

Federal Laws for Possession of Weed and Distribution of Marijuana Charges

<https://www.legalmatch.com/law-library/article/federal-marijuana-laws.html>

What are Federal Marijuana Laws?

Both the [possession](#) and [distribution](#) of marijuana are illegal under federal laws on marijuana, specifically, the Controlled Substances Act. Federal law makes it illegal to use, possess, grow and sell marijuana. There is no exception for the medical or so-called “recreational” use of [marijuana in federal law](#). Possession of even a small amount of marijuana is a federal criminal offense. Simple possession with no intent to distribute is a misdemeanor, punishable by up to one year in prison and a fine of up to \$1,000.

Almost all states and some municipalities have passed laws [legalizing the medical and/or recreational use of marijuana](#) use in recent years. Even growing and distributing marijuana is now legal under state law in certain states. [However, if there is a conflict between federal and state law, federal law always prevails.](#)

The [medicinal use of marijuana](#) is legal in almost all states in the U.S. today, although marijuana CBD oil, and cannabis oil are all still illegal in the State of Nebraska. Colorado may have the most liberal state laws regarding marijuana. In Colorado, it is legal to possess and use marijuana for medical and recreational purposes. It is legal to transport up to 2 ounces and legal to have as many as six plants growing in one’s garden for personal use, more if a person is a commercially licensed grower.

Generally federal law enforcement authorities do not prosecute medical or even recreational marijuana use as long as people adhere to the law of the state in which they live and do not sell marijuana across state lines.

In August of 2013, during the second term of President Obama, the Department of Justice released a memo which stated that the federal government essentially would not interfere with states in which laws had been passed to legalize marijuana to be used for whatever purpose, medical or otherwise.

During the Trump administration, former Attorney General Jeff Sessions had indicated that the federal government would pursue people in violation of federal laws regarding marijuana. As long as the laws are in place, the possibility exists that the federal government could choose to begin enforcing them.

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What Amount of Marijuana Do I Have to Carry to be in Violation of Federal Law?

[Possession](#) of *any amount* of marijuana is a *misdemeanor* offense under federal laws. The question of how much marijuana is a felony only comes into play when a person grows or sells marijuana, but is not relevant when possession is charged.

Following is a list of [penalties based on offense per the U.S. sentencing guidelines](#) used by judges to determine the punishment for any amount of marijuana possessed:

- For a first offense: misdemeanor, up to a year in jail and up to \$1,000 in fines;
- For a second offense: misdemeanor, up to 2 years in jail (with a mandatory minimum of 15 days) and up to \$2,500 in fines; and
- Third offense or more: misdemeanor or felony, up to 3 years in jail, with a mandatory minimum of 90 days, and up to \$5,000 in fines.

So what is a mandatory minimum? [Mandatory minimums](#) are sentencing laws passed by Congress, which, as the name suggests, require a judge to impose a minimum jail sentence even if a judge were to determine that no jail time is warranted in a particular case.

This means that even if a judge should want to avoid jail time for a particular defendant based on the circumstances of their case, they have no choice but to impose the minimum sentence. Additionally, a person typically cannot seek parole before serving the mandatory minimum sentence.

What about Selling and Growing Marijuana?

Growing and selling marijuana is frowned upon by federal law. As one might expect, the penalties for selling or growing marijuana are more strict than the penalties for simple possession. The punishments for selling and cultivating marijuana are as follows:

- Less than 50 plants (cultivating) or 50 kg (selling): a federal felony, up to five years in jail and up to \$250,000 in fines;
- 50-99 plants or kilograms: a federal felony, up to 20 years in jail and up to \$1,000,000 in fines;
- 100-999 plants or kilograms: a federal felony, 5-40 years in jail and up to \$500,000 in fines; and
- 1,000 or more plants or kilograms: a federal felony, 10 years to life in jail and up to \$1,000,000 in fines.

Sales to a minor or within 1,000 feet of a school, youth center, or other protected areas result in doubling of the above penalties. Also, repeat offenders are subject to increased penalties and mandatory minimums.

People convicted of selling marijuana paraphernalia are subject to a penalty of 3 years in jail. Simply [possessing paraphernalia](#) is not a crime; however, those caught with paraphernalia are

subject to a charge of possession of marijuana, once the paraphernalia items are tested for marijuana residue.

What are the Legal Consequences of Marijuana Possession?

As noted above, marijuana possession charges are misdemeanors under federal law, however marijuana sentencing for possession involves both jail terms and fines. A first conviction for possession of *any amount* of marijuana is a misdemeanor punishable by up to a year in jail and up to \$1,000 in fines.

A second offense is punishable by a minimum, mandatory sentence of at least 15 days in jail, but a sentence of up to 2 years in jail is possible. Whatever the jail time imposed, fines of up to \$2,500 are also possible.

A third offense of possession of any amount of marijuana is punishable by imposition of a mandatory, minimum sentence of 90 days in jail and possibly as long as 3 years in jail, as well as a fine of up to \$5,000.

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What If My State Allows Recreational or Medicinal Marijuana?

When it comes to a conflict between federal and state law, federal law prevails. Therefore, while the state in which a person lives might have made it legal to use, possess, grow or even sell marijuana, a person can still be arrested by federal agents and prosecuted under federal law.

As noted above, current federal policy is not to pursue the residents of those states and municipalities in which certain uses of marijuana, e.g. medical or recreational, or even growing and selling marijuana have been legalized as long as residents obey state law and do not distribute marijuana across state lines.

Of course, federal policy can change with changing administrations in the nation's capital, so people want to stay abreast of federal policy regarding marijuana use, possession, growing and distribution.



CITY OF LEMON GROVE

CITY COUNCIL STAFF REPORT

Item No. 2

Meeting Date: November 19, 2019

Submitted to: Honorable Mayor and Members of the City Council

Department: Community Development Department

Staff Contact: Mike Viglione, Associate Planner

mviglione@lemongrove.ca.gov

Item Title: **Public Hearing to Consider Conditional Use Permit
Application CUP-190-0001, A Request to Establish a Medical
Marijuana Dispensary at 7309 Broadway in the General
Commercial Zone**

Recommended Action:

- 1) Conduct the public hearing;
- 2) Receive Public Comment; and
- 3) Adopt a Resolution (**Attachment A**) conditionally approving Conditional Use Permit CUP-190-0001, a request to establish a medical marijuana dispensary at 7309 Broadway in the General Commercial (GC) Zone pursuant to Municipal Code Chapter 17.32.

Below is item 6 in the Conditional use permit:

6. The applicant, project proponents, operators and owners of the subject property and the MMD shall indemnify, protect, defend, and hold harmless, the City and any agency thereof, and/or any of its officers, employees, and agents from any and all claims, actions, or proceedings against the City, or any agency or instrumentality thereof, or any of its officers, employees, or agents to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project. City shall promptly notify the applicant/sub divider of any claim, action, or proceeding brought within this time period, and City shall further cooperate fully.

Takeaway: Cities know that Federal law still categorizes marijuana possession and sales as illegal and the cities' officers want liability protection for breaking the law.