trade, price discrimination between different locations, and selling at less than cost to undercut competitors. NO ALCOHOL OR TOBACCO LICENSES may be held by marijuana licensees.**

**SCHOOL BUFFER ZONES: No licensee shall be located with 600 ft. of a school or youth center** in existence with the license was granted, unless a state or local licensing authority allows otherwise.

**RESIDENCY: All licensees must be continuous California residents as of Jan 1, 2015.** This restriction sunsets on Dec 31, 2019.

**PRIORITY TO EXISTING OPERATORS: Licensing priority shall be given to applicants who can demonstrate they have acted in compliance with the Compassionate Use Act since Sept 1, 2016.**

**APPLICANTS WITH PRIOR CONVICTIONS: Licenses may be denied for convictions of offenses “substantially related” to the business, including serious and violent felonies, felonies involving fraud or deceit, felonies for employment of a minor in controlled substance offenses.** Except in rare cases, a prior conviction for a controlled substance offense may not in itself be the sole grounds for rejecting a license. This is a departure from MMRSA, which makes past CS offenses valid grounds for license denial. CS offenses subsequent to licensing are grounds for revocation.

**CULTIVATION regulations are similar to those established under MMRSA:**

- Cultivators must comply with conditions set by Dept. of Fish and Wildlife and State Water Resources Control Board, plus all other state and local environmental laws.

- The Dept. of Pesticide Regulation is to issue standards for use of pesticides.
- The state shall establish an organic certification program and standards for recognizing regional appellations of origin.
- Marijuana to be regulated as an agricultural product by the Dept of Food and Agriculture.
- The Dept. shall establish an identification program with unique identifiers for every marijuana plant.

**TRANSPORT and DELIVERY: The Bureau shall establish standards for types of vehicles and qualifications for drivers eligible to transport commercial marijuana.** Local government may not prevent delivery of marijuana on public roads by licensees in compliance with the initiative and local law. **(It is unclear whether local governments retain the power to bar deliveries to medical patients in their jurisdiction, as they are authorized to do under MMRSA).**

**NON-PROFITS: The Bureau is to investigate the feasibility of creating nonprofit license categories with reduced fees or taxes by Jan 1, 2018.** In the meantime, local jurisdictions may issue temporary local licenses to nonprofits primarily providing marijuana to low income persons, provided they are registered with the California AG’s Registry of Charitable Trusts. This section is of questionable effect because marijuana non-profits are not allowed on the registry due to federal law. Nonetheless, there is nothing to prevent non-profits from registering as commercial entities under the act.

**MANUFACTURING & TESTING LABS** are regulated by the Dept. of Public Health **along lines as MMRSA.**

**LABELS: The act prescribes specific label warnings on every package of marijuana and marijuana products: “GOVERNMENT WARNING: THIS PACKAGE CONTAINS MARIJUANA, A SCHEDULE I CONTROLLED SUBSTANCE. KEEP OUT OF REACH OF CHILDREN AND ANIMALS. MARIJUANA MAY ONLY BE POSSESSED OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER UNLESS THE PERSON IS A QUALIFIED PATIENT. MARIJUANA USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION OF MARIJUANA IMPAIRS YOUR ABILITY TO DRIVE AND OPERATE MACHINERY. PLEASE USE EXTREME CAUTION.”** (The Schedule I warning is to be deleted if the federal government reschedules).

**MINORS MAY BE SNITCHES: As in the alcohol industry, minors may be employed as peace officers to try to entrap marijuana**

**dealers into illegal sales.**

**ADVERTISING: misleading claims and marketing to minors are banned.** No billboards along interstate highways, and no use of cartoon characters, language, or music known to appeal to kids.

**LOCAL CONTROL:** The same is true of medical marijuana facilities under MMRSA. It is unclear whether local governments may continue to ban deliveries from licensed providers to patients in their jurisdiction.

**ON-SITE CONSUMPTION: Local governments may permit on-site consumption at licensed retailers and micro businesses provided: access is prohibited to persons under 21, consumption is not visible from any “public place” or non-age-restricted area, and sale or consumption of alcohol or tobacco aren’t allowed (this effectively ends the current practice of allowing beer and wine at medical marijuana expos.**

**LABOR LAWS IN EFFECT:** The Division of Labor Standards Enforcement and Occupational Safety and Health shall apply the same labor standards as apply to medical producers under MMRSA, including the requirement **that all businesses with 20 or more employees have a labor peace agreement.**

#### MARIJUANA TAXES

**All retail sales, medical and non-**

**medical, are subject to a 15% excise tax in addition to the regular state sales tax, effective Jan 1, 2018.**

**All marijuana is also subject to a cultivation tax of \$9.25/ounce dry-weight for flowers or \$2.75 for leaves, effective Jan 1, 2018.**

Other categories of harvested product are to be taxed at a similar rate based on their relative price to flowers. **Patients with state ID cards would be exempt from the current 7.5+ % sales tax, but not the excise or cultivation taxes.**

**Cities and counties may impose any taxes they please on facilities cultivating, manufacturing, processing, selling, distributing, providing, storing, or donating marijuana (as is already the case under current law) .**

**INSPECTIONS – The board and other law enforcement officers may inspect any place where marijuana is sold, cultivated, stored to assure taxes are collected.**

**TAX REVENUES** are allocated to a **new California Marijuana Tax Fund.**

Proceeds go to:

- **Reasonable enforcement costs of the Bureau** and other regulatory agencies not compensated by other fees
- \$10 million per year from 2018 thru 2028 for **California public universities** to study and evaluate the implementation of the act
- \$3 million per year from 2018 thru 2022 to the **California Highway Patrol** to establish protocols to determine whether drivers are impaired.
- \$10 million per year beginning in 2018, increasing by \$10 million per year to \$50 million in 2022-23 to the **Governor’s Office of Business and Economic Development** for a community reinvestment program, at least 50% of which in **grants to community nonprofits, for job placement, mental health and substance abuse treatment, legal and other services to communities disproportionately affected by the war on drugs.**
- \$2 million per year to the **California Center for Medicinal Cannabis Research** for research on efficacy and safety of medical marijuana.

Of the remaining revenues,

- 60% are allocated to a **Youth Education, Prevention, Early Intervention and Treatment Account** for youth programs to prevent **drug abuse.**
- 20% to an **Environmental Restoration and Protection Account** for environmental cleanup and restoration.
- 20% to a **State and Local Government Law Enforcement Account for CHP DUI programs** and grants to local governments relating to enforcement of the Act.

#### CRIMINAL OFFENSES

**Current marijuana laws** are rewritten with a new penalty structure. In all cases, offenders **under 18 are not liable to criminal punishment**, but to drug education and community service.

**POSSESSION: Illegal possession of an ounce by persons 18- 21 continues to be a \$100 infraction.** Illegal possession of **more than an ounce by adults continues to be a misdemeanor, punishable by \$500 and/or six months in jail.** Possession of less than an ounce upon a school ground during school hours by a person over 18 is a misdemeanor punishable by a fine of \$250, or \$500 plus 10 days in jail for repeat offenses.

**CULTIVATION: Illegal cultivation of six plants or less by minors 18-21 is a \$100 infraction. Illegal cultivation of more than six plants is a misdemeanor punishable by \$500 and/or 6 months.** The **current mandatory felony penalty for cultivation is eliminated**, but felonies may be charged in the case of repeat offenders, persons with violent or serious priors, and various environmental offenses.

**POSSESSION FOR SALE: Penalties are dropped from current mandatory felonies to misdemeanors (\$500 and/or 6 months). Felony enhancements allowed for repeat offenders, serious or violent priors, and sale to minors under 18.**

**TRANSPORTATION, IMPORTATION, SALE OR GIFT: Penalties are dropped from current mandatory felony to misdemeanors (\$500 and/or 6 months). Felony enhancements allowed for importing, exporting, or transporting for sale more than 1 ounce of marijuana or 4 grams of concentrate.**

**RELIEF FOR PRIOR OFFENDERS: Persons previously convicted of offenses that would not be a crime or a lesser offense under AUMA may apply to the court for a recall or dismissal of their sentence.**

INDUSTRIAL HEMP: The initiative **enables legal production of industrial hemp** under California's existing hemp law, which has been in suspense pending approval by the state Attorney General and federal government.

AMENDMENT: **The legislature may by a 50% majority vote (1) reduce any penalties in the act, (2) add protections for employees of licensees, or (3) amend (Medical Use) or (Regulation and Safety) consistent with the purposes of the act. A 2/3 vote is required for other amendments.**

INTERPRETATION: No provision of this act shall be construed in a manner to create a positive conflict with federal law, including the Controlled Substances Act.

SEVERABILITY: If any provision of this act is ruled invalid or unconstitutional, remaining provisions of the act remain in full force and effect.

#### NORML Update June 28, 2016 – AUMA Ballot Measure 64

"Joint" Legislative Informational Hearing: Marijuana Legalization. Initiative Statute. 5/24/16

The Adult Use of Marijuana Act is a marijuana legalization initiative that is being proposed for the November, 2016 California ballot.

**AUMA is an elaborate, 62-page initiative** which writes hundreds of new provisions and regulations into state law. Its basic thrust is to:

- (1) **allow adults 21 years and older to possess up to one ounce of marijuana and cultivate up to six plants for personal use;**
- (2) **regulate and tax the production, manufacture, and sale of marijuana for adult use;** and
- (3) **rewrite criminal penalties so as to reduce the most common marijuana felonies to misdemeanors and allow prior offenders to petition for reduced charges.**

**AUMA's regulatory provisions are largely patterned on the Medical Marijuana Regulation and Safety Act (MMRSA)**, recently passed by the legislature and effective Jan 1, 2016. **Licenses for medical and adult-use would be distinct, but managed by the same agency in the Department of Consumer Affairs** (the legislature and agency may move to consolidate these two systems if AUMA passes).

Due to its **extraordinary length and complexity**, AUMA contains a number of glitches and inconsistencies that will have to be **ironed out by the courts or the legislature**. It also includes a number of restrictions and oversights that many **users find objectionable** (for example, it makes it **illegal to consume in any public place except for specifically licensed premises**; continues to let **local governments ban medical marijuana cultivation and sales; bans vaporization in non-smoking areas**; and imposes an **unduly high, 15% + tax increase on medical marijuana**). Fortunately, Section 10 of the act **allows for most provisions to be modified by the legislature**.

AUMA will not be the last word on marijuana reform; further changes in state and federal law will be needed to guarantee affordable medical access, protect employment and housing rights, facilitate banking and allow interstate commerce. Regardless of these problems, **AUMA compares favorably to similar legalization measures in other states. If California voters approve AUMA, the pressure for federal marijuana law reform could finally become irresistible to politicians in Washington**; if not, it will no doubt be interpreted as a major setback for marijuana reform at the national level.