



CONTACT US

HOME

GUIDE TO CA CANNABIS LAWS

PRACTICE AREAS

BLOG



ATTORNEYS

CONTACT US

VIDEOS

NEWS

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THE M&L GUIDE TO CA'S CANNABIS LAWS, BY LA'S TOP MED. CANNABIS LAWYERS

Guide to California's Marijuana Laws

By California's Leading Med. Cannabis Lawyers, Margolin & Lawrence

What are the new California cannabis laws as of June 2017?

On June 15, 2017, the California Senate passed S.B. 94, the MAUCRSA. The MAUCRSA effectively repeals the MCRSA and establishes a single regulatory regime with two parallel tracks: one for medical and one for recreational. One of the key changes coming out of this new legislation are that cannabis businesses may be able to co-locate, meaning they can have recreational and medical activities licensed on the same property, so long as they obtain two separate licenses and follow all the compliance requirements for each track. Take the time to



read the regulations yourself and also make sure to consult with a qualified cannabis lawyer who can advise you on how to comply with the requirements for state licensing and set up your business for success.

The MAUCRSA still has two parallel licensing tracks:

A-licensees will be applying for adult use/Prop 64 licenses.

M-licensees will be applying under the medical regime.



Here are our med. cannabis attorneys' top takeaways from the new bill:

- Co-location: the same facility may be able to have a medical and an adult use license under the new regulations.
- City/County Ordinances: You will still need local authorization from your City or County before you can apply for a state license under the MAUCRSA.
- Delivery: There is more clarity around how delivery operators can and should operate, particularly with respect to local jurisdictions in the MAUCRSA. See SEC. 63, Section 26090 of the Business and Professions Code (e)
- Delivery: those without storefronts can deliver to customers (so long as it complies with local regs).

- Edibles: will contain 10mg THC or less per serving & will be marked with a universal symbol which the Department of Public Health will release later this year, among other requirements.
- Priority Applications: applicants who have been operating in compliance with the Compassionate Use Act of 1996 and its implementing laws prior to September 1, 2016 will receive priority in the state licensing process.
- Residency requirement: the provision in the AUMA requiring proof of state residency prior to 2015 has been repealed.
- Appellations Control & Organic designations: the state also clarified the rules around naming your product after a City/County and paved the path for eventually allowing organic certifications on cannabis products.
- Cultivation: Cultivators will need to identify the source of their water supply under SEC. 48 § 26060.1(1)(A).

You can read the full text of S.B. 94 or the MAUCRSA here:

http://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201720180SB94

What are the licensing categories?

The MAUCRSA will license for 20 different categories. Each activity requires a separate license. So, if you are applying for a cultivation site and a manufacturing site, you will need to complete two separate applications for each activity. (Plus two applications for your local jurisdiction before you can apply for the state license).

The main categories are:

Dispensary/Retailer Licenses – License for retail sale of cannabis and cannabis products. The dispensary licenses also allows for deliveries.

Manufacturing Licenses – There are two types of manufacturing license types. One for use of volatile solvents, another for non-volatile manufacturing processes. The state will limit the number of licenses that use volatile solvents because of public safety concerns.

Testing License – Laboratories that test cannabis products before they reach the patient or consumer. Required to be a third party, independent from the other operators in the supply chain.



Cultivation Licenses – Commercial cultivation licenses vary depending on size of grow, and the types of light that are used. Note that many local jurisdictions are banning outdoor cultivation because of perceived nuisance by neighbors.

Distributor License – Storage and distribution of products from the cultivators and/or manufacturers to dispensaries.

Transporter License – Transporters of cannabis and cannabis products between licensees.

A-licensees and M-licensees will be able to apply for licenses in the following categories under the MAUCRSA (updated June 19, 2017):

SEC. 31. Section 26050 of the Business and Professions Code is amended to read:

26050. (a) The license classification pursuant to this division shall, at a minimum, be as follows:

- (1) Type 1—Cultivation; Specialty outdoor; Small.
- (2) Type 1A—Cultivation; Specialty indoor; Small.
- (3) Type 1B—Cultivation; Specialty mixed-light; Small.
- (4) Type 1C—Cultivation; Specialty cottage; Small.
- (5) Type 2—Cultivation; Outdoor; Small.
- (6) Type 2A—Cultivation; Indoor; Small.
- (7) Type 2B—Cultivation; Mixed-light; Small.
- (8) Type 3—Cultivation; Outdoor; Medium.
- (9) Type 3A—Cultivation; Indoor; Medium.
- (10) Type 3B—Cultivation; Mixed-light; Medium.
- (11) Type 4—Cultivation; Nursery.
- (12) Type 5—Cultivation; Outdoor; Large.
- (13) Type 5A—Cultivation; Indoor; Large.
- (14) Type 5B—Cultivation; Mixed-light; Large.



- (15) Type 6—Manufacturer 1.
- (16) Type 7—Manufacturer 2.
- (17) Type 8—Testing laboratory.
- (18) Type 10—Retailer.
- (19) Type 11—Distributor.
- (20) Type 12—Microbusiness.

Read more here: S.B. 94

http://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201720180SB94



Can I apply directly to the State of California starting January 1, 2018?

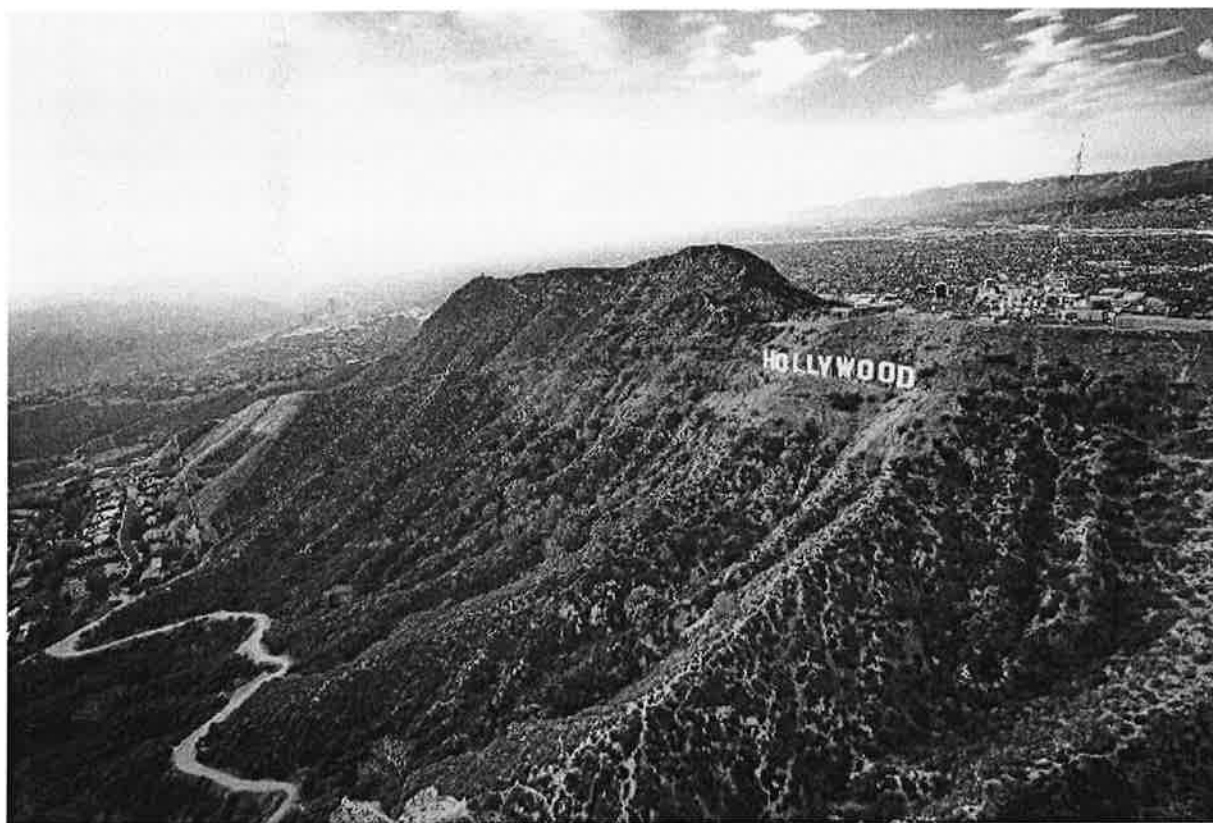
NO. You will need authorization from your local jurisdiction in order to apply for a state license.



What is the process on a local level for the cannabis licensing application process?

There are 482 cities and 58 counties in California. Each has its own rules and regulations regarding cannabis. The City Council or Board of Supervisors will begin with marijuana as a discussion item on the agenda. Then they will vote to write a draft ordinance. Once there is a draft ordinance, there will be a first reading at one meeting. Then, a second meeting will be held where there will be a second meeting and the ordinance will be voted on. Once the ordinance is passed, the City will be allowed to open up applications to potential cannabis licensees. Typically, you will have 1-3 months to complete the application once it is released by the City or County. Then, once you turn in your application, they will have somewhere between 1-3 months to review it and let you know if you are moving on to the next step (depending on how they set up the process) or if you are licensed. After you complete the local licensing process, you can apply for your state cannabis license.

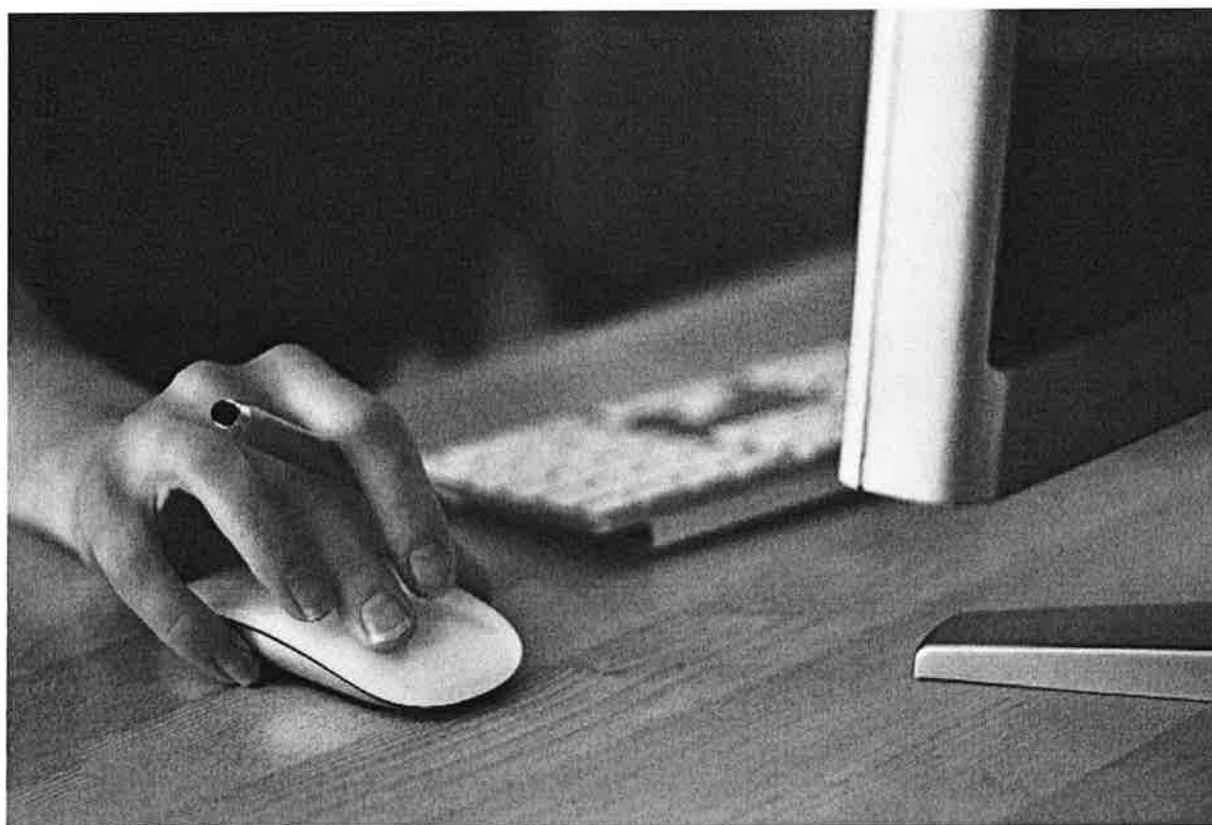
What are the new Los Angeles laws on cannabis?



Being Los Angeles lawyers, we are closely following the new draft regulations coming from our City Council after the passage of Measure M in the March 2017 municipal election. You can read up-to-the-minute coverage of the LA Draft regulations on our blog. In a nutshell, LA's draft licensing process gives an overview of where cannabis business can be located (zoning), as well as laying out new rules for sensitive use areas (800 foot distancing required). There

are different regulations for cannabis dispensaries, cannabis cultivators, cannabis manufacturers, and other cannabis businesses. For example, dispensaries need to be at least 800 feet from other dispensaries, whereas cultivators and manufacturers do not have this buffer distancing requirement. The LA licensing process will have 3 waves of applicants: Priority Processing, Social Equity, and General Public. Priority Processing will be for existing cannabis businesses that meet certain requirements and are in the correct zoning. Social Equity will be for applicants who were affected by the war on drugs and we will be receiving more information on this round over the next 60 days. The General Public will be when anyone who does not qualify for Priority Processing or Social Equity can apply, and will come a few months later. The estimate from the City is that the Priority Processing applications will open in October 2017.

What are the requirements in an application for a city or county license?



The exact requirements will vary by jurisdiction. Typically, they fall into the following areas:

Some cities and counties will require more than the below, and some will not require documents to support each of these categories.

- Type of activity: each cannabis related activity will have its own license under the new state and local compliance regimes. The main areas for licensing will be: cultivation, manufacturing, transportation, and distribution (dispensaries).



1. Some local jurisdictions are licensing for certain activities but not for others. For example, accepting applications for cultivation but banning applications for dispensaries.
2. Additionally, regarding cultivation, many jurisdictions have shown a preference for indoor cultivation over outdoor, due to the perceived nuisance of outdoor cultivation. Check with your local jurisdiction to see what activities are currently eligible for licensing applications.

(1) Business plan: a business plan that outlines the objectives and operating structure of the company as well as the key management and officers will be required. The plan will also require projected operating costs and revenues, planned relationships with suppliers and/or distributors, and an operational overview of how the business will work and what will be accomplished in the first 12-24 months.

(2) Zoning and Land Use: Is the property far enough from sensitive use areas? Is it in the correct zoning for land use purposes according to the municipal or county code (manufacturing, industrial, commercial vs. residential)?

The state law requires that any marijuana business be at least 600 feet from a school. Some local jurisdictions have also included parks, day care centers, and areas where youth congregate as "sensitive use." Additionally, some have required 1,000 feet of distance. Also note that federal law has enhanced criminal penalties for marijuana distribution within 1,000 feet of schools.

(3) Security plan: many applications require a detailed security plan that shows alarms, personnel and strategy relating to securing the premises for retail (dispensaries) or cultivation operations.

(4) Insurance: some applications will require that you show proof of insurance for your operation.

(5) Site plans: some applications will require you to hire a civil engineer or architect to draw up site plans for your cultivation operation.

(6) Environmental impact / Waste management: some applications will require a waste management plan and/or statement of water usage and how potential adverse consequences will be avoided.

(7) Live Scan / Criminal History: Some jurisdictions will require a live scan of the applicants and a disclosure of any criminal history. Some have written the laws so that you will only be



disqualified if your prior criminal history involves a crime of moral turpitude. Other regulations state that past marijuana crimes will not count against you so long as they were non-violent. However, check with your local jurisdiction.

(8) Tax Returns: some jurisdictions require prior tax returns for the persons involved and the entity, if it has been in operation in the past.

Want more information on the local and state cannabis licensing process in California?

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FURTHER READING:

Federal Law – The Controlled Substances Act of 1970

21 U.S. Code § 812 – Schedules of controlled substances

<https://www.law.cornell.edu/uscode/text/21/812>

California Bureau of Cannabis Control

Chris Conrad's Guide to Cannabis Yields and Dosages:

<http://www.chrisconrad.com/pdf/cannayieldsdosage10.pdf>

CA Marijuana Laws Pursuant to Prop 64 – final regulations will be released later in 2017.

You can read the draft trailer bill released in April 2017 here

Marijuana Taxes

CA Revenue & Tax Code Division 2, Pt. 14.5 § 34010-34021.5

Industrial Hemp / CBD



HSC 11018.5 – What is “Industrial Hemp?”

Food & Ag Code 81000-81010 – California State Industrial hemp regulations (effective Jan 1, 2017)

California Cannabis Law FAQ

Is cannabis legal in California? Yes, and no. Three legal regimes apply to Cannabis: Federal, State and Local. Under Federal Law, Cannabis is still classified as a Schedule I substance under the Controlled Substances Act. Because there are a number of areas of law relating to cannabis it is essential to hire a cannabis lawyer who is familiar not only with the state regulations but also with the Federal law. There has been legislation introduced to de-schedule Marijuana and reclassify it from Schedule I, but nothing has passed yet as of June 2017 and the CSA is still the Federal Law in all 50 states.

Under State law in California, you have a defense as an individual charged with possession for sale of marijuana (Cal Health and Safety Code 11359) if you are a marijuana patient collectively associating with other patients, as long as you are doing so in a not-for-profit way, which is the subject of much confusion and litigation. Prop 64 which went into effect in November 2016, decriminalizes possession of cannabis in California and allows individuals to cultivate up to 6 plants per residence.

Cannabis businesses will be able to become legal if they are approved for state permits under the MAUCRSA. It is important to note that in order to apply for a California state license, you will need a local permit from either your city or county and be compliant with the local regulations and have been approved by your local governing body in order to do so.

Please be advised that marijuana activity is still against federal law as noted above. There is a quasi-defense available as long as Congress continues to pass an appropriations rider (that has been reinstated every year so far since 2014) which prohibits DEA spending on medical marijuana enforcement. California also introduced a bill in 2017 (AB 1578) that would prevent local law enforcement from participating with federal authorities on marijuana enforcement activities if it passes.

What is the legislative history of legalized Cannabis in California?

California has had a legal regime for medical marijuana collectives since and it was more robustly implemented via Senate Bill 420 in 2004. In 2017, the California Senate passed the



MAUCRSA which repeals the MCRSA and creates medical marijuana compliance standards merged with adult use standards in one bill that creates two parallel tracks of regulations.

You can read S.B. 94 or the MAUCRSA which passed in June 2017 here:

http://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201720180SB94

You can read the text of prior Medical Marijuana laws passed in California here:

HSC 11362.5 Prop 215 – Text of Prop. 215

HSC 11362.7 – 11362.85 CA Medical Marijuana Program Act (SB 420)

HSC 11362.9 California Marijuana Research Program

What is the process for applying for a city or county license?

There are 58 counties in California and over 482 distinct municipalities in the state. Under the state regulations, each city and county has a right to create their own laws to regulate cannabis, up to certain limits. Because you will need a local license in order to apply for a state one under the dual licensing structure, the local laws are extremely pertinent to anyone hoping to obtain a license for their cannabis business. Check with your City Council or County Board of Supervisors to see whether there are any ordinances in place or upcoming meetings relating to cannabis regulation. Some counties have temporary bans in place, while others are opening up for applications in the coming weeks, and still others have temporarily closed applications while they are processing those who applied in 2016.

Attend your local City Council and Board of Supervisors meetings when there is medical marijuana on the agenda. As a member of the public, you will be able to contribute to the conversation and help shape the cannabis regulations in your local jurisdiction. If you hire us to consult regarding permitting or licensing, we can and do set up meetings with council and Board of Supervisor members to discuss our concerns and try to help shape the local regulations. If the City or County is accepting applications, often the first step will be to obtain a Conditional Use Permit (CUP) to confirm that your location is properly zoned and comports with the land use designations the City or County has passed. After your CUP is approved, you will move to the next step and be able to submit your Business License application permit. (note that this process varies by local jurisdiction).



What are the requirements in an application for a city or county license?

The exact requirements will vary by jurisdiction so it is important to consult with a cannabis lawyer who can interpret the local ordinance and advise you appropriately. Typically, application requirements fall into the following areas:

Some cities and counties will require more than the below, and some will not require documents to support each of these categories.

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(8) Tax Returns: some jurisdictions require prior tax returns for the persons involved and the entity, if it has been in operation in the past.

Do I need a state license to grow cannabis for personal use?

Under the MCRSA, qualified patients are exempt from the state license program if cultivating less than 100 square feet for personal medical use. However, this requirement begins Jan 1, 2018. It is debatable whether the sunset clause applies to this requirement. The sunset clause is the part of the MCRSA that allows the collective defense until one year after the beginning of the new regime, namely January 1, 2019. Until then, a patient may possess what is reasonable for their medical needs, and there is currently a draft gubernatorial proposal to amend the MCRSA to allow that "reasonable needs" test to continue instead of the 100 square foot regime.

As of Jan. 1, 2018, Primary caregivers with five or fewer patients are allowed up to 500 square feet (up to 30 plants). An exemption under MCRSA does not prevent a local government from further restricting or banning the cultivation, provision, etc. of medical cannabis by individual patients or caregivers in accordance with its constitutional police powers under Section 7, Article XI of the CA Constitution. AUMA (Prop. 64) allows individuals to grow cannabis for personal non-medical use (up to six plants per residence) without a state license. Only six plants are allowed to be grown per residence. All plants and harvested cannabis in excess of one (1) ounce must be kept within the person's private residence, in a locked space, that is not visible from a public place. But please note that Prop. 64 has statutory language that prevents

CPS from interfering with families of patients on that basis alone, but is not explicitly extended to AUMA users. So, it is best practice to have a medical recommendation if you are using or growing marijuana, if you are using it medically.

Can I sell homegrown cannabis plants or products to others without a license?

No. Proposition 64 does not allow the sale of homegrown cannabis, whether whole plant, clippings, clones, or any product derived from any part of the plant. But it does allow all Californians to give away under an ounce.



Can I smoke or consume cannabis in public places?

No. AUMA (Prop. 64) prohibits smoking or consumption of medical and recreational cannabis in public places or in places where smoking tobacco is prohibited, which includes but is not limited to hallways and lobbies of apartment buildings and hotels, on the street, in schools, amusement parks, public parks and places of business usually open to the general public.

Additionally, consumption or smoking of cannabis is prohibited within 1,000 feet of a school or youth area while children present, except on private residential property provided smoking is not detectable by children. One issue that will be before city councils and county boards of supervisors will be zoning issues which determine where people may and may not use marijuana for various purposes.

FURTHER READING:

Federal Law – The Controlled Substances Act of 1970

21 U.S. Code § 812 – Schedules of controlled substances

<https://www.law.cornell.edu/uscode/text/21/812>

Chris Conrad's Guide to Cannabis Yields and Dosages:

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