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PERSPECTIVE

What pot legalization would mean for local governments

By Scott E. Huber
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In November, California voters will decide whether to legalize recreational marijuana under state law. While there are numerous policy arguments both for and against the proposition, should it pass (as is commonly expected), it presents several issues for local governments to consider in reviewing existing regulations and potentially adopting new regulations.

What Proposition 64 Would Do

Prop. 64 would de-criminalize the personal use, possession and home cultivation of marijuana for recreational purposes under state and local law for adults over age 21.

It would also establish a state licensing system for businesses that wish to cultivate, distribute or sell recreational marijuana on a commercial scale. A system of taxation on cultivated and commercially distributed marijuana would also be established. Notwithstanding the requirement to obtain a state license, these businesses would still be required to obtain a local business license and be subject to local regulations. Lastly, of note, businesses that sell alcohol or tobacco products of any kind are not allowed to engage in the sale of marijuana of any type or for any purpose.

How Proposition 64 Affects Local Jurisdictions' Ability to Regulate Marijuana

As is the case now, local government agencies would continue to be able to ban completely medicinal marijuana

dispensaries within their jurisdictions under Prop. 64. Likewise, they would have the authority under Prop. 64 to ban completely all recreational marijuana dispensaries within their boundaries. The measure goes on specifically to provide that it does not infringe on a local government or any of its agencies' right to restrict and regulate all actions with regards to the use of marijuana within any building it occupies, whether owned or leased. However, as personal possession of marijuana would be allowed by all individuals over the age of 21, such possession cannot be regulated by a local jurisdiction.

For those jurisdictions that elect to allow recreational marijuana businesses, state law would presumptively prohibit them from operating within 600 feet of any school (K-12) daycare center or youth center in operation at the time the marijuana business is licensed, but the local jurisdiction may specify a different radius in its local regulations.

Local governments would also be able to also ban all outdoor cultivation of marijuana within their jurisdiction, as well as indoor cultivation on a commercial scale. They may not ban, however, personal cultivation of up to six marijuana plants within a personal residence or an or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure (for example, a backyard greenhouse). However, "reasonable regulations" may be enacted on indoor personal cultivation as local governments may see needful.

Prop. 64 does allow for local governments to regulate outdoor



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conduct relating to personal marijuana use, even upon private property. Therefore, an important consideration for such jurisdictions then becomes to what extent they can or should regulate individual conduct, not only within areas near schools, but in the jurisdiction as a whole. Another important item to note however, is that local governments, even when a total ban on commercial selling and distribution has been enacted, cannot regulate transportation or delivery of marijuana when occurring on public roads in or through their jurisdiction.

While a local government's authority to ban cultivation by individuals for personal use may be somewhat limited under Prop. 64, there is a much broader ability to regulate and control businesses, primarily through the licensing process. A local government's zoning authority, as it relates to businesses that wish to sell and distribute recreational marijuana, is also unaffected under this measure. The measure specifically states that concerns such as an overconcentration of marijuana businesses in a neighborhood or an excessive ratio of businesses to an area's population are considered justifiable reasons for denying a license. Further, local jurisdictions are free to set their own standards in issuing licenses to recreational marijuana businesses based on criteria such as land use requirements, business license requirements, and requirements related to reducing exposure to second-hand

smoke. A local government would also be empowered to ban some or all types of recreational marijuana businesses.

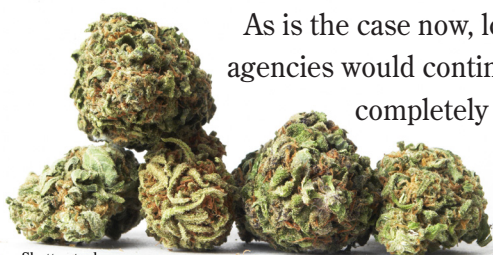
Lastly, local governments that ban completely commercial cultivation and/or retail sales would be ineligible to receive any distribution of tax funds reserved for such local jurisdictions. Those local jurisdictions that permit marijuana businesses, however, could establish their own taxes on recreational marijuana cultivation, distribution, and sales in addition to those already included in the measure. Such local taxes could be used for general governmental use, or for specific purposes as designated.

Current polling data suggests that approximately 60 percent of Californians support the passage of Prop. 64. Given what appears to be its likely adoption, local governments will want to be adequately prepared for the new regulatory scheme.

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