

March 21, 2020

Via email

OREGON LIQUOR CONTROL COMMISSION

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**Re: Proposed Initiatives To Promote Safe Access to Cannabis During COVID-19
Emergency.**

Dear Chair, Commissioners, and Executive Director:

We, the undersigned supporters of all people who rely upon the Oregon cannabis industry for their medicine and/or livelihoods, respectfully submit this open letter to the Oregon Liquor Control Commission, in the hope that we may join together, in the spirit of solidarity and cooperation being embodied by the millions of people who are supporting our healthcare providers by isolation and social distancing, to enact sensible temporary regulations and policies to effectively protect and promote Oregonians' safe access to cannabis products during this crisis. This letter is split into two sections, the first being an argument in favor of cannabis production, processing, and sale being recognized as an essential business activity, and the second containing specific proposals for temporary rule changes to enhance and promote hygienic access to cannabis items.

**A. Cannabis is Medicine and Producing, Processing, and Selling it are Essential
Business Activities.**

We have a legal cannabis industry in this state – and in this country – because so many people rely on cannabis as medicine. Although our adult-use program is often referred to as “recreational,” because of the success of, and lower barriers to entry to, the recreational cannabis industry, the Oregon medical marijuana program has dwindled to the point where there are only three medical-only marijuana dispensaries left in the entire state, and zero medical marijuana

processors. The number of medical cardholders has dropped from more than 60,000 prior to adult use, to fewer than 28,000 now. In other words, there is no doubt that tens of thousands of Oregonians, at a minimum, obtain cannabis that they use for medical purposes, from adult-use retail stores. Given that there is no question that healthcare providers and pharmacies are essential businesses during a shelter-in-place order or similar level of emergency, we ask that the OLCC recognize the production and sale of cannabis as essential business activities during a crisis, and advocate for this view to local and state government considering shutting these businesses down.

While financial considerations must always cede to health and safety concerns, we should all bear in mind that the economic effects of the COVID-19 emergency may hit the cannabis industry especially hard. HR 6021, the Emergency Families First Coronavirus Response Act, mandates that employers provide their employees with paid sick leave and establishes a tax credit to employers to offset such payments. However, because of the effects of Internal Revenue Code 280E, cannabis businesses will likely be unable to access the tax credits, but will still be on the hook for the paid sick leave. If cannabis businesses were also unable to operate because they were not considered essential businesses under a shelter in place order, and simultaneously hit with the obligation to provide sick leave, many cannabis businesses would face total doom.

B. Proposed Temporary Rule Changes.

The attached proposed temporary rule changes are intended to assist the Commission in making rule changes to enhance the ability of retail licensees to more safely serve customers during the COVID-19 emergency. In summary, the proposed changes (1) allow retail licensees to make home deliveries once they have submitted the OLCC home delivery form, without waiting for approval; (2) allow retail licensees to make drive-up and walk-up sales and to exempt from preapproval any premises changes that are made to enhance health and safety; (3) normalize delivery regulations to facilitate mobile service and sanitary concerns; (4) ease pre-approval requirements to increase access to capital; and (5) allow retail licensees to make curbside delivery to customers.

If we all come together in this time of crisis, we can create a safe and hygienic environment for cannabis businesses to operate and for Oregonians to safely access cannabis products. Doing so will also help save the industry from financial ruin, and save tens of thousands of precious jobs, the loss of which now would be especially grievous. We urge you to consider adopting some or all of our suggestions, and we look forward to joining with you in cooperation towards the common goal of providing safe, legal access to cannabis.

Sincerely,

The Undersigned Members of Oregon's Cannabis Community

cc: Oregon state and local government officials, members of the press

Proposed Temporary Rule Changes to Increase Health and Safety and to Promote Hygienic Access to Cannabis Items During the COVID-19 Emergency

Bold and Underlined text = new

Italic and Strikethrough text = delete

1. Fast-track home deliveries. The Commission should allow retailers to make home deliveries pursuant to OAR 845-025-2880 once the retailer has completed the Retailer Home Delivery Form and submitted it to the OLCC, without the requirement of pre-approval.
 1. Rules affected: OAR 845-025-2880
 2. Proposed changes:
 1. OAR 845-025-2880(2)
(b)The retailer must receive written approval from the Commission prior to making any deliveries. **The retailer may make deliveries under these rules upon submission to the Commission of the form prescribed by the Commission. A retailer may prove compliance with this rule by showing proof of submission of the form prior to having made any deliveries.**
2. Allow drive-up and walk-up sales and health and safety-related premises changes. The Commission should allow drive-up and walk-up sales, and other health and safety-related premises alterations, without prior approval.
 1. Rules affected: OAR 845-025-8520(10)(a), 845-025-1175, OAR-025-1440, OAR 845-025-1450.
 2. Proposed changes:
 1. OAR 845-025-8520(10)(a)

(10) Additional Prohibitions. A licensee or permittee may not: (a) Sell or deliver any marijuana item or hemp item through a drive-up or walk-up window, **unless the location served by the drive-up or walk-up window, and all of the area within 15 feet of the drive-up or walk-up window, is under video surveillance as allowed under these rules.**
 2. OAR 845-025-1175(7)

(7) Exception for health and safety-related changes. Notwithstanding the foregoing, a licensee may make changes, modifications, or alterations to a licensed premises (including material or substantial changes as defined above) without preapproval from the Commission, if the following conditions are met: (a) The licensee certifies in writing to the Commission that the changes, modifications, or alterations are made with

the good faith intention to meet a specified public health or safety need, such as, without limitation, enabling social distancing or otherwise preventing or limiting the spread of any infectious disease; (b) The licensee submits to the Commission the information otherwise required under OAR 845-025-1175, together with an updated security plan; (c) The changes, modifications, or alterations would not result in an initial or renewal application denial under OAR 845-025-1115; and (d) The changes, modifications, or alterations are reasonably limited to those deemed necessary, in good faith, to meet the specified public health or safety need.

3. OAR-025-1440(1)(c)

(1) A licensed premises must have camera coverage, as applicable, for: ...

(c) All consumer sales areas, **including, where applicable, a minimum fifteen-foot radius around any drive-up or walk-up sales areas.**

4. OAR-025-1440(2)(b)

(2) A licensee must ensure that cameras are placed so that they capture clear and certain images of any individual and activity occurring: ...

(b) In all locations within limited access areas, *and* consumer sales areas on the licensed premises, **and, where applicable, a minimum fifteen-foot radius around any drive-up or walk-up sales areas.**

5. OAR 845-025-1450(1)(c)

(1) A licensee must have cameras that continuously record, 24 hours a day:

(a) In all areas where mature marijuana plants, immature marijuana plants, usable marijuana, cannabinoid concentrates, extracts, products or waste may be present on the licensed premises; *and*

(b) All points of ingress and egress to and from areas where mature marijuana plants, immature marijuana plants, usable marijuana, cannabinoid concentrates, extracts, products or waste are present; **and**

(c) All walk-up and drive-up sales areas, including all areas within a 15 foot radius around the walk-up or drive-up sales area.

3. Alternatively, the Commission should expedite all floor plan change requests which are reasonably related to increasing health and safety at licensed premises.
3. Normalize delivery regulations to facilitate mobile service and sanitary concerns. The Commission should allow retailers to make home deliveries at the same times and in the same quantities as permitted on a licensed premises, remove the requirement that orders be placed in larger delivery receptacles, eliminate the requirement for METRC manifests for home deliveries, lift the \$3,000 retail value limit per delivery vehicle, and consider suspending the requirement that a customer sign for their order to reduce contact between the delivery driver and customer.
 1. Rules affected: OAR 845-025-2880 – see below for proposed revisions.

845-025-2880

Delivery of Marijuana Items by Retailer

(1) A marijuana retailer may deliver a marijuana item to a residence in Oregon subject to compliance with this rule. For purposes of this rule, “residence” means a dwelling such as a house or apartment but does not include a dormitory, hotel, motel, bed and breakfast or similar commercial business.

(2) Delivery Approval Process.

(a) The retailer must request approval from the Commission prior to undertaking delivery service of marijuana items, on a form prescribed by the Commission that includes a statement that the retailer:

(A) Understands and will follow the requirements for delivery listed in this rule; and

(B) Has taken steps to ensure the personal safety of delivery personnel, including providing any necessary training.

(b) The retailer must receive written approval from the Commission prior to making any deliveries.

(c) The Commission may refuse to review any request for approval that is not complete and accompanied by the documents or disclosures required by the form.

(d) The Commission may deny a retailer’s request for approval to deliver marijuana items if the retailer does not meet the requirements of this or any other pertinent rule. If the Commission denies the request, the retailer has a right to a hearing under the procedures of ORS chapter 183.

(e) The Commission may withdraw approval for delivery service at any time if the Commission finds that the retailer is not complying with this rule, the personal safety of delivery personnel is

at risk, the retailer's delivery service has been the target of theft, or the delivery service is creating a public safety risk.

(3) Bona Fide Orders.

(a) A bona fide order must be received by an approved retailer from the individual requesting delivery, before ~~8~~9:00 p.m. on the day the delivery is requested.

(b) The bona fide order must contain:

(A) The individual requestor's name, date of birth, the date delivery is requested and the address of the residence where the individual would like the items delivered;

(B) A document that describes the marijuana items proposed for delivery and the amounts; and

(C) A statement that the marijuana is for personal use and not for the purpose of resale.

(4) Delivery Requirements.

(a) Deliveries must be made before ~~9~~10:00 p.m. local time and may not be made between the hours of ~~9~~10:00 p.m. and ~~8~~7:00 a.m. local time.

(b) The marijuana retailer may only deliver in a motor vehicle to the individual who placed the bona fide order and only to individuals who are 21 years of age or older.

(c) At the time of delivery the individual performing delivery must check the identification of the individual to whom delivery is being made in order to determine that it is the same individual who submitted the bona fide order. This includes ensuring that the individual:

(A) Is either 21 years of age or older; or

(B) If the individual is age 18-20, that the individual is a current registry identification cardholder; and

(C) Signs a document indicating that the items were received, **unless the individual performing delivery believes that close customer contact would be ill-advisable for health or safety reasons.**

(d) A marijuana retailer may not deliver a marijuana item to an individual who is visibly intoxicated at the time of delivery.

(e) Deliveries may not be made more than once per day to the same physical address or to the same individual.

(f) Marijuana items delivered to an individual's residence must:

(A) Comply with the packaging rules in OAR 845-025-7000 to 845-025-7190; ~~and.~~

~~(B) Be placed in a larger delivery receptacle that has a label that reads: "Contains marijuana. Signature of person 21 years of age or older required for delivery".~~

~~(g) A retailer may not carry or transport at any one time more than a total of \$3000 in retail value worth of marijuana items designated for retail delivery.~~

(h) All marijuana items must be kept in a lock-box ~~securely affixed~~ inside the delivery motor vehicle.

~~(i) A manifest must be created for each delivery or series of deliveries and~~ **T**he individual doing the delivery may not make any unnecessary stops between deliveries ~~or deviate substantially from the manifest route.~~

(5) Documentation Requirements. A marijuana retailer must document the following regarding deliveries:

(a) The bona fide order and the date and time it was received by the retailer;

(b) The date and time the marijuana items were delivered;

(c) A description of the marijuana items that were delivered, including the weight or volume and price paid by the consumer;

(d) Who delivered the marijuana items; and

(e) The name of the individual or the patient or designated primary caregiver's OMMP card number to whom the delivery was made and the delivery address.

(6) A retailer is only required to maintain the name of an individual to whom a delivery was made for one year.

(7) Prohibitions.

(a) A retailer may deliver marijuana items only to a location within:

(A) The city in which the licensee is licensed, if a licensee is located within a city; or

(B) Unincorporated areas of the county in which the licensee is licensed, if a licensee is located in an unincorporated city or area within the county.

(b) A retailer may not deliver marijuana items to a residence located on publicly-owned land.

(8) Medical Delivery Exemption. Notwithstanding the delivery prohibitions in subsection (7)(a) of this rule, a retail licensee may deliver marijuana items to a patient or a patient's designated

primary caregiver at an individual's residence in accordance with the other provisions of this rule, if the retailer follows the delivery approval process set forth in subsection (2) of this rule.

(9) Sanction. A violation of any section of this rule that is not otherwise specified in OAR 845-025-8590 is a Category III violation.

4. Increase access to capital. The Commission should temporarily raise the limit for investment and loans that can be accepted by licensees without pre-approval to \$1,000,000 to allow businesses to access the capital they need to remain operational while also removing some burden from the OLCC. Such investments and loans will need to be disclosed at renewal and will be subject to scrutiny at that point. Consider requiring that licensees provide notification and other relevant documentation, such as individual history forms for investors, to the OLCC prior to accepting such loans or investments.
5. Allow curbside delivery. The Commission should allow curbside delivery, with appropriate safeguards including turning cameras out to the delivery area, checking all IDs on camera, etc.
 1. See below with new proposed OAR 845-025-2885 Curbside Delivery Rule and changes to OAR 845-025-1440 regarding video surveillance.

845-025-2885

Curbside Delivery of Marijuana Items by Retailer

(1) A marijuana retailer may deliver a marijuana item to a person or vehicle in close supervised proximity to the retailer's licensed premises, subject to compliance with this rule. For purposes of this rule, "close supervised proximity" means within 50 feet of the main egress point of the licensed premises AND within the area where the licensee's cameras may capture clear and certain images of any individual present and activity occurring.

(2) Curbside Delivery Approval Process.

(a) The retailer must request approval from the Commission prior to undertaking curbside delivery service of marijuana items, on a form prescribed by the Commission that includes a statement that the retailer:

(A) Understands and will follow the requirements for curbside delivery listed in this rule; and

(B) Has taken steps to ensure the personal safety of curbside delivery personnel, including providing any necessary training.

(b) The retailer may make curbside deliveries under these rules upon submission to the Commission of the form prescribed by the Commission. A retailer may prove compliance with this rule by showing proof of submission of the form prior to having made any curbside deliveries.

(c) The Commission may refuse to review any request for approval that is not complete and accompanied by the documents or disclosures required by the form.

(d) The Commission may deny a retailer's request for approval to undertake curbside delivery of marijuana items if the retailer does not meet the requirements of this or any other pertinent rule. If the Commission denies the request, the retailer has a right to a hearing under the procedures of ORS chapter 183.

(e) The Commission may withdraw approval for curbside delivery at any time if the Commission finds that the retailer is not complying with this rule, the personal safety of curbside delivery personnel is at risk, the retailer's curbside delivery service has been the target of theft, or the curbside delivery service is creating a public safety risk.

(3) Bona Fide Orders.

(a) A bona fide order must be received by an approved retailer from the individual requesting curbside delivery, before 9:00 p.m. on the day the delivery is requested.

(b) The bona fide order must contain:

(A) The individual requestor's name, date of birth, the date curbside delivery is requested, how the recipient intends to take curbside delivery of the marijuana item(s) (i.e., via walk-up or drive-up), and a sufficient description of the requestor's vehicle, if applicable;

(B) A document that describes the marijuana items proposed for curbside delivery and the amounts; and

(C) A statement that the marijuana is for personal use and not for the purpose of resale.

(4) Curbside Delivery Requirements.

(a) Curbside deliveries must be made before 10:00 p.m. local time and may not be made between the hours of 10:00 p.m. and 7:00 a.m. local time.

(b) The marijuana retailer may only make a curbside delivery to the individual who placed the bona fide order and only to individuals who are 21 years of age or older.

(c) At the time of curbside delivery, the individual performing the curbside delivery must check the identification of the individual to whom the curbside delivery is being made in order to determine that it is the same individual who submitted the bona fide order. This includes ensuring that the individual:

(A) Is either 21 years of age or older; or

(B) If the individual is age 18-20, that the individual is a current registry identification cardholder; and

(C) Signs a document indicating that the items were received.

(d) A marijuana retailer may not deliver a marijuana item to an individual who is visibly intoxicated at the time of delivery.

(e) Curbside deliveries may not be made more than once per day to the same individual or vehicle.

(f) Marijuana items delivered curbside must:

(A) Comply with the packaging rules in OAR 845-025-7000 to 845-025-7190; and

(B) Be placed in a larger delivery receptacle that has a label that reads: “Contains marijuana: Signature of person 21 years of age or older required for delivery”.

(5) Documentation Requirements. A marijuana retailer must document the following regarding curbside deliveries:

(a) The bona fide order and the date and time it was received by the retailer;

(b) The date and time the marijuana items were delivered;

(c) A description of the marijuana items that were delivered, including the weight or volume and price paid by the consumer;

(d) Who delivered the marijuana items; and

(e) The name of the individual or the patient or designated primary caregiver’s OMMP card number to whom the delivery was made.

(6) A retailer is only required to maintain the name of an individual to whom a curbside delivery was made for one year.

(7) Sanction. A violation of any section of this rule that is not otherwise specified in OAR 845-025-8590 is a Category III violation.

845-025-1440

Required Camera Coverage and Camera Placement

(1) A licensed premises must have camera coverage, as applicable, for:

(a) All points of ingress and egress to and from the licensed premises;

- (b) All limited access areas as that term is defined in OAR 845-025-1015;
- (c) All consumer sales areas;
- (d) All points of ingress and egress to or from limited access areas;
- (e) The surveillance room or surveillance area as defined in OAR 845-025-1460(1)(a) and (b);

(f) All areas where the licensed premises serves customers via curbside delivery, as allowed under OAR 845-025-2885;

~~(fg)~~ Any other area that the Commission believes presents a public safety risk based on the overall operation and characteristics of the licensed premises; and

~~(gh)~~ All areas where marijuana waste is required to be stored, destroyed or rendered unusable as required by OAR 845-025-7750.

(2) A licensee must ensure that cameras are placed so that they capture clear and certain images of any individual and activity occurring:

(a) Within 15 feet both inside and outside of all points of ingress and egress to and from the licensed premises; ~~and~~

(b) In all areas where the licensed premises serves customers via curbside delivery, as allowed under OAR 845-025-2885; and

~~(bc)~~ In all locations within limited access areas, and consumer sales areas on the licensed premises.

(3) Failure to comply with subsection (1)(a) through (e) of this rule is a Category I violation and may result in license revocation.

(4) Failure to comply with subsection (1)(f), (1)(g), **or** (2)(a) ~~or~~ **through** (2)~~(bc)~~ of this rule is a Category II violation.