



# MEETING OF THE MEDICAL CANNABIS COMMISSION, CULTIVATION, AUMA AND DELIVERY-ONLY DISPENSARIES SUBCOMMITTEE

City Hall  
2180 Milvia Street  
Cypress Conference Room (First Floor)

Tuesday, February 21, 2017  
3:00 - 5:00 PM

**NOTE: NEW ROOM**

## AGENDA


- I. **Call to Order**
  - A. Roll Call
  - B. Changes to Order of Agenda
  
- II. **Public Comment**
  
- III. **Discussion and Action Items**
  - A. Consider delivery-only dispensary regulations. Three attachments:
    1. Draft Sections 12.23.020 and 12.27.115: Proposed delivery-only dispensary regulations
    2. Staff memo: Delivery-only dispensary issues
    3. State language related to deliveries
  - B. Consider delivery-only dispensary selection process options.
  - C. Select dates for future meetings
  
- IV. **Information Items** *(In compliance with Brown Act regulations, no action may be taken on these items. However, discussion may occur at this meeting if the item is moved to the Discussion section.):*
  - A. Letter from Daniel Kosmal regarding Delivery-only dispensaries.
  
- V. **Adjournment**

Berkeley Medical Cannabis Commission website: <http://www.cityofberkeley.info/medicalcannabis/>)

Medical Cannabis Commission Secretary: Elizabeth Greene, 1947 Center Street, 2nd Floor, Berkeley CA 94704. Phone: 510-981-7484 [EGreene@cityofberkeley.info](mailto:EGreene@cityofberkeley.info)

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City commission, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, do not include that information in your communication – you may deliver communications via U.S. Postal Service or in person to the Commission Secretary. Please contact the Commission Secretary for further information.

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Planning and Development Department located at the Permit Service Center, 1947 Center Street, 3<sup>rd</sup> Floor, Berkeley, CA. Please contact the Commission Secretary for further information.

 This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist at 981-6342 (V), or 981-6345 (TDD), at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

**Proposed changes to the Berkeley Municipal Code related to  
Delivery-Only Dispensaries (Revised)**  
November 17, 2016

**12.23.020 Definitions**

H. 1. "Dispensary" means both Retail Dispensaries and Delivery-Only Dispensaries.

2. "Retail Dispensary" shall mean an organization that is authorized under Chapter 12.27 and Title 23 to dispense Medical Cannabis at a lawfully established non-residential location. A Dispensary may also provide other incidental services to its Members to the extent permitted by state law, such as cultivating, acquiring, baking, storing, processing, testing, transporting and delivering Medical Cannabis. In dispensing Medical Cannabis to its Members, a Dispensary may be reimbursed for the cost of its services and materials. A Dispensary may be organized as any statutory business entity permitted under California law, provided it operates in a Not-For-Profit manner as defined in Chapter [12.27](#).

3. "Delivery-Only Dispensary" is a Dispensary that is limited to acquiring Medical Cannabis and delivering it to its Members, and does not have a location to which Members may come to acquire Medical Cannabis or any other good or service.

**12.27.115 Delivery-Only Dispensaries – Delivery requirements**

A. In addition to the six existing Retail Dispensaries, under Berkeley Municipal Code Section 12.26.130 and any Retail Dispensaries selected under Section 12.27.100, up to 10 Delivery-Only Dispensaries shall be permitted, on a first-come-first-served basis.

B. Delivery-Only Dispensaries shall comply with the requirements of Chapter 12.23 and this Chapter that are applicable to Dispensaries except those that are determined by the City Manager to be inapplicable to Delivery-Only Dispensaries because of the nature of their operation as distinct from Retail Dispensaries.

C. Delivery-Only Dispensaries shall only be allowed under this Section in zoning districts where they are specifically permitted.

D. All Dispensaries that provide delivery services to their members shall comply with the following requirements, as well as all applicable requirements of state law. In the event of a conflict, state law shall prevail.

1. All vehicles used for delivery shall be maintained and operated in a manner and in a condition required by law and applicable regulations.

2. The following persons may not drive delivery vehicles:

a. a person who has been at fault within the two years immediately preceding the application in any motor vehicle accident causing death or personal injury;

b. a person who has been in three or more motor vehicle accidents within the previous 12 months.

c. a person who has been under suspension, revocation or probation by the Department of Motor Vehicles for a cause involving the safe operation of a motor vehicle, or has been convicted of any of the following offenses: driving while under the influence, or reckless driving involving bodily injury, or who does not possess a valid driver's license;

3. The following persons may not be involved in making deliveries:

a. any person who is required to register as a sex offender under Section 290 of the California Penal Code;

b. any person who has been convicted of any offense involving moral turpitude.

4. Persons involved in making deliveries must have in their possession a copy of the document memorializing the City's approval of the delivery service.

5. Delivery vehicles may not advertise any activity related to Cannabis or advertise the name of the Dispensary.

6. Delivery of the Medical Cannabis shall be directly to the residence or business address of the Member. Deliveries to any other location are prohibited.

7. Deliveries of marijuana may occur only between the hours of 8:00 a.m. and 11:00 p.m.

8. All orders to be delivered shall be packaged by the name or identification number of the Member for whom the delivery is intended.

9. In addition to the requirements of Section 12.27.050 subdivisions A and B, the person responsible for making deliveries shall have a copy of the record of all delivery requests while making deliveries.

10. All Dispensaries that provide delivery service shall maintain at all times Commercial General Liability providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Comprehensive Automobile Liability (owned, non-owned, hired) providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$1,000,000). The Commercial General Liability policy shall provide contractual liability, shall include a severability of interest or equivalent wording, shall specify that insurance coverage afforded to the City shall be primary, and shall name the City, its officials and employees as additional insured. Failure to maintain insurance as required herein at all times shall be grounds for immediate suspension of the privilege of providing delivery service.

**TO: Medical Cannabis Commission, Cultivation, AUMA and Delivery-Only Dispensaries Subcommittee**

**FROM: Elizabeth Greene, Secretary**

**SUBJECT: Delivery-only Dispensary Issues**

**DATE: February 22, 2017**

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At the February 2, 2017 MCC meeting, the MCC asked questions regarding aspects of delivery-only dispensaries and the proposed delivery-only dispensary ordinance. Below are these ideas, along with some ideas from staff designed to focus the subcommittee discussion regarding this topic. Staff will review all changes with the City Attorney.

Staff suggests that you consider these issues with the following questions in mind:

1. Is it important to address this issue in the ordinance?
2. If yes, does the MCC have adequate information to make a decision?
3. If additional information is necessary to address the issue, what is that information? Is an answer difficult to obtain? Does an answer exist?
4. Is it important to delay a final decision on the ordinance language in order to search for this information?

Issues mentioned at the February 2, 2017 MCC meeting. Staff has provided responses when they relate to the language in the ordinance.

1. 12.27.115.D.2 and 3 – should crimes mentioned here be folded into Chapter 12.23 with the other crimes. *(Staff recommends that these crimes remain in this ordinance because they only relate to delivery-only dispensaries.)*
2. 12.27.115.D.7 – remove the term “of marijuana” – the business should not be delivering non-medical cannabis products outside of the proscribed delivery hours.
3. 12.27.115.D.10 – typo *(Staff will correct.)*
4. Should other uses be added to delivery-only dispensary definition? *(Staff is also looking into this.)*
5. Should language specifying that a) delivery services will only deliver to the patient and/or b) that the driver will verify patient ID at the time of delivery be added to the ordinance? *(Staff checking with City Attorney whether this is necessary.)*
6. Add there additional security requirements that should be added to the ordinance to protect drivers (require 360° cameras, etc.)?
7. Should definition be amended so indicate that products used in conjunction with medical cannabis (papers, bongs) can be delivered as well as the actual medical cannabis?

Question from staff:

1. Are there any other issues that should be considered in the ordinance?
2. Should there be a selection or application process, or should licenses be issued on a first-come/first-served basis? Does this answer change if there is a limit on the number of delivery-only dispensaries? If a selection process is desired, what would the MCC like to see in the process, remembering that the more detailed the information required, the slower the process. Staff would evaluate and give comments on any selection process (legality of process, availability of staff to review applications, etc.)

Staff is also looking into how the City licenses businesses that are based outside the City that provide services within the City (landscapers, housecleaning services, etc.) Delivery services would be subject to the same licensing requirements that these businesses have.

Staff has attached the language from MRCSA (AB 266) that relates to delivery services. This will also be included in the full MCC packet.

## MCRSA (AB 266) Language Related to Deliveries

### Delivery Definition:

19300.5. (m) "Delivery" means the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. "Delivery" also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed under this chapter, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

### Article 9. Delivery

19340. (a) Deliveries, as defined in this chapter, can only be made by a dispensary and in a city, county, or city and county that does not explicitly prohibit it by local ordinance.

(b) Upon approval of the licensing authority, a licensed dispensary that delivers medical cannabis or medical cannabis products shall comply with both of the following:

(1) The city, county, or city and county in which the licensed dispensary is located, and in which each delivery is made, do not explicitly by ordinance prohibit delivery, as defined in Section 19300.5.

(2) All employees of a dispensary delivering medical cannabis or medical cannabis products shall carry a copy of the dispensary's current license authorizing those services with them during deliveries and the employee's government-issued identification, and shall present that license and identification upon request to state and local law enforcement, employees of regulatory authorities, and other state and local agencies enforcing this chapter.

(c) A county shall have the authority to impose a tax, pursuant to Article 11 (commencing with Section 19348), on each delivery transaction completed by a licensee.

(d) During delivery, the licensee shall maintain a physical copy of the delivery request and shall make it available upon request of the licensing authority and law enforcement officers. The delivery request documentation shall comply with state and federal law regarding the protection of confidential medical information.

(e) The qualified patient or primary caregiver requesting the delivery shall maintain a copy of the delivery request and shall make it available, upon request, to the licensing authority and law enforcement officers.

(f) A local jurisdiction shall not prevent carriage of medical cannabis or medical cannabis products on public roads by a licensee acting in compliance with this chapter.

**Greene, Elizabeth**

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**From:** daniel183672@gmail.com on behalf of daniel ! <daniel@docgreens.org>  
**Sent:** Thursday, February 02, 2017 3:29 PM  
**To:** Greene, Elizabeth  
**Subject:** Delivery Only Dispensary definition

Elizabeth,

I would like to propose the following definition change for the Proposed changes to the Berkeley Municipal Code related to Delivery-Only Dispensaries (Revised) 12.23.020:

3. "Delivery-Only Dispensary" is a Dispensary that is limited to delivering Medical Cannabis and related products and services to its Members, and does not have a location to which Members may come to acquire Medical Cannabis or any other good or service.

thank you,

Daniel Kosmal