

# Cannabis Regulation Act for Local Governments

## What is the Cannabis Regulation Act?

- A. In April of 2021, Governor Michelle Lujan Grisham signed the Cannabis Regulation Act into law, legalizing the recreational use of cannabis and decriminalizing the possession of cannabis and cannabis products.
- B. The Cannabis Regulation Act (CRA) creates the ability for individuals and businesses to grow, manufacture, and sell cannabis and cannabis products.
- C. Cannabis is still considered a controlled substance, due to its strong potential to be misappropriated and channeled into illegal commerce, thus the CRA establishes licensing criteria for each stage of cannabis production for commercial purposes.
- D. The CRA additionally created the Cannabis Control Division, an arm of the State Regulation and Licensing Department (RLD) which regulates the issuance of license to cannabis businesses throughout the state.

## How does the Cannabis Regulation Act affect local governments?

- A. The CRA allows local jurisdictions to set reasonable time, place, and manner restrictions on cannabis operations.
  - 1. Local jurisdictions may reasonably limit density of licenses (such as one licensee per 200 feet on a commercial strip).
  - 2. Local jurisdictions may reasonably limit the hours of operation of cannabis businesses, particularly retailers, cannabis consumption areas, and manufacturers who have operations which create more noise than other businesses in the neighborhood.
    - a. Some jurisdictions may choose to regulate cannabis retail and consumption areas by following the hours of operation as established in the Liquor Control Act.
  - 3. Local jurisdictions may establish guidelines on when/where it is permissible to smoke or otherwise ingest cannabis, provided the locale does not prohibit consumption on one's own property.
  - 4. Local jurisdictions may require a set-back from schools and daycares of at least 300 feet for cannabis businesses seeking a zoning permit or other approval from the local jurisdiction.
    - a. It is noteworthy that the CRA did not include churches, government buildings, or other establishments as those required to have.
- B. The CRA specifically prohibits local jurisdictions from disallowing the operation of cannabis related businesses.

1. The local jurisdiction shall not prevent transportation of cannabis or cannabis products on public roads in accordance with the CRA; or
  2. Completely prohibit the operation of a licensee; or
  3. Prohibit a cannabis-related establishment from identifying itself as a cannabis-related establishment via sign regulations; or
  4. Require a cannabis licensee to relocate, such as if a daycare or school begins operations within 300 feet of the licensee's existing premises; or
  5. Prohibit an individual from producing homegrown cannabis (up to 6 plants per person or 12 plants per household) as provided in the CRA. Individuals can grow plants and use the products without state or local regulation. The plants simply must not be visible to the public.
- C. Can a local jurisdiction set fees or charge taxes to cannabis businesses?
1. Generally, the CRA appears to establish all reasonably related taxes and fees for the operation of a cannabis business and maintenance of a license.
  2. However, a local jurisdiction may continue to charge permitting, inspection, and other reasonably related fees as according to their policies and procedures for the operation of any new or existing business within the jurisdiction.
  3. A local jurisdiction may also not set civil fines or criminal penalties for the possession or use of cannabis or cannabis products.

### **Important Dates for Local Jurisdictions**

- A. September 1, 2021 is the date by which RLD must begin accepting and processing license applications for the production (growing) of cannabis.
1. Local jurisdictions will want to have some framework in place for the production of cannabis, especially those who have permissive agricultural use in their existing ordinances or codes.
  2. It is strongly recommended that local jurisdictions consider implementing a framework for all cannabis related activity, in the event any of the licensed producers are vertically integrated such that they may utilize the same space for manufacture or retail if appropriately licensed at a later date.
- B. January 1, 2022 is the date by which RLD must begin accepting and processing all other license types, including manufacturers, retailers, cannabis server permits, and couriers.
1. Local jurisdictions will want to have a comprehensive ordinance, whether through their existing land use code or a standalone ordinance to consider their regulatory needs related to cannabis businesses.

C. April 1, 2022 is when retail sales of recreational cannabis are slated to begin.