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## Why Cities Should Get Moving on Their Cannabis Ordinances

The State of California is not delaying implementation of either the emergency regulations, or the implementation of state licensing on Jan. 2, 2018. The state is moving ahead on schedule. It is in cities' best interest to continue work on local adult use and/or medical ordinances at whatever pace they can effectively do so.

### The Latest News from the Bureau

During a cannabis industry conference on Sept. 28, Lori Ajax, director of the Bureau of Cannabis Control, publicly emphasized that the state is forging ahead with the regulations, and they will begin state licensing on time. As far as the state is concerned, there is no compelling reason for cities to delay implementing their regulations.

### Why Cities Can and Should Proceed Now

The League's Aug. 31 webinar on implementation of the Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) explained in detail why the snapshot of state regulations is largely settled, and why cities can and should proceed with their ordinances now, and not delay that process. Slides 20-24 of the power point [presentation](#) detail the hazards of delay for cities. A good portion of the remainder of the slides explain how cities can proceed with crafting their ordinances more or less immediately.

If for whatever reason your city is simply not ready to enact regulations in the timetable provided, i.e. the next three months, only then is the League advising a ban as a placeholder regulation until such time as a regulatory proposal is ready for consideration by the city council.

The League has provided cities the tools to get started sooner rather than later. Examples of [medical ordinances](#) are available on the League's website. In addition, the League's website includes examples of [adult use ordinances](#).

These ordinances are a template that can, and should be, edited to reflect local priorities. No single ordinance can be a cookie-cutter.

### Where Local Governments Should Submit Their Ordinances

1. Per AB 133, the latest cannabis trailer bill, all cities and counties are required to submit their ordinances directly to the Bureau of Cannabis Control within the Department of Consumer Affairs. The bureau is then required to disseminate the information on local ordinances to the relevant state licensing entities.
2. Cities are also required to designate a specific individual as the point person to interact with state agencies on questions pertaining to local regulations. If a city fails to designate someone, then AB 133 provides that the state will by default treat the city clerk as the designated point person.
3. Email all ordinances to the [bureau](#) at [bcc.localgov.submit@dca.ca.gov](mailto:bcc.localgov.submit@dca.ca.gov).

4. It is not required, but it is strongly recommended that each ordinance submitted be accompanied by a brief summary explaining in plain English what activities are and are not authorized within a specific city. Otherwise state agencies may be forced to start *interpreting* local ordinances, with unpredictable results.

### **Why Delaying Enactment of Cannabis Ordinances Does Nothing to Help Cities**

Under SB 94, the cannabis trailer bill signed by Gov. Jerry Brown in June that reconciled Proposition 64 with the Medical Cannabis Regulation and Safety Act of 2015 (MCRSA), if a local jurisdiction has no ordinance enacted addressing the licensed activity that is the subject of the application, the state can unilaterally issue a license for a business in your jurisdiction. The reason is that state is prohibited from issuing a license only if the business activity would violate local ordinances. If there is no applicable ordinance, there is no violation, and the state can issue a license without local input. Such a license would arguably be legal under the terms of Prop. 64.

Cities are cautioned not to deny applications for cannabis businesses if you have no ordinance in force that specifically prohibits the proposed business activity. At least one city is currently in litigation after denying an application for an adult use business, based on an ordinance that banned medical cannabis only, and was silent on adult use cannabis businesses.

If your city has a ban in place that applies to both medical and adult use and reflects the will of your citizens, then there is no need for further action. However, if your city wants to pursue another path but for whatever reason is simply not ready to enact regulations in the timetable provided, i.e. the next three months, only then does the League advise enacting a ban as a placeholder regulation until such time as a regulatory proposal is ready for consideration by the city council. The League has provided cities the tools to get started sooner rather than later (see above links for examples of medical and adult use ordinances).

### **Why is it Important to Enact or Update City Cannabis Ordinances?**

Some cities have asked, if Jan. 2, 2018 does not apply to local governments, but applies only to the state to begin issuing state licenses, then what is the rush for local governments to enact ordinances at all?

Technically there is no rush because state law does not affirmatively require locals to take action. However, if your city does not have ordinances in place at all covering either medical or adult use of cannabis, the following adverse consequences could occur in your city.

- The city could lose control over local land use decisions if the state issues a license based on your city having no relevant ordinance in place.
- That business might be able to operate legally until two things happen:
  - Your city enacts an ordinance; and
  - The business' state license comes up for renewal.
- Your city could be sued for:
  - Denying a permit if no ordinance covers the specified activity; and
  - Failing to enact an ordinance since cannabis was legalized by Prop. 64 (such lawsuits may or may not have merit, but the city would incur litigation costs regardless).

In addition, attorneys differ in their opinions about whether an interim solution such as a moratorium would be considered a valid local regulation from the state's point of view. The state could take the view that a bona fide cannabis ordinance either affirmatively regulates, or affirmatively prohibits commercial cannabis businesses.

Finally, some jurisdictions that need more time may wish to consider enacting a temporary ban (perhaps with a hard sunset date) while they continue working on their ordinance. Then they will be able to provide the state a definite answer regarding the local rules.