



Date: June 22, 2015
To: Finance and Culture Committee
From: Ketil Freeman, Council Central Staff
Subject: Proposed Marijuana Regulations – Preliminary Issue Identification

At its June 24th meeting, the Finance and Culture Committee will begin issue identification on proposed licensing regulations and a resolution establishing enforcement priorities for marijuana establishments that do not have a state license. This memorandum provides some background on recent changes in state law, describes the content of the Mayor’s proposed legislation, and identifies some preliminary issues for committee discussion.

Background

In 1998, voters approved Initiative 692, which authorized the use of marijuana to treat patients with debilitating medical conditions. I-692 allows patients to grow a limited amount of marijuana or to form collectives of up ten patients to grow and process marijuana. In 2012, voters approved Initiative 502, which created a regulatory framework for growing, processing, and distributing recreational marijuana.

In April, the legislature passed and the Governor signed Second Substitute Senate Bill (2SSB) 5052, also known as the Cannabis Patient Protection Act. Among other things, 2SSB 5052 attempts to integrate and harmonize the regulatory framework for medical and recreational marijuana by:

- Creating a medical marijuana authorization database for patients and providers,
- Creating a medical marijuana endorsement to a recreational marijuana retail license,
- Expanding the number of retail licenses, and
- Establishing how applicants for additional licenses will be prioritized.

2SSB 5052 will be effective on July 24, 2015.

The legislature is currently considering other changes to the marijuana regulatory framework. Specifically, House Bill (HB) 2136, which is under consideration in the second special session, would, among other things, authorize local jurisdictions to reduce the 1000 foot buffer that marijuana businesses must maintain from sensitive land uses like child care centers, parks, libraries, and transit centers. Changes to the City’s zoning regulations may be proposed if HB 2136 is enacted.

Seattle currently has approximately 14 open and licensed recreational marijuana retail stores and 25 licensed producers. There are approximately 99 additional storefronts without state licenses.

The Mayor proposes three pieces of legislation to implement changes in state law: 1) a resolution signaling how the City will prioritize enforcement, 2) a council bill amending business license regulations, and 3) a council bill establishing a new regulatory license for marijuana businesses. Proposed legislation is summarized below.

Legislation	What It Would Do
Enforcement Resolution (Reso. 31595)	<ul style="list-style-type: none">▪ Establish the City’s intent to create a marijuana regulatory license;▪ Articulate enforcement priorities for departments with regulatory authority over marijuana businesses that do not have a state license; and▪ Establish how buffer requirements from sensitive land uses and other unlicensed establishments would be measured.
Business License Bill (Council Bill (CB) 118420)	<ul style="list-style-type: none">▪ Amend business license regulations to allow the Director of the Department of Finance and Administrative Services (FAS) to revoke the city business license of marijuana businesses that do not have a state license.
Regulatory License Bill (CB 118419)	<ul style="list-style-type: none">▪ Establish a city regulatory business license for state-licensed marijuana businesses, including application requirements, application fees, right of inspection by city departments, processes for license suspension and revocation, and penalties for violations; and▪ Amend the adopted 2015 budget to provide appropriation authority to implement the proposed license.



Preliminary Issue Identification

Issue	Mayor's Proposal	Discussion
Enforcement Resolution		
Should proposed enforcement tiers be modified?	Reso. 31595 establishes three tiers of priority for enforcing changes in state law from 2SSB 5052. Generally, those tiers, from highest to lowest priority, are: <ol style="list-style-type: none"> 1. Tier 1 - Businesses or persons that sell marijuana to persons under the age of 21 who are not qualifying patients; businesses or persons that are under criminal investigation by law enforcement or that have generated public safety concerns; businesses or persons that manufacture product that is designed or packaged to be appealing to children; and businesses or persons operating without a Seattle business license or with a license that was obtained after January 1, 2013; 2. Tier 2 - Businesses or persons that are in violation of city codes, such as the Fire Code or Land Use Code; businesses or persons that deliver medical marijuana; and businesses or persons that allow consumption of marijuana products on their premises; and 3. Tier 3 - Businesses or persons that do not meet consumer protection standards for labelling, testing and disclosure; and businesses that are located within 500 feet of another licensed or unlicensed marijuana establishment. 	Among other things, Reso. 31595 signals to the regulated community how the City will prioritize enforcement. However, the resolution does not bind departments with regulatory authority. Departments could choose, on a case-by-case basis, to prioritize enforcement differently, and, in some cases, may be obligated to enforce against lower tier businesses if there has been a complaint. <p>Tiers are informed in part by changes to state law related to how new licenses will be prioritized and on the Executive's experience with public safety concerns related to unlicensed businesses. Some constituents have suggested modifications to the tiers, including elevating delivery businesses to the first enforcement tier.</p> <p>Options:</p> <ol style="list-style-type: none"> a) Accept the tiers as proposed. b) Modify proposed tiers.
Should the proposed dispersion measurement technique be modified?	Reso. 31595 establishes the City's intent to impose a dispersion requirement on marijuana retail establishments. <ul style="list-style-type: none"> ▪ Unlicensed establishments would be required to be located at least 1000 feet from any public or private school or playground. ▪ Licensed and unlicensed establishments would be required to be located at least 500 feet from each other. ▪ Measurements would be made in a straight line from property line to property line. ▪ Establishments with a state license or with an earlier established use would be given preference in determining dispersion. 	Dispersion requirements reflect existing limitations in state law, which prohibit licensing establishments, "within one thousand feet of the <i>perimeter of the grounds</i> of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older." RCW 69.50.331(8) . <p>Some constituents have noted a straight line measurement technique from property lines may put some businesses within 1000 feet of sensitive land uses for the purposes of enforcement when the actual door-to-door distance would exceed 1000 feet. Others have suggested that additional sensitive land uses, such as churches, should be added to list. Finally, others have suggested that dispersion requirements should vary based on intensity of uses allowed in a land use zone, with greater dispersion requirements applying in zones that allow less intense land uses, such as the NC2 zone.</p> <p>Options:</p> <ol style="list-style-type: none"> a) Accept measurement technique as proposed. b) Explore whether the City could modify the measurement technique or base dispersion on land use zones and be compliant with state law. c) Add other sensitive land uses to the list of uses requiring dispersion.
Regulatory License Bill		
How should the proposed licensing regime treat business establishments that opened after	Medical marijuana businesses that opened prior to January 1, 2013 and have met all state and local requirements are not required to obtain a regulatory license and may continue to operate until July 1, 2016, provided that the owners of such establishments take the necessary steps to obtain a state license. <p>Successors in interest to businesses meeting the requirements listed above may also continue to</p>	There are at least four parent businesses, which have been operating before January 1, 2013, that opened branches after January 1, 2013. C.B. 118419 is somewhat ambiguous as to whether branches will be considered to be part of a pre-existing medical marijuana business and allowed to continue to operate until July 1, 2016. <p>Options:</p>

Issue	Mayor's Proposal	Discussion
January 1, 2013 but are affiliates of establishments opened prior to that date?	operate until July 1, 2016, provided that operations were continuous and the transfer of interest is documented.	<ul style="list-style-type: none"> a) Accept the status of businesses existing prior to January 1, 2013 as proposed. b) Clarify the status of branches opened after January 1, 2013.
Should the Council limit rulemaking authority for the FAS Director?	CB 118419 establishes some general provisions to protect the public health, safety, and welfare. However, the bill expressly delegates authority to the FAS Director to promulgate rules incorporating regulations established by the Washington State Liquor and Cannabis Board (Board).	<p>The Seattle Municipal Code (SMC) grants rule-making authority to department directors. The FAS Director has authority to promulgate rules, "deemed necessary to carry out the function of the Department." See SMC 3.39.020.C.</p> <p>Some constituents are concerned that granting express authority to the FAS Director to promulgate rules related to Board requirements for marijuana regulation may be an overly broad delegation, particularly if local regulatory choices are authorized by the Board.</p> <p>Options:</p> <ul style="list-style-type: none"> a) Accept the rulemaking delegation as proposed. b) Modify the rulemaking authority to limit the delegation. c) Require regular reporting on rule-making to determine whether adopted or proposed rules should be subject to legislative decision-making.
Should the proposed fee schedule be modified to increase cost-recovery?	CB 118419 establishes a fee schedule for licensees. A business located within the City would pay an annual license fee of \$1000. A business located outside the City, but operating in the City, would pay an annual license fee of \$500. The Budget Office estimates that the license fee would generate approximately \$247,000 in 2016. This is approximately 46% of the estimated \$537,000 total 2016 program cost. The remainder of program costs would be borne by the general fund. CB 118419 appropriates \$86,000 and \$145,000 in 2015 and 2016, respectively, to cover non-fee supported program costs.	<p>CB 118419 proposes fees to help FAS and DPD recover the cost of licensing and program administration. Costs are associated with initial equipment and space costs for the program and on-going costs for program staffing.</p> <p>HB 2136 would direct a share of marijuana tax revenue to local governments. If passed as proposed, the City would receive approximately \$300,000 in revenue annually that could be used for program administration. If the City wanted to set fees at a full cost recovery level, annual fees would be approximately \$3500 for a business located in Seattle and \$1200 for a business located outside of Seattle. These would be among the highest fees charged by the City for a regulatory license.</p> <p>Options:</p> <ul style="list-style-type: none"> a) Accept the fee levels as proposed. b) Defer potential fee increases pending action by the legislature on HB 2136. c) Increase proposed fees to more fully cover the cost of program administration.