



CALIFORNIA LOCAL CANNABIS LICENSING TOP 10 ISSUE

California's Medical and Adult Use Cannabis Regulatory & Safety Act (MAUCRSA) is the state's main statute regulating cannabis companies. MAUCRSA requires cannabis companies in California to have a state-issued license in order to conduct business, but it also requires each applicant for a state license to have authorization from the city or county in which they operate. California has 58 counties and 482 cities, and each of them have their own rules regarding cannabis businesses, so when identifying a location to locate your cannabis business it's important to consider the following issues for local licensing.

1 Does the local jurisdiction allow your business activity?

With many cities and counties enacting bans or only regulating discrete points in the supply chain, it's important to consider what business activity and what type of cannabis is allowed in your jurisdiction. Some cities only allow medical cannabis businesses and do not allow adult use cannabis activities. Others have outright bans on all activities. Furthermore, consider what type of business is allowed. Depending on the jurisdiction, only certain points of the supply chain may be regulated, and if you are a microbusiness, check to see that all activities are permitted.

2 Are there local rules regarding whether the company can make a profit?

Prior to MAUCRSA, the Compassionate Use Act and the state Attorney General guidelines did not allow cannabis companies to make a profit. Some local rules codified those guidelines into their municipal codes and have not yet caught up to the for-profit operation allowed by state license holders under MAUCRSA. Check your local jurisdiction's rules regarding profit and corporate structure to ensure that your company has the proper organization and rules regarding profits.

3 What are the zoning rules in your city or county?

Most cities and counties have strict rules regarding where a cannabis business can be located, and what kind of business activity can be conducted there. Make sure that you comply with these rules, and furthermore, that your lease aligns with the correct zoning and use. Also watch out to make sure that if you are going to be seeking a self-distribution license that your zoning meets the local requirements for a distribution business, if applicable.

4 Does your location fall within sensitive use and setback requirements?

MAUCRSA allows local jurisdictions to set their own rules about how far a cannabis business must be from various sites where children are present, such as schools, playgrounds, and daycare centers. Most jurisdictions require a 600-foot buffer between the sensitive use site, but some have greater or less distance. Additionally, some localities require cannabis buildings or outdoor cultivation sites to be located a certain distance from the property line.

5 What is the local tax rate?

In addition to unique tax rates that apply at the state level, local jurisdictions can and certainly do apply their own tax rates to cannabis businesses. The rates vary greatly, from 4% to higher than 10%. Check to see what yours is and plan accordingly.

6 Was the local ordinance passed under environmental compliance?

The Bureau of Cannabis Control, which regulates retailers, distributors, testing laboratories, and microbusinesses, and the Department of Food & Agriculture, which regulates nurseries and cultivators, both require an applicant to provide evidence of compliance with environmental laws when they submit annual license applications. An applicant may show that a local jurisdiction passed their cannabis ordinance under compliance with the California Environmental Quality Act (CEQA), or that a CEQA review took place upon issuance of a local license, in lieu of providing a full environmental review with their application materials. Check your local jurisdiction to see if an environmental analysis will be required either with your local application or your state application.

7 Can you locate and secure real property that meets regulations?

Finding a property that is in a jurisdiction that currently issues permits for your business activity, that meets sensitive use buffers, that has the correct zoning, and which is within your budget can feel like looking for a needle in a haystack. A well-established community of cannabis entrepreneurs, cannabis-focused real estate personnel, and a legal team can help you with your search.

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Does your site meet local non-cannabis regulations?

Local jurisdictions will treat cannabis businesses like any other non-cannabis business within their borders when it comes to safety for its citizens and the protection of environmental resources. Check if your identified site will require remediation to come up to code—and if necessary, the cost and timeline for doing so. Pay particular attention to requirements put for by city or county agencies such as building inspection, fire safety, food safety, grading, road construction, water resources and hazardous materials.

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What is the availability of local permits? Is there a social equity program, and does your business qualify under it or as an incubator of a social equity business?

Despite allowing cannabis businesses, some local jurisdictions are not currently issuing permits for certain areas of the supply chain. Others require registration by a certain date, or are issuing permits on a priority schedule based on when the business was established or whether the applicants meet social equity criteria. Social equity programs grant expedited or priority processing to cannabis businesses that can show at least a certain percentage of their owners meet certain criteria. The criteria, such as a cannabis arrest or conviction, or residence in certain police beats, is indicative of populations that have been adversely and disproportionately impacted by the failed War on Drugs. The local jurisdiction may have was for non-equity applicants to partner with equity applicants. For instance, in Oakland a general applicant that partners with an equity applicant and provides it with 1,000 square feet of free rent plus security for three years gets to go through permit processing along with the equity applicant.

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Does your lawyer have cannabis business experience in your area?

Local cannabis regulations can be just as complex as state rules. Make sure your attorney has experience with all of the topics outlined above. McAllister Garfield's attorneys are skilled at advising their clients on compliance with local laws, and would be happy to consult with you on how these considerations apply to you.

