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## Local Government Reference Guide to Proposition 64

On November 8, 2016 California voters passed Proposition 64, which legalizes the nonmedical use of cannabis by adults 21 and older. California now joins seven other states that have legalized cannabis for recreational use. While Proposition 64 legalized consumption effective immediately, the initiative calls for state licensing authorities to begin accepting applications and issuing licenses in January 2018. While the regulatory process will inform much of the work ahead, local governments can also begin preparing now. The following summary provides basic information that local governments should know about Proposition 64.

### Proposition 64 Quick Facts:

- Allows adults age 21 and older to possess, transport, purchase, consume and share up to an ounce of nonmedical cannabis and eight grams of nonmedical concentrates.
- Adults can also grow up to six plants at their household for nonmedical use, but plants must be out of public view and secure from children.
- Local governments may ban outdoor home cultivation.
- Allows local governments to regulate nonmedical cannabis businesses through zoning and other laws, such as requiring businesses to obtain local permits or licenses in addition to state licenses.
- Using cannabis in public remains illegal.
- Driving while impaired by cannabis remains illegal.
- State regulatory process to begin immediately with licensing to begin in January of 2018.

### Regulation of Nonmedical Cannabis

**Licensure:** Proposition 64 creates a framework for the regulation of nonmedical cannabis by establishing a state licensing and taxation structure. The system is meant to function with any local regulatory program by requiring that all licenses issued by the state work well in concert with local rules. However, local regulation of cannabis is voluntary. If cities and counties choose to develop regulatory programs, they are encouraged to adhere to the same timeline as the state's regulatory process, with licensure beginning in January 2018.

Proposition 64 delegates specific roles and responsibilities for state licensure and regulation to three primary state agencies. First and foremost, Proposition 64 changes the name of the Bureau of Medical Cannabis Regulation to the Bureau of Marijuana Control, and adds responsibility for regulating and licensing nonmedical cannabis business as well as the medical variety. In addition, the measure requires other state agencies to regulate and license different parts of the nonmedical cannabis industry. These state agencies would have responsibilities similar to the ones they currently have for medical cannabis. See Table below.

<b>Regulatory Agency</b>	<b>Primary Responsibilities</b>
<b>Bureau of Marijuana Control</b> <a href="http://www.bmcr.ca.gov">http://www.bmcr.ca.gov</a> 800-952-5210	License cannabis retailers, distributors & microbusinesses
<b>Department of Food &amp; Agriculture</b> <a href="https://www.cdffa.ca.gov/is/mccp">https://www.cdffa.ca.gov/is/mccp</a> ; 916-263-0801	License and regulate cannabis cultivation
<b>Department of Public Health</b> <a href="http://www.cdph.ca.gov/programs/Pages/OMCS.aspx">http://www.cdph.ca.gov/programs/Pages/OMCS.aspx</a> 916-445-0275	License and regulate manufacturing & testing of cannabis

**Land Use:** Proposition 64 includes multiple local-control provisions that respect local government police powers to:

- ban commercial cannabis activity, and
- regulate businesses through local zoning and land-use requirements, and/or business license requirements within their respective jurisdiction by ordinance.

However, no local jurisdiction may ban:

- the consumption of cannabis within its jurisdiction,
- the allowance of up to six plants for personal use, or
- the transportation of cannabis through the jurisdiction.

**Cultivation:** The Department of Food & Agriculture is responsible for the Cannabis Cultivation program, requiring all cannabis cultivators (excluding those growing up to six plants for their own personal use) to first obtain a state license before cultivation may begin. Local governments may also establish their own cultivation ordinances.

Proposition 64 expands the currently required track-and-trace system for medical cannabis products to include nonmedical cannabis as well. The Department of Food & Agriculture will oversee this chain-of-custody system, which will document the movement of cannabis and cannabis products throughout the supply chain from cultivation to sale and help to detect illegal activity.

### Medical vs. Nonmedical Cannabis

Numerous key details of Proposition 64’s regulatory system are modeled after the Medical Cannabis Regulatory and Safety Act (MCRSA), passed by the Legislature in 2015. As noted above, the Bureau of Marijuana Control within the Department of Consumer Affairs remains the responsible entity for regulating and licensing both nonmedical and medical cannabis consumer businesses. The Legislature is expected to decide whether to reconcile differences between Proposition 64’s regulation of nonmedical cannabis and MCRSA — or to have two different regulatory processes.

**Medical I.D. Cards:** Proposition 64 amends some statutory provisions governing the Medical Marijuana Identification Card (MMIC) program. The Department of Public

Health will continue to print identification cards and maintain a registry database for verification of qualified patients and their primary caregivers. However, Proposition 64 does cap the fees local governments can charge for voluntary I.D. cards at \$100. In addition, Proposition 64 exempts patients with I.D. cards from sales tax when purchasing cannabis for medical use, effective immediately. The exemption only applies to those that hold a state-issued I.D. card (currently about 6,000 patients in the state). In 2018, the exemption will apply to sales and use tax, while requiring medical patients to pay all other applicable taxes.

### Employer Protections

Proposition 64 respects the rights and obligations of public and private employers to maintain a drug- and alcohol-free workplace, and the ability of employers to have policies prohibiting the use of cannabis by employees and prospective employees. In addition, Proposition 64 subjects nonmedical cannabis businesses to all existing laws governing worker protections, and directs the state to study and implement any unique protections needed for those working in the nonmedical cannabis industry.

### Taxation

Proposition 64 imposes new state taxes on growing and selling both medical and nonmedical cannabis. The measure also allows local governments to establish their own taxes on medical and nonmedical cannabis consistent with existing state law. Explicit authority is granted to counties to levy a tax on cultivating, manufacturing, producing, processing, preparing, selling or distributing cannabis, pursuant to existing voter-approval requirements.

Revenues collected from the new state retail excise tax and state tax on cultivation will be deposited in a new state account, the California Marijuana Tax Fund. Certain fines on businesses or individuals who violate regulations created by Proposition 64 will also be deposited into this fund. Funds generated will be used to compensate state agencies for any regulatory costs not covered by license fees. In addition, a portion of revenues will be allocated to youth programs, environmental clean-up efforts associated with illegal grows, and programs designed to reduce driving under the influence of alcohol, cannabis or other drugs.

The following chart describes new taxes on cannabis, effective January 1, 2018.

<b><i>Type of Tax</i></b>	<b><i>Type of Cannabis Taxed</i></b>	<b><i>Rate</i></b>
<b>New state tax on cultivation</b>	Both medical and nonmedical	\$9.25 per ounce of dried marijuana flowers and \$2.75 per ounce of dried marijuana leaves.
<b>New state retail excise tax</b>	Both medical and nonmedical	15 percent of retail sale
<b>Existing state and local</b>	Nonmedical only	Rates vary across the state;

<b>sales tax</b>		the average is around 8 percent
<b>Existing and future local taxes</b>	Can apply to both medical and nonmedical	Subject to local government decisions

## Environmental Protections

Proposition 64 requires cannabis businesses to act in compliance with all applicable environmental laws to maintain their licenses, including the California Environmental Quality Act (CEQA), Endangered Species Act and the Clean Water Act. In addition, Proposition 64 contains restrictions on pesticide use and provisions for funding to enforce regulations on water diversions. The measure also directs the existing multi-agency task force developed by the California Department of Fish and Wildlife and the State Water Resources Control Board to enforce these laws and regulations. As noted above, Proposition 64 directs a portion of revenues from state taxes to the Department of State Parks and the Department of Fish and Wildlife help fund environmental cleanup efforts.

## Federal Law

Under federal law, it is illegal to possess or use cannabis, including for medical use. The U.S. Supreme Court ruled in 2005 that federal agencies could continue under federal law to prosecute individuals who possess or use cannabis for medical purposes even if legal under a state’s law. Currently, however, the Obama Administration’s Department of Justice chooses not to prosecute most cannabis users and businesses that follow state and local cannabis laws, if those laws are consistent with federal priorities. These priorities include preventing minors from using cannabis and preventing cannabis from being taken to other states. This federal guidance is known as “the Cole Memo.” It is unclear how the new Administration will respond to legalization efforts, and if there will be attempts to amend or rescind the Cole Memo. In addition, there are several outstanding issues related to banking, finance and taxation that will need to be addressed at the federal level.

## Timeline

The state has already started developing regulations to implement legislation related to medical cannabis. With the passage of Proposition 64, it is likely that the rulemaking and regulation development for both medical and nonmedical cannabis will be streamlined. Proposition 64 requires licensing authorities to begin accepting applications and issuing licenses in January 2018.