



**Proposition 64**  
**“Adult Use of Marijuana Act”**  
**“AUMA”**

**San Buenaventura City Council Meeting**  
**October 10, 2016**

# Local Control Provisions of Adult Use of Marijuana Act (“AUMA”)

- Are the protections of local control real or illusory?
- Do you feel confident that you can trust the decisions of the State Legislature or Cal. Attorney General?
- Will the potential revenues promised under the Proposition:
  - Actually come to the City?
  - Be sufficient to cover the costs?



## Key Provisions of AUMA

- Authorizes personal use of marijuana by persons age 21 or older to:
  - Smoke or ingest marijuana or its products
  - Possess, process, transport, purchase, obtain, or give away to persons over age 21, 28.5 grams of marijuana or 8 grams of concentrated marijuana
  - Possess, plant, cultivate, harvest, dry, or process up to six living marijuana plants for personal use

# Cultivation under the AUMA

- Personal cultivation is authorized under the AUMA for up to six plants within a private residence
  - Inside of a private residence could include a greenhouse
  - Local government cannot ban the indoor cultivation of marijuana which consists of six or less plants



# State Agencies Overseeing AUMA

- Creates at least three separate state regulatory agencies:
  - Bureau of Marijuana Control within the Department of Consumer Affairs
    - Issues licenses for the transportation, storage, distribution, and sale of marijuana
  - Department of Food and Agriculture to issue and oversee licenses to cultivate marijuana
  - Department of Public Health will issue licenses for marijuana manufacturing and testing



# Key Local Control Provisions

- “(b) (1) A city, county, or city and county may enact and enforce reasonable regulations to reasonably regulate the actions and conduct in paragraph (3) of subdivision (a) of Section 11362.1.”

Health and Safety Code Section 11362.2



# Key Local Control Provisions

- “ (3) Notwithstanding paragraph (3) of subdivision (a) of Section 11362.1, a city, county, or city and county may completely prohibit persons from engaging in actions and conduct under (3) of subdivision (a) of Section 11362.1 outdoors upon the grounds of a private residence.”

Health and Safety Code Section 11362.2

# Landlords

H. & S. Code Sec. 26037(b) decriminalizes a landlord's action that:

“in good faith, allows his or her property to be used by a licensee . . . as permitted pursuant to a state license and any applicable local ordinances, are not unlawful under state law and shall not be an offense subject to

arrest, prosecution, or other sanction under state law or be subject to civil fine or be a basis for seizure or forfeiture of assets . . .”



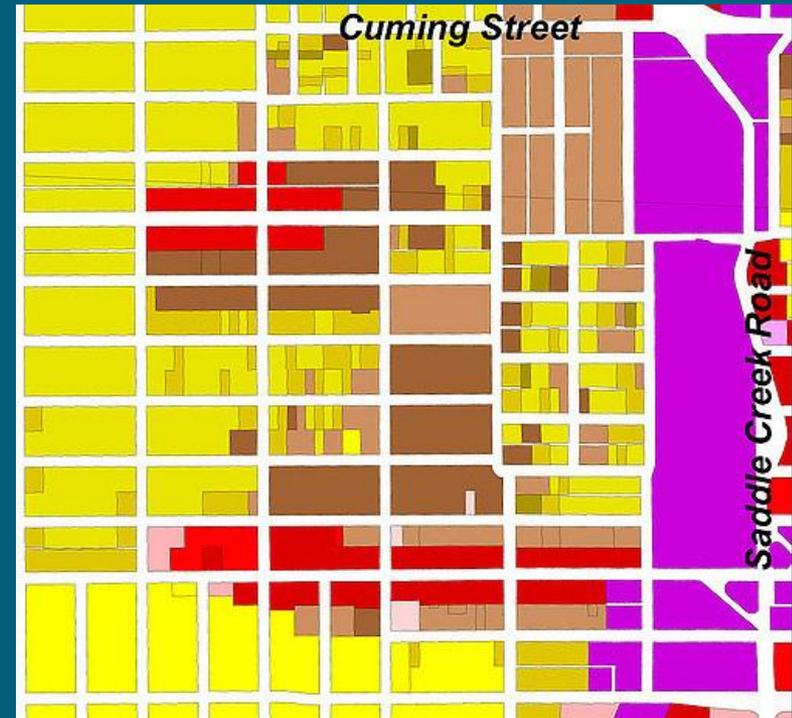
## Local Government Can't Prohibit Transportation Through City

- Bus. & Prof. Code Sections 26080 and 26090 effectively prohibit local agencies from preventing either the distribution or transportation of marijuana through their jurisdiction.



# Local Control Provisions

“(a) Nothing . . . shall be interpreted to supersede or limit the authority of a local jurisdiction to adopt . . . ordinances to regulate businesses . . . including . . . local zoning and land-use requirements, business license requirements, and requirements related to . . . secondhand smoke . . .



# Local Control Provisions

... or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction.”

Bus. & Prof. Code Section  
26200



# Not Obligated for State Enforcement

“(b) Nothing in this division shall be interpreted to require a licensing authority to undertake local law enforcement responsibilities, enforce local zoning requirements, or enforce local licensing requirements.”

Bus. & Prof. Code Section  
26200



# Except . . .

“(c) A local jurisdiction shall notify the bureau upon revocation of any local license, permit, or authorization for a license to engage in commercial marijuana activity within the local jurisdiction. . .”



# Revenue

After 1/1/18 an excise tax is imposed in the amount of 15% of the gross receipts of any retail sale by a dispensary or other person required to be licensed . . . to sell marijuana or marijuana products directly to a purchaser. This Section also establishes that the excise tax imposed by this initiative is in addition to the sales and use tax imposed by the state and local governments.



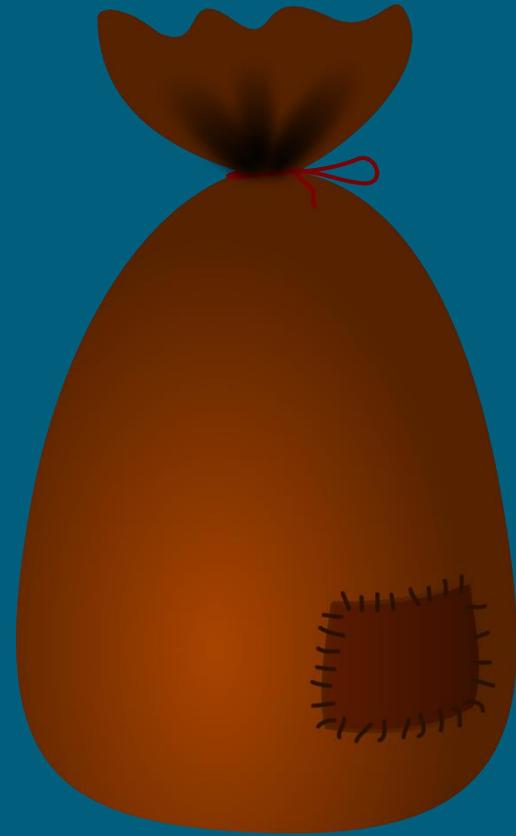
# Where the Taxes Go . . .

- First funding, paying for State Administration of the program
- Various grants available
  - Mostly social services



# If City Prohibits Sale or Cultivation

- If a city prohibits either or both sale and/or outdoor cultivation
  - City can't receive any funds
  - But likely impacted by neighboring jurisdictions & statewide authorization



# City Can Tax the Sale . . .

- Recognizes local agencies can tax sale and distribution of marijuana
- No exemption from Proposition 218
  - Despite fact this initiative expressly authorizes taxes
  - Will new taxes cover the full cost of this Proposition?
  - What if voters say no?



# Local Control Concerns





# LEGISLATURE CAN AMEND AUMA

“The Legislature may, by majority vote, amend . . . any of the provisions to . . . reduce the penalties for any . . . offenses addressed by this Act. Except as otherwise provided, the provisions of the Act may be amended by a two-thirds vote of the Legislature to further the purposes and intent of the Act.”

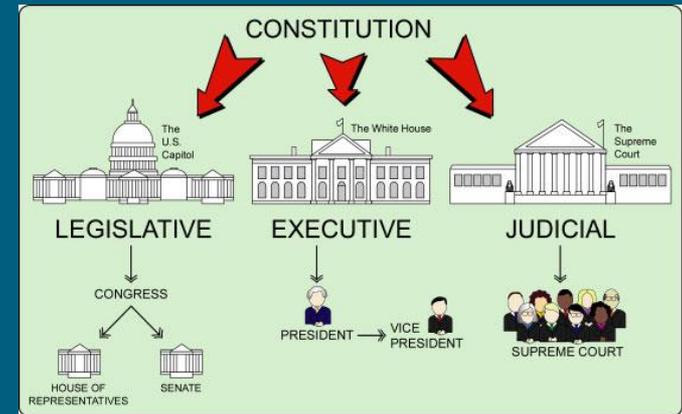


Section 10 of AUMA

# Separation of Powers Concern

H&S Section 11362.85:

“(4) Paragraph (3) of this subdivision shall become inoperable upon a determination by the California Attorney General that non-medical use of marijuana is lawful in the State of California under federal law, and an act taken by a city, county, or city and county under paragraph (3) shall be deemed repealed upon the date of such determination by the California Attorney General.”



No Express Right of  
Judicial Review

## ATTORNEY GENERAL CAN ENABLE STATE TO FURTHER AMEND H&S CODE

- Health and Safety Code Section 11362.85 authorizes the California Attorney General to make a determination that marijuana is no longer prohibited by federal law & state legislature can amend Health & Safety Code





# The Colorado Experience

Police Chief Corney

# Colorado Impacts

- Fatal Traffic Collisions Involving THC-Impaired Drivers – UP 44%.
  - **77% of all DUID Involve Marijuana**
- Hospitalizations for Marijuana Exposures, Diagnosis and Billing Codes Increased 300% after Legalization (803 per 100,000 to 2413 per 100,000).
- Marijuana usage in the past 30 days by young adults 18-25 years old increased 10%.

# Colorado Impacts

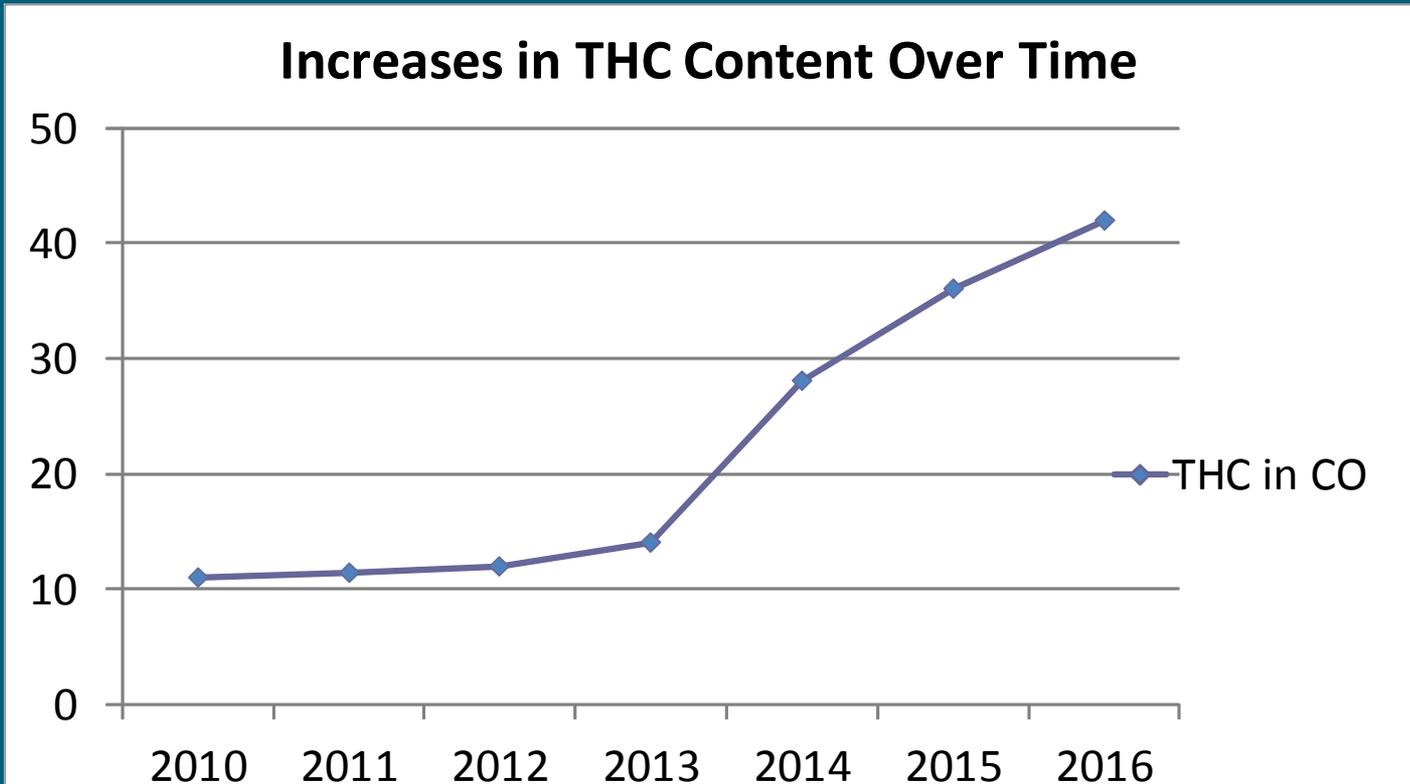
- **Youth Use (12-17)**
  - Colorado Average – 12.56% vs National Average – 7.22%
  - Colorado Leads the Nation for Current Use Among Youth (74% Higher than National Average)
  - Colorado Use Increased 20% 2013/2014 vs 2011/2012 (National Average declined 5%)
  - Drug Related Suspensions/Expulsions +32%

# Colorado Impacts

- **College Age Adult Use (18-25)**
  - Colorado Average – 31.24 % vs National Average – 19.32%
  - Colorado Leads the Nation for Current Use Among College Age Adults  
(62% Higher than National Average)
  - Colorado Use Increased 17% 2013/2014 vs 2011/2012  
(National Average Increased only 2%)  
(HKCS 2015 & NSDUH 2015)<sup>25</sup>

# Potency – last 5 years in CO

- 





# Colorado Impacts

- Emergency Room Visits Related to Marijuana increased from 739 per 100,000 (2010-2013) to 956 per 100,000 (2014-June 2015)
- Poison Control Center Calls Indicating Marijuana: In 2015: 227 calls; while in 2006: 44 calls.
- Colorado has over 1000 Medical and Retail Marijuana Stores. McDonalds and Starbucks Combined – 450.



# Colorado Impacts

- THC Extraction Lab Explosions
  - 2009 = 2
  - 2014 = 32
- Diversion:
  - 2005 – 2008 = 52 Arrests on Average
  - 2015 360 Arrests (592% increase)

# Colorado Impacts

- Drug related susp/exp. increased 32% over a 5 year period
  - mainly for marijuana
- An increase in college aged users groups
- Almost 50% of Denver arrestees tested positive for marijuana
- Marijuana related ER visits increased 57 percent from 2011-2013
- Marijuana related hospitalizations have increased 82% since 2008

**If you are over 30, forget what you  
know about Marijuana**

What today's "Marijuana"  
looks like:





**“But it’s just a plant”**  
**(80-90% THC) Concentrates**

*“Green Crack” wax*

*“Ear Wax”*

Butane Hash Oil (BHO)



Hash Oil Capsules



*“Budder”*

*“Shatter”*









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2<sup>ND</sup> PIERCING \$20  
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**JULES**

TATTOOS BY  
**CORY**

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# Proposition 64

- **An analysis of the initiative by San Diego District Attorney’s Office points out, “The initiative allows persons convicted of dealing large amounts of controlled substances such as heroin, methamphetamine or cocaine, to become ‘legal marijuana dealers.’”**
- **Current law prohibits convicted meth and heroin felons from being involved in **medical marijuana**. But this new initiative will specifically allow for dealers convicted of dealing heroin, methamphetamines or cocaine to receive marijuana licenses.**

# Proposition 64

- Proposition 64 does not provide the necessary tools to identify and prosecute DUID - Marijuana
- Proposition 64 allows for television advertising - Expressly prohibited in Colorado.
- Proposition 64 does not merely decriminalize recreational marijuana, it sets forth a business plan for the commercialization of the industry

# Proposition 64

- A recent University of California, San Francisco report titled *A Public Health Analysis of Proposed Marijuana Legalization Initiatives for the 2016 California Ballot: Creating the New Tobacco Industry* says the initiative contains “minimal protections for public health.”



## **Council Options if AUMA Passes**

- **Option 1:**
  - If the City Council wants to ban all or some commercial marijuana uses, it will need to take affirmative action to do so
  - May want to start with a moratorium
- **Option 2:**
  - If the City Council wants to allow all or some commercial marijuana uses with local regulation, it will need to enact a local program to do so



# Council Options if AUMA Passes

- Option 3:
  - If the City Council wants the State law and regulations to apply, no further action would be necessary

## Some Closing Thoughts

- Are the protections of local control real or illusory?
- Do you feel confident that you can trust the decisions of the State Legislature or Cal. Attorney General?
- Will the potential revenues promised:
  - Actually come to the City?
  - Be sufficient to cover the costs?



# City Council Direction

If the City Council desires to express an opinion either in support or opposition to Proposition 64, you are allowed to do so

## Resolution





Questions?