

**CITY COUNCIL MEETING
TUESDAY, MARCH 21, 2017**

PRESENTATIONS

Item #9 WS 17-010

Cannabis/Marijuana Work Session

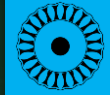


CITY ATTORNEY'S OFFICE

CANNABIS/MARIJUANA STUDY SESSION

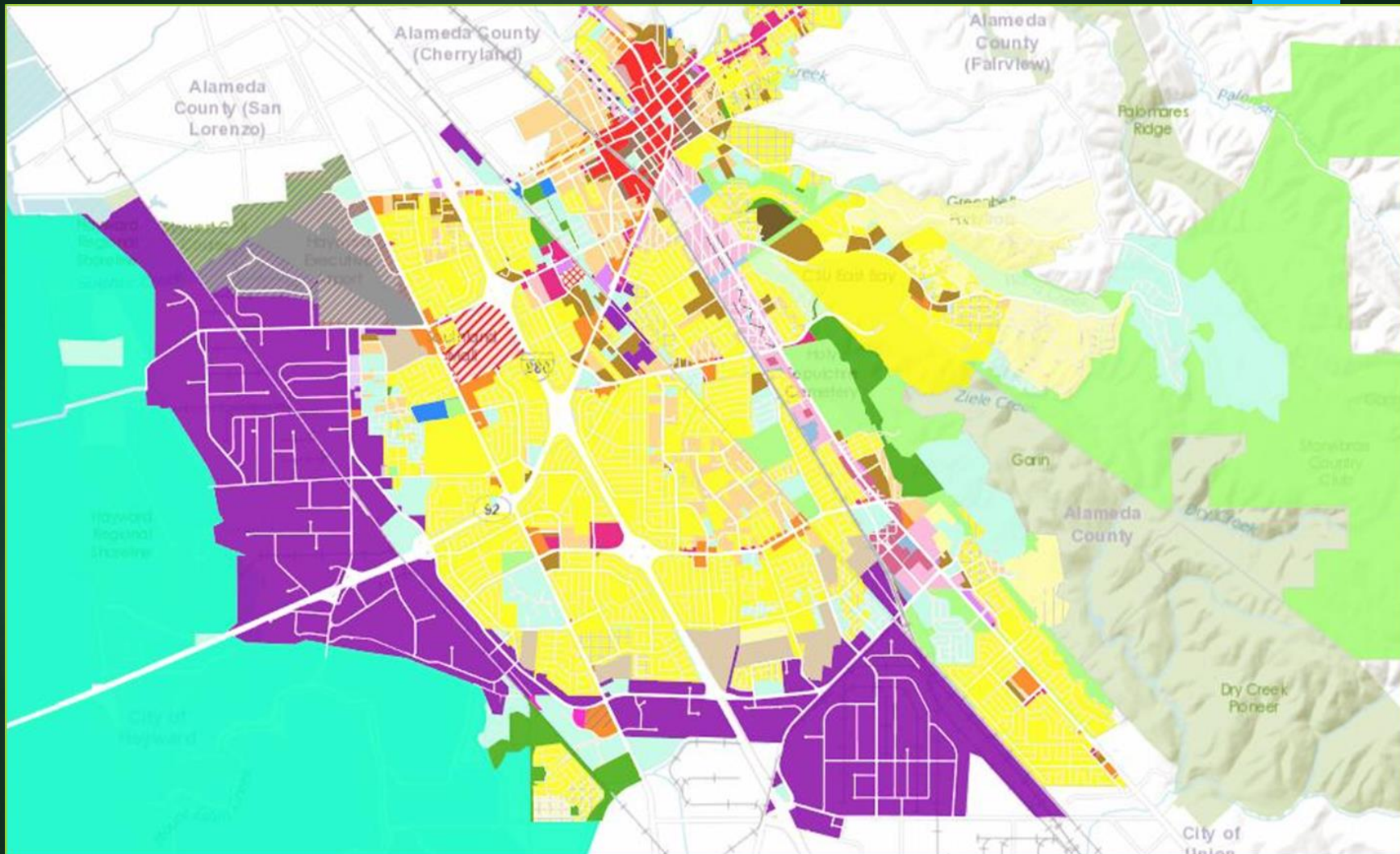
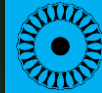
March 21, 2017

Michael S. Lawson, City Attorney



CANNABIS = MARIJUANA
MARIJUANA = CANNABIS





FOUR KEY ISSUES TO CONSIDER THROUGHOUT PRESENTATION



- (1) Should cannabis businesses be permitted, or prohibited in Hayward?;
- (2) If cannabis businesses are permitted, should those businesses include both medical and adult recreational products?;
- (3) If cannabis businesses are permitted, how many should be permitted, and where should those businesses be located, and within what type of regulatory framework?; and
- (4) If cannabis businesses are permitted, how should transactions be taxed under Hayward's voter-approved measure EE (15%)?

FEDERAL (NON)ENFORCEMENT



- ▶ US Controlled Substances Act (CSA) classifies marijuana as a Schedule I drug with no medical use
- ▶ Because it is a controlling federal law, marijuana activities allowed under state law are still prohibited by the CSA
- ▶ However, Obama administration = hands-off approach, and policy could shift under Trump administration

THE COLE MEMO



- ▶ Memorandum by Deputy Attorney General James Cole (August 2013)
- ▶ Explains that federal enforcement is focused on 8 priorities and will take a hands-off approach *if* state laws allowing marijuana activities properly address those priorities

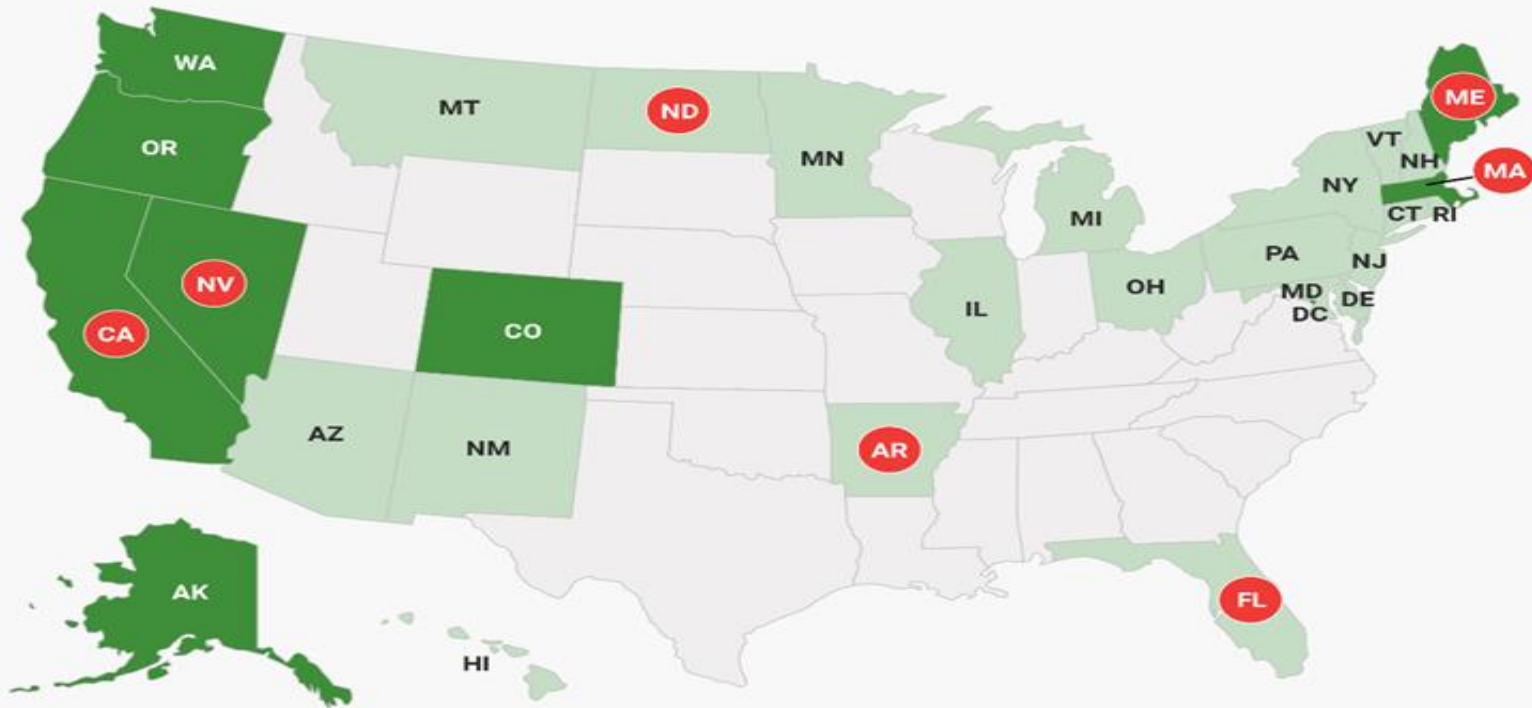
MAP OF CURRENT MARIJUANA LAWS



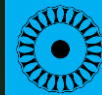
BUSINESS INSIDER
ELECTION 2016

STATES WHERE MARIJUANA IS LEGALIZED

■ Legalized marijuana ■ Legalized medical marijuana ● Legislation passed Nov. 2016

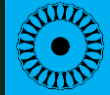


SOURCES: Politico; Reuters



- ▶ **Hayward briefly tried medical marijuana dispensaries in early 2000s, with as many as four businesses - fail**

MEDICAL CANNABIS SAFETY AND REGULATION ACT



- ▶ Before moving to Prop 64, it is important to understand California laws surrounding medical marijuana
- ▶ Medical Cannabis Safety & Regulation Act: Three bills passed in 2015: (1) AB 266; (2) AB 243; (3) SB 643
- ▶ Taken together, created a state regulatory and licensing system for medical-marijuana-related activities (cultivation, distribution, testing, manufacturing, and transportation)

AB 266



- ▶ Legalizes “commercial cannabis activity” pursuant to state medical marijuana license
- ▶ Allows for-profit businesses to obtain licenses (in contrast to non-profit cooperatives)
- ▶ Creates 17 different licenses related to cultivation, manufacturing, distribution, and transportation

AB 266 (CONTINUED): LOCAL AUTHORITY



- ▶ Permits local jurisdictions to enact further regulations, including a **complete ban** on marijuana businesses within their borders
- ▶ Requires local license/permit to obtain state license. Therefore, no local license = no state license
- ▶ However, cannot prohibit lawful transportation through jurisdiction
- ▶ Deliveries by a licensed delivery business to a point within jurisdiction allowed unless **expressly banned**
- ▶ Gives local jurisdictions power to tax/assess fees

AB 266 (CONTINUED): FURTHER RESTRICTIONS

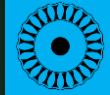


- ▶ State Licenses only last for one year
- ▶ State Licensee cannot be licensed as retailer of alcoholic beverages
- ▶ Separate state license required for each business location
- ▶ Limits certain cross-licensing



AB 243

- ▶ Includes regulations intended to address environmental concerns associated with cultivation
- ▶ Also allows local jurisdictions to enact further regulations, including **complete ban** on cultivation within its borders
- ▶ Also requires license/permit at local level



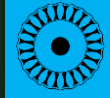
SB 643

- ▶ Regulates doctors who prescribe medical marijuana
- ▶ Regulates applicants/licensees
- ▶ Regulates location of cultivation/dispensary (must be at least 600 feet from a school)
- ▶ Regulates transportation through “track and trace” program and required delivery manifests

JANUARY 1, 2018



- ▶ Medical marijuana licensing scheme must be fully implemented by January 1, 2018
- ▶ State has indicated it will not begin issuing licenses before that date



PROP 64 FAST FACTS

- ▶ Legalizes marijuana-related activities: individuals **21 or over** can legally possess, use, sell, transport, process, and cultivate marijuana
- ▶ Preserves existing medical marijuana laws and creates a parallel system for non-medical marijuana
- ▶ Adopts priorities required under Cole Memo
- ▶ Authorizes County regulation and taxation of commercial activities and some regulation of personal use

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ALLOWS NON-MEDICAL COMMERCIAL MARIJUANA ACTIVITIES



- ▶ Requires state licenses for commercial cultivation, manufacturing, testing, retail, or distribution (state shall begin to issue licenses by **January 1, 2018**)
- ▶ California residents only
- ▶ No license for retailers of alcoholic beverages or tobacco products
- ▶ No license for businesses located within 600 feet of a school, day care center, or youth center
- ▶ No license for those convicted of certain offenses
- ▶ No limits to cross-licensing
- ▶ Separate license required for each business location

LOCAL CONTROL



- ▶ No license *if prohibited* by local ordinance, including **complete ban**
- ▶ Unlike license for medical marijuana, local license is **not** required for state-issued license. Thus, no action could result in allowance.
- ▶ Local jurisdiction **cannot ban** lawful transportation or delivery of marijuana through their jurisdiction.



STATE TAXATION OF COMMERCIAL MARIJUANA SALES

- ▶ Existing state and local sales taxes applied to sale of marijuana products
- ▶ Beginning January 1, 2018:
 - ▶ State Excise tax of 15% added to retail sale of all marijuana products
 - ▶ State Excise tax of \$9.25/ounce of dried marijuana flowers and \$2.75/ounce of dried marijuana leaves added to the commercial cultivation of marijuana
- ▶ Marijuana sold for medical purposes **exempt** from existing sales and use taxes (but excise taxes would apply)
- ▶ Marijuana cultivated for personal use **exempt** from cultivation tax

ALLOCATION OF TAX REVENUE



- ▶ Beginning in 2018, revenue deposited into the California Marijuana Tax Fund
- ▶ After reimbursement for costs of regulation/implementation, \$25 million in tax revenue allocated to earmarked sources, including \$3 million annually to CHP to establish/adopt protocols regarding driving while impaired

ALLOCATION OF REMAINING TAX REVENUE



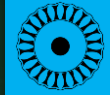
- ▶ 60% for substance use disorder education and prevention programs for youth
- ▶ 20% for environmental programs designed to clean up and prevent environmental damage resulting from illegal cultivation of marijuana
- ▶ 20% to the CHP for programs designed to reduce driving under the influence and to the Board of State and Community Corrections for a grant program designed to mitigate any potential negative impacts on public health and safety resulting from the implementation of the measure

DRIVING WHILE IMPAIRED (DWI)



- ▶ No .08 Blood Alcohol Content (BAC) standard
- ▶ Los Angeles is testing a saliva swab test

LOCAL TAXATION



- ▶ Local jurisdiction may impose ***its own tax*** on the privilege of cultivating, manufacturing, producing, processing, preparing, storing, providing, donating, selling, or distributing
- ▶ Local marijuana taxes would ***in addition to*** existing sales taxes and the excise tax. Therefore, for non-medical commercial marijuana taxes could be very high
- ▶ Local taxes must be approved by the voters (50% for general tax and 2/3 for special tax)
- ▶ The law appears to authorize a county tax throughout the entire county, not just within the unincorporated area

LICENSING FEES



- ▶ Local taxes are *in addition to* local licensing fees
- ▶ Licensing fees must be tied to anticipated regulatory costs:
 - ▶ Administrative costs of processing and issuing licenses/permits
 - ▶ Investigations/Inspections
 - ▶ Audits

THE CASH PROBLEM



- ▶ Money Laundering
- ▶ Accounting Issues
- ▶ No federal deductions
- ▶ Security Issues

EMPLOYMENT RESTRICTIONS

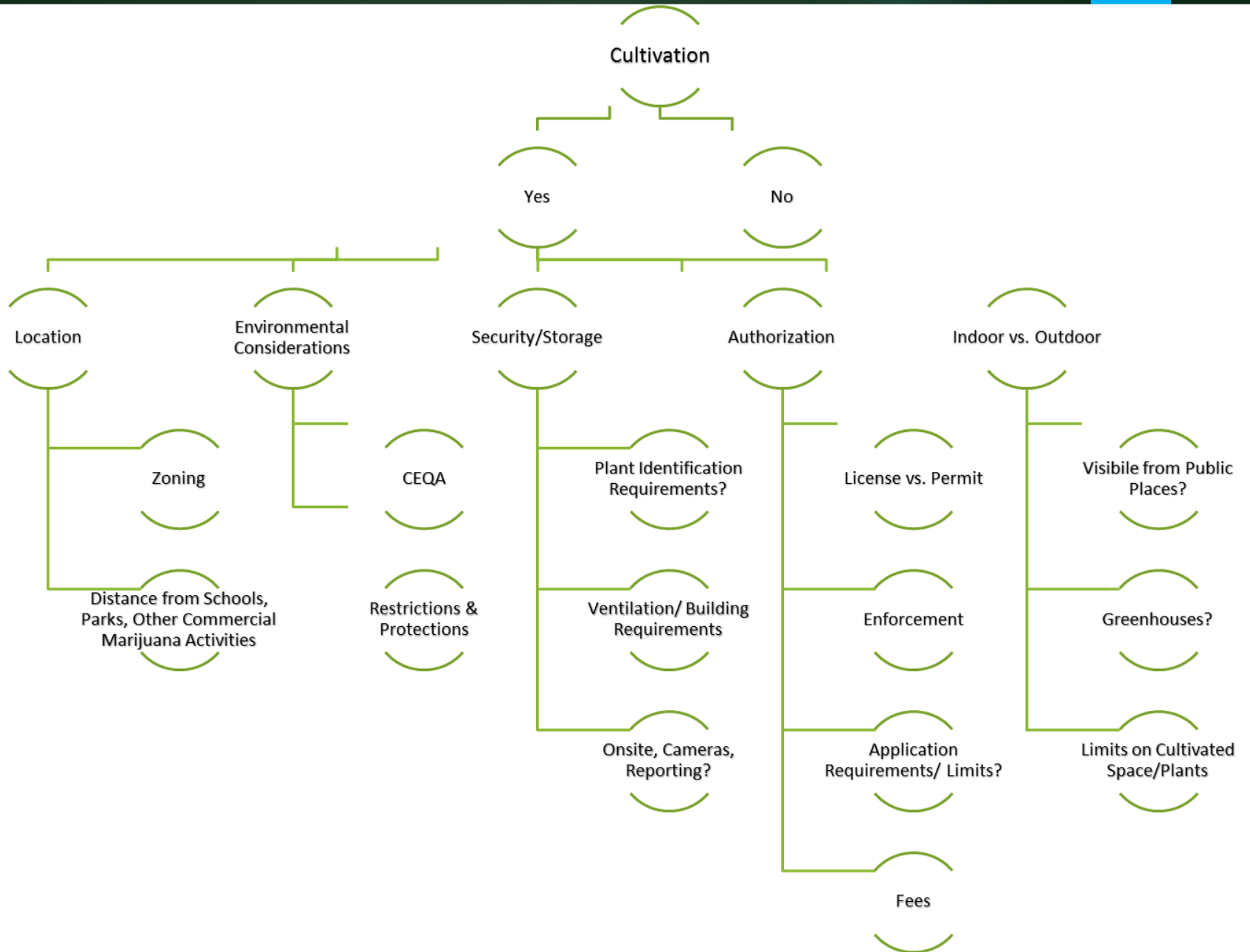


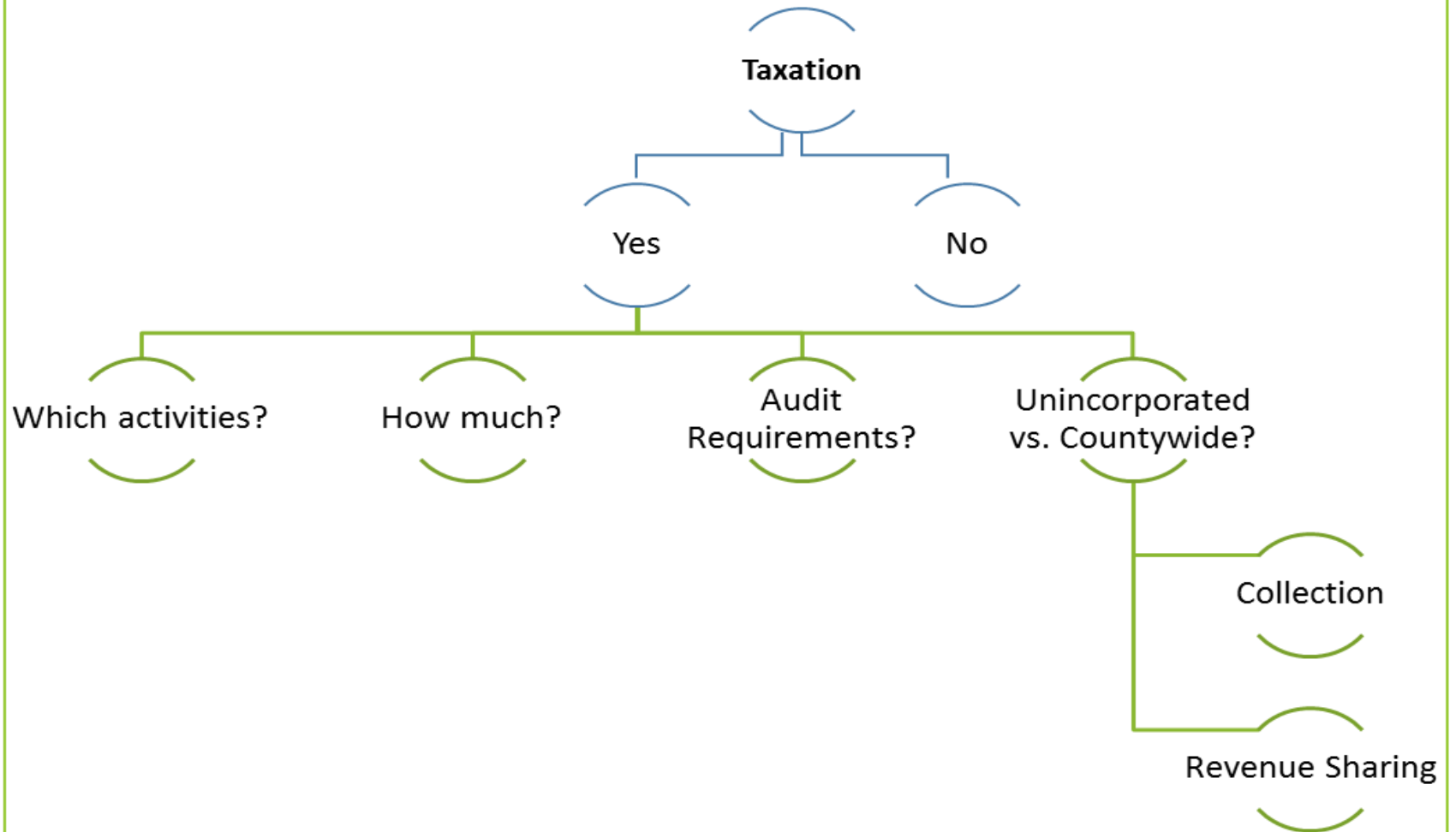
- ▶ Public and private employers can prohibit use (1) in the workplace and/or (2) by employees/prospective employees

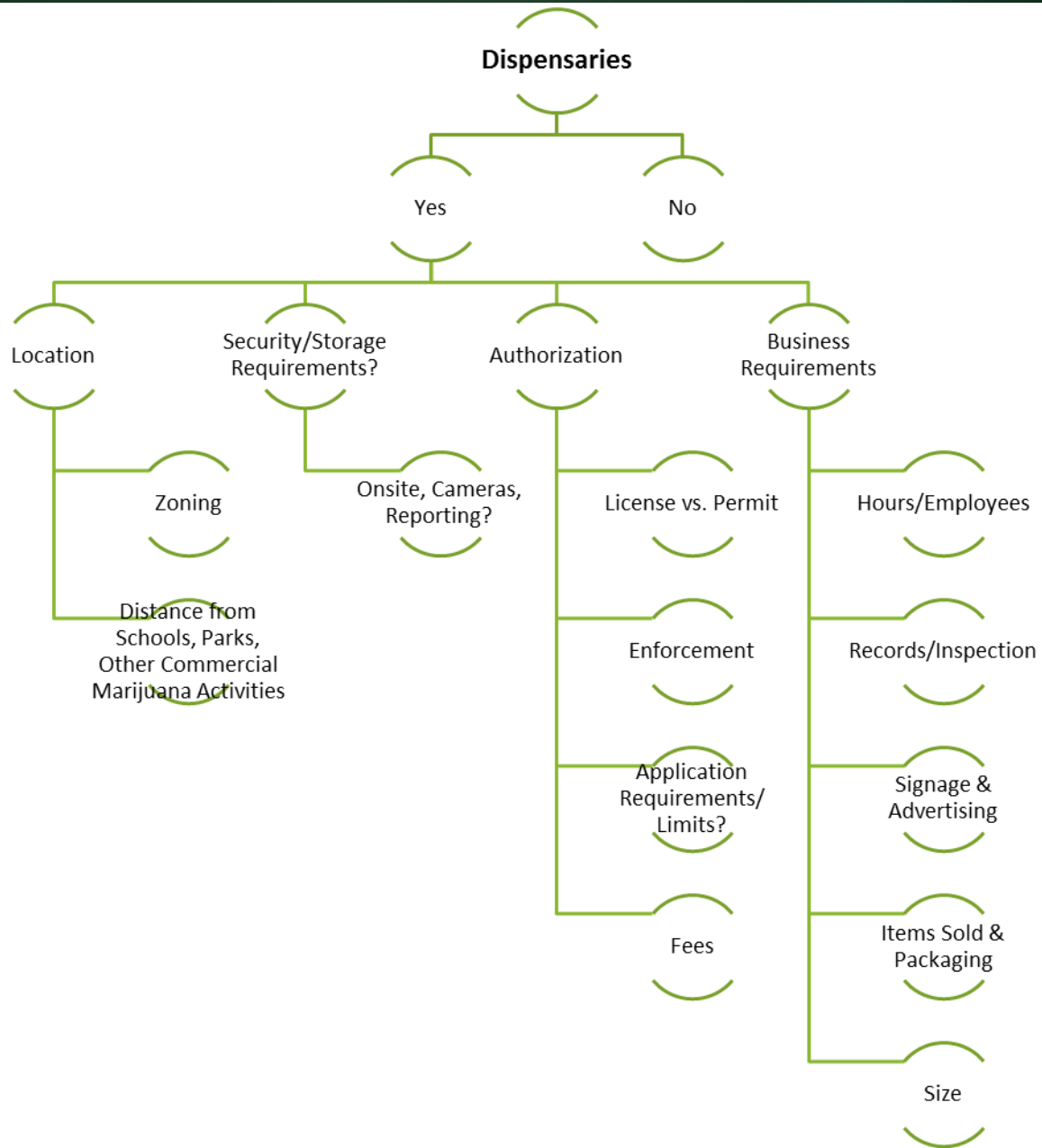
RESTRICTIONS BY LANDLORDS

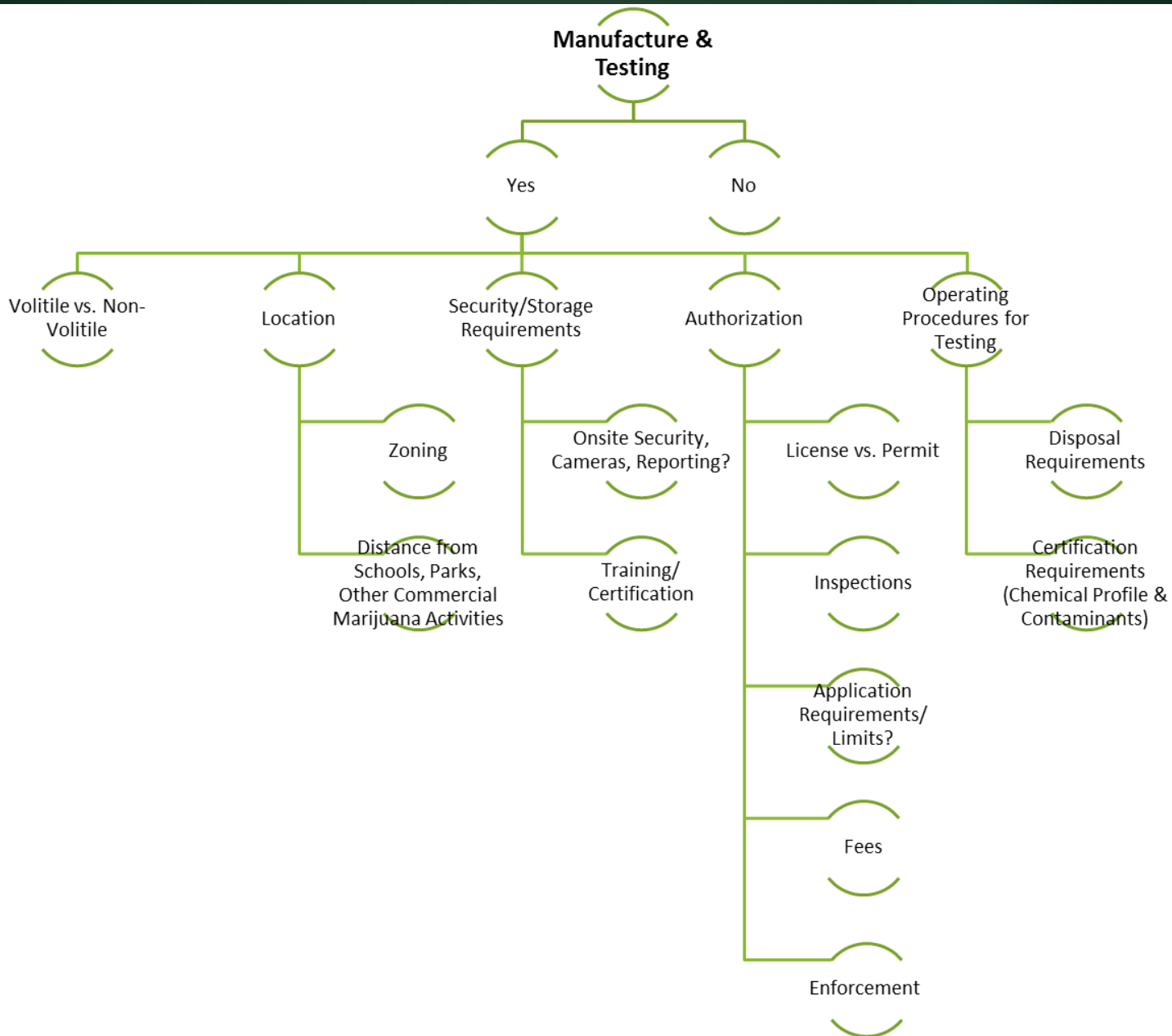


- ▶ Landlord can ban/restrict personal use on the landlord's privately owned property
- ▶ Local government can ban/restrict personal use on property owned, leased, or occupied by the local government









Transportation

Yes

Location of Facilities

Records

Authorization

Security/Storage Requirements

Particular Vehicles Required?

Zoning

Shipping Manifest

License vs. Permit

Onsite Security, Cameras, Reporting?

Distance from Schools, Parks, Other Commercial Marijuana Activities

Track & Trace

Inspections

Training

Application Requirements/Limits?

Labeling/Packaging of Items Delivered

Fees

Enforcement

Questions & Discussion



Thanks to San Mateo County Counsel for their Powerpoint slides