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Changes to Medical Cannabis Regulations as a Result of the Medicinal Cannabis Patients' Right of Access Act

On September 8, 2022, the Governor signed SB 1186 (The Medicinal Cannabis Patients' Right of Access Act), which would prohibit a local jurisdiction from adopting or enforcing any regulations that prohibit or have the effect of prohibiting the retail sale by delivery within the local jurisdiction of medicinal cannabis to medicinal cannabis patients or their primary caregivers by licensed medicinal cannabis businesses in a timely and readily accessible manner. As a result of the changes imposed by SB 1186, public agencies should review their cannabis regulations to ensure they are consistent with SB 1186 and do not prohibit delivery of medical cannabis within their jurisdiction. Fortunately, SB 1186 has a delayed implementation date of January 1, 2024.

SB 1186, which adds Chapter 26 to the Business and Professions Code (commencing with section 26320), identifies specific regulations which have the effect of prohibiting the retail sale by delivery of medical cannabis, including but not be limited to, the following:

- (1) The number of medicinal cannabis businesses authorized to deliver medicinal cannabis in the local jurisdiction.
- (2) The operating hours of medicinal cannabis businesses.
- (3) The number or frequency of sales by delivery of medicinal cannabis.
- (4) The types or quantities of medicinal cannabis authorized to be sold by delivery.
- (5) The establishment of physical premises from which retail sale by delivery of medicinal cannabis within the jurisdiction is conducted by a licensed nonstorefront retailer (this provision is stated to not be construed to require the establishment of additional physical premises in a local jurisdiction that allowed medicinal cannabis retail as of January 1, 2022, and in which at least one physical premises engaged in the retail sale of medicinal cannabis, whether storefront or delivery, is already established).

SB 1186 does allow jurisdictions to impose reasonable regulations on retail sale by delivery of medicinal cannabis, including, but not limited to, reasonable regulations related to: (1) zoning requirements that are consistent with SB 1186, (2) security or public health and safety requirements, (3) licensing requirements, (4) the imposition, collection, and remittance of any applicable state or local taxes upon retail sales occurring within the local jurisdiction, and (5) regulations consistent with requirements or restrictions imposed on cannabis businesses by this division or regulations issued under this division.

A legal action to enforce SB 1186 may be brought by a medicinal cannabis patient or their primary caregiver who seeks to purchase medicinal cannabis or medicinal cannabis products within the local jurisdiction, a medicinal cannabis business that seeks to offer medicinal cannabis for sale within the local jurisdiction, the Attorney General or any other party authorized by law.