

State Says Cities and Counties Cannot Restrict Cannabis Deliveries on Public Roads

The Union Democrat

Alex MacLean

October 31, 2018

Tuolumne County and City of Sonora officials stand with other local jurisdictions throughout California that are against the state's push to prevent them from banning or taxing home deliveries of cannabis.

The state Bureau of Cannabis Control's proposed revisions to the regulations are expected to become final later this year, just after local voters hit the polls on Tuesday and decide whether to give the Tuolumne County Board of Supervisors and Sonora City Council the authority to levy taxes on commercial cannabis activity.

Alex Traverso, spokesman for the bureau, confirmed that the proposed revisions would strip cities and counties of the ability to tax home deliveries of cannabis.

Neither the council nor board have formally addressed the state's push to prevent them from banning and taxing home deliveries of the drug, though officials say they support the efforts of lobbying groups representing California cities and counties to fight against the proposed rule.

"When the proposition was passed, we expected to have local control over all aspects of marijuana sales and distribution," said Sonora City Administrator Tim Miller. "The bureau is now taking that away through regulation contrary to what was in the proposition."

Miller was referring to Proposition 64 that was approved by 57 percent of California voters in the November 2016 election to legalize cannabis use, cultivation and sales for adults 21 and over.

The proposition was also approved by more than 52 percent of Tuolumne County voters, including a majority in all five supervisor districts, and 56 percent of City of Sonora voters.

According to the state, the new rule is being proposed because of a provision in the proposition that states: "A local jurisdiction shall not prevent transportation of marijuana or marijuana products on public roads."

The League of California Cities, California State Association of Counties and Rural County Representatives of California have all challenged the state's interpretation of the law and say that what was put to voters allowed for local control of all commercial cannabis activity.

"From my legal perspective, we would agree with that," said County Counsel Sarah Carillo of the arguments by the city and county associations. "While the board has not formally commented on it, I will say the board has always been in favor of local control."

Deputy County Counsel Carlyn Drivdahl said the county currently does not expressly ban cannabis deliveries, though it does outlaw commercial cannabis cultivation and dispensaries.

The city allows up to two medical-only cannabis dispensaries, in addition to manufacturing facilities and testing laboratories, under a three-year pilot program approved by the council earlier this year.

However, home deliveries are expressly banned within the city.

County Supervisor John Gray, who represents District 4 and serves as board chairman, said he opposes the state's proposed rules changes and supports Measure M on the ballot for voters in the unincorporated area to decide on Tuesday.

The measure would give the board the power to tax potential cannabis businesses at a rate of up to 15 percent of gross revenue. The board voted 4-1 in July to put the measure on the ballot, with District 2 Supervisor Randy Hanvelt being the lone one opposed.

While the measure wouldn't allow commercial cannabis activity, proponents say it would give them the necessary tools to generate revenue if the industry was allowed — whether they want to make it legal or not.

None of the current supervisors, with the exception of outgoing District 3 Supervisor Evan Royce, have expressed a desire to legalize commercial cultivation or sales of cannabis.

"It's not so much the county," Gray said. "The state could step in and say it's under state control now, not county control."

Gray pointed to the state's proposed rule change for home deliveries as a reason why he feels supporting Measure M is the prudent thing to do.

State law requires voters to decide on such tax measures, so the next shot would be in two years if it fails.

"Who knows what's going to happen next year," he said. "I'm hoping that people understand that when we're supporting the measure, the purpose is protection of the county. We're not supporting commercial grows of marijuana."

Gray and District 1 Supervisor Sherri Brennan provide the arguments in favor of voting "yes" on the measure in election materials provided with ballots, while Mi-Wuk Village resident Bob Kirk provides the arguments against it.

Kirk is the father of Anaiah Kirk, who is running for District 3 supervisor in Tuesday's election and has said he would staunchly oppose any attempts to legalize commercial cultivation in the county.

He's recently run ads on social media urging people to vote against Measure M because he believes it would open the door for the board to authorize commercial cannabis cultivation in the future, because several supervisors have said they wouldn't support doing so without a tax.

His challenger, former District 3 Supervisor Laurie Sylwester, said she supports the measure and agrees with Gray's and Brennan's arguments in favor.

"It's fiscally responsible and doesn't allow marijuana businesses in the county," she said. "It helps fund law enforcement, doesn't take away from existing county services, and would only be paid by marijuana businesses — if it ever were to happen."

Both candidates running for District 2 said they believe the board should have a tax on cannabis at the ready, though only candidate Ryan Campbell expressly said he was going to vote in favor of the measure.

"We're at the mercy of what the state and feds decide on this issue at so many levels," Campbell said, noting that cannabis is still illegal at the federal level. "This is just our best attempt to prepare for what could be coming down the line."

Hanvelt said he cast the only vote against putting the measure on the ballot because he believed it would be confusing to voters and a better measure would have asked whether they support commercial cannabis activity, though he acknowledged the need to be able to tax it given the possibility to changes in state and federal law.

"The county needs to have an option to tax it if it ever becomes a reality," he said. "I could see the state forcing it on us at some point. The state seems bent on having commercial marijuana."

City of Sonora voters, meanwhile are going to decide on the fate of Measure N in Tuesday's election that would do the same as Measure M only limited to the three-square-mile city limits.

Unlike the county, the city is already moving toward allowing some cannabis businesses. The council is scheduled to vote on Monday whether to approve the city's first officially permitted medical-only cannabis dispensary.

Jeff Muzio, the would-be owner of the proposed dispensary, said he runs into people "all of the time" who tell him they travel to dispensaries in other counties for medicinal cannabis. None he knew were willing to speak on the record Wednesday.

Muzio said he generally supports more access for people who use the drug medicinally, which allowing home deliveries everywhere would do, but he understands the concerns about local control.

"It's a fine line," he said.

<https://www.uniondemocrat.com/localnews/6644390-151/state-says-cities-and-counties-cannot-restrict-cannabis>