

Review of Cannabis-Related Tax Measures in California

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Each year, the California Debt and Investment Advisory Commission (CDIAC) publishes a statistical summary and review of bond and tax measures appearing on state and local ballots. CDIAC uses this information to track trends regarding debt and tax levy authorizations presented to California's voters as well as matches general obligation (GO) bond authorization with GO bond issuance information filed with CDIAC. While school GO bond ballot initiatives make up the majority of the initiatives presented on local ballots at each election, CDIAC has noted the increased frequency of cannabis-related¹ tax levies on local ballots since 2016.

This article includes a brief overview of cannabis-related election and legislative milestones in California and discusses cannabis-related election results at the state and local level. Using election data, CDIAC discusses key findings, including a summary of all ballot measures since 2009 - the first year voters approved a local cannabis tax measure, and passage rates of local cannabis-related ballot measures. This report also addresses the type of taxes applied to cannabis-

related activities, highlighting the variety of ways cannabis-related activities are subject to voter-approved, local taxes.

OVERVIEW OF CANNABIS ELECTION AND LEGISLATIVE MILESTONES IN CALIFORNIA

In 1907, California passed the *Poison and Pharmacy Act* that banned the sale of opium, cocaine, and morphine without a prescription - cannabis was added to this list of banned drugs in 1913. Almost sixty years later, Congress passed the *Controlled Substances Act of 1970*, classifying cannabis as a Schedule I drug, the most restrictive category of drugs. Almost since the time of this federal action, California has been working to legalize recreational cannabis use.

The first time voters in California were asked to legalize cannabis was *Proposition 19*, the *California Marijuana Initiative* in November 1972. While unsuccessful, the movement to legalize cannabis use in California had begun. Over twenty years later, California voters passed *Proposition 215*, the *Compassionate Use Act of 1996*, on November 5, 1996, which legalized the use and sale of medical cannabis.

With medicinal use legal in California, another attempt to legalize recreational cannabis activity appeared on the ballot in November 2010, with *Proposition 19*², the *Marijuana Legalization Initiative*. While Proposition 19 did not pass, it was clear that public support for legalization of recreational cannabis activity was growing, and legaliza-

AT THE LOCAL LEVEL

Voters in the City of Oakland passed a measure in 2005, that enabled local regulation and taxation of cannabis activities. In July 2009, voters approved Measure F, which authorized a 1.8% tax on the gross receipts of cannabis businesses located in the city, making it the first city in California to levy a tax on cannabis related activity.* In November 2010, voters authorized additional taxes on dispensaries, growers and other cannabis processors.

*Source: BALLOTPEdia

tion was becoming more likely. In anticipation of the legalization of recreational cannabis use in California, the *Medical Cannabis Regulation and Safety Act* (MCRSA), a series of three bills, was enacted in 2015. The bills among other things granted counties the authority to impose a tax on cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing medical cannabis or medical cannabis products pursuant to existing voter-approval requirements.³

¹ Marijuana and cannabis have become synonymous, and the two terms are often used interchangeably. As recreational legalization has become more widespread, both the industry and lawmakers have shifted from the term marijuana to cannabis. In this article, the term cannabis will be used, unless referring to the official name of legislation or bond measure.

² In both 1972 and 2010, the Proposition numbers were 19.

³ Assembly Bill (AB) 266 established a dual licensing structure mandating a state license and a local permit; AB 243 established a regulatory and licensing structure for cannabis cultivation sites under the Department of Food and Agriculture; and Senate Bill 643 established criteria for licensing of medical cannabis businesses, regulating physicians, and providing counties with the authority to levy taxes and fees. SB 643 (Chapter 719, 2015) McGuire.

In 2016, California voters approved *Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act* (Proposition 64), which legalized recreational cannabis use and related business activities in the state. While approved by voters on November 8, 2016, full recreational legalization did not take effect until January 1, 2018, when state licensing authorities could begin accepting applications and issuing licenses to sellers and cultivators, coinciding with the effective dates of the MCRSA passed in 2015. In addition to legalizing recreational cannabis use, Proposition 64 also established two state-level taxes, one on cultivation and another on retail sales.⁴ Under Proposition 64, local governments were given the latitude to pursue approval of cannabis related activities or not. Some local governments have chosen to create local land use and zoning regulations, establish local permit and license requirements to cultivate or sell cannabis, and established local taxes on medical and non-medical cannabis, consistent with existing state law.⁵ Proposition 64 imposes new state taxes on the sale and cultivation of medical and recreational cannabis, and allows local governments to establish their own taxes on cannabis consistent with state law.⁶ However, provisions of Proposition 64 still conflict with federal statutes that continue to classify cannabis as a Schedule 1 drug.

SUMMARY OF ELECTION DATA

Since 2009, CDIAC has identified 203 cannabis-related tax measures that have appeared on statewide and local ballots in California, 179 of these measures were approved by voters (Figure 1). Of the 203 total cannabis measures, there were two statewide measures, Proposition 19 in 2010 and Proposition 64 in 2016 and 201 local measures. The largest number of local measures on the ballot occurred in

FIGURE 1

NUMBER OF PROPOSED AND APPROVED CANNABIS RELATED BALLOT MEASURES BY ELECTION YEAR, JULY 2009 – DECEMBER 2020

ELECTION BY YEAR AND TYPE	CANNABIS MEASURES PROPOSED*	CANNABIS MEASURES APPROVED	PERCENT OF CANNABIS MEASURES APPROVED
2009 - Local	1	1	100.0%
2010 - General	7	6	85.7
2011 - Local	2	2	100.0
2012 - General	3	1	33.3
2013 - Local	2	2	100.0
2014 - General	3	1	33.3
2016 - Primary	3	2	66.7
2016 - General	39	37	94.9
2017 - Local	16	15	93.8
2018 - Primary	12	12	100.0
2018 - Local	3	1	33.3
2018 - General	76	71	93.4
2019 - Local	3	3	100.0
2020 - Primary	5	1	20.0
2020 - General	28	24	85.7
GRAND TOTAL	203	179	88.2%

*Total includes 2 state measures

2018, likely coinciding with the timing of implementation of MCRSA regulations by state agencies for full legalization of recreational cannabis use.

ALL CANNABIS TAX MEASURES: LEVEL OF GOVERNMENT. The proposed tax measures presented to voters over the 11-year period of this report would be levied by different levels of government. At the state level, there were only two statewide measures presented to voters and only one, Proposition 64 was approved by voters. Local cannabis tax measures had both a higher number of measures as well as a higher approval rate with 178 (88.6%) of the 201 proposed local measures approved by voters since

2009. Twenty-one counties have voter-approved cannabis-related taxes, consisting of 23 measures or 11.4% of total cannabis tax measures.⁷ There are 141 cities with voter-approved cannabis taxes, consisting of 155 measures, representing 77.1% of all cannabis tax measures presented to voters. A special district had one cannabis-related measure on the ballot. It is important to note that some cities and counties have passed more than one cannabis tax measure.

ALL CANNABIS TAX MEASURES: GEOGRAPHIC BREAKDOWN. Figure 2 shows the number of cannabis related ballot measures appearing on the ballot by county since 2009.

⁴ A cultivation tax of \$9.25 per ounce for flowers and \$2.75 per ounce for leaves, with exceptions for certain medical marijuana sales and cultivation and 15% tax on the retail price of marijuana.

⁵ Proposition 64 also allowed industrial hemp to be cultivated as an agricultural product for agricultural or academic research, and regulated separately. While industrial hemp is part of the cannabis industry, it is beyond the scope of this article.

⁶ CSAC, Local Government Reference Guide to Proposition 64, Accessed August 4, 2021, www.counties.org/sites/main/files/file-attachments/local_government_reference_guide_to_prop_64_final_11-22-16.pdf.

⁷ The City and County of San Francisco is included in the county total.

FIGURE 2

**SUMMARY OF CANNABIS RELATED
BALLOT MEASURES
LOCAL (BY COUNTY) AND
STATEWIDE ELECTIONS
JULY 2009 THROUGH DECEMBER 2020**

COUNTY	NUMBER OF BALLOT MEASURES (PER COUNTY)
Los Angeles	23
Riverside	17
Monterey	10
San Diego, Ventura	9
San Mateo, San Bernardino	8
Santa Clara, Kern, Solano	7
San Joaquin, San Luis Obispo, Stanislaus	6
Santa Barbara, Sonoma, Alameda	5
Orange, Tulare	4
Contra Costa, Fresno, Mendocino, Nevada, Siskiyou	3
Calaveras, El Dorado, Humboldt, Imperial, Lake, Merced, Mono, Placer, Sacramento, Santa Cruz, Shasta, Trinity, Tuolumne, Yolo, Yuba	2
Butte, Del Norte, Inyo, Lassen, Madera, Marin, Modoc, Napa, San Benito, San Francisco	1
STATEWIDE BALLOT*	
California (appeared on all ballots in statewide election)	2
TOTAL	203

*Appeared on all ballots in a statewide election.

Large counties with many incorporated city governments make up the majority of the measures appearing on the ballot. Los Angeles County has the most ballot measures, followed by Riverside and Monterey. The top five counties account for one-third (33.8%) of all local ballot measures.

ALL CANNABIS TAX MEASURES: BY CANNABIS USE. Of the all the cannabis tax measures proposed to voters (203), 165 (81.3%) applied to both medicinal and recreational purposes, 26 (12.8%) were solely for medicinal activity, and 12 (5.9%) applied specifically to recreational cannabis activity. Of the 179 (88.2%) tax measures that were approved by voters, 153 (85.5%) applied to both medicinal and recreational usage. Sixteen (8.9%) measures applied solely to medicinal activity and 10 (5.6%) were solely for recreational use.

LOCAL MEASURES: TYPE OF TAX. A single cannabis tax measure often includes multiple taxes applicable to the variety of cannabis-related activities. There were 178 local cannabis tax measures approved by voters from July 2009 through December 2020; contained within those measures are

369 separate taxes or tax methods (Figure 3). For example, voters in the City of Grass Valley's recently approved Measure N, which authorized a tax per square foot of commercial grow area, a tax on the gross receipts of cannabis retail businesses, and a tax on gross receipts of other cannabis businesses.⁸

Figure 3 shows the ten most common types of taxes included in the local cannabis measures approved by voters from July 2009 through December 2020. These ten tax types account for 323 of all cannabis-related taxes (87.5%) approved by voters. A local tax on *cultivation sites* is the most common type of tax authorized, appearing on 24.4% of total approved measures. A tax on *gross receipts*⁹ is the second most popular tax type appearing on 62 (16.8%) approved measures. *Other cannabis activity* is third with 41 (11.1%) measures, and includes taxes that are generally not a tax on cultivation or retail gross receipts. For example, in 2020, Madera County passed a cannabis tax that levies 4% on gross receipts of other cannabis businesses including manufacturing and processing; 2% on gross receipts of testing laboratories, and 3% on gross receipts of distribution operations.¹⁰

FIGURE 3

**TOP TAX TYPES FOR VOTER-APPROVED LOCAL CANNABIS TAXES
JULY 2009 THROUGH DECEMBER 2020**

TOP 10 LOCAL TAX TYPES	NUMBER OF MEASURES*	PERCENTAGE OF ALL APPROVED MEASURES
Cultivation Sites	90	24.4%
Gross Receipts (Not Distinguished)	62	16.8
Other Cannabis Activities/Businesses	41	11.1
Retail	35	9.5
Distribution/Distribution and Use	24	6.5
Manufacturing/Testing Facilities	22	6.0
Dispensaries and Manufacturers	20	5.4
Tax on All Cannabis Businesses	13	3.5
Business License Tax	9	2.4
Commercial Production/Operations	7	1.9

*A single ballot measure can and often included multiple tax types

⁸ Nevada County, Measures on the Ballot, November 3, 2020 General Election, [Local Ballot Measure N](#). Last accessed October 22, 2021.

⁹ A tax on gross receipts is a tax levied on the seller and applied to receipts from a business's total sales.

¹⁰ City of Madera, Resolution No. 20-107. Accessed August 4, 2021, www.madera.gov/wp-content/uploads/2020/09/Res-20-107-Cannabis.pdf.

The top three tax types combined represent over 52.3% of the cannabis-related taxes approved by local voters.

The majority of local governments with cannabis tax measures use the tax revenue for general government expenses such as public safety, parks, youth and senior services, and street repair.

THE IMPLEMENTATION OF CANNABIS MEASURES POST-ELECTION

About one-third of city and county governments in California have actively pursued local cannabis tax measures in recent years. This means that 37 counties (63.7%) and 338 cities (70.2%) have not yet chosen to enact cannabis taxes in their community. This could indicate a hesitance to pursue this form of revenue or other constraints including capacity issues among governmental entities to create and oversee a cannabis regulatory framework in their community as well as a lack of banking services for cannabis related businesses. It may also indicate that more local governments may pursue cannabis tax measures in future years.

CDIAC reviewed the ballot language and available financial documents for two cities to see how estimated revenues from the ballot measure and actual numbers compare. CDIAC reviewed ballot measures and financial data for one small to medium sized jurisdiction, the City of San Luis Obispo (SLO), and one medium to large jurisdiction, the City of Sacramento. For the purpose of this analysis, CDIAC only compared the revenue numbers and did not analyze the total cost to oversee the local cannabis programs.

SMALL-TO-MEDIUM JURISDICTION. On November 6, 2018, SLO's *Measure F-18, Marijuana Business Tax*, (Measure F-18) was approved by voters. This measure was approved and imposed a sales tax of 10% on gross receipts for retail cannabis businesses and up to \$10/canopy square foot for cultivation.¹¹ The proposed taxes in measure F-18 are expected to raise approximately \$1.5 million annually, with funds to be used for public safety, senior and youth services, parks, job attraction and retention, homelessness programs, and other general government purposes.

In 2020, SLO's first cannabis retailer opened and the city received its first cannabis tax revenue. For fiscal year (FY) 2020-21, the city's fourth quarter unaudited financial data showed the cannabis taxes brought in approximately \$830,265 in revenue, with almost 55% of the projected revenue from one retailer.¹² While only 1.15% of total tax and franchise revenue for the city, this number is expected to grow in subsequent years. The city recently approved construction permits for two additional cannabis businesses.¹³ According to city budget documents, cannabis tax revenue is expected to meet the revenue level for cannabis tax revenue stated in the ballot measure in FY 2022-23. The city projects a gradual increase in this revenue category from \$1.3 million in FY 2021-22 to \$1.5 million in FY 2022-23.¹⁴ Cannabis operator license revenue is projected to be \$310,000 in FY 2021-22 and then increase in FY 2022-23 to \$388,000.

MEDIUM-TO-LARGE JURISDICTION. Two cannabis tax measures, Measure C, (November 11, 2010), and Measure Y (June 7, 2016), have been presented to voters in the City of Sacramento. Measure C was approved

by voters, but Measure Y failed. While neither measure quantified the amount of expected revenue from the cannabis-related taxes, the city's fiscal planning documents reflect anticipated revenue trends.

Measure C (2010), a business tax on cannabis activities, includes a tax on commercial production and sale of cannabis in the City of Sacramento. Sales of recreational cannabis are taxed at a rate between 4% and 10%. The measure also contained a provision to tax the gross receipts of the city's existing medical marijuana dispensaries at 2 to 4%. This measure was partially contingent on the passage of Proposition 19 to legalize recreational marijuana statewide. As a result, the tax on recreational cannabis could not be imposed until statewide recreational cannabis was approved in 2016 and full implementation took effect January 1, 2018. Measure C did not include revenue projections for future years.

A review of the city's approved budget for the past three fiscal years shows actual revenue received in FY 2017-2018 through FY 2019-20 and budgeted revenue levels for the current year and future fiscal years. Revenue, in the Cannabis Business Operations Tax line item, has increased each year since collection began. For example, for FY 2017-2018, actual cannabis operations tax revenue was \$6.9 million. By the end of FY 2019-2020, actual cannabis operations tax revenue more than doubled to \$14.9 million, a 116% increase. Projections for future years continue to grow. For the current fiscal year, the city is budgeting for \$20 million in revenues. The city also anticipates 5% annual growth in this revenue source from FY 2022-23 through FY 2025-26. Currently, the Cannabis Business Operations Tax represents approximately

¹¹ BALLOTPEdia, San Luis Obispo, California, [Measure F-18, Marijuana Business Tax \(November 2018\)](#). Last accessed, October 28, 2021.

¹² City of San Luis Obispo [Council Meeting Agenda Report](#), Item 6e, Fiscal Year 2020-21 4th Quarter Budget Review, *Table 3: General Fund Revenue Overview*, p. 41. Last accessed on October 28, 2021.

¹³ City of San Luis Obispo, Fourth Qtr. Budget Review, *Table 3: General Fund Revenue Overview*, pg. 6, as presented to the City Council on September 21, 2021, Item 6e. Accessed on October 19, 2021, <https://pub-slocity.escribemeetings.com/Meeting.aspx?Id=d6cfcfd1-1a06-4c30-9904-e06ee5bc16d8&Agenda=Agenda&lang=English&Item=19&Tab=attachments>.

¹⁴ City of San Luis Obispo, 2021-2023 Financial Plan, pg. 77, 91, 101. Accessed on October 20, 2021, www.slocity.org/home/showpublisheddocument/30516/637590015546970000.

4.1% of all taxes received in the city. As this business tax is a general tax, revenue can be used for any municipal purpose. The city is required to audit use of this revenue.

It is important to note, that in addition to taxes, most local jurisdictions have also implemented business licensing and permitting rules specific to cannabis businesses that often include a variety of fees to obtain necessary local regulatory approval. In general, licensing and permit fees are collected to cover the costs of regulation and enforcement of local cannabis programs. For both cities, the license revenues reflect the potential growth in cannabis tax revenue. Cannabis operator license revenue is projected by SLO to be \$310,000 in FY 2021-22 and then increase in FY 2022-23 to \$388,000. For the city of Sacramento, cannabis permits represent \$3.2 million in licenses and permits revenue, representing 10.4% of revenue derived from various types of business licenses.

CONCLUSION

The cannabis market in California has grown and developed significantly since the early twentieth century when California began regulating cannabis use. The ability of the state and local governments to tax this expanding market has resulted in almost 200 ballot measures appearing on local ballots since 2010 and increasing tax revenue for the state and those local governments that have chosen to pursue cannabis tax measures.

Taxation of cannabis at the local level continues to be largely supported by California voters, and approximately one-third of local governments have set forth regulations and taxation structures for cannabis businesses based on voter-approved cannabis measures. Although challenges remain, including the lack of fully legal access to banking and other financial services, cannabis businesses and the cannabis marketplace continues to grow and is expected to continue to grow in future years.