

Will Cannabis Delivery Survive in California's Legal Market?

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In this May, 2017, photo, Andre Shavers, who runs a marijuana delivery business, checks his delivery bag in Oakland, Calif. The state's new licensing regulations are consolidating the delivery business. Those with licenses may flourish; those without may not. (AP Photo/Eric Risberg)

With a marketing slogan so exotically California – *A Feel Good Drug Boutique* – the Urbn Leaf symbolized San Diego's cannabis reawakening as a destination for sun, sand and sativa.

Securing a state and local license can have immediate benefits. Last year, San Diego's Urbn Leaf dispensary employed 10 delivery drivers. Today they have 115.

After years of local bans and law enforcement crackdowns drove out as many as 100 medical marijuana stores, the dispensary secured one of the city's first dozen retail sales licenses in 2017.

Now Urbn Leaf, which has opened a second San Diego store with plans for a third, is reaping a major windfall through its new cannabis delivery business. Ironically, its business bonanza is now being helped by San Diego's strict policies barring many other delivery businesses.

In authorizing a locally regulated cannabis economy, the city last year approved a cap of 36 retail dispensaries for walk-in customers. That same ordinance gave those stores the exclusive right to secure additional retail delivery licenses.

That has led to new opportunities and a hiring spree for Urbn Leaf.

“We can provide delivery within 20 minutes anywhere in the city and to (nearby) cities that allow delivery service – La Mesa, Chula Vista and Coronado Island,” says Urbn Leaf’s owner, Will Senn, 32. After opening in 2017, Senn’s business started offering limited delivery last summer—and now its service is booming.



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Indie Drivers Get Shut Out

San Diego’s local licensing rules expanded opportunities for Urbn Leaf and others, but they froze out an untold number of delivery services that—until recently—operated independently of retail dispensaries. Those unlicensed services emerged in the past few years to serve tens of thousands of consumers as the city and San Diego County shuttered storefront dispensaries in 2012.

‘It’s going to be a season of transition. The state has been clear: Working with licensed dispensaries is the path forward for California and that’s what we’re going to do.’

David Mack, Sr. Vice President, Eaze

Now, in San Diego and elsewhere in California, a relative handful of retail cannabis companies are obtaining licenses in the state’s new era of regulation. Meanwhile, the state’s existing delivery-only cannabis companies face a stark choice: operate in a legally risky gray area or close up shop.

Last June, California passed legislation, Senate Bill 94, which expanded the definition of retail cannabis sales from walk-in retail dispensaries to “non-storefront dispensaries” – such as offices or warehouse spaces – that dispatch delivery drivers.

The bill, which consolidated California’s medical marijuana regulations with voter-approved adult use rules under Proposition 64 in 2016, required delivery drivers to be employees of state-permitted cannabis retailers. Couriers were required to possess a valid driver’s license as well as documentation of all delivery orders.

State vs. Local Control

Still, the Golden State’s legal cannabis delivery economy remains densely muddled.

The state may license and allow delivery services, but local municipalities retain the legal right to prohibit them. Numerous cities and counties either ban cannabis delivery outright or restrict delivery to existing storefront cannabis companies. Confusion has mounted in the past four weeks, as the state has begun issuing delivery licenses in a bureaucratic trickle. At the same time, unauthorized—but determined—delivery operators scramble to stay on the road.

To date, California’s Bureau of Cannabis Control has issued 73 temporary permits to delivery-only businesses in only 10 of California’s 482 municipalities. Some 143 licensing applications have come in for non-storefront delivery businesses. Those 143 applications represent only a splash in the vast sea of unlicensed mobile services that were operating in California a year ago.



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What About SpeedWeed and Eaze?

The future of California’s largest and well-known delivery services, SpeedWeed and Eaze, remains unclear. SpeedWeed built up a huge clientele in the mid-2010s by delivering all over the Los Angeles region. Eaze succeeded in a similar way in the Bay Area.

In 2016, Los Angeles City Attorney Mike Feuer **prohibited**

SpeedWeed from delivering to any address within the city limits. Because of LA’s patchwork quilt of incorporated towns—districts like Santa Monica, West Hollywood, and Beverly Hills are actually separate cities—the banishment slowed SpeedWeed’s growth, but didn’t shut the company down.

Eaze, which has built a strong Bay Area following with its mobile app and an aggressive advertising campaign, briefly suspended delivery orders in San Francisco in late January. The reason? The company faced a shortage of business partners that had secured valid state

"In moving through Jan. 1 (onset of adult use sales) and the licensing process, our focus has been on getting it right rather than getting it fast," Eaze Senior Vice-President David Mack said in an interview with Leafly.

Different Cities, Different Rules



In this 2017 photo, cannabis delivery courier Andre Shavers walks up a street to make a stop in Oakland, Calif. (AP Photo/Eric Risberg)
Mack said the company resumed mobile delivery orders for San Francisco within days of the Jan. 22 service suspension. It is now securing additional licensed delivery relationships, having signed on with San Diego's Urbn Leaf as well as other traditional dispensaries. But many former partners haven't been able to secure state or local licenses.

"It is going to be a season of transition," Mack said. "In the regulatory environment we're in, the state has been very clear: Working with licensed dispensaries is the path forward for California and that's what we're going to do."
Still there is legal confusion over the ability of delivery companies licensed in one city to serve customers in nearby communities where bans are in place or rules are unclear. The state's Bureau of Cannabis Control is expected to refine delivery policies later this year.
"Regardless of what jurisdiction you're delivering to, you've got to follow state laws and regulations," said Lori Ajax, chief of the state regulatory bureau. "As more and more jurisdictions ban, I think we have to look at specific (local) ordinances on delivery. We need to

find clarification."

"I'm going to tell you it's very different how cities and counties around the state have drafted their ordinances. If you're looking for everything to be in black and white, it's not."



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How Big Cities Are Handling Delivery

As Ajax says, there's no easy blueprint here. Each of the state's major cities are creating their own regulations for delivery. Here's a sample:

In **Los Angeles**, unauthorized delivery-only companies long operated despite the city's ban on all cannabis deliveries. Recently, the city approved policies that allow existing storefront dispensaries to offer delivery, but many are still waiting to get state licenses for over-the-counter adult use

In **San Jose**, only six of 16 licensed local dispensaries are currently offering delivery. In San Francisco, six non-storefront operators have secured state retail sales permits for medical cannabis, one for adult use and two for both adult use and medical.

Oakland, with by far the state's most robust permitted cannabis delivery sector, has 23 state-licensed delivery companies, including seven serving adult use consumers, three for medicinal customers and 13 for both.

In **San Diego**, Urbn Leaf quickly exploited the city's path to delivery for city-permitted dispensaries only. In December, the dispensary had 10 delivery drivers. Since then, Urbn Leaf has hired 105 additional drivers, putting them on the payroll with employee tax forms and \$12-an-hour salaries, plus mileage expenses.

Mobile Sales Are Booming

Licensed for both medical cannabis and adult use delivery, Urbn Leaf is already generating 25 percent of its business from mobile sales. Its delivery driver ranks have boosted its total workforce to 220 employees.

"We have hired a very diverse group," Senn said, enthusiastically describing his new delivery team – licensed workers with auto insurance (and a company umbrella policy.)

He said his drivers are "your next-door neighbor's mother. It's your aunt. It's the college student excited about cannabis. It's the 35-year-old who wants to change careers, loves this industry and wants to get in the door."



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Cities Cracking Down on Unlicensed Operators

Elsewhere in San Diego—and across California—the door is closing on people such as Elizabeth Wilhelm.

"The dispensaries that are licensed and can do delivery don't want us in the game," said one unlicensed operator. "They want to create an oligarchy to make sure we're not in the business."

In 2012, as city closure notices and a federal crackdown on California dispensaries shuttered cannabis stores across the state, Wilhelm started a mobile delivery company to provide cannabis to stranded residents with doctors' recommendations for medical use.

Back then, there was no such thing as a delivery license. But Wilhelm formed a medical marijuana collective under California's then-nebulous cannabis rules, obtained a generic state seller's permit and registered to pay sales taxes, which she did dutifully.

"This was my baby, my passion," said Wilhelm, 50. She drove her pickup truck throughout San Diego and surrounding communities, earning a modest living delivering marijuana buds, edibles and tinctures to customers with medical needs. "It was patients over profits," she said.

As many as 300 delivery services sprouted in the San Diego region, many advertising their wares on Weedmaps and Leafly, and through local alternative weeklies and other sites.

Wilhelm soon headed the San Diego Cannabis Delivery Alliance, arguing for local ordinances and state legislation to authorize delivery companies that operated out of business offices or warehouses—not shimmering retail stores serving walk-in cannabis patients.

But her efforts to convince San Diego to allow delivery-only businesses failed, and Wilhelm shut down her business. Bleak days and hard decisions consumed other unlicensed local delivery services. "I would estimate half of those went into the black market," Wilhelm told Leafly, "and the rest of them are gone."

Meanwhile, she watched as a handful of retail dispensaries made big-time expansions to serve the delivery market.

“The dispensaries that are licensed and can do delivery don’t want us in the game,” she said. “They want to create a serious oligarchy to make sure we’re not in the business. I don’t feel I can safely or legally serve patients anymore.”



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In San Diego: Delivery From Storefront Only

Senn of Urbn Leaf says he believes that the city got it right in allowing deliveries only from the city’s brick-and-mortar dispensaries.

“Delivery should definitely be permitted only through a licensed retailer,” he said. “There is far more security and safety because of the regulatory oversight for both the consumers and staff. And it’s a lot easier for the city to regulate an actual store.”

That hasn’t stopped some unpermitted delivery companies from continuing to operate—and openly advertising their services. In the legal licensed era, though, some cities are acting quickly to shut them down.

Weedmaps Pushes Back

On Jan. 9, San Diego City Council member Chris Cate fired off a letter to Dustin McDonald, vice president of governmental relations for the Irvine, Calif.-based Weedmaps. Cate asked Weedmaps to pull advertising for unlicensed delivery services prohibited in San Diego. A city attorney’s memo the same day suggested potential legal actions if Weedmaps refused.

San Diego’s rules are so limiting, said one Weedmaps official, that they ‘will drain taxpayer dollars and rob the city of jobs.’

“Currently, Weedmaps serves as an online advertising platform for hundreds of marijuana delivery services in the City of San Diego. A majority of these delivery services are considered illegal under the Municipal Code,” Cates wrote. “In an effort to ensure compliance with our City laws and the safe and legal access to marijuana, we respectfully request your voluntary compliance to cease the advertising on marijuana delivery services considered illegal.”

In a blistering written response from McDonald, Weedmaps made no concessions on pulling its delivery service ads, including 44 recent postings for San Diego delivery companies. Instead, the company assailed San Diego officials as short-sighted for imposing severe restrictions on the delivery market.

“While your letter focuses on advertising associated with these businesses,” McDonald wrote, “it seems the real issue is that the City has enacted a licensing and zoning system so limited that it ensures a robust unlicensed market that will drain taxpayer dollars and rob the city of jobs and tax revenue.”

The Weedmaps executive added: “Given that San Diego has a population of approximately 1.4 million and 34.9 million tourist visitors, it stretches the bounds of rationality to think that 17 shops can have any hope of meeting consumer demand without a large illegal market springing up or surrounding cities rushing to meet the shortfall.”



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‘Magic Paperwork’ Allowed Delivery to Flourish

Hundreds of delivery services throughout California have long operated on ill-defined fringes of the legal cannabis market.

Here’s how it worked, in many cases. Without state or local permits, delivery services—sometimes created by individual cannabis growers—organized as medical marijuana collectives. Drivers, card-holding medical marijuana patients all, delivered to fellow medicinal users who signed up as collective members.

Omar Figueroa, a leading California cannabis law attorney, said the businesses existed based on “binders full of magic paperwork” offering a tenuous legal defense in the case of stops by police. But California’s collective model will officially vanish in January, 2019, one year after the commencement of state licensing and legal adult use sales.

Now many delivery services are struggling to find local jurisdictions that will license them. Those still operating without licenses are taking legal risks, Figueroa said.

"I tell my clients there is no Weedmaps defense under California law," Figueroa said. "While the cooperative and collective defense is still in effect, they're basically looking at civil penalties or arrest and prosecution with a convoluted medical defense based on stack of magic paperwork. But there is no magic paperwork."



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The Sacramento Model

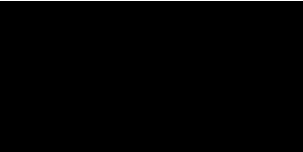
A little more than a year ago, more than 100 delivery services were advertising services in around California's capital city of Sacramento. The businesses, many of them poorly capitalized, expanded rapidly after a similar number of dispensaries closed due to a ban in Sacramento County. Meanwhile the city, which had permitted 30 authorized dispensaries, refused to add any more.

So people like Mike Ayers, who formed the Sacramento Area Cannabis Delivery Association, saw an opportunity: delivering cannabis at low cost from small dispatch centers. Those low-cost inventory storehouses didn't require the huge investment and overhead required to operate a storefront dispensary.

Today, Sacramento has only a single state-licensed delivery service for non-storefront businesses. Seven more locally-approved services still have their applications pending with the state. The city's walk-in retail dispensaries will also be able to add delivery.

But Ayers' delivery company, Mendo Meds, is out of business. He couldn't afford the city's annual \$22,000 permit fee, or additional state fees and taxes he saw as an onerous financial burden.

"My heart just sank. I couldn't do it," he told me. "California is balancing its budget on patients. Yesterday's Robin Hood is today's Sheriff Nottingham."



The California cannabis compliance firm *Axiva Spectrum* released this 10-minute overview of the state's new regulations regarding cannabis delivery.

New Regs, New Opportunities

But new state regulations created new opportunity for Nurit Raphael, who secured one of two state licenses issued to date for cannabis delivery in the San Francisco Bay Area community of San Rafael.

With two brothers, she founded ONA.life, a boutique medical cannabis delivery service that promotes itself as offering a healing alternative for patients with pain and other medical conditions that prescription drugs fail to remedy.

ONA.life delivers cannabis products in San Rafael, nearby suburban enclaves in Marin County as well as Oakland. "We're trying to serve soccer moms...and spread the knowledge on plant-based medicine," Raphael told Leafly.

There are plenty of competitors out there for her small company, which currently operates only three delivery vehicles. Many unlicensed delivery companies still operate in the area. Raphael says she doesn't necessarily want them to go away—she just wants them to get permitted and comply with the same rules she operates under.

"I am now in compliance and am going against a lot of people who are not in compliance," Raphael said. "You ask, when is enforcement going to happen? But, instead of throwing somebody under the bus, shouldn't we just be all on the same road?"

To our readers:

Peter Hecht's feature on the future of delivery services in California begs an obvious question: Does Leafly list unlicensed companies, including delivery services, on its dispensary finder?

Until recently, we did. That's because prior to January 1, 2018, medicinal cannabis companies were allowed under California law, but they were not licensed by the state.

Since California's Bureau of Cannabis Control began issuing licenses earlier last month, though, a steadily widening gap has opened up between cannabis companies that are state-licensed, and those that are not. The California state government has made it clear that only licensed retailers and delivery services may advertise via technology platforms.

Starting March 1, 2018, Leafly will only list state-licensed retailers and delivery services within the state of California. State and local governments in California have been working diligently to process licenses for approved applicants, so we're confident that we'll be able to continue to serve those companies who are in the licensing process.

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Peter Hecht
Peter Hecht, former political writer and Los Angeles bureau chief for the Sacramento Bee, has been reporting on cannabis since 2009. His coverage has been honored for explanatory reporting in the "Best of the West" journalism awards and earned an Excellence in Journalism prize from the Northern California Chapter of the Society of Professional Journalists. Hecht is the author of the book "Weed Land: Inside America's Marijuana Epicenter and How Pot Went Legit."

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