

City of Sacramento

Legislation Text

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Title:
Workshop Relating to Cannabis Storefront Dispensaries

File ID: 2019-01771

Location: Citywide

Recommendation:

1) Hold a workshop on the status and opportunities relative to the City's cannabis storefront dispensaries; 2) provide the City Manager with direction on the following items: a) adjustments to the current cap on cannabis storefront dispensaries, b) eligibility for new storefront dispensary permits: Cannabis Opportunity Reinvestment Equity program (CORE)-Priority vs. CORE Exclusive, c) location of storefront dispensaries, and d) timeline by which new storefront dispensaries must be operational; and 3) receive and file updates on other cannabis-related items.

Contact: Leyne Milstein, Assistant City Manager, (916) 808-8491; Zarah Cruz, Program Specialist, (916) 808-8925, Office of Cannabis Management, Office of the City Manager.

Presenter: Leyne Milstein, Assistant City Manager, (916) 808-8491, Office of the City Manager

Attachments:

- 1-Description/Analysis
- 2-Staff Report for November 13, 2018 Discussion on Storefront Dispensaries
- 3-Map of Del Paso Boulevard SPD

Description/Analysis

Issue Detail: On November 12, 2019, during the discussion of an ordinance to temporarily prohibit ownership changes in cannabis storefront dispensaries, the Mayor proposed the addition of five storefront dispensary permits exclusively for the City's Cannabis Opportunity Reinvestment and Equity (CORE) program applicants. At that time, Council requested staff to return for an in-depth discussion and direction on the matter. In response to Council's request, staff has prepared the items below for discussion and direction in order to ensure that any future ordinance, resolution, or action on storefront dispensaries effectively reflects Council's intent:

1. Adjustments to the current cap on storefront dispensaries
2. Eligibility for new storefront dispensary permits: CORE-Priority vs. CORE Exclusive
3. Location of storefront dispensaries
4. Timeline by which new storefront dispensaries must be operational

In addition to the subject areas defined above, this workshop includes an update on other cannabis-related issues, which are receive and file items only.

1. Adjustments to the Cap on Storefront Dispensaries - Direction Requested

Sacramento has a population of roughly half-a-million residents. The City currently has 30 permitted storefront dispensaries, the maximum number allowed by Sacramento City Code (SCC) section 5.150.350. The 30 permitted dispensaries represent a ratio of one dispensary per 17,000 residents. In comparison, the dispensary to population ratio in San Francisco is one per 16,370; one per 14,670 in Long Beach; and one per 26,575 residents in Oakland. It is important to note that besides Davis, which has five dispensaries, no other cities in Sacramento County currently allow storefront dispensaries. This makes Sacramento's dispensaries the largest retail option geographically accessible to patients and customers in Sacramento County. Outside of California, the cities of Denver, Colorado and Portland, Oregon, where commercial cannabis became legal in 2012 and 2014 respectively and are considered to be mature cannabis markets, currently have a ratio of one dispensary per 4,000 residents.

In May of 2018, Councilmember Carr requested that Council consider increasing the number of storefront dispensary permits. In response, on November 13, 2018, Council considered options to add new storefront dispensary permits. (Attachment 2.) The matter was referred to the Law and Legislation Committee (Committee). On February 26, 2019, the Committee heard and discussed a proposal to gradually add permits over a period of time, directing staff to wait a year to see how the retail market performed and continued further consideration to a future meeting at the end of 2019 or early 2020. Since then, the cannabis retail market in the city has remained relatively flat based on business operations tax revenue receipts.

The matter has been brought back to Council for discussion pursuant to the Mayor's November 12 request. As previously discussed, the addition of storefront permits requires lifting the cap of 30 in SCC section 5.150.350. In lifting the cap, Council can immediately or gradually over a period of time increase the number of storefront dispensary permits. The following includes examples of how Council can gradually add permits over time:

- 30 percent increase over three years = 9 new permits (three permits per year)
- 20 percent increase over three years = 6 permits (two permits per year)
- 10 percent increase over three years = 3 permits (one permit per year)

- Other percentage over a different period time

It is important to recognize that the gradual increase in the number of storefront dispensary permits will provide the necessary time for staff to manage the City's land entitlement and permitting processes, including appropriately addressing any potential concerns by Sacramento's neighborhoods.

In providing direction, staff recommends that Council direct staff to keep or immediately or gradually increase the current number of storefront dispensary permits.

2. Eligibility for New Storefront Dispensary Permits: CORE-Priority vs. CORE Exclusive - Direction Requested

Core Exclusivity or Priority

In August 2018, Council established the CORE Program to provide an opportunity to own a cannabis business, among other things, by individuals and communities disproportionately impacted by the War on Drugs, specifically cannabis-related crimes. (Resolution No. 2018-0323 as updated and amended.) CORE program participants receive entrepreneurship training, technical assistance, and other resources and services from CORE facilitators, namely the Sacramento Asian Chamber of Commerce (SACC) and the Greater Sacramento Urban League (GSUL). Participants also receive priority processing and a fee waiver for City cannabis business operating permit (BOP) applications. As of January 6, 2020, 117 individuals have either completed or are going through the CORE program, at least one individual has received a BOP for cultivation, and two individuals have BOP applications in process with the Office of Cannabis Management. According to SACC and GSUL, many of the participants are interested in securing a cannabis permit for a storefront dispensary. However, due to the cap, the only possible way to obtain a storefront dispensary permit is when a permit is surrendered or revoked, unless Council lifts the cap.

Based on current City Code, should Council increase the number of storefront dispensary permits, eligibility for the new storefront permits will be determined through a lottery process. (SCC section 5.150.350.) Under the CORE Program, Council established priority processing for CORE participants in the lottery process. Considering the discussion to increase storefront dispensary permits, staff requests Council direction as to whether any and all new BOP permits should be:

- Exclusive to CORE participants,
- Open to general applicants only if there are no CORE participants, or
- Any other method of priority processing.

Either approach can be implemented through establishing lottery procedures. For example, Council can establish lottery procedures that are exclusive to CORE participants by only allowing CORE participants to enter the lottery. In the alternative, the attached provides an example of a lottery

process that is open to general applicants only if there are no eligible CORE participants. Essentially, the attached includes a lottery process that creates a list of eligible CORE participants and another list of general applicants. The list of general applicants will not be used until the list of CORE participants has been exhausted. After that, the list of general applicants would then be used to issue any available storefront dispensary permits.

It is important to note that given the number of CORE participants that have expressed interest in a storefront dispensary permit and would likely participate in the lottery process, coupled with the lengthy time-line to open a cannabis storefront dispensary (discussed in detail below), it is unlikely that the City would need to conduct an additional lottery process over the next several years before both lists are exhausted.

Since CORE was established on August 9, 2018 as a two-year program, Council is also asked to consider if an individual's admission and participation in the CORE program should continue to receive priority processing as it relates to permits and lottery procedures after the program sunsets in August of 2020, especially since it could take a CORE participant three years to get a dispensary operating.

Term and Ownership of Permits issued to CORE Participants

Finally, Council has expressed intent to ensure that any storefront dispensary permits issued to a CORE participant remain a CORE permit without burdening participants who may benefit from a partnership that would provide access to the capital required to open a storefront dispensary or from changing their ownership model in the future. Staff has found the following as models in other equity programs:

- At least 51% owned by equity applicant(s)
 - Long Beach, Oakland, San Francisco, San Jose and Stockton
- Equity applicant must own at least 40 percent and be the Chief Executive Officer
 - San Francisco
- More than half of the members of a non-profit board are equity applicants
 - San Francisco and Oakland

In order to ensure that a storefront dispensary permit remains with a CORE participant, Council may consider the following options:

- Any storefront dispensary permit issued to a CORE participant business shall remain with the participant's business for a minimum period to be specified by Council, unless surrendered or revoked in accordance with the City Code (i.e. 10 years); and
- Any storefront dispensary permit issued to a CORE participant owned business, that business must have CORE participant ownership with at least a 51% ownership interest.

We recognize that ownership interest requirement identified above may not fully ensure Council's intent that the CORE participant is an equitable beneficiary of the upside of the business. As such, staff will continue to research this question and include any recommendations in future reports to Council on this issue.

3. Location of Storefront Dispensaries - Direction Requested

Currently, storefront cannabis dispensaries that meet specific land use and siting criteria are permitted (via an approved conditional use permit (CUP)) in the General Commercial (C-2), Heavy Commercial (C-4) and Light and Heavy Industrial (M-1, M-1S, M-2, M-2S) zones. Depending on the criteria, outlined below, either the Zoning Administrator (ZA) or the Planning and Design Commission (PDC) will review the CUP for a storefront dispensary.

A CUP may be approved at the ZA level if the following criteria is met:

- Their operations are within a fully enclosed building and not visible from the public right-of-way; and
- The site is not within 600 feet of a school.

A CUP is approved at the PDC level if the proposed storefront dispensary meets the above criteria but is also:

- within 600 feet of another storefront dispensary site;
- within 600 feet of any park, childcare center, in-home childcare (family day care home), youth-oriented facility, church or faith congregation, substance abuse center, or cinema;
- within 600 feet of any tobacco retailer that has 15,000 square feet or less of gross floor area; or
- within 300 feet of a residential zone.

To recap, storefront dispensaries are never allowed within 600 feet of a school or outside of the zones cited above. Within the allowable zones, storefront dispensaries are approved at a higher level (i.e. by the PDC) if the site is closer to sensitive uses.

Title 5 of the City Code (Business Licenses and Regulations) limits the number of dispensaries permitted to operate in the city through a cap on the issuance of business permits. In contrast, Title 17 (Planning and Development Code) does not specify a limit on the number of CUPs that can be approved as CUPs in general are granted based on specific locational (i.e. planning) criteria.

There are 29 storefront dispensaries currently operating and one permitted dispensary currently in the CUP process for a new location. The following is a breakdown by council district and zone.

District	# of Dispensaries	General Commercial	Heavy Commercial	Industrial
1	-	-	-	-
2	7	-	-	7
3	4	2	1	1
4	7	6	1	-
5	3	1	-	2
6	8	2	-	6
7	-	-	-	-
8	-	-	-	-
Total	29	11	2	16

As mentioned above, one storefront dispensary owner with a cannabis storefront dispensary BOP is hoping to relocate. The storefront dispensary closed at its former location in D2 in 2018. The owner currently has a CUP application in progress for a new site in D4.

In addition, there are three storefront owners that are also in the process of relocating their businesses from their existing sites to new locations that have been granted a CUP. One of which is moving from an industrial zoned site in D6 to a General Commercial zone in D4. Another owner will move from an industrial zoned site to a Heavy Commercial zone in D2. The last owner will move from a heavy commercial site in D4 to a general commercial site in D5.

When these three businesses have relocated there will be a total of six sites with approved CUPs for cannabis storefront dispensaries that will be vacant. If a business vacates a site with a use permit, a different business with the same land use designation can reoccupy the site if they establish the business within two years. If the use authorized by a CUP is discontinued for a continuous period exceeding two years, the permit expires for discontinuance and is thereafter void (SCC section 17.808.410). Two sites, one in D2 and one in D6, will expire in the next three months if not occupied by another dispensary. It is highly unlikely that any of the existing dispensaries will move to these locations and as such, the CUPs will likely expire. Another in D2 will expire in late 2021. The remaining three, in D2, D4 and D6 will expire in 2022. The chart below shows the location of storefront permits by district and zone when all proposed relocations are completed.

District	# of Dispensaries	General Commercial	Heavy Commercial	Industrial
1	-	-	-	-
2	7	-	1	6
3	4	2	1	1
4	7	7	-	-
5	4	2	-	2
6	7	2	-	5
7	-	-	-	-
8	-	-	-	-
Total	29	13	2	14

Given the limitations on the areas in which dispensaries are currently allowed to operate, Council may wish to consider expanding the current allowable zoning for storefront dispensaries to allow for locations in the Shopping Center (SC) zone. The addition of SC for retail dispensaries has been requested by the cannabis industry and could be presented to the Committee for consideration with Council direction. If Council approves additional dispensary permits, the addition of SC would expand the options for permit applications across the city.

Council may also consider adding an option for the extension of a cannabis dispensary CUP for CORE participants. This would eliminate a costly and time-consuming step of the business development process should a CORE participant choose to locate at a site that previously had an approved cannabis dispensary CUP that would have expired.

Finally, the Del Paso Boulevard/Arden Way Special Planning District (SPD) was established in 1994 to assist in the preservation of the economic climate in this mixed-use neighborhood of residential, commercial and light industrial uses by retaining existing businesses while accommodating new development. A map of the SPD is included as Attachment 3. One of the goals for properties in the area is to promote an active retail district along these two major thoroughfares. A storefront cannabis dispensary, with an approved CUP, is a compatible land use with this goal. Cannabis production businesses and delivery-only dispensaries, however, are not.

In May of 2018, the Council amended the SPD to prohibit cannabis cultivation on parcels fronting Del Paso Boulevard and Arden Way (Ordinance 2018-0018). Staff recommends that this prohibition be extended to all cannabis production uses (cultivation, manufacturing and distribution) as well as delivery-only dispensaries as these uses are not compatible with the goal in that they are low intensity, non-retail uses that are not pedestrian friendly and do not activate the street by encouraging visitors and customers to the SPD.

4. Timeline by which New Dispensaries Must be Operational - Direction Requested

The majority of storefront dispensaries obtained their CUPs between 2011 and 2016. However, five storefront dispensary owners have gone through the entitlement process and obtained CUPs in the past three years. It took between five and nine months for storefront dispensary owners to go through the Planning and Design Commission process and obtain a CUP for their new sites.

Once a CUP is obtained the land use must be established within three years of the effective date of approval of the CUP. If the use is not established and an extension is not requested, the CUP expires. A use that requires a building permit is established when the building permit is secured for the development project and construction has physically commenced. (SCC section 17.808.400.A.1). If an applicant/property owner is not going to meet the three-year deadline, an application requesting to extend the time to establish the use may be granted for the CUP up to a total extension period of five years (SCC section 17.808.400.B.1).

A new storefront dispensary may relocate to an existing vacant site where the CUP has not expired if the dispensary complies with all conditions of approval found in the CUP for the site. A new CUP for the business would not be required. If the new storefront dispensary needed to make modifications to the existing CUP in order to locate at the site, an applicant/property owner could submit a CUP modification application rather than submitting for a new CUP.

After obtaining the CUP, storefront dispensary owners have taken approximately four months to prepare plans to obtain a building permit. It has taken approximately four months for a building permit to be issued after submittal of plans. Of those currently in the process, one storefront permit holder has finished building permit process. The process from issuance to final permit took seven months. The entire process from submittal of CUP to occupancy of the building can take 24 months, or two years. In these five cases, the storefront dispensaries were opening in existing structures. New construction of a storefront dispensary would take longer. The cannabis BOPs from the Office of Cannabis Management (OCM) are processed concurrently with the CUPs and building permits.

Based upon recent processing times, if Council decides to authorize additional storefront dispensary permits, staff recommends that applicants be given the maximum length of time to provide all the necessary documentation and processes to complete an application for a cannabis storefront dispensary permit and open the dispensary should be three years.

RECEIVE AND FILE

Status Updates on Other Cannabis-Related Items

Dispensary Ownership

Given the current cap of 30 storefront cannabis storefront dispensary permits and that one individual has assumed an ownership interest in multiple dispensaries, it has become clear that the rules had

potentially skewed the dispensary market in the city. In order to address this situation, on November 12, 2019, Council approved an ordinance prohibiting storefront dispensary ownership changes for 120 days (expires March 11, 2019).

At the same time, Council approved an ordinance adding section 5.150.355 to the City Code. This section prospectively prohibits any person from obtaining an ownership interest in more than one storefront dispensary, preventing further consolidation of ownership within our market.

In a comparison with similar California cities staff found that Oakland limits an individual to no more than two dispensary permits and San Jose limits a business to ownership in one storefront or non-storefront dispensary. Given that the addition of section 5.150.355 to the City Code reflects current regulatory limitations in similarly situated California cities and effectively prevents further consolidation staff is not recommending further changes at this time. However, there will be substantial work required to document ownership percentages of the current dispensaries to ensure consistency with the Code.

In addition, as business models continue to evolve staff will return to Council for consideration of additional requirements as necessary. For example, staff has reached out to the California Department of Alcoholic Beverage Control (Department) to examine how ownership transfers are regulated. Currently, licensees are required to report to the Department within 30 days after the change, ownership changes such as changes to corporate officers, issuance or transfer of any shares of stock that results in a person owning 10% or more of the corporate stock. The Department processes these changes as updates and charge a fee, transfer of the license is not required. If 50% or more of a stock transfer to someone who did not originally own 50% of the entity requires an application for license transfer. The Department has different regulations depending on the business structure.

January 31, 2020 Deadline for Enforcement Against Registered Cultivators and all Other Cannabis Businesses Operating Without a BOP

While the City was in the process of developing regulations for cannabis cultivation, Council adopted an ordinance creating a registration process for cultivators with documented operations prior to April 2016. The registered cultivators were allowed to continue to operate as long as they submit a business permit application no later than June 30, 2017. However, two years later, a majority of the registered cultivators have not completed either the building permit or operating permitting process and many buildings are still not up to building or fire/life safety requirements. The same is true for businesses who have applications for a manufacturing, distribution and non-storefront delivery permits.

In July 2019, OCM and its operational partners in Code Enforcement, the Building Division and the Fire Department, established a deadline of January 31, 2020 for enforcement of registered cultivators

and other cannabis businesses who are operating without a BOP. As of January 6, 2020, 23 cultivators, seven manufacturers, nine distributors, and 33 non-storefront deliveries are subject to this deadline. OCM is working in conjunction with the Sacramento Police Department and the interdepartmental team identified above with regard to enforcement of the upcoming deadline.

Chapter 5.150 Cleanup Ordinance

Chapter 5.150 of the City Code outlines the regulations for cannabis businesses. From 2016 through 2018, sections were added to Chapter 5.150 creating a regulatory structure for the entire cannabis supply chain, from seed to sale. However, some sections of the Code have remained static or have become obsolete, inconsistent with State law, require clarification, or have become counterproductive to ensuring an efficient permitting process. A cleanup of Title 5, which includes technical and non-policy changes is being proposed as a separate item on this Council agenda. If adopted, the cleanup ordinance will:

- Deleting requirements for cannabis businesses to operate as collective or cooperative (California Health and Safety Code section 11362.775, which required cannabis business operation as collective and cooperatives, was repealed in January of 2019 in accordance with that section and the California Bureau of Cannabis Control's January 9, 2018 notice that the Bureau began issuing licenses pursuant to the Medicinal and Adult-Use Cannabis Regulations and Safety Act);
- Deleting a requirement that storefront dispensaries maintain the medical records of their patients (aligns with State);
- Adding "nursery" as a new cultivation permit type (California Business and Professions Code section 26061);
- Adding a requirement for permittees to report surrendered State licenses to the City;
- Creating a uniform security video retention requirement for the entire supply chain (California Code of Regulations title 16, division 42, section 5044);
- Modifying a requirement for a City-issued badge to a badge that aligns with the State's requirement (California Code of Regulations title 16, section 5043);
- Adding an informal reconsideration hearing for modified, suspended, or revoked permits;
- Allowing cannabis manufacturing businesses to share premises subject to applicable State regulations; and
- Adding new grounds to deny a permit, including applications that have been incomplete for a period of 180 days after submission, violations of chapter 5.150, and violations of certain building, fire, plumbing, electrical, and other related regulations.

SCC section 5.150.240 specifies the grounds for denial of a cannabis business operating permit. Since the adoption of the ordinance in 2012 and the adoption of a regulatory framework for the entire cannabis supply chain, staff has encountered numerous situations that necessitate the expansion of

the grounds for denial. These include operating without a permit, being the subject of a final administrative penalty, and failing to complete an application within 180 days. These additional grounds are also part of the Chapter 5.150 cleanup ordinance that was approved by the Law and Legislation Committee on January 7, 2019 and is on this Council meeting agenda as a separate item.

Policy Considerations: Staff seeks Council direction on the policy questions regarding storefront dispensaries as outlined above. In order to implement such direction, staff may need to return to Council with amendments to Title 5 and Title 17 of the Sacramento City Code. Staff may also bring back a resolution amending the CORE Program, if necessary. Finally, staff will return to Council with lottery procedures for new storefront dispensary permits based on the direction from Council provided during this workshop.

Economic Impacts: None.

Environmental Considerations: This action is exempt from the California Environmental Quality Act (CEQA) because it is the adoption of an ordinance, rule, or regulation that requires discretionary review, including environmental review, and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity (CEQA Guidelines sections 15061(B)(1), California Business and Professions Code section 26055(h)) and because it does not have the potential for causing a significant effect on the environment (CEQA Guidelines section 15061(b)(3)).

Sustainability: Not applicable.

Commission/Committee Action: In May 2018, Councilmember Carr asked staff bring an item to Council with options for the addition of new storefront dispensary permits. That item was heard by Council on November 13, 2018 and referred to the Law and Legislation Committee (Committee) for consideration. On February 26, 2019, the Committee heard and discussed a proposal to gradually add permits over a period of time. At that time the Committee directed staff to wait a year to see how the retail market performed and continued further consideration to a future meeting at the end of 2019 or early 2020.

Rationale for Recommendation: The 30 permitted dispensaries are a self-selected group whose business operating permits as collectives and cooperatives were obtained through a ministerial permitting process that started years before commercial cannabis became legal in the State of California. Consideration of additional dispensaries has intermittently come up during discussions regarding other cannabis permit types, as part of the CORE Program, and more recently, during a discussion around ownership of storefront dispensaries.

Should Council decide to modify or lift the cap on storefront dispensaries, Council direction is required regarding where new dispensaries can be located, how the CORE Program will impact the new permits, the timeline for operation of the new dispensary, along with other related matters. Staff

will return to Council with an ordinance, resolution, or city policy that effectively reflects Council's intent as soon as possible.

The status update section of the report reflects staff's continuing effort to make improvements to the City's cannabis policies, regulations and enforcement. As the industry continues to mature and regulations continue to evolve, staff anticipates additional amendments to City ordinances to ensure that Sacramento's regulations are consistent with Council's intent, State and Federal law and that the City's regulatory structure remain realistic and equitable.

Financial Considerations: None.

Local Business Enterprise (LBE): Not applicable.