



BUREAU OF CANNABIS CONTROL REGULATIONS

The Office of Administrative Law (OAL) earlier this month approved the comprehensive regulations surrounding implementing cannabis. The regulations take effect immediately and previous emergency regulations are no longer in effect.

The following was prepared to assist clients and interested parties in understanding key selected issues impacting local government operations and revenues. MuniServices is prepared to assist its clients in implementing the regulations. This report is organized as follows:

- **Section 1: Statewide Delivery of Cannabis**
- **Section 2: Uniformity in Financial, Criminal and Ownership Disclosures**
- **Section 3: Licensing – Population Standards**
- **Section 4: Municipal Advertising Placement**
- **Resources and MuniServices Cannabis Team**

SECTION 1: STATE-WIDE DELIVERY OF CANNABIS

In January 2019, the California Bureau of Cannabis Control received approval for a change to its regulations relating to the delivery of cannabis throughout California. MuniServices was a stakeholder in the regulatory process and submitted comments including concerns with the delivery provisions. The revised regulations include a significant change that will impact all cities and counties in California whether it allows or bans portions of the commercial cannabis businesses industry. Proposition 64 passed with language that provided local control over all aspects of the commercial cannabis industry.

Proposition 64 Language in the Businesses and Professions Code

- Section 26055(e) Licensing authority shall not approve an application for a state license under its division if approval of the state license will violate provisions of any local ordinance or regulation adopted in accordance with Section 26200.
- Section 26080 (b) A local jurisdiction shall not prevent transportation of cannabis or cannabis products on public roads by a licensee transporting cannabis or cannabis products in compliance with this division.

- Section 26090(e) A local jurisdiction shall not prevent delivery of marijuana or marijuana production on public roads by a licensee acting in compliance with this division and *local law* as adopted under Section 26200.

The previous understanding of these sections was that cities and counties could regulate all commercial cannabis businesses activities authorized within its jurisdictions, except for the transportation.

BCC Regulation: § 5416. Delivery to a Physical Address

- (a) A delivery employee may only deliver cannabis goods to a physical address in California.
- (b) A delivery employee shall not leave the State of California while possessing cannabis goods.
- (c) A delivery employee shall not deliver cannabis goods to an address located on publicly owned land or any address on land or in a building leased by a public agency. This prohibition applies to land held in trust by the United States for a tribe or an individual tribal member unless the delivery is authorized by and consistent with applicable tribal law.
- (d) A delivery employee may deliver to any jurisdiction within the State of California provided that such delivery is conducted in compliance with all delivery provisions of this division.
- (e) A delivery employee shall not deliver cannabis goods to a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center.

The immediate impacts will vary depending on the degree a local jurisdiction has allowed commercial cannabis businesses. All local jurisdictions should monitor deliveries to ensure:

- Businesses are properly licensed
- Operators have required documents to support sales
- Deliveries are made pursuant to State regulations
- Deliveries are made to authorized purchasers
- Deliveries are not made to minors

Delivery businesses that are operating in-violation of the State regulations could be considered an illegal business and not entitled to the protections of the Medical and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).



Local jurisdictions that have authorized storefront and non-store front retail businesses could experience additional issues.

Can out of jurisdiction delivery-based businesses be required to be registered in all delivery jurisdictions?

- Jurisdictions cannot prohibit a business without a local license from making local deliveries.
- We believe that the jurisdiction can encourage all deliver businesses to obtain a local license and become a good business partner.

Will this impact locally licensed businesses?

- This will increase the competition for the consumer's business.
- Local sales could be reduced.

Will this impact local tax revenue?

- Local tax revenue could be impacted.
- Out of area delivery businesses may not report or collect the locally imposed tax.
- State licensed delivery businesses cannot be prohibited because they don't pay the local tax.

The Future of Deliveries / Summary of Possible Options

The Commercial Cannabis Industry continues to evolve. At this time, it is unclear whether there will be legal challenges or proposed legislation to address the concerns raised by local governments during the regulatory approval process.

MuniServices will continue to monitor and evaluate this and other emerging issues. We are evaluating several options to ease the potential burdens on local jurisdictions, including:

- Working with the CDTFA to determine availability to information gathered through collection of excise tax and the track and trace system that can be utilized to document all sales made to a local jurisdiction.
- The availability of State grant funds available to all local jurisdictions to address the impacts of the new State mandate. Previously, the State did not allow these funds to local jurisdictions that didn't authorize a segment of the commercial cannabis industry. However, now all local jurisdictions must

allow delivery businesses. This should allow all local jurisdictions access to the grant funds. We will continue to explore this possibility.

SECTION 2: UNIFORMITY IN FINANCIAL, CRIMINAL AND OWNERSHIP DISCLOSURES

The following regulations have been revised, in part, and provide an opportunity for cities and counties. It mandates a baseline of disclosures to the State which could help communities more quickly, efficiently and economically qualify or disqualify applicants. With State uniformity on these disclosures, city and county agencies could reduce budgets for the initial licensing process and ongoing license renewals.

§ 5002. Annual License Application Requirements (6) license types the applicant holds, (7) Whether the applicant has been denied a license, (14) business organizational structure, (15) business formation documents, (18) financial information including accounts, loans, investments, gifts, and those with financial interest.

§ 5004. Financial Interest in a Commercial Cannabis Business 6(b) all owners / persons required to be listed on the application including the financial institutions, brokers, agents.

§ 5017. Substantially Related Offenses and Criteria for Rehabilitation (a) for the purposes of license denial, defines offense categories like violent or serious felony conviction, fraud, embezzlement. (c) Consideration of the criteria for rehabilitation.

§ 5010. Compliance with the California Environmental Quality Act (CEQA) (c)(1) in the absence of CEQA certification, provides for project location and surrounding land use, (2) project description.



SECTION 3: LICENSING - POPULATION STANDARDS

§ 5019. Excessive Concentration (1) ... “excessive concentration” applies when... the ratio of licensees to population within the census tract or census division in which the applicant premises is located exceeds the ratio of licenses to the population in the county the applicant is located, *unless denial of the application would unduly limit the development of the legal market to perpetuate the illegal market for cannabis goods.*

This regulation applies to retail premises or microbusinesses authorized to engage in retail sales and is both concerning and confusing. It presents an “excessive” concentration ratio that would apply to granting or renewing a license. This would seem to favor moving businesses to less concentrated areas. The verbiage “unless denial of the application would unduly limit the development of the legal market so as to perpetuate the illegal market” is not defined within the regulation. The Bureau will review information provided by the applicant to determine if a denial would unduly limit the development of the legal market. Local jurisdictions can impose concentration limits, however, it doesn’t appear that it will have a role in the Bureau review and evaluation process.

Licensing – Operator Compliance Standards

§ 5034. Significant Discrepancy in Inventory (a) A significant discrepancy in inventory means a difference in actual inventory compared to records pertaining to inventory of at least 3% of the average monthly sales of the licensee.

Business and Professions Code Section 26070(k) provides that a retailer shall notify the licensing authority and the law enforcement authorities within 24 hours after discovery of a significant discrepancies identified during inventory. This regulation imposes a strict discrepancy level of 3%. It could create a very difficult condition for businesses to remain compliant and could trigger costly enforcement actions for the business, oversight agencies, including the local jurisdiction. The goal is to identify and eliminate the diversion of cannabis product to the illegal market. However, based on an analysis of store level sales of Washington State data two, three, and four years into legalization rarely would a business have monthly sales that consistent.

§ 5309. Inventory Accounting (a) A licensed distributor shall be able to account for all inventory and provide that information to the Bureau upon request.

§ 5800. Right of Access (a) the Bureau and its authorized representative, shall have full and immediate access to inspect.

These two regulations assist combatting illicit operations and reinforces the ability for local jurisdictions unfettered access to inventory upon request.

SECTION 4: MUNICIPAL ADVERTISING

§ 5040. Advertising Placement (a)(1) cannabis advertising or marketing shall only be displayed where 71.6% of the audience viewing is reasonably expected to be 21 years of age or older.

This regulation creates an inconsistency with other sensitive activities such as alcohol and the gambling industry. This may result in legal challenges.

RESOURCES

<https://cannabis.ca.gov/wp-content/uploads/sites/13/2019/01/Order-of-Adoption-Clean-Version-of-Text.pdf>

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