

Public Health Institute
Mobilizing Local Cannabis Tax Revenue in the COVID-19 Era
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>> MURLEAN TUCKER: Hello. And welcome to "Mobilizing Local Cannabis Tax Revenue in the COVID-19 Era." My name is Murlean Tucker, and I'm running this Dialogue4Health Web Forum with my colleagues Starr Tiffany. Thank you for our sponsor the Conrad Hilton Foundation, Getting it Right from the Start, and the tobacco-related disease research program.

Audio for the Web Forum is through your computer speakers or headphones. If you click the telephone

>> ALISA PADON: Thank you so much, Murlean. I'd like to say thank you again to our sponsors. I'd like to introduce our presenters today. Dr. Lynn Silver is pediatrician, public health advocate. She's a director of the Getting it Right from the Start project, senior adviser at the Public Health Institute and clinical professor at the University of California San Francisco. Michael Colantuono is perhaps California's leading expert on the law of local government revenues. He has specialized in municipal law since 1989 after graduating magna cum laude from Harvard University and receiving his degree from the University of California at Berkeley School of Law in 1988. And Jim Keddy is the executive director of Youth Forward and consultant to social change organization. He has been a leading voice in policy discussions regarding racial and health equity in the implementation of Proposition 64. To kick it off, I would like to invite Dr. Lynn Silver to talk about where we stand on local marijuana legalization and local taxation in California and principles for public health-oriented taxation. Lynn...

>> LYNN SILVER: Thank you, Alisa. It's a pleasure to be here with you all. I think you'll find the poll you just did is going to correspond pretty well to our data. So let me move forward here and I'm going to be speaking about mobilizing cannabis tax revenues in this unusual and challenging type of the COVID-19 epidemic. So I'm going to give you a spoiler summary. At the end of this talk, I'm going to tell you about why we should tax cannabis, why we should tax it enough, and to borrow from Michael Pollan in "Food" not too much, and why we need to use it wisely and the other speakers will also be addressing these issues. This is the getting it right project. It is to collaboratively develop and test evidence-based models of marijuana policy with the goals of reducing harm, reducing problem use and supporting greater social equity. And those are sort of the guiding principles behind the work that we'll present today.

So first of all, I'm going to talk a little bit about the general framework around marijuana policy, because that needs to inform our discussion of tax and fiscal policy. What were the factors that drove legalization in the first place? The most pertinent ones were there was profound racism in the application of existing drug policy. Second, we were seeing mass incarceration across the United

States, particularly of people of color as a result of the war on drugs. Third, we were seeing violence related to drug trafficking in the United States and California and globally. And lastly, prohibition as a social policy was not working well in a large percentage of our population. It was using products despite prohibition. Of course, an additional driving force behind legalization were commercial interests, with interest in making money from this area.

But was legalization -- is legalization all a wonderful thing? Or should we also be worried? Basically, when you talk about marijuana specifically, there is evidence of benefit, of medical benefits for some applications.

Certain rare forms of epilepsy, certain forms of chronic pain, and undoubtedly additional use and applications will be emerging in the coming years as the evidence increases. But the National Academy of Sciences and others have concluded there is substantial evidence of harm with use. These include low birth weights when it's used during pregnancy. Less known, an increase in schizophrenia and psychosis, which is a problem of grave concern particularly when people start using young and frequently. Increased motor vehicle crashes. Respiratory illness, chronic and what we saw last year with vaping epidemic and severe lung disease, although compelling in the face of COVID. As well as problem use, or basically addiction, which is particularly frequent when people start using young and use frequently or use high potency products. Additional areas that emerging as problems are cognitive, academic and social effects, which the surgeon general called attention to in his advisory last year. For example, lower high school graduation rates with frequent use. Accidental injection and overdose, cardiovascular disease, and other areas where the evidence is consolidating but not quite as mature.

So these are reasons why we may -- even if you support legalization, we believe it's important to be cautious and to not promote demand but rather to have policies that reduce demand for these products while allowing their legal sale.

So in 2016, the voters in California passed Proposition 64 which legalized adult use 20 years after medical use was legalized, and in the following two years, really California state and local governments was focused on creating a legal system for managing this new line of business, essentially, in the state. But very little attention was paid to creating the needed public health protections. We believe that it is time to really build the guard rails that can protect youth and protect public health in the context of legalized sales.

And why are we so concerned? Just to give a couple of important data points, while initially in some of the states that have legalized, use was not going up as fast. In the last three years we have seen very dramatic increases in use nationally. Youth, marijuana use is now, after decades of declining, is now back at the highest levels in 35 years with 43% of young adults, 19-22 using in the last 12 months, and a quarter using in the last month. And even greater concern is the increase in daily use, which is where people are really getting into trouble, which is now 1 in 10, 19-20-year-olds who aren't in college and 1 in 20 college students. You can see the lines going up, up and away in recent years. And this of very great concern.

Particularly of concern, just as Joule skyrocketed, vaping of nicotine, vaping of marijuana and nicotine doubled for U.S. college students in a single year between 2017 and 2018 and continued to skyrocket in 2019. These are very unheard of rates of increase.

We saw as a consequence last year the vaping epidemic with 2800 young people hospitalized, at least 68 deaths, most of them very young. This, of course, could be you or our children.

The market that we are talking about looks very little like the market of 20 to 30 years ago. We now have a market that is a panoply of manufactured products, including edibles, cannabis orange soda, very high potency concentrates in vaping fluids and fluids and butter and wax, but the market that people thought they were legalizing four years ago is not the market that they, in fact, have gotten but rather a very highly manufactured market similar to the transformation of tobacco from a plant to the highly manufactured industrialized cigarette industry of the 20th Century.

And what we're seeing is the cannabis industry adopting three dangerous areas barred from big tobacco's playbook. One is manipulation of potency of the products, which greatly increases the risk of addiction and of psychosis. Two, creating flavored and other diverse products, gummies, cannabis orange soda, strawberry banana pre-rolls and Girl Scout cookie vapes, aimed at attracting youth. And third is shameless and misleading marketing products.

These trends are very worrisome for public health.

The example that really perhaps concerns me the most is the increase in psychosis and schizophrenia associated with the use of these products. And I apologize I'm talking some medicine before we get on to taxes, but this is the basis for some of the tax issues that I'll discuss. But using cannabis daily increased the risk of a psychotic disorder three-fold in this very extensive study. Using what they called high potency marijuana daily increased the risk of a psychotic disorder five-fold. And they defined high potency as just greater than 10% THC or the active ingredient. When they looked across populations in 11 large cities, they concluded that at least 12% of the first people arriving in the emergency room psychotic having a break with reality was likely due to high potency cannabis and that percentage was as high as 50% of new onset psychoses in New Amsterdam. So this is very worrisome. Pretty much the entire California market has migrated to potencies greater than the 10% risk level. Which means we're allowing manufacturer products that will create a substantial added burden of serious mental illness in our population, particularly in youth. Frankly, we're not doing so well in that department. I think all of you who live pretty much anywhere in the United States know that homelessness and a series of other social problems are driven by our societal weaknesses and caring for the severely mentally ill. And that anything that contributes to increasing the number of people living with severe mental illness and psychotic illness can be a serious issue.

So what are some specific overall policy recommendations for cannabis? And then let's talk about how the issues around taxation fit in.

Just summarizing, I think we wanted to decriminalize and expunge criminal records so that people did not have to spend a life with a criminal record for carrying a joint when they were 16 or 18. Making sure that enforcement of this new legal order does not create a new wave of incarceration to protect investors. Protecting children and youth through policies that reduce promotion of these products to that group. Preserving local control, which was a characteristic of Prop 64 that has been weakened. Making state or federal law a floor but not a ceiling. Where commerce is allowed, to collect and invest tax revenues to reduce youth use, address health disparities or mitigate the effect of the war on drugs. And that is what the most of the rest of this talk will be about. Reduce the risk of addiction and other negative health effects, product, retail, marketing, and fiscal, yes, tax regulation, we can reduce the risk of addiction through tax policy.

Discourage big outside investors and growth of a powerful industry that looks like the tobacco industry by supporting social equity considerations.

And moderate choice and the re-normalization of smoking that is occurring.

So, I'm going to present some data that we have collected over the past year and share that with you and then talk about what that might look like in terms of policy approaches for taxation. So many of you may have seen this billboard. To those who are not from California, some of our data will be about California, but the general principles I'm going to discuss here are often applicable in other states or in countries.

So this a Weedmaps ad that is up in many parts of California saying 77% of California, cities and counties, still ban its sale.

Is that true?

Study of the laws of all 539 California cities and counties, one year after doors opened on the centuries that was published on JAMA network open on June 19th and available on our website, we looked at legal databases, municipal websites, contacted city clerks, etc., and studied over 150 different variables. We'll be doing a second webinar to discuss other aspects of cannabis regulation and model laws in July, but today's is focused on taxation. We were able to obtain information on all but 5 of these jurisdictions.

The first and most basic finding is that almost half, 49% of California's jurisdictions with 57% of residents had legalized some form of retail cannabis commerce by January of last year.

Second, slightly over half allowed some form of cannabis commercial activity, whether cultivation, manufacturing, testing or retail. So a little bit higher than the number that allowed retail activity.

38% allowed recreational sales or adult use. About a quarter storefront dispensaries and 15% only allowed delivery businesses for adult use. About half allow medical use, 48%, split between dispensaries and delivery model. 51% of cities and counties did prohibit legal cannabis businesses in their jurisdiction, but in December of 2018, the state adopted a regulatory policy that overrode the guarantee of local control in Proposition 64 and said that delivery licensee anywhere in the state could deliver anywhere. That is in the courts and the outcome is still uncertain.

31% of jurisdictions allowed cultivation. And 33% allowed manufacturing. So going to taxation, what we saw was that of the 289 jurisdictions that allowed some form of cannabis commerce, whether cultivation, manufacturing or retail, the majority of them, 53%, did not tax as of January of last year. Cities and counties, which also banned commerce but are forced to receive deliveries and could tax them also did not tax. So we believe that this is a major missed opportunity for revenue for local government, and one that should be addressed. In particular-though is just an example of the largest delivery business, Eaze, which is advertising aggressively across the state, essentially saying that having cannabis delivered will bring you more happiness than dogs and babies combined. This is the kind of aggressive marketing that I was talking about. Coca-Cola uses it too, and frankly nor Coke nor cannabis will solve your happiness problems.

Those who taxed, most taxed at low rates. And this is probably the wonkiest slide that we'll have, but I'm going to talk about taxes on retail, adult use cannabis, cultivation and manufacturing. Retail adult use for the most part is called a gross receipts tax, which Michael will explain much more competently than I will. In 2019, the mean was 6% across those jurisdictions with taxed. And that is the rate that is currently being charged to businesses across sales. And the mean legal max, which is the maximum established in the initiative to which the city council or board of supervisors can raise the tax without going back to the voters was about 10% ranging from 2 to 20. On cultivation, the mean was 4.6 and the maximum was 10 if taxed by gross receipts. And if taxed by square footage, 8 and \$15 respectively.

In manufacturing, similarly the mean was 4%, ranging from 1 to 15, and the maximum was 8%. So we're talking about relatively modest taxes compared, for example, to cigarette taxes. And the currently charged rate is running about half of the maximum allowed rate at present.

Another tremendous concern which Jim Keddy will address in greater depth, is that the taxes didn't go to youth or prevention or stopping substance abuse or other social uses. 41% of jurisdictions passed general taxes. Seven passed general tax with advisory body. Only three passed a special tax we're marking, and even then much went to law enforcement and fire. Little revenue with the exception of a couple of jurisdictions was captured for reinvestment in our most vulnerable communities, which I think is what most of us would hope would happen with cannabis tax revenues. Taxing based on potency has been a widely made recommendation, including by the legislative analyst office of California and others. Only one jurisdiction, Cathedral City, taxed based on potency as recommended and they're taxed on products like Shatter is 8 times higher than their tax on less potent products, for example. So they tax more on beverages. They tax more on high THC products, which was great. I spoke with them recently and apparently that's working fine.

So what should we do? How can we get the benefits of ending incarceration without creating a new tobacco industry?

And one thing that I believe we should be doing is incorporating the best lessons from tobacco control. And one of these is the use of tobacco taxes, which have been proven time and again to reduce youth use of tobacco. They generate revenues that can be used for tobacco control or other social needs. They are globally acknowledged as one of the most successful tobacco control policies and are part of the framework convention on tobacco control globally. There is an illicit market that escapes taxation.

Michael will speak next to develop model local ordinances for California on approaches to taxing. There is a general tax, one that goes to the general fund and a special tax model. Both of them have language that would help jurisdictions guide these funds towards health and equity uses.

Only in the special tax cases that legally mandated.

We would recommend, if you are not currently taxing in your jurisdiction, consider putting a tax on the ballot this November. Michael will talk about how to do that. If you propose a tax, tax enough. Our model calls for ballot measure that provides at least 15% as the maximum for gross receipts. You can go higher. But allows councils or boards to start low and gradually increase.

California has a 15% retail tax, and nationally state tax between 10 and 37%.

Over time, as the illicit market shrinks, taxes can rise to discourage use to a greater extent.

If you propose a tax, we recommend taxing potency as well. Our model proposes additional 1% tax for each percent of THC. Above 17% in flower. And on concentrate products with more than 50% THC. We also recommend additional tax of 20% on sweetened cannabis beverages like cannabis orange soda modeled after alcopops which are well known to attract youth. This tax could apply to cultivation, manufacturing or retail.

If you tax, we recommend capturing revenue for social needs, not more policing. That can be done through a dedicated tax, but in California requires two-thirds of voters. Or it can also be done as we

have done with soda taxes in the Bay Area through a general tax but with a structured advisory group with a specific mission. We recommend, for example, that taxes from community-based prevention of leading causes of illness and injury substance abuse.

Part of taxes also be invested in prevent drug-related incarceration, with reentry programs diversion programs and other community-based programs to reduce and mitigate the effect of the war on drugs. But there are other good social uses that can also be adopted. Use the revenue to meet social needs as well exacerbated by the COVID pandemic and the recession.

One approach that could be taken with a dedicated tax or even with a general tax with advisory structure is to say that the first two years of the tax will go to filling -- to help filling the hole and needs created by the pandemic, which are tremendously serious. And then revert to other specific priority uses such as health and youth prevention or diversion programs after that two-year window of COVID relief. But this is one source as municipalities are in a tremendous fiscal crisis facing furloughs and layoffs, cuts and essential services that should be considered.

There are a couple of arguments that have been raised against local taxes, one that taxing will slow the transition to the legal market, and, two, that prices are too high in the legal market.

Some of the responses are the following. In California we produce over 13 million pounds. The vast majority is illegally exported out of state. Not taxing will not make the illicit market go away. Excess production is probably the main driver of prices and the illicit market. And excess production post-legalization has driven prices down in most states, facilitating youth access. In general, letting prices fall too low facilitates youth access and harm. It would be tremendously helpful to be able to access the track and trace data in California to be able to understand the prices and the sales, but that is being kept secret from the public and considered confidential, unlike the situation in other states.

So in conclusion, we don't know what the optimal tax rates are yet. We still are learning. We are in a learning process. So you want to build in flexibility so they can be adjusted over time. We do need more research and evaluation. But examples of innovative local regulation incorporating lessons from tobacco control and other areas are emerging. The current practice, what we're seeing in California, is a missed opportunity for generating revenue in a crisis, protecting youth and addressing social needs. The cannabis industry is far outstripping public health and community advocates in their agility and engagement and setting the rules. They are showing up at city council, talking to council members, pressuring for change. Our advocates and health workers need to organize and help set the rules based on public health protecting youth instead. We call upon all of you to come to the table. We should be taxing cannabis. We should be taxes enough and not too much and using it wisely.

Thank you. You can join the listserv at our website, www.GettingItRightFromTheStart or contact our project for technical assistance

>> MICHAEL COLANTUONO: Good afternoon. I'm happy -- I guess it's still morning in California, but afternoon in the rest of the country. I'm happy to present this morning. I should make you all aware that I'm only licensed to practice law in California and the therefore the work that I'm presenting here speaks to California law. But some of the principles are generalizable to other states. So if you want to use this work, you probably need to consult a lawyer in your jurisdiction.

So in California, all taxes require voter approval. And taxes are imposed typically by an ordinance, a particular kind of local law. But other kinds of local legislation can be accomplished by a resolution which shows a different form of local law. And in California the way you place an ordinance on the ballot is with a resolution. You have a resolution placing a matter before the voters. After the election

you have resolution of the city council or board of supervisors certifying the election result, but you don't need the legislative body, the city council or board of supervisors to approve the ordinance. And that can be helpful in more conservative places where folks don't want to be associated with taxes or they're happy to let the voters have their say.

So the resolution you can obtain from the Public Health Institute, which places the question on the ballot, also states the ballot question. In California that's 75 words or less. Actually they're printed on the ballot and should be the last thing voters read before they vote yes or no. There are some laws in California that regulate the form of that question. I think a little more freedom in other parts of the country. And political consultants and pollsters tell you that how you frame the question is really important and that drives how voters understand what you're trying to do.

It's helpful in California to state that such an ordinance is intended for revenue and not regulation. Local governments in California get their powers to tax from a different source than they get the power to regulate and it's helpful to be clear which voice you're speaking with so to speak.

The model ordinance has a set of definition and a lot of procedural detail about who pays what to whom and how we enforce it. The definitions are fairly important and drawn from California law. Your mileage may vary.

So what kind of tax? Generally speaking governments can tax property, either real property or personal property, or they can tax people, like a head tax or a poll tax. Or they can tax particular transactions. So when you buy a house and record a deed, there's often a tax on recording the deed.

In California, as in many states, we have a sales tax, which is combined with a use tax. We just collect at a cash register when any transaction occurs. Our sales tax is called the Bradley Burns Uniform and Local State Sales and use tax law. It's preemptive. It's the only sales tax committed. And that tax is collected for local government by the California department of tax and administration.

That tax already applies to retail sales of cannabis and cannabis products. If you show up at a dispensary in California and produce a medical ID card indicating that you have a physician who has recommended that you use cannabis products for a health condition you are not subject to sales tax. And that exemption from both the state and federal sales taxes. So even though we have an ample adult use market in California, the medical ID cards are still popular for people looking to shave some cost off the product.

Because we want local government to tax cannabis activity, and that means they're going to be taxing transactions, but they can't tax sales, per se, we tend to see a gross receipt business tax or a canopy tax on marijuana cultivation as the taxes which are most practical and effective. That's why the model ordinance takes that approach. It's a percentage of the gross receipts to a business involved in cannabis commerce, whether growing, transporting, distributing, manufacturing, selling, testing, and we tend to see a dollar per square foot of canopy. Because this functions much like a business license tax, it's useful for local governments to make sure that the cannabis business license tax is consistent with their regular business license tax so that it can be enforced by the same people in the same way and it may be useful even to embed the cannabis tax in your business license tax ordinance.

So here are a couple of the definitions that are most important. The definition of cannabis business is quite broad. Any kind of a person doing any kind of commerce associated with cannabis, whether or not for profit. Everybody. And then high potency cannabis is defined in this ordinance in order to drive some public health objective as any product containing more than 17% THC, excluding edibles that

have doses of 10 milligrams or less of THC so those definitions are important and they sort of drive the tax.

So, with tax model ordinance that the Public Health Institute has prepared and is available on their website, it has some taxing options. The first is to tax only adult use commercial cannabis, medical marijuana market tax and up to 15% of gross receipts or up to 10% of square foot of cultivation area.

The reason we structure the tax with a range to a ceiling because in California taxes require voter approval. So you want voters to give you a range of authority so you can adjust within that range as necessary to accomplish your objectives.

The second option is to tax, again, adult use commercial cannabis only leaving medical marijuana aside, up to 15% of gross receipt and up to 1% of gross receipt in addition per 1% of THC and cannabis products over 17% THC. So that means something that is 18% cannabis would have the 15% base gross receipts on all the dispensary business and additional 1% of gross receipt from the 18% product. But if you think about products like Wax and Shatter, which are very high, up in the 90s, I believe, you're going to see 90 minus 17 is 63% or 15%, 78% tax. We're nearly doubling the price of the product in tax in order to discourage sale and use and make sure the people who are buying it are not doing it casually. Because people can get into serious trouble if they take these very potent products that they don't have experience with. And then this tax as option to go to 10 feet per square foot of cultivation.

And here is another calculation of a product with 70% THC content producing a 53% tax on top of the 15% underlying tax.

So what are the features of the ordinance? One is there is a tax ceiling. Again, the range of authority set rates up to the ceiling. We want to raise the ceiling. In California, you have to go out to the voters again.

Creating flexibility in that range. And also authorizing the city council or the board of supervisors to do any amendment to the ordinance they want that doesn't constitute a tax increase. That's the broadest authority that the California constitution allows voters to give local governments and that's why we recommend it. It includes cultivation tax. There's a basic distinction in California law and I think elsewhere too, between taxes which produce general revenue, which goes in the general fund and can be spent for any lawful purpose of the agency. And taxes which produce money that can only be spent on one thing. The slide refers to that as a dedicated tax. California law refers to it as a special tax. And under California law, special taxes require two-thirds voter approval. So on the one hand they're attracted to advocates because they can control how the money is spent. They're not so attracted from the perspective that it's harder to get them passed.

No matter how you regulate marijuana and how you tax it, there should be a registration feature of your ordinance. Having the people who are involved in this business tell you where they're doing business, what business they're doing and who they are and how you can contact them. That's a common feature of the business license tax ordinance. You want to provide for the administration of the tax by city or county officials who are in positions to do it, who are to ensure constitutionality in California or whatever state you're working in, and you want to set an effective date, which should be a month or so after the election or a month or so after the law in your state makes the measure effective, to give your staff and the regulated community an opportunity to get up and go it.

So, again, ceiling on the floor, you may want to start below the floor and see how your balance between cultivating this market and making money off of it and not allowing it to be irresponsible are all achieved.

Again, we want to allow increases without going back to the voters.

On the cultivation tax you want to tax by the square foot rather than the amount of product produced. Because people can lie about how much product is produced, and they can abscond with it. You could choose to have this as a credit against gross receipts if you want to respond to the industry complaint that you're taxing on my crop before I cash it in and I may never cash it in if I have a bad harvest.

One of the problems that we have experienced in Humboldt County is that the grower is not the landowner. The grower promises to pay the tax at the end of the season but disappears, and there's nobody to tax. So Humboldt County requires the landowner to allow the tax to be placed on the property tax bill and be secured by the value of the land, leaving the landowner to work out with the grower how to get paid. They're more likely to be able to prevent the grower from disappearing in the dark of the night with their crop. It's your land use regulatory ordinance which is going to give you the power to do that. We also can get voter approval to do that with a tax.

In California special taxes require two-third voter approval. That's attainable for cannabis taxes but it's still a steep hill to climb.

In California, alternatives include a general tax where you have political promise from the city council or board of supervisors to spend in a political way. Or in California you can put general tax on the ballot and advisory measure on the ballot voters advise the city council or board of supervisors how they want it spent. And that advisory measure can confuse some voters because whenever you're asking the same question in two ways, some voters have trouble understanding why you're asking twice. And it's not legally binding, but it can be pretty politically potent. The voters told you they wanted money spent for public health objectives and not police and fire and that should be effective.

Agencies have separate ordinances to regulate cannabis commercial activity, separate ordinance to tax it, commonly in standalone chapter or business license tax. One or both ordinances should provide registration so you have information you need to police and protect and regulate this activity.

Often best to treat this tax as a special case of the business license tax and use the existing administrative structures to collect it. As I said before, consider land security for grow taxes, taxes on cultivation.

[music playing in background]

[music stops]

California charter cities can impose tax. Those approved charters and those governed under the general laws passed by state legislation. So authority in California to impose any tax that does not violate other constitutional provisions. And then a statute allows general law cities to do whatever charter cities can.

Counties have statutory authority to tax business activity, business license taxes, and that's why the business license tax is a good approach for both cities and counties. As I said, sales taxes are preempted in California and Proposition 13, even non-Californians have heard of, limits taxes on real property to 1% of assessed value. So we can't use those to get at cannabis commerce.

We also have a measure in California called the GAM limit. GAM was one of the two sponsors of Prop 13 back in 1978. So California's constitution Article 13 (b) limits what a government agency can spend from what is called proceeds of taxation. And your GAM is basically average of the tax proceeds you received in three years ending in 1978. I was intended to starve the beast, so to speak. Prevent government from growing. Because Prop 13 had the effective greatly reducing property tax revenue to local government in California, most agencies are still two generations later well below their Gann limit. But some agencies, if you've added taxes, taken on service that you didn't have back in the '70s, maybe took over a fire department for a water district, you could be at your cap. If you hit the cap you have to lower taxes or refund the money or both, but voters can override the cap for four years at a time. So the city of San Marino, wealthy suburb of Los Angeles has to renew their Gann limit to continue to fund their police and fire departments every four years. Not likely an issue in the current economy, but if you have a particularly well-funded government you may need to include Gann limit in your tax ordinance to put you in a position to spend the money for the first four years.

What effective date do you want to use for your tax? In California local government ballot measures are affected ten days after the vote is certified. That has to happen 30 days after election. So about 40 days after election day or mid-December of 2020, November 3rd election, the ordinances could be effected. It's best to make them effective at the beginning of the month and maybe beginning of a calendar or fiscal year to allow time to set up the tax administration and get the word out to the regulative community and figure out how it's all going to work.

So what are advantages of the model that you might not notice as lay leader? Tax payment does not authorize commercial cannabis activity. So you can adopt a tax before you adopt the ordinances allowing the activity, and that way you get money from day one.

So Cape Grass Valley, where I'm a city attorney has measure on ballot to tax commerce but zoning ordinance to allow it as matter of land use law hasn't adopted yet but should be in January when we expect tax to take effect. Another thing helpful is it could be a tool for enforcing your ban on cannabis commerce if you have one. It may be hard to prove the commercial activity on any given day. You have to send a cover cop in to make an illegal buy. But show they're making money you can prosecute for not paying taxes. As a way to make you remember, they never did prosecute Al Capone for killing anybody. He went to jail for tax evasion. What are the disadvantages of this model? It has the administrative burden of the business license tax. And it can be -- you have to find the people, apply and audit them. It can be challenging to an industry that is not accustomed to the norms of lawful commerce. People who do a grove do disappear in the middle of the night. They sometimes divide the profit among them by dividing up the dough rather than accounting for their cash. A second point is grow taxes are criticized by growers because they don't account to the risk of crop failure. That risk can be positive planning too. Another point is that the industry and their customers expect to pay taxes at the cash register. So they expect them to function like a sales tax. And that's okay. It can be a business license tax legally but if you pay the taxpayer, can tax the tax through and show it on receipts to their customers, it will look and feel like a sales tax to everybody but the lawyer, and it's only the lawyer who really has to care that it's not.

So timing. In California you can place a measure on the ballot up to the 88th day before the election. So for November 3rd election, that's August 7. Your city clerk or your county registrar of voters will not appreciate you if you ask them to deal with a measure called at the very last minute. So about four months' notice will make them breathe a bit easier and you should let them know it's coming.

As I mentioned earlier, you can adopt a measure placing it before the voters on a single resolution immediately effective, doesn't have to be an ordinance. In California ordinances have to be twice and

they can't take on less than 30 days' notice. That's more cumbersome and not necessary if you're just asking voters to do it. Some states, where Pennsylvania where I grew up and you have to go to a state outlet and buy it there. Some public health advocates have proposed a similar monopoly on cannabis so they can ensure that the cannabis retailing activity is responsible and takes into account public health policy. So they're not selling cannapops and Wax and Shatter.

One idea was grant one license to a non-profit and have any of the proceeds from the non-profit used to accomplish public health objectives. That is challenging in California because we have a state constitutional provision saying you can't put a business tax on an non-profit.

But you can give them a concession to be the only seller of cannabis products, give them a franchise, and those documents typically provide for a flow of revenue back to government. So that approach may work in California.

So Grass Valley, just as an example, has a tax on the fall ballot. It uses the Public Health Institute model ordinance, which is 1% of gross receipts generally. 20% additional, so it's -- sorry, it's 15% gross receipts tax with additional 20% on cannapops and additional 1% of products above 17% THC. The tax rate otherwise matching other cities, neighboring city already had a retailer and set the standards for our market, so that's what the council wanted to do. And that has a canopy tax and gross receipt tax on retail, manufacturing and tests.

Grass Valley will soon develop a regulatory ordinance. The license probably only one dispensary, probably not licensed outdoor grows, because small and fairly densely populated city. And probably will allow manufacturing distribution and the like. And since my firm also serves adds city attorney of Ojai, a brighter blue city politically than Grass Valley, which is a little purple down in Ventura County, we'll use the Ojai model as a place to get started.

And now it's time for me to give the mic away. I give it to Jim, I imagine, right?

Thank you for the introduction and thanks, everyone, for joining today. I'm going to be speaking to the cannabis policy from the context of racial justice and from the perspective of community organizing. I come out of the community organizing field and currently am working with grassroots groups and racial justice groups around the state to address several issues in cannabis policy. And one of the ones that we have been most focused on has to do with cannabis taxation.

We recently released a report along with our great colleagues, getting it right from the start in the Public Health Institute, in which we looked at what is happening with California cannabis tax revenues. And as you'll see the title, "A Windfall for Law Enforcement Or an Opportunity for Healing Communities"?

I'm going to share highlights from the report as well as give some storytelling moments around what we are seeing around advocacy in these issues.

So in our work on cannabis policy we feel it's super important to start from the context of the racialized history of cannabis policy, not only in California but in this country there is tremendous amount of documentation on these -- this issue from the ACLU. And this slide quotes from a new study that just came out two weeks ago. The study is called "When the Smoke Clears: Racial Disparities in Marijuana Arrests." A study from the UC Davis center for regional change and public health advocates, partners who work closely with. And they looked at what is going on at the county level from 2000 to 2016, as you see in the examples there. Black people in California have been over-criminalized to a great extent as a result of cannabis policy and have been targeted for arrests at a much higher level than other communities, and the research shows that, you know, different racial ethnic communities

use cannabis at roughly the same rates. So it's clear from this data and as I mentioned before, so much other data, that racism has been at the center of cannabis policy for decades. Both in California and across the country some of you are most likely aware of the book "The New Jim Crow." She raises this issue and shows how cannabis policy really played a huge role in fueling mass incarceration around the country. This is a data point here on growth in the criminal justice system as you see from 1982 to 2015. Our population in California grew by about 57% by the criminal justice system grew by 245%.

This is a chart that shows a graph form, massive growth we've seen in criminal justice spending over many years, again with drug policy playing a big role in this growth and expansion. So in the report we looked at 28 cities that have had cannabis taxes in place and collecting revenue since 2018. So it's a subset. The cities estimated they would be bringing in \$85 million in the 2019-2020 fiscal year collectively. And generally across the board what we see is that cities are dedicating this new revenue to the general fund. So as Michael described it, they're pursuing a general tax that can be passed on a 50% plus one vote and dollars flow to the general fund where it's at the discretion of the city council or county board of supervisors.

And those of us who follow city budgets are very much aware that police spending makes up most of the general fund, the biggest percentage of the general fund of the cities we studied on average, it was 39%. Certainly much higher in many cities. And in addition many local governments use cannabis revenues to create special law enforcement units focused on cannabis. So here in the city of Sacramento where I live, we have had a cannabis tax in place for many years, actually pre-dating the passage of Proposition 64. Our city brings in about \$12 million a year annually in revenue from local cannabis tax, and the first decision our city made once the tax was approved by voters was to create a 15-person new police unit focused on cracking down on the underground market here in the city.

As we followed the budgets of these 28 cities, what we saw was a really significant growth in spending on law enforcement and 19% growth over a three-year period.

This is an example from the city of Greenfield, a small city in the Salinas Valley, has about 17,000 people, approved cannabis tax in November of 2016. As you can see here, with growth in the general fund they have been able to about double the number of police staff they have in their city.

Let me back up here again. One thing I wanted to mention, just in terms of the larger political dynamics we've been seeing. The cannabis industry is becoming more and more politically influential. They have associations and lobby at the state capitol. They're making political contributions. And the cannabis industry, as I think many of you know, has been calling for a crackdown on the illegal market. So what we're seeing is an alliance between the cannabis industry and law enforcement, where law enforcement is making an argument that it needs additional resources to deal with legal cannabis. And then the cannabis industry, of course, is calling for the crackdown. And those two forces together have been really a driving force and expansion of law enforcement spending. But it's never taken into account the fact that for so many decades police spent a huge amount of time arresting people and investigating folks for marijuana offenses and for actions which are now legal. We never had a conversation in California about, you know, now that that is no longer a function of police for the most part, what happened to all that time? You know, with wouldn't it have made sense to, in fact, reduce law enforcement spending now that we're not arresting folks for minor drug offenses? But what we see instead is just this very consistent growth in law enforcement.

There are a small number of examples we lift up in the report of where local governments are spending cannabis tax revenues on something other than law enforcement or general city activities. In Monterey County in 2019-20 they spent \$1 million of cannabis revenue on early childhood education and

intervention programs, a homeless shelter in the Whole Person Care program, and in Santa Cruz they're investing \$350,000 in an early childhood program. And many of the parts of the state where we see cannabis revenue going towards kids and towards these kinds of purposes, it's due to the first five. First five has been active and engaging local governments in many parts of the state around this concern and has had some success in steering dollars towards children who need services and other programs.

So in terms of where voters are at, 2018 we did a statewide survey and partnership with the Children's Defense Fund, and what we found was that most voters, 66% are supportive of cannabis revenues going towards youth services. 27% were supportive of it going to expand police services. And then this is an error on the slide. It should say 7% didn't answer the question. So we are seeing strong support for these dollars to go towards youth services and health and prevention. You know, in the climate we're in today with the Black Lives Matter movement, the George Floyd protests, I imagine there may be even greater support to see cannabis revenue go towards youth and prevention and not go to law enforcement. Again, this survey was done in 2018 and before the current moment that we're in where we're having a real conversation about reducing police budgets and making a greater investment in prevention.

So our policy recommendations in the report, which very much echo what Lynn has said, I'm not listing all of them, just a few highlights to invest cannabis revenues in black and brown communities most impacted by the war on drugs. Again, we feel it's essential that we look at this product and this policy area from the context of racialized history that was described earlier. Invest in cannabis revenues in the protection of youth and vulnerable populations and increase economic opportunities for black and brown neighborhoods.

And for activists, for folks who want to do something about this -- again, as I mentioned earlier, I relate to a lot of grassroots organizing in groups around the state, and what I'm encouraging everyone to do is try to look -- the first research that is happening with your city or county, if they have a tax, they're spending the tax, sharing that, raising awareness of it. In my experience most people are not tracking this issue at the local level, and I think many folks would be concerned to know that if there is a tax in place that it's flowing to the general fund and to law enforcement. In my view, very few people likely voted for Prop 64 with the notion that it would lead to growth and law enforcement.

Secondly, really critical to educate local officials on the racialized history of the war on drugs. The report I mentioned earlier, from public health advocates does a terrific job of that and can be used for that purpose. And we are seeing at the state level, the state is capturing cannabis tax revenue and created a few grant programs that does steer that new revenue to community-based services and black and brown communities and those state programs can be lifted up as an example for local officials how to spend the dollars. And if you're interested in those state grant programs, please feel free to contact me following the webinar.

And we suggest bringing forward proposals to your local officials on how to tax cannabis businesses and invest those revenues in communities based on your local needs, again, with the racial equity perspective. And in the absence of action on the part of local officials, we recommend considering using ballot measures to put these options in front of voters directly on how to capture and spend the dollars.

And that's my contact information. I appreciate everyone joining us this morning. And I am looking forward to the question and answer period. Thank you very much.

>> ALISA PADON: Jim, thank you so much. At this point we would love to hear from our attendees. I'd like to say thank you as well to all of our panelists.

As a reminder to submit a question, look to the bottom of your screen for the Q&A panel and type your question into the Q&A box. Be sure that all panelists is selected so we all get to see what your question is, and then hit enter. So we're going to start with some of the questions that we received earlier. First, what are panelists' thoughts on specific nuances and taxation structures to minimize unintended consequence progressive nature to have taxation, taxing consumption versus production, accountability, transparency, and links to disbanding, not just defunding police and prisons. There's a lot to unpack there. I thought I would give each panelist a minute to respond if they have a response, starting with Lynn.

>> LYNN SILVER: Thank you for that question. I think we tried to address many of those questions in the webinar. Really first it's about we do recommend taxing. A regressive tax. I think a lot of the issue depends on how that tax is levied, how it's structured. And how it's used. So if you take tax revenue and put it back into the community that is paying it in ways that benefit the community and possibly affects their social and economic welfare, then that mitigates the fact that at the end of the day it is community members who are paying the tax. If that tax revenue is going back into law enforcement, for example, then that may not have the same positive effects for the community. So I think a lot of it can reflect how tax revenues are being used. And, again, as I mentioned, I think having access to data such as the California Track and Trace system is going to be really essential for us to have accountability, to have transparency, and to understand how policies, whether tax policies or other policies are affecting the market, are affecting consumers, are affecting the characteristics of the product and what their risks might be.

>> ALISA PADON: Michael or Jim, do you have anything to add?

>> MICHAEL COLANTUONO: Michael does not.

>> JIM KEDDY: I guess one comment I would add is a few months ago, actually I think in January or February, the legislative analyst's office came out with their recommendations on cannabis taxation and they were given that role by Prop 64, and they did recommend taxing THC, high THC products at a higher level. They recommended other changes to the tax, but they did recommend that the changes to taxation should be revenue-neutral, that the state should continue to collect the same amount of revenue as projected going forward. And they didn't buy into the argument about the need to lower cannabis taxes. That is a common argument among policymakers now. You know, the work I do with state policymakers, I run into it all the time. I think Lynn pointed out in her presentation, it's really unclear how lowering taxes would have any impact on the underground market given that so much of the California illegal market is for export. But they did sort of commonly have a belief, and I think the cannabis industry has done a good job of promoting that view, and it is something we're all going to have to be countering as we're out working to -- working to increase cannabis taxes or put new taxes in place and to steer those dollars towards good purpose.

>> ALISA PADON: We've had a number of questions come in essentially a how do we advocate for this? How do we advocate for local cannabis ordinances knowing that municipalities going to cut tax revenue? Similar one just came in: What are best practices you can share when introducing the idea of cannabis tax to local official stakeholders? And finally is there a infographic or short proposal that can be used when meeting with local officials? I thought this would be a good question for Lynn and Jim to respond to.

>> LYNN SILVER: Jim, why don't you start?

>> JIM KEDDY: Alisa, would you mind repeating the question. I was trying to find them in the question box.

>> ALISA PADON: I'm organizing the questions, so I'll just throw them out to you. The question was really about how do we best advocate for this. And there were a couple versions of the question. How do we advocate the local cannabis ordinances knowing municipalities get a cut of tax revenue? A similar one was. What are some best practices we can share when introducing the idea of cannabis tax to local officials or take holders? And then last, very grounded question. Is there an infographic or short proposal that can be used when meeting with local officials?

>> JIM KEDDY: Yeah. When advocating for cannabis taxes, if you're in a community that has legal cannabis businesses or is moving towards legalization to allowing for legal businesses, I think the first argument is to make is that since these businesses are selling a product that has a harmful health impact, it's the obligation of local officials to use part of the revenue to mitigate the impact, the negative health impact of that product. So, of course, that's the same argument we use with tobacco and is kind of in this general category of sin taxes. And conversations I have with local elected, I always start with the health research. Generally people are not aware of it. People think of cannabis as a harmless or health product, and I think the research Lynn shared earlier about the impact of cannabis on mental health, on psychosis, youth mental health, is very compelling. Because at the same time that we're dealing with the COVID epidemic we're also dealing with this ongoing crisis of homelessness and we know how much mental health is underneath that crisis. So spending time doing broad education of local electives, what we're really dealing with here is essential to any kind of advocacy effort. And without it I don't -- it's hard to make any real progress.

>> MICHAEL COLANTUONO: Just a couple thoughts from Michael. I'm a local government attorney and I travel in local government circles, and I don't see much resistance to cannabis taxes quite frankly. The only resistance I see is a few communities that don't want to allow cannabis commerce feel that proposing and adopting a tax makes it harder to resist allowing cannabis commerce. And what I would say to those communities is, as long as the state regulation allowing delivery in your community is in effect, you've got cannabis commerce. You might as well know where it is and get some money out of it. Now, what I do see is the taxes pass easily. Even the industry tends to support them at the polls. Because they view them as a way to create a relationship with local government, become a valued source of funding for local government and then begin to persuade local government to help them produce even more money by doing things like policing the black market and the like. And the industry is very articulate, well-organized. We see them a lot in Grass Valley because this is a good place to grow the product. They want relatively low taxes and it seemed to me that the public health aspects of grass valley's use of the Public Health Institute model tax, the 20% on cannapops and 1% on high potency products, they objected to that. But only at a letter that showed up at the council hearing. They didn't twist their arms. It wasn't on their radar and I suspect it may start to get on the radar.

>> LYNN SILVER: I would just add that we're in kind of a unique conjuncture this year. We have local governments desperate for revenue because COVID has cut into their revenue base so strongly. And we have a national passionate debate about the need to reduce law enforcement funding and put more funds into community welfare youth social needs that's taken off in a way that really hasn't been as present and as consensus driven as this, as long as I can remember.

So I think that really creates a unique window to try and pass a tax and pass a tax that at least is not a special tax, which is difficult, a general tax that has advisory and recommended social purposes in it. Regarding the question on the infographic, the brilliant summary, we haven't done that yet. We have a one-page summary of principles but not specific to -- has mention of taxation but not specific to taxation

but we could try and develop that. One thing I would recall for people that Michael mentioned is that we really are in a narrow window if you want to tax in California in this year, we are in a narrow window until -- was it the 7th of August, Michael? When taxes can still be introduced to be placed on the November ballot.

>> MICHAEL COLANTUONO: The last legal date but less practical is mid-July.

>> LYNN SILVER: That's actually why we rushed this webinar and tried to have it even though we had a short time for enrolling people because if you wanted to act in your jurisdiction now, strike while the iron is hot. This is the time to do it in the next couple of weeks to a month if you have those contacts or ability. So we hope that at least some of you will take this webinar and walk over to your city council members or your supervisors and say, this is the time to act.

We said 53% of jurisdictions were not taxing, but that was 53% of jurisdictions that allow commerce. It's more like 70% of all jurisdictions, and as Michael noted, all of them are being obligated to accept delivery whether they legalized or not. So it's a much larger percentage of jurisdictions when you count those that do not allow -- that did not allow commerce but have to accept delivery.

>> ALISA PADON: So that segues to a question that just came in. Can you explain how cannabis tax and delivery vehicles would work in a community without cannabis business in that jurisdiction? How would the city track vehicle deliveries coming into those cities from businesses not located there? I don't know if this one that maybe Michael could --

>> MICHAEL COLANTUONO: This is the problem of all business license taxes. How do you know that somebody is doing business in your city? And the answer is you just have to know. Which is to say, your council members can be eyes and ears, your staff can be eyes and ears. Public health advocates can be eyes and ears. Your police department can notice it. Basically you announce to the community, we have a tax, you have to register, come on down and talk to us. You should talk to the dispensaries in the vicinity, because those are often the host site. And the other thing to know is that the -- if you have no tax in your jurisdiction and the deliveries are coming from a dispensary next door, that dispensary is very likely reporting the gross receipts from deliveries in your community to the community where their facility is located. They've got an interest in avoiding an argument they're not compliant with the law, they've got an interest in keeping that host community happy and the host community is happy to do deliveries as far out into the sunshine they can get because they want the money.

>> ALISA PADON: Next question: What are your thoughts on using cannabis tax revenues to open new cannabis businesses for people who are affected by the war on drugs versus using the tax money for increased job training, education, for high-paying jobs in a city with marijuana bids?

I thought maybe Lynn and Jim could take this one.

>> LYNN SILVER: Okay, I think this is one where Jim and I may even disagree, I'm not sure. I think cannabis tax revenues should be used to mitigate the effect of the war on drugs, to invest in health for whatever the community considers to be its highest social priorities and needs. I would be happy seeing cannabis tax revenues support economic opportunities in low-income communities, opening day care center, a grocery store. I would be fine if every single cannabis license in the state was required to go to an equity applicant and not just to anybody or some fixed percentages on model proposes. But I don't personally believe that public -- I think we should make accommodations for equity applicants to make applying more feasible, like deferring license fees and other measures. But I don't personally think that public funds should be used to subsidize cannabis businesses no matter who owns them

more than we use public funds to subsidize a liquor store. But many colleagues are working on the equity licensing issue strongly feel that investment in educating equity businesses are needed and that's an area where we may not totally agree. Jim, do you want to...

>> JIM KEDDY: Thanks, Lynn. Yeah, so the context for this question is that the cannabis industry in California is predominantly white-led industry and it was... you know, folks who have been doing well in the industry are folks who had capital to begin with and were able to start businesses early on and capture some market share. And many people in the racial justice community view this as a kind of gross contradiction for decades, black and brown people go to prison for exactly the same activities that white people are now making a lot of money. And a number of folks have been fighting for the establishment of equity programs at the city level that -- in which local governments provide additional support to people of color who are looking to start cannabis businesses. My view from watching these equity programs in a small number of cities where they're in place is that they are all struggling. And, you know, the number of black and brown people entering the cannabis industry remains to be very small. And I would rather see sort of a general support -- a general approach to economic development in those communities, and with cannabis revenue where it can be used to help people start a range of businesses, not just cannabis businesses, so that we look at -- when you pull back the camera and you look at the economic devastation that took place in those communities from people going to prison for so long, that we just re-look to sort of a broader economic development support, economic development approach funded by cannabis revenues.

>> ALISA PADON: Thank you Jim and Lynn. I know we're running out of time here. I wanted to say for questions that didn't get answer we'll try to answer and send those out to attendees. But in the last two minutes I wanted to pose a final question to Lynn. Do we know if any funds will be allocated towards health research? And if so, when can we expect to see funding announcements?

>> LYNN SILVER: Well, I have not seen any local taxes that included funding for research, however, the state cannabis taxes have a mandated provision for \$10 million a year CCM at least for a period of ten years, to go to cannabis policy research and another pot which goes to medically oriented research on cannabis.

However, the funds for cannabis policy research, which are supposed to be being administered by the Bureau of Cannabis Control, not a single cent has been spent. We are asking the governor to move or subcontract those funds to the University of California, which has a long history of competent administration of research funding, for example, the tobacco-related disease research program, which funded some of this work. We believe that these funds could be well-administered. And there is a sign-on letter for that. If your organizations are interested in signing on, please reach out and it also will be available on our website as something that Jim and I are working on together. And please feel free to write to email. If there were questions that went unanswered and we'll also try to follow up on the webinar.

>> ALISA PADON: Thank you, everyone. I think that wraps up our time for today. I don't know if, Murlean, you would like to do a final closing slide.

>> MURLEAN TUCKER: Yes, we're about there. I want to thank everybody so much for your presentations. And many thanks to our sponsors, the Conrad Hilton Foundation, Getting it Right from the Start and the tobacco-related disease research program. Thank you to our audience. The recording of today's presentation and slides will be available next week at Dialogue4Health.org. A brief survey will be shown when you exit the forum. Please take a few minutes to complete it. We would love to hear from you. Thanks for being with us. That concludes the Web Forum. Have a great day!

