

# CALCANN SPECIAL REPORT

## OBTAINING A LICENSE UNDER MMRSA



### Introduction to MMRSA

California became the first state to legalize medical marijuana with the passage of Proposition 215 in 1996. While the bill legalized the consumption of marijuana, it didn't establish a licensing and regulatory structure to guide the cultivation, production and sale of the plant. As a result, many California medical marijuana markets are unregulated and unsuitable for medical patients.

Finally, after almost 20 years, in October 2015 the California legislature passed the Medical Marijuana Regulation and Safety Act (MMRSA). MMRSA creates a comprehensive state licensing system for the commercial cultivation, manufacture, sale, transport, distribution, delivery, and testing of medical cannabis. All state licenses require local authorization.

The passage of MMRSA has created an enormous opportunity for acquiring local cannabis licenses and real estate across California. Many counties and cities across California that have banned or severely limited the production and sale of medical marijuana are expected to reverse and implement expanded medical marijuana laws. With the passage of MMRSA, licenses have become the currency of marijuana investment in California. There's a limited window of time to act, as municipalities are experiencing pressure from operators and activists to issue licenses before California residents vote to legalize cannabis later this year.

MMRSA established the Bureau of Medical Marijuana Regulation (BMMR), which is part of the Department of Consumer Affairs and will be responsible for developing and implementing enforcement rules for the MMRSA. Every person or company operating in the commercial medical marijuana industry will be required to obtain a local operating permit and annual state license by January 1, 2018. Lori Ajax, former chief deputy director at the California Department of Alcoholic Beverage Control, has been appointed chief of the BMMR.

### Available Licenses

There are six categories of licenses under MMRSA: cultivation, manufacturing, testing, dispensary, distribution and transportation.

With limited exceptions, a licensee may only hold a state license in up to two separate license categories, and only certain combinations of licenses are allowed.



## How to Obtain a MMRSA License

### 1) Identify a Local Jurisdiction that Authorizes Medical Marijuana Businesses

To obtain a license under MMRSA, every marijuana business must first obtain authorization from the local jurisdiction in which it operates. For unincorporated areas, this means the county. All other operations need authorization from the city.

Many California jurisdictions ban medical marijuana businesses, but some expressly authorize them. Other jurisdictions are silent on the matter, which creates opportunities for businesses to obtain authorization. Many zoning codes authorize the local zoning administrator to make a determination that a particular use is substantially similar to an existing use enumerated in the code. Such a determination would allow that use by right or with a conditional use permit. However, absent a variance or other legal approval from a local jurisdiction, marijuana businesses cannot operate in jurisdictions that do not expressly authorize such use in their zoning codes. Using land in a manner not expressly authorized in a zoning code constitutes a public nuisance, and many marijuana businesses have been shut down for doing so, even where no ban exists.

Some of the jurisdictions that expressly authorize marijuana businesses include San Diego, Santa Ana, Berkeley, Oakland, Sacramento, Desert Hot Springs, Humboldt County, Cathedral City, and Adelanto, among others. Note that many local jurisdictions limit the number of medical marijuana businesses that can operate within their borders.

If a marijuana business does not obtain local authorization to operate, it cannot obtain a State license under MMRSA.

### 2) Identify and Obtain Real Property in Authorized Zones

After determining that a jurisdiction allows marijuana businesses, the first step is to identify available properties located in areas zoned for marijuana business activity. In addition to reviewing the zoning code and zoning map, marijuana businesses should obtain confirmation from appropriate local government officials that operation of a particular type of marijuana business is allowed on a particular property. Note that the different license categories under MMRSA constitute different types of land use. For example, a code that allows cultivation may not allow dispensaries, and vice versa.

### 3) Identify Sensitive Uses

Once real property in an authorized zone is identified, marijuana businesses should verify that the property is located sufficiently far away from sensitive uses. Under MMRSA, cultivation and dispensary facilities must be at least 600 feet from schools. Local jurisdictions frequently have stricter sensitive use provisions, the most common being that marijuana businesses must be located a certain distance from churches, day cares, and other marijuana businesses.

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### 4) Obtain Land Use Authorization if Not Allowed by Right

Each local jurisdiction has its own procedures and requirements for obtaining authorization to use land for a particular purpose. In the context of marijuana businesses, California jurisdictions have required conditional use permits and zoning administrator authorizations, among other things.

Most zoning districts include permissible uses and conditional uses. If operation of a particular kind of marijuana business is listed as a permitted use, that means it is allowed by right, and the owner may proceed without obtaining additional permits from the city other than a building permit (and, perhaps, design review). Other uses are allowed only subject to conditions; these are known as conditional uses. Conditional uses require issuance of a conditional use permit (also called a CUP) by the city. This issuance occurs only after notice and public hearing.

Conditional use permits customarily restrict use, such as limiting the hours of operation, and may require the owner to meet certain conditions, such as construction of streets or other improvements. Performance or design standards may also be required before a CUP will be issued.

### 5) Other Requirements

#### 5a) Obtain a Business License

In addition to obtaining local land use authorization, marijuana businesses must obtain a business license. Note that a business license alone, without proper land use approvals, does not authorize a marijuana business to operate.

#### 5b) Enter into Development Agreement

Although rare, some cities, including Desert Hot Springs, require marijuana businesses to enter into a development agreement. Development agreements are voluntary agreements between a local jurisdiction and a business. Development agreements allow developers to negotiate with cities and counties to create a customized vested right by contract.

Marijuana businesses can benefit by negotiating development agreements that lock in favorable general plan and zoning designations early in the development process, freezing whatever zoning laws exist at the time. Marijuana businesses can also negotiate development agreements that vest rights for long periods of time, often 10 years, 15 years, or longer. Cities and counties benefit from development agreements by negotiating specific terms, such as fees or public improvements, that they could not legally impose as conditions of approval, because the terms of negotiated development agreements are not subject to certain statutory and constitutional requirements.

#### 5c) Undergo a Background Check

The State may deny applications under MMRSA if an applicant has been convicted of an offense that is substantially related to the qualifications, functions, or duties of operating a medical marijuana business. Such offenses include, but are not limited to, felony convictions for the illegal possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance, violent felonies, and felony convictions involving fraud, deceit, or embezzlement. Many local jurisdictions impose stricter background requirements.

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### Why You Shouldn't Wait for "Legalization"

We frequently hear from potential investors that they want to wait until "legalization" happens in California. This is unwise for the following reasons:

First, referring to the November 2016 ballot measure for recreational adult use (the "Control, Regulate and Tax Adult Use of Marijuana Act" or "AUMA") as "legalization" is a misnomer - cannabis is already "legal" in California. MMRSA created a regulatory structure through which the State will affirmatively issue licenses to marijuana businesses. The AUMA would merely expand the lawful medical businesses to non-medical recreational businesses.

Second, the AUMA may not pass in November 2016. The AUMA is not universally supported or agreed upon by the major players in the marijuana industry, and aggressive opposition campaigns by non-marijuana industry players have already begun.

Third, even if the AUMA passes in November 2016, it will serve as a mere overlay to MMRSA. All business will require local authorization to operate under AUMA. All MMRSA licenses will remain intact, and local governments will retain control to prohibit recreational use or regulate it. Further, local governments are expressly authorized to use their discretion to deny licenses based on "excessive concentration" under the AUMA, meaning, if a local government determines that too many marijuana businesses exist in a certain area, the government can refuse to issue anymore licenses in that area. This is an especially compelling reason to enter the market early and obtain a license before the market becomes excessively concentrated.

Because the majority of local governments ban marijuana businesses, and very few allow dispensary or other licenses, it is imperative to obtain a license while the opportunity exists rather than waiting until November 2016.

Very few people understand the steps to obtain MMRSA licenses, let alone where to look. The local nature of these licenses makes the process increasingly complex. With 58 counties and 482 cities, it is almost impossible to keep track of where licenses are available in California. CalCann monitors and tracks these opportunities, closely following local ordinances.

### Should I purchase a pre-ICO dispensary in LA?

Investors have contacted us regarding opportunities to purchase dispensaries in the City of Los Angeles. One of the many problems with operating in the City of Los Angeles is that the City does not issue affirmative licenses. Instead, the roughly 135 dispensaries considered "pre-ICO" are operating pursuant to limited criminal immunity, and have no affirmative licenses or permits - nor vested rights - to operate a marijuana business (all other marijuana businesses in the City are completely illegal). Aside from the obvious risks involved with operating a business without affirmative authorization or vested rights, because of MMRSA, every pre-ICO marijuana business operating in the City of Los Angeles will become illegal under state law in January 2018. MMRSA expressly requires marijuana business to obtain local authorization to operate, and the City of Los Angeles does not provide such authorization - only a very limited criminal immunity to certain businesses pursuant to Proposition D.



CalCann Holdings is a holding company focused on building a premier portfolio of California cannabis brands. Identifying and acquiring undervalued licenses requires a strong knowledge of local government politics and the California cannabis industry. We are experienced in writing ordinances, opening up new territory, finding compliant properties, and advising on compliance with state and local laws. Our team at CalCann Holdings has the political relationships and proven industry expertise in California to capitalize on these opportunities. Please contact us about our available licensing opportunities.

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#### CANNABIS

We operate fully-licensed California medical marijuana facilities, ranging from cultivation centers to retail stores



#### PUBLIC POLICY

We work with local California governments and lawmakers to advocate for sound public policy and transparency in cannabis laws



#### REAL ESTATE

We are experienced real estate investors who proactively identify and invest in medical marijuana real estate opportunities in California

Under the Federal Controlled Substances Act, medical and recreational cannabis are illegal and classified as Schedule I drugs. CalCann has endeavored to comply with all known legal and ethical requirements in compiling this Special Report. The information contained herein is for informational purposes only as a service to the public, and is not legal advice or a substitute for legal counsel, should not be considered investment advice or a recommendation to purchase or otherwise trade an investment, and does not constitute advertising or a solicitation. (Some jurisdictions may consider this Special Report as advertising; that is not our intention). All users are advised to consult with an attorney before acting on any information contained herein. CalCann assumes no liability for the use or interpretation of information contained herein. The information contained in this Special Report may or may not reflect the most current legal developments; accordingly, information in this Special Report is not promised or guaranteed to be correct or complete, and should not be considered an indication of future results.