Overview of California Marijuana Laws

Jonathan P. Hobbs,
City Attorney, City of Elk Grove
California Marijuana Laws

- Federal Law
  - Marijuana (Cannabis)
  - Controlled Substances Act (21 U.S.C. § 801 et seq.)
  - Schedule I drug
  - Illegal to use or possess
  - No current federally accepted medical use
California Marijuana Laws

• Federal policy of deference to the States
    • Federal focus would be on large operations, sales to minors
    • Reliance on state and local agency regulation
    • Not likely to pursue prosecutions for medical marijuana uses
  – Federal Budget Appropriations Bills
    • DOJ/DEA cannot spend funds to prevent implementation of state medical marijuana laws
    • Upheld in United States v. McIntosh, 833 F.3d 1163 (9th Cir. 2016) (DOJ prohibited from prosecuting individuals who strictly comply with state medical marijuana requirements)
    • “But Congress could appropriate funds for such prosecutions tomorrow.” (McIntosh, at 1179.)
  – New U.S. Attorney General, Jeff Sessions?
State Law

- Prop. 215 Compassionate Use Act (1996)
  - Voter initiative
  - Recognizes marijuana for medical uses
  - No specific regulations or processes

- Senate Bill 420 (Medical Marijuana Program Act) (2013)
  - Implements the Compassionate Use Act
  - Medical marijuana decriminalized
  - Defense to criminal prosecution for possession or use with doctor recommendation
  - Creates a cardholder system
  - Medical marijuana dispensaries become more prevalent
  - Recreational use remained illegal (pre-Prop. 64)
Case law

• *City of Riverside v. Inland Empire Patients Health and Wellness Center*, 56 Cal.4th 729 (2013)
  – Cities/counties may regulated and/or prohibit medical marijuana dispensaries

  – Cities/counties may prohibit medical marijuana cultivation
California Marijuana Laws

• Medical Marijuana (Cannabis) Regulation and Safety Act (2015)
  – Effective 1/1/16
    • Minor amendments (budget trailer bill), effective 1/1/17
  – State regulatory framework for commercial medical marijuana operations
    • Commercial medical cultivation, testing, manufacturing, labelling, dispensing, and delivering
  – Dual licensing scheme
    • Bureau of Medical Marijuana/Cannabis Regulation within the Department of Consumer Affairs
    • Department of Food and Agriculture regulates cultivation
    • Department of Public Health regulates production and labeling of edible medical cannabis products
  – State and local licenses required
California Marijuana Laws

• Medical Marijuana (Cannabis) Regulation and Safety Act (2015) (cont.)
  – Local Control
    • Cities/counties retain local authority to regulate and/or prohibit medical marijuana cultivation, dispensaries, and commercial deliveries
    • Cities/counties may prohibit commercial deliveries, but must do so “explicitly”
      – Non-commercial transportation remains permitted
California Marijuana Laws

• Prop. 64 – Adult Use of Marijuana Act (AUMA)
  – Passed by voters November 8, 2016
  – Legalizes recreational use of marijuana (21 and older)
  – Use prohibited in public places; where smoking tobacco is prohibited; and within 1,000 feet of schools, day care, or youth center
  – Use prohibited while driving or riding in a car
  – Employers may maintain a drug-free workplace
California Marijuana Laws

- Prop. 64 – Adult Use of Marijuana Act (AUMA) (cont.)
  - Dual licensing scheme for state and cities/counties
    - Bureau of Medical Marijuana/Cannabis Regulation renamed Bureau of Marijuana Control within the Department of Consumer Affairs; regulates distribution and sales
    - Department of Food and Agriculture regulates cultivation
    - Department of Public Health regulates manufacturing and testing
  - State and local permits required
  - State permits will issue by January 1, 2018 (maybe sooner)
  - Cities/counties may prohibit commercial activities and outdoor cultivation
California Marijuana Laws

• Prop. 64 – Adult Use of Marijuana Act (AUMA) (cont.)
  – AUMA allows indoor personal cultivation up to six plants per private residence
    • Cities/counties may reasonably regulate but not completely prohibit
    • Reconcile with city/county ability to completely prohibit medical marijuana cultivation?
      – Do recreational users now have greater rights than medical users?
California Marijuana Laws

• Prop. 64 – Adult Use of Marijuana Act (AUMA) (cont.)
  – Taxation
    • State excise tax – 15% of gross receipts.
    • State cultivation tax – $2.75/ounce (leaves); $9.25/ounce (flowers)
    • Goes to state agencies, universities, Governor’s economic development, CHP, state youth education/prevention
    • Local agencies eligible for enforcement grants
      – No grants to agencies who have banned outdoor cultivation or retail sales
    • Local agencies retain local taxing powers
California Marijuana Laws

• Assembly Bill 729 (2017) – Amends AUMA
  – License suspension/revocation
    • Allowing persons under 21 to engage in nonmedical marijuana commercial activities (three violations/36 months)
  – Signage
    • Mandated: “No persons under 21”
    • Allowed for dispensary: “without identification authorizing the purchase of medical cannabis.”
  – No vending machines
  – Allows peace officer inspections (in addition to Bureau employees)
  – Expands 600 foot commercial operations prohibition
    • From schools, day care centers, youth facilities; to include playgrounds, hospitals, and churches
  – Transparent windows and doors for law enforcement view
  – Agencies may use persons under 21 for sting operations
Thank you!