

Communication from Public

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Comments for Public Posting: Please see our attached letter with our comments related to the June 23, 2020 Rules Committee meeting regarding cannabis licensing.

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June 22, 2020

Special Meeting -- Los Angeles Rules, Elections, and Intergovernmental Relations Committee

Tuesday, June 23, 2020

John Ferraro Council Chamber – Room 340 – City Hall – 8:00 AM

200 North Spring Street, Los Angeles, CA. 90012

Dear Los Angeles Rules, Elections, and Intergovernmental Relations Committee:

On June 16, 2020, the Los Angeles Department of Cannabis Regulation sent proposed ordinance amendments to the Los Angeles City Council regarding the licensing process for commercial cannabis businesses. Many of these changes will be well received by the industry, but some of the DCR's new recommendations would create additional problems for the cannabis industry in the City, and could have negative side effects exceeding any benefits. Our law firm has assisted many businesses in attempting to navigate through Los Angeles's cannabis licensing process, and we wanted to make the following recommendations and practical points about the DCR's recommendations before the City Council decides how to proceed. These recommendations are based on our many years of experience representing clients in the cannabis industry and advocating for cannabis policy reform.

The City Should Provide Temporary Approval to All Applicants who Applied for Retail Businesses and are Ready to Begin Operation

Many people, including former LA City Council President Herb Wesson, have urged the City to cancel the further processing of all pending cannabis retail applications, and start the licensing from scratch, possibly with a new set of rules. We do not believe this is a sound approach, and we encourage the City to not cancel the pending applications, but instead to process and approve as many of them as possible, so that applicants who expended substantial resources in reliance on the City's licensing program may begin operating their proposed businesses. Any other approach would likely devolve into expensive and lengthy litigation, at a time when Los Angeles is desperately in need of new businesses to provide tax revenues and employment to the City.

All of the Los Angeles Phase 3 retail applicants were required to secure real estate in the proper zone for months and spend substantial resources, but none has yet received any license. The City of Los Angeles halted the entire licensing process and stopped processing applications after Mayor Eric Garcetti called for an outside audit on November 6 after various allegations of irregularities, including claims that some applicants received special treatment resulting in an unfair advantage, and

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that many applicants had submitted applications in the “first come, first served” process before they were legally allowed to do so. Due to the audit, hundreds of social equity applicants have now been bleeding money for many months waiting for the City to move forward with licensing. People relied on this City and its promise to help social equity candidates, and most of them have now suffered serious financial harm as a result of their applications.

The audit began after invoices were issued to 100 applicants who had purportedly secured the top 100 spots in the “first come, first served” process. We reviewed the results from the audit after they were released to the general public. They showed that 69 out of the 100 invoices issued were given to applicants who logged into the system before the 10 AM time the City had announced it would “go live.” The people who logged in early had a huge advantage – they were over 6 times more likely than people who followed the DCR’s instructions to get an invoice. This is grossly unfair, and many people who followed the rules have suffered because of it. In addition to the unfairness caused by these technical glitches, the City Attorney changed the rules shortly before the application portal opened, allowing applicants to apply with lease options, contrary to the City’s prior guidance. This allowed wealthy, corporate management companies to exploit the process by submitting numerous applications and edging out social equity applicants who had only single regular leases and could not compete. The City can fix the unfairness and financial harm. We urge the City to process all the remaining license applications for people who still have their property and are ready to roll. People who lost a lot of money because of the unfair application process and delays are now suffering even more due to the coronavirus emergency. The City should issue licenses to all applicants who have been waiting patiently and are ready to go. This will create jobs, help social equity applicants, and provide a path out of the mess created by the flawed application process. In the mean time, while applicants waiting to get their storefront licenses, we urge the City to allow all retail applicants to acquire delivery, distribution, and non-volatile manufacturing licenses (none of which is subject to undue concentration restrictions), so they can commence some business operations and begin to recoup their losses.

Los Angeles has a serious shortage of licensed cannabis retail outlets, which has caused the unlicensed, illicit market to thrive. The unlicensed shops pay no taxes, comply with no regulations, and sell untested products, including vaping products with unknown additives that have caused a public health crisis with many deaths and injuries. New licensed businesses are desperately needed to serve the demand now being served by the unlicensed shops.

We are urging Los Angeles to process and award licenses to as many applicants as possible, both to benefit all the social equity applicants (who qualify

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based on being low income, having prior cannabis arrests or convictions, and/or having lived in certain areas with the most marijuana arrests for a minimum time period), and to remedy the bungled process and damage the City has caused through its flawed licensing system. We would like to see the City process both the first 100 applications it has already issued invoices to and are stuck in purgatory with no ability to operate in sight, and any other viable applications submitted by qualified applicants, many of whom are still holding onto expensive properties in reliance on the City's Social Equity Program. As a short-term solution, the City could process an additional 123 applications now (on top of the 100 invoices it has already issued in Phase 3), which would then place the entire City into "undue concentration" and allow applicants across the City to pursue their licenses via the PCN (Public Convenience or Necessity) process. We also encourage the City to immediately issue cannabis retail delivery, distribution, and/or manufacturing licenses to all 802 applicants with pending Phase 3 applications, so that they may begin generating some revenue while working to secure storefront licenses.

As things stand now, most applicants have lost large sums of money in reliance on the licensing system, causing damage to the very group of social equity applicants the City was trying to help. The social equity program was intended to be a form of reparations for victims of the war on drugs, but instead has turned into a system that has done more harm than good. Many have threatened litigation against the City, but we are trying to help encourage a solution where the City awards as many licenses as possible to the qualified applicants so they may get going with their businesses and the City can potentially avoid a major lawsuit.

Many social equity applicants now feel that they were misled by the City into making large financial investments and other commitments, with the vast majority of qualified applicants not receiving a license, through no fault of their own. Many have been holding onto expensive properties in the correct zones for months or even years in reliance on the program, with no ability to secure licenses anywhere in sight. In addition, various rumors and allegations have been spread around, including claims that some applicants were afforded special treatment in the process, and that rules were changed in the middle of the application process to benefit deep-pocketed investors as opposed to regular social equity applicants. All of these factors have created the perception that the social equity program is actually causing more harm to the social equity community than benefits – the opposite of its intended goal.

As the Round 1 licensing results suggest, the original objectives of the Phase 3 licensing process, which was to be a form of reparations for those most affected by the war on drugs, did not reach the statistically known, most affected communities. Therefore, the City should treat this as an opportunity to rectify an additional harm

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suffered by those already victimized by systematic oppression, by processing their cannabis applications. These applications act as an opportunity for community members to establish a legitimate business and build generational wealth to serve their families and communities.

Zoning Rules Should be Loosened

We also propose adopting similar language as has been applied to pre-ICO dispensaries regarding sensitive uses and inter-dispensary buffers, for Round 3, Phase 1 applicant locations. The cannabis industry and community consumers will be better served by lifting the current restrictive zoning rules, including the buffer zones between dispensaries.

The current law (LAMC 105.01-02) prohibits licensed dispensaries from operating within 700 feet of another licensed dispensary. We recommend that the ordinance be changed to expressly allow cannabis storefronts to operate near each other, with the approval of local stakeholders. We have spoken with various individuals who incurred substantial expenses attempting to follow the current application process, only to have been knocked out of the process by the current rule.

Under the current zoning rule prohibiting licensed cannabis storefronts from being within 700 feet of one another, every time the city issues a storefront license, all other applicants within 700 feet are knocked out of consideration, through no fault of their own. Each of the other “sensitive use” categories has a certain logic to it --- schools, day care centers, parks, libraries, and drug and alcohol treatment centers are inherently likely to have people who may be especially bothered by nearby cannabis sales.

There is little if any logic, however, to prohibiting dispensaries from being close to one another. Near another dispensary is exactly where one would expect a new dispensary to be most tolerated, and have the least adverse effect on surrounding areas. And allowing clusters of dispensaries would foster the development of cannabis districts that would attract locals and tourists alike, and boost the overall economy including ancillary and related businesses. The current rule prohibiting cannabis dispensaries from being near one another has the practical effect of causing dispensaries to be spread out more all around the city, encroaching more into residential areas, and to require people to drive from business to business, rather than walking.

One potential solution, if the City did not want to completely revoke the buffer zones between dispensaries, would be to allow dispensaries to open up

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within 700 feet of one another only with the approval of the City Council, via the already-existing undue concentration process. Under the current ordinance, pre-ICO dispensaries that received licenses in Phase 1 are already “grandfathered in” to their locations without having to comply with the buffer zone requirements.

If these 187 dispensaries are able to operate without regard for the buffer zones, and without any reports of major problems arising from their location, it is difficult to articulate why new businesses should be required to comply with the buffer zones. Current law prohibits onsite consumption of cannabis, and allows sales to the general public only to those over 21 years of age. Given these restrictions, one could argue that the buffer zones even around schools and parks make little sense. Illicit-market cannabis sales remain a very large portion of the California cannabis economy. Studies have found 1,000 illicit-market cannabis retailers just within the City of Los Angeles. Sales through the illicit-market avoid any tax or fee payments to the government, and avoid all regulation, potentially harming both the public coffers and public health.

The current crisis of people dying from vaping products (which all appear to result from poisonous additives in the unregulated, unlicensed market) is a striking example of why California, and Los Angeles, should work on licensing and regulating enough dispensaries to meet public demand. Issuing more dispensary licenses as fast as possible will increase tax revenues to state and local governments and allow licensed businesses to overtake the illicit-market and ensure public health and safety.

The City Should Not Tightly Regulate Control of Storefront Dispensaries

As a general rule, the City should allow reasonable, market-based transactions between social equity candidates and investors, and should not attempt to police standard business transactions. The City should allow any reasonable agreements negotiated between social equity applicants and management companies or investors in arm’s length transactions. Investors and management companies are not in a position to impose unreasonable terms on social equity applicants, as they need to compete with each other to attract the most desirable social equity applicants. Social equity applicants could also more effectively negotiate their terms with investors by forming a social equity applicant union

Investors need to ensure that they will have some degree of control over the operations they are funding, and social equity applicants likewise need assistance in establishing and managing these large and complicated business operations. The DCR’s new proposed amendments would require the Social Equity Applicant hold

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the highest officer position in each licensed business, and to retain full control over all business decisions and daily business operations. In order to ensure adequate investment into these businesses, the City should not require social equity applicants to maintain this degree of control over business operations. Instead, they should be allowed to enter into long-term contract with management companies to manage business operations and control the day-to-day operations, thus giving investors some assurance that the business will be run efficiently and by someone who has the appropriate background and experience running a retail operation.

PCN Process

We commend the DCR for recognizing that the Undue Concentration / PCN process needs to be reformed. The current system, with no standards or oversight, risks that important policy decisions will be made based on corruption or racism, instead of based on fair and reasonable criteria that apply to everyone equally.

Recently, there have been numerous allegations and media reports of potential corruption inside the LA City Council, involving alleged kickbacks or bribes being made in exchange for City Council approval of business projects. We do not believe that any conclusions should be drawn based on mere allegations, and the people involved in the scandal deserve due process and a chance to present their own side of the story. Due to the nature of the recent corruption allegations, however, and the similarity of their subject matter to the current City Council approval process for cannabis businesses in areas of undue concentration, the public and the industry want assurance that the City will have a corruption-free process for approving cannabis businesses.

To avoid even the appearance of impropriety, and to show the City is serious about preventing corruption, the City should take tangible steps to ensure the City employees involved in the current corruption allegations do not have any opportunity to engage in corrupt practices in the course of approving or denying any proposed new cannabis businesses.

While we applaud the DCR's efforts in coming up with new standards for the PCN process, we fear that the new standards could still be too vague and leave room for corruption or other improper criteria being used to approve or deny, such as the race of the social equity applicant or others involved in the businesses. For now, consideration of race in the PCN approval process is illegal under both California state law and federal laws preventing discrimination based on race by the government.

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A more transparent and equitable process for approving PCN applications would be to hold public hearings on each application, during which the City would be required to prove beyond a reasonable doubt that the proposed project does not meet the standards proposed by the DCR for approving the license. This would help prevent decisions being made in back rooms, outside of public scrutiny, where improper financial or racial considerations could be applied. The City should also expressly clarify in its laws that it is illegal for any decisions made in the PCN process to be based in any manner on donations or anyone's racial background, and that any evidence of such behavior would be subject to criminal and civil remedies.

The City should also avoid giving too much power to neighborhood councils in deciding whether to approve commercial cannabis projects. Too often, these groups are biased against any cannabis businesses, especially ones run by people previously arrested or convicted of cannabis offenses. But the very goal of LA's social equity program is to encourage these types of people to start up businesses. Neighborhood councils ought to be allowed to play a role in the licensing process, but their role should be restricted to an advisory one, rather than giving them veto power over any project.

Whatever the process for approving PCN applications, it should be a liberal one, as there is currently a huge demand for new dispensaries, as evidenced by the prevalence of unlicensed shops across the city. In addition, many Angelenos have recently lost their jobs and the City has recently lost a large portion of its tax base due to the huge number of businesses that have shut down as a result of the Covid-19 lockdown. Approving as many dispensaries as possible, in a fair and efficient manner, could give a great boost to the City's efforts in re-booting and re-energizing the economy. The City should also allow PCN applications to be approved automatically if the City Council does not take any action on them for a set period of time. This would allow council members to avoid difficult votes that could be politically unpopular, while giving them complete flexibility to hold hearings on any applications of their choosing.

The City should also reassess the factors considered to establish the undue concentration ratio of 1 dispensary per 10,000 citizens to adequately serve the wants and needs of the community and consider that over 70% of Californians stated they wanted more accessibility to cannabis products and shops. (LAMC 104.01(a)(28)) ([LA Times, Most Californians want marijuana stores in their communities](#))

Delivery Licenses Should be Made Available to all Phase 2 Applicants

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Current Los Angeles law provides that all businesses that received non-retail licenses (cultivation, distribution, and/or manufacturing) in Phase 2 of the City's licensing program shall be eligible to add retail delivery licenses to their business premises. See Section 104.06.1(d) ("An Applicant eligible for processing pursuant to Section 104.08 may amend its pending Section 104.08 application to add a Type 9 License at the time it submits an annual License application to DCR."). The DCR has proposed deleting this language.

We urge the city to keep this language allowing non-retail applicants to obtain a delivery license. Many businesses have relied upon this provision of the law, and invested substantial time and effort in planning the delivery side of their operations. In light of the concerns over COVID-19, delivery options are in-demand, promote public health, and should not be artificially suppressed.

Conclusion

We are hopeful that the City can approach all of these issues relating to commercial cannabis licensing with diligence and compassion, restoring the original reparational purpose and spirit back into the program and uplifting the community simultaneously. Now is a great time to open as many new businesses as possible across the City, for the sake of the social equity applicants, and our society at large.

As perspective, the City Los Angeles currently has 188 active commercial cannabis storefront licenses (<https://cannabis.lacity.org/resources/authorized-retail-businesses>), and over five thousand liquor licenses, including 3,557 active on-sale alcohol retail licenses, *i.e.*, restaurants, bars, etc.

(<https://www.abc.ca.gov/licensing/licensing-reports/adhoc-report/?RPTTYPE=7&CITY=LOS+ANGELES>), and 1,524 active off-sale alcohol retail

licenses, *i.e.*, grocery stores, liquor stores, etc.

(<https://www.abc.ca.gov/licensing/licensing-reports/adhoc-report/?RPTTYPE=8&CITY=LOS+ANGELES>).

There is broad consensus that cannabis is not as damaging to society as alcohol, and the City should consider issuing up to as many cannabis retail licenses as there are alcohol retail licenses in the City.

Very truly yours,

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