



Frequently Asked Questions Cannabis Administrative Prosecutor Program (CAPP)

1. What is administrative enforcement and why use this approach?

Through the Cannabis Administrative Prosecutor Program (CAPP), the Office of Attorney General (OAG) seeks to partner with cities and counties in order to integrate the resources of the OAG with the existing administrative enforcement and nuisance abatement authority of local jurisdictions. The goals are to achieve increased levels of cannabis enforcement, shift the costs of enforcement onto those who profit by illegal activity, institute cost-effective and sustainable enforcement programs, and support the legal cannabis industry.

Administrative enforcement, in this context, involves the issuance of notices of violation, citations, and orders to abate illegal commercial cannabis activity. Illegal operators will have an opportunity to voluntarily abate the illegal activity. In the absence of voluntary compliance, a due process hearing is held before an administrative hearing officer or hearing board (depending upon the provisions of a local ordinance). The hearing will result in the issuance of an abatement warrant, which will authorize the eradication of unlicensed commercial cannabis cultivation or the cessation of unlicensed retail or manufacturing activity, as well as an order authorizing the recovery of enforcement costs.

Administrative enforcement is an alternative to traditional criminal enforcement or civil litigation and can address illegal commercial cannabis activities by treating them as land use issues and unlicensed business practices. There will be circumstances where criminal prosecution or civil litigation against illegal commercial cannabis operations is the necessary and better option. However, this program uses an administrative enforcement approach because it is cost effective and can be undertaken on a much larger scale without many of the risks, collateral impacts, or expense of undertaking criminal prosecution or civil litigation.

Administrative enforcement will drastically increase the capacity of the OAG and of local jurisdictions to address the massive scale of illegal commercial cannabis activity.

2. What are the roles of the local jurisdiction and the Office of the Attorney General?

The roles of the local jurisdiction and the OAG will vary based upon the needs and goals of a participating city or county. The goal is to set up a sustainable administrative enforcement program suited to each jurisdiction. For the OAG, this can mean:

- Providing Deputy Attorneys General (DAGs) to act as administrative prosecutors before local administrative hearing bodies or officers and, where necessary, to assist with the development of forms and procedures for expedited administrative enforcement.

- Assisting with investigative services through the Eradication and Prevention of Illicit Cannabis (EPIC) program and its partnerships with other agencies.
- In jurisdictions that have limited resources, OAG staff can perform the administrative work necessary to provide notices, assist in facilitating administrative procedures, and assist with logistical issues through the use of private process servers, contract code compliance officers, and abatement contractors. (The OAG would seek to recover the cost of these services through means discussed below.)

The CAPP seeks to collaborate with the local jurisdiction to help determine how best to support and supplement the administrative enforcement procedures and resources available. Whether a jurisdiction wants to provide nearly all the staff to perform the enforcement tasks or the jurisdiction does not have the ability to supply very much support at all, the OAG will seek to fill gaps to help create cost effective administrative enforcement procedures tailored to suit the needs of the local jurisdiction. By establishing enforcement programs in as many jurisdictions as possible, the CAPP is seeking to create sustainable models for ongoing enforcement by leveraging the enforcement tools that are unique to local jurisdictions.

3. How will the CAPP be implemented in a local jurisdiction?

The first step is to enter into an agreed upon Memorandum of Understanding (MOU) between the local jurisdiction and the OAG. The process for developing the MOU begins with review of the OAG's initial draft MOU, which serves as a template. The local jurisdiction and OAG will collaborate and revise this draft MOU, as needed, to implement the CAPP using the processes that exist within the local jurisdiction.

Once the local jurisdiction and OAG have agreed upon the final draft of the MOU, the MOU must be brought before the local jurisdiction's governing body to formally adopt the MOU, thus allowing the CAPP to be implemented. After adoption of the MOU, staff from the local jurisdiction and OAG can begin to develop the systems and procedures necessary for the CAPP operations to commence.

4. Will a local jurisdiction still be able to pursue criminal or civil actions if they participate in the CAPP?

The CAPP will never interfere with criminal enforcement operations or civil actions that a city or county undertakes in lieu of administrative enforcement. The OAG will engage in standard deconfliction and parallel proceedings protocols. The CAPP is intended to work in collaboration with local authorities in order to handle the cases that the local jurisdiction does not wish to pursue through civil actions or criminal enforcement.

5. How does CAPP get funded?

The CAPP will require initial staff time by both the OAG and the local jurisdiction to develop the procedures and documents required for administrative enforcement actions. Thereafter, the program will seek to recover all costs of enforcement and abatement through

voluntary settlements and abatement liens in accordance with local ordinances and procedures adopted under the authority of Government Code sections 25845, for counties, or 38773.5, for cities.

As with any type of administrative enforcement action, the CAPP will seek to recover costs through settlement and stipulated administrative orders where the property owner voluntarily abates the nuisance or unpermitted cannabis activity on the property. As part of any settlement and order, the CAPP will seek to recover the fully weighted cost of staff time, mileage, contractors, expenses, and use of equipment incurred by the local jurisdiction and the OAG.

Where there is no settlement, the CAPP will seek to obtain an administrative order and abatement lien, which is considered super priority and takes first position over a first deed of trust mortgage providing security to recover enforcement costs.¹ If a property owner does not pay the costs of enforcement within the timeframe specified in applicable local ordinances, the enforcement costs will be added to the land owner's property tax bill.

6. How are time and the costs for the CAPP operations tracked?

The OAG uses a case management system to track all time spent working on a matter by OAG staff. For any third-party contractor hired by the OAG, invoices will also be tracked in the case management system. The local jurisdiction is responsible for keeping track of costs incurred for investigation, service of process, etc. All costs that may be considered enforcement costs under local and state law will then be tallied and billed to the unlicensed commercial cannabis operator or land owner who facilitated the activity. Where the costs are not paid voluntarily, such costs will be recorded as an abatement lien in accordance with local and state law (Gov. Code §§ 25845 or 38773.5, as applicable).

7. What happens if enforcement costs exceed the value of properties that are the subject of abatement actions?

It will always be the goal to avoid incurring costs that could potentially over-encumber a property targeted for enforcement action. This goal can be achieved through a strategic approach to the scope of abatement actions, by taking minimum remedial measures necessary to stop the unlicensed commercial cannabis activity, and through efforts to seek cooperation from property owners. However, in circumstances where there are extremely hazardous conditions or unmitigated and ongoing environmental harm, it is possible that costs of abating a nuisance could exceed the value of the property where the commercial cannabis activity is occurring.

In anticipation of this potential scenario, the OAG's draft proposed MOU outlines that fines assessed pursuant to local law and Government Code section 53069.4, and collected as part of the CAPP operations, will go into the cost recovery fund to provide a cushion against potential

¹ Jurisdictions that are suitable partners for the CAPP have adopted ordinances pursuant to Government Code sections 25845 or 38773.5. If a city's ordinance uses lien procedures under Government Code 38773.1, then nuisance abatement liens do not have the same character as a property tax lien.

shortfalls in recovery of abatement costs. Where the funds are not needed to cover costs, the funds will be retained by the local jurisdiction to use as it determines.

If abatement liens and the sums deposited in the cost recovery fund as a consequence of the CAPP enforcement actions are inadequate to cover the costs of the enforcement/abatement, then the local jurisdiction and OAG will take a proportionate share of the remaining funds equal to the proportion each expended on enforcement and abatement.

If you have any additional questions or would like to learn more about the CAPP, please contact Justin Buller at Justin.Buller@doj.ca.gov and Ethan Turner at Ethan.Turner@doj.ca.gov.