

# The Impact of Local and State Cannabis Regulations on the Real Estate Market

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Presented by

Jennifer McGrath

[jennifermcgrath.com](http://jennifermcgrath.com) - [California Cannabis Law](#)





Welcome  
To California





## **LAW OFFICES OF JENNIFER MCGRATH**

Lawyer Jennifer McGrath is a former City Attorney with over 20 years of legal experience. Her law office provides legal support and guidance to members of the cannabis community as well as Cities and Counties in navigating the emerging State and local regulation of both adult use and medical marijuana in this rapidly changing environment.

- 1. History of California Cannabis Law**
- 2. Types of Cannabis Uses**
- 3. Local Regulation**
- 4. Tips for Negotiating**

## California was the first state to decriminalize medical Marijuana

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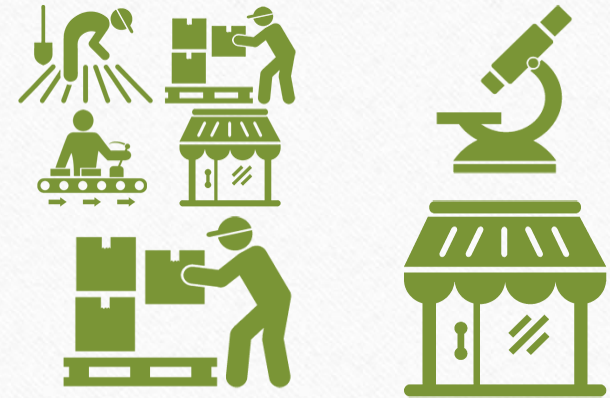
- 1996 - Voters legalize medical cannabis (Proposition 215 - the Compassionate Use Act (CUA)) (56%)
- 2003 - Legislature adopts SB 420, the Medical Marijuana Program Act (MMPA)
- 2008 - Attorney General Guidelines for the security and non-diversion of medical marijuana.

# Seventeen Years Without Further Action by the State of California

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- 2015 - Legislature adopts the Medical Cannabis Regulation and Safety Act (MCRSA)
- 2016 - Voters legalize “The Adult Use of Marijuana Act” (AUMA) (Proposition 64) (57%)
- 2017 - SB 94 creates the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)
- 2018 - Bureau of Cannabis Control (BCC) implements emergency regulations of commercial cannabis

# California State Regulators



**BUREAU OF  
CANNABIS  
CONTROL**  
CALIFORNIA

# Types of Cannabis Businesses



- Cultivation
- Manufacturing
- Distribution
- Testing Labs
- Retail
- Microbusiness



# Local Regulations

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- **Between 1996 and 2013, local policy makers struggled to determine what regulation, if any**

- **State Mandate?**
- **Zoning?**
- **Fees?**
- **Enforcement?**
- **Patient access?**



- **2013 - City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc., 300 P.3d 494, 56 Cal. 4th 729, 156 Cal. Rptr. 3d 409**

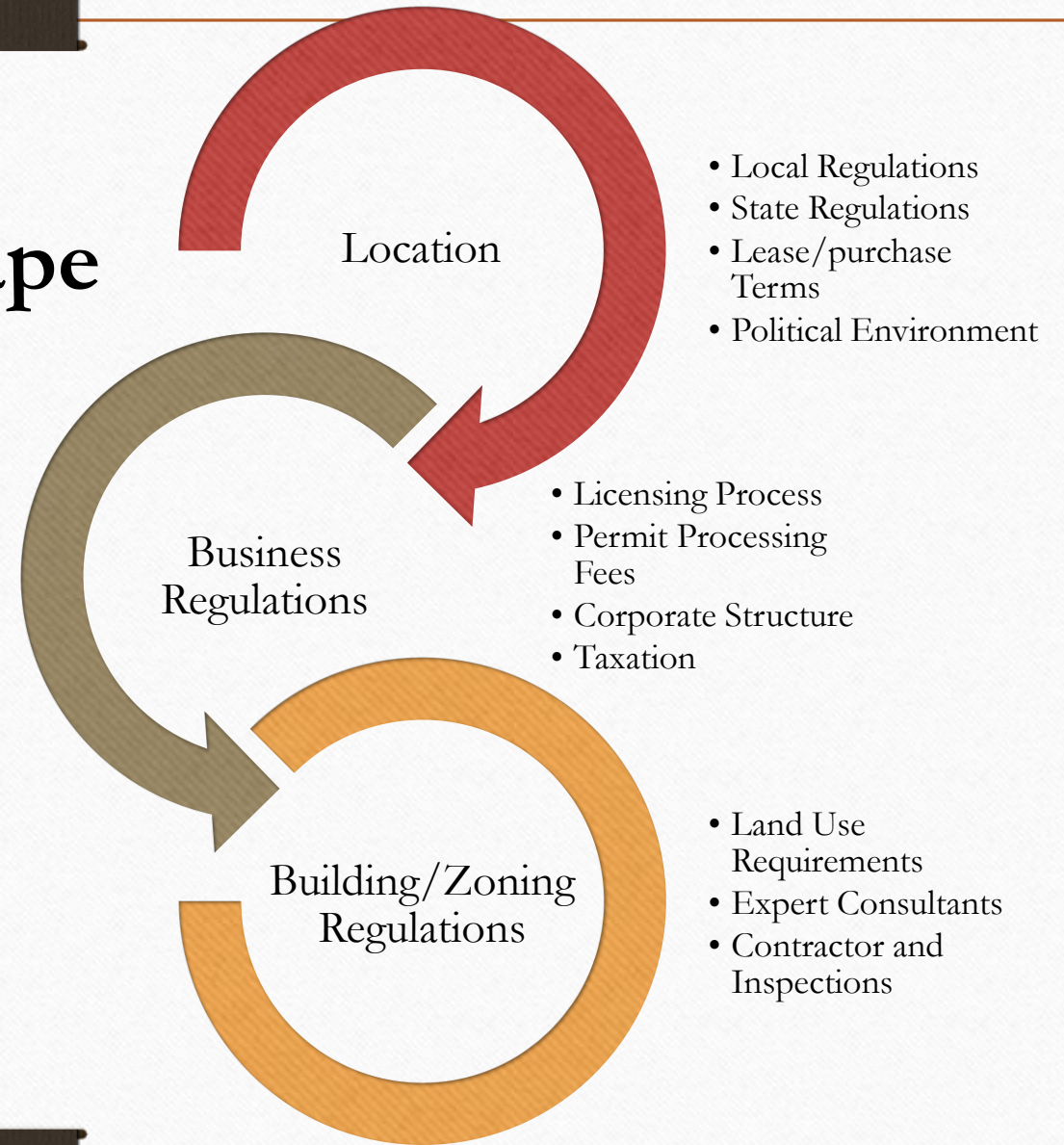


# Today's Cannabis Landscape

Prior to November 2016  
95% Ban

Post November 2016  
13% Legal

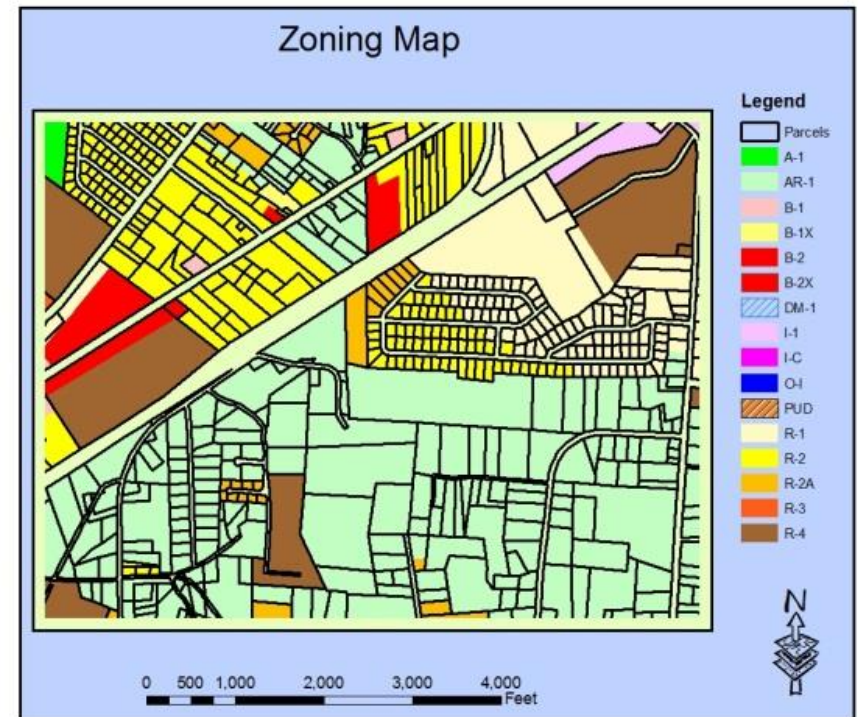
Property Owners Have  
the Power



# Zoning and Permitting

A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” Cal. Const. Art. XI, Sec. 7.

Land use and zoning regulations are derivative of a City’s general police power. See *DeVita v. County of Napa*, (1995) 9 Cal. 4th 763, 782; see also *Big Creek Lumber Co. v. City of Santa Cruz*, (2006) 38 Cal. 4th 1139, 1159.



# Sample Regulation (Ban on Medical Cannabis)

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Medical Marijuana Businesses, Collectives, Cooperatives or Dispensaries. A Medical Marijuana Business, Collective, Cooperative or Dispensary or any other such business, no matter how so named, is not a permitted use in any zoning district or specific plan in the City. It shall be unlawful for any person or entity to own, manage, establish, conduct or operate a Medical Marijuana Business, Collective, Cooperative or Dispensary. Also, it shall be unlawful for any person to permit to be established, conducted, operated, owned or managed as a landlord, owner, employee, contractor, agent or volunteer, or in any other manner or capacity, any Medical Marijuana Business, Collective, Cooperative or Dispensary in the City. (Huntington Beach Municipal Code 204.18 (c))

# Sample Regulation (Ban on All Cannabis)

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- **Cannabis Dispensaries and Delivery Prohibited.** Except as exempted in subsection C below, cannabis dispensaries and cannabis delivery are prohibited in all zoning districts, planned unit development districts, and specific plan areas in the City. It shall be unlawful for any person or entity to own, manage, conduct, or operate any cannabis dispensary or cannabis delivery service or to participate as an employee, contractor, agent or volunteer, or in any other manner or capacity, in any cannabis dispensary or cannabis delivery service in the City of Garden Grove. (Garden Grove Municipal Code 9.52.020 (A))

# Embracing Cannabis

- Cathedral City
- City of Los Angeles
- Humboldt County
- Santa Cruz County
- Needles
- San Bernardino
- Oakland
- San Francisco



# Legalizing Commercial Cannabis

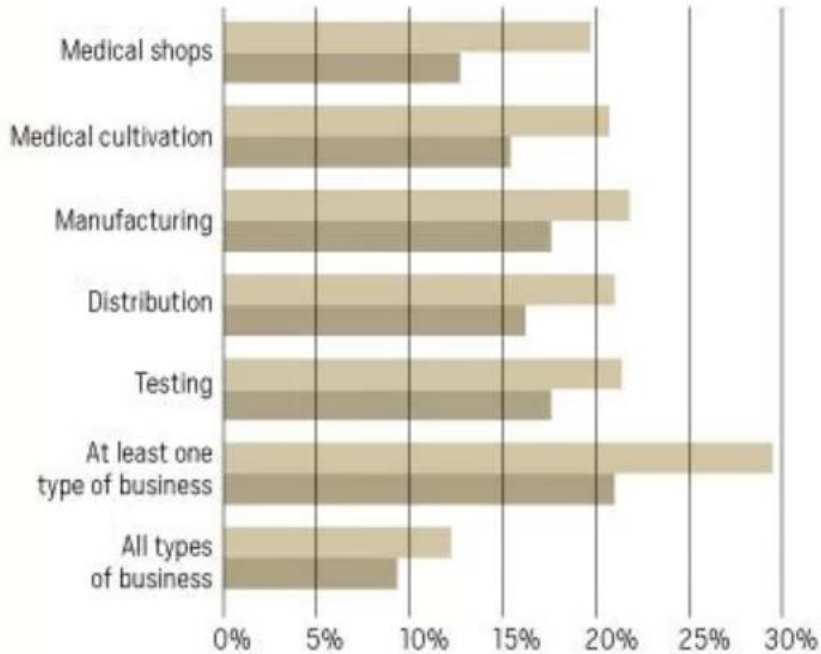
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- Where?
- What types?
- How Many?
- Process?
- Taxes/Fees?
- Residency Requirements?



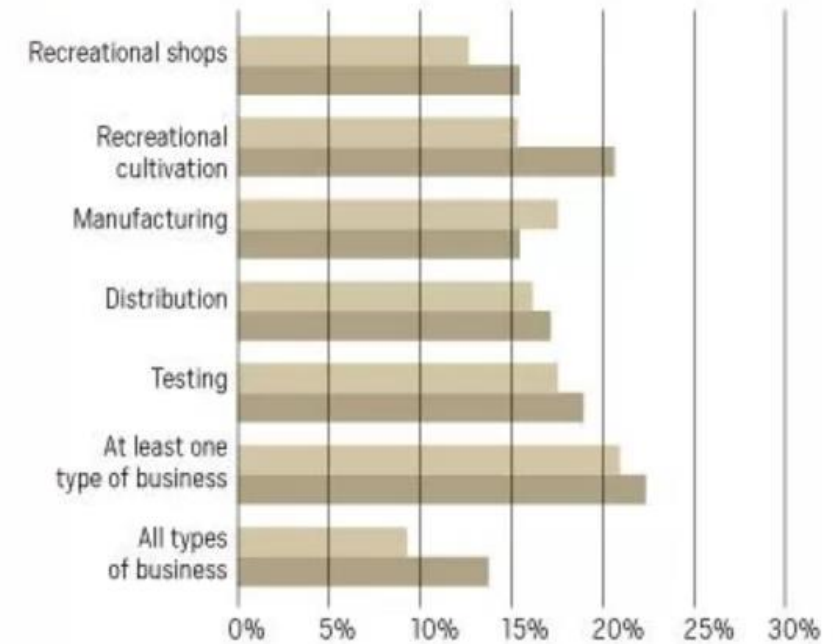
### MEDICAL MARIJUANA

■ Cities out of 482 that allow ...    ■ Counties out of 58 that allow ...



### RECREATIONAL MARIJUANA

■ Cities out of 482 that allow ...    ■ Counties out of 58 that allow ...



Southern California News Group database as of April 2

Courtesy of Orange County Register  
California Medical Marijuana and Recreational Marijuana  
April 9, 2018 UPDATED: June 11, 2018

# Risk to Landlords

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- **Civil fines and Liens Against Property**
- **Criminal Penalties**
- **Loss of access to property**
- **Injunctive relief/ Receivership**
- **Expense/ Delay of Unlawful Detainer Action**



# Civil Citations

- 1997 – Legislature creates the ability for local jurisdictions to issue civil citations in lieu of criminal citations
- Today – 90% of the jurisdictions have adopted the system

ANY VIOLATION OF HBMC TITLE 5, 8, 17, AND ZSO	→	1 <sup>ST</sup> OFFENSE	2 <sup>ND</sup> OFFENSE	3 <sup>RD</sup> OFFENSE		
ALL OTHER HBMC VIOLATIONS	→	\$250	\$500	\$1,000		
		\$125	\$250	\$600		
HB CODE SECTION (S)	DESCRIPTION	FINE (CIRCLE AMOUNT)				
HBMC 5.08.010	NO BUS LICENSE	\$125	\$250	\$500	\$600	\$1,000
HBMC 17.04.036	NO C of O	\$125	\$250	\$500	\$600	\$1,000
HBMC 17.10.050	a.c.d.e., x	\$125	\$250	\$500	\$600	\$1,000
HBZSO 204.15	PROHIBITED USE	\$125	\$250	\$500	\$600	\$1,000
TOTAL FINE AMOUNT:						\$8,000

**BUILDING VIOLATION:** IF THIS BOX IS CHECKED, YOU ARE ORDERED TO CORRECT THE BUILDING VIOLATION WITHIN 30 DAYS. YOUR CORRECTION PERIOD ENDS ON \_\_\_\_\_. YOU MAY REQUEST AN EXTENSION OF THE PERIOD. (SEE REVERSE SIDE.) IF CORRECTION IS NOT COMPLETED WITHIN THE 30 DAYS, YOU MAY BE CITED AND FINED FOR ADDITIONAL VIOLATIONS FOR EACH DAY THE VIOLATION CONTINUES.

**NOTICE OF NONCORRECTION OF BUILDING VIOLATION:** IF THIS BOX IS CHECKED, YOU HAVE FAILED TO

# Lien Against Property

- Recorded Against Property
- Interference with refinance and/or sale
- Foreclosure by County

Document Number	Invoice Date	Due Date	Remark	Open Amount
497446	05/31/2017	06/30/2017	PROCESSING FEE	\$39.00
497446	05/31/2017	06/30/2017	CIVIL CITE 1034856 4/28/17	\$8,000.00
497447	05/31/2017	06/30/2017	PROCESSING FEE	\$39.00
497447	05/31/2017	06/30/2017	CIVIL CITE 1034857 4/28/17	\$2,000.00
497536	05/31/2017	06/30/2017	PROCESSING FEE	\$39.00
497536	05/31/2017	06/30/2017	CIVIL CITE 1051301 4/14/17	\$2,000.00
497537	05/31/2017	06/30/2017	PROCESSING FEE	\$39.00
497537	05/31/2017	06/30/2017	CIVIL CITE 1051302 4/14/17	\$500.00
497542	05/31/2017	06/30/2017	PROCESSING FEE	\$39.00
497542	05/31/2017	06/30/2017	CIVIL CITE 1051307 4/17/17	\$4,000.00
497543	05/31/2017	06/30/2017	PROCESSING FEE	\$39.00
497543	05/31/2017	06/30/2017	CIVIL CITE 1051308 4/17/17	\$1,000.00
497548	05/31/2017	06/30/2017	PROCESSING FEE	\$39.00
497548	05/31/2017	06/30/2017	CIVIL CITE 1051313 4/18/17	\$8,000.00
497549	05/31/2017	06/30/2017	PROCESSING FEE	\$39.00
497549	05/31/2017	06/30/2017	CIVIL CITE 1051314 4/18/17	\$2,000.00
497554	05/31/2017	06/30/2017	PROCESSING FEE	\$39.00
497554	05/31/2017	06/30/2017	CIVIL CITE 1051319 4/19/17	\$8,000.00
497555	05/31/2017	06/30/2017	PROCESSING FEE	\$39.00
497555	05/31/2017	06/30/2017	CIVIL CITE 1051320 4/19/17	\$2,000.00
497560	05/31/2017	06/30/2017	PROCESSING FEE	\$39.00
497560	05/31/2017	06/30/2017	CIVIL CITE 1051325 4/20/17	\$8,000.00
497561	05/31/2017	06/30/2017	PROCESSING FEE	\$39.00
497561	05/31/2017	06/30/2017	CIVIL CITE 1051326 4/20/17	\$2,000.00
497570	05/31/2017	06/30/2017	PROCESSING FEE	\$39.00
497570	05/31/2017	06/30/2017	CIVIL CITE 1051335 4/21/17	\$8,000.00

# Criminal Violations

- It is unlawful to: (1) Own, set up or operate an Establishment, (2) Participate as an employee, contractor, agent or volunteer or in any other capacity in an Establishment, (3) Use any portion or portion of any parcel of land as an Establishment, or to (4) Lease, rent to, or otherwise allow an Establishment to occupy any parcel or portion of parcel of land. (LAMC Sec. 45.19.7.3)

The image shows a yellowed, torn piece of a traffic violation form. The form has columns for 'Correctable Violation (Veh. Code § 40610)', 'Booking Required (see reverse)', 'Description', and 'M I'. There are four rows of handwritten entries:

Correctable Violation (Veh. Code § 40610)	Booking Required (see reverse)	Description	M	I
<input checked="" type="checkbox"/>	<input type="checkbox"/>	CBC 114.1 Unlawful Acts	(M)	I
<input type="checkbox"/>	<input type="checkbox"/>	Occupying Unsafe Structure	M	I
<input checked="" type="checkbox"/>	<input type="checkbox"/>	CBC 116.1 Unsafe structure with no	(M)	I
<input type="checkbox"/>	<input type="checkbox"/>	Utilities (Closed by Building Official)	M	I

At the bottom of the form, there are checkboxes for 'Safe', 'Radar', and 'Continuation Form Issued'. The name 'SB, CA' is handwritten at the bottom.



# Restricted Access

- **Building Officials**
  - Unpermitted Work
  - Illegal Use
  - Utility Shut-off
- **Fire Inspectors**
  - Fire extinguishers
  - Extension Cords
  - Emergency Access



## Violations of Code

- **Lack of Certificate of Occupancy**
- **Lack of Building Permits**
- **Fire Code Violations**
- **Nuisance Code Violations**



# Civil Complaint

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**COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION, DETERMINATION OF PUBLIC NUISANCE, ABATEMENT OF PUBLIC NUISANCE, IMPOSITION OF CIVIL PENALTIES AND DESTRUCTION OF CANNABIS**

[Filing fee exemption for government entity pursuant to Government Code § 6103]

- **Action brought against Landlord and Tenant**
- **Conflict of Interest Concerns**
- **Attorney's Fees**
- **Receivership**

# Unlawful Detainer

**UD-100**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	<b>FOR COURT USE ONLY</b>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF: DEFENDANT: <input type="checkbox"/> DOES 1 TO _____	
<b>COMPLAINT — UNLAWFUL DETAINER*</b> <input type="checkbox"/> COMPLAINT <input type="checkbox"/> AMENDED COMPLAINT (Amendment Number): _____	CASE NUMBER: _____
Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000 but does not exceed \$25,000 <input type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (amount demanded exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint or cross-complaint (check all that apply): <input type="checkbox"/> from unlawful detainer to general unlimited civil (possession not in issue) <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlawful detainer to general limited civil (possession not in issue) <input type="checkbox"/> from unlimited to limited	

1. PLAINTIFF (name each):  
 \_\_\_\_\_  
 alleges causes of action against DEFENDANT (name each):  
 \_\_\_\_\_

- Obey all laws
- Definition of Use
- Service Issues

1 Any Attorney or Party 2 Any Street 3 Any Town, CA 95655 4 714-555-5555 5 6 Any Attorney or Party 7 8 9 10 11 Any Plaintiff, 12 Plaintiff, 13 vs. 14 Any Defendant, and DOES 1-6 15 Defendants. 16	Case No.: _____ NOTICE OF DEMURRER AND DEMURRER TO COMPLAINT, MEMORANDUM OF POINTS AND AUTHORITIES DATE: _____ TIME: _____ DEPT: _____
Superior Court of the State of California For the County of _____	
To subscribe to my FREE weekly legal newsletter visit <a href="http://freeweeklylegalnewsletter.gr8.com/">http://freeweeklylegalnewsletter.gr8.com/</a> and enter your e-mail address.	
Be sure to remove this notice and all other notices before using this document.	
To view and purchase the California eviction document collection containing over 30 sample documents including an answer, this	
- 1 - NOTICE OF DEMURRER AND DEMURRER TO COMPLAINT	



# New California State Law Remedy

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- State has created a new remedy for local government
- **Business and Professions Code 26038.** (a) A person engaging in commercial cannabis activity without a license required by this division shall be subject to civil penalties of up to three times the amount of the license fee for each violation . . .
- Can be brought by the Attorney General, County Counsel, and/or City Attorney

# Tips for Negotiating Cannabis Leases

- Identifying the use (impact on UD)
- Indemnification for civil fines
- Attorney's fees
- Site inspections
- Exit Clause for tenant
- Conditions Precedent
- Options



## COMMERCIAL LEASE AGREEMENT (C.A.R. Form CL, Revised 10/01)

Date (For reference only): \_\_\_\_\_

\_\_\_\_\_ ("Landlord") and \_\_\_\_\_ ("Tenant") agree as follows:

- 1. PROPERTY:** Landlord rents to Tenant and Tenant rents from Landlord, the real property and improvements described as: \_\_\_\_\_ ("Premises"), which comprise approximately \_\_\_\_\_ % of the total square footage of rentable space in the entire property. See exhibit \_\_\_\_\_ for a further description of the Premises.
- 2. TERM:** The term begins on (date) \_\_\_\_\_ ("Commencement Date").  
**(Check A or B):**
  - A. Lease:** and shall terminate on (date) \_\_\_\_\_ at \_\_\_\_\_  AM  PM. Any holding over after the term of this agreement expires, with Landlord's consent, shall create a month-to-month tenancy that either party may terminate as specified in paragraph 2B. Rent shall be at a rate equal to the rent for the immediately preceding month, payable in advance. All other terms and conditions of this agreement shall remain in full force and effect.
  - B. Month-to-month:** and continues as a month-to-month tenancy. Either party may terminate the tenancy by giving written notice to the other at least 30 days prior to the intended termination date, subject to any applicable laws. Such notice may be given on any date.
  - C. RENEWAL OR EXTENSION TERMS:** See attached addendum \_\_\_\_\_.
- 3. BASE RENT:**
  - A.** Tenant agrees to pay Base Rent at the rate of (CHECK ONE ONLY):
    - (1) \$ \_\_\_\_\_ per month, for the term of the agreement.
    - (2) \$ \_\_\_\_\_ per month, for the first 12 months of the agreement. Commencing with the 13th month, and upon expiration of each 12 months thereafter, rent shall be adjusted according to any increase in the U.S. Consumer Price Index of the Bureau of Labor Statistics of the Department of Labor for All Urban Consumers ("CPI") for \_\_\_\_\_ (the city nearest the location of the Premises), based on the following formula: Base Rent will be multiplied by the most current CPI preceding the first calendar month during which the adjustment is to take effect, and divided by the most recent CPI preceding the Commencement Date. In no event shall any adjusted Base Rent be less than the Base Rent for the month immediately preceding the adjustment. If the CPI is no longer published, then the adjustment to Base Rent shall be based on an alternate index that most closely reflects the CPI.
    - (3) \$ \_\_\_\_\_ per month for the period commencing \_\_\_\_\_ and ending \_\_\_\_\_ and \_\_\_\_\_ per month for the period commencing \_\_\_\_\_ and ending \_\_\_\_\_.

# Private Cannabis Cultivation

- Absolutely legal to prohibit smoking and/or manufacturing/cultivation
- Local jurisdictions may regulate
- Federal Law concerns
  - Banking
  - Insurance
  - Forfeiture



**Cannabis is still illegal  
on a Federal level.**

**Controlled Substances Act –  
Schedule I**

**Rohrabacher/Farr Amendment**

**Forfeiture**

**Banking**



**Jennifer McGrath**

[jennifermcgrath.com](http://jennifermcgrath.com)

California Cannabis Law

California Cannabis Licensing

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**9114 Adams Ave., #264**

**Huntington Beach CA 92646**

**(714) 231-2124**