



COUNCIL OF THE DISTRICT OF COLUMBIA

THE JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004

MEMORANDUM

To: Chairman Phil Mendelson
FROM: Councilmembers Mary M. Cheh and Kenyan McDuffie
DATE: June 23, 2022
SUBJECT: Requests for the June 28, 2022 Legislative Meeting

We request that the following emergency measures be agendized for the June 28, 2022 Legislative Meeting:

- Medical Marijuana Self-Certification Emergency Declaration Resolution of 2022
- Medical Marijuana Self-Certification Emergency Amendment Act of 2022
- Medical Marijuana Self-Certification Temporary Amendment Act of 2022

Currently, District law permits and regulates the possession, use, and sale of marijuana for medical purposes. It is further legal to possess, use, and “transfer . . . without remuneration” (i.e., gift) marijuana for recreational use. However, due to a 2014 Congressional budget rider imposed on the District by Congress (since it was proposed by Representative Andy Harris, it is commonly referred to as the “Harris Rider”), the District is prohibited from spending funds to legalize and regulate the sale of recreational marijuana (i.e., marijuana not used for medical purposes).

This unique state of the law has led to the development of what has been termed a “gray” market for the purchase of marijuana. Over the past 7 years, a number of “gifting” shops have opened in the District, which incorrectly purport to legally sell marijuana by including marijuana as a gift accompanying the purchase of (generally significantly overpriced) digital art, stickers, clothing, food, or other items. Because these shops are operating outside of the law, there is no requirement or enforcement of customer registration, including verification that purchasers are of legal age. In addition, for gray market products, there is no assurance that the marijuana has been tested or adequately labeled, raising concerns that products could be contaminated or otherwise unsafe for consumers, and that the potency of the marijuana purchased could differ from what was advertised.

On the other hand, a patient wishing to buy legal marijuana for medical purposes from the existing regulated dispensaries must adhere to numerous regulatory requirements. Patients must submit an application to the Alcoholic Beverage Regulation Administration (“ABRA”), which requires the patient to provide a recommendation from an authorized practitioner issued within the past 2 years—a requirement made all the more burdensome by the fact that only 620 authorized practitioners (out of thousands of healthcare providers in the District) are registered with ABRA and able to provide these recommendations. Lack of access means treatment may be delayed as patients work to identify and secure an appointment with an authorized practitioner, and later wait for the authorized practitioner to provide their recommendation. This requirement also creates barriers for the underinsured, low-income residents, and other vulnerable communities, who may not have the time or financial resources to obtain an authorized practitioner’s recommendation, despite having medical need. This has had real consequences for legal medical dispensaries; because gray market shops do not require customers to provide an authorized practitioner’s recommendation, many patients choose to shop at these illegal gifting stores.

Due to the aforementioned lower barriers to access in the gray market, a significant number of customers have shifted from purchasing from legal medical dispensaries to the illicit gray market, creating a significant risk to the long-term viability of the District’s legal medical marijuana industry. The gray market is estimated to log a staggering \$600 million in sales annually, sapping patients from legal businesses; ABRA reports that the number of patients purchasing marijuana from medical dispensaries in the District has been in decline since December 2021. This loss of sales is calamitous for the District’s legal market: even under the best of circumstances, the medical marijuana industry faces extremely slim profit margins due to the federal government’s prohibition on these businesses claiming deductions accessible to most other businesses, in effect requiring these businesses to pay taxes on their revenue, rather than their profit. If this trend continues, it is possible that gray market sales could wipe out the District’s legal marijuana dispensaries. Given the aforementioned benefits that regulated and safe legal dispensaries provide to medical marijuana users in the District, it is vital that the industry survive until the District can stand up a regulated recreational market and transition toward full regulation of recreational marijuana products.

On April 5, 2022, the Council considered the Medical Marijuana Patient Access Supplemental Extension and Civil Enforcement Emergency Amendment Act of 2022, as introduced on April 4, 2022 (Bill 24-747), which would have established an enforcement scheme against gray market businesses and would have allowed certain residents to self-certify in order to access medical marijuana products. That legislation failed, with several members raising concerns about the impact the enforcement provisions would have on employees and business owners participating in the gray market.

This emergency legislation moves only the portion of that prior legislation regarding self-certification. Specifically, it would allow patients 21 years of age and older to self-certify that they are utilizing marijuana for medical purposes. Patients will still be formally registered in the medical marijuana program, issued a patient identification number, and recorded in ABRA's private and secure "Metrc" track-and-trace system. This will allow patients to go directly to medical dispensaries, rather than seek out an authorized practitioner and spend time and money trying to obtain a recommendation. While not a panacea to the issues facing our legal marijuana market, this emergency legislation provides a small amount of relief by putting our legal medical marijuana dispensaries on more even footing with gray market businesses in terms of ease of access for patients. This language mirrors the self-certification provision in permanent legislation pending before the Committee on the Judiciary and Public Safety, Committee on Business and Economic Development, and Committee of the Whole, which hopefully will move before the end of this Council Period.

In the meantime, however, permitting patients to self-certify now will provide a critical stopgap measure to help legal marijuana dispensaries retain and even win back patients. While the Council heard concerns from gray market businesses last April regarding the emergency legislation being proposed at that time, and the effect enforcement would have on their businesses and employees, the same concerns cannot be raised regarding this measure. Unlike the prior legislation, this bill does not include any enforcement provisions, and therefore will not have a direct effect on the gray market businesses or their employees beyond perhaps increasing competition for services. That is, instead of attempting to constrain the gray gifting market, this legislation aims to expand access to the legal medical market. Of note, where this legislation does result in patients choosing legal dispensaries over gray market stores, that shift should result in better health outcomes for patients due to those dispensaries selling only regulated marijuana products, which have a lower risk of contamination and higher rates of consistent labeling and potency compared to unregulated marijuana.

Draft copies of the emergency legislation are attached. Please contact Michael Porcello at 724-8062 or mporcello@dccouncil.us if you have any questions.