



Overview of Medical Marijuana

Background of Medical Marijuana Legislation in California



1996- Proposition 215

California was the first state to legalize marijuana for medical use. In 1996, Californians approved Proposition 215, which exempted patients and certain defined caregivers who possess or cultivate marijuana for medical treatment recommended by a physician from criminal laws which otherwise prohibit possession or cultivation of marijuana.

Proposition 215 was silent about the amount of marijuana that could be lawfully cultivated by patients and/or caregivers and about other topics critical to its implementation.



Proposition 215 - The Compassionate Use Act (CUA)

The intent of the CUA was to enable seriously ill persons who need medical marijuana for specified medical purposes to obtain and use marijuana under limited, specified circumstances. The CUA provided a limited exception from criminal prosecution under state law for the cultivation, possession, and use of marijuana for specified medical purposes.

The CUA does not address land use, zoning or building code impacts or issues that arise from marijuana cultivation within local jurisdictions.



Senate Bill 420

On January 1, 2004, SB 420 the Medical Marijuana Program Act (“MMPA”) went into effect. The MMPA was enacted by the State Legislature to clarify the scope of the Compassionate Use Act. The MMPA allows cities, counties, and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA.

Because the CUA was voter enacted, and the MMPA was enacted by the legislature, there have been numerous court cases interpreting whether provisions of the MMPA are consistent with the voter’s initiative.



Interplay between Proposition 215 and SB 420

SB 420 attempted to set limits on the number of plants that a patient could lawfully have-- six mature or twelve immature plants and eight ounces of processed marijuana. However, in 2010, in *People v. Kelly*, the California Supreme Court stated that the limits contained in SB 420 could NOT be used to defeat a criminal defense by a patient that the patient needed more medical marijuana. However the Court LEFT in the SB 420 language that the Court of Appeals had voided.

“We conclude, consistently with the decision of the Court of Appeal below (and with the position of both parties in the present litigation), that insofar as section 11362.77 burdens a defense under the CUA to a criminal charge of possessing or cultivating marijuana, it impermissibly amends the CUA and in that respect is invalid under article II, section 10, subdivision (c). We also conclude, consistently with the views of both parties in the present litigation, that the Court of Appeal erred in concluding that section 11362.77 must be severed from the MMP and hence voided.”



Local Jurisdictions Caught Between the State and the Federal Government

In 2005, in *Gonzales v. Reich*, 545 US 1, the Supreme Court held that Congress could continue to criminalize the production and use of home-grown medical cannabis even where states had approved its use for medicinal purposes.



Local Jurisdictions Caught Between the State and Federal Governments

In October 2011, the four U.S. attorneys in California introduced stringent enforcement programs against medical marijuana dispensaries. The effort included sending letters to property owners who rent to dispensaries, advising of potential prosecution and asset forfeiture proceedings. The program was successful where it was implemented.

In August 2013, the U.S. Justice Department issued a memorandum announcing that it would not prioritize marijuana enforcement against businesses that were following state law and adhering to certain criteria. The memorandum makes clear that marijuana remains an illegal drug under federal law and identifies certain enforcement areas that federal prosecutors should prioritize.

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.



2011- Assembly Bill 2011

In August 2011, the State Legislature adopted AB 1300, which clarified that nothing in CUA or MMPA prevents a city or county from adopting local ordinances that regulate the location, operation or establishment of a medical marijuana cooperative or collective or from civilly or criminally enforcing those ordinances.



Local Jurisdictions Caught Between the State and Federal Governments

In 2013, the California Supreme Court heard *City of Riverside v. Inland Empire Patients*. The Supreme Court unanimously ruled that local governments have the power to ban medical marijuana dispensaries. The court concluded that the CUA and MMP do not “expressly or impliedly preempt the authority of California cities and counties, under their traditional land-use and police powers, to allow, restrict, limit, or entirely exclude facilities that distribute medical marijuana, and to enforce such policies by nuisance actions.”

The court stated that state medical marijuana laws do not restrict Riverside’s ban or any similar city ban, stating that the scope of the medical marijuana laws is limited and circumscribed: “Nothing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medical marijuana will not be permitted to operate within its borders.”



EDC's History of Regulating Medical Marijuana

From 1996 until the mid 2000s, EDC's implementation of the CUA was primarily informal. There were no provisions in the code about cultivation and there was an ambiguous reference to "dispensaries" that pre-dated the CUA and apparently referred to small pharmacies at campgrounds. The County's first official action was to amend the ordinance to remove all references to dispensaries.

In 2011, the County passed its first ordinance regulating outdoor cultivation and expressly banning new dispensaries.



EDC's History of Regulating Medical Marijuana

Between 2011 and 2013, the County continued to work with various stakeholders on ordinances regulating outdoor cultivation and dispensaries.

In the Fall of 2013, the County adopted Ordinance 5000. Ordinance 5000 allows outdoor cultivation of marijuana of 200-600 square feet depending on the size and zone district of the parcel as long as specific standards are met. It precludes the opening of any new dispensaries. It is silent about indoor cultivation.



EDC's History of Regulating Medical Marijuana

In late 2014, after the first full year of operating under Ordinance 500), in response to complaints from residents through out the county about odor, fear of potential crime, and proximity to land uses where minors are present, the Board decided to revisit its medical marijuana regulations.

However, at approximately the same time, the State undertook a new comprehensive set of changes to its medical marijuana statutes.



Overview of the California Medical Marijuana Regulation and Safety Act (MMRSA)

March 15, 2016



MMRSA – High Level Overview

- What is MMRSA?
- What are the timelines of MMRSA?
- What state departments will have responsibility?
- What are the key provisions MMRSA?



MMRSA – Three Bills that Make the Act

- MMRSA is made up of three bills:
- SB 643 (McGuire)
- AB 243 (Wood)
- AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, and Wood)



MMRSA – Key Dates and Actions

- MMRSA became operative January 1, 2016
- The March 1, 2016 deadline no longer exists for local governments
- State agencies are working on developing regulations
- Target date for state to begin issuing licenses to compliant operators is January 1, 2018
- Operators without a state license will be in non-compliance January 1, 2019



MMRSA – Regulating State Departments

- Creates the Bureau of Marijuana Regulation in the California Department of Consumer Affairs
- Department of Food and Agriculture – has some licensing authority
- Department of Public Health – has some licensing authority



MMRSA – Key Provisions

- Local government authority is broad
- Collectives and cooperatives will be phased out
- Patients can still grow their own
- Cultivator space would be capped
- New standards for cultivators
- Protections for businesses and employees
- Many types of licenses – 17 classifications
- Testing and labelling is required



MMRSA – Key Provisions

- Medical marijuana is tracked during the process
- Deliveries are allowed
- Criminal background checks are required
- Some vertical integration on licenses is allowed



MMRSA – Conclusion

- New standards for cultivators
- Creates a framework to regulate and tax the medical marijuana industry
- Many types of licenses
- MMRSA gives local governments broad authority



Legalizing Recreational Use in California?

California voters most recently considered legalizing recreational use of marijuana in 2010 with Proposition 19. Proposition 19 was defeated, with 53.5 percent of voters casting "no" votes. [U.S. Attorney General Holder](#) came out against Proposition 19, saying [President Obama's](#) administration would vigorously enforce the Controlled Substances Act against individuals and organizations that possess, manufacture or distribute marijuana for recreational use, even if such activities are permitted under state law.

In 2012, legalized recreational marijuana advocates saw their first statewide victories in [Colorado](#) and [Washington](#). Following these initiatives President Obama changed his position on recreational marijuana, stating that going after recreational marijuana use in states where it was legal was not a top priority. This change in position, and the financial benefits that have appeared in Colorado and Washington, have led to a new recreational legalization effort in California in 2016, commonly referred to as the Adult Use of Marijuana Act.



Adult Use of Marijuana Act 2016

The official ballot summary:

Legalizes marijuana and hemp under state law. Designates state agencies to license and regulate marijuana industry. Imposes state excise tax on retail sales of marijuana equal to 15% of sales price, and state cultivation taxes on marijuana of \$9.25 per ounce of flowers and \$2.75 per ounce of leaves. Exempts medical marijuana from some taxation. Establishes packaging, labeling, advertising, and marketing standards and restrictions for marijuana products. Allows local regulation and taxation of marijuana. Prohibits marketing and advertising marijuana to minors. Authorizes resentencing and destruction of records for prior marijuana convictions.



Adult Use of Marijuana Act

Fiscal Analysis from the ballot initiative:

Net reduced costs ranging from tens of millions of dollars to potentially exceeding \$100 million annually to state and local governments related to enforcing certain marijuana-related offenses, handling the related criminal cases in the court system, and incarcerating and supervising certain marijuana offenders. Net additional state and local tax revenues potentially ranging from the high hundreds of millions of dollars to over \$1 billion annually related to the production and sale of marijuana. Most of these funds would be required to be spent for specific purposes such as substance use disorder education, prevention, and treatment.



Adult Use of Marijuana Act- Will CA Legalize Recreational Use of Marijuana in 2016?

Poll conducted in February 2016 by Probalsky Research:

On the November 2016 ballot you may see an initiative that would legalize marijuana for recreational use under California law and allow government to tax it, likely bringing in millions in new revenues for government programs. If the election was held today, would you vote Yes to approve or No to reject this initiative?

Of the 1,000 people polled:

Yes: 59.9%

No: 36.7%

Unsure/No response: 3.4 %

Margin of Error: +/- 3.0%



What to do now? Topics to Consider While Listening to the Speakers

Process Moving Forward. Should The County:

- Keep its current regulations indefinitely?
- Have staff prepare amendments?
- Comprehensive changes?
- Limited changes to demonstrate compliance with MMRSA?
- Do additional outreach before acting?
- Form a citizen task force to analyze the various issues?
- Survey residents?
- Place advisory measures on the ballot?
- Other forms of outreach?



Topics to Consider: Outdoor Cultivation

Some Options:

- Keep in same locations and same amounts
- Ban
- Change the locations/amounts
- Change the standards such as setbacks
- Enclose in greenhouses



Topics to Consider: Indoor Cultivation

Some options:

- Expressly ban
- Allow at MMRSA levels (100 sq ft/patient for up to 5 patients)
- Allow at current County outdoor cultivation levels (200 sq.ft/patient for up to 3 patients)
- Allow at other levels
- What zone districts? Residential? Commercial? Industrial?
What standards?



Topics To Consider: Dispensaries

Clarify whether the existing dispensaries are permitted or not.
Determine whether to allow any additional dispensaries
If so, in what districts and with what limitations.



Topics to Consider: Deliveries

MMRSA allows dispensaries to deliver unless local jurisdiction prohibits.

If existing dispensaries allowed to remain, should they be allowed to deliver?

If additional dispensaries are allowed, should they be allowed to deliver?



Topics to Consider: How to Treat Marijuana in Our Agricultural Ordinances

MMRSA states that medical marijuana can be regulated like an agricultural product.

- Should it be explicitly excluded from the Right to Farm Ordinance?
- How should it be treated in the Agricultural setback ordinance?



Topics to Consider: Miscellaneous businesses

- Manufacturing
- Testing
- Packaging
- Food products



Topics to Consider: Taxation and Revenue

Under MMRSA, commercial operations can be taxed

How/whether to tax cultivation

How whether to tax dispensaries

(Not an insignificant sum . . . between November 2014 and September 2015, Santa Cruz County collected \$1.8 million from 14 dispensaries.)



Conclusion of Topics to Consider

The County needs to determine what it wants its future to look like in 2017 and beyond if medical marijuana remains legal or if both medical and recreational marijuana are legal. It needs to also consider the possibility that the federal/state disparity will remain, and the possibility that a new administration might react differently to local jurisdictions' regulations.



What Are Other Counties Doing

- Looked at 16 northern California counties
- What counties did outreach or created ad hoc committees
 - 10 of 14
- Some counties have not acted post MMRSA
 - Happy with current ordinance(s)
 - Waiting for the landscape to stop
 - Discussing options
- Some counties have had ballot measures regarding medical marijuana



Direction to Staff

Process Moving Forward. Should The County:

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- Survey residents?
- Place advisory measures on the ballot?
- Other forms of outreach?