



Topic: Petition for Adoption, Amendment, or Repeal of a State Administrative Rule – Curbside and Walk-up Window Sales at Cannabis Retail Stores
Date: July 20, 2022
Presented by: Jeff Kildahl, Policy and Rules Coordinator

Background

On May 24, 2022, Jeffrey Clark submitted a petition for adoption of a new state administrative rule. Mr. Clark is requesting a new rule to allow cannabis retail licensees to conduct curbside and walk-up window sales at retail cannabis stores.

In the rule petition, Mr. Clark states:

- 1. NEW RULE - I am requesting the agency to adopt a new rule.

Allow Curbside and Walk-up Window Sales at retail cannabis stores

 - The subject (or purpose) of this rule is: _____

See additional pages
 - The rule is needed because: _____

Retail cannabis customers, medical cannabis patients, retail cannabis employees
 - The new rule would affect the following people or groups: _____

Issue

Whether or not the Board should adopt a new rule section or amend an existing rule section in chapter 314-55 WAC to allow curbside and walk-up window sales at retail cannabis stores on a permanent basis.

Authority

RCW 69.50.390(1) prohibits retail cannabis stores from operating a drive-through purchase facility where marijuana products are sold at retail and dispensed through a window or door to a purchaser who is either in or on a motor vehicle or otherwise located outside of the licensed premises at the time of sale.

WAC 314-55-110(3)(d) requires cannabis licensees and their employees to conduct the business and maintain the licensed premises, surrounding area, and vehicles transporting product, in compliance with chapter 69.50 RCW, the Uniform Controlled Substances Act.

Analysis

In 2012, Initiative 502 legalized the use of cannabis products for adults 21 and over, and established the framework for the legal cannabis market in Washington state. Later, in 2015, Second Engrossed Second Substitute House Bill 2136 placed restrictions on certain methods of selling cannabis, and these requirements were codified in RCW 69.50.390. These restrictions prohibit retail cannabis licensees from operating a vending machine for the sale of cannabis products, and also prevents cannabis sales and dispensing of cannabis products through a window or door to a purchaser who is in a motor vehicle or otherwise outside of the licensed premises.

In order to promote social distancing best practices after the rise of the COVID-19 pandemic, the LCB created temporary allowances in March 2020 to permit curbside and walk-up sales of cannabis products. These allowances temporarily suspended enforcement of the provisions of RCW 69.50.390, which prohibit such sales, and were created in addition to mandatory measures for retail establishments set forth by Governor Inslee and the Centers for Disease Control and Prevention. Initially, the allowance provided that retail licensees were permitted to sell and dispense cannabis products through curbside sales only to qualified medical patients. As the pandemic progressed and efforts to prevent the spread of disease intensified, the allowance was expanded to allow curbside service of cannabis products to all consumers.

Under the temporary allowances, curbside and walk-up cannabis sales were permitted to all adult customers so long as the retail licensee complied with the following guidance regarding these sales:

- Sales could not be conducted via drive-through windows;
- Customer identification checks were still required;
- Video camera coverage was mandatory for monitoring and recording the designated sales area;
- Outdoor sales from a tent or kiosk were not allowed;
- Only existing pass-through windows could be utilized; and
- Curbside sales areas were required to be stationary and physically designated on the leasehold property with markers, such as cones or painted parking spots.

The temporary allowances for curbside cannabis and walk up cannabis sales began in March 2020. On June 30, 2021, Governor Inslee lifted most COVID-19 business restrictions put in place based on health and safety proclamations or Emergency Orders when all business sectors were allowed to return to pre-pandemic capacity and operations, with limited exceptions. The LCB allowances for curbside and walk-up cannabis sales were not extended, and were ended by the LCB on July 31, 2021.

On September 2, 2021, the LCB reactivated the allowances for curbside and walk-up sales through October 31, 2021 due to a dramatic increase in COVID-19 cases resulting from the Delta variant of the COVID virus. The allowances were then extended in October 2021, and remained in effect until June 1, 2022.

In the rulemaking petition submitted to the LCB on May 26, 2022, Mr. Clark expresses his desire as a retail cannabis licensee to resume curbside and walk-up cannabis sales. Under the allowances, Mr. Clark conducted cannabis sales exclusively through curbside and walk-up transactions. When the allowances initially expired in July 2021, Mr. Clark resumed indoor-only sales at his store. After the allowances were reinstated in September 2021, he resumed curbside and walk-up sales at his retail location.

Mr. Clark notes the likelihood that the transmission COVID-19 will continue for some time to come, especially as social distancing and mask wearing precautions are relaxed. He notes that his retail location does not have adequate space in the indoor retail area to practice social distancing for staff and customers, and reports that only about a quarter of his retail customers wear a mask while shopping at the indoor store.

Mr. Clark also believes that curbside and walk-up sales are also potentially safer for some retail locations in that they may deter potential robberies and thefts, a growing threat to cannabis retailers. The curbside and walk-up sales allowances permitted customers to make purchases while remaining outside the locked doors of the building, preventing a potential robbery from occurring inside the store.

Public Health and Safety Concerns

Public health and safety concerns include the need to continue with required identification checks of customers to prevent youth access, and concerns that customers may attempt to make purchases from their vehicles without presenting identification. The allowances for curbside service may present another risk in that cash transactions for cannabis products take place outdoors, where the customers may be vulnerable to robbery.

Conclusion

Although the LCB created curbside and walk-up cannabis sales allowances during the COVID-19 pandemic, these allowances were intended to be temporary measures to promote social distancing best practices. With the recent decline in numbers of new COVID-19 cases, these allowances were not renewed by the LCB.

RCW 69.50.390 prohibits curbside and walk-up cannabis sales, and WAC 314-55-110 requires cannabis licensees to conduct business in compliance with chapter 69.50 RCW. In order to permanently allow curbside and walk-up cannabis sales, chapter 69.50 RCW must first be amended to allow curbside and walk-up cannabis sales on a permanent basis in rule.

Recommendation

Director’s Office staff recommends that consistent with RCW 34.05.330(1)(a)(i), the Board denies Mr. Clark’s rule petition request to allow curbside and walk-up window sales at cannabis retail stores, received on May 26, 2022, for the reasons described above.

Board Action

After considering the recommendation of Director’s Office staff, the Board accepts/denies the petition received on May 26, 2022, from Mr. Clark for the reasons stated herein.

_____ Accept _____ Deny _____
David Postman, Chair Date

_____ Accept _____ Deny _____
Ollie Garrett, Board Member Date

_____ Accept _____ Deny _____
Jim Vollendroff, Board Member Date

Attachments

- 1. Rule petition from Jeffrey Clark received May 26, 2022
- 2. Letter from Jeffrey Clark received May 26, 2022
- 3. Acknowledgement of rule petition
- 4. RCW 69.50.390
- 5. WAC 314-55-110



PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF A STATE ADMINISTRATIVE RULE

[Print Form](#)

In accordance with [RCW 34.05.330](#), the Office of Financial Management (OFM) created this form for individuals or groups who wish to petition a state agency or institution of higher education to adopt, amend, or repeal an administrative rule. You may use this form to submit your request. You also may contact agencies using other formats, such as a letter or email.

The agency or institution will give full consideration to your petition and will respond to you within 60 days of receiving your petition. For more information on the rule petition process, see Chapter 82-05 of the Washington Administrative Code (WAC) at <http://apps.leg.wa.gov/wac/default.aspx?cite=82-05>.

CONTACT INFORMATION *(please type or print)*

Petitioner's Name Jeffrey Clark

Name of Organization JWC Retailers/SKJ Industries

Mailing Address PO Box 31128

City Bellingham State WA Zip Code 98228

Telephone 3603251201 Email jeff@thejointbellingham.com

COMPLETING AND SENDING PETITION FORM

- Check all of the boxes that apply.
- Provide relevant examples.
- Include suggested language for a rule, if possible.
- Attach additional pages, if needed.
- Send your petition to the agency with authority to adopt or administer the rule. Here is a list of agencies and their rules coordinators: <http://www.leg.wa.gov/CodeReviser/Documents/RClist.htm>.

INFORMATION ON RULE PETITION

Agency responsible for adopting or administering the rule: WSLCB

1. NEW RULE - I am requesting the agency to adopt a new rule.

Allow Curbside and Walk-up Window Sales at retail cannabis stores

The subject (or purpose) of this rule is: _____

See additional pages

The rule is needed because: _____

Retail cannabis customers, medical cannabis patients, retail cannabis employees

The new rule would affect the following people or groups: _____

2. AMEND RULE - I am requesting the agency to change an existing rule.

List rule number (WAC), if known: _____

I am requesting the following change: _____

This change is needed because: _____

The effect of this rule change will be: _____

The rule is not clearly or simply stated: _____

3. REPEAL RULE - I am requesting the agency to eliminate an existing rule.

List rule number (WAC), if known: _____

(Check one or more boxes)

It does not do what it was intended to do.

It is no longer needed because: _____

It imposes unreasonable costs: _____

The agency has no authority to make this rule: _____

It is applied differently to public and private parties: _____

It conflicts with another federal, state, or local law or rule. List conflicting law or rule, if known: _____

It duplicates another federal, state or local law or rule. List duplicate law or rule, if known: _____

Other (please explain): _____

Hello,

My name is Jeff Clark and I am the owner of a retail cannabis store located in Bellingham. The address is 1321 W. Bakerview Rd. and the building is a former coffee shop. The entire building is less than 400 square feet and the sales floor is 10x15 or 150 square feet. Since the pandemic began, we have operated exclusively via curbside at our drive-up lane or by using our walk-up window as the store does not have the space to allow for staff and customers to maintain a six-foot social distance. When the mask mandate was lifted the first time, in August of 2021, we were forced to allow customers back into the store as the curbside and walk-up window allowances were removed. We would commonly have two staff members and two customers inside the building on the sales floor at the same time, making it impossible to maintain social distancing. Several customers stopped shopping with us due to safety concerns. Luckily, the Liquor and Cannabis Board brought back the curbside and walk-up allowances and we were able to resume operating in that capacity in September 2021. Now the date for the allowances to end once again has been set for June 1st of 2022 and I would like to express our (myself my staff, and our customers) concerns regarding this and ask that the Board continue to allow curbside and walk-up service. I understand that the law cannot be changed by the LCB and I have written the office of the governor and all my district's legislators to ask that they consider doing so in the next legislative session. The LCB does have the authority to extend these measures as they have in the past, while we attempt to get the law amended to allow permanent curbside and/or walk-up service.

It is fairly certain that we will be living with covid just as we do the flu permanently. Masks, social distancing, and sanitation procedures are the new norm. Even though the mask mandate has ended, many people still choose to wear a mask while in public places. Around 25% of our customers still wear a mask and prefer to maintain social distance. In the last two weeks (May 9-22) in Washington there were 41,445 new Covid cases or an average of 2,960 per day. On May 19 there were 5,433 new cases. Quite simply, this pandemic is still not over and will only become an endemic if we continue to follow safe guidelines. Curbside has become a normal way to shop for products. Grocery stores, hardware stores, restaurants, and many other businesses continue to offer a curbside purchase option for their customers. As you are aware, many cannabis customers are also medical patients purchasing their medicine. Some suffer from conditions that make them more susceptible to become sick and die from Covid. We feel that it is in the best interest of our customers and staff's health and safety to be allowed to continue to offer curbside and walk-up purchase options.

As our walk-up window and curbside lane is literally one step out of the door, all transactions are recorded via our security camera system. It also bears mentioning that there is another benefit to operating solely as a walk-up and curbside store is that no customer is ever inside the store and our doors remain locked in between transactions. This makes our store much safer in terms of being robbed. We all know that cannabis stores have become favored targets of armed robbers and there have even been instances of staff losing their lives. My staff all feel much safer operating the way we do now. Having multiple customers inside such a small space will not only be unsafe from a Covid standpoint but will increase the possibility of theft and/or armed robbery. For these reasons, we request that the LCB extend these emergency allowances until at least after the next legislative session so that we may be able to get the law permanently amended.

Respectfully,

Jeff Clark

From: [Kildahl, Jeff \(LCB\)](#)
To: [Jeff Clark; LCB DL Rules](#)
Subject: RE: Petition to Amend Administrative Rule
Date: Tuesday, May 24, 2022 12:24:00 PM

Good Afternoon Mr. Clark,

Thank you for your petition to adopt, amend, or repeal state administrative rules.

Your petition was received today, Tuesday, May 24, 2022. Consistent with [RCW 34.05.330](#) and [WAC 82-05-040](#), the Board has 60 days after submission of a rulemaking petition to either:

(a) deny the petition in writing, stating (i) its reasons for the denial, specifically addressing the concerns raised by the petitioner, and, where appropriate, (ii) the alternative means by which it will address the concerns raised by the petitioner, or

(b) initiate rule-making proceedings in accordance with RCW [34.05.320](#).

The Board will have until July 23, 2022 to take action as detailed above.

Please let me know if you have any questions.

Sincerely,
Jeff

Jeff Kildahl
Policy and Rules Coordinator
Washington State Liquor and Cannabis Board
360-664-1781
jeff.kildahl@lcb.wa.gov

RCW 69.50.390**Attachment 4****Licensed retailers prohibited from operating vending machines, drive-through purchase facilities for the sale of marijuana products.**

*** CHANGE IN 2022 *** (SEE **1210-S2.SL**) ***

(1) A retailer licensed under this chapter is prohibited from operating a vending machine, as defined in RCW **82.08.080**(3) for the sale of marijuana products at retail or a drive-through purchase facility where marijuana products are sold at retail and dispensed through a window or door to a purchaser who is either in or on a motor vehicle or otherwise located outside of the licensed premises at the time of sale.

(2) The state liquor and cannabis board may not issue, transfer, or renew a marijuana retail license for any licensee in violation of the provisions of subsection (1) of this section.

[**2015 2nd sp.s. c 4 § 1301.**]

NOTES:

Findings—Intent—Effective dates—2015 2nd sp.s. c 4: See notes following RCW **69.50.334.**

HTML has links - PDF has Authentication

Attachment 5

PDF WAC 314-55-110**What are my responsibilities as a marijuana licensee?**

(1) Marijuana licensees are responsible for the operation of their licensed business in compliance with the marijuana laws and rules of the WSLCB, chapters **69.50** and **69.51A** RCW, **314-55** WAC, and any other applicable state laws and rules.

(2) The penalties for violations of marijuana laws or rules are in WAC **314-55-515** through **314-55-535**, as now or hereafter amended. The rules also outline aggravating and mitigating circumstances that may affect what penalty is applied if a licensee or employee violates a marijuana law or rule.

(3) Licensees and their employees must conduct the business and maintain the licensed premises, surrounding area, and vehicles transporting product, in compliance with the following laws, as they now exist or may later be amended:

(a) Titles **9** and **9A** RCW, the criminal code;

(b) Title **66** RCW, the liquor laws;

(c) Chapters **70.155**, 82.24, and **82.26** RCW and RCW **26.28.080**, the tobacco laws;

(d) Chapter **69.50** RCW, the uniform controlled substances laws; and

(e) Chapter **69.51A** RCW, the medical marijuana laws.

(4) Licensees have the responsibility to control their conduct and the conduct of employees, customers, and visitors on the licensed premises at all times. Except as otherwise provided by law, licensees or employees may not:

(a) Be disorderly or apparently intoxicated by liquor, marijuana, or controlled substances on the licensed premises;

(b) Permit any disorderly person to remain on the licensed premises;

(c) Engage in or allow behavior on the licensed premises that provokes conduct which presents a threat to public safety;

(d) Engage, or permit any employee or other person to engage in, conduct on the licensed premises which is prohibited by any portion of Title **9**, **9A**, or **66** RCW, or chapters **69.50** and **69.51A** RCW;

(e) Engage in or permit any employee or other person to engage in the consumption of any type of marijuana, usable marijuana, marijuana concentrate, or marijuana-infused product on the licensed premises.

[Statutory Authority: RCW **69.50.342** and **69.50.345**. WSR 16-11-110, § 314-55-110, filed 5/18/16, effective 6/18/16.]