

Recent Developments in California Medical Marijuana Law

Unincorporated Services Committee
June 29, 2016

Key State Medical Marijuana Laws

- Compassionate Use Act of 1996 (Health and Safety Code section 11362.5; Prop 215). Provides criminal immunity for *patients and primary caregivers* for possession and cultivation of marijuana if a doctor has recommended the marijuana for medical use.
- Medical Marijuana Program Act (Health and Safety Code sections 11362.7 through 11362.9 adopted in 2003). Establishes voluntary program for identification cards for qualified patients and primary caregivers and provides criminal immunity to *qualified patients and primary caregivers* for certain activities involving medical marijuana, including cultivation as a collective or cooperative.
- Medical Marijuana Regulation and Safety Act (Business and Profession Code section 19300 through 19360). Governs the licensing and control of all medical marijuana *businesses* in the state and provides criminal immunity for *licensees*.

Medical Marijuana Regulation and Safety Act and Related Legislation:

- ▶ **AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, Wood)** – Establishes dual licensing structure requiring state license and a local license or permit. Department of Consumer Affairs heads overall regulatory structure imposing health and safety and testing standards.
- ▶ **AB 243 (Wood)** – Establishes a regulatory and licensing structure for cultivation sites under the Department of Food and Agriculture.
- ▶ **SB 643 (McGuire)** - Establishes criteria for licensing of medical marijuana businesses, regulates physicians, and recognizes local authority to levy taxes and fees.

Medical Marijuana Regulation and Safety Act

The legislation protects **local control** in the following ways:

- ◆ **Dual licensing**: A requirement that all marijuana businesses must have **both** a state license, and a local license or permit, to operate legally in California. Jurisdictions that regulate or ban medical marijuana will be able to retain their regulations or ban.
- ◆ **Effect of Local Revocation of a Permit or License**: Revocation of a local license or permit terminates the ability of a marijuana business to operate in that jurisdiction under its state license.
- ◆ **Enforcement**: Local governments may enforce state law in addition to local ordinances, if they request that authority and if it is granted by the relevant state agency.
- ◆ **State law penalties for unauthorized activity**: Provides for civil penalties for unlicensed activity, and applicable criminal penalties under existing law continue to apply.

Expressly protects local licensing practices, zoning ordinances, and local actions taken under the police power.

AB 266 Medical Marijuana – what the bill does:

- ◆ Establishes a statewide regulatory scheme with the new Bureau of Medical Marijuana Regulation (BMMR) within the Department of Consumer Affairs (DCA) at its head.
- ◆ Provides for dual licensing: both a state license, and a local permit or license, *issued according to local ordinances*, are required.
- ◆ Limits cross-licensing: operators may hold one state license in up to two separate license categories. Prohibits medical marijuana licensees from also holding licenses to sell alcohol.
- ◆ Grandfathers vertically integrated businesses (i.e., businesses that operate and control their own cultivation, manufacturing, and dispensing operations) if a local ordinance allowed or required such a business model and it was enacted on or before July 1, 2015.
- ◆ Allows those facilities operating in compliance with local zoning ordinances and other state and local requirements on or before January 1, 2018, to continue to operate until their state application for licensure is either approved or denied.
- ◆ Gives state license processing priority to those facilities in operation and in good standing with the local jurisdiction as of January 1, 2016.

AB 266 Creates 17 types of State License Classifications:

Type 1 = Cultivation; Specialty outdoor; Small

Type 1A = Cultivation; Specialty indoor; Small

Type 1B = Cultivation; Specialty mixed-light; Small

Type 2 = Cultivation; Outdoor; Small

Type 2A = Cultivation; Indoor; Small

Type 2B = Cultivation; Mixed-light; Small

Type 3 = Cultivation; Outdoor; Medium

Type 3A = Cultivation; Indoor; Medium

Type 3B = Cultivation; Mixed Light; Medium

Type 4 = Cultivation; Nursery

Type 6 = Manufacturer 1

Type 7 = Manufacturer 2

Type 8 = Testing

Type 10 = Dispensary; General

Type 10A = Dispensary; No more than 3 retail sites.

Type 11 = Distribution

Type 12 = Transporter

AB 266 Medical Marijuana – what the bill does (continued):

- ◆ Caps total cultivation for a single licensee at 4 acres statewide, subject to local ordinances.
- ◆ Requires establishment of uniform state minimum health and safety standards, testing standards, and security requirements at dispensaries and during transport of the product. Product testing is mandatory.
- ◆ Prohibits testing lab operators from being licensees in any other category, and from holding a financial or ownership interest in any other category of licensed business.
- ◆ Labor Peace: Includes a labor peace agreement under which unions agree not to engage in strikes, work stoppages, etc. and employers agree to provide unions reasonable access to employees for the purpose of organizing them.
- ◆ Specifies that patients and primary caregivers are exempt from the state licensing requirement, and provides that their information is not to be disclosed and is confidential under the California Public Records Act.
- ◆ Phases out the existing model of marijuana cooperatives and collectives one year after the Dept. of Consumer Affairs announces that state licensing has begun.

AB 243 Medical Marijuana – what the bill does:

- ◆ Places the Dept. of Food and Agriculture (DFA) in charge of licensing and regulation of indoor and outdoor cultivation sites.
- ◆ Mandates the Dept. of Pesticide Regulation (DPR) to develop standards for pesticides in marijuana cultivation, and maximum tolerances for pesticides and other foreign object residue.
- ◆ Mandates the Dept. of Public Health to develop standards for production and labeling of all edible medical cannabis products.
- ◆ Assigns joint responsibility to DFA, Dept. of Fish and Wildlife, and the State Water Resources Control Board (SWRCB) to prevent illegal water diversion associated with marijuana cultivation from adversely affecting California fish population.
- ◆ Specifies that DPR, in consultation with SWRCB, is to develop regulations for application of pesticides in all cultivation.
- ◆ Specifies various types of cultivation licenses.
- ◆ Directs the multi-agency task force headed by the Dept. of Fish and Wildlife and the SWRCB to expand its existing enforcement efforts to a statewide level to reduce adverse impacts of marijuana cultivation, including environmental impacts such as illegal discharge into waterways and poisoning of marine life and habitats.

SB 643 Medical Marijuana – what the bill does:

- ◆ Directs the California Medical Board to prioritize investigations of excessive recommendations by physicians.
- ◆ Imposes fines (\$5000) against physicians for violating the prohibition against having a financial interest in a marijuana business.
- ◆ Provides that a recommendation for cannabis without a prior examination constitutes unprofessional conduct.
- ◆ Imposes restrictions on advertising for physician recommendations.
- ◆ Places the Dept. of Food and Agriculture in charge of cultivation regulations and licensing, and requires a *track and trace* program.
- ◆ Codifies dual licensing (state license and local license or permit), and itemizes disqualifying felonies for state licensure.
- ◆ Places DPR in charge of pesticide regulation and DPH in charge of production and labeling of edibles.
- ◆ **Clarifies the right of counties to impose taxes** (not fees) on cultivation, dispensing, producing, processing, preparing, storing, providing, donating, selling or distributing medical marijuana/products. Requires voter approval. Tax proceeds may be for general government purposes or purposes specified by the board of supervisors in the ordinance proposing the tax. The tax can be county-wide.

Cultivation (AB 243)

- ◆ AB 243 prohibits cultivation of medical marijuana without first obtaining both a local license, permit, or other entitlement for use and a state license. A person may not apply for a state license without first receiving a local license, permit, or other entitlement for use.
- ◆ A person may not submit an application for a state license if the proposed cultivation will violate provisions of local ordinances or regulations, or if medical marijuana is prohibited by the city or county, ***either expressly or otherwise under principles of permissive zoning*** (Health & Safety 11372.777(b)).
- ◆ Under a “permissive” zoning code, “any use not enumerated in the code is presumptively prohibited.” *City of Corona v. Naulis* (2008) 166 Cal.App.4th 418, 425. **Alameda County has a permissive zoning code.**

RELEVANT ALAMEDA COUNTY GENERAL CODE PROVISIONS

6.108.180 - Prohibited operations.

The permittee and or his or her agents shall at all times comply with Section 11326.5 [sic] et seq. of the California Health and Safety Code and this chapter in the operation of the dispensary. This includes, but is not limited to, **the prohibition of sales, transportation and delivery of medicinal marijuana off the site of the dispensary premises.**

6.110.020 - Purpose of medical cannabis patient and primary caregiver identification cards.

***** This chapter shall not be construed by any member of the public to authorize possession, use, or transportation of cannabis that is not authorized by Health and Safety Code Section 11362.5 or by federal law.**

6.108.120 - Standard conditions.

A. Throughout the term of the permit, each permittee shall not violate this chapter and shall comply with the following standard conditions: ***

- 4. Marijuana may not be grown or cultivated on the premises. *****

Timeline for Implementation?

- ◆ **None of the bills specify a timeline for implementation.**
- ◆ This is partly due to various state departments being at different stages in terms of their readiness to proceed.
- ◆ The rough timeline that has been given for state licensing to begin is January 2018.

GENERAL ORDINANCE CHAPTER 6.108

- Adopted in 2005 to regulate Medical Marijuana Dispensaries in the Unincorporated Area
- Limits the number of Dispensary Permits to 3, in specific geographic areas
- In April, 2016, a group of community “stakeholders” drafted a proposed amendments to Chapter 6.108 to conform to the MMRSA
- In May, 2016, County staff reviewed the stakeholder proposal and provided an initial response to the Board Transportation & Planning Committee
- On June 23, 2016 the Transportation & Planning Committee provided guidance to staff

PERMITS

- ▶ Increase the number of dispensary permits from 3 to 6
- ▶ Allow dispensaries in more geographic areas, including in east County
- ▶ Prohibit dispensaries in residential zones; continue to allow in commercial, industrial, and (potentially) agricultural zones as accessory uses to cultivation sites
- ▶ Create separate permits/licenses that mirror state license types (dispensary, nursery, cultivation, manufacture, transport)
- ▶ Provide appropriate regulation for each license – deferring to anticipated state regulations and enhancing state regulations as necessary
- ▶ Require bidders in the dispensary permit RFP process to identify the proposed dispensary site, but to obtain zoning entitlements (likely a Conditional Use Permit) after the bid process concludes

DELIVERY OF MEDICAL MARIJUANA

- ▶ Include a separate permit and application process for the delivery (retail) of medical marijuana
- ▶ Limit delivery permits to licensed, “brick and mortar” dispensaries
- ▶ Include in the ordinance the definition of “delivery” from the MMRSA
- ▶ Suspension or loss of a “delivery” permit would not automatically affect the dispensary permit
- ▶ Delivery permits would be unlimited in number

ROLE OF SHERIFF

- ▶ While CDA will be lead, maintain a role for the Sheriff in licensure/permitting, inspections and enforcement
- ▶ Maintain criminal penalties for violations of the ordinance
- ▶ Require Sheriff approval of security plans

DISPENSARY REGULATION

- ▶ Prohibit the presence of persons under age 18 on the premises
- ▶ Prohibit sales to persons under the age of 18
- ▶ Clarify visibility standards
- ▶ Expand nuisance regulations (noise, odors, etc.)
- ▶ Reduce from 1,000 feet to 600 foot the spacing for sensitive receptors and other dispensaries
- ▶ Require pre-approval for the transfer of a permit to a new location
- ▶ Require compliance with weights & measures regulations
- ▶ Require compliance with agricultural laws and regulations

EDIBLES

- ▶ Business & Professions §19300.5(s) “edible cannabis product” ... “is not considered food” (Health & Safety § 109935) “or a drug” (Health & Safety § 109925)
- ▶ Require compliance with applicable Health & Safety Codes
- ▶ Edibles must be produced in a commercial facility (that does not produce food items) constructed in accordance with applicable building standards and health and safety standards as opposed to private home kitchens

VERTICAL INTEGRATION FOR CULTIVATION AND MANUFACTURING

- ▶ Potential pilot for 2 currently licensed Dispensary operators
- ▶ Establish a commercial cultivation permit
- ▶ Consider CEQA requirements for a cultivation program
- ▶ Defer cultivation entitlements until proper zoning is in place
- ▶ Defer manufacturing activity authorization until proper zoning is in place
- ▶ Permissive Zoning – commercial medical marijuana cultivation is not presently permitted or conditionally permitted in the Zoning Ordinance; it must be listed as a discrete land use and appropriate conditions imposed before it is authorized as a permitted zoning use in appropriate zoning districts.

VERTICAL INTEGRATION/CULTIVATION

- ▶ Right to Farm – neither the Right to Farm Ordinance nor MMRSA create an entitlement for zoning for marijuana as an agricultural product
- ▶ Health & Safety § 11362.777(a) “**For purposes of this section** and Chapter 3.5 (commencing with Section 19300) of the Business and Professions Code, medical cannabis is an agricultural product.”
- ▶ Medical cannabis is not an “agricultural product” for *all purposes*, including local zoning
- ▶ The Alameda County Right to Farm Ordinance (Gen. Code Chap. 6.28) “does not exempt farmers, agricultural processors or others from compliance with the law.” Section 6.28.010 defines “agricultural operations” with the qualification that agricultural practices and operations must be “consistent with county regulations.”
- ▶ The California Right to Farm Act (Civil Code § 3482.5) precludes commercial agricultural activities from being deemed a nuisance after being in lawful operation for three years; commercial cannabis operations can not meet this standard

FEES AND STAFFING COSTS

- ▶ Include provisions for payment of reasonable and necessary fees for all aspects of regulations (permit applications, inspections, renewal applications, etc.) and licensure
- ▶ Determine and fund costs for additional staff needs

STATE EFFORTS

- Additional State Legislation –
 - Fine-tuning original bills
 - SB 837
 - AB 1575
 - Anticipated CEQA EIR with State regulations

- Voter Initiatives –
 - Control, Regulate and Tax Adult Use of Marijuana Act

NEXT STEPS

Public Meeting Schedule

June 29	Unincorporated Services Committee
July 18	Transportation/Planning Committee
July 18	CV Municipal Advisory Council
July 18	Planning Commission
July 19	Board of Supervisors – first reading
July 20	Sunol Citizens Advisory Committee
July 26	Ag Advisory Committee
July 27	Unincorporated Services Committee
August 2	Board of Supervisors – second reading

QUESTIONS?