



CITY OF CAMBRIDGE

Community Development Department

To: Planning Board
From: Community Development Department (CDD) Staff
Date: November 18, 2020
Re: **Cannabis Delivery Zoning Petition**

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Overview

Petitioner: City Council (POR 2020 #217)

Petition: To amend Article 2.000 *Definitions*, Article 4.000 *Use Regulations*, and Article 11.000 *Special Regulations* by creating a new land use classification of “Cannabis Delivery-Only Retailer” and associated regulations.

Context: In 2018, Cambridge adopted zoning to regulate Cannabis Retail Stores and Cannabis Production Facilities. At that time, the state did not have regulations to license home delivery of cannabis products, but in November 2019, the state Cannabis Control Commission (the “CCC”) adopted regulations that allowed a home delivery license. However, the CCC is currently in the process of considering amendments to its regulations that would modify the home delivery license and would establish two types of home delivery licenses. The Planning Board has thus far granted special permits to 11 Cannabis Retail Stores in Cambridge, which did not contemplate home delivery of cannabis products from those locations, and contain conditions prohibiting home delivery to consumers.

Summary: The proposed zoning amendments, which have been submitted along with proposed amendments to the Cannabis Business Permitting Ordinance, are intended to authorize cannabis home delivery in Cambridge. However, since the types of cannabis delivery licenses available from the state will likely change in the near future when the CCC adopts amended regulations, there may be desire to propose revised zoning amendments to mirror what types of delivery will be licensed by the State.

Report: This memo, provided by CDD staff in consultation with and based upon advice provided by the Law Department, provides a background of Cambridge’s current cannabis-related zoning, summarizes key provisions of the Petition in the context of what is currently allowed by the state and the proposed changes to the state’s delivery licensing scheme, and suggests issues for the Planning Board to consider in its deliberation of this Petition.

Cannabis Planning and Zoning Background

In November 2016, Massachusetts first approved non-medical (“adult-use”) marijuana by ballot initiative. Two years later, the state’s CCC promulgated regulations for issuing licenses for adult-use establishments. At the end of 2018, the Cambridge City Council adopted Ordinance #1404, which set forth local zoning regulations for adult-use Cannabis Retail Stores and Cannabis Production Facilities, allowing the former mainly in Business zoning districts and the latter in the Industry B-2 zoning district, and in both cases requiring a special permit from the Planning Board. At the time, while home deliveries were prohibited at the state level, City staff noted in its presentation to the Planning Board and Ordinance Committee that home delivery of adult-use cannabis products may be authorized in the future. In 2019, the City Council adopted a separate Cannabis Business Permitting Ordinance intended to ensure that businesses operating comply with certain conditions and intended to promote economic empowerment and social justice objectives.

After the adoption of the zoning regulations for adult-use Cannabis Retail Stores and Production Facilities and after the adoption of the Cannabis Business Permitting Ordinance in the Municipal Code, the CCC adopted amendments to its regulations which enabled home delivery of adult-use cannabis products. The CCC created a “Delivery-Only License” which authorizes a license holder to deliver cannabis product directly to consumers from Cannabis Retail Stores. For the first two-years, the CCC only offers Delivery-Only Licenses to Economic Empowerment Applicants and Social Equity Program Participants.

At the time of this memo, the CCC is considering further amending the regulations concerning delivery licenses and is undergoing a public comment and review period, with action by the CCC anticipated on November 30th. Specifically, the proposed regulations would create a “Marijuana Delivery Operator” license that would allow an operator to buy product wholesale from growers and manufacturers, store the product and sell to their own customers. The existing Delivery-Only License would now be called a “Marijuana Courier” license and it would allow delivery from Cannabis Retail Stores, as the existing delivery license does now. The proposed regulations would make these licenses exclusively available to Economic Empowerment Applicants and Social Equity Program Participants for a minimum of three years. Should the proposed regulations be approved by the CCC on or about November 30th, such regulations would then be forwarded to the Secretary of State’s office for further review and promulgation. The CCC estimates that the timeline for that review process and ultimate promulgation may be approximately one month.

Overview of Current State Regulations

The CCC's regulations for adult-use cannabis include a Delivery-Only License. This license enables the sale of home-delivered adult-use cannabis products from an existing Marijuana Retailer (i.e. a Cannabis Retail Store, as defined in the Cambridge Zoning Ordinance). The Delivery-Only Licensee has a delivery agreement with a Cannabis Retail Store and does not maintain its own retail store. The Delivery-Only License would need to maintain parking for its delivery vehicles and may need office space for its business operations. The license includes additional requirements for age verification, security and delivery of products, among other stipulations. The CCC's regulations also allow a cannabis microbusiness to have a Delivery Endorsement as part of its license which allows a microbusiness to deliver directly from its establishment to consumers.

Overview of Draft State Regulations

Over the course of 2020, the CCC has been engaged in a process to draft amendments to its adult-use cannabis regulations, with the latest changes proposed on October 20, 2020, and the subject of a public hearing on November 13, 2020. The draft regulations establish two types of Delivery Licenses – a “Marijuana Courier License” and a “Marijuana Delivery Operator License.”

- The Marijuana Courier License would be substantially the same as the current Delivery-Only License.
- The Marijuana Delivery Operator would allow a licensee to purchase wholesale cannabis products from a cultivator, microbusiness, craft marijuana cooperative, or product manufacturer for resale. A Marijuana Delivery Operator Licensee would be authorized to sell and deliver such products to customers via delivery but may not operate a storefront accessible to the public. Instead, all Marijuana Delivery Operator Licensees would be required to operate a warehouse for the storage of cannabis products within the host community. In this case, an order is placed directly with the Marijuana Delivery Operator Licensee, who then packages the order and delivers it directly to consumers.

Both types of licenses include additional requirements for sale recordation, age verification, product labeling, security and delivery of products, among other stipulations.

Per the current Draft Regulations, the two types of delivery licenses can be summarized as follows:

1. Marijuana Courier License
 - a. Delivers from a licensed retailer to consumers
 - b. All points of sale must occur at existing retailer
 - c. No warehouse allowed

2. Marijuana Delivery Operator License
 - a. Delivers from warehouse to consumers
 - b. Can repackage product with its own label
 - c. May sell and deliver, but no direct sales to consumers on-site at the warehouse facility

Based on the state's draft regulations and comments from prospective operators, three general types of delivery activities might be anticipated:

- 1) Retail Direct Delivery – This type of activity would involve the direct fulfillment of delivery orders by a Cannabis Retail Store through telephone or online orders, akin to calling a restaurant directly and placing an order for delivery. This type of activity would be captured under the Marijuana Courier License (if the owner of the Cannabis Retail Store held a retail license and Marijuana Courier license).
- 2) Third-Party Delivery – This type of delivery activity would involve browsing products through a third-party clearinghouse of several different existing establishments, placing an order directly through one of the establishments, and then delivery is facilitated through a third-party, akin to online companies like Drizly, Grubhub or Uber Eats. This type of activity would be captured under the Marijuana Courier License.
- 3) Distribution Center – This type of activity would involve browsing products from a wholesaler/reseller and placing an order with the wholesaler/reseller, who then packages and delivers orders separate from a bricks-and-mortar retailer, akin to an Amazon Fulfillment Center. This type of activity would be captured under the Marijuana Delivery Operator License.

Overview of Zoning Petition

The Petition establishes a new land use classification called “Cannabis Delivery-Only Retailer,” which encompasses the use allowed by the Delivery-Only License outlined above. The Cannabis Delivery-Only Retailer use is defined as any entity licensed by the CCC for home delivery but does not provide a retail location accessible to the public. The definition mirrors the language in the current CCC Regulations for a Delivery-Only License.

Under the Petition, a Cannabis Delivery-Only Retailer land use would be permitted in Industry B-1 and B-2 districts by special permit from the Planning Board, and limited to 10,000 square feet in Gross Floor Area, similar to current zoning for Cannabis Production Facilities (although the latter are only permitted in the Industry B-2 district). As mentioned above, the land use would likely be vehicle parking and office space. The Petition also amends Section 11.802.4 *Building* to authorize Cannabis Microbusinesses with a Delivery Endorsement and Cannabis Delivery Only-Retailers to conduct home deliveries and related activities in accordance with state regulations. Cannabis Delivery-Only Retailer special permit applicants are required to submit a logistics plan which describes and illustrates how delivery, loading, parking and other service functions will be conducted, similar to current requirements for Cannabis Retail Stores.

Considerations for Review

Timing

It appears that new regulations at the state level may be adopted within the month and may go into effect by the new year, though the final form of those regulations and exactly what action the CCC will take is not yet known. There may be changes beyond just the name change from Delivery-Only License to Marijuana Courier License that would impact the proposed zoning, and the City Council may or may not want to also allow uses authorized pursuant to the Marijuana Delivery Operator License. Local

regulations which would permit home delivery should work in concert with state regulations to ensure a clear, predictable review and approval process.

While the CCC is currently reviewing draft regulations to amend home delivery licenses, it is unclear what final form such regulations would take. At the time of this memo, new changes to the proposed regulations have been incorporated into the latest working draft and have not yet been made available to the public. Depending on the form and content of the final regulations, the Planning Board should consider if waiting for such final drafts could help ensure local and state regulations work in concert with one another.

Land Use Considerations

Regulating delivery activities through zoning can be complicated because zoning only regulates issues of *land use*, and is limited in its ability to affect how vehicles use city streets. The delivery activity under the current Delivery-Only License and proposed Marijuana Courier License, which is transient in nature, could follow (as described above) a “Retail Direct Delivery” model or a “Third-Party Delivery” model, the latter of which would have a physical location only for purposes of vehicle storage and possibly office. Additionally, the land use issues would need to be addressed as a potential new component of the operation of a Cannabis Retail Store, as discussed further below.

Existing Special Permits & Amendment Process

Further complicating the issue noted above, special permits already granted by the Planning Board for Cannabis Retail Stores include a condition which explicitly prohibits home delivery, because such activity was not proposed by the applicants at the time and therefore could not be fully evaluated by the Planning Board as part of the proposal’s land use impact. Even if the zoning is amended to authorize home delivery from Cannabis Retail Store locations, the Planning Board would need to approve amendments to special permits that were previously granted.

Enabling home delivery for approved Cannabis Retail Stores might introduce traffic and transportation impacts requiring evaluation of a new Transportation Logistics Plan and new conditions to mitigate such impacts. For example, many approved retailers in Cambridge have limited-to-no on-site parking, and there is the potential for vehicle, bicycle and pedestrian conflicts if additional delivery vehicles result in double-parking, parking in bicycle lanes, or other impacts on safety and travel flow. Such impacts would need to be evaluated on a case-by-case basis for any special permit application (new or amended) to authorize home delivery.