

Medical Marijuana Regulations: New State Legislation & Recommended Responsive Local Legislation



Presentation Overview

- Informational briefing re: medical marijuana laws & Medical Marijuana Regulation & Safety Act (“MMRSA”)
- Highlight specific regulatory issues that require immediate attention
- Request Council direction and action re: adoption of ordinance amendment & resolution in response to MMRSA

Background: Key State MMJ Laws

- **Compassionate Use Act (CUA) of 1996**
- **Senate Bill (SB) 420**
- **SB 420 + CUA = Medical Marijuana Program (MMP)**

Background: Key MMJ Decisions

- *City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729
- *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975
- *Kirby v. County of Fresno* (2015) WL 7765893

Background: City's Current MMJ Ordinance & Zoning Structure

- Lompoc Municipal Code Chapter 9.36: “Prohibition of Medical Marijuana Dispensaries” (2007)
 - Prohibits establishment or operation of MMJ dispensaries city-wide – both fixed & mobile (LMC §§ 9.36.010-020)
 - Deems MMJ uses a “public nuisance” subject to abatement (LMC § 9.36.030)
 - Provides for criminal and civil penalties (LMC § 9.36.040)
 - Codified in “Public Peace & Safety” Article of LMC
 - Does not include a cultivation ban
 - Does not address delivery of medical marijuana
- City's Zoning Code provides for “permissive zoning”
 - 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)
 - Important to implied prohibition on MMJ uses

New State Law: MMRSA

The Medical Marijuana Regulation & Safety Act (“MMRSA”) consists of three pieces of legislation:

- **AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, Wood)**
- **AB 243 (Wood)**
- **SB 643 (McGuire)**

MMRSA: What Does it Do?

SB 266 – What the bill does:

- Provides for dual licensing: both a state license and local license or permit, *issued according to local ordinances*, are required
 - Note: Effect of local revocation of permit/license

Other key points:

- Requires establishment of uniform state minimum health and safety, testing & security standards during product transport
- Makes product testing mandatory
- Specifies that patients & primary caregivers are exempt from state licensing requirement, and provides that their information is confidential under the CPRA

MMRSA: What Does it Do?

SB 243 – what the bill does:

- Establishes regulatory and licensing structure for MMJ cultivation
- Imposes March 1, 2016 deadline for local regs

Other key points:

- Places Dept. of Food and Agriculture in charge of State licensing & regulation of cultivation sites
- Specifies various types of cultivation licenses
- Makes Dept. of Fish & Wildlife and State Water Resources Control Bd. jointly responsible for reducing adverse impacts of MMJ cultivation and preventing illegal water diversion & illegal discharge into waterways

MMRSA: What Does it Do?

SB 643 – what the bill does:

- Establishes criteria for licensing of MMJ businesses, regulates physicians and recognizes local authority to levy taxes & fees

Other key points:

- Establishes track and trace program for all MMJ (key public safety measure)
- Directs California Medical Board to prioritize investigation of excessive recommendations by physicians
- Imposes fines (\$5,000) vs. physicians for violating prohibition against having a financial interest in a marijuana business
- Imposes restrictions on advertising for physician recommendations

MMRSA: Issues Requiring Immediate Action

Two areas requiring immediate attention from City per MMRSA

- **Cultivation - March 1, 2016 “use it or lose it” deadline:** Cities must adopt an ordinance prohibiting or regulating cultivation prior to March 1, 2016 or State will be sole licensing authority
 - AB 243: “if city...does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, *either expressly or under principles of permissive zoning . . .* then commencing March 1, 2016 the state is the sole licensing authority for medical marijuana applicants. . .”] (Health & Safety Code § 11372.777(c)(4))
- **Deliveries & mobile dispensaries:** Delivery is permitted with a State license unless a city adopts an express prohibition on delivery by January 1, 2018 (AB 266)
 - AB 266: “Deliveries” can only be made by a dispensary and in a city, county, or city and county that does not *explicitly prohibit* it by local ordinance. (Bus. & Prof. Code 19340(a))

MMRSA: Recommended Responsive Action

(1) Adopt, by First Reading, Amended MMJ Ordinance [Ordinance No. 1621(15)]

- Adopts express ban on MMJ cultivation
- Adopts express ban on MMJ commercial “deliveries”
- Amends enforcement provisions to accord with new *Kirby* case

(2) Adopt Resolution confirming permissive zoning [Resolution No. 6018(15)]

- Confirms City’s “permissive zoning” code
- Addresses requirement that cultivation ban be codified in “land use regulation or ordinance”