



City Council Report

915 I Street, 1st Floor

Sacramento, CA 95814

www.cityofsacramento.org

File ID: 2018-01147

September 20, 2018

Consent Item 05

Title: (Pass for Publication) Proposed Ordinance Limiting Southeast Industrial Area Dispensaries Authorized to Deliver

Location: District 6

Recommendation: 1) Review an Ordinance adding Article X to Chapter 5.150 of the Sacramento City Code limiting Southeast Industrial Area dispensaries authorized to deliver; and 2) pass for publication the ordinance title as required by the Sacramento City Code section 32(c) to be adopted on October 2, 2018.

Contact: Joe Devlin, Chief, (916) 808-4772; Zarah Cruz, Program Specialist, Office of Cannabis Policy and Enforcement, (916) 808-8925, Office of the City Manager

Presenter: None

Attachments:

1-Description/Analysis

2-Delivery Ordinance (Redline)

3-Delivery Ordinance (Clean)

Description/Analysis

Issue Detail: On November 28, 2017, the City Council adopted Ordinance Nos. 2017-0059 and 2017-0060 amending Title 17 and Title 5 respectively, to allow delivery of cannabis and cannabis products in the City of Sacramento. Under these ordinances, a delivery service can be added to an existing permitted storefront dispensary through a condition placed on its Business Operations Permit (“BOP”). Delivery may also operate out of a non-storefront brick-and-mortar location that is closed to the public and functions solely as a delivery service. A non-storefront dispensary also requires a Conditional Use Permit and BOP. The City began accepting applications for delivery on December 28, 2017.

To date, 14 of the 30 permitted storefront dispensaries have applied to add delivery to their operations. Eight of them are in the Southeast Industrial Area. Sixty-eight BOP applications for a non-storefront dispensary have also been received from applicants citywide, 38 of which are in the Southeast Industrial Area. This brings the total of potential delivery operations, both storefront and non-storefront in the Southeast Industrial Area, to 46.

Of the 38 non-storefront applications, 21 are proposed in stand-alone locations, while the other 17 will be co-locating, or sharing a building with at least one other non-storefront dispensary. The 38 proposed non-storefront spaces combine for approximately 47,000 square feet, the majority of which will occupy under 800 sq. ft. of building space. These dispensaries have proposed an average of three vehicles in their fleet, with each vehicle estimated to make 12 trips day. A majority of drivers will be part time employees using their own vehicles as permitted under State law and will therefore be parked offsite after hours.

The Power Inn Alliance, a property-based business improvement district (PBID) in the Southeast Industrial Area, has expressed concerns over the number of BOP applications for cannabis delivery within the 6.2-mile area included in the PBID. Among other things, the PBID is concerned over the potential safety and security issues associated with the number of vehicles carrying cannabis and cannabis products when leaving the dispensaries and returning with cash after completing a delivery. Under the City Code, delivery drivers can carry up to \$3,000 worth of cannabis and cannabis products each time they leave a dispensary to make a delivery.

The proposed ordinance will establish a limit on the number of southeast industrial area dispensaries that are authorized to deliver cannabis. The number will be limited to 46, the current number of applications submitted. The proposal is an effort to stop the further increase in the number of potential cannabis delivery operations in the southeast industrial area until a full assessment can be completed on the impacts of the delivery businesses. The proposed ordinance will take effect on the date of Council’s adoption and remain in place for one year

(Attachments 2 and 3). Prior to the end of one year, staff will make a recommendation, based on traffic and trip generation information extrapolated from the State's Track-and-Trace system, or other available data such as GPS, as to whether the limitation should be lifted or remain in place.

Policy Considerations: Without sufficient data to support whether cannabis delivery will result in an increase in police service calls, or can create a significant impact on local traffic, a limitation on the number of southeast industrial area dispensaries authorized to deliver cannabis will put a pause on the BOP application acceptance until studies yield a definitive result. The limitation will close the application acceptance for the Southeast Industrial Area dispensaries. The cap will apply to both storefront and non-storefront delivery applications. The issue will be revisited one year after Council's adoption of the ordinance. During the one-year period, staff will compile data generated from service calls, a local traffic study and any information gathered from the State's Track-and-Trace system and make a recommendation as to whether to keep or lift the limitation.

Economic Impacts: Not applicable.

Environmental Considerations: This action is exempt from 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 § 15061(B)(1), Bus. and Prof. Code § 26055(h)) and because it does not have the potential for causing a significant effect on the environment (CEQA Guidelines §15061(b)(3)).

Sustainability: Not applicable.

Commission/Committee Action: The Law and Legislation Committee will discuss the proposed ordinance on September 18, 2018.

Rationale for Recommendation: The legalization of commercial cannabis on January 1, 2018 created new opportunities to participate in a new and emerging industry. It also created a path for delivery businesses previously operating underground to become compliant with State and local laws and operate in the formal economy.

For permitted dispensaries, delivery will allow them to better serve their existing clientele, which may include the elderly and shut-in patients, by delivering products to their homes. The addition of delivery to their operation requires as minimal as one vehicle making about 15 trips per day during the hours previously approved under their CUPs.

Non-storefront dispensaries generally require the least amount of capital and have one of the lowest barriers for entry out of all cannabis businesses regulated by the State and the City. Non-storefront dispensaries typically require a small brick-and-mortar space in a building with a CUP for a delivery-only dispensary, which could potentially be shared with other non-storefront dispensaries. At a minimum, a non-storefront dispensary can also operate with one part-time driver using his/her personal vehicle to deliver cannabis. Because of the low barrier to entry, the non-storefront business model makes it attractive for entry into the retail market.

Prior to the City Council's adoption of an ordinance allowing non-storefront dispensaries, there were at least 100 or more delivery businesses believed to be operating in Sacramento. Now that there is legitimate path to operate, many of these companies have taken the step to bring their operations into compliance by applying for City permits.

The low barrier to entry, coupled with the desire by existing delivery companies to operate in the legal market, account for the large number of non-storefront dispensary applications citywide. The fact that majority of the City's industrial zones are in the Southeast Industrial Area, which is for the most part away from residential zones, makes it an ideal site for non-storefront dispensaries. However, without sufficient data to support whether cannabis delivery will result in an increase in police service calls, or can create a significant impact on local traffic, a limit will keep delivery of cannabis authorization in this area at a manageable level until studies yield a definitive result.

Financial Considerations: A limit will reduce the potential number of Southeast Industrial area authorized dispensaries. BOP applications for non-storefront dispensary costs \$9,760 for small delivery companies with less than \$500,000 in gross revenues, and \$23,610 for those with more than \$500,000. The fee to add delivery for a permitted storefront dispensary is \$2,810 plus an additional \$1,000 for a BOP modification fee.

Local Business Enterprise (LBE): Not applicable.

ORDINANCE NO.

Adopted by the Sacramento City Council

[Date Adopted]

**AN ORDINANCE ADDING ARTICLE IX TO CHAPTER 5.150 OF THE SACRAMENTO CITY CODE,
RELATING TO CANNABIS BUSINESSES**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Article IX is added to chapter 5.150 of the Sacramento City Code to read as follows:

Article IX. Southeast Industrial Area Dispensaries Authorized to Deliver.

5.150.1100 Definitions.

As used in this article, the following definitions apply:

“Dispensary” means a storefront cannabis dispensary or a delivery-only cannabis dispensary.

“Dispensary authorized to deliver” means a dispensary that is expressly authorized to deliver cannabis pursuant to this chapter.

“Southeast industrial area” means the area in the city bounded by Power Inn Road to the west, Folsom Boulevard to the north, and the city limits to the east and south.

5.150.1110 Limit on southeast industrial area dispensaries authorized to deliver.

- A.** Notwithstanding any contrary provision in this chapter, the city shall not authorize a dispensary to deliver cannabis if the dispensary is located or is proposed to be located in the southeast industrial area and there are 46 or more dispensaries authorized to deliver located in that area. Whenever the number of dispensaries authorized to deliver in that area falls below 46, the city manager may conduct a lottery, in accordance with this section, to determine eligible applicants for the available permits or conditions.
- B.** Prior to conducting a lottery, the city manager shall publish a notice in a newspaper of general circulation in the city pursuant to California Government

Code section 6063. The notice must announce a date for the lottery, a request that any person wishing to be considered for available permits or conditions should file a lottery application with the city manager, and a date when applications are due. The city manager may give additional public notice of the lottery as the city manager deems appropriate.

- C. Lottery applications must be on a form approved by the city manager and may require information or documentation consistent with the provisions of this code and state law, and other assurances that the applicant will be able to successfully apply for and operate a dispensary authorized to deliver located in the southeast industrial area if they are selected in the lottery.
- D. The city manager shall thereafter conduct a lottery among all those filing a complete lottery application, and establish a sequence in which potential applicants will be considered for the available permits or conditions. Specific rules and procedures for the lottery shall be established by the city manager and approved by resolution of the city council.
- E. If the selected applicant fails to qualify for the permit or condition, or elects not to proceed with the application process, applicants drawn in sequence in the lottery shall be considered until the permit or condition is issued.

5.150.1120 Sunset provision.

This article shall remain in effect until October 1, 2019, and on that date this article is repealed.

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