



# CALCANN SPECIAL REPORT

MCRSA AND AUMA COMPARISON

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# OVERVIEW

In light of the Medical Marijuana Regulations and Safety Act (MMRSA) and the possible passage of the Adult Use of Marijuana Act (AUMA), California cities are increasingly taking a pro-cannabis stance.

City councils are rushing to adopt medical cannabis ordinances, which prohibit or regulate how medical cannabis businesses can operate within their city. Additionally, some cities are supplementing their regulatory structures with tax ordinances, which establish a medical cannabis tax in addition to existing sales taxes.

Since these tax ordinances differ from city to city, it is important to understand which cities have tax ordinances in place, and how these cities have chosen to tax medical cannabis operations (varying tax structures can either help or harm one's business).

Due to the changing legal landscape of cannabis taxation across California cities, this special report serves to detail the process of how cannabis tax ordinances are enacted and will provide a broad scope of a myriad of California cities' current medical cannabis tax ordinances and local medical cannabis tax measures to appear before voters on November's General Municipal Ballot. This special report does not provide information on cities' recreational cannabis taxation frameworks.

# TAXES



The passage of MMRSA did not create new taxes for cannabis businesses. All businesses operating pursuant to MMRSA are required to have a seller's permit with the State Board of Equalization, which imposes a 7.5% - 10% sales and use tax. Local governments can impose additional taxes on cannabis businesses pursuant to applicable law.

AUMA, however, would create a new tax scheme that will affect medical cannabis as well as recreational cannabis:

## **Medical Cannabis Exempt from Sales & Use Tax**

If AUMA passes, California's sales and use tax, which ranges from 7.5-10%, will not apply to retail sales of medical cannabis when a qualified patient or primary caregiver provides his medical cannabis identification card.

AUMA calls for a study to be conducted by January 1, 2018, to determine whether nonprofit recreational cannabis businesses should also be exempt from the state taxes and fees.

## **City of Grover Beach Example:**

Grover Beach, with a local sales and use tax of 8%, proposed a measure that would charge a 5% tax on medical cannabis and a 10% tax on recreational cannabis. This measure would create a combined 33% ( $15\% + 10\% + 8\%$ ) tax on recreational cannabis sales and a combined 20% ( $15\% + 5\%$ ) tax on medical cannabis sales in Grover Beach.

### **Excise Tax on Medical and Recreational Cannabis**

AUMA would impose a 15% excise tax on gross receipts for both medical and recreational cannabis. The excise tax would be imposed on purchasers of cannabis or cannabis products sold in California.

### **Cultivation Tax on Medical and Recreational Cannabis**

AUMA would also impose a cultivation tax on all harvested medical and recreational cannabis that enters the commercial market. The tax would be calculated as follows:

- Cannabis flowers: \$9.25 per dry-weight ounce.
- Cannabis leaves: \$2.75 per dry-weight ounce.

The cultivation tax would not apply to cannabis cultivated for personal use or cultivated by a qualified patient or primary caregiver.

### **Additional Local Taxes**

Like MMRSA, municipalities can impose additional taxes under AUMA.



# LOCAL CONTROL



Currently, some cities have local ordinances in place, allowing or prohibiting cannabis businesses to operate, while other cities do not have these ordinances in place.

Ordinances serve to regulate cannabis activities, such as the selling, testing, distribution, manufacturing or cultivation of cannabis. In addition to this, local legislation can create tax ordinances and zoning ordinances.

Zoning ordinances specify which zones and which types of medical cannabis businesses are allowed to operate and also typically regulate lot size, placement, and the height of structures.

Tax ordinances specify how the city will tax cannabis businesses. Cities can tax a percentage of a business's gross receipts, tax per square foot of a business's operation, or do a combination of both. In addition, cities can assign different tax rates to different cannabis operations.



## City of Coachella Example:

Coachella taxes medical cannabis cultivation at \$25 per square foot for the first 20,000 square feet and \$7.50 thereafter, in addition to a 4% tax on gross receipts. However, they tax medical cannabis distributors at the same per square foot rate, but instead have a 2% tax on gross receipts.

Cities that do have regulatory ordinances do not necessarily have both tax and zoning ordinances, and in some cases have one or neither of these additional ordinances. Some cities are also more likely than others to enact ordinances that allow cannabis businesses to operate.

## COUNTY REGULATORY AND TAX ORDINANCES

Counties can enact medical cannabis regulatory and tax ordinances. When counties decide to do this, cities may choose to operate under the county ordinance or draft their own city ordinances. For instance, if the county ordinance allows cannabis businesses to operate, cities can adopt their own ordinances that prohibit cannabis businesses or establish regulatory and tax ordinances for cannabis businesses operating within their city limits.

## CITIES LIKELY TO TAX MEDICAL CANNABIS BUSINESSES

### Progressive Cities

Progressive cities, such as Oakland and Berkeley, are on the forefront of pushing for social reform in California's cannabis industry by implementing liberal policies allowing for cannabis businesses to thrive within their cities. These cities are more open to enacting cannabis ordinances that are more liberal in nature. For instance, Oakland's ultra-progressive city council has called for employment regulations that set aside half of its new medical cannabis dispensary permits for people that have been incarcerated for a cannabis-related crime within the past ten years, or have been living in an area of the city affected by police brutality for the past two years. Cities like Oakland are taking the lead on fighting the stigma that the federal law imposes on cannabis businesses in California.

Typically, progressive cities in Northern California have medical cannabis tax rates relatively lower than most California cities'. For instance, in Berkeley, Oakland, and Stockton, their current medical cannabis tax rates for dispensaries are up to 2.5%, 5%, and 2.5% respectively. Medical cannabis tax rates can soar as high as 15% as seen in Palm Springs and Cathedral City.

### City of Stockton Example:

In Stockton, their current tax ordinance sets a tax rate at 2.5% for medical cannabis dispensaries. Stockton's 2.5% tax rate is one of the lowest city tax rates on dispensaries in California. However, there is a ballot proposal to increase taxes to 3.5% - 5% on both dispensaries and cultivation. The new tax rate though would still be one of the lowest tax rates for a city in California.

### Cities in Debt

Cities that are financially burdened are more open to cannabis businesses, as they can benefit more from the additional tax revenue.



### City of Coalinga Example:

Coalinga was facing a mounting deficit fueled by the maintenance of their vacant prison since 2011. Struggling to find a new tenant, the city council passed a regulatory and tax ordinance on July 7th 2016, allowing Ocean Grown Extracts to transform their prison into a cultivation and extraction operation.

### Cities Open to New Sources of Tax Revenue

Cities that are open to new sources of tax revenue are more open to allowing cannabis cultivation or other cannabis operations.

## CITIES LIKELY TO PROHIBIT MEDICAL CANNABIS BUSINESSES

Many cities have chosen to prohibit medical cannabis businesses by enacting moratoriums or adopting ordinances prohibiting medical cannabis operations. Cities that do not allow cannabis businesses generally do so because of the stigma associated with cannabis, since it is still illegal under federal law.

### City of Barstow Example:

Barstow has enacted ordinances to prohibit all medical cannabis businesses from operating and have no interest in putting a medical cannabis related measure on November's General Municipal Ballot because cannabis is still federally illegal.



# ESTABLISHMENT OF CANNABIS BUSINESSES

## **City Councils Draft and Adopt Cannabis Ordinances**

City councils may draft and adopt medical cannabis ordinances without putting aforementioned ordinances as measures on the ballot. Some cities may adopt ordinances or create a measure to be voted on that prohibit cannabis businesses from operating within their city limits.

## **Citizen-Backed Voter Initiative**

In some cases, individuals choose to challenge the prohibition of cannabis businesses by drafting citizen-backed voter initiatives. If these citizens collect a sufficient amount of signatures, their initiative is placed on the November ballot. However, cities can challenge a voter initiative by drafting an alternative measure.

### **City of Laguna Beach Example:**

Laguna Beach's city council drafted a medical cannabis ballot measure allowing for one dispensary as an alternative to the voter initiative that allowed for two dispensaries.

## **City Ballot Proposal**

When city council members are on the fence about implementing medical cannabis ordinances, they may choose to place medical cannabis measures on the ballot, leaving the choice up to their voters. If the deadline to place other initiatives on a ballot has not passed, individuals can draft and petition for a competing measure.

### **City of Perris Example:**

In Perris, more than one council member noted they had their own personal beliefs on allowing medical cannabis businesses to operate within their city, so they put the matter before voters in November's General Municipal Election.

# CONCLUSION

One should evaluate the opportunities and risks different tax structures create prior to establishing a medical cannabis business. For example, a tax rate based on square footage serves a fixed cost, and may not be preferable if the market price of cannabis goes down. However, if the market price of medical cannabis rises, a square foot tax may be preferable to a large tax on gross receipts, as one's business would likely be generating greater revenues. It would behoove business owners to look over our tax list and understand the risks and benefits associated with the varying tax structures that cities have.

