

Cannabis Regulatory Commission

Regular Meeting

Thursday, September 15, 2016, 6:30 p.m.
Council Chambers, City Hall, One Frank H. Ogawa Plaza

AGENDA

Members:

Dale Gieringer	District 1	Jacob Sassaman	District 7
Sean Donahoe	District 2	A. Kathryn Parker	At Large
Sierra Martinez	District 3	Sunshine Lencho	Mayor
Vacant	District 4	Amanda Reiman	City Auditor
Matt Hummel	District 5	Joe DeVries	City Administrator
Terryn Buxton	District 6		

Available on-line at: <http://www.oaklandnet.com/measurez>

MEETING AGENDA

- A. Roll Call and Determination of Quorum
- B. Open Forum / Public Comment
- C. Review of the Pending List and Additions to Next Month's Agenda
 - a. A Discussion on Public Banking, article attached in PDF or click this link:
<http://www.truth-out.org/news/item/37343-public-banks-could-break-the-impasse-over-marijuana-money>
- D. Approval of the Draft Minutes from the Cannabis Regulatory Commission meeting of 8-18-16.
- E. Reports for Discussion and Possible Action
 - 1. A continued discussion and possible action on Proposition 64. (see attached ad hoc committee recommendations)
 - 2. An update on the concerns over arrests at Oakland International Airport of persons transporting Medical Cannabis.
- F. Announcements
- G. Adjournment

Persons may speak on any item appearing on the agenda; however a Speaker Card must be filled out and given to a representative of the Cannabis Regulatory Commission. Multiple agenda items cannot be listed on one speaker card. If a speaker signs up to speak on multiple items listed on the agenda, the Chairperson may rule that the speaker be given an appropriate allocation of time to address all issues at one time (cumulative) before the items are called. All speakers will be allotted 3 minutes or less – unless the Chairperson allots additional time.

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Questions or concerns regarding this agenda, or to review any agenda-related materials, please contact the Cannabis Regulatory Commission at (510) 238-3301.

Item E-1

Sept 9, 2016 - V.1.1

PROPOSED CHANGES IN CANNABIS LAWS POST-PROP 64
OAKLAND CANNABIS REGULATORY COMMISSION

WHEREAS Proposition 64 would alleviate many injustices of marijuana prohibition by legalizing the possession and cultivation of small amounts of marijuana, and reducing penalties for other marijuana offenses; and

WHEREAS Further reforms are still in order to eliminate these injustices and achieve the goals of the Oakland Cannabis Regulation and Revenue Ordinance (Measure Z), approved by Oakland voters in 2004.

WHEREAS Prop. 64 allows for the legislature to amend the law should the voters pass it on November 8;

BE IT RESOLVED, that the City of Oakland endorses Prop. 64 and calls on the state to adopt further measures to:

- Decriminalize possession of more than one ounce of marijuana
- Remove cannabis from the state list of controlled substances
- Forbid local bans on deliveries of cannabis from licensed providers to qualified individuals
- Increase tax breaks for qualified medical marijuana patients
- Ban local taxes on donations of medical marijuana
- Encourage licensing of small businesses and nonprofits with financial and regulatory incentives so as to discourage monopolization and concentration of ownership.
- Require the collection of demographic data on applicants and licensees
- Protect the confidentiality of license applications in order to protect privacy and public safety
- Protect cannabis users from discrimination in employment, housing, parental and medical rights
- Expand areas where marijuana can be used for medical and adult use, particularly when vaporized.

Cannabis Regulatory Commission

Regular Meeting

Thursday, August 18th, 2016, 6:30 p.m.

Council Chambers, City Hall, One Frank H. Ogawa Plaza

Minutes

Members:

Dale Gieringer	District 1	Jacob Sassaman	District 7
Chang Yi	District 2	A. Kathryn Parker	At Large
Sierra Martinez	District 3	Sunshine Lencho	Mayor
Vacant	District 4	Amanda Reiman	City Auditor
Matt Hummel	District 5	Joe DeVries	City Administrator
Terryn Buxton	District 6		

Available on-line at: <http://www.oaklandnet.com/measurez>

MEETING MINUTES

A. Roll Call and Determination of Quorum

Members Gieringer, Hummel, Buxton, Parker, Sassaman, Lencho, and new Member representing District 2, Chang Yi were present. Former member Sean Donahoe was thanked for his work on the commission as was Member Martinez who has announced he will be stepping down as well due to time constraints.

B. Open Forum / Public Comment

Gene Hazard asked about the maps of the beats that were used to determine the boundaries of the Equity Program but he was asked to wait until that item was discussed on the agenda.

C. Review of the Pending List and Additions to Next Month's Agenda

Concerns were raised about Sherriff's Deputies arresting Medical Cannabis Patients at the airport and then those individuals subsequently being charged by the District Attorney. The Commission agreed to research the issue and schedule for the next meeting.

D. Approval of the Draft Minutes from the Cannabis Regulatory Commission meeting of 7-21-16.

The minutes were approved with some minor corrections.

E. Reports for Discussion and Possible Action

Persons may speak on any item appearing on the agenda; however a Speaker Card must be filled out and given to a representative of the Cannabis Regulatory Commission. Multiple agenda items cannot be listed on one speaker card. If a speaker signs up to speak on multiple items listed on the agenda, the Chairperson may rule that the speaker be given an appropriate allocation of time to address all issues at one time (cumulative) before the items are called. All speakers will be allotted 3 minutes or less – unless the Chairperson allots additional time.

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1. Discussion and Action on the Oakland Police Department Report on 2015 Citations and Arrests for Marijuana Offenses (Attached)

Captain Kirk Coleman with the Criminal Investigations Unit of OPD presented the report to the Commission noting that OPD rarely initiates an interaction due to cannabis but instead is usually responding to a complaint. Vice Chair Parker asked about the incidents where OPD acquired a warrant and he explained those typically are when OPD or OFD stumbles upon a cultivation site and are required to obtain a warrant before proceeding. He noted that there are increasing concerns about fires from cultivation sites and often those are what OPD gets called out to address.

Member Sassaman asked about the 38% of arrests from vehicle stops and Captain Coleman noted these happen for a variety of reasons from whether the cannabis is being smoked to how it's packaged.

Vice Chair Parker asked what OPD was doing to address the huge disparity in arrests that has existed year-over-year since the Commission has been reviewing the data. Captain Coleman noted a larger departmental study and strategy to address disparities including the Sanford Study and the department wide Procedural Justice Training that has been occurring over the past two years.

Member Lencho noted that the citation data is not broken down by beat (only arrests) and if it were it would help the Commission (and OPD) determine where people are waking in public and smoking cannabis and if there is a disproportionate level of enforcement in neighborhoods of color. Captain Coleman said he could try to get that data categorized by beat as well but since they are citations, not arrests, there is less data.

Public Comment:

Deborah Johnson asked about the trainings and if they are working, specifically does OPD track individual officer's and their arrests rates (he noted that they do).

Gene Hazard pointed out that the data only pertains to OPD and the commission should also look at Sherriff's Department and CA Highway patrol data since they often conduct operations in Oakland neighborhoods.

Alex Zavelle cited the Stanford Study on OPD stop data and also pointed out there are big fluctuations beat-by-beat each year as to where the arrests take place suggesting a longer look at beat data is needed to determine where the equity program should be applied.

Robert Brackers also commented that using one year of data for the Equity Program seems flawed.

Leana Held again raised the issue of the Sherriff arresting people at the airport.

2. A continued discussion on the recommended amendments to the Equity Program portions of 5.80 and 5.81

Chairperson Hummel presented the map showing the current Equity Beats and the new recommended beats from the CRC for discussion. Member Gieringer stated his concern about the program and Member Chang also noted that there has been a lot of change as to where crime takes place in Oakland since the 80's. He pointed out that his Eastlake neighborhood used to have many more drug arrests and problems than it does now. No new recommendations were made.

3. A continued discussion and possible action on Proposition 64. See link for text of the measure:

Chairperson Hummel reviewed some suggestions taken by Member Reiman (absent) about possible legislative fixes to Prop 64 after it passes. Member Sassaman expressed several concerns that would not be addressed by those remedies including the 15% excise tax, remaining criminal penalties, a lack of protection for minors, and some others.

Member Lencho also highlighted several areas of concern including fines and fees that people could still be charged, the September 1st prioritization for businesses to get state licensee and the lack of equity this will perpetuate. She also pointed out there are no provisions to collect Racial Impact Data.

Member Gieringer noted that CA NORML had several misgivings but decided ultimately to endorse due to it ending prohibition and decriminalizing cannabis.

A motion was made to ask the City Council to wait on endorsing Prop 64 until the CR could provide some additional legislative remedies to recommend. The motion passed with 4 yes votes and 2 abstentions.

Also, an ad hoc committee was formed to bring recommendations back to the September meeting.

F. Announcements

G. Adjournment

The meeting adjourned at 8:30.

Public Banks Could Break the Impasse Over Marijuana Money

Wednesday, 24 August 2016 00:00

By Marc Armstrong (</author/itemlist/user/52513>), Truthout | News Analysis



(Photo: Martijn (https://www.flickr.com/photos/van_mij/3998139338/in/photolist-76ivwS-B5Q1uj-fKD2D8-8raLmR-5DNAX2-8raLci-bB9N7R-djzLyZ-6qksrn-swezVy-nTQWp9-7g7EB6-f4B4E-4tqBzS-nGKk8x-8iHdJ-bRHofz-nTQRHB-BWbV-pN8JQy-8JgQ1m-svdeM-BWbS-obkffz-dTDDh7-od6CLk-obbKiG-od6GWz-obfAxf-obbw4q-nTQ3kG-09hWUE-nTQhVA-gYgvWd-fvJ7-4uNTFz-oP9ZWV-nTRA9X-gwoUFh-FQcieR-5ASjyq-nTQMk7-ob1v3z-pN71mt-nTR6a4-nTQZ9Z-od7apK-objPnD-obkn6i-obfQDb))

With nearly a dozen state initiatives legalizing recreational marijuana on the November ballot, the market for legalized marijuana is certain to expand. But, because marijuana continues to be classified as a Schedule 1 drug by the Drug Enforcement Agency (DEA), private banks are effectively prohibited from fully participating in this market -- the compliance burden is too high and individual employees face the threat of prosecution. A network of city, county and state-owned public banks, sharing best practices, may be an effective way to offload the compliance burden so that marijuana-related businesses can confidently accept payments and deposits can be placed into a network of public banks, which could develop the systems needed for legal compliance with the Department of Justice and federal regulatory agencies. Short of legalization of marijuana, this may be the best way to protect local businesses and banks from a market that is fraught with risk.

The Recreational Marijuana Market

The creation of the recreational marijuana market by the state governments of Washington, Oregon, Alaska and Colorado has directly led to the establishment of a variety of marijuana-related businesses -- from growers to retail stores. These businesses are quickly growing revenues and profits. As one of the fastest-growing industries (<http://www.forbes.com/sites/debraborchardt/2016/02/01/marijuana-sales-grow-184-in-one-year/#14c5a5194adb>) in the United States, national legal sales of all forms of cannabis were \$4.6 billion in 2014, \$5.7 billion in 2015, and are projected by ArcView Market Research (<http://specials-images.forbesimg.com/imageserve/5718e1cd4bbe6f6f9574d028/x.jpg>) to be \$7.1 billion in 2016. If all 50 states and the District of Columbia were to legalize recreational marijuana, GreenWave Advisors (https://www.greenwaveadvisors.com/wp-content/uploads/GreenWave_Report_ES.pdf) projects the total value to top \$36 billion.

With licensing and tax revenue in Colorado alone expected to be \$135 million in fiscal year 2015-16 (up from \$70 million the previous year), elected officials in cash-strapped cities and states recognize the potential budgetary windfall of this market and are eager to bring the industry under their legal purview so they can reap the taxes.

States Promote While Feds Penalize

One would think that, with all that money in the industry, banks would be lining up to provide depository banking and other financial services to marijuana-related businesses. Not so, according to the recent article, "Banking is Not Yet Going to Pot (<http://www.americanbanker.com/news/law-regulation/dangerous-haze-banking-is-not-yet-going-to-pot-1090464-1.html>)," published in the American Banker. Most banks are ignoring the market and, in doing so, leaving money on the table.

The problem is that, while the states legalize the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing and sale, marijuana remains classified as a Schedule 1 substance under the federal Controlled Substance Act. The classification makes it illegal for any use -- which, in turn, makes the revenues it generates an illegal source of investment, akin to old-fashioned "drug money." The DEA's announcement in August 2016 to allow more research into possible medical benefits does not change the illegal status of money generated from this market.

This is a business school case study in the making, where conflicting government positions on marijuana legalization offer a perfect example of an imperfect market. In a market economy, one of the most important roles of government is to define the playing field and to determine the rules so that competing businesses can provide reasonably priced products and services. What has happened with the recreational marijuana market is that state and federal governments have conflicting sets of rules that introduce unnecessary risk into the market for those businesses that choose to

participate. Full market participation -- and fully realized fee and tax revenues -- can only happen if a government entity provides some sort of remedy to the conflicting set of rules.

It's Still a Risky Business

Banks are federally regulated and therefore, more vulnerable to facing federal charges, should they be found inadequately compliant. The federal Bank Secrecy Act requires banks to watch for Anti-Money Laundering (AML) law violations in customers' deposit accounts and requires them to file a Suspicious Activity Report (SAR) to FinCEN, an agency of the US Treasury, regarding a customer's suspicious or potentially suspicious activity. Failure to file a SAR can result in criminal and civil penalties, including incarceration for involved employees. Federal law technically says a bank is itself committing money laundering by accepting a deposit of money derived from the sale of marijuana.

The imperfections in the market create risk for both participating financial institutions and marijuana-related businesses. Naturally, credit card issuers and processors shun doing business with pot-related firms. As a result, the marijuana-related businesses, having to resort to a cash-based payment system, end up incurring enormous risk by carrying excessive cash-on-hand. Banks are loath to accept marijuana-related cash as deposits for fear of facing money-laundering charges. The trajectory is to have a sizeable market that is based entirely on cash transactions with mattresses used for safeguarding profits.

Incomplete DOJ Guidance

The US Department of Justice (DOJ) has provided a memo (<https://www.documentcloud.org/documents/781805-doj-marijuana-memo.html>) that serves as guidance to banks so that they can accept cash as deposits. But it is not a regulatory handbook, nor does it identify best practices. In other words, it gives guidance for banks on how to evade the law, a solution that is unsettling at best. As a half-remedy, it's the equivalent of the DOJ saying to banks, "You go first and we'll see if it works, and we'll prosecute you if it doesn't." The excessive compliance costs for taking this approach led MBank (<http://www.americanbanker.com/news/law-regulation/dangerous-haze-banking-is-not-yet-going-to-pot-1090464-1.html?pg=1>), a \$175 million-asset institution in Portland, Oregon, to shutter its marijuana-related businesses program within a year.

The result is either a lack of banking depository services (forcing marijuana-related businesses into risky cash transactions) or depository services that are provided (at a high price). Some credit unions have jumped into the marijuana market and are charging upwards of \$3,500 per month (<https://www.newcannabisventures.com/this-banker-proudly-serves-the-cannabis-industry/>) for a deposit account. This

kind of pricing is certainly an indicator of an imperfect market.

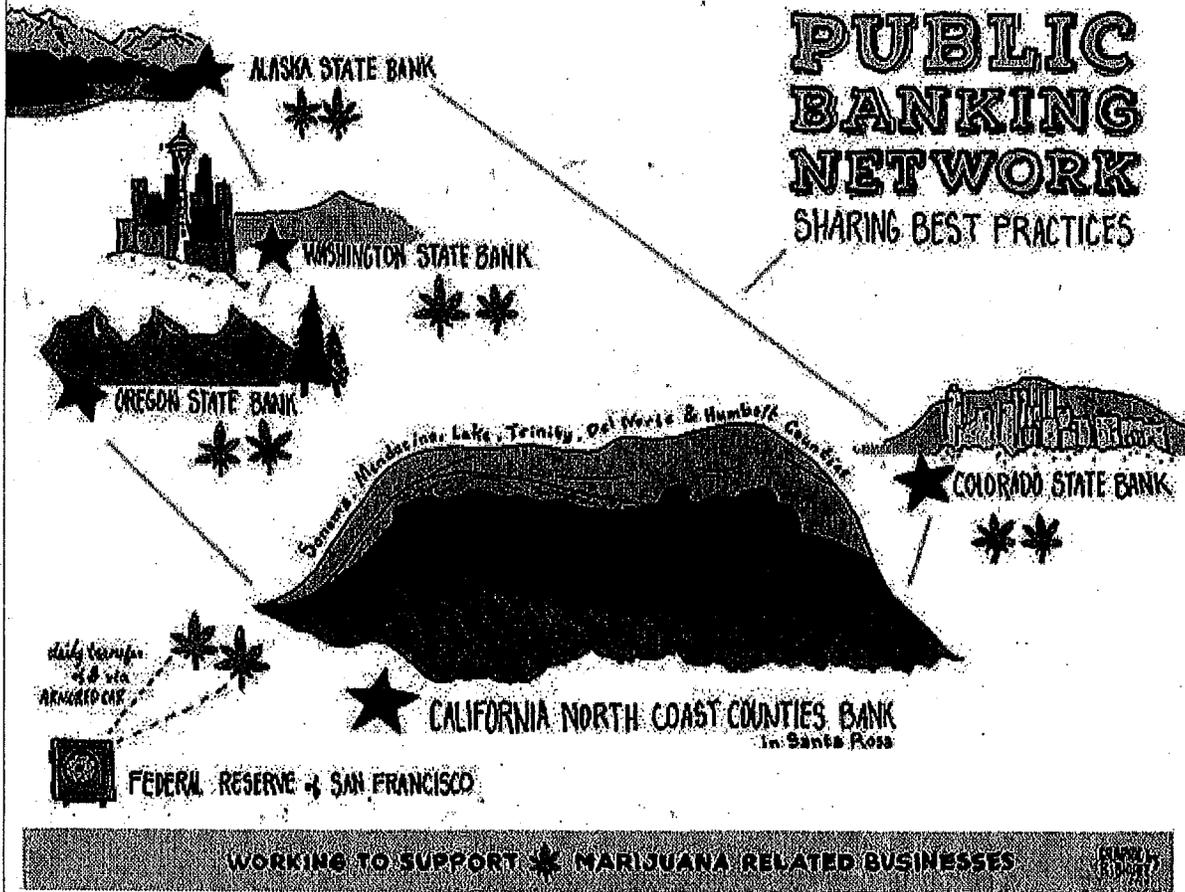
The Solution: A Network of Public Banks

Of course, the DEA could legalize recreational marijuana and simply end this impasse. Or Congress could pass legislation that protects banks from the risk of handling legitimate money generated by marijuana-related businesses. The risk of participating in this market would be significantly diminished and a rapid expansion of the market to all 50 states and the District of Columbia would likely result. But this is something that neither President Obama, nor the Republican and Democrat presidential nominees, have given any indication of supporting.

Short of the federal government legalizing recreational marijuana, cities, counties or states can resolve the conflict between state and federal regulations by taking on the roles of both banker to the marijuana-related businesses and guarantor to the federal government. In California, a charter city or county can define its own rules for governance through the provisions outlined in its charter. A constitutional amendment in 1879, "home rule" power was obtained by California cities in order to thwart state meddling in municipal affairs (<http://www.jdsupra.com/legalnews/the-quiet-war-between-california-s-48960/>). This means that charter cities and counties may provide credit and depository services to their residents, much like they can provide water, electricity, broadband and other utilities.

However, the bank would be more a legal entity than a traditional retail operation. It will have no retail presence, no ATMs, no consumer deposits/loans, and therefore no need for compliance with many requirements of the Dodd Frank Act. A vault is not needed, since any cash would be considered excess and deposited in the Federal Reserve (<https://www.newyorkfed.org/aboutthefed/fedpoint/fed01.html>), a standard procedure. As an independent corporate entity (owned by the city, county or state) it will likely consist of bank operations software and just a few cubicles in the treasurer's office. The city financial officer or county treasurer will direct all city/county government deposits generated from taxed marijuana revenue into this public bank. Debt or equity capitalization and governance will need to be addressed -- the Bank of North Dakota (<http://www.truth-out.org/news/item/35877-bank-of-north-dakota-soars-despite-oil-bust-a-blueprint-for-california>) is a safe and proven public bank that can serve as an effective model.

In order to remedy the imperfect marijuana market, the public bank will also accept marijuana-related deposits. This "excess" cash can be picked up daily and placed in Federal Reserve vaults and credited to marijuana-related business accounts in the public bank. A web interface will allow account holders to transfer this money to their other deposit accounts with private banks or credit unions located in the same state as the public bank. This scenario can be replicated state-by-state with state-owned public banks.



A combination of city and state-owned public banks can establish best practices to resolve the pot money impasse.

In these scenarios, where a city, county or state public bank accepts marijuana-related business deposits (with the cash physically deposited at the Federal Reserve), the public banking network will need to ensure rigorous compliance with the DOJ's guidance memo on accepting deposits from all the marijuana-related businesses its member public banks serve. Documentation of the origin of the cash will be required to be completed by the marijuana-related businesses before a cash pickup occurs. Enabling smartphone apps that report on specific transactions can help. Other stipulations and practices will be enforced by the public banks so that the rudimentary standards identified by the DOJ guidance memo can be enforced.

One can argue that a network of public banks that solely focus on pot money would do a superior job of setting the gold standard for implementation of the DOJ guidance memo and any subsequent guidance provided by the DOJ or other federal enforcement organizations. In fact, a network of public banks between states that have legalized recreational marijuana can establish best practices in partnership with the primary bank regulatory agencies (the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency) and the DOJ. This would be a significant development. If there is a failure in the system, it will be up to these government entities to work it out, with the public banking network

protecting business entities from the risk of guessing what the existing DOJ guidance memo or future guidance may mean in terms of actual business practices.

In essence, state, city and county governments will better serve their constituents and create a "level playing field" by leveraging their bargaining power as a consortium of public banks that determine best practices. Agencies from the federal government will need to deal with the entire network/consortium, not individual private banks, providing a more balanced approach to federal law enforcement. And state, county and municipal law, based on community rights, can serve to further buttress the network of public banks.

Bank of North Dakota Sets Precedent

There is a precedent for having a public bank deal with compliance issues in a market economy. In 2011, the North Dakota Bankers Association worked with the state legislature to direct the Bank of North Dakota, the nation's only state-owned bank, into the home mortgage origination business in order to offset the increased compliance burden that community banks were shouldering as a result of the Dodd Frank (<https://www.newyorkfed.org/aboutthefed/fedpoint/fed01.html>) legislation (p.5). Dodd Frank was designed to constrain the large Wall Street banks, but inadvertently penalized community banks, and North Dakota has the highest number of community banks per capita in the nation (<http://www.yesmagazine.org/new-economy/a-choice-for-states-banks-not-budget-crises>). Rural banks that only saw three to five mortgages a year could not shoulder the compliance burden, leading to business lost to out-of-state banks.

As a result, the Mortgage Origination Program (<https://bnd.nd.gov/home-loans/mortgage-origination-program-for-rural-lenders/>) for rural lenders was created by Bank of North Dakota to directly address the twin issues of compliance costs and lost business. The irony of an association of private banks using the public bank -- in a red state, no less -- as a way to ensure that they could better manage the risk of working in an increasingly federally-regulated market practically leaps off the page. It shows just how responsive a state government can be in meeting the needs of its people. Not to put too fine a point on it, but this is a demonstration of how a state government, acting in concert with its own depository bank, can blunt the (oftentimes) heavy hand of federal authority, a situation not all that dissimilar to the one faced by the recreational marijuana market.

The new marijuana market cannot realize its potential if participating banks bear the risk of being federally prosecuted and legitimate businesses bear the risk of using a cash-based payment system as a workaround. Until the federal government legalizes recreational marijuana, a network of public banks working together to implement the DOJ guidance memo can serve as an important way to improve market conditions so that unnecessary risk is not borne by private banks or credit unions,

and a measure of safety is provided to cash-based marijuana-related businesses.

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MARC ARMSTRONG (/AUTHOR/ITEMLIST/USER/52513)

Marc Armstrong was the founding executive director of the Public Banking Institute and is one of the founders of Commonomics USA (<http://www.commonomicsusa.org/>), a nonprofit committed to a Commons-based economy, and founding member of the Campaign for Postal Banking (<http://www.campaignforpostalbanking.org/>). More public banking information may be found at Public Banking Policy Project (<http://www.publicbanking.org/>), an initiative of Commonomics USA.

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By Rob Hotakainen, McClatchy Newspapers (http://www.mcclatchydc.com/2013/08/19/199598/marijuana-industry-eager-to-pay.html#eimpl=Daily_News_Update) | Report

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