Los Angeles City Council
200 N Spring Street.
Los Angeles, CA 90012
Rooms – Various

November 30, 2009

Re: **Item 8, December 2, 2009 Council meeting, Council File 08-0923**

Council Members: Reyes, Zine, LaBonge, Koretz, Cardenas, Alarcon, Parks, Perry, Wesson, Rosendahl, Smith, Garcetti, Huizar, Hahn.

Many in the various communities around the City have been befuddled by the process the Medical Marijuana Ordinance has taken. As community members we have read the City Attorney's reports to you and then the actual cases in order to understand the law so that we could make informed recommendations to you. We recently listened as councilmember's Reyes and Koretz lectured the City attorney and his staff suggesting that the City Attorney was not giving them the information they needed to draft legislation, and that the City Attorney was somehow manipulating the Council. It sounded as if those members were saying don't tell us what we need to hear, tell us what we want to hear.

Then the LA Weekly story on L.A.'s Medical-Weed Wars broke and we began to understand what was happening and that once again it was the people who were being manipulated. That story brought clarity as it exposed the existence of a Medical Marijuana working group that had access to the City Attorney's office, Planning Department, Building and Safety Department, City Clerks office and LAPD brass. As it turned out one person, an advocate and owner of a Medical Marijuana dispensary in West Hollywood was a member of the group and had the ear of influential Council members. Where were Neighborhood Councils which are mandated by the Charter to monitor City services and bring government closer to the people? Where were school officials, parent groups and the business community? They were excluded as usual. This is the real manipulation, not an opinion by the City Attorney's office. Council members, you are public servants. The City Attorney may theoretically work for the City Council as members Reyes and Koretz stated at the last Council meeting but you work for the people!

Certainly not all Council members should be painted with the same brush. Some have struggled to understand the complexities of a poorly written initiative, implemented by the legislature through a long process and further defined by the courts. I especially admired the way Council members Smith, Alarcon and Huizar probed the City Attorney on the issue of sales and what is legal in the State of California. They appeared to genuinely want to understand this issue while others seemed to have come to a conclusion based not on what the law is, but what they want it to be.

What is missing in this debate, what is never mentioned is that patients and their caregivers can still grow marijuana. Nothing is stopping them from doing that. Some patients complain that they do not have green thumbs and can't grow marijuana, but the question remains why they don't let their caregiver grow it for them? Also collectives as a physical entities are not necessary for patients and caregivers to collectively cultivate medical marijuana.

We keep hearing that the West Hollywood model is what we should adopt but after reading the LA Weekly story one has to ask why? Why does Councilmember Koretz keeps pushing the West Hollywood model, especially when West Hollywood Councilman John Duran said in the LA

Weekly article that the Council knew from the beginning that the dispensaries were operating for a profit. Duran continued to concede a darker truth that "We know that the collectives are not able to get all their marijuana from California, and some are coming from drug cartels." Is this where Los Angeles is heading? Is this the plan hatched in the working group sessions?

As far as sales are concerned they are not permitted under Federal or California law. Courts have sentenced people to jail for sales! The City Attorney has mentioned on numerous occasions that the necessary component is the patient/caregiver relationship. He has mentioned the California Supreme Court case, People v Mentch. Here is what that court stated in connection to primary caregivers.

"Three aspects of the structure of the responsibility clause are noteworthy. From these aspects, as we shall explain, we conclude a defendant asserting primary caregiver status must prove at a minimum that he or she (1) consistently provided caregiving, (2) independent of any assistance in taking medical marijuana, (3) at or before the time he or she assumed responsibility for assisting with medical marijuana.
First, the text requires that the primary caregiver have "consistently" assumed responsibility for the patient's care. "Consistently" suggests an ongoing relationship marked by regular and repeated actions over time. In People ex rel. Lungren v. Peron, supra, 59 Cal.App.4th 1383, for example, the many customers of a marijuana club, the Cannabis Buyers' Club, executed pro forma designations of the club as their primary caregiver. The Court of Appeal correctly rejected the assertion that the buyers' club could qualify as a primary caregiver in these circumstances: "A person purchasing marijuana for medicinal purposes cannot simply designate seriatim, and on an ad hoc basis, drug dealers on street corners and sales centers such as the Cannabis Buyers' Club as the patient's 'primary caregiver.' The primary caregiver the patient designates must be one 'who has consistently assumed responsibility for the housing, health, or safety of [the patient].' " (Id. at p. 1396.) One must consistently — "with persistent uniformity" (3 Oxford English Dict. (2d ed. 1989) p. 773) or "in a persistent or even manner" (Webster's 3d New Internat. Dict. (2002) p. 484) — have assumed responsibility for a patient's housing, health, or safety, or some combination of the three.
Second, the definition of a primary caregiver is written using a past participle — "has consistently assumed." (§ 11362.5, subd. (e).) This reinforces the inference arising from the use of the word "consistently" that primary caregiver status requires an existing, established relationship. In some situations, the formation of a bona fide caregiving relationship and the onset of assistance in taking medical marijuana may be contemporaneous, as with a cancer patient entering chemotherapy who has a recommendation for medical marijuana use and has a live-in or home-visit nurse to assist with all aspects of his or her health care, including marijuana consumption. (See § 11362.7, subd. (d)(1) [primary caregiver may include employees of hospice or home health agency].) Even in this scenario, however, the caregiving relationship will arise at or before the onset of assistance in the administration of marijuana. What is not permitted is for an individual to establish an after-the-fact caregiving relationship in an effort to thereby immunize from prosecution previous cultivation or possession for sale. (Cf. People v. Rigo (1999) 69 Cal.App.4th 409, 412-415 [doctor may not give postarrest recommendation to bless prior use].)
Third, from these two aspects of the text, as well as logic, we draw a further inference: a primary caregiver must establish he or she satisfies the responsibility

clause based on evidence independent of the administration of medical marijuana. Under the Act, a primary caregiver relationship is a necessary antecedent, a predicate for being permitted under state law to possess or cultivate medical marijuana. The possession or cultivation of marijuana for medical purposes cannot serve as the basis for making lawful the possession or cultivation of marijuana for medical purposes; to conclude otherwise would rest the primary caregiver defense on an entirely circular footing.

We thus agree with the Court of Appeal in People v. Frazier (2005) 128 Cal.App.4th 807, 823, which rejected the argument that "a 'primary caregiver' is a person who 'consistently grows and supplies physician approved marijuana for a medical marijuana patient to serve the health needs of that patient.' " The Frazier court concluded that, while if one were already qualified as a primary caregiver one could consistently grow and supply medical marijuana to a patient, the consistent growth and supply of medical marijuana would not by itself place one in the class of primary caregivers. (Ibid.; see also People v. Windus (2008) 165 Cal.App.4th 634, 644 ["Case law is clear that one who merely supplies a patient with marijuana has no defense under the [Act]"].)**5**"

Why this is so difficult for certain councilmember's to understand is beyond us? Why do they continue to dodge around the issue of sales? This as Councilman Smith has stated is at the core of this Ordinance. The dispensary owners understand this all to well. Don Duncan of ASA commenting on a blog about the 7 hour session last Wednesday thanked Council President Garcetti for some skillful negotiations on the issue of sales "to keep the City Council from back peddling on this crucial issue". Why would this Council continue to dance around this issue and why would this council continue to discuss growing marijuana off campus? Council member Reyes seems to want LA to allow off site sales. That would open the gates to illegal activity and some unfortunate patients or caregivers could have to suffer the consequences by going to jail. That is one more reason why membership lists for Collectives must be open for inspection without a court order and audits conducted of marijuana grown in the collectives. The City must be able to match patients to the caregivers who are growing the marijuana for them. As Deputy City Attorney William Carter has informed you time and time again the crucial element the City must get right is to ensure that Collectives are made up of patients and their primary caregivers who have consistently assumed responsibility for the housing, health, or safety of a patient who may legally possess or cultivate marijuana. This is the law Council members and under Government Code Section 37,100 the legislative body may pass ordinances not in conflict with the Constitution and laws of the State or the United States. It is your duty to pass an Ordinance that clearly does not violate California law as it currently exists!

Some of us will try to be at the next meeting but unfortunately there will be fewer and fewer non patient members of the Community in attendance. It is difficult enough to take time off of work but frankly people do not want to be subjected to the taunts and threats that have been heard in Chambers during this debate. Some of us will be there to watch each others back, especially as we leave the chamber.

While some who attend the meetings are true believers fighting for patient's rights it should be remembered that dispensaries are making large amounts of money and will do almost anything to keep their profits. I would point your attention to an entry of Weed Tacker asking Vets to show up in uniform in order to kill the debate. This from the blog and a link,

"Iraq/Afghanistan Vets Please Attend Next Wed. City Council

If there are any patients on WT who are also Iraq/Afghanistan War veterans, I think it would make a huge difference next Wednesday Dec. 2, 2009 if they would speak before city council in formal dress uniform or which conveys the branch they served in. If they were to impress on the councilmembers the sacrifice they made overseas only to return home and have Trutanich and Cooley step all over the rights they risked body, limb, and mind to protect, it would go a long way towards making Nuch and Cooley look like real unpatriotic assholes and support of Nuch and Cooley as much. I figure one Marine in uniform who is an MMJ patient would equal about 100 patients who typically speak before council in terms of how quickly they reverse their position in our favor.

Of course, I'm referring here to pure visual impact and the impact a veteran's voice would have on these politicians. Considering that Zine, Smith, and Rosendahl are all pro-military (Smith is a reservist!) and all three have that star dispalyed were veterans to pose the politically incorrect question of councilmembers depriving local veterans access to medicine, I think it would put a coffin in any naysayers on council, maybe even Parks!

http://www.weedtracker.com/forums/protest-alerts-1022/iraq-afghanistan-vets-please-attend-next-wed-city-council-175853.html

It is time Councilmember's to do the right thing, to keep your oath to uphold the Constitution of the State of California. Follow the City Attorney's advice and get on with it. If you are truly concerned with getting sued over this issue then the most prudent choice would be to ban dispensaries or collectives altogether. There is nothing currently in the Municipal code that allows for them and the recent City of Claremont case gives you the authority to do exactly that.

Sincerely:

James O'Sullivan
President, Miracle Mile Residential Association

Cc Mayor Antonio Villaraigosa
Cc City Attorney Carmen Trutanich
Cc Council Staff members