

## OFFICE OF CONSTITUTIONAL POLICING AND POLICY

### **NOTICE**

August 29, 2024

1.14

**TO:** All Department Employees

**FROM:** Director, Office of Constitutional Policing and Policy

**SUBJECT:** SEARCHES BASED ON PRESENCE OF CANNABIS OR ODOR OF CANNABIS - CLARIFICATION

The purpose of this Notice is to clarify when searches are allowed based on the presence of cannabis or the odor of cannabis. Officers are reminded that under Proposition 64, the *Adult Use of Cannabis Act*, adults over the age of 21 are permitted to possess personal-use quantities of cannabis, defined as up to 28.5 grams (i.e. one ounce) of non-concentrated cannabis. California Health and Safety Code Section 11362.1, subdivision (c), further provides that lawful possession of cannabis **shall not** constitute the basis for detention, search, or arrest.

An opened container of a lawful quantity of cannabis while operating a vehicle is a violation of law, but by itself does not establish sufficient probable cause to search a vehicle or persons. Cannabis **does not** have to be stored in the trunk of a vehicle while it is being transported as long as the container is closed. A zipped plastic bag, a knot-tied plastic bag, and closed-lidded bottles and canisters are all considered closed containers.

#### Search of Vehicle Based on Odor of Cannabis

Officers may, based upon specific, articulable facts and unique training and experience, develop probable cause to search when they detect the odor of cannabis **and** additional factors are present that lead the officer to believe a person is driving under the influence of cannabis, possesses an unlawful quantity of cannabis, or is illegally selling cannabis (e.g., objective symptoms of cannabis use present, vehicle had heavy foot traffic approach the occupants, clear locking baggies are strewn throughout the vehicle, etc.). For more information, see People v. Moore (2021) 64 Cal.App.5th 291.

Additionally, if *all the vehicle's occupants are under 21 years old*, cannabis possession is not lawful under the *Adult Use of Cannabis Act*, and the odor of cannabis alone may give officers probable cause to believe they will find improperly possessed cannabis that would justify a search of the passenger compartment of a vehicle. For more information, see People v. Castro (2022) WL 17662954.

Relevant Statutes Regarding Search of a Vehicle Based on Possession of Cannabis while in a Moving Vehicle

Vehicle Code (VC) Section 23222(b) prohibits a **driver** from having “in their possession on their person, while driving a motor vehicle...a receptacle containing cannabis or cannabis products...which has been opened or has a seal broken, or loose cannabis flower not in a container.”

Health and Safety Code (H&S) Section 11362.3(a)(4) prohibits a **driver or passenger** from possessing “an open container or open package of cannabis or cannabis products, while driving, operating, or riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.”

**Note:** If the person is carrying a current identification card or a physician’s recommendation (i.e., Medical Marijuana Identification Card issued by the Department of Public Health), they are allowed to lawfully possess up to 8 ounces of non-concentrated cannabis.

Officers who encounter a vehicle with an **open** container of a lawful quantity of cannabis, or loose cannabis, may only search the passenger compartment or persons in a vehicle based upon additional articulable factors that support probable cause to believe they will find additional violations of improperly transported cannabis. Separate probable cause for each individual is required in order to search that person and their belongings.

Should you have any questions, please contact the Office of Constitutional Policing and Policy at (213) 486-8730.

APPROVED:



LIZABETH A. RHODES, Director  
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