



Washington State Liquor Control Board

Clearing the Path for Recreational Marijuana Licensure Summary of Licensing Status February 19, 2014

Two Decisions*

The Washington State Liquor Control Board is ready to begin issuing recreational marijuana licenses within the next few weeks. For the agency to continue to move forward, it had to make two decisions regarding:

- a) How to address local government bans and moratoria; and
- b) How to align the production cap with the total canopy represented in producer applications

Decision A: Addressing Local Bans and Moratoria

Background

Several communities across Washington State currently have enacted a ban or moratorium that locally prevents a recreational marijuana business from opening within their jurisdiction. Moratoria are temporary. It is not clear of the communities that currently have moratoriums in place how many will lift them later. Jurisdictions that have enacted bans are expected to retain that status.

At the Board's request, Washington State Attorney General Bob Ferguson reviewed the question of whether local government could formally or effectively ban recreational marijuana businesses established by Initiative 502. On January 29, 2014, the Attorney General issued a formal Opinion that essentially states that local governments are not pre-empted by I-502 from establishing a ban. This AG Opinion is not legally binding.

The Issue

The WSLCB is left with the choice of whether or not to issue licenses in communities with bans or moratoriums.

Decision

The WSLCB will continue forward with its original position and issue licenses to qualified applicants regardless of local bans or moratoria.

After a careful review and consideration of the risks of either choice, the LCB has concluded that there is nothing in I-502 or other state law that allows the LCB to not issue licenses to qualified applicants.

Barring the ability to deny a license, the LCB determined that it is prudent to continue issuing them. A state license is not permission to operate, only that an applicant meets state requirements for licensure. Regardless of a ban or moratorium, as stated in the rules, a licensee must be compliant with local regulations in order to operate.

Decision B: Aligning Production Cap with Total Canopy in Producer Applications

Background

The Department of Justice (DOJ) was clear in its August 29, 2013 memo that said any state establishing a recreational marijuana system must ensure that it is tightly controlled. Washington's system is tightly controlled from seed (or clone) to sale. Among the DOJ's key concerns was diversion of product out of state from licensed producers, processors and retailers.

To minimize diversion, the LCB used consumption data during the rule-making process to identify the amount of marijuana needed to serve the emerging market without exceeding it. Further, based on advice from the our consultant – BOTEK Analysis Corporation – the LCB is expecting to capture up to 25 percent of the market by the end of the first year. That percentage is expected to increase in the years ahead.

Under Washington's system, the producers must produce 40 metric tons of useable marijuana to meet demand. 40 metric tons is approximately equal to 2 million square feet of canopy space. Extrapolating production data from the initial 1,500 applications, the LCB estimates that the canopy of marijuana licenses would be about 35 million square feet.

The Issue

The total production canopy must be reduced from 35 million square feet to 2 million.

Decision

The rules are flexible and allow the Board to limit production and licensure as needed. To provide certainty for our license applicants and to get Washington's recreational market started, the LCB is moving forward with the below solution.

- Those who have applied for **multiple licenses will be limited to one license**
 - Applicants will have the option of withdrawing their other applications or the LCB will hold their applications indefinitely.
- All tiers will be temporarily **reduced to 70 percent of their tier**
 - The LCB may increase the production to full capacity allowed within its tier once the market is established and maturing.

The LCB's action reduced canopy to about 12 million square feet. This will be further reduced for the following four reasons:

1. We are currently seeing a 26 percent failure rate among applications (lack a location, don't meet requirements for a license, etc.). That percentage will likely increase as the LCB continues to process applications.
2. We anticipate a significant business failure rate once the market is up and running. Colorado estimated that 50 percent of its medical marijuana businesses failed within 18 months after they transitioned into the state-licensed medical system.
3. Bans, moratoriums, and local regulations will prevent many businesses to open
4. We will have a "rolling open." We will continue to issue licenses as they are available (not all at once). We will know more later, via the traceability system, of much is actually produced. We will consider adjustments as we know more.

** These summary sheets are prepared to help explain the proposed Board action. These advance copies apply only if the Board approves staff recommendations.*

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