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OFFICE OF THE  
SECRETARY

MURIEL BOWSER  
MAYOR

JAN 22 2018

The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia  
John A. Wilson Building  
1350 Pennsylvania Avenue, N.W., Suite 504  
Washington, D.C. 20004

Dear Chairman Mendelson:

Enclosed for Council consideration and approval is the "Medical Marijuana Facility Failure to Open or Operate Rulemaking Approval Resolution of 2018."


This resolution would approve rulemaking to amend Section 5303 (Failure to Open or Operate) of Chapter 53 (General Registration Requirements) of Title 22-C (Medical Marijuana) of the District of Columbia Municipal Regulations, adopted by the Department on an emergency basis.

The Council of the District of Columbia has declared the existence of an emergency need to increase the number of medical marijuana dispensaries that may be registered to operate in the District from five (5) to six (6), and to require the Mayor to open an application period for the registration of a dispensary in Ward 7 or Ward 8. The impetus of that emergency legislation is that a quarter of the qualifying patients in the District's Medical Marijuana Program live in Wards 7 and 8, but there are no dispensaries east of the Anacostia River, resulting in a geographical barrier to access to these healthcare services. To further ensure adequate access to medical marijuana for patients located in Wards 7 and 8, the Department exercised its authority under D.C. Official Code § 7-1671.06(d)(2)(A) to increase the number of dispensaries registered to operate in the District by emergency and proposed rulemaking to seven (7) so that a dispensary could be registered in Ward 7 and in Ward 8. This rulemaking action is necessary to ensure that applicants which have been selected and deemed eligible for registration proceed expeditiously to open their facilities for business and remain operational for the District's qualified patients.

I urge the Council to take prompt and favorable action on the enclosed legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Muriel Bowser".  
Muriel Bowser

  
Chairman Phil Mendelson  
at the request of the Mayor

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A PROPOSED RESOLUTION

\_\_\_\_\_  
IN THE COUNCIL OF THE DISTRICT OF COLUMBIA  
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Chairman Phil Mendelson, at the request of the Mayor, introduced the following resolution, which was referred to the Committee on \_\_\_\_\_.

To approve proposed rules adopted by the Department of Health on an emergency basis to ensure that applicants for a medical marijuana facility who have been selected and deemed eligible for registration proceed expeditiously to open their facilities for business and remain operational for the District’s qualified patients.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this resolution may be cited as the “Medical Marijuana Facility Failure to Open or Operate Rulemaking Approval Resolution of 2018.”

Sec. 2. Pursuant to section 14(b) of the Legalization of Marijuana for Medical Treatment Initiative of 1999 (Act), effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code § 7-1671.13(b)), the Council approves the proposed rulemaking adopted by the Department of Health on an emergency basis on \_\_\_\_\_, amending section 5303 of chapter 53 of Title 22-C of the District of Columbia Municipal Regulations to ensure that applicants for a medical marijuana facility who have been selected and deemed eligible for registration proceed expeditiously to open their facilities for business and remain operational for the District’s qualified patients.

Sec. 3. Fiscal impact.

1           The Council adopts the fiscal impact statement in the committee report of the  
2 Budget Director as the fiscal impact statement required by section 4a of the General  
3 Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C.  
4 Official Code § 1-301.47a).

5           Sec. 4. The Council shall transmit a copy of this resolution, upon its adoption, to  
6 the Mayor, the Director of the Department of Health, and the Administrator of the Office  
7 of Documents and Administrative Issuances.

8           Sec. 5. This resolution shall take effect immediately.

## DEPARTMENT OF HEALTH

### NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to Section 14 of the Legalization of Marijuana for Medical Treatment Amendment Act of 2010 (Act), effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code § 7-1671.13 (2012 Repl.)), and Mayor's Order 2011-71, dated April 13, 2011, hereby gives notice of the adoption of, on an emergency basis, the following amendments to Subtitle C (Medical Marijuana) of Title 22 (Public Health and Medicine) of the District of Columbia Municipal Regulations (DCMR).

This emergency action is necessary to protect the public by ensuring that there are a sufficient number of dispensaries open for business to adequately supply the needs of the District's registered patients. A quarter of the qualifying patients in the District's Medical Marijuana Program live in Wards 7 and 8, but there are no dispensaries east of the Anacostia River, resulting in a geographical barrier to access to these healthcare services. To further ensure adequate access to medical marijuana for patients located in Wards 7 and 8, the Department exercised its authority under D.C. Official Code § 7-1671.06(d)(2)(A) to increase the number of dispensaries registered to operate in the District by emergency and proposed rulemaking to seven (7) so that a dispensary could be registered in Ward 7 and in Ward 8.

The Department is aware that, in previous rounds, a significant number of the applicants that were selected to receive registrations took many months to complete the requirements for registration and then to open for business. This emergency action is necessary to immediately preserve and promote the health, safety, and welfare of the public, and is being taken to ensure that applicants which have been selected and deemed eligible for registration proceed expeditiously to open their facilities for business.

This emergency rule was adopted on December 14, 2017 and became effective immediately on that date. The emergency rule will expire one hundred twenty (120) days from the date of adoption, April 13, 2018, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

The Director of the Department of Health also gives notice of her intent to adopt this rule, in final, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, and upon completion of the thirty (30) day Council period of review if the Council does not act earlier to adopt a resolution approving the rules.

**Chapter 53, GENERAL REGISTRATION REQUIREMENTS, of Title 22-C, MEDICAL MARIJUANA, is amended as follows:**

**Section 5303, FAILURE TO OPEN OR OPERATE, is amended to read as follows:**

**5303 FAILURE TO OPEN OR OPERATE**

5303.1 For purposes of this section, "deemed eligible" shall mean:

- (a) The applicant has met all application prerequisites;
- (b) The applicant has been selected by the Director for registration; and
- (c) The applicant is only pending the remaining necessary approvals required under this title from MPD, DCRA, OTR, and the Department, including passing the pre-opening inspection.

- 5303.2 Being “deemed eligible” does not guarantee that an applicant will receive a registration, or create a contract between the applicant and the Department. The medical marijuana laws of the District of Columbia and the federal government are subject to change at any time and that the District of Columbia shall not be liable as a result of these changes.
- 5303.3 An applicant that has been deemed eligible for a dispensary registration shall complete the steps to obtain a registration and open for business within one hundred twenty (120) days from the date of receipt of the notice of selection.
- 5303.4 If an applicant that has been deemed eligible for a dispensary registration, or a registrant that has received a dispensary registration, fails to open for business within one hundred twenty (120) days, the Director shall withdraw the applicant’s selection, and select the next highest ranking applicant in its place. If a registration has been issued, the registrant shall surrender and return the registration to the Department.
- 5303.5 If there are no applicants pending, the Director may open the application process to select a replacement dispensary or cultivation center applicant.
- 5303.6 The Director may grant an applicant that has been deemed eligible for a dispensary registration an extension at his or her discretion for good cause shown.
- 5303.7 A registration for a dispensary or cultivation center shall be returned to the Director if the dispensary or cultivation center fails to operate for any reason for more than sixty (60) days after it has opened for business.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to Phillip Husband, General Counsel, Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 6<sup>th</sup> Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 8:00 a.m. and 4:00 p.m. at the address listed above, or by contacting Angli Black, Paralegal Specialist, at [Angli.Black@dc.gov](mailto:Angli.Black@dc.gov), (202) 442-5977.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of the Attorney General

Legal Counsel Division



**MEMORANDUM**

**TO:** Lolita S. Alston  
Director  
Office of Legislative Support

**FROM:** Janet M. Robins  
Deputy Attorney General  
Legal Counsel Division

**DATE:** January 8, 2018

**SUBJECT:** Legal Sufficiency Review of Draft Approval Resolution, the “Medical Marijuana Facility Failure to Open or Operate Rulemaking Approval Resolution of 2018”  
(AE-18-007)

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**This is to Certify that** this Office has reviewed the above-referenced draft approval resolution and has found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 202-724-5524.

A handwritten signature in blue ink, appearing to read 'Janet M. Robins'. The signature is written in a cursive, flowing style.

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Janet M. Robins