



MEMORANDUM

To: Marijuana Special Issues Committee
From: Ashley R. Kilroy, Executive Director, Excise and Licenses
Cc: Molly Duplechian, Deputy Director, Excise and Licenses
Skye Stuart, Legislative Director, Mayor's Office
Date: March 13, 2019
Subject: Development of the Designated Cannabis Consumption Rules and Regulations

Question

Councilwoman Black has requested that we provide a memorandum answering the following question:
How were the current distance requirements for Designated Consumption Areas (DCAs) developed?

Summary

The distance requirements for DCAs were developed after an open and transparent process that included months of hard work by a diverse group of stakeholders whose meetings were open to the public and allowed for public comment; and, a subsequent public rule-making process that included posting the proposed rules, feedback through approximately 75 written comments, and a 3-hour public hearing during which approximately 55 community members spoke.

The Neighborhood Supported Cannabis Consumption Pilot Program (NSCCPP), was an initiated ordinance that passed in November 2016. Pursuant to NSCCPP, Excise and Licenses was given the authority to make "reasonable rules and regulations as may be necessary for the purpose of administering and enforcing provisions." Similar to some other initiated ordinances, additional detail was deemed necessary to make NSCCPP operationally feasible, enforceable, and consistent with other city regulations.

Additional detail and rules were deemed necessary due to a number of reasons. As you will recall, shortly after NSCCPP passed, Denver City Attorney Kristin Bronson highlighted issues with enforceability, advising City Council that the initiated ordinance "posed serious conflict with state law," raised a number "federal concerns," and needed "safeguards to prevent minors from having legal access to the increased accessibility that is inherent in this ordinance." (Denver City Council Special Issues Committee Meeting, December 5, 2016.) There were also operational questions about how to implement some of the requirements of the ordinance, including the ordinance requirements for evidence of community support, a health and sanitation plan, and a responsible operations plan. At that same City Council meeting, EXL proposed a timeline for rule-making, rule adoption, and implementation of NSCCPP. (Special Issues Committee Meeting, December 5, 2016.) In addition, because marijuana laws were evolving so quickly, there was a need for the city to continue to strive for consistency with other laws and regulations.

In January 2017, EXL assembled the Social Consumption Advisory Committee (the committee). This group, comprised of stakeholders representing varied interests and two City Council representatives,

contemplated potential rules through a collaborative consensus-based process that honored the intent of the initiated ordinance. The committee met 6 times from January 18, 2017 to April 6, 2017, and concluded with a public hearing held on June 13, 2017. Complete information about this committee can be found [here](#), including a list of committee members, meeting agendas, meeting minutes, and all of the written comments that were submitted to the department prior to the public hearing. The committee discussed area restrictions in detail at the first two meetings on January 18th and February 8th, as well as at the final committee meeting on April 6th.

The committee considered a number of area restrictions, some far-ranging and very broad, and ultimately recommended the area restrictions that are now in place.

They include 1000' restrictions from:

- ✓ Daycares
- ✓ City-owned pools and recreational centers
- ✓ Drug and alcohol treatment facilities

Other area restrictions that were proposed, but not ultimately adopted in the rules included:

- Places where children congregate
- Churches
- Residential zone districts
- Other DCAs
- Marijuana stores and dispensaries
- Special events with a liquor license

After the committee work, EXL compiled the recommendations into draft rules and went through the formal rule-making process. Of the combined 122 comments received on the draft rules, 74% were either in support of the rules as drafted or felt they were not strict enough. Thus, the community feedback reflected the general consensus of the committee.

In adopting the rules regarding area restrictions, the department determined to approve the ones originally proposed by the committee. The department rejected area restrictions from “places where children congregate,” concluding that the definition was overbroad. The department decided against adopting area restrictions from churches because there are numerous churches spread throughout Denver, and area restrictions from churches would significantly limit options for applicants. In rejecting area restrictions from residential zone districts, the department concluded that such areas restrictions could negate numerous blocks along South Broadway and Colfax Avenue that might be desirable locations and the required neighborhood support and needs and desires hearing would address concerns of the surrounding residents. The department also decided not to require that DCAs be a certain distance from one another or from marijuana stores, reasoning that our city might want DCAs near each other in certain areas of town, and allowing them to be near marijuana stores would provide them with a place to purchase since DCAs cannot allow for sales of marijuana under state law.

This balanced approach embraced the core value identified by the committee and community of protecting youth, and which was also reflected in NSCCPP’s area restriction from schools, as well as NSCCPP’s requirement that smoking not be visible from “a place where children congregate.” The department considered whether the area restrictions were too limiting and whether there would enough locations for interested applicants. Given that from the time that NSCCPP had been adopted, the

department had not seen significant demand for these licenses, and given that there are currently approximately 9000 businesses in Denver that meet the area restrictions, the department concluded that the area restrictions were appropriate, met the intent of the ordinance, reflected the significant community input, and were consistent with the committee's and city's values.

Below is more detail of the committee deliberations and conversations. Statements in quotes are taken directly from the minutes from the meetings which were provided to committee members for review and comment prior to finalizing and posting online.

SCAC discussions regarding proximity restrictions:

- January 18, 2017:
 - The committee discussed adopting the same area restrictions that City Council had put in place years ago for marijuana dispensaries.
 - “City Council put a lot of thought into the current distance restriction, and we should respect that effort.” (Meeting Minutes, January 18, 2017)
 - In 2010, City Council adopted 1000’ area restrictions for medical marijuana dispensaries from schools, daycares, other dispensaries, drug/alcohol treatment centers. In 2013, City Council duplicated those area restrictions for retail marijuana stores.
 - These area restrictions adhered to federal guidelines that emphasized keeping marijuana away from youth as a top priority.
 - Denver received a letter from the federal government that warned that storefronts operating within 1000’ of schools might be shut down. (January, 2012)
 - By mid-2012, the federal government had in fact closed 47 medical marijuana dispensaries within 1000’ of schools.
 - The city “has strived for consistency between state rules and the municipal code, as well as consistency between retail and medical regulations. Therefore, we should ensure that the regulations for consumption clubs are consistent with other marijuana businesses.” (Meeting Minutes, January 18, 2017)
 - “All of the group members agreed that childcare, and alcohol/drug treatment facilities were appropriate types of facilities to place distance restrictions around.” (Meeting Minutes, January 18, 2017)
 - The committee concluded that the proximity restrictions from marijuana stores should not apply to DCAs since marijuana cannot be sold at DCAs.
 - The committee also discussed the proposed proximity restriction from “any place where children congregate.”
 - This particular language was taken directly from NSCCPP’s requirement that permit holders “ensure that any outside smoking of cannabis occurring at the street level is not visible from a public right-of-way or a place where children congregate.”
 - An action item from this meeting was for the City Attorney’s Office to bring back some possible definitions for “places where children congregate.”
- February 8, 2017:
 - “All of the group members continue to agree that childcare, and alcohol/drug treatment facilities, and schools were appropriate types of facilities to place distance restrictions around.” (Meeting Minutes, February 8, 2017)
 - The conversation continued around whether a broader area restriction from “a place where children congregate” should be included.

- The city attorneys presented a proposed definition for “a place where children congregate” to the group.
 - The group discussed the difficulty of clearly defining this term, and the possibility of it being too imprecise.
- Some committee members argued that there should be proximity restrictions from churches, especially since churches are places where children congregate.
- April 6, 2017 (final meeting):
 - At this final committee meeting, a table of the proposed rules and regulations was presented.
 - The draft included an area restriction from a “place where children congregate,” but the department ultimately did not include that area restriction in the final draft rules that were posted for public comment and hearing.
 - The draft included adding proximity restrictions of 1000’ from child care facilities and drug/alcohol facilities with an explanation that it would harmonize with proximity restrictions for other marijuana business licenses issued by EXL for standardization, consistency and ease of administration.
 - The draft also included a proximity restriction that DCA Special Events be 1000’ from another Special Event that holds a liquor license with the explanation that this would be a “clear zone” approach utilized in other jurisdictions to effectively manage special events and to address dual consumption concerns.
 - During the discussion, a committee member suggested an additional 500’ setback from residential zone districts.
 - During this meeting, one committee member voiced concern about the availability of locations for DCAs given the proposed proximity restrictions.
 - One committee member supported the proposed 1000’ buffer from city-owned recreation centers and outdoor pools. This member stated that children often go to these places and therefore this restriction was reasonable. Another member felt that this would limit the available locations too much.

Public Hearing - June 13, 2017:

- The final rules that were posted for public comment and hearing did not include places where children congregate, churches, residential zone districts, other DCAs, marijuana stores and dispensaries, or special events with a liquor license.
- The area restrictions posted for public comment and hearing were the ones that were ultimately adopted:
 - Daycares
 - City-owned pools and recreational centers
 - Drug and alcohol treatment facilities
- Public comment and hearing process:
 - The department received approximately 122 comments on the draft rules:
 - 74% were either in support of the rules and regulations as drafted or felt they were not strict enough.
 - 26% felt the rules and regulations as drafted were too strict.
 - Examples of the feedback from those who felt the proposed rules and regulations were not strict enough included requests to include additional area restrictions from residential zone districts, churches, and backyards.
 - The feedback from the minority who felt the proposed rules and regulations were too strict was varied, and only a portion of the opposition related to the area restrictions. Some of

the opposition argued that alcohol should be allowed in DCAs (which violates state rule); some argued for less strict advertising restrictions (which were based on state law); and some argued for the removal of the proposed the waiver upon entrance to the DCA. The department removed the waiver requirement based on this public feedback. The department also removed a ventilation requirement because it was redundant.

June 29, 2017 – EXL answers City Council representatives' questions about the proposed rules

- City Council representatives posed about 10 questions in writing about the rules to the department.
- One of the 10 questions related to area restrictions. The City Council representatives asked for a map, which was provided, and commented that the distance restrictions “may overly restrict where DCAs may be located.”
- The department responded with the reasoning for the area restrictions and that there “was near unanimous agreement” by the committee on the area restrictions consistent with the information contained in this memorandum.

June 30, 2017 – Adoption of the rules

- The department adopted the current area restrictions, consistent with the discussions, recommendations, and feedback described above.