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VIA PERSONAL DELIVERY

Council President Wesson and
Members of the Los Angeles City Council
City of Los Angeles
200 N. Sprint Street, Room 340
Los Angeles, CA 90012

Re: Council File 08-0923-S17 re Los Angeles Medical Marijuana Ordinance 'Gentle Ban Approach'; Compliance with California Environmental Quality Act

Dear President Wesson and Council members:

This firm represents the Union of Medical Marijuana Patients ("UMMP") and Arts District Patients Collective, Inc. d/b/a Arts District Healing Center ("ADHC") with respect to the City of Los Angeles' ("City") proposed new medical marijuana ordinance replacing the current ordinance with a co-called "gentle ban" (hereinafter referred to as "gentle ban"). For the reasons outlined below, a proposed "gentle ban" is not exempt from the California Environmental Quality Act ("CEQA") and the City must prepare an Initial Study and give the public an opportunity to comment prior to adoption.

The Gentle Ban is Not Exempt from the California Environmental Quality Act

While the precise ordinance language of the proposed "gentle ban" has yet to be released for public review, the Motion presented by Paul Koretz and Herb Wesson states the following:

> "A second more reasonable approach to compliance could include a limited immunity approach whereby the City proceeds forward with a ban on dispensaries but uses its prosecutorial discretion to abstain from any enforcement action against the limited number of dispensaries that do not violate a set of City Council imposed restrictions. This approach would protect neighborhoods while still assuring limited safe access for patients within the confines of ever evolving case law."

The proposed Ordinance does not identify or outline the proposed "set of City Council imposed

restrictions." However, if these restrictions include either a requirement that collectives relocate or ceases operations, then review under CEQA is required. Under CEQA, the City is compelled to analyze whether the proposed project will result in any "significant, adverse effects on the environment." Regardless of the City's asserted position regarding the legality of the hundreds of existing medical marijuana collectives in the City, the fact remains that medical marijuana collectives have existed in the City for at least 6 years. This is the environmental baseline and status quo. The City's previous medical marijuana ordinances sought to uproot established collectives and relocate them to other parts of the City and new Community Planning Areas ("CPAs"). According to the City's own records, only a handful of collectives would have met either the previous ordinances' buffer zone requirements such that they were not forced to relocate. If the City chooses to adopt a similar regulatory regime in the form of a "gentle ban" that compels the mass relocation of hundreds of existing collectives, then they must review this action under CEQA. Moreover, any grandfather date or restrictions that effectively reduce the number of collectives in the City will certainly change the environmental status quo by reducing the total number of collectives and access to medical marijuana. Patients have come to depend on the existing locations in the City. A "gentle ban" that results in mass relocation or the reduction in the total number of existing collectives will result in a physical change in the environment and requires review under CEQA. This impact is not speculative and is certainly foreseeable.

The City is compelled to prepare an Initial Study pursuant to §15063 of the California Public Resources Code as there are no applicable exemptions established in Division 13, Articles 18 or 19 of the California Public Resources Code.

Any Initial Study conducted by the City must analyze the reasonably foreseeable indirect or secondary effects of the proposed "gentle ban." The term "project" as defined in Cal. Pub. Res. Code § 21065 has been broadly interpreted by courts. For example, in a seminal case decided by the California Supreme Court, the court stated that CEQA is "to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259. Further courts have concluded that the term "project" encompasses regulatory approvals such as general plan amendments, zone changes, and annexations which may ultimately lead to physical environmental changes. 14 Cal. Code Regs. § 15378(a)(1); *Bozung v. Local Agency Formation Commission*, (1975) 13 Cal. 3d 263, 277 n.16, 118 Cal. Rptr. 249. The City is required under CEQA to undertake a review of an ordinance when it is apparent that the regulations will "*culminate* in physical change to the environment." *Bozung v. Local Agency Formation Commission*, 13 Cal. 3d 263, 281 (emphasis added).

The fact that the "project" at issue is the adoption of an ordinance as opposed to a development project proposed by an applicant does not relieve the City of the obligation to undertake a review of the project under CEQA. *Rosenthal v. Board of Supervisors* (1975) 14 Cal.App.3d 815, 823 (stating that "adopting an ordinance [is] a project"); *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 118 Cal.Rptr. 34 (impliedly holding that adoption of ordinance is a project within the meaning of CEQA); 60 Ops.Cal.Atty.Gen. 335 (1977) ("ordinances and resolutions adopted by a local agency are 'projects' within the meaning of CEQA"). The Attorney General Opinion issued in 1977 concluded that the following ordinances were all subject to CEQA: (1) an open-range ordinance requiring private land owners to fence out cattle; (2) an ordinance allowing construction of single family dwellings in rural areas without electricity, running water, or flush toilets; and (3) an ordinance modifying road

improvement standards for new subdivisions. The bottom line is that a project need not directly effect a physical change in the environment: reasonably foreseeable indirect or secondary effects must also be analyzed. The relative inquiry is whether or not the project, or in this case, a proposed "gentle ban," will ultimately culminate in physical changes to the environment. *Id.* As described below, any proposed "gentle ban" will unquestionably culminate in a physical change to the environment if collectives are either required to relocate or cease operations and any Initial Study that the City conducts must analyze these impacts before the City can adopt the "gentle ban."

The environmental impacts of a "gentle ban" could be profound. The environmental factors that the City is compelled to consider include the following: (1) Aesthetics, (2) Agriculture and Forestry, (3) Air Quality, (4) Biological Resources, (5) Cultural Resources, (6) Geology / Soils, (7) Greenhouse Gas Emissions, (8) Hazards & Hazardous Materials, (9) Hydrology / Water Quality, (10) Land Use / Planning, (11) Mineral Resources, (12) Noise, (13) Population / Housing, (14) Public Services, (15) Recreation, (16) Transportation/Traffic, and (17) Utilities / Service Systems. While a "gentle ban" may not have a significant effect on the environment with respect to one particular environmental factor (e.g. Mineral Resources), it may nonetheless have a significant environmental effect on another factor (e.g. Transportation / Traffic). Without conducting an Initial Study, the City has no way of knowing the effects on the environment. Here are some facts to consider:

- Ordinance 181069 only allowed those collectives that successfully registered with the City on or before November 13, 2007 to continue to operate in the City.
- Ordinance No. 181612 places a cap of 100 collectives in the City.
- Based on the City's estimates, only 187 collectives would be eligible to participate in the permitting process under Ordinance 181069.
- While the total number of collectives in the City is unknown, it is fair to assume based on the plaintiffs in *Americans for Safe Access v. City of Los Angeles* (and related cases) that there are at least 400 existing collectives in the City that would be impacted by a proposed "gentle ban."
- A grandfather date of November 13, 2007 could reduce the total number of collectives to just 187. This would result in a 53% reduction in the number of collectives in the City.

A reduction in the total number of collectives will create a greater burden on the remaining collectives in the City who will be tasked with meeting the needs of a greater number of patients. There are foreseeable environmental consequences that implicate agriculture, air quality, water quality, traffic, land use planning, etc. Consider the following:

- Assuming medical marijuana patients comprise 2% of the Los Angeles population then there are 76,987 patients in Los Angeles.
- Assuming patients use 1 ounce of marijuana per month, then 57,740 pounds of cannabis per year would need to be cultivated to meet patient needs.
- This amounts to 144 pounds per year/per collective if there are 400 collectives in the City.
- Any reduction in the number of collectives, however, would <u>increase</u> the cultivation requirement of each collective. If the City was to reduce the total number of collectives to 187, for example, then the remaining collectives would have to increase cannabis cultivation by 144.7 pounds per year (or 288.7 pounds/per collective).
- In other words, each collective would need to increase production by almost <u>100%.</u>

Such a large increase in cannabis production may have significant effects on the environment. Obviously, larger cultivation facilities will be required and additional waste water will be created as a result of these cultivation activities. Moreover, additional waste plant material (a.k.a bio-waste) will be created that must be disposed of properly. There will also be an increase in the electrical consumption that will be required. Approximately 400 watts of electricity is required to grow one pound of cannabis per year. These facts are compelling and demonstrate potential significant environmental effects in terms of (1) Greenhouse Gas Emissions, (2) Hazards & Hazardous Materials, (3) Hydrology / Water Quality, and (4) Utilities / Service Systems.

Moreover, there are transportation/traffic and air quality issues that are implicated as well. It is undisputed that the buffer zone requirements outlined in previous ordinances will compel the mass relocation of hundreds of collectives, many of which would be forced to relocate to entirely new areas of the City. The buffer zone requirements will also have another intended consequence – they will cluster collectives within the few areas of the City that comply with the buffer zone requirements and residential restrictions. Because collectives are necessarily comprised of patients and caregivers that live in the community (and presumably in residential areas), these individuals (who have a medical need) will have to travel much further to visit the collective of which they are a member. Collectives are not mere cogs that can simply be switched out and replaced without consequence and when one collective "replaces" another in a community, patients will not necessarily join that collective. Patients will likely travel by car or public transit. Also, those patients that were previously within walking distance of their collective must now drive or use public transit to visit their collective. In essence, compelled relocation turns certain patients into commuters. Further, significant land use/planning impacts may result from the "gentle ban." The clustering of collectives *within* certain areas of the City creates land use compatibility problems that the City is compelled to analyze under CEQA. There are also environmental concerns in the form of "Public Services." Collectives are inherently formed for the collective cultivation of medical marijuana and are comprised of patients with medical needs. Patient member services (which span the gamut and are often designed for healing) will be impacted when existing collectives are forced to close and destroyed. This could have an effect on "public services."

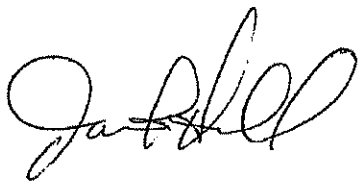
Finally, there are cultural resources that the City must consider under CEQA. Collectives are communities made up of patients and caregivers. A collective is NOT about the mere distribution and cultivation of medical marijuana. For example, ADHC offers a range of patient member services, including (1) Live Music, (2) Organic Food, (3) Community Gardening, (4) Art, and (5) Counseling. Both patients and healing practitioners visit ADHC to assist patients who are experiencing medical problems. ADHC also has a gallery and curator. Artists often come from the local community, but also include patients. Counseling is also provided such as acupuncture, tax advice, and emotional counseling. Much like a church is much more than just a place to worship, a collective is more than a place for the collective cultivation of marijuana. On the contrary, a wide range of patient members services are offered at many collectives and communities have developed around these collectives. A "gentle ban" requiring either closure of relocation threatens to destroy this community. For example, ADHC could be forced to move from downtown Los Angeles to the Valley and this would have a profound impact on the health and vitality of the collective. Some patients would simply not be able to make the drive and this would deeply impact the collective community. Local artists would not have ADHC has a venue to display work and, most importantly, an established piece of the local community for over 5 years would simply disappear. Any ordinance that threatens to shut down a patient

organization is disrupting the culture that has developed within these collectives. This would certainly impact cultural resources and requires review under CEQA.

Conclusion

While the above discussion is not intended to be an exhaustive list of the reasonably foreseeable indirect or secondary effects of the adoption of a "gentle ban" (which has yet to be presented to the public), it is illustrative of the types of impacts that the City must analyze. A fair argument has been outlined regarding the significant environmental effects of any "gentle ban" that compels mass relocation or significant reductions in the number of collectives in the City. As such, the City must conduct an Initial Study under CEQA and provide the public with a review period to comply with the legal mandates of CEQA.

Sincerely,



Jamie T. Hall
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