

# HALLINAN & HALLINAN P.C.

Helping your cannabis business succeed.

## SF ARTICLE 33 v. MCRSA v. AUMA CHART

FAR-RIGHT COLUMN UNDER JURISDICTION OF THE CANNABIS TASK FORCE

ISSUE	SF ARTICLE 33	MCRSA	AUMA
Cultivation size	24 Plants allowed per individual in 25 square feet of canopy area. Maximum of 9 patient members per collective without MCD permit. MCD on site cultivation capped at 99 plants in up to 100 square feet of canopy.	Cultivation capped at 22,000 feet indoors and 1 acre outdoors.	Starting in 2023 there will be no cap on the size of grows under the new Type 5 licenses (22,000+ feet indoors and 1+ acre outdoors).
Distributor and Testing licensees	Not defined or addressed.	Distributor licenses and Testing licenses may not be owned in whole or in part by any other licensee. Distributor is responsible for sending sample to testing lab.	Testing licenses may not be owned in whole or in part by any other licensee. Distributor licenses may not be owned by the new Type 5 licensees. A cultivator who also owns a distributor license may send samples directly to testing lab (a bit unclear, since AUMA does allow cultivators to send directly to the lab; seems likely that this was meant to apply to cultivators with distributor licenses, since that is now clearly allowed).
Limits on the number of	No limits.	The Department of Agriculture will cap	

licenses owned by an entity		grows between 10,001 feet and 22,000 feet indoor, or grows between 10,001 and 1 acre by issuing a limited number of licenses.	No limit on the number of licenses issued or owned in any category.
For-profit v. non-profit	Non-profit model.	For-profit model.	For profit, but also creates experimental nonprofits oriented toward low-income consumers that must register with the State Registry of Charitable Trusts and can gross no more than \$2mil per annum. May be issued provisional licenses locally as soon as AUMA passes and operate recreationally immediately. State oversight, but no State-level licensing, and may be renewed solely at local discretion. (BPC 26070.5)
Producing dispensary licenses	Manufacturing not addressed. Cultivation allowed only if associated with MCD. No limit on number of locations or licenses.	Type 10A license. Allows cultivation, manufacture and retail to be held by the same entity, but no more than 3 retail locations and no more than 4 acres of cultivation.	Type 12 Microbusiness license. Allows cultivation, manufacture, retail, and distribution licenses to be held by the same entity, with no limit on total cultivation area and no limit on the number of retail locations (however, restrictions related to Type 5 licenses still apply).

Transportation	Not addressed.	Transportation license required for moving cannabis between locations but not between licensees.	No transportation license.
Multiple license categories	Manufacturing, distribution, testing, and transportation not addressed. Cultivation allowed only if associated with an MCD. No limit on number of locations or licenses.	Except for 10A, licensees may only hold licenses in no more than two categories (Type 8 Testing may own in no other license category; Type 11 Distributor licensees may also hold Type 12 Transporter licenses).	Only Type 5 (large scale agriculture) and Type 8 (testing) are restricted from holding licenses in multiple categories. (BPC 26061(e)).
Age restrictions	No age limits. “It shall be unlawful for any medical cannabis dispensary to allow any person who is not at least 18 years of age on the premises during hours of operation unless that person is a qualified patient with a valid identification card or primary caregiver with a valid identification card or a verifiable, written recommendation from a physician for medical cannabis.”	18+ only unless approved by guardian	21+ unless dispensary also holds medical license, in which case 18+ may enter and purchase with state-level ID. Permitted smoking lounges restricted to 21+. (BPC 26200(d)(1))

Distance from schools	Cultivation sites: 600 feet radius from schools. Dispensaries: 1000 feet from schools or recreation facilities primarily serving persons 18 and under.	600 feet radius from schools.	600 feet, unless city or county approves a different radius. Smoking lounges must be 1,000 feet from schools. (HSC 11362.3)
Taxes	No cannabis-specific tax.	Standard sales tax, although localities may approve additional cannabis-specific taxes.	Excise tax of 15% applied before standard sales tax. Medical cannabis is exempt from sales tax. \$9.25/pound cultivation tax applies to both (\$2.75/pound for leaves). (RTC 34011)
Clustering	No specific regulation, but addressed informally by Planning.	Decided at local level.	Frankly doesn't make much sense. Similar to Alcohol, but without actual numerical limits. "26051. (c) For purposes of this section, 'excessive concentration' means when the premises for a retail license, microbusiness license, or a license issued under Section 26070.5 is located in an area where either of the following conditions exist: (1) The ratio of a licensee to population in the census tract or census division in which

			<p>the applicant premises are located exceeds the ratio of licenses to population in the county in which the applicant premises are located, unless denial of the application would unduly limit the development of the legal market so as to perpetuate the illegal market for marijuana or marijuana products.</p> <p>(2) The ratio of retail licenses, micro business licenses, or licenses under Section 26070.5 to population in the census tract, division or jurisdiction exceeds that allowable by local ordinance adopted under Section 26200.” Implies that a jurisdiction must release a license in each census tract within the jurisdiction each and every time one is issued in a different census tract.</p>
Priority	Not addressed.	Applicants with proof of operation in “good standing” before January 1, 2016 receive priority.	Applicants who can show proof of operating in compliance with the CUA before September 1, 2016, or are presently in compliance with MCRSA, receive priority. (BPC 26054.2)
Residency	Not addressed.	No residency requirement.	Persons who were not continuous California residents from or before

			January 1, 2015 cannot be licensed. Sunsets December 31, 2019, unless renewed by the legislature. Also applies to entities with 20% or more foreign ownership (BPC 26054.1 refers to “controlling person,” but AUMA defines owner as 20% or more and does not specifically define “controlling person”).
Type 5 Mega Farms: Over 22,000 square feet indoor cultivation or over 1 acre outdoor.	Theoretically allowed under the CUA, and not specifically addressed in Article 33.	No type 5 licenses.	“BPC 26061(e). A Type 5, Type 5A, or Type 5B licensee may apply for and hold a Type 6 [nonvolatile manufacturing] or Type 7 [volatile manufacturing] license and apply for and hold Type 10 [retail] license. A Type 5, Type 5A, or Type 5B licensee shall not eligible to apply for or hold a Type 8 [testing], Type 11 [distribution], or Type 12 [microbusiness] license.”
Free samples	Allowed.	Allowed.	Prohibited. “BPC 26153. No licensee shall give away any amount of marijuana or marijuana products, or any marijuana accessories, as part of a business promotion or other commercial activity.”

Advertising	Allowed, although building signage is restricted to 10 square feet.	<p>Allowed, although BOE Sales # must be posted in any advertisement by a cooperative or collective, and recommending physicians must issue disclaimer: “NOTICE TO CONSUMERS: The Compassionate Use Act of 1996 ensures that seriously ill Californians have the right to obtain and use cannabis for medical purposes where medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of medical cannabis. Recommendations must come from an attending physician as defined in Section 11362.7 of the Health and Safety Code. Cannabis is a Schedule I drug according to the federal Controlled Substances Act. Activity related to cannabis use is subject to federal prosecution, regardless of the protections provided by state law.”</p>	Restricted. “BPC 26152. No licensee shall...(g) Advertise or market marijuana or marijuana products on an advertising sign within 1,000 feet of a day care center, school providing instruction in kindergarten or any grades 1 through 12, playground, or youth center.”

Smoking lounges	Allowed.	Allowed.	<p>“BPC 26200. (d) Notwithstanding paragraph (1) of subdivision (a) of Section 11362.3 of the Health and Safety Code, a local jurisdiction may allow for the smoking, vaporizing, and ingesting of marijuana or marijuana products on the premises of a retailer or microbusiness licensed under this division if:</p> <p>(1) Access to the area where marijuana consumption is allowed is restricted to persons 21 years of age and older;</p> <p>(2) Marijuana consumption is not visible from any public place or non-age restricted area; and</p> <p>(3) Sale or consumption of alcohol or tobacco is not allowed on the premises.”</p>
Bond	Not required.	Not required.	<p>May be required. “RTC 34014.... (b) The board may require every licensed dispensary, cultivator, microbusiness, nonprofit, or other person required to be licensed, to provide security to cover the liability for taxes imposed....”</p>



Resentencing or dismissal of prior charges	Not addressed.	None.	May petition the Court to dismiss original charges if the offense would have been protected under AUMA. (HSC 11361.8) Clear and convincing evidence is the standard to oppose.
Labor peace agreements	Not addressed.	Required of all applicants with 20 employees or more. (BPC 19322)	Not required.
Potency limits	Not addressed.	None.	Edibles: 10mg THC/serving
NOTES:			