



**To:** RCRC Board of Directors

**From:** Paul A. Smith, Senior Legislative Advocate  
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**Date:** September 19, 2016

**Re:** Proposition 64 – “Marijuana-Use Initiative” - ACTION

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### **Summary**

This memo provides an analysis of Proposition 64, “The Control, Regulate and Tax Adult Use of Marijuana Act” (commonly referred to as the “AUMA”), which would legalize marijuana use (beyond medicinal activities) in California. The RCRC staff recommends adopting a “No Position” on this measure.

### **Background**

Under the federal Controlled Substances Act, it is a violation of federal law to possess, use, cultivate and/or distribute marijuana. The Controlled Substances Act is enforced by federal law enforcement agents and prosecutions are made in federal courts by the U.S. Department of Justice (DOJ). Under the Obama Administration, the DOJ has issued a series of memorandums to U.S. Attorneys regarding the use of federal enforcement resources in states that have enacted "laws legalizing marijuana in some form." The most recent of these memos instructs federal prosecutors that even larger, commercial marijuana operations may not "implicate the Department's enforcement priorities" if "the operation is demonstrably in compliance with a strong and effective state regulatory scheme."

Mirroring federal law, California's codes contain various criminal statutes regarding the cultivation, possession, usage and distribution of marijuana, other than for medicinal purposes.

In 1996, the voters approved Proposition 215 - the Compassionate Use Act – which exempts patients and 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. In conjunction with Proposition 215, the Legislature approved Senate Bill 420 (Vasconcellos) in 2003 to further implement the state's medical marijuana laws, guidelines and practices.

In 2013, the RCRC Board of Directors adopted Policy Principles regarding medical marijuana, including principles that rural counties need under a statewide regulatory scheme (see attached). Last year, the Legislature enacted a medical marijuana

licensing/regulatory framework. RCRC supported this effort as it achieved the primary objectives of:

- Local control
- Explicit county taxing authority
- Addresses environmental degradation; and,
- Imposes a strict licensing scheme and ends the “collective model.”

In 2010, the voters rejected Proposition 19, which proposed to decriminalize possession, cultivation and the distribution of limited amounts of marijuana for adult-use in California. It should be noted that Proposition 19 lacked significant local control protections. The RCRC Board of Directors voted to “Oppose” Proposition 19. The voters rejected Proposition 19 by a margin of 46.2% in favor to 53.8% against. Only three RCRC counties voted to support the measure – Alpine (59.9%), Mono (56.5%), and San Luis Obispo (51.5%).

### **Issue**

In November, the voters will consider Proposition 64 which would:

- Allow persons age 21 or older to possess, process, share or transport no more than one ounce of marijuana for personal consumption and not for sale;
- Allow persons to cultivate no more than six marijuana plants indoors on private property for personal consumption, subject to “reasonable” local regulation (outdoor cultivation could be completely banned, as long as marijuana remains illegal under federal law); and,
- Provide local governments the option and ability to regulate, control, permit, license, and tax activities surrounding the use, cultivation, sale of marijuana (including the ability to ban commercial marijuana activities).

Proposition 64’s state regulatory scheme is, for the most part, consistent with the Medical Cannabis Regulation and Safety Act enacted last year by the Legislature (see comparison chart attached). Some notable differences are:

- No mandatory distribution which requires unprocessed marijuana to move through a distributor for product testing;
- No prohibitions on owning multiple licenses outside of each licensing type;
- No size limitation on large grows (local governments can still limit size);
- Counties that ban cultivation and dispensaries would be precluded from accessing certain state grants funded under the Proposition; and,
- Enacts a 15 percent excise tax at retail level and a per-ounce tax on cultivation (this applies to both medical and adult-use; however, medical sales would be exempt from sales and use tax).

In addition, there are some aspects that directly impact counties:

- Caps county-issued medical marijuana identification cards at \$100 (reduced amounts for patients in Medi-Cal or County Medical Services Program);

- Exempts patients with county-issued medical marijuana identification cards from paying state sales tax when purchasing marijuana;
- Counties are required to identify medical marijuana patients using unique identifiers instead of names, and subjects any databases to medical privacy protections;
- Restricts county health departments from disclosing medical marijuana patient information.

Proponents of Proposition 64 argue that legalizing and regulating marijuana would minimize black market activities associated with the product. And, by instituting a regulatory scheme, state and local governments would be able to accrue revenue from marijuana activities.

Opponents argue that legalizing marijuana is inappropriate social policy. Also, despite what the state does, marijuana will remain illegal under federal law and therefore the criminal element in the cultivation, distribution and sale will remain.

### **Staff Recommendation**

Staff is recommending the RCRC Board of Directors adopt a “No Position” position on Proposition 64.

### **Attachments**

- Copy of Proposition 64
- List of Support/Opposition
- Comparison Chart
- California State Sheriffs’ Association Position Statement
- Proposition 19 Election Result Map
- RCRC Policy Principles on Medical Marijuana