

Legal Education for the Marijuana Working Group

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The Brown Act

Government Code § 54950 et seq.

Purpose



- To facilitate public participation in local government decisions
- To curb misuse of the democratic process by public bodies through secret legislation

Scope



Governs meetings conducted by local legislative bodies

Open Meetings

- All of the deliberative processes by legislative bodies, including discussion, debate and the acquisition of information, must be open and available for public scrutiny.



Public Participation

- Members of the public can attend, and testify, without giving their names.
- Information given to the legislative body in connection with an open meeting must be equally available to members of the public.
- Unless it's disruptive, any person may record (video or audio) or broadcast an open meeting.

Voting



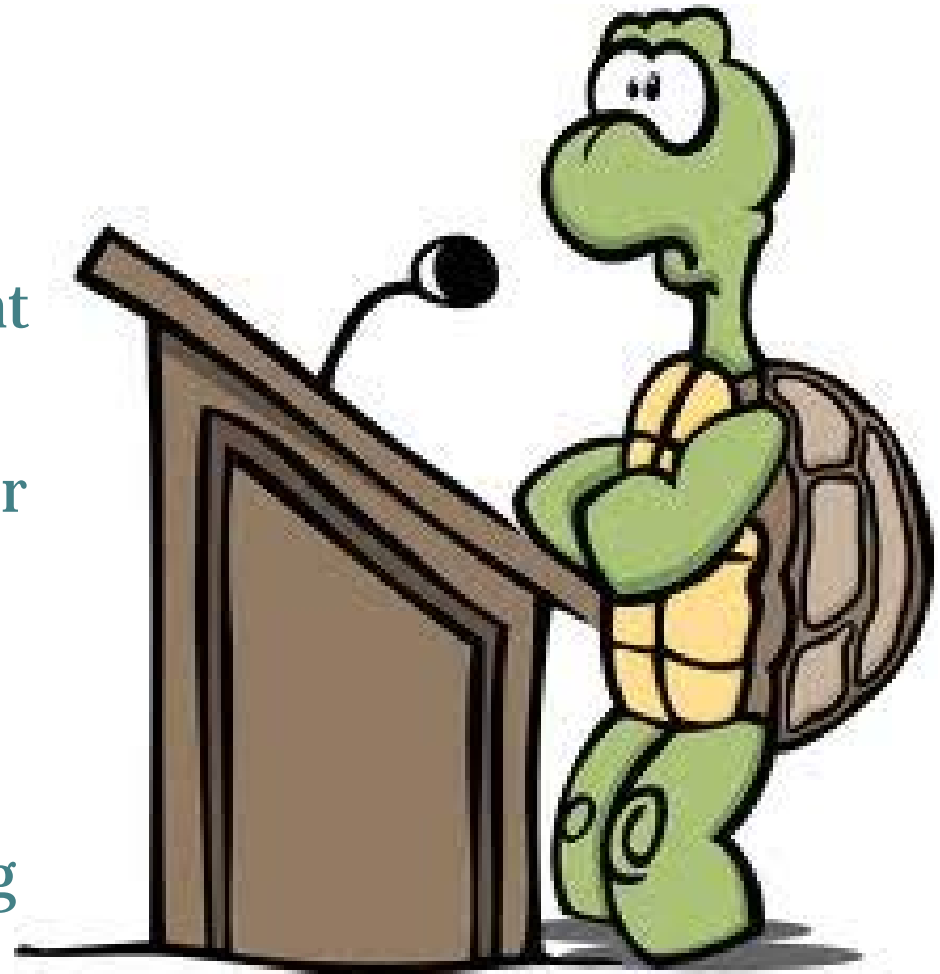
- No secret ballots
- The legislative body must publicly report any action taken and the vote or abstention on that action of each member present for the action

Opportunity to Speak

- Every regular meeting agenda must provide opportunity for the public to speak:
 - On items of interest to the public
 - Before/during consideration of each item
 - On items not on the agenda (but within the jurisdiction of the legislative body)

Reasonable Regulations

- **The legislative body may:**
 - Adopt regulations limiting the total amount of time for public testimony for certain issues & for each speaker
 - May order the room to be cleared of persons interrupting orderly conduct of the meeting (except nonparticipating media personnel)



Reasonable Regulations



- The legislative body may not:
 - Prohibit a speaker from criticizing the policies, procedures, programs or services of the agency or the acts or omissions of the legislative body.

Public Access

- Agendas or any other writings, unless exempt from disclosure by the Public Records Act, distributed to all or a majority of the members of a legislative body for discussion or consideration at a public meeting are disclosable to the public upon request



Meeting

- Gathering of a majority of the body
 - The body need not take any action in order for the gathering to be defined as a meeting.



Serial Meetings Prohibited



S E R I A L

- Serial meetings – a series of communications, each of which involves less than a quorum of the legislative body, but when taken as a whole, involves a majority of the body's members
 - Conducted through direct communications, personal intermediaries or technological devices to discuss, deliberate or take action on any item of business that is within the SMJ of the legislative body

Examples of Serial Meetings



- Chain (A-B-C)
- Hub (A-B, A-C)

E-mail deliberations prohibited

Group members may not e-mail each other to develop a collective concurrence as to action to be taken by the Group without violating the Brown Act



“Meeting” does not include:

- **Contacts with the public**
- **Purely social or ceremonial occasions**



“Meeting” does not include:

- Attendance at open & noticed meetings of other local agencies
- Attendance at conferences open to the public on issues of general interest to the public or public agencies
- Town meetings or similar gatherings which are open, noticed and organized by a person or organization other than the local agency

Don't talk shop outside of the program!

Agendas - Posting & Notice Requirements



- Agendas must be posted in a location freely accessible to the public 24 hours a day
- Regular meeting - 72 hours prior
- Special meeting - 24 hours prior
 - Called by presiding officer or a majority of the body

Agenda Contents

- Time and place of meeting
- Public comment period
- Brief general description (20 words or less) of every item of business to be discussed or transacted



Agenda Packets

- Agenda packets should be made available to the public at the time the agenda is posted or when the materials are distributed to all or a majority of the legislative body, whichever is first
- May post on the Agency's website
- Materials distributed during a meeting:
 - If prepared by the local agency, must be made available for public inspection at the meeting
 - If prepared by some other person, must be made available for public inspection after the meeting

Agendas

No action or discussion is allowed for any item not listed on an agenda.



Agenda Exceptions

- Questions to staff for clarification of a matter based on public comment
- Brief response to statement or question from the public
- Ask staff to report back at a future meeting on any matter



Agenda Exceptions



- **Brief announcement or report on member's or staff's own activities**
- **Provide reference or information to staff**

Penalties & Remedies

- A member who violates the Brown Act is guilty of a misdemeanor if action is taken and the member intended to deprive the public of information to which the member knows of or has reason to know the public is entitled.



Penalties & Remedies

- **Opportunity to Cure**
- **Cease and Desist/Unconditional Commitment**
- **Injunction**
- **Court Costs & Attorneys' Fees**
- **Misdemeanor**

Questions?

Legal Framework for Local Marijuana Regulation

Case Law, Statutes and
Ordinances

Marijuana and Zoning Law

- *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729
 - The CUA and MMP did not create a 'broad right' to access to medical marijuana.
 - The CUA and MMP do not preempt the authority of cities and counties to regulate, even prohibit, facilities that distribute medical marijuana.
- *Maral v. City of Live Oak* (2013, 3rd Dist.) 221 Cal.App.4th 975
 - The CUA and MMP do not preempt a city's police power to prohibit the cultivation of all marijuana within that city.

Medical Cannabis Regulation and Safety Act



MCRSA

- **Preserves local control**
- **Grants explicit county taxing authority**
- **Ends the collective model**
- **Addresses environmental impacts**

MCRSA

- **Created Bureau of Medical Cannabis Regulation (Dept of Consumer Affairs)**
- **Dual licensing scheme for commercial operations**
- **County taxing authority**
- **Setback requirements**

MCRSA – local control

- **Local control and authority maintained**
 - **Cultivation – can't get a state license if cultivation is prohibited by the local jurisdiction, "either expressly or otherwise under principles of permissive zoning."**
 - **Dispensaries – can't get a state license without either a local license or documentation from the County that the business will be in compliance with all local ordinances**

MCRSA - Cultivation licensing threshold

- **Qualified patient – 100 square feet**
- **Primary caregiver – Up to 500 square feet**

MCRSA - Mobile deliveries

- Mobile deliveries of medical marijuana are allowed January 1, 2016 unless expressly prohibited by the local jurisdiction
- Board of Supervisors declined to prohibit mobile deliveries of medical marijuana in 2016
- Important Distinction: Transportation vs. Deliveries

MCRSA - State Regulations

- Draft regulations on commercial medical marijuana activities are not expected to be released until Summer 2017
 - Any regulations adopted at the local level must be as strict or stricter than the regulations adopted by the State
- CEQA review - EIR

Questions?

Adult Use of Marijuana Act



Overview of AUMA

- Legalizes marijuana-related activities for individuals 21 and over
 - Possess, use, sell, transport, process, cultivate
- Creates a parallel system for nonmedical marijuana

AUMA – Personal Use

- **Individuals over the age 21 can lawfully:**
 - **Use, possess, process, transport, or give away to individuals (21 or over) up to 28.5 grams of marijuana and up to 8 grams of concentrated cannabis**
 - Can cultivate up to 6 marijuana plants per residence
 - Local jurisdictions can place reasonable restrictions on cultivation for personal use but cannot completely ban cultivation within a completely enclosed and secure private residence (up to 6 plants)

AUMA - Restrictions on Personal Use

- **No using in a public place unless authorized by a local jurisdiction**
- **No using in a location where smoking tobacco is prohibited**
- **No using within 1000 feet of a school, daycare center, or youth center while children are present**
- **No open container or using while in a moving vehicle**

AUMA - Regulation of Commercial Marijuana Activities

- **Requires state licenses for commercial cultivation, manufacturing, testing, retail and distribution**
 - Licenses issued by state starting January 1, 2018
 - California residents only
 - No licenses to retailers of alcohol or tobacco products
 - No licenses w/in 600 feet of a school, daycare center or youth center
 - No licenses to those convicted of certain crimes

AUMA - Regulations by Local Jurisdictions

- **No state licenses if activity is prohibited by local ordinance, including complete ban**
- **Unlike MRCSA, no requirement for local license in order to get state license**
- **Local jurisdictions cannot prohibit transportation through the jurisdiction by licensed distributors**

AUMA - Taxation of Commercial Marijuana Sales

- Existing state and local taxes apply to the sale of marijuana products
- Beginning January 1, 2018:
 - Excise tax of 15% added to retail sale of all marijuana products
 - Excise tax of \$9.25/ounce of dried marijuana flowers, \$2.75/ounce of dried marijuana leaves added to the commercial cultivation of marijuana
- Marijuana sold for medical purposes exempt from existing sales and use taxes but excise taxes would apply
- Marijuana cultivated for personal use is exempt from cultivation tax

AUMA - Allocation of Tax Revenue

- Revenues deposited into State Marijuana Tax Fund
- After reimbursement for costs for regulation and implementation, many slices of the pie:
 - Public universities for research
 - CHP for impaired driving enforcement
 - Various state agencies for grant opportunities (job placement, drug treatment, law enforcement, environmental protection, youth diversion, etc.)

AUMA - Local Taxation

- **Local jurisdiction may impose its own tax on the privilege of cultivating, manufacturing, producing, processing, preparing, storing, providing, donating, selling, and distributing**
- **Local taxes would be in addition to existing sales and uses taxes**
- **Local taxes must be approved by the voters**

AUMA - Labeling and Advertising

- **All marijuana products must:**
 - Be placed in child resistant packaging that are not made attractive to children or easily confused with candy or other foods
 - Include a government warning label
 - Be produced and sold with standardized dosage, not to exceed 10mg of THC per serving
- **No licensee shall:**
 - Sell to anyone under 21
 - Allow anyone under 21 on the premises
 - Employ anyone under 21
 - Advertise to anyone under 21 or within 1000 feet of a daycare center, school, playground or youth center
- **Track and trace system expanded to cover non-medical sales**

AUMA – Civil and Criminal Penalties

- **Changes existing state penalties related to use, possession, transportation, cultivation and sale**
- **Youth offenders will be diverted to counseling, community service and drug education services**
- **For individuals over 18, selling marijuana without a valid license is punishable as an infraction, misdemeanor or felony (depending on certain factors)**
- **Engaging in commercial activity without a license is subject to a civil penalty up to 3 times the amount of the license fee and the court may order destruction of marijuana associated with the violation**

AUMA- State Regulations

- Draft regulations on commercial nonmedical marijuana activities are not expected to be released until Fall 2017
 - Any regulations adopted at the local level must be as strict or stricter than the regulations adopted by the State
- CEQA review - EIR

Questions?

Comparison w/ Tuolumne MMJ Regulations

<u>ISSUE</u>	<u>TCOC 17.67</u>	<u>AUMA</u>
Type of marijuana covered?	Medical	Recreational (nonmedical)
Who can grow?	Qualified patients or primary caregivers (18 and older)	Adults 21 and over
How many plants?	<p>Single individual – 12 outdoors OR no more than 24 indoors w/in 50 square foot area</p> <p>Two or more individuals – 24 outdoors OR no more than 24 indoors w/in 50 square foot area</p>	<p>6 plants</p> <p>County can completely prohibit personal outdoor cultivation of nonmedical marijuana. [unless and until marijuana is lawful under federal law.]</p>

Comparison w/ Tuolumne MMJ Regulations

<u>ISSUE</u>	<u>TCOC 17.67</u>	<u>AUMA</u>
Plant restriction applies to?	Per parcel	<p>A single private residence or upon the grounds of that private residence</p> <p>“Private residence” is defined as a house, an apartment unit, a mobile home, or other similar dwelling.</p> <p>For parcels with multiple dwelling units, each residence is authorized to have 6 plants indoors.</p>
Indoor restrictions?	<p>Growing restricted to one area that is no larger than 50 contiguous square feet</p> <p>Indoor defined as a fully enclosed and secure structure that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken into.</p> <p>A detached structure accessory to the dwelling unit shall be considered indoor cultivation if the structure satisfies the requirements of this definition.</p>	<p>County cannot completely prohibit personal indoor cultivation of nonmedical marijuana.</p> <p>Cultivation must occur within a locked area of a private residence or an accessory structure and not be visible from a public place. Any accessory structure must be fully enclosed and secure.</p>

Comparison w/ Tuolumne MMJ Regulations

ISSUE	TCOC 17.67	AUMA
<p>Outdoor restrictions?</p>	<p>25-foot setback from all property lines. Fully enclosed by an opaque fence at least six (6) feet in height. The fence must provide adequate security to prevent unauthorized access.</p> <p>Landscaping, plastic sheeting, or cloth material (tarpaulins) shall not constitute an adequate fence.</p>	<p>County can completely prohibit personal outdoor cultivation of nonmedical marijuana. [unless and until marijuana is lawful under federal law.]</p> <p>Personal outdoor cultivation cannot be visible from a public place.</p>
<p>Distance requirements for sensitive receptors?</p>	<p>Sensitive receptors: school, school evacuation site, place of worship, public park, licensed family day care home/day care center or youth-oriented facility</p> <p>Parcel less than 20 acres in size: if parcel is 1,000 feet from sensitive receptor parcel, outdoor cultivation is prohibited</p> <p>Parcel 20 acres or greater in size: outdoor cultivation within 1,000 of sensitive receptor parcel boundary is prohibited.</p>	<p>County may enact and enforce reasonable regulations to reasonably regulate personal cultivation of nonmedical marijuana.</p>

Comparison w/ MMJ Tuolumne Regulations

<u>ISSUE</u>	<u>TCOC 17.67</u>	<u>AUMA</u>
Landlord authorization?	Notarized letter from property owner consenting to marijuana cultivation required upon request	Landlords retain the ability to prohibit or restrict marijuana cultivation.
Other requirements?	Cultivator must reside on the property on a permanent basis.	Because personal cultivation is tied to a private residence, residency on the parcel is required.

Decision Points

1. Should the County allow more than 6 nonmedical plants?
2. Should medical and nonmedical plant allowances be aggregate (i.e., 12 plants total) or separate (i.e., 12 medical plants and 6 nonmedical plants)?
3. Should nonmedical personal grows be allowed outdoors?
4. Should nonmedical indoor grows be subject to the same restrictions as medical indoor cultivation?
5. Should nonmedical outdoor grows be subject to the same restrictions as medical outdoor cultivation?
6. Should landlord consent be a requirement for nonmedical grows?

Questions?