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Dos and don'ts of California's cannabis regulatory environment

By **Seena Max Samimi**

Several times a week, I get calls or emails from people at varying stages of involvement in the cannabis industry, all asking for legal advice in the cannabis space. Some are employees of cannabis operations looking to open businesses of their own, and wanting to understand the regulatory process. Others are owners of successful cannabis businesses looking to expand into new jurisdictions, and need help navigating the intricacies of the regulatory landscape. Others are operators of existing businesses asking what it would take to “make everything legal” and come into compliance with the relevant cannabis regulations. Others are landlords considering taking on a cannabis industry tenant, and want to be advised regarding risks and specific considerations that should be taken into account when taking that step.

The formula for regulatory compliance is actually quite simple: (1) find a local jurisdiction that allows for the type of canna-business that you want to operate, (2) procure all relevant local permits and licenses (which vary considerably from jurisdiction to jurisdiction), and (3) with the local approvals in hand, obtain the relevant state licenses. Most of the regulatory action happens in step 2: local compliance. That is because the

California Legislature expressly provided for a great deal of local control over cannabis regulations. People new to the cannabis industry often think that marijuana is simply “legal in California.” That’s only partially true; many jurisdictions have bans on most types of canna-businesses, meaning that the type of business that you may want to pursue may not actually be legal in most of the state. Furthermore, even in

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local jurisdictions that do allow for canna-businesses, there are always regulations that further restrict when, where, how, and whether one can open up shop.

Despite being one of the most heavily regulated industries in the world, the cannabis industry still attracts entrepreneurs, investors and other professionals by the droves. Interacting with California’s local and state cannabis laws, regulations, and its regulators is a major part of business operations. This article presents some do’s and don’ts of working with public agencies in the cannabis space. Whether you are an owner, operator, or compliance personnel, it is important to know how to work with regu-

latory agencies in a manner that ensures maximum efficiency and transparency, and is more likely to achieve results.

DO: Know Your Local Regulations

One issue with the excessive local control is that every city does things differently. While one city might only require a set of simple ministerial approvals

restrictive than the state as to the minimum distance from schools, parks, and/or other dispensaries and canna-businesses. Also, cities/counties will often limit the total number of marijuana businesses (by type of use).

- *Cannabis-specific regulatory permits:* Although sometimes captured by the CUP process, localities often have additional cannabis-specific regulatory permits beyond a CUP. These may require submittal of detailed plans that meet security and lighting requirements (e.g. camera placement), proof of fingerprinting/ background checks, corporate documents, etc.

- *Social Equity Program Compliance:* Some jurisdictions offer priority/ incentives to individuals negatively impacted by the historical illegality of cannabis, or who come from underprivileged backgrounds.

- *Business licenses:* Almost all jurisdictions require separate business licenses, usually used to track local taxes and fees.

- *Local taxes:* Each jurisdiction will have its own cannabis tax structure, some of which require up-front compliance.

- *Building permits and occupancy certificate:* Standard for building out any business.

Not only do regulations vary significantly from jurisdiction to jurisdiction, but even within the same jurisdiction, localities constantly change and update their ordinances through seemingly

for a certain cannabis-related use, the same type of use may need multiple discretionary approvals in the neighboring city. There is no consistent terminology across jurisdictions, and local requirements vary widely. Here is a representative list of some typical local regulations:

- *Conditional use permit:* Localities usually require discretionary CUPs for a canna-business to operate in any particular location. There is almost always a discretionary element to cannabis permits, which is how cities maintain control and add site-specific conditions.

- *Numerical, distance and spacing requirements:* Local regulations will often be more

trial and error methodology. From 2014-2017, I represented cities and counties throughout California regarding cannabis regulation and enforcement. It wasn't uncommon for them to enact significant changes in where and how canna-businesses can operate, and then unleash code enforcement and attorneys to shut down non-compliant businesses after a short amortization period. Thus, not only should you know your local regulations as you're going through the administrative approval process, but you should stay on top of your city/county's local agendas to see when additional regulations go into effect, and even participate in the administrative process to the extent that modifications can have a negative impact on your business.

DON'T: Go It Alone. Hire a Professional to Assist with Navigating Complex Regulatory Process

Due to the volatility and varied nature of cannabis regulations, it is important to be well advised. Engaging an attorney or land use expert early in the process can help ensure that you know the procedures for obtaining all the right permits and approvals (and can assist in obtaining them), and can stay on top of the changing regulations so that you stay compliant.

For businesses with less experience navigating the local administrative process, a professional can take the lead in preparing the relevant applications, interfacing with local staff to resolve issues and respond to comments, hiring consultants for preparation of site plans, security plans, etc., and making the appearances at the hearings for the discretionary approvals.

However, professionals should tailor their involvement to the clients' needs. Clients with a more robust internal compliance structure may need less help. For those businesses, a professional can ascertain the appropriate regulatory procedures, and provide a roadmap for the client to run with. In those instances, attorneys and land use consultants can provide support and review and comment on submittals, but the client is in the driver's seat. For example, after local approvals are obtained, many businesses will have the expertise to handle the state license process mostly on their own, with minimal guidance.

Even the most sophisticated canna-businesses benefit from consultation with professionals, who can increase the chances for positive outcomes at the local and state level.

DON'T: Create Nuisances. Avoid Noises, Minimize Smells, and Shun Activities that will Cause Neighbors to Submit Complaints

Most jurisdictions operate on a complaint-based code enforcement system. From a practical perspective, cities lack resources for code enforcement to patrol and look for violations. Rather, code enforcement is deployed in response to specific complaints. Marijuana businesses are more prone to complaints, not only because of the inherent issues like smell and the presence of large amounts of cash/ product that create safety concerns, but also, because of the stigma associated with the industry. Thus, canna-businesses should go out of their way to be good neighbors and avoid complaints, which will open up the business to scrutiny over compliance with

ALL local regulations (not just the issue complained about), as well as all site and business-specific permits and licenses.

DO: Ensure Continued Compliance with All Approvals

Beyond complaint-based code enforcement, another scenario where localities will audit canna-business operations is whenever there is a new permit/license application, or when there is a change in operations requiring modification of an existing permit/license. In the cannabis space, it is not uncommon for some approvals to require annual renewal (likely for this very reason).

When applications are submitted, Cities often take the opportunity to do a compliance review to ensure that all current permits are being complied with. As such, compliance with all conditions of approval in the CUP and/or other regulatory permits are important. It is recommended that a compliance or operations manager be very familiar with all conditions of approval in the entitlements (this includes documents that are incorporated by reference, such as security plans, landscaping plans, lighting plans, parking agreements, etc.), and should be extremely vigilant regarding compliance with all local and state approvals.

It is not uncommon for businesses to be in violation of certain conditions in their entitlements, and the locality (and even the operator) may be unaware. Indeed, minor violations of the CUP can go unnoticed for years. However, complaints and new applications will potentially trigger compliance reviews, and noncompliance without remedial action can trigger revocation proceedings.

DO: Engage with the Local Staff Early and Often

Jurisdictions that have allowed canna-businesses have done so for a reason. Usually, it's because of the tax revenue that will be generated, which incentivizes localities to promote properly permitted, safe, successful, and compliant businesses (so that they can get their money). Thus, cities that have allowed for these uses will often have dedicated staff who are there to shepherd the regulatory process and answer questions. If a city or county knows that a business is making a good faith effort to be compliant, that fact alone goes a long way, and will often serve to evade formal violation notices and enforcement action. Open the lines of communication with local staff early, and stay engaged with key players. Land use professionals and attorneys with experience in dealing with local administrative procedures can be helpful to more quickly and efficiently navigate the regulatory maze.

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