Richard Williams <richard.williams@lacity.org>

Public comment for council file no 14-0366-S5. CPC -2107 -2260 - CA. Draft commercial cannabis activity requirements

matt garland <mattg1975@live.com> Wed, Jul 12, 2017 at 1:54 PM
To: Richard Williams <richard.williams@lacity.org>, "niall.huffman@lacity.org" <niall.huffman@lacity.org>
Cc: "joe.buscaino@lacity.org" <joe.buscaino@lacity.org>, Ryan Ferguson <ryan.ferguson@lacity.org>

The Draft ordinance for commercial cannabis activity in the City of LA outlines a far better approach to cannabis regulation than the previous prop D. There are, however, a few key flaws that serve to undermine community safety, management of youth exposure, local employment and ownership ownership opportunities, and dissolution of the black market.

Dissolving the black market by combining strong enforcement with incentives and opportunities for rogue operators to seek licensing is the most important step our regulatory framework can take to ensure community safety and social equity.

Actual business licensing is needed to ensure a transition of this industry from the black market to a transparent, accountable legal business landscape. Limited immunity, or certificates of compliance are not sufficient to serve the the goal of bringing the cannabis industry into the legitimate business environment.

Municipal licenses for cannabis businesses must be made available for all license types available under State law. Including volatile manufacturing (type 7), cottage licensing (type 1C), and outdoor cultivation. A failure to make these licenses available will perpetuate the existence of rogue operators in these categories. Depriving our community of legitimate ownership and employment opportunities.

Finally, the required offset of 800 feet between dispensaries and sensitive uses is too restrictive. This distance creates a shortage of compliant locations for cannabis businesses in Los Angeles City. This lack of compliant locations will exacerbate the problem of rogue operators. Our community needs the cannabis industry to be limited by market forces, not artificial limits. The 800 ft. offset will create opportunities for rogue operators to continue to fill consumer demand. Undermining the goal of industry transparency, community stewardship, and managing youth exposure.

The voters of the State of California, and more importantly, the City of Los Angeles have clearly issued a mandate that the cannabis industry needs to be regulated like any other business. The dangers of overuse and the social stigma around cannabis should be addressed through public education, not restrictive regulations. A drug education campaign based on health, human rights, and compassion. Our community is in need of honest information about cannabis use and culture. Our youth is in an especially vulnerable position in need of the tools to make educated and appropriate decisions about drug use.

The restrictions set forth in the current draft proposal will not provide the community benefits intended. Instead, these limits will perpetuate the disruptive black market opportunities and the social ills created by the outlaw cannabis culture. Economic benefits will continue to be funneled to scofflaws and organized crime alike. These regulations will handicap the community benefits that are forthcoming when a vibrant cannabis industry is transparent, accountable, and restricted by market forces instead of artificial limits.

Best Regards
Matt Garland
Chairman of the Central San Pedro Neighborhood Council ad hoc committee on marijuana regulatory framework

CHERNIS LAW GROUP P.C.
2425 Olympic Blvd. Suite 4000-W
Santa Monica, CA 90404
Telephone: (310) 566-4388
Facsimile: (310) 382-2541

Email: michael@chernislaw.com

July 12, 2017

VIA EMAIL
City of Los Angeles, Department of City Planning
Attn. Niall Huffman
Niall.Huffman@lacity.org

Los Angeles City Clerk's Office
Attn. Richard Williams, Legislative Assistant
Richard.Williams@lacity.org

Re: Draft Commercial Cannabis Activity Requirements and Land Use Restrictions

To whom it may concern:

Chernis Law Group P.C ("CLG") is a Santa Monica-based law firm, that represents collectives, dispensaries, deliveries, cultivators, manufacturers, landlords, patients, and other cannabis-related clients, and has been doing so since 2009. We are fully familiar with the City's history with regard to cannabis regulations and litigation. We urge the adoption of common-sense regulations that serve the health and safety interests of consumers and neighbors while not imposing needless costs and other burdens on businesses, or unrealistic startup costs and other barriers to new market entrants. CLG also encourages the passage of regulations that are clear and which minimize uncertainty, so that we can better aid our clients in being fully complaint.

While CLG appreciates the efforts of the members of the Los Angeles City Council and Planning Commission and their Staff in promulgating the proposed regulations for commercial cannabis activity, we believe the regulations, in a number of ways, are seriously flawed, unfair, unduly restrictive, and impractical, and to that end respectfully submit the following comments for your consideration:

1. **Limited Immunity: Failure to Issue Licenses and the Issuance of Certificates of Compliance**

The overall structure of the regulations and, in particular, the land use ordinance, does not contemplate issuance of actual licenses or permits, but instead contemplates "limited immunity" and "certificates of compliance." This, in turn, raises a number of practical and legal issues, and threatens to repeat the myriad problems seen with respect to enforcement of Proposition D. No

other city in California has opted for this route and there is no rational explanation for not issuing licenses or permits. It is remarkable that the City would consider repeating a policy of "limited immunity" that has been unworkable for years.

The suggestion raised by some, that municipal workers, or the City itself would somehow be subject to liability under federal law if it issues licenses or permits to these businesses is, to be blunt, absurd. Apart from the fact that the State legislative framework authorizes and even requires permitting of such businesses, notwithstanding federal law, the August 29, 2013 memo from Deputy Attorney General James Cole, providing Guidance Regarding Marijuana Enforcement (the "Cole Memo"), , essentially authorizes medical and recreational cannabis businesses to operate notwithstanding federal prohibitions, where subject to strong local regulatory controls. The Cole Memo is still the policy of the United States Department of Justice. Furthermore, as affirmed last year in United States v. McIntosh, 833 F.3d 1163 (9th Cir. 2016), the Department of Justice is currently constrained by the Appropriations bill from enforcing federal law against cannabis businesses and municipal licensing agencies. The Government conceded in that case that these constraints absolutely prohibited any enforcement action against municipal workers engaged in the licensing process. However, the businesses must demonstrate "strict compliance" with State and local requirements to benefit from these protections. Having the ability to show a local license or permit will go much further in doing so then "limited immunity."

I am concerned that the Los Angeles City Attorney's Office may have overstated the risks from federal enforcement, and ignored the very real and practical difficulties "limited immunity" would impose on the businesses. Moreover, the City has been aggressive in other policy areas, such as immigration reform, in resisting federal policies it rejected. Cannabis should be no different. The intent of the voters in passing Measure M was the adoption of a licensing scheme to replace the deeply flawed "limited immunity" mechanism contained in Proposition D, and the lack of licensing or permitting will create very real obstacles for the cannabis businesses to exist and flourish in the City, and likely push many of the businesses and jobs to surrounding communities.

Please also consider the following issues arising from a failure to license and permit these businesses:

- Measure M creates a tax scheme premised on licenses being issued, and such businesses in receipt of something less than an actual license might argue that they are not subject to the tax structure created by Measure M.

- Prospective landlords have been told by the Office of the City Attorney for nearly a decade that cannabis businesses are illegal in the City, and that it is a crime to lease property to such businesses, and have even been prosecuted for leasing property to dispensaries claiming "limited immunity." Thus, many property owners will be unwilling

to lease property to a business that is unable to demonstrate it possesses an actual local permit.

- To that end, even if a "certificate of compliance" would meet the requirements of State law under Business and Professions Code §26032, in terms of demonstrating local authorization of the business, it does not meet the requirements of Business and Professions Code §26032, which only provides immunity from State law to property owners leasing property to commercial cannabis businesses that possess either a "license" or "permit."

- Banking relationships are integral to the success of the cannabis businesses and reducing the amount of business transacted in cash. Without actual permits or licenses, the City will be impairing the ability of businesses to obtain bank accounts, which will at a minimum perpetuate cash transactions, and may even frustrate the ability of local cannabis businesses to participate in the new infrastructure created by State legislation. For example, on February 14, 2014, Deputy Attorney General Cole of the Department of Justice and the Department of the Treasury Financial Crimes Enforcement Network, each issued memos to financial institutions instructing them how they could provide financial services to marijuana-related businesses and avoid federal prosecution. The memos require the financial institutions to conduct extensive due diligence on the applicant to evaluate the risk associated with the business before opening an account. One of the requirements of the banking institutions is to verify that the cannabis business is duly licensed. Even with the guidance, many banks have been reluctant to open accounts. Without local permits or licensure, the City of Los Angeles will be imposing an additional hurdle on the ability of these businesses to access financial services.

- Similarly, the lack of local licensing will deter insurance companies from offering coverage to cannabis businesses. It will also deter investors from providing necessary capital for the businesses since the investors cannot rely on the permanence of "limited immunity" to secure the investment. This is in part a function of the cannabis business not obtaining any vested rights under this draft land use ordinance.

- "Limited Immunity" does not offer the same level of protection that other licensed businesses in the City are afforded, and will perpetuate the same confusion caused by Proposition D. Indeed, like Proposition D, "this immunity may only be asserted as an affirmative defense in an enforcement proceeding. The burden of proof in any enforcement proceeding to establish Limited Immunity shall be upon the persons engaging in the Commercial Cannabis Activity." Why should a business invest hundreds of thousands or millions of dollars in the City of Los Angeles, in terms of real estate acquisition, licensing and application fees, and capital improvements, to acquire the privilege of asserting a defense in a criminal prosecution? It makes no sense. The business is better off making that investment in a neighboring city. It is manifest that this

will deter cannabis business activity in the City of Los Angeles, and in turn, the tax revenue. This is not a mechanism for a city to show its partnership with an industry. Rather, it perpetuates the decade-old perception that these businesses are illegal and unwelcome.

2. The Uncertainty of the Timing for New Applicants Will Create Insurmountable Barriers for Entry

The draft regulations contemplate that the new applicants will be issued licenses in a 1:1 ratio with social equity applicants. However, there is no time-frame for when either of these categories of applicants can seek local permission, let alone when they can commence operations. This is, in part, because the application process cannot begin until the social equity program is created and financed, and there is no deadline for this to be accomplished. At the same time, the draft regulations will not allow either a social equity or new applicant to commence operations until such time as it obtains State licensure. Putting aside the issue of whether the State will accept "certificates of compliance" as a showing of local authorization, the requirement that a local business obtain State licensure before commencing operations exceeds what is required by State law, which authorizes such businesses, at least those engaged in medical cannabis activities, to operate under the collective model and Health & Safety Code §11362.775 until they receive State licensure, through the end of 2018. In other words, the City in requiring new business to obtain State licensure before commencing operations is exceeding what is required under State law, and in fact may actually be pre-empted from imposing such a requirement.

Moreover, as a practical matter, there is no telling how long it will take the State to issue licenses as there is likely to be a significant backlog in the application process in 2018. It could take 6 months for a business to receive a decision from the State. Thus, assuming a business only receives its local authorization in April 2018, it still may not be able to commence operations until October 2018. All the while, the business would be required to pay the lease or carrying costs on real estate for the business. That is unrealistic and an absolute barrier to entry for any but the most highly funded applicants. Businesses are also supposed to provide the City with names of expected management personal in the application process, but with such a long application process it will likely be the case that applicant businesses will not be able to maintain anticipated personnel for such a long duration.

For these reasons, the City is urged to dispense with the requirement that businesses must obtain a State permit before commencing operations. Once receiving local permission, a business should be allowed to commence operations and continue operations until there is a denial of a State permit application, or January 2019, whichever comes earlier. In addition, the City must create a finite timetable for the new applicant and social equity applicant process to begin, and a mechanism for new applicants to seek licensure in the event that the social equity program for whatever reason does not become implemented by January 2018.

3. General Problems With Application And Appeals Processes

The application processes created by the draft regulations lack clarity in terms of the amount of discretion to be exercised by the City of Los Angeles Cannabis Commission and Cannabis Department, thereby making it subject to challenges for vagueness, and denies applicants basic due process rights to hearings and appeals. There also is a lack of clarity on other aspects of the application process. Set forth below are some examples to illustrate these problems:

- The regulations should make clear that if an applicant has proposed to use a property that is deemed ineligible under the land use restrictions, for example because it is deemed to be too close to another retail outlet, that applicant should be able to cure that deficiency and not lose its place in line, at least in instances where the deficiency could not be reasonably determined in advance.

- There is a provision in the draft regulations to the effect that "In determining the issuance of Certificates of Compliance after Proposition M Priority and Non-Retail Registry processing, the Department will consider the equitable dispersion of Businesses throughout the City of Los Angeles prior to the issuance of a Certificate of Compliance to the extent practicable." This is precisely the type of vagueness, broad discretion and uncertainty that is ripe for abuse and denies applicants necessary planning certainty. There needs to be clear standards for applicants and these types of amorphous bases for denial are unfair and likely to result in extensive litigation.

- To echo that point, there is an absence in the draft regulations of the criteria that would justify either the Cannabis Department or Commission denying an applicant, or the Commission overruling the decision of the Department. For example, the section for retailer applicants states that "An application may be denied for any of the following reasons *including, but not limited to:* The applicant does not fully comply with application requirements; the applicant's premises is substantially different from the diagram of the premises submitted by the applicant, in that the size, layout, location of a common entryways, doorways, or passage ways, means of public entry or exit, or limited-access areas within the premises are not the same; the applicant denied Department employees or agents access to the premises; the applicant made a material misrepresentation on the application; or the applicant failed to correct the deficiencies within the application in accordance with Department requirements and procedures, or the applicant has been denied a license, permit, or other authorization to engage in Commercial Cannabis Activity by a state or local licensing authority." (Emphasis added). The "including but not limited to language" is surplusage and should be eliminated as it creates confusion. Moreover, the fact that an applicant was denied a license in another jurisdiction should not be a basis for a denial in the City of Los Angeles, unless the reason for that denial in the other jurisdiction is independently a basis for denial in Los

Angeles.

- The appeals process contemplated by the draft regulations is confusing, to say the least, and does not make clear under what circumstances an appeal of a denial will be heard and granted a hearing, let alone the criteria or standard of review applied during the appeal. Basic due process requires that all applicants denied a permit or opportunity to operate a business be afforded a hearing.

- With respect to Proposition M Priority Processing, the draft regulations contemplate that dispensaries holding a 2016 or 2017 BTRC and able to show "substantial compliance" with the limited immunity and tax provisions of Proposition D will be eligible. But nowhere does it explain what "substantial compliance" means. Having defended operators in cases alleging violations of Proposition D, I can guarantee that an absence of clarity on this issue alone will result in numerous legal challenges for vagueness and on other grounds. This is an example of repeating the mistakes of Proposition D. In addition, many dispensaries arguably entitled to Proposition M priority processing will be denied an opportunity to seek this priority because the Office of Finance did not renew their BTRC, sometimes where the business was in "substantial compliance." There should be in place a mechanism for such operators to challenge the Office of Finance decision before the time for priority processing commences.

- The draft regulations need to conform to the recently enacted State requirements set forth in SB 94, which change the license types available under State law.

- The draft regulations in section 10 (page 17) require disclosure of financial information that is unduly onerous and exceeds the requirements of State law.

- The draft regulations in section 22 (page 19) require applicants to provide "a valid state license for Commercial Cannabis Activity license issued by the State of California" or "attest that the applicant is currently applying for a state license and provide adequate documentation to the Department." An applicant cannot apply for let alone receive a State license before receiving a local permit or license. This needs to be deleted in its entirety.

- The draft regulations in section 28 (page 20) states that "Businesses are not transferable once a Certificate of Compliance is issued…A change to the Business organizational structure or ownership as defined by the State of California requires a new application, the initial application fees, and approval of the new application by the Commission, Department, or City Council." Many applicants are structured currently as a non-profit entity. The regulations should make clear that a change in the form of the entity, for example from a non-profit to a for-profit, does not require a new application to be submitted. Moreover, a 20% ownership interest is the threshold under State law for being

considered an "owner" and thus a change in ownership not implicating that amount should not trigger a new application requirement.

4. Failures of Registry

The proposed non-retail registry process is serious flawed, for the following reasons, among others:

- It fails to include license types apart from cultivation and manufacturing, including in particular delivery which the recent Trailer Bill (SB 94) validates as a legitimate business model.

- There is no clear threshold showing that businesses must make or meet to get on the registry, and this is subject to abuse or worse unfettered exercise of discretion by City in denying applicants for the registry.

- It does not provide immunity from prosecution to businesses that seek application through the registry, yet expects those businesses to admit prior violations of Proposition D, which will deter businesses from seeking to participate in the registry. Businesses should be immune from prosecution for any activities admitted to in the application or registrations process.

- There is no logical reason why the cut-off date for qualifying for the registry is demonstrating operations as of January 1, 2016, rather than January 1, 2017.

- No right of appeal is provided for businesses denied access to the registry.

5. Excessive and Duplicative Operational Requirements

The draft regulations contain extensive and sometimes absurd operational restrictions on businesses, often merely echoing requirements already imposed by State law, or which have now been modified by SB 94 and are no longer applicable. Indeed, many of the draft regulations are based on draft regulations issued by various State agencies which, because of SB 94, are now going to be re-drafted. The City regulations do not need to impose obligations that are already imposed by State law, and if they do can do so generally by requiring applicants to follow State law, rather than copying into the local regulations the text of State law or regulatory requirements that are subject to change. Here are but a few examples:

- The video-surveillance operational requirements are excessive and intrusive. For example, section 7 on pages 24-25 requires retailers to record "the facial features of any person purchasing or selling cannabis goods, or any person in the retail area, with

sufficient clarity to determine identity." I believe this is premised on a proposed State regulation that will likely change because the State received comments objecting to the recording of medical marijuana patients purchasing medicine as being a violation of their privacy rights. This illustrates the need for the City to NOT try to impose operational requirements that are already occupied by the State but rather to defer to State requirements.

- Item 10 on page 25 requires all businesses to maintain a fire-proof safe on site, presumably to hold cash. This requirement is unnecessary for non-retail businesses that are not expected to do business in cash.

- The regulations (item 14 on page 26) contemplate the businesses being subject to inspection by the City and unrestricted access for purposes of ensuring compliance. There should be reasonable limits on the frequency of inspections of such businesses to avoid harassment and interference with the businesses, and perhaps notice requirements when to do so would not impede the purpose of the visit.

- Item 3 in the Records Retention section requires businesses to "maintain adequate records of all activities and transactions that involve financial implications for seven years." This is overbroad and vague in terms of what it means to "involve financial implications."

- The regulations on pages 28-30 also require businesses to meet certain requirements and have certain equipment concerning point of sale and track and trace. This is another area already occupied by State law requirements that the City regulations should simply require compliance with the State requirements to avoid confusion and inconsistent requirements.

- The operational requirements for manufacturers, in items 8-9 on page 38, restrict the types of edibles products that may be sold and the dosage amounts. Again, this is premised on draft State regulations that are in a state of flux. The City should defer to the State requirements and merely require that operators comply with all applicable State regulations.

6. Land Use and Zoning Restrictions

I want to draw your attention to a few issues particular to the draft land use and planning ordinance, apart from the issues previously addressed with respect to the "limited immunity" construct.

- Many of the definitions are premised on the now-repealed Medical Marijuana Regulation and Safety Act.

- The 800-foot radius from sensitive uses is excessive given the already limited lack of available property for cannabis businesses and should be moved back to 700 feet, or at the very least be measured from building to building rather than from property lines.

- The draft regulations do not appear to allow manufacturing business to operate in the "Commercial Manufacturing" zones. It seems counter-intuitive and arbitrary to not allow at least some such businesses to operate in a manufacturing zone. For example, businesses that do nothing more than packaging or edibles infusion, or that may want to pair retail with limited manufacturing of chocolate, should be permitted to operate in a CM zone.

- Section 45.19.8.4 provides that "The use of any building, structure, location, premises or land for any Cannabis activity, including any Commercial Cannabis Activity, is not currently enumerated in the Los Angeles Municipal Code as a permitted use in any zone, nor is the use set forth on the Official Use List of the City as determined and maintained by the Zoning Administrator," and that "the Zoning Administrator shall not have the authority to determine that the use of any building, structure, location, premises or land for Cannabis activity, including any Commercial Cannabis Activity, may be permitted in any zone." This tells prospective landlords that these businesses are illegal and will deter them from entering into lease agreements. Furthermore, these restrictions suggest that planning department personnel may not disclose to operators whether a particular piece of property meets the land use and zoning restrictions. That would be incredibly unfair and punitive.

- There is no rational reason to prohibit mixed-light cultivation projects in certain zones within the City. An absolute ban on such activities and license types is extreme and arbitrary.

Thank you for taking the time to consider our comments. I hope what is currently drafted can be revised to address these concerns and create a better model that will serve both the City and the industry for years to come.

Sincerely,

Michael Chernis

HOBSON, BERNARDINO & DAVIS, LLP
725 SOUTH FIGUEROA STREET, SUITE 3230
LOS ANGELES, CALIFORNIA 90017
TELEPHONE: (213) 235-9190
FACSIMILE: (888) 308-9087

DIRECT LINE: (213) 235-9197
RBERNARDINO@HBDLEGAL.COM

July 12, 2017

Via email and U.S. Mail
niall.huffman@lacity.org

Mr. Niall Huffman
City of Los Angeles
Department of City Planning
200 North Spring Street
Los Angeles, California 90012

Re: Case No. CPC-2017-2260-CA
Commercial Cannabis Location Restriction Ordinance;
Comment From Interested Parties for Inclusion In Staff Recommendation Report

Dear Mr. Huffman:

Thank you for giving me the opportunity to be heard concerning this very important piece of proposed legislation. The ability of persons to engage in Commercial Cannabis Activity in the City of Los Angeles is an important economic, political and cultural question; and, while it is important to enact legislation to allow persons in the City of Los Angeles to engage in such activity, it is more important to make sure that such legislation is correct and will not lead to unintended negative consequences or perpetuate current inequalities. While I believe that the current proposed Commercial Cannabis Location Restriction Ordinance (the "Proposed Ordinance") is an improvement to "Proposition D," the Proposed Ordinance is far from the sort of legislation that will generate economic growth, protect the persons and property of the City of Los Angeles or provide a full opportunity for women and minority owned businesses to participate in this important new industry or ensure that transitional workers will have the opportunity to enter the workforce in a thoughtful and constructive manner.[1]

---

[1] A fair reading of both the Proposed Ordinance and the "*Proposed Requirements for Commercial Cannabis Activity in the City of Los Angeles*" demonstrates that rather than abolishing Proposition D and creating a new regulatory scheme as envisioned by the voters when they overwhelmingly passed Proposition M this past March, the Proposed Ordinance has sought to simply build upon the Proposition D framework. As set forth herein, Proposition D is a poor foundation upon which to build a new industry that if properly developed will deliver thousands of jobs and millions of dollars in tax revenue to the City of Los Angeles. The Proposed Ordinance will do neither.

What follows are areas where I believe the current Proposed Ordinance is either inadequate or confusing, and what I think the Department of City Planning ("DCP"), the Los Angeles City Council (the "Council") and proposed City of Los Angeles Cannabis Department (the "Department") should consider as alternatives.

At the outset, I note that it is important to hear the opinions of all stakeholders in the City of Los Angeles; both proponents and opponents of the Proposed Ordinance should be heard. In adding my voice to this commentary I respectfully request that you note that I have a unique outlook on the Proposed Ordinance. First, law enforcement and public safety are paramount in my analysis and my suggestions for improvement. As a former Commissioner of the Los Angeles Board of Police Commissioners, I have extensive law enforcement experience both on what is necessary and what is not necessary from a law enforcement perspective. Second, as a former Commissioner of the Los Angeles Police and Fire Pensions Commission, I think I have an appreciation for the sort of government regulation and free market forces that will contribute to the economic growth of the City of Los Angeles as a whole, and individual businesses as participants and employers in this dramatic new market. Third, as a Partner, in a minority owned law firm, I have a great appreciation on the need to have diversity in business activities and ownership interests. Finally, fourth, as an experienced criminal defense lawyer, who has represented several hundred persons and businesses on marijuana related complaints over the past four years (since I left the Police Commission) I think my insight on the cost of such prosecutions, both to the City of Los Angeles as a prosecuting agency, and to individual (mostly poor and minority) persons charged with marijuana related crimes, is both significant and largely unnecessary. While the equity of such prosecutions can be debated, I think the negative impact on the ability of the Los Angeles Police Department to sustain its mission of protecting and serving the City of Los Angeles is manifest, and will likely continue if the Proposed Ordinance is not amended.

A. The Proposed Ordinance's Grant of "Limited Immunity" Is Unworkable and Will Perpetuate Prosecution of Persons For Marijuana Offenses.

In order to efficiently enforce State Law, persons engaged in Commercial Cannabis Activities in the City of Los Angeles need an express statement that they are allowed to engage in Commercial Cannabis Activity such as a License or Permit. So-called "limited immunity" as provided by the June 7, 2017 draft of the Proposed Ordinance is neither a license nor a permit to engage in Commercial Cannabis Activity in the City of Los Angeles. By the express terms of the Proposed Ordinance, the City of Los Angeles will not issue qualified applicants with either an express "license" or "permit" to engage in Commercial Cannabis Activity. The Proposed Ordinance's regulatory scheme will at best create confusion in the context of State Law, and at worst, will conflict with State Law and prevent the development of a marijuana industry in the City of Los Angeles because of such uncertainty.

State law expressly provides for license to engage in a variety of Commercial Cannabis Activities. See, *The Adult Use of Marijuana Act*, ("Proposition 64"), *passim*. See also, *Business and Professions Code* §§26050, 26055, *et seq.* The City of Los Angeles' Proposed Ordinance provides for only a "limited immunity" from prosecution. Limited immunity is an "affirmative defense" that can only be raised **at trial** in response to a criminal prosecution, i.e. a person may only raise their limited immunity after all pre-trial proceedings and after the government has presented its case. As an experienced trial lawyer, I can attest that a person who has such "limited immunity" can only raise the issue after spending many months and several thousand dollars defending themselves in a criminal action, which may include imposition of bail and bail requirements such as the cessation of all Commercial Cannabis Activities. Further, presentation of a "limited immunity" defense does not guarantee a favorable outcome; "limited immunity" will need to be plead and proved and accepted by a Court of competent jurisdiction or a jury as finder of fact.[2]

Granting a Los Angeles based Commercial Cannabis Business "limited immunity" does not provide for the type of legal certainty that would indicate either to the State of California, a financial institution or a landlord that a Commercial Cannabis Business located in the City of Los Angeles is either eligible for a state license or is otherwise able to conduct business lawfully in the City of Los Angeles, State of California.

First, the failure to provide either a "license" or "permit" or other express authority to engage in Commercial Cannabis Activity may preclude the State of California from issuing any license for a Los Angeles based business to engage in Commercial Cannabis Activity. California *Business and Professions Code* § 26055 provides that California State licensing authorities "shall not approve an application for a state license if approval of the state license will violate the provisions of any local ordinance or regulation..." **The City of Los Angeles' prohibition on licensing would appear to prohibit the issuance of a license from the State of California.** Conversely, the failure to obtain a license or permit from the City of Los Angeles may be interpreted as an abandonment of the City of Los Angeles' authority to regulate Commercial Cannabis Activity. See, *Business and Professions Code* § 26056 which provides that an applicant (for a state license) need not provide documentation that the applicant has obtained a license, permit or other authorization to operate from the local jurisdiction in which the applicant seeks to operate. Again, because the City of Los Angeles does not provide either a "license," "permit" or express authorization to operate, a good faith argument can be made that the City of Los Angeles has abdicated its rule making authority and licensing will be solely a state function.

---

[2] The Proposed Ordinance specifically places the burden of proving the protection of a "limited immunity" upon the person(s) "engaging in Commercial Cannabis Activity." Proposed Ordinance § 45.19.8.1.

Second, while the issue of financial institutions to loan money, provide mortgages, or otherwise provide financial services to Commercial Cannabis Businesses is presently uncertain, a City of Los Angeles pronouncement that a business that is being subject to criminal prosecution can raise as a defense **at trial** that it has immunity from certain types of prosecution is unlikely to encourage financial institutions to do business with Los Angeles based Commercial Cannabis Businesses. There is no indication in either the Proposed Ordinance or "*Proposed Requirements for Commercial Cannabis Activity in the City of Los Angeles*" that considers or even mentions any effort to address the ability of Los Angeles based Commercial Cannabis Businesses to obtain the type of financial services that will allow such businesses to pay their taxes, pay their employees, pay their vendors or accumulate capital. We respectfully request, that before the City of Los Angeles finalize any Proposed Ordinance that the Council and DCP affirmatively seek the input of financial institutions and the California State Treasurer's Office and tailor the Proposed Ordinance in a way that will allow Los Angeles based Commercial Cannabis Businesses to obtain financial services. A statement that such businesses would not be found guilty (assuming the limited immunity defense worked) is far from the sort of assurances that an FDIC financial institution would find acceptable or comforting. Again, the City of Los Angeles' commitment to the concept of "limited immunity" rather than affirmative licensing or permitting will place Los Angeles Commercial Cannabis Businesses at a disadvantage both in comparison to other Commercial Cannabis Businesses in the State of California and in the growing nationwide Commercial Cannabis Industry.

Third, under the Proposed Ordinance, Land owners who lease property to an unlawful Commercial Cannabis Business are subject to criminal prosecution and substantial fines. Again, there is nothing in the Proposed Ordinance or "*Proposed Requirements for Commercial Cannabis Activity in the City of Los Angeles*"which indicates that the City of Los Angeles' proposed grant of "limited immunity" would provide either the necessary guidance for land owners to know to whom they can and cannot lease their property or provide comfort that such lease would not violate Federal, State or Local Law or breach a term of the land owner's loan agreement if such property were under mortgage or otherwise used as collateral. Again, before the City of Los Angeles finalizes the Proposed Ordinance, we respectfully urge the Council and DCP to affirmatively seek the opinions and input from private land owner associations and persons in the real estate brokerage profession for guidance that will both allow land owners to lease their property in a lawful manner, and allow land owners to know definitively who can and cannot lease such property: A clearly written "license" or "permit" that expressly gives a Commercial Cannabis Business permission to lawfully operate for a specified period of time is both a document that will be easy to understand, easy to confirm the validity of, and can be displayed in a clear and conspicuous manner. A "limited immunity" does none of these things.

Fourth, in order to foster economic growth, a "license" or "permit" must be transferable.[3] Under the City of Los Angeles' Proposed Ordinance, neither the Certificate of Compliance nor the grant of "limited immunity" is transferable. There is no rational basis to prevent a Commercial Cannabis Business from being freely transferred.[4] Indeed, there is no other business in the City of Los Angeles, the State of California, or the United States of America that cannot be transferred to another person. Additionally, the continued disparate treatment of Commercial Cannabis Businesses (when compared with every other business in the City of Los Angeles) will continue to paint Commercial Cannabis Businesses with the brush of illegality and the continued perception that somehow, these businesses are a danger to public safety. A fair reading of the City of Los Angeles' "*Proposed Requirements for Commercial Cannabis Activity in the City of Los Angeles*" demonstrates that any Los Angeles based Commercial Cannabis Business will have to follow very strict requirements in regards to every aspect of its business operations, e.g. from the type of employee identification badges that must be worn, to the training employees receive, to the type of locks that have to be on the doors. We believe that any business that follows all of the requirements of both the City of Los Angeles and State of California is deserving of an imprimatur of legality, and should be allowed to be bought, sold and freely transferred. Of course, the Proposed Ordinance's prohibition on transfer prevents the transfer of any Commercial Cannabis Business to family members as well; a barrier that would create terrible hardship in the event of death or disability of the owner of the business who would then not be allowed to transfer the business to a spouse, widow/widower or children, brothers or sisters.

Fifth, as of this date, the City of Los Angeles is the only municipality in the State of California that is embracing "limited immunity." All other California cities, and cities in other states that have also legalized Commercial Cannabis Activity, issue licenses or permits. There is no rationale basis for the City of Los Angeles to be different from other California cities; Los Angeles based Commercial Cannabis Businesses deserve to be treated as well as other California cities.

Sixth, we understand that the reason that the City of Los Angeles is declining to issue affirmative licenses or permits is a fear that City of Los Angeles Officials could be prosecuted by

---

[3] A "license" or "permit" to engage in Commercial Cannabis Activity will likely be the most important asset any Commercial Cannabis Business will own. Assuming a mature marketplace, such an asset will be as important as any intellectual property and if properly maintained, may be used as collateral for future expansion or other form of necessary capital accumulation.

[4] Restrictions on location, such as those set forth in the Proposed Ordinance can presumably be used as a control on the transfer of any Commercial Cannabis Business, much like the current restriction on liquor stores.

the Federal Government for issuing such licenses. If fear is the reason for the City of Los Angeles' intention to not issue affirmative licenses or permits expressly authorizing Commercial Cannabis Activity, such opinion or statements should be disclosed so that such position can be analyzed and after discussion and analysis be rejected or accepted.[5] However, even without analyzing the reason for this fear, it must be noted that neither the Governor of the State of California, the California Legislature, nor City Officials in any other City in the State of California that are issuing licenses or permits have such fear.

B. The Proposed Eight Hundred Foot Barrier Between Commercial Cannabis Businesses and So-Called Sensitive Sites Is Not Necessary; Imposition of Such A Barrier Will Exclude Women and Minority Owned Businesses From Fully Participating In Commercial Cannabis Activity in the City of Los Angeles.

California State Law requires a six hundred foot barrier between Commercial Cannabis Businesses and certain specifically enumerated locations. There is no rational basis for the City of Los Angeles to extend such barrier an additional two hundred feet. First, it is well settled that an average city block in the City of Los Angeles is 600 feet, otherwise known as two football fields. There is no rational basis for a barrier greater than a city block.[6]

Second, California State Law only requires Commercial Cannabis Businesses to be six hundred feet from schools or other places where children gather. Again, there is no rational basis to include other places that are not prohibited under State Law. If there is truly some unusual circumstance that requires a Commercial Cannabis Business to be excluded from any particular location, such exclusion can be addressed through the zoning and public comment hearings that are already envisioned in the City of Los Angeles' Proposed Ordinance. Such discretion will allow both the community and the proposed Commercial Cannabis Business to address each concern and provide mitigation if available or exclusion is absolutely necessary.

---

[5] Any such opinion must be carefully scrutinized. Especially in light of the Federal *Rohrabacher-Farr Amendment*, which has barred the United States Department of Justice from expending any funds to enforce federal laws in states where cannabis is legalized or de-criminalized by applicable state law. The *Federal Rohrabacher-Farr Amendment* has been in place since 2014 and there have been no prosecutions in contravention of such Federal Law. The Amendment was recently renewed as the "*Rorabacher-Blumenauer Ammendment*."

[6] Additionally**,** measuring the required distance "as the crow flies" is not rationally based. Such a system of measurement ignores both natural and man-made barriers such as broad busy streets, flood control basins, freeways or other barriers that cannot legally be crossed.

Third, the City of Los Angeles's Proposed Ordinance requiring that any new Commercial Cannabis Business be eight hundred feet from another Commercial Cannabis Business which "has a state license or is an existing medical marijuana business eligible for priority processing" creates uncertainty, is very confusing and is both unknowable and unworkable. How is an applicant supposed to know if there is a proper medical marijuana business eight hundred feet from any location? There is no official City of Los Angeles map that demonstrates this. There is no City of Los Angeles issued flag or banner that can be displayed to warn away other Commercial Cannabis Businesses.[7] Additionally, what if there is currently no established lawful Commercial Cannabis Business at a certain location, but two **new** Commercial Cannabis Businesses, (neither open for business because they do not have a Certificate of Compliance or State License) are located within eight hundred feet of each other; and both of these **new** proposed Commercial Cannabis Businesses apply for City of Los Angeles permission and a State License at the same time? Or if one **new** proposed Commercial Cannabis Business applies one day before the other **new** proposed Commercial Cannabis Business? Which **new** non-existent has priority and which is excluded? Since, under this scenario, there were no lawful business within eight hundred feet when the two **new** applications were submitted, can two businesses within eight hundred feet of each other both be issued State Licenses with only one given permission to operate as Commercial Cannabis Businesses in the City of Los Angeles? Such an outcome would surely be subject to legal challenge on the grounds of equal protection and commerce clause. Removing the requirement that Commercial Cannabis Businesses be eight hundred feet from each other will eliminate both the potential for confusion and the potential for lawsuits alleging that City of Los Angeles has violated the constitutional rights of one of its citizens.

Fourth, the proposed location restrictions will likely prevent the City of Los Angeles from achieving the worthy goal of diversity and social justice in the burgeoning Cannabis industry. It is readily apparent that the reason that the City of Los Angeles is currently seeking to encourage ownership of **new** Commercial Cannabis Businesses by Women and Minorities is that Women, Minorities and other disadvantaged groups were largely excluded from engaging in the Cannabis industry under Proposition D. In many ways, the prime real estate where Commercial Cannabis

---

[7] To further complicate matters, there is no certainty that a Commercial Cannabis Business that considers itself to be a lawful "Pre-ICO" or "Prop D Compliant" Medical Marijuana Collective is actually in compliance with Proposition D. As an experienced trial attorney, I have met with several businesses who thought they were Prop D compliant, only to be charged as illegal Medical Marijuana Businesses because of a technical failure to comply with some portion of the law such as "Livescan" or a dispute over taxes. The maps recently promulgated by DCP are also deficient as they are not readily available to the public nor do they clearly state street names or addresses. Our office is currently corresponding with DCP to assemble maps that will suitably inform our clients of sensitive locations.

Businesses can operate has already been taken by lawful (and unlawful) Medical Marijuana Collectives. As such, the pool of places where a **new** proposed Commercial Cannabis Business owned by a Woman or member of a Minority group can engage in Commercial Cannabis Activity is limited. Indeed, like residential redlining done by both the Federal Government and private developers, the City of Los Angeles' proposed "buffer" zones will have the same effect: exclusion of **newly arrived** proposed Women and Minority owned Commercial Cannabis Businesses.[8] Increasing the pool of available land where a new Commercial Cannabis Business may be located will reduce one of the significant barriers to **new** Women and Minority owned Commercial Cannabis Businesses.

C. The Focus of the Proposed Ordinance Should Be To Encourage Lawful Commercial Cannabis Businesses To Operate In The City of Los Angeles; Prolonged Law Enforcement Activity Against Rogue Actors Is A Waste of Scare Law Enforcement Resources and Reduces The Safety of Persons and Property in the City of Los Angeles.

As an experienced trial lawyer, who has represented several hundred persons charged with violation of the City of Los Angeles marijuana laws, I can attest that no person wants to operate outside of a legal framework.[9] Unless the Proposed Ordinance is amended to make it easier for Commercial Cannabis Businesses to operate lawfully, the City of Los Angeles will have to expend significant sums to enforce penal laws, at a cost to both law enforcement, the court system and finally to the individuals subject to prosecution. From an economic perspective, it is far better for the City of Los Angeles to receive tax revenue from Commercial Cannabis Businesses than to expend money to eradicate them.

Of far greater importance is the impact future penal enforcement will have on the safety of persons and property in the City of Los Angeles. Of this, I have first hand experience. The Los Angeles Police Department, more than any other big city police department in the United States, is undermanned. While I was Police Commissioner we reached the threshold of ten thousand officers. Such personnel were barely sufficient to meet all the needs of the Los Angeles Police Department in 2013 when I left the Police Commission. I further understand the number

---

[8] See, Richard Rothstein, *Under Color of Law* (W.W. Norton & Co. 1917) Among other things, Mr. Rothstein's book demonstrates how the Federal Housing Administration, which was established in 1934, furthered segregation by refusing to insure mortgages in and near African-American neighborhoods; while at the same time, subsidizing builders who were mass producing entire subdivisions for whites - - with the requirement that none of the homes be sold to African-Americans.

[9] *Los Angeles Municipal Code* §§ 12.21, *et seq.* and 45.19.6.2 *et seq.*

of sworn and civilian personnel has decreased since then. In other words, the Los Angeles Police Department is not an unlimited resource. The opposite is true; it is a limited resource. And, very simply, every officer hour expended in enforcing a marijuana law, usually against a store front or always young, often minority, often female defendants, is an hour that cannot be spent enforcing other laws that, in my opinion, should have a greater priority.

In my experience, from reading hundreds of police reports on marijuana related arrests and prosecutions for the past four years, a minimum of ten officers (some times more, never less) are involved each time an unlawful medical marijuana business is raided. The time expended in a raid is at least eight hours. I assume an additional eight hours were expended by officers preparing for such raids, and over time, an additional eight hours will be expended by each officer writing reports, testifying at hearings or trial and otherwise engaging in assisting the prosecution of misdemeanor offenders. In other words, approximately two hundred forty hours Los Angeles Police Officer hours are expended for each misdemeanor prosecution. (For purposes of this discussion I will not include time and resources expended by the City Attorneys Office, Public Defenders or Judicial Officers or Sheriff Department personnel tasked with incarceration.) Multiplying the time expended by the total number of currently illegal medical marijuana businesses (currently estimated to be more than five hundred in the City of Los Angeles) accounts for tens of thousands of LAPD Officer hours that cannot be spent on other criminal activity.

Indeed, I have been informally tracking the increase in the crime rate since I left the Police Commission in 2013.[10] The rise in crime over the past four years parallels the rise in marijuana criminal law enforcement; the leveling off of the crime rate in the last quarter also parallels the reduction in marijuana criminal law enforcement in the last quarter. **Before making any decisions on the Proposed Ordinance, both the Council and the DCP should obtain information from the Los Angeles Police Department to determine exactly how much time has been expended enforcing Proposition D, and determine if there are better uses of Los Angeles Police Officer time, and Los Angeles Police Department Resources.** Because the Proposed Ordinance in many ways mirrors Proposition D, we believe such a comparison would be informative as to the amount of time the Los Angeles Police Department can be expected to expend enforcing the Proposed Ordinance going forward.

---

[10] As of August 2013, the crime rate in Los Angeles was the lowest it had been since 1952, when General Eisenhower was President of the United States, the Dodgers were in Brooklyn and the City of Los Angeles had two million fewer persons.

Commercial Cannabis Activity will soon be legal in the State of California; the City of Los Angeles should make every effort to create lawful, tax paying, Los Angeles based Commercial Cannabis Businesses. The current Proposed Ordinances places too many needless obstacles to achieving such a goal.[11]

***

Our office is currently in the process of counseling persons, mostly Women and members of Minority Groups, who want to become involved in the Commercial Cannabis Industry in the City of Los Angeles and elsewhere in the State of California. All of these persons are new to the Commercial Cannabis Industry, an industry that is growing faster than the Smart Phone industry. As such, they have waited until such time as the Commercial Cannabis Industry was completely legalized and could operate openly and lawfully. However, rather than facilitate new Commercial Cannabis Businesses, the Proposed Ordinance, discourages access to the City of Los Angeles and encourages **new** Commercial Cannabis Businesses to locate in other cities where there is greater certainty and fewer barriers to commencement of a lawful Commercial Cannabis Business. The limited suggested changes to specific portions of the Proposed Ordinance suggested by this correspondence will not solve all the issues related to Commercial Cannabis Activity in the City of Los Angeles. However, we view the issues raised in this correspondence as important and worthy of further discussion. Thank you for the opportunity to be heard. If you have any questions or require any additional information, please feel free to contact me at your earliest convenience. My direct phone line is (213) 235-9197.

Respectfully submitted,

/s/ Rafael Bernardino, Jr.

Rafael Bernardino, Jr.
of Hobson, Bernardino & Davis, LLP

RXB:mam

---

[11] At a microeconomic level, the *Proposed Requirements for Commercial Cannabis Activity in the City of Los Angeles* is very thorough and helpful in guiding prospective new businesses in exactly what will be required of them to operate in compliance with the law, e.g., the type of security that will be needed, the type of "track and trace" protocol that will be needed. Such specificity provides proper notice of what is expected and what is prohibited.

cc:
Los Angeles City Clerk's Office
Richard Williams - Legislative Assistant
200 North Spring Street, Room 360
Los Angeles, California 90012
Richard.Williams@lacity.org
Council File No. 14-0366-S5