

Latest Developments  
in  
Cannabis Regulation  
City Attorneys' Spring Conference  
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# Latest Developments: Cannabis Regulation

## Presenters

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# Latest Developments: Cannabis Regulation

- **Challenges to local government authority**
  - **Myth:** Proposition 64 prohibited local governments from banning cannabis deliveries (media and even state govt)
  - **Reality:** Deliveries are just another business activity falling squarely within cities' constitutional land use and police powers, which were expressly protected by Prop. 64

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- **Development on Deliveries: SB 1302 (Lara)** – seeks to statutorily prohibit local governments from banning deliveries
  - **Direct threat to local control**
  - **Violates Prop. 64: Commercial activities not allowed where locally prohibited**
  - **Independently violates Article XI, Section 7 of California Constitution**

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- **Article XI, Section 7 of the California Constitution**
  - “A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”
  - Cities may want to consider formal opposition to SB 1302
  - A measure of this type could be the opening wedge to further attacks on local control

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- **Development on State Tax Policy:**

## **AB 3157 (Lackey) – Cannabis Taxation**

- Suspends state cultivation tax until June 1, 2021
- Reduces state excise tax from 15% to 11% for the same period
- Intended to give industry breathing room as it phases into the regulated market

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## AB 3157 (Lackey) – Cannabis Taxation (continued)

- **Bill in itself poses no threat to locals**
- Triggers concerns that, if it takes effect, locals will increase local tax rates in response, frustrating the bill's purpose
- This in turn may lead to discussions about legislation regulating local tax rates
- **Could lead to dangerous legal precedent**
- Locals need to be aware of danger, keep taxes at reasonable rates to discourage state action

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- **Developments on Banking Front**

## **SB 930 (Hertzberg) - Financial Institutions: Cannabis**

- Would authorize creation of limited charter banks and credit unions, and the use of special purpose checks for payment of state and local taxes, rent, and goods and services
- Intriguing but legal hurdles not completely ironed out – cautionary testimony from former Federal Reserve regulator to Treasurer's Banking Task Force



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- **Legal Challenges to Local Regulations:**
  - Local regulations re: personal cultivation
  - After Prop. 64, in response to its provision that “local governments cannot ban, but can reasonably regulate” indoor cultivation for personal use, a number of cities enacted ordinances requiring permits and in some cases inspections.
  - **December 2016 and months following:** Drug Policy Alliance sent letter to several cities challenging locally adopted ordinances.

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## **Drug Policy Alliance laid out four broad challenges:**

- 1) Preventing categories of people from engaging in personal cultivation violates AUMA;
- 2) Local permits or fees to engage in personal cultivation violates AUMA;
- 3) Requiring a permit to engage in personal cultivation violates the Fifth Amendment to the U.S. Constitution;
- 4) Requiring a warrantless inspection of a private home violates the Fourth Amendment to the United State Constitution.

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## **Tax Fairness, Transparency and Accountability Act**

- Threatens to cripple local government by requiring 2/3 vote on ALL tax measures and fees
- Sponsored by Business Roundtable, signatures are being gathered now for November ballot
- Serious threat to state and local ability to govern
- Will finish the work of 1978's Proposition 13 in restricting government access to tax revenues

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## **Tax Fairness, Transparency and Accountability Act**

- Retroactive to January 1, 2018
- Local taxes enacted since that date by majority vote will be invalid by operation of law
- Local tax proposals must run a double gauntlet to be enacted:
  - 1) 2/3 vote of city council to place on local ballot
  - 2) 2/3 vote of local electorate

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## **Litigation: Harris v. City of Fontana**

- Filed June 2017
- Mounted a challenge to the City's:
  - Permit requirement
  - Inspection requirement
  - Fee requirement
  - Background check requirement
- Underlying issue: What is “reasonable regulation” within the meaning of Proposition 64?

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## **Harris v. City of Fontana (continued)**

Rationale for Regulations:

### **Permit Requirement**

- Due to inherent risks of unregulated cultivation, it is reasonable to require a permit prior to allowing it to occur indoors
- Allows City to impose reasonable conditions to mitigate risk:
  - Prohibit storage of explosive chemicals
  - Secure cannabis from unauthorized persons (minors)

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## **Harris v. City of Fontana (continued)**

- Rationale for Regulations

### **Inspection Requirement**

- The only authorized inspection under city regulations is one conducted with applicant's consent – similar to other inspections prior to issuance of permits

### **Fee Requirement**

- The fee is tied to the amount of staff time and resources required to review and process a permit application.

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- **Harris v. City of Fontana (continued)**
- Rational for Regulations

## **Background Check Requirement**

- Allows authorized personnel in the Police Department to examine an applicant's criminal background and provide a recommendation to the Planning Department to approve or deny a permit based on criminal history with regard to drug possession or sales.

Case is pending, City will rely in part on **Riverside** and **Maral** cases, both of which upheld local authority to regulate cannabis activity per local police power.



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QUESTIONS?