CP&DR

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California Cities Consider Different Kind Of Greening

BY JOSH STEPHENS

All parents, whether they are latter-day hippies or Marine drill sergeants, reach that moment somewhere in the midst of their children's teen years when they must establish a marijuana policy. Most probably end up somewhere between zero tolerance and "smoke 'em if you got 'em."

With the passage of Proposition 64 in November, cities across California now find themselves in much the same situation.

Proposition 64, the Adult Use of Marijuana Act, does not amount to a revolution unto itself. California has long championed permissive policies towards cannabis, having first legalized its medicinal use in 1997. A gray market of cultivation, distribution, and retail sales already flourishes around the state. But, by legalizing recreational use and

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insight
WILLIAM FULTON

How Will Unwinding WOTUS Rule Affect California?

Despite its rocky start, the Trump Administration seems likely to weaken – and perhaps muddy – federal clean water rules, which could give farmers in California more leeway and put more pressure on state environmental laws to regulate wetlands and water discharges.

It's almost certain that the new administration will start unwinding so-called "Waters of the United States" rule – which will either make it easier to farm and develop around streams or more confusing than ever to get an EPA permit, depending on who you listen to. The new administrator

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inside

San Francisco Enlists Developers to Influence Mobility

The San Francisco Board of Supervisors approved an ordinance to encourage developers to establish Transportation Demand Management (TDM) programs in many new projects citywide. The program would require developments to provide on-site amenities that support sustainable modes of transportation and reduce single-occupancy driving trips associated with new development. The program would apply to residential developments with more than 10 units, 10,000 square feet of commercial, and projects with 25,000 square feet of changes of use. This will encourage more sustainable transportation options, help manage congestion, reduce risks to pedestrians and cyclists, and improve overall efficiency of transportation network. The system works with points which can be collected from providing car-sharing service (six points), bicycles for residents (one point), or set up a shuttle service to the closest train or bus station (14 points). For instance if a developer wants to include 20 free parking spots 13 points are required under the new TDM regime.

Report Identifies nearly 300,000 Acres At Risk in Bay Area

San Francisco's Greenbelt Alliance released At Risk: The Bay Area Greenbelt, which found that 293,100 acres of farmland and natural spaces are eligible for development in the next few decades. The report predicts that much of this development could be inefficient sprawl development. Of those lands, 63,500 acres—99 square miles—are at high risk, meaning they face development within the next 10 years. Contra Costa County has the most vulnerable land to potential development, with Santa Clara County close behind. The goals of the reports are not to halt development, but instead persuade local governments to approve responsible and sustainable development in urban areas. These studies look at city and county plans, zoning, and development proposals across the region. The risks to losing these greenbelt lands include loss of region's farmland and ranch land that contribute to a $6.1 billion agricultural economy, lands that catch and filter rain to be stored as groundwater, and loss of forests and wetlands as carbon sinks. The previous At Risk report came out in 2012; that report estimated the number of acres of open space under threat was 29,700 acres greater than this year's number.

Los Angeles to Accelerate Community Plan Updates

The Los Angeles City Council voted, 12-0, to draft an ordinance to accelerate the city's notoriously slow planning process. One of the new rules will require the Department of City Planning to update its 35 community plans every six year. Some plans haven't been updated in more than 15 years. Updating the plans will cost around $10 million annually and bring each document up to date by 2024. Another rule would be the allocation of necessary funds to allow the Planning Department to fulfill the obligation. Proposed by Councilmember Jose Huizar, the ordinance comes partially in response to Measure S, on the March 7 ballot, which would force the city to update community plans and impose a multitude of other restrictions on the planning process.

Three California Freeways Have 'No Future,' Says Congress for New Urbanism

The Congress for the New Urbanism released a report, Freeways without Futures 2017, to identify urban freeways that should be torn down. A panel of national transportation experts identified ten U.S. highways as candidates for teardown based on their negative impacts, possible benefits of removal, and the political feasibility of such a project. Three of the ten obsolete freeways are in California. report identified I-280 in San Francisco, an elevated highway that cuts off Mission Bay and other neighborhoods from downtown; I-980 in Oakland, which separates downtown Oakland from West Oakland; and Route 710 in Pasadena, which is a stub of long-planned but now moribund extension intended

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to connect the 210 Freeway to the 10 Freeway. There is some degree of local support for demolition of all freeways in the report. CNU advocates removing freeways to fight pollution, ease traffic, and improve walkability and health.

Los Angeles Density Bonus Programs Yield Few Units

An audit of the City of Los Angeles' affordably-priced housing program and density bonus program finds that they have been relatively ineffectual. Los Angeles City Controller Ron Galperin completed the audit to determine how well the "density bonus" program was performing since its inception in 2008. The audit found that 21 percent of new multi-family projects of five units or more, built between 2008 and 2014 (169 of 790 projects) utilized some aspect of the density bonus program -- resulting in 4,463 units designated as affordable. However, just 329 of these units were created in market-rate projects throughout the city. Galperin calls this "an arguably minimal impact when considering the city's overall affordable housing needs." The rest of the units were in entirely affordable housing projects.

San Diego Seeks to Increase Urban Forest

The San Diego City Council unanimously approved a five-year urban forestry plan that would significantly increase the city's stock of street trees, especially those in low-income and urban areas. The city's Climate Action Plan calls for increasing percentage of San Diego covered in trees from 13 to 35 percent over the next 20 years. Those in favor of the plan say it will boost property values, improve air and water quality, enhance wildlife habitat, and shrink energy costs by reducing the heat island effect. The city is using a $750,000 grant from the California Department of Forestry and Fire Prevention to plant 500 trees in urban areas. The next step for the city is creating an updated tree inventory of the existing urban forest to create a better strategy.

S.F. Controller's Report Analyzes Inclusionary Housing Policies

San Francisco City Controller Ben Rosenfield released a report on the affordable housing required by developers. The analysis found developers could afford to rent up to 18 percent of new apartments and sell up to 20 percent of new condominiums at below-market prices without jeopardizing overall housing production. The city currently requires 25 percent to get approval for new construction, but the number had been 12 percent in the past. Mayor Ed Lee says this will lead to more dense housing and he supports legislation set between 16-18 percent for rentals and 18-20 percent for condominiums.

$800 Million Infrastructure Financing District Approved in San Diego

The San Diego City Council unanimously approved the creation of an enhanced infrastructure financing district in Otay Mesa, a largely undeveloped area along the international border. The district would generate nearly $800 million in estimated property tax increment over the next 45 years for infrastructure projects that would accelerate economic development and job growth in Otay. The projects would include primarily freeway onramps, road widening, other transportation upgrades, but also fire stations, parks, and municipal swimming pools. Similar to redevelopment agencies, enhanced infrastructure financing districts allow a defined geographical area to keep increases in property tax that take place during the decades after the district is formed. This may be the largest EIFD to-date; the tool was created by the legislature in 2015.

Los Angeles Releases Vision Zero Plan

The Los Angeles Department of Transportation announced the release of the city's first Vision Zero Action Plan (pdf). The plan outlines the city's blueprint for reducing pedestrian fatalities by 20 percent by end of 2017, and eliminating traffic deaths by 2025. The plan calls out 40 priority corridors that will be focused on in 2017 to achieve the goal of 20 percent reduction. The Action Plan is organized around the following key outcomes: "to emphasize the importance of working together to achieve Vision Zero goals: Create Safe Streets for All, Develop a Culture of Safety, Adopt New Policies and Legislation to Strengthen Safety and Respond to Relevant Data" according to the LADOT press release. However, in 2016 data shows increased fatalities across all road user categories, with pedestrians rising the highest. The plan is related to the city's Mobility Plan, which was adopted last year. (See prior CP&DR coverage.)

Los Angeles General Plan Amendments Approved in 90 Percent of Cases

A Los Angeles Times analysis found that of nearly 1,000 cases of general

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plan amendments to accommodate individual projects since 2000 — sometimes known as "spot zoning" — about 90 percent of general plan amendments, zoning or height district changes heard before the Planning Commission have been approved. Critics, such as those promoting the Measure S ballot measure, contend that this practice has led to an erosion of the role of zoning regulations as an accurate guide of the city's development. City officials and developers argue the exceptions are essential to increasing housing supply and to working with outdating zoning codes. The Times review found when planning commissioners raised objections to some projects, developers included more affordable housing or other conditions to receive approval. The Times did not analyze projects that may have been proposed but withdrawn from consideration when developers realized that they would not receive Planning Commission support.

Obama-Era BLM Policies Threatened; Could Affect 15 Million Acres in California

The U.S. House of Representatives voted to overturn the Bureau of Land Management's "Planning 2.0" rule, which took effect in December. The rule governs all planning for future uses of 250 million acres of federal public land, primarily in western U.S. The House lawmakers also voted to eliminate the federal methane rule that requires oil and gas companies using public lands to control air pollution. Both measures now move to the Senate, and if approved the rules would be eliminated and the BLM banned indefinitely form developing similar rules. The BLM rules would increase public involvement and incorporate more current data and technology to decide whether and where to drill, mine, and log on public land. The rollback could affect up to 15 million acres of land in California, or 14 percent of the state's landmass.

Ainsworth Named Permanent Coastal Commission Director

Jack Ainsworth has been selected as executive director of the California Coastal Commission. Ainsworth has served as acting executive director since last February and has worked at the commission for nearly 30 years. The Commission voted unanimously for Ainsworth. He has received positive feedback from leaders across the state and will be able to guide the agency if it ends up battling the Trump administration, especially over offshore drilling. Environmental groups had been critical of the commission and strongly opposed the departure of former executive director Charles Lester. A nationwide search was conducted for the position with over 1,000 candidates contacted. ■

Manhattan Beach Adopts A Low-Profile Downtown Plan

BY JOSH STEPHENS

Of all the prized surf spots along the California coast, none has been protected more fiercely than Lunada Bay on the Palos Verdes Peninsula. For decades, the "Bay Boys" have harassed any kook who dared to surf there, so much so that they got hit with a class action lawsuit last year.

A few miles up the coast, the City of Manhattan Beach – while not quite in the same league – is taking a cue from the Bay Boys.

Late last year, the city council adopted a new downtown specific plan that, by some accounts, amounts to a big "locals only" sign hanging over the dozen or so commercial blocks clustered at the foot of the Manhattan Beach Pier. It restricts new development to modest levels and favors small, independent retail establishments by limiting the widths of storefronts. To discourage rowdiness, it forbids bars and restaurants from occupying second-story spaces where the ocean views might encourage diners to linger over a few extra glasses of wine.

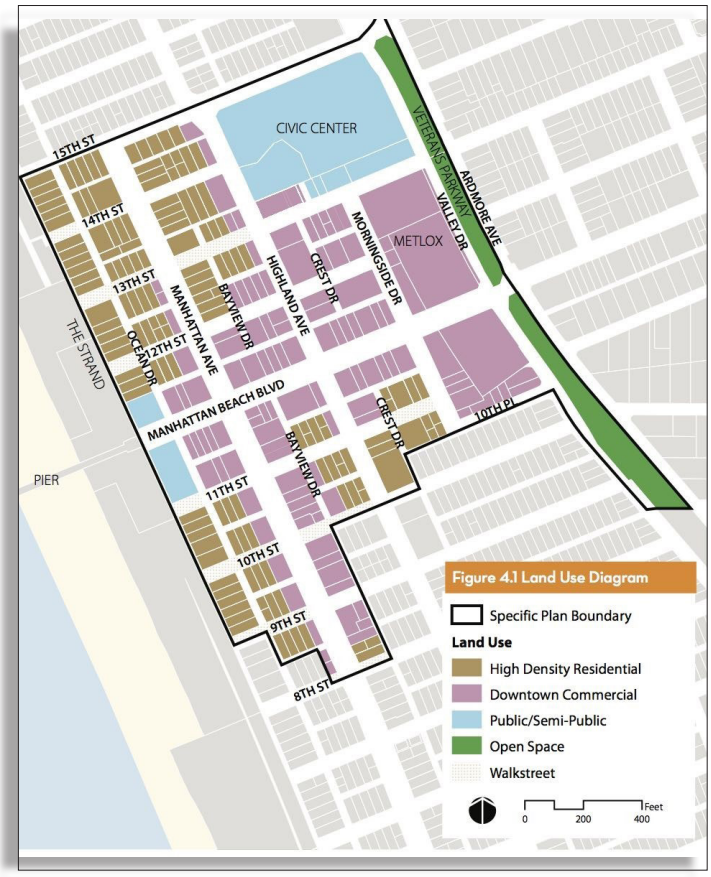

Image credit: City of Manhattan Beach.

In other words, Manhattan Beach wants to be the opposite of its namesake.

For years, the city's development community and many of its businesses had clamored for the city to allow more development. The city's residents and its flood of weekend visitors warranted more space for stores, restaurants, and even offices. Retail space became so dear that only deep-pocketed institutions, such as banks and offices, could afford storefronts.

In 2014 the city adopted an interim ordinance outlawing banks and ground-floor offices in the downtown, in an effort to preserve boutiques and other local businesses. That ordinance spawned a process to rewrite the Downtown Specific Plan. (See prior CP&DR coverage.)

In 2015, city officials invited a National Advisory Panel from the Urban Land Institute to conduct a study and make recommendations. Finding the commercial vacancy rate to be "extremely low" and "an almost untenable situation for small retailers," they suggested that "some densification could be beneficial to the economic development goals of the city. Recommendations included lifting height limits from two stories to three, up to 30-45 feet.

Perhaps it's no wonder that the ULI group, as outsiders, figured that Manhattan Beach could afford to accommodate more visitors.

"When we hire outside consultants…they tend to be from the development community," said Michelle Murphy, president of the Manhattan Beach Residents Association. "They're hammers and they see a nail."

But Manhattan Beach, population 35,726, lives in two worlds: that of a beachside paradise and of an upscale suburb. It's a cross between Thousand Oaks and Malibu. By weekday, residents drive BMW SUV's to downtown Los Angeles. On weekends, surfboards are the vehicles of choice. The median home price is $2.2 million.

Not everyone, of course, can afford this lifestyle all the time. But plenty like to check out the vibe for a day or so.

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"It's typical in some ways of downtowns, but it's atypical, because we do have this incredible beach and pier," said Planning Manager Laurie Jester. "We have a strong local interest, but we also have a worldwide interest."

The city rejected many of ULI's recommendations and instead opted for a far more restrictive downtown plan, which includes the primary goal of "preservation of Manhattan Beach's unique small town beach character."

"Some of the concepts were a little too much for the community," said Jester. "A little too much development."

Notably, a near-final draft of the plan said that it was "primarily oriented toward the local Manhattan Beach community, while acknowledging the role that visitors play in supporting the downtown." The second clause was stricken upon outcry from community members.

The adopted plan limits the width of ground-floor storefronts and total square footage to 1,600, to accommodate independent stores but not big retailers. Banks and ground-floor offices are explicitly forbidden and can move in only with a conditional use permit. Contrary to ULI recommendations and the desires of some downtown property owners, heights will remain limited to two stories. And the plan limits parking, under the theory that more parking will only equal more visitors.

"It's typical in some ways of downtowns, but it's atypical, because we do have this incredible beach and pier," said Planning Manager Laurie Jester. "We have a strong local interest, but we also have a worldwide interest."

And yet, the plan in some ways seeks to make Manhattan Beach even more attractive – to residents and visitors alike.

"We have a number of new guidelines and regulations to ensure that pedestrian orientation, like transparency on the ground floor," said Jester.

Most eccentrically, Manhattan Beach now forbids dining on upper stories. It is, apparently, a quirk of Manhattan Beach nightlife for romantic dinners overlooking the sunset to turn into cacophonous dance parties in the later hours. Murphy cited "hundreds of complaints" about the Shade Hotel.

She also noted that, contrary to most demographic trends in coastal California, Manhattan Beach isn't getting any bigger, and therefore doesn't need a bigger downtown.

"More residents are not moving in," said Murphy. "Richer people tend to buy houses like those on the Strand, and it's one of their seven houses."

During a public hearing, former Development Director Marisa Lundstadt suggested that the Coastal Commission might object to the omission of visitors from the plan's mission statement. The Coastal Commission typically favors efforts to increase beach access. To-date, the commission has not expressed any such concerns.

Absent an outcry from the Coastal Commission, Manhattan Beach's downtown plan could turn out to be a model for other California cities – Laguna Beach, Encinitas, and especially neighboring Hermosa Beach and Redondo Beach – teetering, like so many new surfers, between bedroom community and vacation paradise. ■

Resources

Manhattan Beach Downtown Plan
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cultivation, Proposition 64 essentially puts the finishing touches on this political evolution.

Prop. 64 allows for cultivation of a small amount of marijuana for personal use in private residences, regardless of local restrictions.

"Other than those things….it's based on whatever rules you want to prevail in the community," said Tim Cromartie, legislative representative at the League of California Cities.

Generally, cities seem to be sticking close to tradition.

"You can look at what their policies were before Prop 64 and most of them are following the same kind of line," said Dale Gierenger, state coordinator for the National Organization for the Reform of Marijuana Laws. "Places like Fresno that hated marijuana still hate it. Places like Humboldt County and San Francisco, which see an opportunity in it, are proceeding forward."

Proposition 64 affirms that localities have significant discretion to decide whether and how to allow cannabis-related business activities, including cultivation, processing, and retail sales. Prop. 64 also gives them the right to tax activities related to recreational marijuana (medical marijuana will be untaxed as of 2018).

At the same time, Prop. 64 directs the state to develop guidelines. Those guidelines, to be developed by the new Bureau of Marijuana Control, are not expected to come out until 2018. Meantime, statewide regulations in the Medical Marijuana Regulation and Safety Act, which went into effect Jan. 1, 2016, remain in effect.

MMRSA imposes certain guidelines on the size of cannabis-related facilities and requires that any facility be at least 600 feet from a school. Many cities that permit medical cannabis have adopted further regulations that limit the total number of facilities, separate them from residential areas, and require minimum distances between facilities.

Many cities have adopted moratoriums on new cannabis-related businesses or have placed measures on upcoming ballots, with city council members preferring to let the electorate weigh in on what is, by some accounts, more of a moral issue than a policy issue. Even liberal cities like Berkeley and Arcata are proceeding with caution by enacting moratoria on commercial activities related to recreational cannabis.

In the meantime, many cities are trying to get out in front of the issue. Some are seizing what they consider tremendous economic development opportunities and participating in the so-called "green rush" to capitalize an estimated $7 billion industry statewide. Others are quarantining themselves against what they consider a scourge, becoming part of what some cannabis advocates refer to as a "Banapalooza."

"Some cities are waking up to the economic opportunity and are changing their perspective on whether they want to allow this," said Cromartie. "Some cities have philosophical or moral objections and just aren't prepared to authorize it."

Pro-marijuana blog "The Ganjier" estimated as of late January that 43 percent of the state's localities have either banned or are considering banning commercial cannabis. 11 counties have banned commercial cannabis, with nine others considering it. Almost 140 cities have banned it, with 75 bans pending.

By contrast, Cromartie said, "There are a handful of cities we know that are looking at this as a serious economic opportunity and an economic development opportunity."

It's fair to say that, like those sheepish parents who did their share of experimenting back in the day, the majority are caught in a haze. Planners will play a major role as

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cities try to achieve clarity.

Many cities have adopted moratoriums on new cannabis-related businesses or have placed measures on upcoming ballots, with city council members preferring to let the electorate weigh in on what is, by some accounts, more of a moral issue than a policy issue.

Many cities taking a conservative approach may be doing so in reaction to the chaos that reigned when the United States Department of Justice effectively decriminalized medical marijuana in 2009 — catching many cities off guard.

"At the height we had upwards of 120 illegal operators, at a time when there were no regulations in our zoning code or in our municipal code that provided for or allowed medical marijuana collectives, and yet folks opened," said Michelle McGurk, assistant to the city manager in San Jose and coordinator of the city's medical marijuana policy. San Jose was quick to impose a moratorium on any new commercial cannabis after the passage of Prop. 64.

"The council was very concerned that we would see some of the same behavior without…..essentially a ban in place," said McGurk.

"Places like Fresno that hated marijuana still hate it," said Dale Gierenger, state coordinator for the National Organization for the Reform of Marijuana Laws. "Places like Humboldt County and San Francisco, which see an opportunity in it, are proceeding forward."

Likewise, even very liberal cities like Berkeley and Arcata are proceeding with caution by enacting moratoria on commercial activities related to recreational cannabis.

Voters in the City of Los Angeles, which also ended up with hundreds of unpermitted dispensaries, are facing two ballot measures that would establish regulatory and taxation frameworks for recreational cannabis; one was placed on the ballot by the city council, and the other by citizen initiative. The latter has gone dormant as its sponsors have decided to support the city council measure.

In many cases, cities are expected to treat recreational cannabis just as they did medical cannabis, with the same restrictions on aspects like number of dispensaries.

"Probably the great majority of existing medical places are going to try to go for adult use," said Gierenger.

Where legalization gets interesting — especially for planners — are the opportunities for large-scale production and retail opportunities that go beyond blacked-out windows and "green cross" neon signs.

A few case studies in include the following cities:

Arcata

The unofficial capital of the "Emerald Triangle," Arcata has perhaps the most intimate relationship with cannabis of any city in the country. Its isolation on the North Coast and rugged landscape has long fostered marijuana growing and production, long before legalization came into vogue.

"We were trying to get out ahead of both the state and the region in order to allow people to start getting a foothold in the market," said Loya.

In 2014, the city established a pilot project of a "Medical Marijuana Innovation District," an area of industrial land specifically zoned for processing, cultivation, and "innovative experimentation".

"To provide a safe location, that didn't have impacts to other areas, where marijuana could be processed, grown, and manufactured so that we knew it was being done in a manner that was safe," said Loya. "We wanted to provide an area that was also somewhat controlled."

The zone has a capacity for several dozen businesses but is not yet fully occupied. With recreational legalization, the city expects demand to increase.

For the time being, though, even Arcata is taking a conservative approach.

"We're pressing the pause button on commercial cannabis activities related to non-medical businesses by saying in our municipal code that those activities would have to be

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consistent with state law and the city's zoning," said Loya.

Coalinga

If Arcata's embrace of cannabis is predictable, Coalinga's is nothing short of shocking. The town was approached over a year ago by Ocean Grown Extracts, which was searching for a location for a major production facility. After being met with initial skepticism, Ocean Grown won over the town and worked with the community to craft regulations and a tax structure.

All of this in the middle of conservative Fresno County.

"Public attitudes on this are changing….it's really hard to say anybody is fitting a particular mold right now," said Cromartie.

The company recently moved into what is surely the most poignant location in the young history of California's legalized pot industry: a former prison.

Former City council Member Patrick Keough, who is now a consultant for the cannabis industry, described the regulatory process as intricate but collaborative.

"We changed our zoning," said Keogh. "We had to do negative impact reports. We had to think of what the state law says, what does federal law say? Will it hurt grants that we'd be eligible for?"

Keogh said that, after the initial discomfort, the city ended up embracing cannabis and shaking off its stigma. "Let's not treat these folks like they're anything different from any other industry," said Keogh. "Let's treat them like anybody else."

(Desert Hot Springs, another down-at-heel town with a prison is doing much the same. It has legalized large-scale cultivation, and producers are buying land by the acre.)

Oakland

Short of Amsterdam, perhaps no major city is associated more closely with the cannabis industry than Oakland is. It is the home of some of the state's most enthusiastic pot advocates and of Harborside Health Center, one of the original players in medicinal marijuana. It also gave rise to aptly named Oaksterdam University, a name that came to describe the surrounding neighborhood between downtown and Lake Merritt.

While Prop. 64 might seem to give Oaksterdam every reason to more thoroughly emulate its namesake, negotiations over the city's regulatory structure have taken some odd turns. The city's Cannabis Regulatory Commission is debating whether to set aside a certain number of permits for minority groups that have historically been victimized by the war on drugs. Proponents see the proposed policy as a way of ensuring equity and partially compensating for past injustices.

"There's a myth out there that somehow because of the racial injustices of the War on Drugs, the cannabis industry needs to offer special favors to oppressed minorities," said Gierenger. "But the industry is not responsible for the oppression."

"We do not think the cannabis industry should be subject to anything different from any other industry coming into Oakland, be it microbreweries or be it e-commerce and Uber," said Gierenger.

San Diego

With relatively little fuss, the City of San Diego became the first major city in the state to allow retail sales of recreational marijuana. In mid-January, the San Diego City Council unanimously agreed to allow the sale of recreational marijuana at 15 dispensaries approved by the city to sell medical marijuana. The city additionally agreed to consider the possibility of allowing pot farms, manufacturing facilities, and testing labs later this year.

Council members said they were motivated by the November election, where 62 percent of city voters approved Proposition 64. The council's move could boost city tax revenues and the local economy, while making sure marijuana products are safe. San Diego voters approved a local tax on recreational marijuana that would start at 5 percent and rise to 8 percent in July 2019.

Meanwhile, the San Diego County Board of Supervisors voted last week to ban marijuana farms and dispensaries in unincorporated areas and force existing facilities to close in the next few years. Many counties have enacted such bans.

Even if cities like Coalinga, Desert Hot Springs, and Arcata hit it big with industrial cannabis, opportunities for other cities may be scarce. Geiranger said that California already over-produces marijuana, growing four times more

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crop than state residents can consume. (Per federal law, marijuana still cannot be traded across state lines.)

"Because of the complexities between state and federal law on cannabis, your market in California is just that – California," said Keough. "With any commodity you're going to reach that saturation point."

And yet, no matter how limited the number of producers may be, the number of consumers of cannabis is still vast. That's why some cities may pursue opportunities on the retail side.

"The big thing that's going to happen is you're going to see adult use on-site consumption….coffee shops or other types of establishments like that where people can go and socialize," said Gierenger. "I think you're going to see resorts or hotels and that will become the tourist thing."

"I don't know if we'll go to a dispensary model or allow for coffee houses," said Loya. "There's probably going to be a lot of interest in capturing that some of that tourism that's likely to come from legalization."

Among permissive cities, those that focus on cannabis production may end up leaning heavily on their planners to figure out how and where to accommodate facilities. And, as new uses and, potentially, new zones, they'll have to go through a gauntlet of reviews and approvals.

"All will require significant planning department involvement: appropriate zoning locations, sensitive use buffers, are the requirements going to be the same as for medical marijuana collectives or will they be different? Those changes will have to go to planning commission," said McGurk. "And we'll have to have CEQA review."

One consideration that cities are overwhelmingly concerned about is that of power supply. Keough said that the City of Coalinga has issued permits for four more producers, in addition to Ocean Grown, but that the city does not yet have the electrical capacity for them to operate yet. And when producers do get the power they need, they can pose further challenges.

"If you're pulling that kind of power off the grid, you're probably pulling more power than that structure is designed to withstand. Translation: 24-hour fire hazard," said Cromartie.

As planners consider the economic impacts of cannabis, there's a balance between the revenue cities can reap from taxes and the economic development opportunities by way of employment.

Advocates like Gierenger encourage cities not to get overzealous with taxation.

"We think that's inviting the underground market," said Gierenger, citing cities such as Santa Barbara that have imposed city taxes of 20 percent on top of the 25 percent state tax. And cities that are attracting cannabis businesses through zoning and cooperative regulations don't want to repel them with high taxes.

"I think getting people into the market and helping that market flourish is going to be more important than the initial shot in the arm to your general fund," said Loya. "You'll have more staying power that way."

Some cities are getting creative with taxation. Council members in Sacramento, where cannabis producers are clustering in industrial areas, have proposed a 1 percent tax to support a "neighborhood responsibility fund."

For all but the most conservative cities, Gierenger encourages a sober approach. "This stuff isn't plutonium," he said. ■

Contacts & Resources

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of the Environmental Protection Agency, sued to stop the rule as attorney general of Oklahoma.

And attempts to repeal the WOTUS rule might be a good indication of how far the Trump Administration and the Republican Congress will be able to go in rolling back environmental regulations. But it might also show the added pressure placed on California environmental laws during the Trump administration.

The WOTUS rule in California would make it clear, among other things, that the federal Clean Water Act regulates vernal pools – those small inundations in the ground in the Central Valley, often located on farms, that sometimes fill with water. Up to now, vernal pools have been regulated in large part through the state and federal endangered species acts because they are habitat for the fairy shrimp.

But with Republicans in control of the entire federal government, the endangered species act could be in trouble too. With the possibility of both a WOTUS rollback and a federal endangered species reform, vernal pools could be regulated mostly by the California endangered species act.

The WOTUS rule is the first likely target of the Trump Administration. But an assault on the Endangered Species Act – which survived the entire George W. Bush administration with a single legislative amendment – is also likely.

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Few environmental regulations during the Obama years were more controversial than the WOTUS rule, which was issued in mid-2015. The rule sought to bring more clarity to federal water and wetlands regulation – especially after confusing court rulings – and the Obama EPA even claimed it would reduce the scope of federal jurisdiction. However, the rule does appear to bring marshes, peat bogs, vernal pools, and other small and sometimes disconnected wetlands into federal water jurisdiction.

In California, the rule appears to bring vernal pools under federal water regulation, and the Association of California Water Agencies has expressed concern that it will impede construction of water infrastructure alongside streams. Implementation of the new rule was halted in late 2015 by the Sixth U.S. Circuit Court of Appeals, which issued a stay. The litigation was brought by several attorneys general, mostly in the Midwest and Plains states, including Oklahoma's Scott Pruitt, who is President Trump's new EPA administrator. The Sixth Circuit has now halted the litigation temporarily while the U.S. Supreme Court considers another case which poses the question of whether federal district or appellate courts have jurisdiction over Clean Water Act issues.

The Clean Water Act was passed in 1970 and in its early years was widely credited with greatly improving the quality of water in American cities. Since EPA and the Army Corps of Engineers began regulating wetlands in the 1980s under Section 404 of the Clean Water Act, however, the scope of the act – and the definition of "waters of the United States" -- has been controversial. It began during the first Bush Administration, when then-Vice President Dan Quayle, charged with running a task force to settle the matter once and for all, suggested that the rule for wetlands should be, "When it's wet, it's wet".

Especially in California, of course, it's not that simple. Rainfall varies so much by season and by year – witness the recent deluge after years of drought – makes it hard to determine what's a wetland and what's not.

At the time the WOTUS rule was finalized in mid-2015, the EPA claimed that the rule would simply clarify

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insight WILLIAM FULTON

>>> How Will Unwinding WOTUS Rule Affect California?

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a confusing mélange of federal regulations and Supreme Court rulings on wetlands and would not greatly increase the EPA's scope of regulation. In particular, the rule was designed to meet the test laid out in the 2006 case *Rapanos v. United States*, which said the Clean Water Act applies to navigable waters of the United States but did not define what that meant.

As attorney general, Pruitt was aggressive in criticizing the rule. He even posted a Facebook video in which he argued that the rule would harm landowners' ability to engage in farming, ranching, and oil and gas activity. Left-wing activists have criticized Pruitt's close ties to the oil and gas industry.

Especially given Pruitt's involvement in the WOTUS case, it's almost certain that the EPA will soon begin the process of repealing the rule. Unwinding the rule might need be as easy as it seems, however, given the fact that the law's language is not clear and *Rapanos* and other court cases have further muddied the waters. Environmentalists are also likely to tie the repeal up in court for a long time – something the Trump Administration is not likely to appreciate.

Meanwhile, many are predicting an attempt to repeal or dramatically weaken the Endangered Species Act, whose text has remained untouched for decades despite significant periods of Republican control of the House, the Senate, and the presidency. But these efforts too are likely to run into fierce environmentalist opposition.

All this is not likely to affect California much, as the state has parallel environmental laws for air, water, and endangered species. But it could put the state on a collision course with the federal government over environmental protection – and suggest one more arena in which the state will appear to be a blue bubble for the next four years. ■

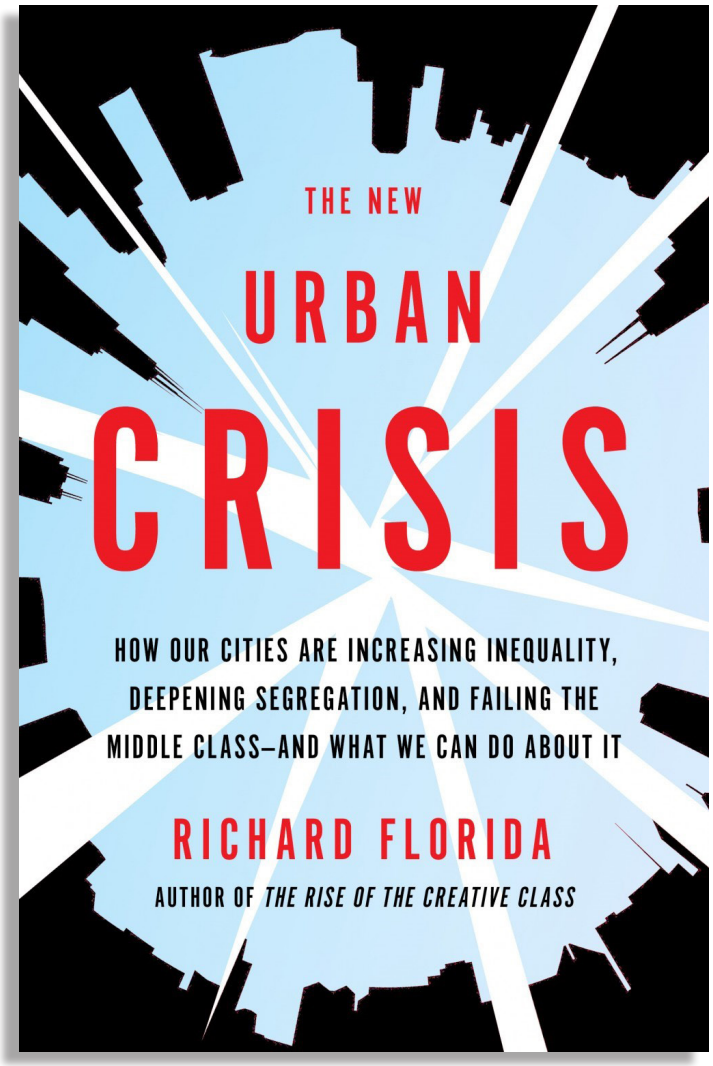
Richard Florida's Reckoning

Richard Florida's forthcoming book, *The New Urban Crisis,* will likely elicit one of two responses. It will be viewed as either a tardy, richly ironic attempt to undo damage for which Florida himself deserves partial blame -- or as a timely, if lamentable, analysis of unintended consequences and plausible solutions accompanied by an appropriate mea culpa.

Your feelings about Florida may depend in part on your feelings about the new U.S. presidential administration. More on that later.

Florida built his career on advocacy for the "creative class." Back in 2003, he noticed that creative industries — which he defined broadly as anything from fine arts and fashion to programming and pharmaceuticals — did not need suburban office parks or noxious factories. Their "products" are based on ideas. Ideas thrive on collaboration. Collaboration requires congregation – i.e. cities.

Creatives didn't want just any cities. They wanted *nice* cities. They wanted nice bars, nice restaurants, nice parks, nice transit, and, most importantly, nice people. Florida encouraged cities to become the cities that the creative class wanted them to be.



But today, many cities, and perhaps Florida himself, have become victims of their own success.

In his introduction, Florida writes soberly, "I realized I had been overly optimistic….I entered into a period of rethinking and introspection, of personal and intellectual transformation, of which this book is the result."

We all needed a good think, really. The last great urban crisis – back in the 1960s and 1970s -- took place in plain sight. The Cuyahoga River caught fire. So did the Bronx. Downtown neighborhoods emptied out and then got torn down. What Florida realized is that the current crisis, while not nearly as grave as the last one, is profound in its own way. But it's relatively invisible, hidden behind, and not nearly as exciting as, the prosperity of the past decade. He realized that "the very same clustering force that drives economic and social progress also…. generates a lopsided, extremely unequal kind of urbanism. A relative handful of superstar cities…benefit while many other places stagnate."

Florida invents a statistical index to quantify what a "superstar city" is. Globally, New York and London rank at the very top, followed by Tokyo, Hong Kong, Paris, Singapore, Los Angeles, Seoul, Vienna, Stockholm, and Toronto.

Florida's index, like all indices, is semi-arbitrary — Vienna is a "superstar" but Shanghai isn't? – but the point is well taken: talent, cultural influence, and capital gravitate converge in what Florida describes as "winner-take-all" situations. Cleveland and Liverpool suffer (relatively) while Chicago and London thrive. And why shouldn't they? Mobility is a hallmark of the creative class. If you're free to move anywhere, why move to the "second-best" city as opposed to the "best"?

The consequence of increasing wealth is increasing hardships for many residents — those who don't make it big, and those who don't want to make it big but instead just

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want to make a living. But cities are microcosms of global patterns: "Superstar cities fall victim to winner-take-all urbanism of their own, as they, too, are divided into a small number of extremely advanced superstar districts and much larger numbers of less advantaged neighborhoods." Some cities experience trickle-down effects whereby the poor benefit from the spending of the wealthy, but even poor neighborhoods still suffer from inflated costs for housing.

Florida defines these intra-urban problems as inequality, segregation, and sorting. He offers a slew of data to describe these patterns, some of it almost comical in its precision. He offers data sets to rank cities according to different types of segregation: Segregation of the Wealthy; Segregation of the Less Educated; Segregation of College Grads; Educational Segregation; Creative Class Segregation; Service Class Segregation, etc.

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(In almost every case, the major California metros rank atrociously, playing a game of musical chairs to see which can be the worst in a given category. Los Angeles has the worst working-class segregation and educational segregation. San Jose and San Francisco are Nos. 1 and 2 in overall occupational segregation. Conversely, four of the top six cities *globally* for venture capital investment are in California.)

Florida fuses this data into what he calls the "New Urban Crisis Index," consisting of "economic segregation, wage inequality, income inequality, and housing unaffordability." The big winners/losers, are, in order: Los Angeles, New York City, San Francisco, San Diego, and Chicago.

He reserves choice words for political interests that have exacerbated the crisis.

Opponents of growth "not only preserve their own housing values but also put a brake on the very clustering that drives innovation and economic growth." NIMBY activism has produced a "thicket of zoning laws and other land use regulations that restrict the supply of housing." The aggregate result: an estimated loss of $1.4 trillion to $2 trillion in economic gains between 1964 and 2009.

Florida chides activists at the other end of the socioeconomic spectrum too. While low-income residents are understandably wary of displacement, Florida contends that the tendency to oppose new housing in low-income areas is counterproductive. "The media's obsession with gentrification deflects attention from the far more serious problem of chronic and concentrated urban poverty," he writes.

Unlike in generations past, the suburbs provide little relief. "Instead of pushing people toward the American Dream, suburbia today actually hinders upward economic mobility" especially for the poor, who have to shoulder the cost of transportation. Florida's description of the suburbs partly echoes what many people said about cities themselves 60 years ago: "with their enormous physical footprints, shoddy construction, and hastily put up infrastructure, many of our suburbs are visibly crumbling."

The hyper-dense, rapidly growing cities of the developing world are even worse off. Across Africa and Asia, rural migrants seek out cities not to realize their dreams but merely to survive. Many countries have only one major city, so migrants can go in only one direction — the ultimate example of winner-take-all urbanism. "Massive inflows of people can easily overwhelm a city's ability to effectively

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absorb them," Florida writes, "so tremendous numbers of new migrants end up being packed into rudimentary settlements in mega-slums."

For all the gloom, make no mistake: Florida still believes in the power of the creative class — and he's still himself. (You know it's a Richard Florida book when it includes references to "Byrne, Smith, and Moby" — i.e. David, Patti, and, well, Moby.) He just wants cities to take a more nuanced approach.

The New Urban Crisis lacks much of the dazzle that characterizes Florida's earlier work — he's like a Taylor Swift fan who just discovered Morrissey. Previously, Florida presaged, and encouraged, ebullient trends that hadn't happened yet. This time, he's describing depressing things of which many urbanites are all too aware. Whether Florida should have been aware of them — ahead of time — is the question that hangs over the book.

Indeed, Mike Davis, among others, has been warning about this stuff for years, with full Marxist indignation. In 2008, he and co-editor Daniel Monk gave "superstar cities" a far more sinister name: "Evil Paradises." Florida is less shrill than Davis and more optimistic. Whereas Davis sees class struggle and capitalistic exploitation in every penthouse and gated driveway, Florida sees more of a garden-variety mess.

The scholar seemingly most at odds with Florida is Joel Kotkin. In last year's *The Human City*, Kotkin presented a passel of self-contradictory recommendations to a) lower their costs of living and be more friendly to young families; by b) turning away from dense urbanism and re-adopting the suburban model that families "like." How less density in San Francisco or New York would lead to lower costs of living, Kotkin does not explain.

Florida's approach is far more realistic and intellectually consistent than Kotkin's: "the way out of the New Urban Crisis is *more*, not less, urbanism." (You can read Bill Fulton' old but still fun three-part riff on Florida v. Kotkin here and my review of the *The Human City* here.)

Florida has concluded that urban success depends on balance. Balance among cities. Balance within cities. Even balance on the level of a city block. "Urban economics are powered not by extreme residential density and huge towers, but by the mid-rise, mixed-density that promotes mixing and interaction," writes Florida.

Florida prescribes a mix of pragmatic physical and policy solutions. He calls for the reform of zoning codes to support infill development; provision of infrastructure, including transit, to enable dense cities to do what they do best; and develop "affordable" rental housing. On the policy front, he wants cities to get serious about alleviating concentrated poverty and supporting low-wage workers. He even proposes a guaranteed minimum wage for workers and, at the other end of the spectrum, a land-value tax to encourage property owners to develop property intensively rather than let them languish as, say, mini-malls and parking lots.

Florida wants national officials to get with the program too. He proposes a "Department of Cities and Urban Development" to set urban policy and, importantly, maximize federal funds that go to cities. He notes, "the federal government is already spending a lot of money on cities and urban development through a wide ran of initiatives, ranging from transportation and housing to education, crime, and economic development—none of them coordinated in any meaningful way."

"We must put cities and urbanism at the very center of our agenda for economic prosperity," he writes.

Uh oh.

Had I read *The New Urban Crisis* on November 7, I'd have placed it somewhere between obvious and inspiring. The latter is certainly how Florida felt about it. Today, who knows.

Florida wrote the preview draft before the November election, with the assumption that Hillary Clinton would win the presidential election. And he assumed – as did many of us – that a Clinton presidency would respect and support cities, especially since city-dwellers voted for her overwhelmingly. Trump's win, which came largely from rural areas that are culturally and temperamentally suspicious of cities, compelled him to write a late revision, changing the introduction and conclusion.

Trump's election rattled Florida, and not just because he had to write a few more paragraphs. He seems genuinely to fear that Trump will neglect and abuse cities like no other

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president in recent memory. He puts on a brave face, though, writing in his update, "Now more than ever, mayors and local officials will have to take the lead on transit, affordable housing, poverty, and other pressing urban issues." (Kotkin actually agrees with this, promoting something he calls "localism".) But Florida knows that Trump's presidency transcends specific issues. With chilling certainty, Florida writes, "The geographical and cultural divides that the New Urban Crisis has etched into our landscape are deep….our newly elected government will only make them worse."

Perhaps what Florida really did by promoting and branding the creative class was to unwittingly give the forces of stasis and conservatism a target at which to shoot. It's one thing for a city to go about its business, gradually adding residents and jobs by the grace of the free market. It's another thing to be invaded by "the creative class." The invasion is all the more threatening when it consists of young, weird people who work at new, unfathomable jobs.

(Encouragingly, Florida and Kotkin are drafting a joint op-ed about how cities can address the Trump administration. Strange times lead to strange bedfellows.)

Until President Trump's urban policies come to bear, *The New Urban Crisis* provides a tidy, timely summary of the current urban problem, in all its enormity. Florida's statistics and graphs may not stir the soul the way stories about evictions, gang wars, galleries, and gastropubs do. But they testify to the seriousness of the trend and its long reach.

Notwithstanding President Trump, I find myself sympathizing with Florida. Sure, he's a target because he's a celebrity academic and he may have marketed his theory of the creative class too exuberantly. But he's not Mayor of the World.

Even as Florida encouraged cities to develop seemingly frivolous amenities and cosmetic improvements, he wasn't telling them not to build housing. He wasn't telling them not to build schools. He wasn't telling them to vest political power in homeowners associations and not in their new residents. He never told them to cling to outdating zoning regulations or counterproductive tax schemes.

Whatever fantasies Florida foisted upon cities, he never told them to do it *badly*.

If anything, the biggest mistake of Florida and other city boosters was to sell cities to creatives (and vice-versa) without fully impressing on creatives their obligation to be citizens. Creative class residents can build awesome iPhone apps, drop dope tracks, and throw great parties. But creativity doesn't inherently lend itself to civic participation. But civic participation -- from everyone, not just the NIMBY's -- is exactly what's required to create equity, civic prosperity, and urbanism that serves everyone.

Too many members of the creative class have stood by, immersed in their own worlds, while their cities have become more expensive, more segregated, and less accessible. What Florida probably should have advised is that every newcomer not treat their new cities like playgrounds but rather like projects — projects that require every bit as much attention as do the tech startups, underground theater companies, and urban planning newsletters that keep the creative class busy.

Now we may need to get busier than ever.

The New Urban Crisis: How Our Cities Are Increasing Inequality, Deepening Segregation, and Failing the Middle Class -- and What We Can Do About It

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– JOSH STEPHENS | FEB 8, 2017 ■