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The Vital Importance of Local Enforcement in the Cannabis Industry

Cal Cities' City Leaders Summit

Thursday, April 18, 2024

3:45 – 5:00 p.m.

Moderator/Speakers



MODERATOR

- Zachary Scalzo, Of Counsel
Best Best & Krieger LLP

SPEAKERS

- Veronica Goedhart, Director
Department of Special Program Compliance,
Palm Springs
- Mitchell Nabhan, Code Compliance Supervisor,
Palm Springs
- Denise M. Hansen, Partner and Director of
Municipal Code Enforcement
Best Best & Krieger LLP

Agenda



Regulatory compliance is a vital component of virtually every aspect of the cannabis industry. Enforcing cannabis regulation is not just important for the safety and security of the community, it also helps protect the nascent cannabis industry. Under California’s local-control system, cannabis operators are required to obtain and maintain licenses at two separate levels – both state and local – each with their own set of regulations. This presentation is intended to provide a high-level, practical overview of the various enforcement considerations and issues that may arise when adopting and implementing a cannabis ordinance, from drafting and adopting an ordinance to legal actions to enforce violations of a city’s cannabis regulations. The goal of this presentation is to understand that creating and enforcing these rules requires a bit of “tough love,” meaning that cities must balance on one hand their central role in regulating in the furtherance of the healthy, safety, and general welfare, and on the other hand, the need to craft rules that will encourage enforcement, foster good working relationships with cannabis businesses, and not stifle the viability of the local cannabis market that may result in reduced revenue.

Overview of Legal and Regulatory Framework



- Why Enforcement Issues are Important
- General Overview of Legal / Regulatory Framework
- Don't Forget the Federal Government!
- Overview of California Laws Regulating Cannabis Businesses

Why Enforcement Issues Are Important



- Involves considerations that are interrelated and summarized as:
 - ✓ *Protecting the public while creating a workable regulatory framework that promotes economic development in the cannabis market*
- Overview of potential considerations impacting this goal:
 - ✓ Preventing the illicit sale of cannabis
 - ✓ Encourage legal cannabis business growth and disincentive illegal operators
 - ✓ Balancing planning and development concerns
 - ✓ Discouraging state and federal intervention
 - ✓ Avoiding overregulation that impacts local cannabis market

General Overview of Legal / Regulatory Framework



- Two general sources of law:
 - ✓ Federal
 - ❑ Controlled Substances Act and other criminal and financial statutes
 - ❑ Department of Justice
 - ✓ California
 - ❑ Current statutory framework: Medicinal and Adult Use Cannabis Regulation and Safety Act
 - ❑ California Code of Regulations enforced by Department of Cannabis Control

Don't Forget the Federal Government!



- The 2013 *Cole Memo* by DOJ and its 2018 Rescission (Strong enforcement = no federal intervention)
- Current policy
 - ✓ Appears to be consistent with *Cole Memo*
 - ✓ Cannabis to be de-scheduled?
- **Key Point: Political winds can change and strong enforcement discourages federal scrutiny**

Overview of California Laws Regulating Cannabis Businesses



- One key policy concern: to create a regulatory environment that creates a closed-loop system from “seed to sale”
- Localities retain discretion to permit cannabis businesses, with some limitations
- The closed loop system
 - ✓ What can a cannabis business do?
 - ✓ How are cannabis products tracked?
 - ✓ How must different cannabis businesses operate?

Adopting Cannabis Ordinances and Addressing Enforcement Concerns



- Drafting a complete and comprehensive Ordinance
- If at first, you don't succeed - revise
- Implementing enforcement

Drafting a Complete and Comprehensive Ordinance

- Considerations
 - ✓ Where Businesses Can Be Located
 - ✓ Youth Access and Exposure to Cannabis
 - ✓ Personal Cannabis Cultivation
 - ✓ Equity and Economic Development



If at First, You Don't Succeed – Revise



- State-specific regulations vary widely, reflect local concerns and prejudices, and change rapidly.
- There are extra hurdles and complexities associated with implementing cannabis policy and complexities associated with implementing cannabis policies.
- The nascent cannabis industry is continuously evolving.

Implementing Enforcement



- Developing rules to implement enforcement.
- Are your administrative enforcement regulations effective for cannabis?
- Creating effective enforcement.
- The benefits of dedicated code enforcement.

Enforcing and Implementing Cannabis Ordinances



- Understanding Your City's Enforcement Goals & Objectives
- Evaluating the Climate of Licensee's by Permitted Use to Determine the Resources and Capacity Needed
- Developing Enforcement Tools & Strategies
- Engaging with Businesses to Foster a Culture of Compliance
- Having a Consistent Approach to Administering Enforcement Action

Understanding Your City's Enforcement Goals & Objectives



- What are the Core Objectives of Your Jurisdiction?
 - ✓ How do the broader mission and priorities of your city align with the objectives of your current enforcement program?
- How do your Compliance Objectives Align With Stakeholder Expectations and Community Priorities?
 - ✓ Ensure that goals and objectives are in harmony with stakeholder priorities and effectively address significant concerns.
- What is Your City Leadership's Vision for Success?
 - ✓ What are the hallmarks of a successful enforcement environment?

Evaluating the Climate of Licensee's by Permitted Use to Determine the Resources and Capacity Needed



- Assessing the Regulatory Landscape: Understanding Your Licensed Environment
 - ✓ Do specific license types face restrictions within your jurisdiction?
 - ✓ Do your licensed businesses operate with vertical integration across multiple permitted types or independently as stand-alone entities?
 - ✓ What is the distribution between storefront and non-storefront operations?
- Implementing Strategic Staffing to Support Current Needs and Future Growth

Developing Enforcement Tools & Strategies



- Developing an Inspection and Audit Program Aligned with City Objectives
 - ✓ Determine the frequency and scope of inspections and audits based on the degree of potential risk and priority areas identified by the city.
- Procuring Technology and Data Analytics Tools to Enhance Compliance Management
 - ✓ Identify compliance trends and prioritize enforcement activities to target your resources more effectively.
- Training Staff for Effective Inspection and Audit Practices
 - ✓ Establish clear protocols and standards for conducting inspections and audits to ensure consistency and accuracy.

Engaging with Businesses to Foster a Culture of Compliance



- Build Collaborative Relationships with your Licensed Businesses through Operational Understanding
 - ✓ Get to know their operations and understand the intricacies of their day-to-day activities.
- Develop an Effective Communication Strategy With Your Licensed Businesses
 - ✓ Have staff available as a compliance resource accessible to businesses for proactive resolution of concerns.
- Collaborate and Share Information Relevant To How Their Businesses Operate
 - ✓ As regulations evolve and the regulated market matures, exchange information on pertinent trends that impact the operations of their businesses.

Having a Consistent Approach to Administering Enforcement Action



- Clear Guidelines and Standards
 - ✓ Regulations that are clearly defined, communicated, and uniformly enforced across all businesses.
 - ✓ Establish clear expectations regarding the consequences of non-compliance.
- Transparent Enforcement Actions
 - ✓ Effectively communicate compliance findings and provide clear rationales for necessary corrections.
 - ✓ Implement responses that are proportionate to the severity and nature of the violations.

Legal Considerations Arising from Enforcement Actions



- Enforcement Options
- Recent Legal Updates

Enforcement Options



- Courtesy Notice/Administrative Citations
 - ✓ Seriousness of violations
 - ✓ Comply with requirements of your code
- Civil Nuisance Abatement Action
 - ✓ Injunction
 - ✓ Recover daily fines/penalties (B&P 26038)
 - ✓ Attorney fees/costs

Enforcement Options continued



- Revocation/Suspension
 - ✓ Compile sufficient evidence and adequate record
 - ✓ Due process – notice, hearing
 - ✓ Potential conflict – prosecution v. advisory
 - ☐ Nightlife Partners Ltd. v. City of Beverly Hills
 - ☐ Create wall
 - ☐ Outside counsel

Recent Legal Updates



- AB 1448, Business & Professions Code section 26038

AB 1448 (Bill) responds to the ongoing challenges posed by unlicensed cannabis operations in California by offering financial incentives to strengthen local agencies' enforcement against these illicit activities. Under existing law, those engaging in unlicensed cannabis activities are subject to civil penalties. Civil penalties brought by the attorney general, county counsels, city attorneys or city prosecutors were used to reimburse the costs incurred by the prosecuting agency prior to the Bill's enactment. Any remaining funds were subsequently directed into the state's General Fund.

- ✓ The Bill marks a significant departure from this existing framework to provide greater reimbursements to local jurisdictions for their efforts in prosecuting unlicensed cannabis activities.
- ✓ With the recognition that local jurisdictions are at the forefront of enforcement against such activities, the Bill reallocates half of any remaining penalties to local jurisdictions (a share that would have otherwise been contributed to the General Fund). The other half of the remaining penalty will continue to be deposited into the General Fund.
- ✓ By offering a more direct financial incentive to local agencies, the Bill enhances local enforcement initiatives while allowing these agencies to reinvest penalty funds into further enforcement against unlicensed cannabis activities.

Recent Legal Updates continued



- AB 1684, Government Code section 53069.4

AB 1684 (Bill) signifies a pivotal departure from California's original concentrated focus on illegal cannabis cultivation by extending local agencies' enforcement authority to a broader range of unlicensed cannabis operations. With this change, local agencies gain the ability to immediately impose administrative fines or penalties encompassing a wider spectrum of unlicensed cannabis operations (including the cultivation, manufacturing, processing, distribution and retail sale of cannabis).

- ✓ The Bill authorizes local agencies to classify these unlicensed activities as public nuisances subject to abatement in order to strengthen enforcement efforts at the local level.
- ✓ The Bill expands on existing authority by allowing local agencies to hold property owners and business entities associated with unlicensed commercial cannabis activities jointly and severally liable.
- ✓ The Bill introduces a ceiling on these immediate administrative fines or penalties, capping them at \$1,000 per violation at a maximum of \$10,000 per day. Despite these limitations, the Bill leaves room for the possibility of imposing larger fines otherwise authorized by other laws.
- ✓ The enactment of the Bill also enhances collaboration between local authorities and the Office of the Attorney General by allowing agencies to refer cases of such activities directly to the attorney general for civil enforcement.
- ✓ The extensive measures of the Bill against unlicensed cannabis activities ultimately signal California's ramped-up efforts to sustain a compliant cannabis market and address the public dangers associated with such activities.



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Questions?

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