



City Council Report

915 I Street, 1st Floor

Sacramento, CA 95814

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November 12, 2019

Discussion Item 17

Title: An Ordinance Amending Sections 5.150.020 and 5.150.160 of, and Adding Sections 5.150.055 and 5.150.355 to, the Sacramento City Code, Relating to Cannabis Businesses, and declaring the Ordinance to be an Emergency Measure [Two-Thirds Vote Required] {To be published in its entirety upon adoption}

Location: Citywide

Recommendation: Adopt an Ordinance by two-thirds vote amending sections 5.150.020 and 5.150.160 of, and adding sections 5.150.055 and 5.150.355 to the Sacramento City Code, relating to ownership interests in cannabis businesses, and declaring the Ordinance to be an emergency measure to take effect immediately upon adoption.

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

Attachments:

1–Description/Analysis

2–Ordinance

Description/Analysis

Issue Detail: At the October 15, 2019 Council meeting, Mayor Darrell Steinberg requested the City Manager and City Attorney return to Council with recommendations to, at a minimum, temporarily prohibit ownership transfers of our cannabis dispensaries while we audit and examine our current rules and processes. The Mayor also asked the City Auditor to review the current rules to determine if they need to be changed to safeguard against an overconcentration of permits with one individual or group and to make sure the regulatory structure is appropriate to the times.

Given the current cap of 30 storefront cannabis dispensary permits and that one person has assumed an ownership interest in multiple dispensaries, it has become clear that the current rules potentially skewed the dispensary market in the City. To address this situation, staff is recommending the adoption of the attached proposed ordinance that includes two specific actions:

1. Temporarily prohibiting any transfer, sale, assignment, or bequest of ownership interests in storefront cannabis dispensaries by new City Code section 5.150.055.

This provision is proposed to sunset in 120 days from the date of adoption, March 4, 2020, which will provide City staff with time to research and determine alternatives to our current rules to ensure our regulatory structure reflects Council's intent in establishing a limit on storefront dispensary permits and the changes in State regulations relative to ownership (on January 9, 2019, the State law provision that allowed cannabis dispensaries to operate as non-profit collectives or cooperatives was repealed).

2. Prospectively prohibiting an individual from obtaining an ownership interest in more than one storefront cannabis dispensary by adding section 5.150.355 to the City Code:

5.150.355 Prohibition against obtaining more than one ownership interest in a storefront cannabis dispensary.

No person who has an ownership interest in a storefront cannabis dispensary may obtain an ownership interest in another storefront cannabis dispensary.

The City's current regulatory structure does not include a prohibition on multiple ownerships. The addition of the language above will prospectively prohibit any person from obtaining an ownership interest in more than one storefront dispensary, preventing further consolidation of ownership within our market.

Over the next 120 days, City staff will continue to evaluate alternate regulatory structures that reflect the realities of changing markets and business structures in the context of the current cap on storefront dispensaries. Various models including that of the State Alcohol and Beverage Control (ABC), which generally defines transfers of ownership interest as 50 percent change in ownership interests, are being reviewed and may be presented to Council for future consideration.

The background section of this report provides detailed information on the development of the current regulatory structure.

Policy Considerations: The emergency ordinance will mitigate the potential for additional ownership concentration by limiting the ownership interest going forward to no more than one ownership interest in a storefront dispensary by any one individual. The addition of temporary language to the City Code relative to transfers will provide time for City staff to review opportunities to update the City Code to reflect the changes in State regulations and resulting changes to the businesses (and business structures) in our market and Council's intent in establishing the limit on storefront dispensary permits. This portion of the ordinance will sunset in 120 days. While the emergency ordinance is in effect, staff will continue to weigh different models and bring forward another ordinance no later than the sunset date.

At the request of Councilmember Carr on November 13, 2018, Council considered options relative to the current cap on storefront dispensaries. Council provided comments and referred the issue to the Law and Legislation Committee (Committee) to consider and come back to Council with options to expand with benefits and risks. This item was presented to the Committee on February 26, 2019. At that time, L&L deferred action and requested staff return for future consideration at the beginning of the year in 2020. Based on this direction, staff is planning to return to L&L in early 2020 to continue consideration options for changes to the current cap.

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: This item will bypass the Law and Legislation Committee in accordance with Council Rules of Procedure Chapter 13 Section B.1.i.i.

Rationale for Recommendation: The rapidly evolving cannabis regulatory landscape requires constant modifications to the City Code to ensure that it remains consistent with Council intent. The proposed ordinance addresses recent concerns and direction provided by Council.

Financial Considerations: None.

Local Business Enterprise (LBE): Not applicable.

Background: In 2009, the City allowed for an “Exemption of Established Operations” in Ordinance 2009-033 for a medical marijuana dispensary if the dispensary applied and could prove that the dispensary had been providing marijuana services in the City since at least June 16, 2009. The exemption allowed for the dispensaries to operate within the City. Dispensaries that did not meet the exemption were ordered to cease operations.

On November 15, 2011, Council adopted Ordinance No. 2011-049 amending Chapter 5.150, relating to medical dispensaries. Under the ordinance, in order to qualify for a storefront dispensary permit, a dispensary must have registered its location pursuant to Ordinance No. 2009-033 and complete two phases of the application process.

While the process started with more than 50 registered dispensaries throughout Sacramento after the conclusion of Phase 2 applications, only 30 dispensaries completed the process and received a permit. Because no new dispensaries would qualify for a permit unless they had previously registered and completed the two phases of the application process, a *de facto* cap of 30 dispensaries was created.

On November 28, 2017, Council adopted Ordinance 2017-0060 removing all references to registered applicants and the two phases of applications and a cap of 30 permits was officially established (section 5.150.350). Chapter 5.150 also prohibits storefront dispensary permits from being sold, transferred, assigned or bequeathed.

In 2003, the State enacted a law that required cannabis dispensaries to operate as non-profit collectives or cooperatives (collectives), consisting of at least four member patients. As such, permits were issued to the collective, and individuals elected by its membership to hold office were named as permit holders.

Because the permit belonged to the collective and not to individual officers, changes in officers, management and board, were not a transfer of permit, as long as the collectives were able to establish continuity in membership. Continuity is established when at least one individual listed on the dispensary permit remains in office in the event of a change in the roster of officers. As was documented in the City Auditor's 2017 Audit of City's Medical Marijuana Dispensaries:

In February 2016, the Revenue Division acknowledged in its report to Council that "[current] City Code does not allow dispensaries to relocate or change management members...It is not practical to require a dispensary to keep its officers and manager static. The City should not allow the entity to change in its entirety, however employees, managers, and officers will need to change on occasion and City Code should reflect this reality." Specifically, the Revenue Division Manager, in response to a Council member's question, clarified that "[when] a dispensary wanted to change their managers, or they wanted to change their name, or they wanted to change where their location was before they actually got their permit, we would look for some continuity. If they wanted to change everything at once, that wasn't allowed, because obviously, that was new people running a new dispensary somewhere else. So, we've always looked for continuity on the board, the managers, [and] the original application. And, we look for a continuity trail along the way with the permit applications."

To ensure continuity, the City required collectives to submit board minutes and evidence of filing with the Secretary of State to demonstrate that the continuity requirement is satisfied. While the Auditor's report revealed shortcomings in the documentation of continuity, the process has been updated and the completion of all required documentation is necessary prior to consideration of any changes.

The State's law allowing dispensaries to operate as collectives was phased out in early 2019, so some dispensaries re-structured and began operating as corporations and/or a variety of other business entities. Changes to these entities have been reviewed using the same standard of continuity as their predecessor collectives.

ORDINANCE NO.

Adopted by the Sacramento City Council

[Date Adopted]

AN ORDINANCE AMENDING SECTIONS 5.150.020 AND 5.150.160 OF, AND ADDING SECTIONS 5.150.055 AND 5.150.355 TO, THE SACRAMENTO CITY CODE, RELATING TO CANNABIS BUSINESSES, AND DECLARING THE ORDINANCE TO BE AN EMERGENCY MEASURE TO TAKE EFFECT IMMEDIATELY UPON ADOPTION

BE IT ENACTED BY THE COUNCIL OF CITY OF SACRAMENTO:

SECTION 1.

A. Section 5.150.020 of the Sacramento City Code is amended to add the following definition:

“Ownership interest” means all forms of legal or beneficial ownership including the following: stock, partnership, limited liability company, joint tenancy, leasehold, proprietorship, trust, beneficiary, proxy, power-of-attorney, option, warrant, and any other interest that evidences ownership or control, whether direct or indirect.

B. Except as provided in subsection A above, section 5.150.020 of the Sacramento City Code remains unchanged and in full effect.

SECTION 2.

Section 5.150.055 is added to the Sacramento City Code to read as follows:

5.150.055 Prohibition against transferring an ownership interest in a storefront cannabis dispensary.

A. No person shall transfer, sell, assign, or bequeath any ownership interest in any storefront cannabis dispensary permittee to another person. Any such action is unlawful and void.

B. This section remains in effect until March 11, 2020, and on that date this section is repealed.

SECTION 3.

A. Subsection A of section 5.150.160 of the Sacramento City Code is amended to read as follows:

A. A cannabis business shall maintain the following business records in printed format for at least three years on the site and shall produce them to the city within 24 hours after receipt of the city's request:

1. The name, address, and telephone numbers of the owner and landlord of the property.
2. The name, date of birth, address, and telephone number of each manager and staff of the cannabis business; the date each was hired; and the nature of each manager's and staff's participation in the cannabis business.
3. A written accounting of all income and expenditures of the cannabis business, including, but not limited to, cash and in-kind transactions.
4. A copy of the cannabis business' commercial general liability insurance policy and all other insurance policies related to the operation of the business.
5. A copy of the cannabis business' most recent year's financial statement and tax return.
6. An inventory record documenting the dates and amounts of cannabis received at the site, the daily amounts of cannabis on the site, and the daily amounts of cannabis sold, distributed, and transported from the site.
7. The name, address, and telephone numbers of the owners and officers of the cannabis business; and the nature of the ownership interest in, and control of, the cannabis business.

B. Except as provided in subsection A above, section 5.150.160 of the Sacramento City Code remains unchanged and in full effect.

SECTION 4.

Section 5.150.355 is added to the Sacramento City Code to read as follows:

5.150.355 Prohibition against obtaining more than one ownership interest in a storefront cannabis dispensary.

No person who has an ownership interest in a storefront cannabis dispensary shall obtain an ownership interest in any other storefront cannabis dispensary.

SECTION 5. Emergency Declaration

The city council declares this ordinance to be an emergency measure, to take effect immediately upon its adoption pursuant to Sacramento City Charter section 32(g)(2). The facts constituting the emergency are as follows:

It has recently come to the City's attention that an individual has obtained an ownership interest in eight storefront cannabis dispensaries in the city of Sacramento. In order to protect the public health, welfare, and safety, the City must investigate whether any changes need to be made to the City's cannabis business ownership regulations to prevent any person from potentially exercising undue control over the City's retail cannabis market due to limited number of storefront dispensary permits. Until that investigation is complete, the City must maintain the status quo by temporarily prohibiting the transfer of any ownership interests in storefront cannabis dispensaries and permanently prohibit any person from obtaining more than one ownership interest in a storefront dispensary permit. An emergency measure is necessary to maintain the status quo and prevent a rush that would exacerbate the situation in the city.