

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

FROM: Elizabeth Greene, Secretary

SUBJECT: Delivery-only dispensary issues

DATE: February 22, 2017

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.)*

The Subcommittee thinks these crimes should remain in the ordinance, but that there should be a look-back period. 5 years was recommended. It seemed conceivable that someone convicted of a DUI 20 years ago would be precluded from being a driver. This seems inconsistent with fairness and the spirit of the rules.

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.

The subcommittee agreed with this. Cannabis delivery businesses should be precluded from all delivery operations outside of the proscribed hours.

3. 12.27.115.D.10 – typo *(Staff will correct.)*

Agreed. What is the typo?

4. Should other uses be added to delivery-only dispensary definition? *(Staff is also looking into this.)*

The subcommittee believes the definition should read as follows:

“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.

Further information was sought with respect to why certain types of services couldn't be offered at the business location (i.e. counseling services). The subcommittee also thought that patients *should* be allowed to visit the delivery service location to inspect for cleanliness and for the purpose of registering with the delivery and other forms of patient inquiry.

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.*)

The subcommittee agrees.

6. Add these additional security requirements that should be added to the ordinance to protect drivers (require 360° cameras, etc.)?

The subcommittee felt that this question should be asked in the next MCC meeting during the presentation of David Hua.

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?

Yes. See #4 above.

Question from staff:

1. Are there any other issues that should be considered in the ordinance?

Yes. This question should be asked of David Hua at next MMC meeting. The Subcommittee also felt that drivers should be able to carry more inventory than was specifically ordered by patients during delivery routes. Patients will often reject products they ordered in favor of other products. Also, the environmental and communal impacts of back and forth trips would be significantly heightened. The subcommittee recommends that the city should look into a monetary cap per car (i.e. San Jose requires that each car can carry no more than \$3000 in product at any time).

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.)

The subcommittee does not support a limit in the number of licenses, or in the alternative that if there is to be a limit that some kind of selection process would be utilized. The justification for no cap in the number of licenses hinges on the fact that from the consumer perspective, there is no difference between an in-city or out-of-city delivery service. The demand for delivery based products would be exactly the same whether or not these products originated in the city. Therefore, the same number of cars would be on the road, limit or no-limit. The question then turns to whether the city is interested in tax revenue from these sales. A limit would simply deny the city of tax revenue, while not changing the actual amount of deliveries that would be occurring. It seemed to be the most sensible argument to not have a limit on delivery services, since these businesses are essentially non-descript and render a low impact on surrounding neighborhoods. If there were a limit, the subcommittee felt that a selection process should be used. There are several delivery businesses that have been attending meetings, helping inform the process, and interacting in the community. These businesses should have a chance to operate in Berkeley. No selection process *and* a limit would turn the licensing process into a race to the permit office on the first day of licensing, and this seemed illogical and inconsistent with a community based approach.

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.

The subcommittee would like to know more about how out of town service providers are regulated and taxed. Is there an enforcement mechanism?

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