The Impact of Local and State Cannabis Regulations on the Real Estate Market

Presented by
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Jennifermcgrath.com - California Cannabis Law
1. History of California Cannabis Law
2. Types of Cannabis Uses
3. Local Regulation
4. Tips for Negotiating
California was the first state to decriminalize medical Marijuana

- 1996 - Voters legalize medical cannabis (Proposition 215 - the Compassionate Use Act (CUA)) (56%)
- 2003 - Legislature adopts SB 420, the Medical Marijuana Program Act (MMPA)
Seventeen Years Without Further Action by the State of California

- 2015 - Legislature adopts the Medical Cannabis Regulation and Safety Act (MCRSA)
- 2016 - Voters legalize “The Adult Use of Marijuana Act” (AUMA) (Proposition 64) (57%)
- 2017 - SB 94 creates the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)
- 2018 - Bureau of Cannabis Control (BCC) implements emergency regulations of commercial cannabis
California State Regulators
Types of Cannabis Businesses

- Cultivation
- Manufacturing
- Distribution
- Testing Labs
- Retail
- Microbusiness
Local Regulations

- Between 1996 and 2013, local policy makers struggled to determine what regulation, if any
  - State Mandate?
  - Zoning?
  - Fees?
  - Enforcement?
  - Patient access?

- 2013 - City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc., 300 P.3d 494, 56 Cal. 4th 729, 156 Cal. Rptr. 3d 409
Today’s Cannabis Landscape

Prior to November 2016
95% Ban

Post November 2016
13% Legal

Property Owners Have the Power

Location
- Local Regulations
- State Regulations
- Lease/purchase Terms
- Political Environment

Business Regulations
- Licensing Process
- Permit Processing Fees
- Corporate Structure
- Taxation

Building/Zoning Regulations
- Land Use Requirements
- Expert Consultants
- Contractor and Inspections
A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” Cal. Const. Art. XI, Sec. 7.

Land use and zoning regulations are derivative of a City’s general police power. See DeVita v. County of Napa, (1995) 9 Cal. 4th 763, 782; see also Big Creek Lumber Co. v. City of Santa Cruz, (2006) 38 Cal. 4th 1139, 1159.
Sample Regulation
(Ban on Medical Cannabis)

Medical Marijuana Businesses, Collectives, Cooperatives or Dispensaries. A Medical Marijuana Business, Collective, Cooperative or Dispensary or any other such business, no matter how so named, is not a permitted use in any zoning district or specific plan in the City. It shall be unlawful for any person or entity to own, manage, establish, conduct or operate a Medical Marijuana Business, Collective, Cooperative or Dispensary. Also, it shall be unlawful for any person to permit to be established, conducted, operated, owned or managed as a landlord, owner, employee, contractor, agent or volunteer, or in any other manner or capacity, any Medical Marijuana Business, Collective, Cooperative or Dispensary in the City. (Huntington Beach Municipal Code 204.18 (c))
Sample Regulation
(Ban on All Cannabis)

- Cannabis Dispensaries and Delivery Prohibited. Except as exempted in subsection C below, cannabis dispensaries and cannabis delivery are prohibited in all zoning districts, planned unit development districts, and specific plan areas in the City. It shall be unlawful for any person or entity to own, manage, conduct, or operate any cannabis dispensary or cannabis delivery service or to participate as an employee, contractor, agent or volunteer, or in any other manner or capacity, in any cannabis dispensary or cannabis delivery service in the City of Garden Grove. (Garden Grove Municipal Code 9.52.020 (A))
Embracing Cannabis

- Cathedral City
- City of Los Angeles
- Humboldt County
- Santa Cruz County
- Needles
- San Bernardino
- Oakland
- San Francisco
Legalizing Commercial Cannabis

• Where?
• What types?
• How Many?
• Process?
• Taxes/Fees?
• Residency Requirements?
MEDICAL MARIJUANA

- Medical shops
- Medical cultivation
- Manufacturing
- Distribution
- Testing
- At least one type of business
- All types of business

CITIES out of 482 that allow ...  COUNTIES out of 58 that allow ...

0% 5% 10% 15% 20% 25% 30%

RECREATIONAL MARIJUANA

- Recreational shops
- Recreational cultivation
- Manufacturing
- Distribution
- Testing
- At least one type of business
- All types of business

CITIES out of 482 that allow ...  COUNTIES out of 58 that allow ...

0% 5% 10% 15% 20% 25% 30%

Southern California News Group database as of April 2

Courtesy of Orange County Register
California Medical Marijuana and Recreational Marijuana
April 9, 2018  UPDATED: June 11, 2018
Risk to Landlords

- Civil fines and Liens Against Property
- Criminal Penalties
- Loss of access to property
- Injunctive relief/Receivership
- Expense/ Delay of Unlawful Detainer Action
Civil Citations

- 1997 – Legislature creates the ability for local jurisdictions to issue civil citations in lieu of criminal citations
- Today – 90% of the jurisdictions have adopted the system
### Lien Against Property

- **Recorded Against Property**
- **Interference with refinance and/or sale**
- **Foreclosure by County**

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Criminal Violations

- It is unlawful to: (1) Own, set up or operate an Establishment, (2) Participate as an employee, contractor, agent or volunteer or in any other capacity in an Establishment, (3) Use any portion or portion of any parcel of land as an Establishment, or to (4) Lease, rent to, or otherwise allow an Establishment to occupy any parcel or portion of parcel of land. (LAMC Sec. 45.19.7.3)
Restricted Access

- Building Officials
  - Unpermitted Work
  - Illegal Use
  - Utility Shut-off
- Fire Inspectors
  - Fire extinguishers
  - Extension Cords
  - Emergency Access
Violations of Code

- Lack of Certificate of Occupancy
- Lack of Building Permits
- Fire Code Violations
- Nuisance Code Violations
Civil Complaint

- Action brought against Landlord and Tenant
- Conflict of Interest Concerns
- Attorney’s Fees
- Receivership
## Unlawful Detainer

- **Obey all laws**
- **Definition of Use**
- **Service Issues**
New California State Law Remedy

- State has created a new remedy for local government
- **Business and Professions Code 26038.** (a) A person engaging in commercial cannabis activity without a license required by this division shall be subject to civil penalties of up to three times the amount of the license fee for each violation . . .
- Can be brought by the Attorney General, County Counsel, and/or City Attorney
Tips for Negotiating Cannabis Leases

• Identifying the use (impact on UD)
• Indemnification for civil fines
• Attorney’s fees
• Site inspections
• Exit Clause for tenant
• Conditions Precedent
• Options
Private Cannabis Cultivation

• Absolutely legal to prohibit smoking and/or manufacturing/cultivation
• Local jurisdictions may regulate
• Federal Law concerns
  • Banking
  • Insurance
  • Forfeiture
Cannabis is still illegal on a Federal level.

Controlled Substances Act – Schedule I

Rohrabacher/Farr Amendment

Forfeiture

Banking
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