



**Cannabis Commercial Licensing
Ad Hoc Recommendation, Future Pathway
and Alternative Options
11/14/17**



Presentation Overview

- Recap on process addressing cannabis in County
- The County's current medicinal cannabis ordinances
 - Including commercial ordinance banning medicinal marijuana dispensaries
- Brief overview of commercial licensing under State law
- What other counties and local cities are doing
- Overview of staff recommendations and other options
- Next steps in the process



Recap on the Process

- The Medical Marijuana Advisory Committee was created in March 2016 and has met nine times
 - In addition to four Board of Supervisors Meetings on the topic
- The Medical Marijuana Advisory Committee has met on topics ranging from cultivation to niche businesses to taxation and code compliance
 - Information was obtained from consultants, public, and 20 benchmark communities
- The Medical Marijuana Advisory Committee has discussed commercial licensing both medical and recreational at multiple meetings.



Personal Use Authorized in County

- **MEDICINAL CANNABIS**
 - Outdoor cultivation for personal use. Ordinance 5000 allows cultivation of 200-600 square feet depending on the number of patients (200 per patient), parcel size, and zone district of the parcel.
 - Many other conditions must be met as well, such as residency and setbacks.
 - Collective cultivation permitted for up to three patients.

- **PROPOSITION 64 – Medicinal or Recreational Adult Use**
 - Allows six plants per residence (not per person) for medicinal or adult recreational personal use.
 - Indoor cultivation only.
 - County may “reasonably regulate” indoor cultivation under Proposition 64.



State License Not Required for Personal Use

- Under Prop 64, any adult 21 years or older may possess, transport, or give away without any form of compensation no more than 1 ounce of cannabis or 8 grams of concentrated cannabis for personal consumption.
- Under Business and Professions Code section 26033, a commercial state license will not be required for:
 - “A qualified patient . . . who cultivates . . . cannabis exclusively for his or her personal medical use but who does not provide, donate, sell, or distribute cannabis to any other person”
 - “A primary caregiver who cultivates . . . cannabis exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver . . . but who does not receive remuneration for these activities”



Commercial Use

- Commercial Cultivation
 - Commercial cultivation, either indoor or outdoor, is not authorized in the County regardless of whether it is for medicinal or recreational use.

- Medical Cannabis Dispensaries
 - Ordinance 4999 banned medicinal cannabis dispensaries.
 - At the time of banning, Ordinance 4999 provided that the ban would not be enforced against a limited number of medicinal cannabis dispensaries that were in operation for 6 months before October 30, 2011, provided that operations remain the same as they did in October 30, 2011.
 - Not authorized to cultivate or manufacture the cannabis sold at dispensary.

- Distribution of Cannabis for Recreational Adult Use
 - Not authorized in the County.



Medicinal and Adult-Use Cannabis Regulation and Safety Act – State Uncertainty

- On June 27, 2017 as part of trailer bill legislation, the State passed S.B. 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).
 - MAUCRSA streamlined the State’s regulation and licensing of medicinal and recreational cultivation, use, and sale of cannabis.
- On September 16, 2017, the State made further amendments with A.B. 133. Agency is still interpreting the new laws.
- The Bureau of Cannabis Control had released regulations, but pulled them after MAUCRSA. It still plans to adopt regulations before it begins issuing temporary licenses on January 1, 2018.
 - No confirmed date for regulations, but expected in late November.
 - Permanent regulations are expected in “Early 2018.”



State Law Preserves Local Control

- MAUCRSA retains local control over any cannabis decisions other than the 6 plants per residence (grown indoors) for personal use.
 - State cannot issue commercial licenses if activity is not authorized by County.
- Business and Professions Code section 26200: “This division shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction.”



State Commercial Licenses

- State will issue separate licenses for commercial medical or adult use for all licenses (either an “M” license or “A” license) except Laboratories.
 - Same requirements for an M-license or A-license and licensee can have both.
 - A-licensees can only do business with other A-licensees and vice versa.
- Bureau of Cannabis Control intends to issue temporary licenses at first and applications will be available as of December 2017, but none will be issued until January 1, 2018.
 - Temporary licenses require authorization from the County to conduct the commercial activity, which may take the form of a County license or permit or letter of acknowledgment.
- Licenses will only be valid for 12 months.
- Application requires submittal of fingerprints to the Department of Justice and numerous requirements in Business and Professions Code section 26051.5, including consultation with and approval by other agencies.



State Commercial Licenses – Process

- Under Business and Professions Code section 26055, the State cannot issue a license if the commercial activity is prohibited by the County or if the applicant is not in compliance with a local ordinance or regulation.
- State will automatically deny an application for commercial activity that is banned and will inform the County of the denial.
- If the State is unsure, the State will notify the County and the County has 60 days to indicate whether the applicant is in compliance with a local ordinance or regulation. If the County informs the State that the applicant is not in compliance, the State must deny the application.



Commercial Activity - Two Themes

- Local Control: State licensing system preserves local control over commercial cannabis activities. Each local government or its citizens decide whether to allow commercial cannabis activities and, if so, what type, how many, where, etc.
 - Still, authorization by the County or compliance with County regulations cannot affect independent authority of state agencies.
- Federal Government: Cannabis remains a Schedule 1 drug and possession, use, cultivation, distribution, etc. of cannabis is illegal under federal law. Authorization by the State or local government or possession of a State license does not protect a person from federal prosecution or from other federal regulatory agencies.
 - Current federal administration has indicated it will not be as permissive as prior administration.



Types of Licenses – Section 26050

With the exception of testing laboratories, a person may apply for and be issued more than one license and each license can be an M-license or A-license.

■ **Cultivation**

- Indoor - specialty small; non-specialty small, medium, or large
- Outdoor - specialty small; non-specialty small, medium, or large
- Mixed-light - specialty small; non-specialty small, medium, or large
- Specialty cottage - small; outdoor; indoor; or mixed-light
- Nursery (cloning and seed propagation)
- Processing (only trimming, drying, curing, grading, or packaging)

■ **Manufacturer**

■ **Testing Laboratory**

■ **Retailer** (Storefront/Public and Nonstorefront/Not Public)

■ **Distributor** (transports, arranges for testing, and conducts quality control)

■ **Distributor transport** (transports between licensed cultivators, manufactures, and distributors, but not to licensed retailers)

■ **Microbusiness**



Microbusiness – Section 26070

Specialty Cottage – Section 26061

- **“Microbusiness”**: Cultivating less than 10,000 square feet of cannabis and acting as a licensed distributor, Level 1 manufacturer, and retailer.
 - A microbusiness must comply with all state requirements for licensed cultivators, distributors, Level 1 manufacturers, and retailers to the extent the licensee engages in those activities.
 - Level 1 manufacturer must use nonvolatile solvents or no solvents. (Level 2 manufacturer may use volatile solvents, which are liquids that vaporize at room temperature.)
- **“Specialty Cottage”**: Cultivating on a single premises using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority of 2,500 square feet or less of total canopy size for mixed-light cultivation, up to 25 mature plants for outdoor cultivation, or 500 square feet or less of canopy size for indoor cultivation.



Cultivation Licenses: Canopy Square Footage Allowed

Type	Specialty	Small	Medium	Large
Specialty Cottage Outdoor	25 plants			
Specialty Cottage Indoor	500			
Specialty Cottage Mixed-Light	2,500			
Outdoor	5,000 (or 50 plants)	5,001-10,000	10,001 to 1 acre	More than 1 acre
Indoor	501-5000	5,001-10,000	10,001-22,000	More than 22,000
Mixed-Light	2,501-5,000	5,001-10,000	10,001-22,000	More than 22,000

**Amounts in canopy square footage unless otherwise indicated.*



State Commercial Licenses

- Licensing will require oversight and compliance with the regulations of numerous agencies in addition to the licensing authority, such as the State Water Resources Control Board, Department of Fish and Wildlife, and Department of Pesticide Regulation.
 - All agencies retain independent jurisdiction and authority.
 - County does not have any authority or control over state or federal agencies.
- Primary state licensing agencies include:
 - **Bureau of Cannabis Control within the Department of Consumer Affairs**
 - Retailers, Distributors, Testing Labs, and Microbusinesses
 - **Manufactured Cannabis Safety Branch (MCSB) within the Department of Public Health**
 - Manufacturers, which includes nearly all non-flower products (edibles, oils, tinctures, etc.)
 - **CalCannabis Cultivation License (CalCannabis) within the Department of Food and Agriculture**
 - Cultivators



Nonprofit Licenses – Section 26070.5

- Under current scheme, nonprofit licenses and tax-exempt status are not authorized.
- By January 1, 2020, the Bureau of Cannabis Control is required to investigate the feasibility of creating one or more classifications of nonprofit licenses.
- Any local jurisdiction may issue temporary local licenses to nonprofit entities that primarily provide whole-plant cannabis and cannabis products and a diversity of cannabis strains and seed stock to low-income persons so long as certain requirements are met, including environmental regulation.



Licensing Scheme / Track and Trace

- All commercial cannabis activity must be conducted between licensees, thus a licensed distributor must obtain cannabis from a licensed cultivator, etc.
- State law requires that all plants are tagged with a unique identifier from cultivation through sale.
- Cannabis must be subject to quality assurance and testing prior to sale.
- Health and Safety Code section 11362.775, which currently provides for collectives and cooperatives, will sunset one year after the state begins issuing commercial cannabis licenses.
 - Collectives and cooperatives for distribution have never been authorized in the County. Ordinance 5000 allows for 3 patients to collectively cultivate for personal use only.



Mobile Deliveries – Sections 26080 & 26090

- Mobile deliveries must originate from and be made by a licensed retailer or microbusiness in response to a “delivery request” (i.e., no roaming mobile vending).
- Only a licensed distributor can transport cannabis goods.
- Deliveries must be “in compliance with . . . local law.”
- Local governments “shall not prevent delivery of cannabis or cannabis products on public roads,” thus the County cannot ban the transportation of cannabis through the County by a licensed distributor.
 - According to CSAC and RCRC, there is “growing consensus” that local governments can ban deliveries occurring within their boundaries.



Packaging and Labeling – Section 26106

On-Site Consumption – Section 26200(g)

- **Packaging:** The State Department of Public Health will issue standards for the production, packaging, and labeling of all cannabis products.
- **Consumption:** A local jurisdiction may allow for the smoking, vaporizing, and ingesting of cannabis or cannabis products on the premises of a licensed retailer or microbusiness only if:
 - Access to the area for cannabis consumption is restricted to persons 21 years of age and older.
 - Cannabis consumption is not visible from any public place or nonage-restricted area.
 - Sale or consumption of alcohol or tobacco is prohibited on the premises.



CEQA Compliance

- Section 26055 provides for a temporary CEQA exemption (through July 1, 2019) for the adoption of a local ordinance that regulates commercial cannabis activity through discretionary permits, provided that CEQA is performed when the discretionary permit is granted.
 - This would allow the County to pass the cost of CEQA compliance to a permit applicant.
- Assuming this CEQA exemption expires on July 1, 2019 as is provided in the statute, the County would be required to comply with CEQA in adopting any ordinance allowing for commercial activity after July 1, 2019.
- A voter initiative does not require CEQA review, but individual applicants would still be required to comply with CEQA.



State Taxes

- 15% State excise tax is imposed for retail sale of adult use cannabis.
 - No sales or use tax on medical cannabis if patient presents a County-issued medical identification card.
- State cultivation tax:
 - Flowers: \$9.25 per ounce
 - Leaves: \$2.75 per ounce
- Proceeds from taxes are placed in the Marijuana Tax Fund and first cover the cost of administration, then:
 - 60% for youth-related use
 - 20% for environment-related purposes
 - 20% for local government & California Highway Patrol
 - Local grants in this category are not available to a County that has banned commercial cannabis activity.



Industrial Hemp

- Proposition 64 decriminalized and regulates cultivation of industrial hemp under state law.
 - “Industrial hemp” consists of “the plant *Cannabis sativa* L. having no more than three-tenths of 1 percent tetrahydrocannabinol (THC)”
- State regulatory program for industrial hemp is separate from other commercial cannabis laws and regulations.
 - Industrial hemp cultivators will be required to register with the County Agricultural Commissioner and are subject to regulations to be issued by the California Department of Food & Agriculture Advisory Board.
- State law does not appear to pre-empt additional local regulations or bans of industrial hemp cultivation.
- Cultivation of industrial hemp remains largely illegal under federal law.



Taking Action Before January 1, 2018

- Because no commercial activity is currently authorized in the County (with the exception of existing dispensaries since 2011 under Ordinance 4999), the County would inform the State that any application for commercial activity is not in compliance with County law.
- To avoid any confusion, however, the County should decide whether to ban or authorize any commercial activity before the State begins accepting issuing licenses on January 1, 2018.
- Given the limited time before the State will begin accepting and processing commercial licenses, the County lacks the time to pass a zoning ordinance through the normal procedures, which would include review and recommendation by the Planning Commission first. (Government Code Sections 65853-65854)



Passing a Temporary Urgency Ban

- Temporary Ban – Urgency Measure / Interim Ordinance:
 - May only be utilized for up to 2 years. (Government Code Section 65858)
 - Initially effective for only 45 days and then can be extended:
 - 10 months and 15 days, and then additional year if no noticed hearing before adoption.
 - 22 months and 15 days if initial adoption was at a noticed hearing.
 - Requires 4/5ths vote of Board and finding that the urgency ordinance is required to protect the public safety, health, and welfare.
 - During the time any temporary ban is in place, the Planning Commission would be directed through a Resolution of Intention to consider a general zoning ordinance to address commercial cannabis, which could allow certain uses or impose a ban.



Other Options Can Be Difficult Too

- Special Use Permits – process to approve/revocation
 - Environmental regulatory challenges
 - Planning Commission

- Development Agreements – limited in timeframe
 - Environmental regulatory challenges
 - Planning Commission



What Are Other Counties/Cities Doing

- Looked at 18 California counties and 2 cities in El Dorado County
- Commercial Licenses
 - El Dorado County - Does not allow except existing dispensaries under Ordinance 4999
 - Allow - 5
 - Do not allow - 14
 - Just Dispensary Licenses for Medical Use – 1
- Commercial Outdoor Cultivation
 - El Dorado County – Does not allow
 - Allow – 5
 - Do not allow - 15



What Are Other Counties/Cities Doing

- Commercial Indoor Cultivation
 - El Dorado County – Does not allow
 - Allow – 4
 - Do not allow – 16
- Manufacturing
 - El Dorado County – Does not allow
 - Allow – 4
 - Do not allow – 16
- Dispensaries
 - El Dorado County – Existing dispensaries under ordinance 4999
 - Allow – 4
 - Do not allow – 16



What Are All 58 Counties Doing

- **Commercial Licenses**
 - El Dorado County - Does allow existing dispensaries under ordinance 4999
 - Allow - 12
 - Do not allow – 41
 - Still working – 4
- **Commercial Cultivation**
 - El Dorado County – Does not allow
 - Allow – 8
 - Do not allow – 45
 - Still working – 4
- **Commercial Retailers/Distributors**
 - El Dorado County – Does allow existing dispensaries under ordinance 4999
 - Allow – 8
 - Do not allow – 45
 - Still working – 4



Committee Recommendation on Commercial Licenses

- Allow
 - Medical
 - Allow for existing dispensaries under ordinance 4999
- Not allow
 - Medical
 - Temporary ban on medical business licenses – except for the existing dispensaries under 4999
 - Recreational
 - Temporary ban on non-medical business licenses



Reasons for Recommendation

- Continues the Board of Supervisors message to allow individuals medical marijuana
- Provides time to create trust in the civil cannabis code compliance process
 - Many in community do not think we can enforce the current activities so how can we even enforce new activities
- Allow time for the Federal Government and State Government to work out recreational and medical commercial issues including State rules
 - This will help to protect County citizens



Local Jurisdictions Caught Between the State and Federal Governments

In 2010, Mendocino County began to issue permits for up to 99 marijuana plants, provided they follow local and state medical marijuana rules, pay thousands of dollars in fees to the county and submit to inspections by sheriff's deputies. The program was popular with growers, with 100 registering between 2010 and 2012.

County officials stated that drawing a bright line between legal and illegal marijuana growing benefits the safety of the wider public. But just as the program has gained local acceptance, it faced pushback from the federal government; DEA agents raided the "legal" farms. Federal prosecutors informed Mendocino officials that the program was in violation of federal drug laws and that the county faced litigation and other enforcement actions if it continued.

The local US Attorney stated that cities and counties that were "licensing and ostensibly authorizing the commercial and very profitable cultivation and distribution of marijuana" are creating "schemes inconsistent with federal law." Federal prosecutors in other states have warned that anyone who facilitates commercial pot production –including elected officials – risked possible federal criminal penalties.



Local Jurisdictions Caught Between the State and Federal Governments

- President Trump previously expressed support for medical marijuana and states' rights to legalize.
- However, Attorney General Jeff Sessions has expressed the desire to eliminate protections for states' medical marijuana programs and prosecute drug crimes (including recreational cannabis) to the fullest extent under federal law.
- Attorney General Sessions has asked Congress not to renew the Rohrabacher-Farr amendment, which expires December 8, 2017.
 - The amendment prohibits the Department of Justice from spending federal dollars to prosecute individuals acting in compliance with state medical marijuana laws.



Reasons for Recommendation

- There is almost a 50/50 split in El Dorado County when it comes to recreational marijuana and there is a split when it comes to commercial marijuana
 - A measured and steady approach will allow for informed decisions
- The County can learn from the four benchmark counties when they start commercial operations
 - All counties moving forward with commercial cultivation overwhelming voted for Proposition 64
 - Already issues with changing rules for license applicants/holders
- Allowing time will let the County build up an understanding of how an administrative process might work
 - Does operations belong in Planning or in a Cannabis Office?



Reasons for Recommendation

- There is not a financial gold rush as initially thought for local governments
 - Consulting firm HdL provided, in a Board of Supervisors presentation, financial figures on revenue which included 9 licenses
- Does not yet provide enough local revenue to cover enforcement, education, health programs and other programs that are related to use of recreational cannabis



Reasons for Recommendation

- A majority of cannabis revenue goes to states
 - Ex. In 2016, Colorado took in \$193.6 million in taxes on cannabis
 - Colorado's 2016 tax structure was 10% retail sales tax and 2.9% state sales tax – it changed in 2017
 - During the same time period, Pueblo County (pop. 161,000) took in approximately \$1,006,000 in revenue with a 2% sales tax on 284 active licenses

Source: Colorado Department of Revenue



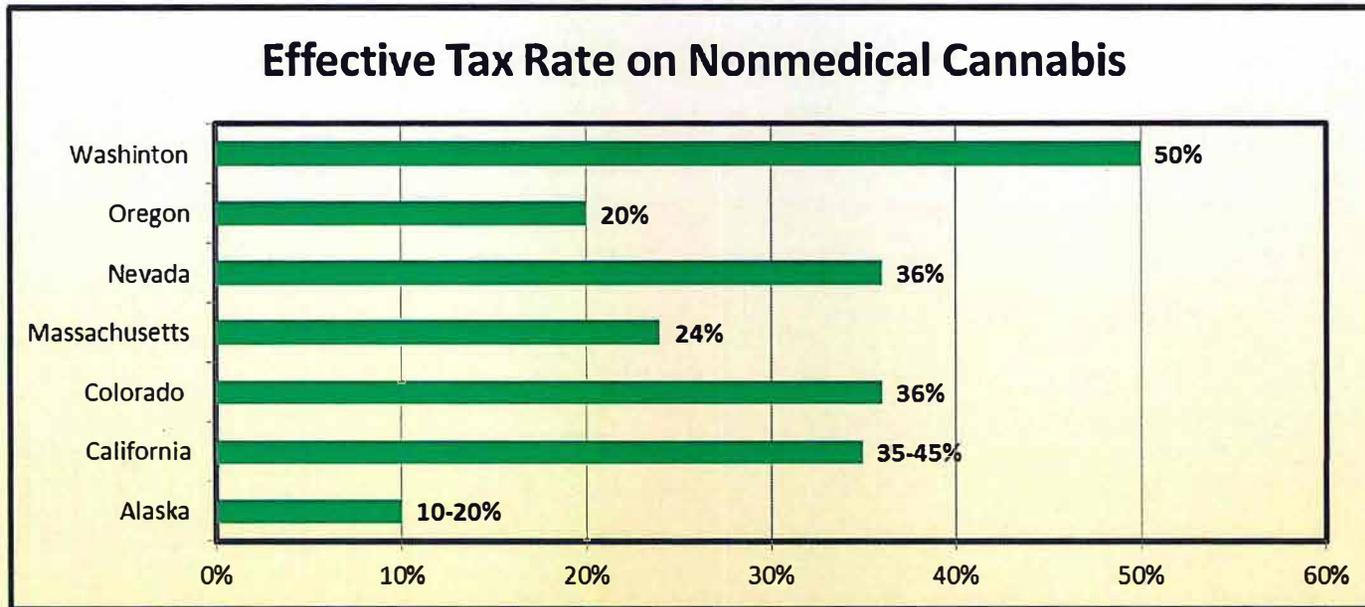
Reasons for Recommendation

- Recreational cannabis state taxes – as of 8/1/17
 - Alaska - \$50 oz
 - California – 15% sales tax, \$9.25/oz flowers and \$2.75 oz leaves on cultivation tax
 - Colorado – 15% excise tax and 8% sales tax
 - Massachusetts – 3.75% sales tax
 - Nevada – 15% excise tax
 - Oregon – 17% sales tax
 - Washington – 37% sales tax

Source: Tax Foundation



Reasons for Recommendation



Excludes Maine due to pending legislative action on tax rates. Estimates include both state and local taxes.

Source: Fitch Ratings Agency



Reasons for Recommendation and Timeframe

- It provides for a timeframe and public decisions in the near future

- Timeframe steps
 - Step 1 – Continue to allow existing dispensaries in Ordinance 4999
 - Step 2 – Pass a temporary ban on all medical commercial licenses and all recreational commercial licenses
 - Step 3 – Allow the new civil code compliance process to operate without adding any new services to evaluate
 - Step 4 – Create new rules for existing dispensaries and allow for dispensaries to apply for licenses – estimated time for new rules would be in the next year



Reasons for Recommendation and Timeframe

- Step 5 – Allow for the new civil code compliance process to prove it works over a period of time
- Step 6 – With the recommended appointment of a new subcommittee, create local measures for different commercial uses tied to taxation for a local election
- Step 7 – Start meetings to study local measures on commercial uses for a future election



Alternative Options

- Option 2 – Full Ban on All Commercial Licenses
 - This option would permanently ban all commercial licenses in El Dorado County including the dispensaries under ordinance 4999
- Option 3 – Full Ban on All Commercial Licenses Except Existing Dispensaries
 - This option would permanently ban all commercial licenses in El Dorado County except the existing dispensaries under ordinance 4999
- Option 4 – Allow for Medical Cannabis Commercial Licenses
 - This option would allow for medical cannabis commercial licenses that could include cultivation, dispensaries, manufacturing, delivery, testing, etc.



Alternative Options

- Option 5 – Allow for Medical and Recreational Commercial Cannabis License
 - This option would allow for medical and recreational cannabis commercial licenses that could include cultivation, dispensaries, manufacturing, delivery, testing, etc.



Next Steps:

Proposed amendments to Chapter 130.14 (Ordinances 4999 and 5000) were passed by the Board on November 7, 2017.

- These amendments were separate from the issues discussed today regarding commercial activities and licensing.

If direction is given today, staff will return to the Board on December 12 to bring an ordinance(s) regarding commercial licenses.