



The Cannabis Conundrum: How to Extinguish Illegal Marijuana Businesses

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David J. Ruderman

COLANTUONO
HIGHSMITH
WHATLEY, PC

Colantuono, Highsmith & Whatley, PC

Southern California

790 E. Colorado Blvd., Suite 850
Pasadena, CA 91101-2109
(213) 542-5700

Northern California

420 Sierra College Drive, Suite 140
Grass Valley, CA 95945-5091
(530) 432-7357

www.chwlaw.us

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Agenda

- Legal framework
- Enforcement options:
 - Administrative citations
 - Civil injunction actions
 - Inspection and abatement warrants
 - Criminal enforcement
 - Unlawful detainer actions
 - State regulatory enforcement
 - Some combination of the above
- Summary

Legal Framework

- Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)
 - Civil penalties
 - Up to 3x license fee
 - Reimburses attorney fees with remainder to General Fund
 - Misdemeanor
 - Health and Safety Code



Legal Framework

- Proposition 64 and MAUCRSA reflect the fundamental principle that a local jurisdiction has constitutional authority over land use within its boundaries
- Municipal Code
 - Permissive zoning no longer sufficient for bans
 - May allow some or all license types available under state law
 - Rational basis applies to limitations on economic activity
 - See *City of Vallejo v. NCORP4, Inc.* (2017) 15 Cal.App.5th 1078, 1087

Legal Framework

- Municipal Code best practices
 - Declare unlicensed commercial cannabis activity a public nuisance
 - Provide for abatement through any lawful means
 - Impose civil penalties + costs of abatement and attorney fees
 - Designate violations as misdemeanors
 - Business license & zoning regulations



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Administrative Citations

- Small fines for infractions—\$100/\$200/\$500
 - AB 2164 for grow operations in residential neighborhoods
 - Slightly higher fines for local building and safety code violations possible
- Cost of staff time
- Administrative appeal rights
- Writ of administrative mandate

Administrative Citations

- May be seen as “cost of doing business”
- May use appeal process to deplete City resources and political will
- Risk of res judicata on factual issues against the City



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Civil Injunction Actions

- Public nuisance
- Favorable standard for cities
 - *IT Corp. v. County of Imperial* (1983)
35 Cal.3d 63
- Consider:
 - bringing in the name of the People of the State of California
 - seeking civil penalties under MAUCRSA
 - suing property owner too



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Civil Injunction Actions

- Civil “indirect” contempt
 - Marshal evidence of continued cannabis distribution
 - OSC re contempt
 - Quasi-criminal proceeding
 - Proof beyond a reasonable doubt
- Time-consuming and costly
 - Personal service requirement
- Difficult to demonstrate owner violated injunction—
enjoin all persons acting on behalf of/in concert with
operator

Civil Injunction Actions

- Criminal violation
 - Willful disobedience with a court order is a misdemeanor
 - Penal Code § 166, subd. (a)(4)
 - Arrest and prosecutor contemner
- Speedier than civil contempt
- Same burden of proof as civil contempt
- Unlike civil contempt, contemner has right to jury trial
- May require more resources than small cities possess

Inspection and Abatement Warrants

- Inspection warrants
 - Zoning violations
 - Suspected building code violations
- Abatement warrant for building code violations



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Inspection and Abatement Warrants

- Court unlikely to issue abatement warrant where only violation is unpermitted cannabis business
- Quick and inexpensive
 - Issued ex parte
- Useful in conjunction with other enforcement methods:
 - Inspection can be basis for increased administrative fines
 - Inspection may provide additional evidence of violations

Criminal Enforcement

- City may prosecute Municipal Code violations as a misdemeanor unless the violation is an infraction
 - No immunity from criminal prosecution for collectively/cooperatively cultivating medical cannabis since January 9, 2019
- Review your Code to determine scope of criminal liability



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Criminal Enforcement

- District Attorney or City Attorney/Prosecutor may bring misdemeanor charges
 - However, DA's office seldom has resources to do so
- Potential jail time and financial penalties
- Defendant entitled to counsel and jury trial
- Very effective in compelling operators to cease unlawful activities
- May be too expensive for smaller cities

Unlawful Detainer Actions

- Nearly all commercial leases require compliance with law
- If landlord unwilling to evict upon request, TRO or preliminary injunction can assist landlord in successful eviction
- Cities likely cannot mandate landlords successfully evict unlawful cannabis businesses
 - *Cook v. City of Buena Park* (2005) 126 Cal.App.4th 1



Unlawful Detainer Actions

- Effective and inexpensive
- Seek landlord's cooperation early
 - Civil liability on landlords for leasing to unlawful cannabis businesses may help compel cooperation
 - Unlawful cannabis businesses pay a premium to rent
- Seek eviction from all properties the operator leases from landlord—even if not being used for cannabis retail activity

Unlawful Detainer Actions

- Ineffective where unlawful cannabis operator owns the property
- Considering title search to identify and notify lienholders
- Lienholders may enforce deed covenants requiring compliance with law to avoid having costs and fees of abatement recorded against property



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State Regulatory Enforcement

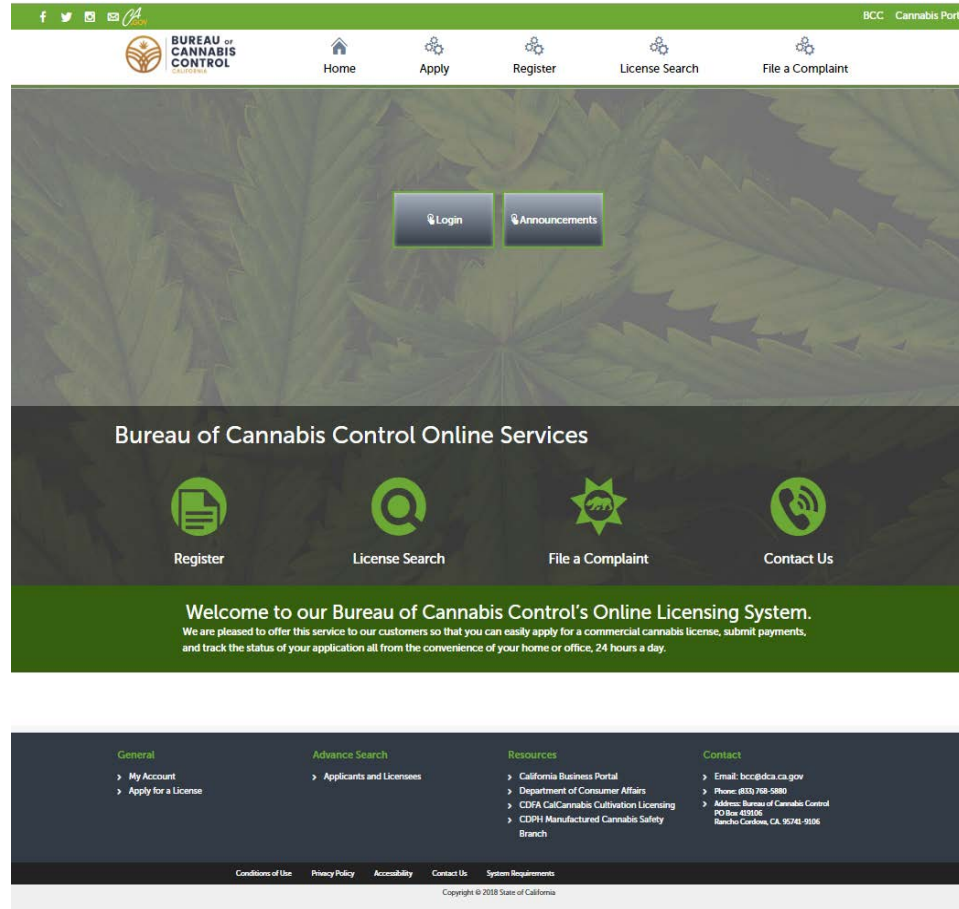
Department

- Dept. of Consumer Affairs, Bureau of Cannabis Control
- Dept. of Food and Agriculture, CalCannabis Cultivation Licensing division
- Dept. of Public Health, Manufactured Cannabis Safety Branch

Licensed Activity

- Retailers
- Cultivators
- Manufacturers

State Regulatory Enforcement



- State often performs enforcement activity with local law enforcement
- Bureau provides on-line complaint portal for unlicensed activity
- Let licensed retailers know of this opportunity

Combining Enforcement Options

- Administrative citations + inspection/abatement warrants
- Civil injunctions + unlawful detainer actions
- Criminal enforcement + state regulatory enforcement

Combining Enforcement Options

Costliest to least costly

- Criminal enforcement
- Civil injunction action
- Abatement warrants
- Administrative citations
- State enforcement
- Unlawful detainer

Most to least effective

- Criminal enforcement
- State enforcement
- Unlawful detainer
- Civil injunction
- Abatement warrant
- Administrative citations

Summary

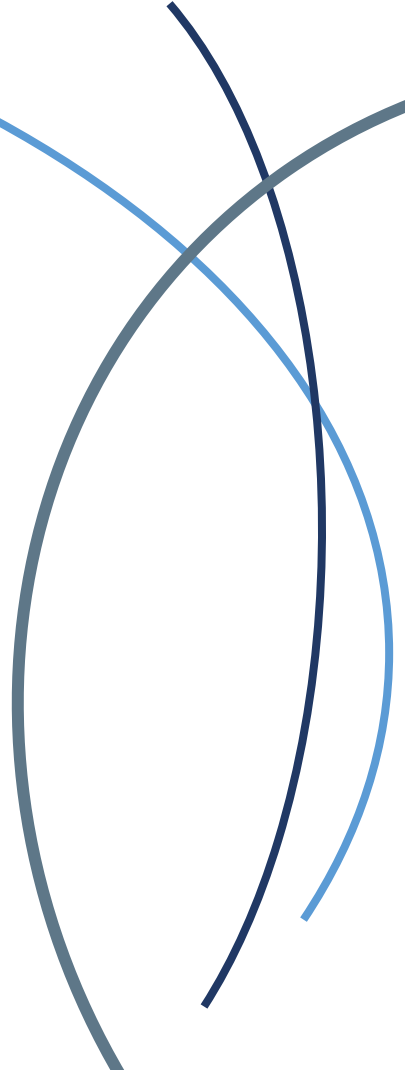
- MAUCRSA and state law provides effective tools for enforcement
- Local law can augment and supplement these tools
- These legal bases provide a range of options

Summary



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- Choice among these options is for each City to decide
- Depends on:
 - The City's goals
 - The nature of the offender
 - The specific provisions of the City's Municipal Code



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Thank you!

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druderman@chwlaw.us



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