



CITY AND COUNTY OF DENVER

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TO: Denver City Council

FROM: David W. Broadwell, Asst. City Attorney

RE: **CB 16-264 Capping marijuana business locations in Denver; changes from committee version of the bill**

DATE: April 7, 2016

CB 16-264 has been filed, it is available in SIRE, and it will be the subject of a courtesy public hearing on Monday night. The purpose of this memorandum is to highlight the changes to the bill as filed in comparison to the version that was presented to the Special Issues Marijuana Moratorium Committee on Monday, April 4.

Codifying the numerical caps; adding a cumulative cap on both cultivation sales locations; restrictions on change of location. As explained in committee, the text of the bill was modified to state the maximum numerical caps on each category of licensing directly in the ordinance. Language was also strengthened to avoid situations where multiple licenses that share one common location (*e.g.* the 64 current locations where *both* sales *and* cultivation licenses exist in the same location) cannot be spun off individually to new locations in a way that adds to the total number of licensed locations in Denver. (See Attachment 1.)

Clarifying ability to change an RMJ cultivation license to another location where an RMJ cultivation license already exists. In response to a comment from one of the speakers at the committee hearing, the bill has been clarified on this point. An RMJ cultivation license may still be changed to another location where cultivation is already occurring, but the licensee will be subject to the “collapsing” requirement imposed by the recently adopted omnibus bill, i.e. RMJ cultivation licenses sharing the same “licensed premises” must be “collapsed” into one license. (See Attachment 2.)

Improving chances that future RMJ licenses will not be added to the most heavily concentrated statistical neighborhoods. As another measure to help neighborhoods that currently experience the highest concentration of licensed MJ businesses, Councilwoman Kniech added language to require the blind lottery to favor the selection of locations for future licenses elsewhere in the city. (See Attachment 3.)

ATTACHMENT 1

Codifying the numerical caps; adding a cumulative cap on both cultivation sales locations; restrictions on change of location

Changes or additions to the Committee draft of April 4, 2016 are highlighted in **BOLD**:

Sec. 6-201. - Defined terms.

- (2) Cap on marijuana cultivation locations means a maximum of three hundred and eleven (311) distinct locations in the city where a medical marijuana optional premises cultivation facility, a retail marijuana cultivation facility, or both may be licensed; or such lesser number as may be determined by the director pursuant to section 6-203 (b) by calculating the total number of locations in the city:
- (a) Where one or more licensed premises existed pursuant to a medical marijuana optional premises license, a retail marijuana cultivation facility license, or both, as of May 1, 2016, and
- (b) Where any licensed premises was approved by the director after May 1, 2016 as the result of an application for new licensing that was pending on May 1, 2016 for a medical marijuana optional premises cultivation license, a retail marijuana cultivation license, or both, in a location where such licenses did not previously exist.
- (3) Cap on marijuana sales locations means a maximum of two hundred and twenty-six (226) distinct locations in the city where a medical marijuana center, a retail marijuana store, or both may be licensed; or such lesser number as may be determined by the director pursuant to section 6-203 (b) by calculating the total number of locations in the city:
- (a) Where a licensed premises existed for a medical marijuana center, a retail marijuana store, or both, as of May 1, 2016; and
- (b) Where any licensed premises was approved by the director after May 1, 2016 as the result of an application for new licensing that was pending on May 1, 2016 for a medical marijuana center, a retail marijuana store, or both, in a location where such licenses did not previously exist.

(6) **Cumulative cap on marijuana cultivation and sales locations means a maximum of four hundred and sixty-seven (467) distinct locations in the city where one or any combination of the following may be licensed in the same location: medical marijuana center, retail marijuana store, medical marijuana optional premises cultivation facility, retail marijuana cultivation facility; or such lesser number as may be determined by the director pursuant to section 6-203 (b) by calculating the total number of locations in the city:**

- (a) **Where a licensed premises existed for a medical marijuana center, retail marijuana store, medical marijuana optional premises cultivation facility, retail marijuana cultivation facility, or any combination of these, as of May 1, 2016; and**
- (b) **Where any licensed premises was approved by the director after May 1, 2016 as the result of an application for new licensing that was pending on May 1, 2016 for a medical marijuana center, retail marijuana store, medical marijuana optional premises cultivation facility, retail marijuana cultivation facility, or any combination of these, in a location where such licenses did not previously exist.**

Sec. 6-203. City-wide cap on certain retail marijuana licenses; annual open application process.

- (a) **Effective May 1, 2016, the issuance of any new retail marijuana store license or any new retail marijuana cultivation facility license in the city shall be subject to the cap on marijuana sales locations and the cap on marijuana cultivation locations respectively, as well as the cumulative cap on marijuana cultivation and sales locations, to be administered by the director in accordance with this section.**
- (b) **The director shall calculate and publish the cap on marijuana sales locations, the cap on marijuana cultivation locations, and the cumulative cap on marijuana cultivation and sales locations as soon as possible after a determination is made by the director on all applications for new licenses that were pending on May 1, 2016. The director's calculation of the caps shall be considered dispositive and shall not be subject to appeal.**
- (c) **Beginning in 2017 and continuing once in each calendar year thereafter, the director shall administer an open application process for new retail store licenses and new retail marijuana cultivation facility licenses, to the extent the total number of then-current licensed locations in either category in the city falls below the cap on marijuana sales locations and the cap on marijuana cultivation locations respectively, and only if the cumulative number of then-current**

licensed locations for any combination of marijuana cultivation or sales licenses falls below the cumulative cap on marijuana cultivation and sales locations. The annual open application process shall be subject to the following requirements:

Sec. 6-217. - Change of location; modification of premises.

(d) Effective May 1, 2016, in the case of a retail marijuana store that is co-located with a medical marijuana center **or with any retail marijuana cultivation facility or medical marijuana optional premises cultivation business at the same location,** a change of location for the retail marijuana store shall not be approved by the director unless:

(1) The associated medical marijuana center **and any retail marijuana cultivation facility or medical marijuana optional premises cultivation facility at the same location** likewise changes to the same new location, or

(2) The license for the medical marijuana center **or any retail marijuana cultivation facility or medical marijuana optional premises cultivation facility at the former location** is surrendered.

(d) Effective May 1, 2016, in the case of a retail marijuana cultivation facility that is co-located with any other retail marijuana cultivation facility, any medical marijuana optional premises cultivation business, **any retail marijuana store, or any medical marijuana center at the same location,** any change in location of the retail marijuana cultivation facility shall not be approved by the director unless:

(1) All other marijuana cultivation **or sales** licenses at the prior location likewise change to the same new location; or

(2) All other marijuana cultivation **or sales** licenses at the prior location are surrendered; or.

(3) The retail marijuana cultivation facility is proposed for change to a location where medical marijuana optional premises cultivation licenses or other retail marijuana cultivation facility licenses currently exist at the new location, subject to the limitations set forth in section 6-214 (c).

Sec. 24-512. - Change of location; modification of premises.

(d) Effective May 1, 2016, in the case of a medical marijuana center that is co-located with a retail marijuana store **or with any medical marijuana optional premises cultivation facility or retail marijuana cultivation facility at the same location**, a change of location for the medical marijuana center shall not be approved by the director unless:

(1) The associated retail marijuana store **and any medical marijuana optional premises cultivation facility or retail marijuana cultivation facility at the same location** likewise changes to the same new location, or

(2) The license for the retail marijuana store **and any medical marijuana optional premises cultivation facility or retail marijuana cultivation facility at the prior location** is surrendered.

(e) Effective May 1, 2016, in the case of a medical marijuana optional premises cultivation license that is co-located with any other optional premises cultivation licenses, any retail marijuana cultivation facility, or both at the same location, any change in location of the medical marijuana optional premises cultivation license shall not be approved by the director unless:

(1) All other medical marijuana optional premises cultivation licenses, retail marijuana cultivation facility licenses, **medical marijuana centers or retail marijuana stores** at the prior location likewise change to the same new location; or

(2) All other medical marijuana optional premises cultivation licenses, retail marijuana cultivation facility licenses, **medical marijuana center licenses, or retail marijuana store licenses** at the prior location are surrendered; or

(3) The medical marijuana optional premises cultivation license is proposed for change to a location where other medical marijuana optional premises cultivation licenses, retail marijuana cultivation facility licenses, or both currently exist at the new location.

ATTACHMENT 2

Clarifying the authority to change an RMJ cultivation license to another location where an RMJ cultivation license already exists.

Changes or additions to the Committee draft of April 4, 2016 are highlighted in **BOLD**:

Sec. 6-214. - Licensing requirements—Retail marijuana cultivation facility.

Effective May 1, 2016, the director shall not receive or act upon any application for a retail marijuana cultivation facility license except through the annual open application process set forth in Section 6-203. The director may, however, receive and act upon an application to co-locate ~~one a~~ retail marijuana cultivation facility license with one or more existing medical marijuana optional premises cultivation licenses **or retail marijuana cultivation facility license as provided in subsection (b) of this section, subject to the limitations set forth in subsection (c) of this section.** In addition to the requirements set forth in the Colorado Retail Marijuana Code and any rules or regulations adopted pursuant thereto, the following requirements shall apply to the issuance of any local license for a retail marijuana cultivation license:

Sec. 6-217. - Change of location; modification of premises.

(e)(3) The retail marijuana cultivation facility is proposed for change to a location where medical marijuana optional premises cultivation licenses **or other retail marijuana cultivation facility licenses** currently exist at the new location, **subject to the limitations set forth in section 6-214 (c).**

Sec. 24-512. - Change of location; modification of premises.

(e)(3) The medical marijuana optional premises cultivation license is proposed for change to a location where other medical marijuana optional premises cultivation licenses, ~~a~~ retail marijuana cultivation facility licenses, or both currently exist at the new location.

ATTACHMENT 3

Improving chances that future RMJ licenses will not be added to the most heavily concentrated statistical neighborhoods.

Changes or additions to the Committee draft of April 4, 2016 are highlighted in **BOLD**:

Sec. 6-203. City-wide cap on certain retail marijuana licenses; annual open application process.

(c)(1) In advance of the open application process, the director shall determine and publish the total number of available locations in the city for retail marijuana stores and retail marijuana cultivation facilities under the respective caps. The director's determination of the number of available locations shall be considered dispositive and not be subject to appeal. **Also in advance of the open application process, the director shall determine the statistical neighborhoods in the city where there exists the highest concentration of licensed locations for marijuana cultivation and marijuana sales. The director shall, by rule, adopt procedures to be used in the blind lottery as set forth in paragraph (2) of this subsection (c) that will increase the odds of being selected in the lottery for any entrant in the lottery who proposes to be licensed in any location in the city other than the most highly concentrated statistical neighborhoods as determined by the director.**