

## Council of the District of Columbia

### MEMORANDUM

1350 Pennsylvania Avenue, NW, Washington, DC 20004

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**TO:** Chairman Phil Mendelson  
**FROM:** Councilmember Charles Allen *CA*  
**RE:** Request to Agendize Measures for the January 9, 2024 Legislative Meeting  
**DATE:** January 4, 2024

I request that the following measures be placed on the agenda for the January 9, 2024 Legislative Meeting:

#### Emergency Legislation

- “Medical Cannabis Program Enforcement Emergency Declaration Resolution of 2024”
- “Medical Cannabis Program Enforcement Emergency Amendment Act of 2024”
- “Medical Cannabis Program Enforcement Temporary Amendment Act of 2024”

On December 3, 2014, District voters passed the Legalization of Possession of Minimal Amounts of Marijuana for Personal Use Initiative of 2014, effective February 26, 2015 (D.C. Law 20-153; D.C. Official Code *passim*) (“I-71”), which, among other provisions, made it lawful to transfer one ounce or less of cannabis to another person, so long as no remuneration is exchanged, and the recipient of the cannabis is 21 years of age or older. The selling of any amount of cannabis to another person remains illegal.

The passage of I-71 has resulted in the creation of an illegal cannabis market in the District that describes itself as “I-71 compliant”, whereby consumers merely need to buy a small item and, in return, receive an accompanying cannabis product as a “gift”. This illegal cannabis market is estimated to take in more than \$600 million in sales annually, and has been in direct competition with, and accordingly, has profoundly harmed, the District’s Medical Cannabis Program. Furthermore, these illegal businesses do not pay the taxes and fees that licensed facilities under the Medical Cannabis Program must pay, and most are owned by non-District residents and sell products that are untraced, untested, and mostly cultivated outside the District.

The presence of these illegal businesses also raises serious public health and safety concerns. Some of these establishments are located in areas in which legal facilities are not allowed to operate, such as within 300 feet of schools and recreation facilities. These businesses have also been the target of criminal activity, such as robbery and theft, and some have been implicated in criminal activity themselves, including illegal possession of firearms and illegal possession and distribution of narcotics.

On December 20, 2022, the Council passed the Medical Cannabis Amendment Act of 2022, effective March 22, 2023 (D.C. Law 24-332; 70 DCR 1582), which established an “on-ramp” for these currently unlicensed businesses to receive a license from the Alcoholic Beverage and Cannabis Administration (“ABCA”). This “on-ramp” will ensure that consumers are protected against untested cannabis products, District residents are empowered to own and operate these businesses, businesses operate with oversight, and the community is involved in reviewing

applications and reaching settlement agreements over hours of operation and security, like what currently happens with alcohol licensees. The open application period for these businesses to apply for a license to be a cultivation center, retailer, or internet retailer in the District's Medical Cannabis Program opened on November 1, 2023, and will close on January 29, 2024.

With the open application period now underway and Advisory Neighborhood Commissions ("ANCs") receiving notices of applications and providing comments, I convened an implementation conversation with all ANCs in Ward 6, the Department of Licensing and Consumer Protection, and the Alcoholic Beverage and Cannabis Administration. Through that conversation, several implementation issues arose, which this emergency legislation addresses:

- *First, it is unclear which entities or persons have standing to protest the issuance of a license to a currently unlicensed establishment.* For example, under current law, different ANCs that are miles apart from each other and within the same Ward could protest the same prospective licensee and reach different settlement agreements. This legislation makes standing requirements consistent with the alcohol requirements, ensuring that ANCs follow a similar process. Specifically, that only ANCs within 600 feet of the proposed establishment may protest a license.
- *Second, the enforcement scheme has some glaring deficiencies.* The statutory framework for the Medical Cannabis Program does not clearly provide ABCA or the ABC Board with the authority to enforce the provisions of the Medical Cannabis Program against those unlicensed establishments. If left unresolved, this gap would allow the "gray market" to exist without consequence. The purpose and intent of creating the on-ramp for unlicensed establishments would be meaningless, as they could continue to operate outside of ABCA's purview. This legislation would empower ABCA to issue civil fines and cease-and-desist orders against unlicensed establishments. ABCA would now be empowered to hold unlicensed establishments accountable for deceiving consumers for continuing to hold themselves out as "I-71 compliant".
- *Third, concerns have been raised about the ability of the Department of Licensing and Consumer Protection to issue fines against those commercial property owners in whose properties illegal cannabis establishments are currently operating.* ABCA would be the most appropriate agency to issue fines because it would be empowered to investigate those establishments that are operating outside the confines of the Medical Cannabis Program.
- *Fourth, because there will undoubtedly be further legislative and implementation issues that arise through the application process,* this emergency bill creates a working group to study and advise the Mayor and the Council on necessary changes to the Medical Cannabis Program for the next year.

Drafts of these measures are attached. Please contact Antonio Nunes, Legislative Director, at [anunes@dccouncil.gov](mailto:anunes@dccouncil.gov), with any questions.

cc: Members, Council of the District of Columbia  
Office of the Budget Director  
Office of the General Counsel  
Office of the Secretary