

Dialogue4Health Web Forum

## Sharing a Public Health Oriented Model Local Ordinance for Marijuana Regulation

Friday, December 15, 2017

2:30 p.m. – 4:30 p.m. EST

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>> Dave Clark: Greetings and welcome to today's Dialogue4Health web forum on recreational marijuana regulation brought to you by the Hilton Foundation and the Public Health Institute.

My name is Dave Clark, and I'll be the host for today's event.

Our moderator today is Alisa Padon, research scientist institute.

Dr. Alisa Padon's past research focused on youth-targeted marketing and promotions of alcohol and tobacco products, examining the intersection between the unique vulnerabilities of youth and the psychosocial and neurocognitive appeals and techniques used in marketing. She is now translating that work as a research scientist at the Public Health Institute, into the regulation of sugar sweetened beverages and legalized recreational marijuana.

Alisa will be leading us through the rest of today's event. Alisa, over to you.

>> Alisa Padon: Thank you so much. So I'm a research scientist at the Public Health Institute and director at Getting It Right from the State. Our panelists are Dr. Lynn Silver, director of the Getting It Right from the State and two legal consultants, Ted Mermin, a First Amendment expert and Leslie Zellers, a public health attorney.

I want to welcome the audience today. We have fantastic individuals, with people from 43 of the 50 states, Guam and Canada. A lot from California, which makes sense. Since we are talking about California legislation. Also some other states that have legalized adult use marijuana and maybe some that are on the cusp of doing that. We have a lot of representation from local government, which we are thrilled to see, as well as nonprofits, state government, and a wide range of other sectors as well.

We are very glad to have you all here.

Our first panelist today is Dr. Lynn Silver is a pediatrician and public health advocate. She is Senior Advisor at the Public Health Institute and Clinical Professor at University of California San Francisco. She focuses on policies to prevent noncommunicable disease, its risk factors and inequitable impact.

In the past she addressed unhealthy foods and tobacco use. Her interest in marijuana regulation arose from this experience and the belief that public health oriented measures are needed now to protect against future harm as this new industry emerges rapidly. Lynn?

>> Lynn Silver: Thank you very much, Alisa. It's a pleasure to be here with you today and talk about our new model ordinance which we just released this week. So welcome, everybody.

First, just a few words about our project called Getting It Right from the State, local regulation of marijuana. And we collaboratively test options of local marijuana policy with the goal of

reducing harm, youth use and problem use, using the best scientific evidence and principles of protection of public health, social equity, and safety.

So why are we talking about local regulations? State regulation is important too, obviously, but in California Prop. 64 legalized recreational marijuana, passed last year and becomes effective next month. This was a statewide ballot initiative that paid scant attention to public health concerns but left broad leeway for control and created a window of opportunity for local cities, communities, counties to do better or get the regulatory framework right. That's where we are seeking to work. The process that we followed so far, we started with an extensive round of qualitative research, speaking with local and state regulators, jurisdiction leaders, community organizations, dispensary owners, manufacturers, legal experts, substance abuse providers, academic experts, a fairly wide range to get their input on what might be optimal components of a local ordinance.

We then carried out some legal analysis through our legal consultants to understand the authority of local government to act. Worked to together to get a model ordinance and attain several rounds of feedback from colleagues around the state, omni-model ordinance. We are just beginning now to roll that out and work with communities, providing technical assistance and hopefully building engagement for action on this issue.

I am going to talk for a couple minutes about our conceptual framework for this work and in the second part of the talk I'll go over the content of the ordinance. Marijuana is not the cause of Reefer Madness as portrayed in the past, but it is also not the best thing since sliced bread as parts of the cannabis industry would have you believe today. We have about 4 million Americans today who meet the criteria for cannabis use disorders that are problems that interfere with their lives. We have many young users with about 1.2 million of first time users in 2016 being adolescents between the ages of 12 and 17. That is a problem.

We also have a cannabis market, marijuana market. I'll use those words interchangeably, that is changing very rapidly. I turned 60 last week and the marijuana of my youth is not the marijuana of today. So what used to be for flower, 4 percent of active ingredient is now between 16 and 22 percent. There has been a massive proliferation of new forms of administration. Ranging from edibles to extracts to vaping to shatter to wax and so forth. An increasing number of young people are introduced to marijuana through these new forms of administration, with edibles playing the most prominent second role.

Why should we worry about this? Really, we are concerned because marijuana does have significant negative health impact, especially when heavy users, when people start young and use heavily. The national academies of science carried out a recent review that found a clear association of marijuana with low birth weight when used during pregnancy, with increased occurrence of schizophrenia and psychosis, increased motor vehicle crashes, respiratory illness and early on set of use and high frequency are clearly associated with development of problem use. There is a growing body of evidence cognitive problems, academic and social effects, especially in those who start young and use heavily. Overdose, for example, pediatric ingestions, heart disease and other issues around which the research basis growing but still not growing fast enough.

We've seen some suggestion of increased use in Colorado post legalization. The data is still being analyzed and playing out on this. These are some preliminary results that would suggest increases in a variety of different age groups from youth to adults to college. So take was concerning.

We are also seeing an increase in heavy use. So on to date two out of five users use marijuana daily or almost daily, at which point it does begin to interfere in many people's lives. That percentage of heavy users has increased significantly since 2002.

Marijuana also has two periods of life when there is significant vulnerability to negative effects. The first is during pregnancy. The second is during adolescence. Nationally there is a marked decline in the perception of harm from marijuana in general. And that extends to the period of pregnancy, with only one out of five Americans believing that it -- I'm sorry, one out of five Americans believe it is okay for pregnant women to use pot for nausea or pain. And double that percentage amongst people who do use marijuana.

That has led to an increase of marijuana use during pregnancy, and increasing exposure of developing fetus.

Similarly, during the period of adolescence, the brain continues its neurologic development through age 25. So from adolescence through that period in early adulthood there is vulnerability to the effects of different substances. One study, for example, looked at the frequency with which young people used marijuana before age 17, and outcomes in their life at age 30.

And they found some very concerning findings, greatly increased incidence of cannabis dependence among those who used daily in their teens, increased drug use, and the result that I think worried me the most in many ways was that for daily users, the high school graduation rate fell by over half in that study. That's a very concerning finding as we struggle as a society to make sure that every kid completes their education.

So what is this project focused on? We are focused on developing a model local ordinance for cannabis retailing and marketing and helping jurisdictions adopt some or all of the provisions to have a healthier legalization process. The model ordinance was sent out to registrants and it is also available on our website. We are working on a model local ballot form municipal legal expert.

One of the biggest aspect of the overall framework is to think about what part of the legalization process will have the most impact on health. And the regulatory process has a lot of discussion about quality control, about manufacturing standards, about pesticide residues, but when we think about tobacco, for example, the biggest component of the impact of tobacco on health was always how many people use it and how much do they smoke? And how young do they start? We believe that similarly for marijuana, the biggest determinant of the health impact of the legalization processes occurring in many states will be how many people the industry gets to use cannabis, how intensely the marketing leads them to use it, and at what age they begin to use the product.

So when you think about legalization, there's two different extremes. The past extreme was prohibition. It is still in effect federally but not at the state level.

The other end is free for all, you give free range to the power and might of American entrepreneurship, which is creative and don't limit it. Any product that somebody can think up is okay. So we are positioning ourselves somewhere in the middle here, saying yes, we should legalize it for a variety of reasons. But we should do so modestly, starting modestly and cautiously. So our approach is what we are calling cautious legalization. It has as a goal the reduce the illegal market and drug related incarceration which is so prevalent in our society and had negative impacts.

We want local law to promote economic justice and make sure that the wealth that has been generated by this product in the past does not cross to the other side of the tracks, leaving low income communities and go only to wealthy investors.

At the same time we need to recognize this particular economic opportunity comes at a cost that may include negative social impacts to youth, like not graduating from high school, for example. We want to keep marijuana somewhat boring, in reality, to reduce growth of the market and attractiveness to youth.

We also want to correct the growing and false perception that this is a harmless product. It is not as bad as opiates, for example, but it is not harmless. To fight what some people call social normalization. It took decades to denormalize tobacco smoking in our society. We don't want marijuana legalization to be a new form of social normalization of smoking.

This is just an example of a -- this says hello marijuana, goodbye worries.

We want to learn from our decades of experience with tobacco and alcohol, we have lots of experience with success and.

We want to prevent excessive expansion and diversity indication of the market that attracts youth. We want to encourage local authorities to innovate and learn from those processes. And in general these are some of the questions that we'll try to answer in the rest of the webinar. What is the best way to assure equity? How many stores are enough? What products should be allowed and which shouldn't be? Edibles, flavors, strength. What is does attractive to children and youth mean? How far can we go to limit aggressive advertising and marketing under current commercial speech law? What are the appropriate penalties, how long does my -- how long does my town need to do this right? How can we create movements and local level to leads better state policies and how can we learn from each other? Let's get started on this journey. Back to Alisa.

>> Alisa Padon: Thank you, our first question for marijuana, how many stores should there be? Should the number of local marijuana retailers be limited? Yes or no?

Submit your answer on the right. After you selected yes or no, don't forget to hit "submit" so we can see what your answers are.

Again, it's should the number of legal marijuana retailers be limited? I'll give everyone a few more seconds to answer as you collect your thoughts.

And I think, Laura, you can go ahead and close the poll.

As we wait for the results, we've asked this question because the next section is where we talk about the authority that local jurisdictions in California have with regard to prohibiting or regulating adult use marijuana, and retail outlet density and its effect on youth is an area where we know relatively more about from alcohol and tobacco control as well as what happened in other states. Here are the results, 88 percent agree yes, 8 percent, no. There is a clear winner here, but it shows some tension in order to maximize the transition from legal illegal to legal markets. There are best practices in terms of limiting and we'll talk about that next.

The next speaker is Leslie Zeller, who is a consultant with the Public Good Law Center and an attorney with more than 20 years of experience in public health law and public policy for government and nonprofit organizations. She has extensive experience. She works to advance health and wellbeing through policy and legal work in areas such as tobacco control, creating healthy places and guarantees access to health. Leslie?

>> Leslie Zellers: Thank you, Alisa. Good afternoon, everyone. I'm happy to be here. You have heard from Lynn Silver about the potential dangers of marijuana use. From this we will

shift to strategies that primarily local governments can use to determine how, when, and why they want cannabis to be sold in their community.

As you know, Proposition 64 was the ballot initiative that legalized adult use and possession of marijuana. Again I will be using those terms interchangeably, both marijuana and cannabis. It also set up a regulatory mechanism to allow retail sales of marijuana.

A few acronyms that you may hear floating around. One is the Adult Use Marijuana Act, the formal name of Proposition 64 for those of you who read the ballot of the proposition, it was in fact buried in there.

After the ballot proposition was voted on by voters, the state phased to creating a regulation for the market. Because California also has a regulatory framework for medical marijuana, the California legislature adopted a bill, SB94 which created a coordinated regulatory scheme for adult use, which is also known as recreational marijuana and medical marijuana.

So the acronym for the new program is the Medical and Adult-Use Cannabis Regulation and Safety Act, MAUCRSA for those of you trying to pronounce it.

As I mentioned, the ballot initiative and the regulatory mechanism adopted by the State will allow retail licenses to be issued as of January 1, 2018.

So what does that mean for local governments? The good news is that the ballot initiative very clearly carved out authority for local governments to decide how cannabis sales should occur in their community or whether they want them to occur at all. That means that local governments can decide to completely prohibit cannabis sales in their community or impose some regulations. And in the law, there is a specific allowance for local zoning, land use and business license requirements, or a complete prohibition on sales. So the intention was really to give the maximum flexibility for local governments to determine the strategy that would be most effective for them.

So some communities are choosing to prohibit the sale of adult use cannabis. Many of those are following the same regulatory scheme that they set up for medical marijuana. So if the community that you live in already does not allow for the sale of medical marijuana, it is likely that they will make a choice also not to allow the sale of adult use or recreational marijuana.

And the good news for local governments is that local governments have to affirmatively allow retailers to operate in their jurisdiction. That is a requirement before the State will issue a license. So the State has issued regulations for temporary licenses for the first few months of 2018 in order to just get the system launched. Then they will transition to a permanent licensing scheme.

But the burden is on the state to verify that the local government has authorized the use of this permit or license in a particular community.

So that's something that is an important development, but it is not foolproof. At a certain appointment, if the state doesn't hear back from the local government then they'll assume there is authorization. So what this means is that it is in your best interests as a local government to very clearly state how you want to allow cannabis sales to occur in your commune, if at all.

So the strategy of regulating how cannabis is sold is really the main purpose of the model ordinance that we have compiled and sent out to you. And local governments have a lot of flexibility here. You can decide to regulate where cannabis retailers operate, for example within a certain distance from schools, the density of retailers, the proximity to one another. Also operating standards such as the hours of operation, what kind of products are sold, serving size, things like that.

This is also something that is specifically carved out in the state law, which allows local governments to establish additional standards, requirements and regulations regarding health and safety.

So the state law really creates a floor for how cannabis is sold and what products may or may not be sold, but local governments have the authority to decide to impose stricter regulation.

Another thing to keep in mind is you as a local government can set the timeline. You can take your time to decide what sort of regulatory framework you want to use. Many communities in California are considering this right now through their City Councils, boards of supervisors, appointed commissions, existing local government staff. There are many, for those of you who have had an opportunity to look at the model ordinance, there are many components to it. It is a menu for you to choose from. So we really encourage local governments to take the time they need to decide what sort of regulatory framework is appropriate.

And in the interim, what that means is that you need to set in place a mechanism saying what is and isn't allowed in your community. So that could be through a temporary moratorium for a certain amount of time, where you prohibit retailers from opening while you decide on how best to regulate them. Some communities, for example, that already prohibit or regulate medical marijuana have extended those requirements to the adult use market are in order to gain some time to figure out the right framework.

So let me spend a few minutes talking about how retailers are regulated in the model ordinance.

As Lynn mentioned, we really wanted to borrow strategies that have been affected in both tobacco control and alcohol. And the approach that the model proposes is a conditional use permit. And that is a land use strategy. And basically, what it allows is, if there are certain, a particular business in your community, you may decide that you only want it to be located in certain parts of town. For example, only in industrial zones, not in residential zones.

Even if a business is located, allowed to locate in that area, the community may still want to impose additional operating restrictions in order to monitor and regulate the business activity. So a conditional use permit is in effect a strategy for doing that. Because we are starting with a completely blank slate here, there are in fact no authorized retailers anywhere in California at this moment to sell adult use or recreational marijuana. And so the strategy that we are proposing is to allow the government to individually consider each application and decide what kinds of operating conditions to impose on that location, if it allows it to operate.

Another key component of a conditional use permit strategy is that it allows for the public to have input through public hearing or other mechanisms. The public can say we don't want a retailer to be allowed to locate in this particular location because of the impact it will have on the surrounding neighborhood. Or we are in favor of this, or also the business community can come out and say that we are going to be responsible retailer and you should allow us to operate.

This strategy allows a local government to do a couple of different things. One is you can decide where you want these retailers to operate, what kinds of businesses you allow them to be. Then also impose operating conditions.

For businesses that violate those conditions, there are mechanisms such as suspension of the conditional use permit that can be imposed.

One of the things that keep in mind is that the conditional use permit strategy generally applies to a parcel of land. And the reason that that is important, I'm going to distinguish that from another strategy that is always frequently used in the tobacco control community, which is issuing a license or a permit to a particular business. So that's allowing a particular business to operate in a community with a certain set of conditions.

A license or permit is issued to the business, the business owner, whereas the conditional use permit is issued to the land. There are trade-offs in that and the community should decide what is the best approach for them and how to customize that in order to meet the needs of your jurisdiction.

The reason we didn't opt for a licensing strategy as the default option of in the ordinance is that generally it doesn't allow for public input. Licensing is usually a strategy where a community has decided that it wants to allow a particular kind of business and it is really just going through the basic information necessary for businesses to qualify. And we are proposing a conditional use permit approach so take local governments can take a more individualized approach to determine what businesses it wants to operate in its community.

As I mentioned there are different kind of restrictions that can be imposed in addition to the location, how close a retailer is from a school or a park. You can also limit the density of retailers, require them to only sell cannabis products and not other things such as food or alcohol. And imposition of operating conditions such as hours of operation, requiring retail operator education. That is a bit about the approach we have applied in the model ordinance. We will turn it back to Alisa for another poll and then Lynn will give you more detail on a couple of the elements.

>> Dave Clark: It looks like we might have lost our audio connection with Alisa. We'll give Alisa a few moments to reconnect to the broadcast. As we are waiting we have our third poll on the screen for you right now. Let us know, should marijuana infused beverages like soda or tea be prohibited? Yes, no, don't know?

Should we restrict the sale of high potency products like shatter or wax? Yes, no, or I have no idea what those are.

Let us know how you would respond to each of these two poll questions. And as you are doing that we'll try to get Alisa back on the line with us. Thanks for your patience as we wait.

(Pause.)

>> Dave, I think that's probably enough time for folks to respond if you want to close the poll.

>> Dave Clark: Thanks.

>> Alisa Padon: Sorry, I'm back on.

>> Dave Clark: Alisa is back with us! All right, Alisa, back to you.

>> Alisa Padon: Thank you so much.

So we were interested in all of your thoughts on that question because the next section is where we present our actual recommends for regulating marijuana retail practices at the local level.

These are two questions that we really grappled with, in particular the high potency products.

So we have some responses here in terms of marijuana beverages, should they be prohibited?

We have not quite 50 percent saying yes and 30 percent saying no and 20 percent don't know.

We totally understand that split.

Then should we restrict the sale of high potency products? 17 percent have no idea what those are. We didn't know either about a year ago. I'll go ahead and pass it on to Lynn to talk about where we ended up on those questions and others.

Lynn?

>> Lynn Silver: Hello, folks. It's a pleasure to be back with you. Now we are getting into the model ordinance itself. This is going to cover the model ordinance. The first 20 temporary licenses for adult use cannabis retailers were issued this morning. So it has started. First opening the doors on January 1, I believe.

The first element that we are encouraging is a focus on nonprofit organizations, which was dominant in the medical dispensary mode in past years. If we want cannabis to be legal but not to be aggressively marketed by organizations that have profit as their mission and even the legal mandate in the case of publicly held property, retailers -- nonprofit retailers might be the way. The draft language has an -- that you will prioritize them over for profit. If there is a cap on the number of licenses that you are implementing, then that means that you actually will be primarily licensing nonprofits.

The second section talks about ways to promote economic justice and licensing. And again I think the goal there is to keep the wealth from the cannabis industry in the low income communities and not have this process which demands a lot of investment to comply with the requirements of the state for operating legal enterprise for all move into the hands of wealthy investors from outside the community. So we define or offer definitions of equity applicants, primarily based on being long-term residents of parts of the community. Census tracts, for example, that have been most heavily influenced by drug related incarceration during the war on drugs that have had tremendous negative impacts on those communities. We suggest requiring that 50 percent of licenses be issued to equity applicants. There are also some other potential criteria that can be used that are being employed in cities like oak land and Sacramento having to do with income level, or past history of conviction that are discussed in the model.

It is also important to adjust aspects of how you administer it to make sure that it is actually feasible for a low income applicant to be successful in this endeavor, which is complicated. For example, deferring fee payment or adjusting the fee schedule so an equity applicant can have a period of time to establish residence or some of the measures that are discussed.

Next, how many stores should there be? The State of Washington started conservatively with one per 22,000 inhabitants. California created no cap for the number of retailers they will license. We strongly encourage jurisdictions to start slow and initially limit the number of dispensaries they will license for adult medical use at no more than 15,000 inhabitants. You may want to make exceptions in large rural areas with large geographical areas. We suggest conservative hours in the state and limiting from 8:00 a.m. to 8:00 p.m. to avoid people getting involved in late night motor vehicle crashes and limiting normalization. We suggested a creation of a buffer between retailers, so you don't get cannabis close with multiple retailers controlling distribution in the area.

This is for sense, keeping them also away from schools, colleges and universities, which is something we added in relation to the State. And your community may have other locations that you want to include like a youth center or a park or library, for example.

We recommend that retailers be obligated to operate in fixed structures. I personally would recommend not doing event licensing at all. But if you do choose to do event licensing, you may -- it would be best to limit that to events where entry is restricted to those over age 21.

One thing that we are recommending and that is the practice actually in most of the states that legalized is a specialized store model only. So the California law prohibits retailer having an alcohol or tobacco license, but it does not prohibit the retailer from being a clothing store or a pharmacy or a food retailer, for example.

So we strongly recommend to local government that you keep this a specialized business, a store that sells cannabis, cannabis products and perhaps accessories, but not a restaurant, for example, doing double duty as a cannabis retailer and serving only adults because we believe that that will contribute enormously to social normalization of the use of this product.

Another element that we are recommending is not to permit adult use delivery. While some arguments can be made for delivery of medical use marijuana, there is not an urgency to get that cannabis to your house quickly. And the research in the past has shown that delivery systems, delivery of alcohol, for example, have increased youth access. So while you can inspect and detect sales to youth in a fixed store, that is much more difficult to do in a home delivery. We recommend no adult use delivery.

Another recommendation of the ordinance is not to allow on site consumption. State law holds that a local jurisdiction can authorize on site consumption in its stores. Any local jurisdiction that is allowing stores has to decide whether it wishes to do so. We recommend that you do not. And we feel that the creation of cannabis clubs, restaurants, entertainment shows are all things that will contribute to the social normalization of this product. And we strongly recommend that that not occur. It also may present a risk of exposure for workers to second hand smoke.

The next group of provisions of the ordinance have to do with the products. And what products do we want and need to be sold in our communities. And it also has to do with your view of what legalization is about. Is legalization about eliminating the harmful effects of illegality, like incarceration? Is it about creating a new free for all industry that can do anything that anyone can possibly think of with cannabis? And really, we have seen on the market incredible proceed liver racial of lollipops, cotton Candy, soda bottles, gummy bears in the edible type products but also a very high potency products like shatter, like butter and wax that have increased frequency of causing severe reactions such as psychosis or very, very strong highs. I heard one story from a colleague of a relative who used shatter and had such a strong reaction that he jumped in a river and passed away.

So some of the products that we are recommending not be allowed to be sold by local retailers include products that are clearly attractive to children and youth. We tried to go beyond the California state law by defining that much more specifically than occurs in state law an regulation. The new state emergency regulations did add a little bit of coverage and become somewhat stronger than the law, but they are still not strong enough. We also recommend not allowing flavored flower marijuana or concentrates. This comes from many years of experience with tobacco regulation, where the tobacco industry has intensively used flavors as ways of luring youth to begin consumption of tobacco. All of you probably heard of menthol cigarettes. To this day we have not been able to get menthol cigarettes off the market in spite of extensive knowledge and research despite the fact that they have been marketed to low income communities and similarly, flavors are being used to get kids to start smoking and the marijuana industry is doing the same thing, chocolate, orange, mango. The about marijuana is clear. Flavored cigarettes with the exception of menthol have been banned and we see no reason why we should allow the cannabis industry to start doing all of the things that we already know from tobacco are harmful and attract youth.

An additional will provision is to allow edibles. We believe they are probably a safer alternative to smoking but we don't believe there should be this unlimited universe of imaginative edibles that will attract youth. We suggest a limit of ten different types of edibles in a given retailer. SKU is a product type, hard lozenges and chocolates but to keep it more boring than the market would otherwise be. This is a difficult area to define and there is no strong evidence on what the best practice will be. We are going to have to learn over time how to define this.

The other, some of the other provisions in relation to product is that we recommend not allowing marijuana beverages. There is absolutely no reason why we need orange soda marijuana. We are struggling hard to reduce sugar sweetened beverage consumption to prevent diabetes an

tossing cannabis into this stuff is not going to help the situation. These products also mimic Alco pops which are alcohol and soda type products that are well-known to attract youth and communities are working to ban. Again a harmful product from the alcohol industry that attracts youth, there is no reason to start legalizing these products.

The other area in relation to products that we strongly recommend looking at, and this is one of the most complex and challenging areas that we struggled with, how to treat it in the model ordinance is the high potency products that are associated with more severe reactions and higher rate of psychosis. For example, if you are going to smoke marijuana, skunk is one of the most potent flower types. And it is associated with higher rates of psychotic reactions.

So we, given this tremendous increase in the potency of products on the marketplace, we are recommending that your licensed retailers not carry flower over 20 percent THC concentration. Some limited 15 percent and we recommend no concentrates over 50 percent THC which would cut out products like shatter and wax. The advantages to this approach are first to reduce the normalization of these high potency products about whose safety we know very little. And the disadvantage is that it doesn't take them off the illicit market. They may persist in the illicit market to some extent, but I don't think that necessarily deciding to legalize marijuana needs to imply that we will legalize all of these dangerous products that have been invented using marijuana extracts. And that we should think twice about it.

This is a complex issue, but we felt that it was more feasible to start cautiously and if necessary to loosen up in the future. But if we start with a wide open approach, we do know from the history of the tobacco industry that it is very difficult to move backwards once the manufacturer is making a product, that product is on the market and being consumed, it can be a very difficult fight to pull back and get that off the market. Again, start slow and cautiously.

Another aspect that is very important in determining the use by young people in particular, but also by others is the price of the product. We know this is a major determinant of youth use from other products, since even when there is an age prohibition there's vast evidence on this from tobacco and alcohol, for example.

So there are approaches that tobacco control has used to address this problem. One of the most common ones is to prohibit discounting. So retail commerce has a whole bunch of ways that they get you to buy things that all of you know from your trips to the supermarket: Coupons, happy hours, two for ones, buy one get one free, discount Mondays. And these all have the effect of encouraging people to buy more than they would otherwise buy. There are laws that disallow the use of discounting for tobacco, for example in Rhode Island and New York City, and Sonoma county, we passed a tobacco ordinance doing so. Sonoma adopted part of this already for marijuana already. We recommend not allowing discounting measures.

Another measure to ensure that the price is not too low is a minimum price floor. This too has been used for tobacco in some places as an alternative to taxation to raise the price. It had been used widely in other economic areas to combat anti-competitive behavior. We don't recommend doing this at the start. But do recommend that it be considered once the legalization process stabilizes and the legal market is relatively consolidated. So a model ordinance can authorize, for example, the creation of a minimum price floor in the future, but not implement it in the first few years. We do know in Colorado, for example, the price of cannabis fell dramatically as the legalization process advanced. So it might be at that point that you would want to raise the price back.

Lastly, taxation is an important component of price construction. In California, you will be allowed to tax at the county and city level. That will affect price and reduce the use by youth. It

has been highly effective in tobacco control to the point where it's part of the framework convention on tobacco control globally. Of course, it raises money. In California, it does require voter approval for local government to create a tax. So we are right now drafting the model ballot initiative on this issue, which would also take revenue and have language to help jurisdictions take that revenue and use it for prevention.

So we recommend that you consider a local tax, whether you are a city or county. We recommend that you look at the possibility of taxing products differentially depending on their THC content or bans of potent, different levels of potency. You probably want to start not excessively high and raise that tax after the market shift consolidates. We recommend that most resources be dedicated to prevention and creating healthier communities.

So those are, that's a brief outline of some of the components of the model ordinance. And with that I am going to hand it back over to Alisa and our colleague will be talking about advertising. Remember Joe Camel? He's back. That's our next section. Alisa, take it from there?

>> Alisa Padon: Thanks so much, Lynn. Yes, so our next panelist is Ted Mermin. He is Executive Director of the Public Good Law Center and has for the past decade worked with state and federal agencies in the development and defense of innovative policies in public health and consumer law, litigated consumer rights cases in appellate and trial courts around the nation and written and spoken extensively on issues of tobacco control, marketing to children, deceptive advertising, unfair competition, preemption and commercial speech. Ted?

>> Ted Mermin: Thank you very much, Alisa. Welcome, everybody. We are now arrived at a popular but difficult area of regulation, with apologies to everybody, we are going to take a little bit of a plunk now into the law.

So there are, as you probably have noticed, billboards popping up all over California now announcing that marijuana has arrived. Or as you saw, unrivaled potency. And for local government, the question is -- we know this because we have received your question on just this topic: What can we do about it?

And the answer is, it depend. Don't you just love the law? There are two basic ways to approach the question of what local governments can do consistent with this little piece of the United States constitution, the First Amendment. And with state constitutions, which lesser known, all have free speech clauses of their own.

The first way is to say cannabis is different. It is different from all other products like including tobacco and alcohol. Maybe it is different because it is still illegal under federal law. Maybe it's different because cannabis businesses are so grateful to be able to operate legally that they won't challenge whatever restrictions are placed on them. Maybe it's different because the local government has thought fully sat down with the industry and said: Can we reach a memorandum of understanding? Some sort of MOU? Because we think the only way we can get the board of supervisors to approve cannabis sales in the county is if you agree not to advertise.

That cannabis is different option is the one that says we are going to restrict cannabis advertising in the way we do not restrict other types of advertising is definitely open. It has been tried, apparently successfully so far in several states. Local jurisdictions that are interested in this more aggressive approach should have a look at some of those other more restrictive state laws. Those are included with the model. And of course, you should make sure to consult attorneys in your own jurisdiction.

An attorney, it's like a comfort object. You should always have one.

Now, the second way to approach marijuana advertising and the one that the model ordinance here followed is to say cannabis is the same. This approach treats cannabis the same as other

products, including controversial products like tobacco or alcohol. And it is more legally conservative. More cautious. That is in keeping with a model ordinance that designs for local governments which may not have either the appetite or the resources for ground breaking litigation. Courts are generally interpreting the First Amendment very broadly these days. Under that broad interpretation, advertising is a form of protected speech. They call it commercial speech. There are pretty tight limits on what government can do to restrict it. We don't yet know whether cannabis will be considered an exception. In addition, local governments face resource and jurisdictional challenges that states do not. Sort of adding to the reasons for caution for most, not all but most local jurisdictions.

So for these reasons we've taken the second way. Cannabis is the same, in this model. And the content of the ordinance is more legally conservative. Now, that doesn't mean that some provisions don't still test the First Amendment, and First Amendment limits. They do. Now, just what are those limits? Funny you should ask.

I mentioned that we are going to take a plunk into the law. Here is the law. Let's take a very brief tour of First Amendment protections. On the far left we have strict scrutiny. This is the sort of review that courts give to restrictions on political speech or artistic speech or ideological speech. If your town were to say you may not post signs for your favorite candidate in your window or this type of business is not allowed to run an op-ed in the local paper, that would be reviewed with strict scrutiny. They ask if there's any way to accomplish the same goal, whatever your legitimate and valid goal is, while restricting less speech. Strict scrutiny is known for being strict in theory but fatal in fact. It is not a place you want to go.

Next along we have the lions, the recumbent lions of Central Hudson. This test is a type of review reserved for most restrictions on commercial advertising, which is what we are talking about mostly. It is as you can see not quite as vicious as strict scrutiny, but pretty dangerous when aroused.

Central Hudson requires a reasonable fit between the government's goal and the way that the government is trying to achieve those goals. Basically, a law can only restrict the speech that it's aimed at. For example, ads directed at minors. If it is minors you are looking to protect, you should not restrict speech that is aimed at or reaching adults. It is not impossible to pass the Central Hudson scrutiny, but in the United States no law has survived it. In the lower courts and state courts where federal constitutional provisions also apply, the record has been better.

Second from the right, we have O'Brien review. Like Central Hudson, the test is named after a class, this one called O'Brien instead of Central Hudson. This standard applies to restrictions aimed at conduct that happened to restrict speech as well. In theory it is supposed to be the same as Central Hudson. In practice it has been more lenient. No Supreme Court case in the last 20 years has struck down a law under O'Brien review. It doesn't apply as frequently, and we'll see that it does apply to certain measures that we put into the model ordinance.

Finally, over on the right, we have the house cat, the kitten, Zauderer Review. These are restricted to factual and uncontroversial warnings. For example, danger, poison, or consumption of alcoholic beverages impairs your ability to drive a car. Or more recently, this bagel contains 420 calories.

Zauderer just requires that the disclosure be reasonably related to the government's legitimate goal. It sound pretty good for the government and it tends to be. But in recent years even this test has start the to become more difficult to get past and industries that have been restricted in their commercial advertising or have found their advertising limited in some way by government have turned even this test to one that is not by any means automatic. All right.

Well, now that we have those tests in hand, let us apply them. First, what happens when we apply these tools to various advertising and marketing measures in the model ordinance? First we looked at the measure prohibiting packaging aimed at youth. That is a restriction on speech. It is a restriction, so up there we have our dormant lions of Central Hudson. That's the test it applies. The government's stated primary interest is an important one, preventing underage use of cannabis. That's check. Barring these pass packages seems like a reasonable fit with that goal. So even with the Central Hudson lion, we think it will pass.

How about the bar on health claims for recreational marijuana? There is a restriction of commercial speech again. So it is our Central Hudson lions again. The Central Hudson test specifically notes that the First Amendment does not protect deceptive or actually misleading advertising. Health claims for adult use, recreational use at this point fall into that category and we believe the lions may stay at rest.

There is in the model ordinance a ban on self service displays or including vending machines. That ban is aimed at reducing youth access and any restriction on speech is only incidental. So we apply the O'Brien test. The alley cat. More than the nicely house broken kitten, but not a truly dangerous feline.

And with an important government interest that is unconnected to suppressing speech, that is it is just meant to reduce access, we should again be okay.

This does lead to questions: Well, what about potential speech restrictions that aren't in the model ordinance? There are indeed some things we left out because we didn't want to face the saber toothed tigers and didn't want to wake the lions.

For example, a ban on all cannabis billboards. If we were taking the first approach, the cannabis is different approach, that might work out. You could say to a court: Yes, maybe we couldn't ban all alcohol billboards, but Your Honor, this is marijuana!

And a bunch of states have tried this approach. So far, so good. Again, here with this ordinance we are going on the more legally conservative assumption that cannabis will be treated the same, even now, as other products like alcohol or tobacco. A ban imposed by the government, as opposed to one agreed to by agreement, would be difficult to sustain in court. We don't even in the model ordinance have a ban on ad spinners because we don't have evidence showing that spinner ads appeal primarily to kids and youth. And under the full Central Hudson test, being able to show that the restriction is carefully crafted to fit the government's purpose is essential. So if you notice some thing that are missing it is because we are taking a legally more cautious route in light of the fact that this is an ordinance and a webinar directed primarily at local governments and indeed that we have a broad-based focus on all local governments in the State. So it is, however, and we can assure you, not too cautious as you will see.

So we are offering a full slate of warnings. The model ordinance offers the option of requiring five health warnings behind the counter and rotating series of warnings on the back of the practices that the cannabis has to be placed in before it leaves the store.

In addition it proposes three behind the counter warnings addressed respectively to parolees, to immigrants, and to youth. There is even an option forewarnings on advertisements. These warnings are all crafted to be -- remember that phrase -- factual and uncontroversial. So that the kitten of the Zauderer test will apply. These days, remember the First Amendment is aggressively used by a host of organizations, including on warnings. We may face a Central Hudson lion which is the alternative if a warning is not considered factual and uncontroversial, the test is the more stringent Central Hudson test.

If the industry succeeds in making the science behind the warning seem controversial. The bottom line, it pays to step very gingerly to choose the wording of your warnings carefully and to consult your friendly neighborhood cuddly attorney.

Now, back over to you, Alisa.

>> Alisa Padon: Ted, thank you so much. Thank you to all of our panelists. So I just want to take a minute to kind of wrap up before we go into the Q&A. We know a strong legal framework to protect young people and public health is not going to happen by itself. It will take building collaboration and advocacy across local government, public health, faith-based organizations, health providers and many others to effectively advance better frameworks than we have in hand today. We encourage you to engage and seek out partners and help make change. We recognize there is still a huge amount of uncertainty around many of these issues and we are still learning what the best brass will be. We have the evidence from tobacco and alcohol, but the underlying principle is to act cautiously and recognize it is easier to loosen up in the future than to tighten up once practices in the industry are established.

In terms of next steps, we will be holding a webinar on January 18 on local taxation. We are available to work with jurisdictions an interested stakeholders in California and potentially other parts of the country on this issue. Please follow up with us if that's something you are interested in. Join our list serve on to pose questions and learn from other places. You can visit our website, the URL is on the next slide, for news, resources, other information about the project and our team.

Here you can see the contact information for all of the panelists. These slides will be posted on the Dialogue4Health website after the webinar, if you need our contact information.

And there's the link to our site, which has the model ordinance as well. And so now we will transition to the Q&A session. And we've received a ton of really fantastic questions from the audience. Both before as well as during the presentation. If you have a question and you haven't had a chance to submit yet, you can click on the Q&A icon, as this slide points out. Type in your question and we'll see it there. For the first question, I'm going to address this question to Leslie. The question was: How have local jurisdictions that have not legalized recreational marijuana use but border communities that have deal with the differences in laws at a local level?

And related to that, how can we keep neighboring areas' regulations more in sync?

>> Leslie Zellers: Well, thank you.

>> Alisa Padon: Do you have any thoughts on that?

>> Leslie Zellers: That's a great question, Alisa. This is something that communities are grappling with in other areas of public health now. For example, Lynn talked a little bit about pricing and the same question comes up in tobacco regulation. If you increase the price in a particular community, local government fears that that will drive people to another community for their purchasing.

So it is definitely something to be aware of. And the nature of local government in California is that each individual city can regulate for their city. Then the county regulates for the unincorporated areas. It may be that you want to meet with your neighboring jurisdictions within the same county and develop some sort of coordinated strategy in terms of how you are going to be approaching the issue.

Delivery is a great example. If one community allows delivery of adult use cannabis, and the other communities do not, it may be that other people are going to that community. So it will have ripple effects.

I think it's something that as we've talked about, this is a work in progress. And really this is an opportunity for local governments to experiment and see how well these regulations work, which is why we are recommending a cautious approach and how to move forward and adjust them. It is going to be an ongoing process. It is not that you adopt one ordinance and you figured it out and you're done. It will require fine-tuning over time.

>> Alisa Padon: Leslie, I'm glad you mentioned delivery. That's another question. How would a jurisdiction ban adult use delivery? It would be difficult to enforce. Lynn, you might have thoughts on this as well.

>> Leslie Zellers: Let me start. It does seem difficult to enforce because you're not going around to everyone's house and verifying they are not receiving delivery.

The easiest way to access this information is the websites for the stores. For example, there's a website called Weed Maps, essentially the Yelp for cannabis sales in the medicinal world. You can see how the retailer is advertising their services. Are they saying that they deliver? Where do they deliver to?

I think that's probably the most accessible way for a local government to figure out if a retailer is violating the delivery prohibition.

>> Alisa Padon: Great. The next question I thought I would pose to Lynn. How do or can cities advocate and pass legislation to earmark proceeds from legal marijuana sales for public health prevention and things like drug use or by teens?

>> Lynn Silver: Thank you, Alisa. That's something that is absolutely feasible in California. So the regulatory framework at the state level around marijuana did authorize cities and counties to pass local taxes. They can't do that for tobacco, for example, but they can do it for marijuana. They can't do it just through the legislative body. They have to go to the voters, for a local tax in California requires voter approval. There's a couple of different types of taxes.

So the taxes that go to the voters can be general taxes, where the money goes to the general fund. That requires 50 percent of voters to approve it. Or they can be what is called the dedicated tax, where the measure defines what the money will be used for. That requires 66 percent of the voters to do that, to be in favor of that. For the most part, the marijuana taxation proposals have been passing pretty well in California, which is not the case for other types of local taxes across the board.

So this is a good time if you want to try for general tax, to do that. You can have an advisory body that advises the local government on how to spend the money to support specific prevention goals. That's what we did, for example, with the Berkeley, Oakland, and San Francisco soda taxes. If you can pass the dedicated tax, that's the best approach. Really, there are many competing demands at the local level, but we recommend that public health and prevention advocates come to the table now because this is a rare new revenue source to the State. It can and should be used to help create healthier communities. That might be the whole use. More likely it would be part of the use. Law enforcement is asking for part of the funds. There are many other possible good uses. For example, diversion programs in criminal justice advertise so that people who are drug users go to treatment instead of going to jail. But we believe that creating a local fund that supports and funds community prevention, including but maybe not limited to substance use and marijuana use, is a fantastic way to use these funds and that we should be organized, be strong, and be aggressive in trying to capture these funds to create healthier communities.

We will be putting out the model ballot initiative which is actually just for that are purpose next month.

>> Alisa Padon: So a question related to that, Lynn, you know, I think a lot of communities are just looking at the money and their primary focus is the taxation. How can you form a counter for them to look at the wellbeing of the community? Perhaps a dedicated tax is one way. I wonder if you have thoughts on how to do that.

>> Lynn Silver: There are different kinds of jurisdictions out there. There are jurisdictions who are looking at this mainly as a golden egg, as a potential revenue source for their jurisdiction or employment for their residents. They are not really thinking about the public health issues. In those communities we need the public health community and community organizations and pastors and academics and drug treatment providers to stand up and say: Hey, slow down. This is a problem in our community. We need to do this very thoughtfully.

On the other hand, there are communities that are much more conservative about marijuana legalization and are thinking maybe we shouldn't allow this at all. Maybe we should just ban it. There are many of those in California. Then the model ordinance may offer an intermediate course where you can legalize but do so very carefully and cautiously. This may be more appealing in some ways to conservative legislators who are hesitant to proceed with marijuana legalization and are not just worried about the effects of incarceration or illegal trafficking on their communities.

So this is, as I said before, middle of the road. But I think it will take people standing up, speaking out, and organizing whether you are in government or in the community, to get these public health considerations adopted because what we are seeing is a rapidly going cannabis industry. The industry grew by over one-third in the last year, the legal cannabis industry, reaching \$10 billion a year. It has a lot of energy. It has a lot of money. It has a lot of force behind it. If you want it to happen differently in your community, it's time to stand up and organize.

Ale asks Lynn, thank you. This next question I'll put to Leslie. How does the model local ordinance impact tobacco regulations? In a complementary way? Contradictory way? How can they be strengthened so they are synergistic?

>> Leslie Zellers: Thank you, Alisa. I notice there are a lot of questions having to do with where people can consume cannabis, which is related to this topic. The basic framework to keep in mind is that part of the ballot initiative said that even though adults use over age 21 is legal, people are not allowed to smoke cannabis in places where tobacco smoking is prohibited, where you can't smoke cigarettes. In California that's a lot of places. It's most workplaces, most areas that are open to the public, businesses, and many communities often have more extensive restrictions such as prohibitions on tobacco smoking in outdoor areas such as outdoor dining, parks or within 25 feet of buildings and further, a number of communities prohibited smoke marijuana smoking in multi-occupancy buildings such as condos and apartments. That means that cannabis smoking is not allowed in any of those places.

Cannabis smoking is not allowed in any public place. You can't walk down the sidewalk and use cannabis or if your local community doesn't prohibit smoking in parks, you can't smoke there. This is an extremely challenging area. The people who asked this question are really identifying a critical problem here. Where will people be allowed to legally use cannabis? The model ordinance that we put forward does not permit on site consumption at retail locations but we do include a note, making communities aware of this tension so that they can try to consider what option will be most appropriate for them. And I think there is not a best practice yet in this area. Communities across the country are considering different things, whether it is allowing limited on site consumption and perhaps you limit that to edibles or maybe vaping but not smoking.

Another thing to consider, if you are allowing smoking, what is the impact on neighbors jurisdictions.

There are, if a local government allows cannabis consumption at a cannabis retailer, there are minimum requirements. It can't be visible from other areas, you can't allow alcohol or tobacco sales. This is something that is definitely challenging. For now the cannabis and tobacco initiatives are quite similar because of the way it was written. It will be a challenge, given that this is a legal product, where can we allow people to use it legally, especially if you don't happen to live in a single family home. If you live in an apartment or, for example, public housing.

>> Alisa Padon: Leslie, thank you. We had a lot of questions about that. It's definitely something we are thinking a bunch about.

How can local jurisdictions be proactive using this ordinance? What sort of buy-in is needed before considering recommending this ordinance? Leslie, I would like your thoughts on that.

>> Leslie Zellers: Well, I think you can think about this policy as you would any other policy. I know we have a lot of folks from local health departments who are quite familiar with approaching their elected officials with policies. All of the same strategies you would use to adopt an ordinance prohibiting smoking in certain areas apply here in terms of establishing a community coalition, determining what elements you think are important in the ordinance and beginning a process of educating elected officials. I think in the regulation of cannabis, communities have taken different approaches. Some have created commissions or committees that are comprised of sometimes a mix of government officials and community representatives, representatives from the industry in order to craft some recommendations and come up with some recommended approaches.

This is because, as you see, there are so many different ways you can regulate this issue. I think it is important for folks to become educated. As we mentioned, this is a menu. So you can decide which provisions are appropriate for your community and which are not. And then I would recommend that you use the same community organizing and education strategies that you would in any other area, but because it may take awhile to vet some of these options an interim step is to create a temporary moratorium or ban on retail sales while you give your government the time to figure out what the right regulatory approach is.

>> Alisa Padon: We had a number of questions about equity and we know this is a big issue. I'll kind of tie three of them together and Lynn, I put this question to you. First, how do you navigate a political world where City Council members are pro cannabis business and see health equity issues only in the lens of business. Making sure that minorities, people of color and women, have an opportunity to own.

A question related to that is, regarding equity involvement, I have yet to see descriptions of true diversity. How do you define that? I know it's something we grappled with for a while. Lynn, can you answer that question?

>> Lynn Silver: I wouldn't say I have the solutions, but we do -- what we are seeing in some cities, for example in Sacramento, through mobilization in the community and leadership from certain organizations, the city which is I think very interested in the economic aspects of development of the industry, has included provisions prioritizing licenses to members of the local community and for including supports to individuals in low income communities to be able to successfully create cannabis businesses.

So I think it is possible. It will probably take mobilization from the sectors of the community that are being affected and people standing up and saying we provide this language. It's technical language to cities and counties, but it is a political issue. And in some cases a

jurisdiction may adopt it without questioning the equity provisions. In many cases, it will really take people from the community speaking up and saying no, this is important to us. We have been the ones who have been arrested or spending time in jail for marijuana possession. It is important that the resources that are generated from legal marijuana stay in the community and benefit the community.

At the same time as I mentioned before, I think it is important not to glorify the marijuana industry. Yes, it is an economic opportunity, but it is an economic opportunity that is harmful to people. So just like opening a liquor store or opening a tobacco shop, it is not a great thing for the community. I hope that the taxes and the economic wealth that arise from these businesses really are put back into the community and not to stimulate the cannabis industry but for better schools, for other jobs, for other productive activities in the community that will be healthful and safe for those communities.

Also I just wanted to mention in regard to the previous question about on site consumption that it is a difficult issue that we are going to have to discover the best models, but a real guiding thought should be thinking about how we don't have the behavior become normalized but also if there is law enforcement against activities that are illegal, smoking on the street or even selling illegally, that we make sure that the new enforce. Post legalization doesn't also lead to the same kind of incarceration that the old illegality led to.

So to really encourage your communities to develop enforcement methods that might be community service or education, but that are not putting people back in jail once again because of the marijuana.

>> Alisa Padon: Great. I think that is all the time we have for questions. Thank you all. We know that many of you across the nation and in particular California are struggling with this issue. We hope this first webinar was helpful. We invite you again to join us at our next webinar on taxation on January 18. Again the project is available to be a resource to assist. Don't hesitate to reach out.

Dave?

>> Dave Clark: Thanks so much, Alisa. My thanks as well to all of our speakers today for their insights into today's topic, in addition to Alisa, Lynn, Leslie and Ted. Thanks also to everyone to submitted a question. We received very many questions and if we didn't get a chance to answer yours, we will follow up with you via email if your question requires an answer. Thank you to the Hilton Foundation and the Public Health Institute. A recording of today's presentation as well as the presentation slides will be available shortly at [Dialogue4Health.org](http://Dialogue4Health.org). Actually, I think the slides are already up there.

You will receive an email with that link. Check your inboxes for that. That email you'll receive will also include a link to a brief survey we hope you will take. We would like to have your thoughts concerning today's web forum and what topics you would be interested in for future Dialogue4Health forums. We do read all of your comments and feedback. Be sure to take a couple of moments to complete that survey.

Thanks so much for being with us today. That concludes today's Dialogue4Health web forum. Have a great day.

(The webinar concluded at 4:30 p.m. EST.)

(CART captioner signing off.)