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June 8, 2012

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 11-1737-S1 re Los Angeles Medical Marijuana Ordinance; 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 banning so-called "medical marijuana businesses." For the reasons outlined in the attached Analysis, the proposed 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.

Sincerely,

Jamie T. Hall
Attorney for Union of Medical Marijuana Patients and Arts District Healing Center

PLANNING & PERMIT TECHNOLOGIES, INC.
Building - Planning/Zoning - Permitting - Consulting Services

2012-1273-CE Planning & Zoning/CEQA Analysis_Comments On City's Proposed Environmental Determination/Document ENV 2012-1273-CE/Notice of Exemption

June 8

2012

Project Description (City of Los Angeles):

An ordinance (Appendix A) repealing and replacing Article 5.1 of Chapter IV of the Los Angeles Municipal Code in response to recent appellate court decisions concerning regulation of medical marijuana.

Lead Agency:

City of Los Angeles Department of City Planning.

Project Title:

Proposed Ordinance Concerning Regulation of Medical Marijuana.

Project Location:

Citywide

Description of Nature, Purpose, and Beneficiaries of Project (City of Los Angeles):

An ordinance repealing and replacing Article 5.1 of Chapter IV of the Los Angeles Municipal Code in response to recent appellate court decisions concerning regulation of medical marijuana.

Justification for Project Exemption (City of Los Angeles):

The proposed ordinance would have no direct or reasonably foreseeable indirect physical impact upon the environment. Also, the proposed ordinance solely impacts the operation of existing private structures involving negligible or no expansion of use; is a minor alteration in land use limitations; is an action to assure the maintenance, enhancement, or protection of the environment; and is an action to enforce a law, general rule, standard, and objective.

PLANNING & PERMIT TECHNOLOGIES, INC.
Building · Planning/Zoning · Permitting · Consulting Services

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

Re: Response and comments (rebuttal) on the City of Los Angeles's determination to find that the "Project", a proposed ordinance repealing and replacing Article 5.1 of Chapter IV of the Los Angeles Municipal Code, that will serve to effectively ban medical marijuana businesses

Dear President Wesson and Council members:

As a practicing professional urban planner with significant experience (20 years working in the public sector at jurisdictions across the State) and expertise in the real application of Local Municipal Code Regulations, California Planning & Zoning Law, the Subdivision Map Act, the Permit Streamlining Act, the California Environmental Quality Act (CEQA), General Plan Law, and all matters with respect to applicable Federal, State, and Local Planning and Zoning Legislation I have been retained to present my analysis, findings, and opinions surrounding the City of Los Angeles's preliminary determination that a proposed Citywide ordinance repealing and replacing Article 5.1 of Chapter IV of the Los Angeles Municipal Code that will serve to ban "medical marijuana businesses" while also (allegedly) preserving the activities associated with this land use pursuant to State law is "Categorically Exempt" from the provisions of CEQA. To this purpose a summary introduction of the component parts of the comprehensive analysis contained in this correspondence is presented below followed by a summary of the my conclusions on this matter.

Enclosed herein is a narrative in objection to the City's determination that a proposed citywide ordinance repealing and replacing Article 5.1 of Chapter IV of the Los Angeles Municipal Code that will serve to ban "medical marijuana businesses" while also preserving the activities associated with this land use pursuant to State law is "Categorically Exempt" from the provisions of CEQA. Particularly this correspondence will provide a two (2) part analysis with conclusions focusing on the following themes:

1. A general discussion concerning the standards and intentions of CEQA as they are typically applied by the professional planning community throughout the State; and
2. A specific and detailed (in an exhaustive manner) "rebuttal" of the CEQA Narrative (ENV 2012-1273-CE) document and proposed "Notice of Exemption" in support of the City's proposed determination that the "project" that is the subject of this matter is "exempt" from the provisions of CEQA.

The following is a summary of the conclusions that are supported in detail in the body of the correspondence.

1. The "Project/Proposal" is not accurately described in either the "Project Description" within the CEQA Narrative document entitled "ENV 2012-1273-CE" or the proposed "Notice of Exemption";
2. The analysis of the "Project/Proposal" ignores and does not address/analyze in any way the critical element of the proposed ordinance that will preserve many of the activities associated with the subject land use that the City is seeking to ban;
3. There are both "direct and indirect reasonably foreseeable impacts" associated with this "Project/Proposal" when CEQA is applied as it is intended and when the entirety of the "Project/Proposal" is comprehensively considered;

4. There are clear "Location" issues and "Unusual Circumstances" surrounding the subject land use and its regulation and therefore pursuant to "Section 15300.2 Exceptions (a) and (c)" the subject "Project/Proposal" is not "exempt" from CEQA;
5. None of the various classes of project types recognized as "Categorically Exempt" from the provisions of CEQA that are cited by the City in their proposed CEQA Narrative document, "ENV 2012-1273-CE" and their proposed "Notice of Exemption" apply to the subject "Project/Proposal"; and
6. The City's "faux" "Initial Study" included within the CEQA Narrative document entitled "ENV 2012-1273-CE" does not include an analysis of the entirety of the "Project/Proposal" nor does it provide the thorough vetting of the potential impacts and in turn, alternatives and mitigation that may be determined necessary if this project were analyzed properly/appropriately/conscientiously.

BACKGROUND

In 2007, the City adopted Interim Control Ordinance ("ICO)" No. 179027, which prohibited the establishment of new medical marijuana collectives until such time as a permanent ordinance could be adopted. Significantly, the City broadly defined the prohibited activity. The City defined a "Medical Marijuana Dispensary" as follows: "**any** use, facility, or **location**, including but not limited to a retail store, office building, or structure **that distributes, transmits, gives, dispenses, facilitates or otherwise provides marijuana in any manner**, in accordance with State law, in particular, California Health and Safety Code Sections 11362.5 through 11362.83, inclusive." (emphasis added). A total of 219 medical marijuana collectives registered with the City under the ICO.

In 2010, the City adopted permanent Medical Marijuana Ordinance ("MMO") No. 181069. Section 45.19.6.1(B) of the MMO defined a "Medical Marijuana Collective" as follows: "An incorporated or unincorporated association, composed solely of four of more qualified patients, persons with identification cards, and designated primary caregivers of qualified patients and persons with identification cards . . . who associate at a particular location to collectively or cooperatively cultivate marijuana for medical purposes, in strict accordance with California Health and Safety Code Sections 11362.5. *et seq.*" No permits or "registrations" were issued by the City under the MMO and the City subsequently adopted Temporary Urgency Ordinance No. 181530, which amended the MMO to comply with court order.

The City's proposing ordinance bans "medical marijuana businesses," which are defined in the draft ordinance as either of the following: "(1) Any location where marijuana is cultivated, processed, distributed, delivered or given away to a qualified patient, a person with an identification card, or a primary caregiver. (2) Any vehicle or other mode of transportation, stationary or mobile, which is used to transport, distribute, deliver, or give away marijuana to a qualified patient, a person with an identification card, or a primary caregiver." *See* Section 45.19.6.1(1)-(2). However, the proposed ordinance specifically excludes from the definition "Any **dwelling unit** where a maximum of three (3) or fewer qualified patients, persons with an identification card, and/or primary caregivers process or associate to **collectively or cooperatively cultivate marijuana on-site** for their own personal medical use or, with respect to the primary caregivers, for the personal medical use of the qualified patients or persons with an identification card who have designated the individual as a primary caregiver, in accordance with California Health and Safety Code Sections 11362.5 and 113621 et seq.;" *See* Section 45.19.6.1(3)(a) (emphasis added). Notably, the proposed ordinance requires all cultivation of medical

marijuana to be conducted onsite within the City of Los Angeles and only allows medical marijuana collectives of less than four persons in "dwelling units."

ANALYSIS

The "ANALYSIS" herein consists of two (2) component parts that will individually and collectively serve to provide the necessary evidence for the City of Los Angeles ("City") to reconsider the proposed determination that the subject project is "exempt" from CEQA.

The initial component of this analysis presents context that will serve to set the reasonable and practical parameters under which CEQA is intended and typically applied for "unusual" projects of this nature. Following the contextual discussions is a detailed "rebuttal" of the City's CEQA Narrative document, **"ENV 2012-1273-CE"**.

General CEQA Comments

The following sections of the State's Public Resources Code, commonly referred to as "CEQA" provide the context and intentions to which CEQA is to be applied by the lead and responsible agencies and their professional planning staff. It will be clear after this contextual analysis that with respect to this matter/"Project/Proposal", CEQA is not being applied in a manner consistent with the articulated intentions.

- **§ 21000 Legislative Intent/§ 21001 Additional Legislative Intent** (CEQA California Public Resources Code Division 13. Environmental Quality);
- **§ 21001.1 Review of Public Agency Projects** (CEQA California Public Resources Code Division 13. Environmental Quality);
- **§ 21002 Approval of Projects; Feasible Alternative or Mitigation Measures** (CEQA California Public Resources Code Division 13. Environmental Quality);
- **§ 21003.1 Environmental Effects of Projects; Comments from Public and Public Agencies to Lead Agencies; Availability of Information** (CEQA California Public Resources Code Division 13. Environmental Quality);
- **§ 21005 Information Disclosure Provisions; Noncompliance; Presumption; Findings** (CEQA California Public Resources Code Division 13. Environmental Quality);

CEQA § 21000 Legislative Intent/§ 21001 Additional Legislative Intent

The following are specific clauses/excerpts lifted directly from Sections 21000 and 21001 of the Public Resources Code and are presented here to gain additional perspective and guidance concerning the importance of accurately applying CEQA to all projects under consideration by local jurisdictions in the State of California.

> ***"§ 21000 Legislative Intent***
>
> "The Legislature finds and declares as follows:"
>
> "(a) The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern."
>
> "(b) It is necessary to provide a high-quality environment that at all times is healthful and pleasing to the senses and intellect of man."
>
> "..."
> "..."
> "..."
> "..."

"(g) It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian."

"§ 21001 Additional Legislative Intent

"The Legislature further finds and declares that it is the policy of the state to:"

"(a) Develop and maintain a high-quality environment now and in the future, and take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state."

"..."

"..."

"(d) Ensure that the long-term protection of the environment, consistent with the provision of a decent home and suitable living environment for every Californian, shall be the guiding criterion in public decisions."

"(e) Create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations."

"(f) Require governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality."

"(g) Require government agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment."

In review of the above sections it is clear that the state Legislature intends that CEQA serve as the primary tool in carefully considering any and all potential impacts associated with a "project" and it's "alternatives" (including a "no project alternative"). What is equally clear is that by making a determination that the project in this case, an ordinance serving to ban so-called "medical marijuana businesses," while knowing that many/most of the cultivation activities associated with the land use are provided for under State Law may only serve in the migration of this land use from "storefronts" throughout the City to "underground" locations. Indeed, many of these new locations will likely be in residential neighborhoods in the City. ,. The City has failed to analyze the potential impacts associated with a shift of this land use into other alternative locations, such as residential neighborhoods. Indeed, patients will gravitate towards residential neighborhoods for the purpose of fulfilling the need to have marijuana medicine easily accessible and the impacts of such a shift should be evaluated before a decision on the proposed project is rendered by the City. By determining that the "project" in this case, a proposed ordinance to ban medical marijuana businesses, is "exempt" from CEQA, no such analysis is being conducted and existing residential neighborhoods throughout the City are unaware of the pending impacts that may result from this action. To assume that the activities associated with the land use in this case will simply go away is neither a reasonable nor an accurate position.

CEQA § 21001.1 Review of Public Agency Projects

"§ 21001.1 Review of Public Agency Projects" reads as follows:

"§ 21001.1 Review of Public Agency Projects"

> "The Legislature further finds and declares that it is the policy of the state that projects to be carried out by public agencies be subject to the same level of review and consideration under this division as that of private projects required to be approved by public agencies."

The above section is included herein to make clear there should be no deference given for how a "project" is processed and reviewed whether it is proposed by a public agency, as the case is here, or by a private entity. In my review of the facts and circumstances surrounding the determination to "exempt" the project from the provisions of CEQA it appears there are some liberties taken to support the City's desire to ban the subject land use.

CEQA § 21002. APPROVAL OF PROJECTS; FEASIBLE ALTERNATIVE OR MITIGATION MEASURES

"§ 21002 Approval of Projects; Feasible Alternative or Mitigation Measures" reads as follows:

> "§ 21002. Approval of Projects; Feasible Alternative or Mitigation Measures"
>
> "The Legislature finds and declares that it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects, and that the procedures required by this division are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects. The Legislature further finds and declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof."

The above section stipulates the importance of truly understanding the project's impacts and any feasible alternatives or feasible mitigation measures available before the project is approved. By failing to conduct an Initial Study in this case, the City has failed to assess or analyze the potential impacts of the proposed ordinance, including feasible alternatives, or mitigation measures (if any). By improperly rendering the project categorically exempt from CEQA, the City has failed to vet the project in terms of impacts when there are clearly potential impacts that will remain with respect to this land use in that regardless of the City's ban, the State still recognizes that collective cultivation of medical marijuana. Knowing that "medical marijuana businesses" are being banned locally and knowing collective cultivation may still be permitted from the State's perspective is certainly cause to study the possible alternatives that may result if the storefront options that are now available are proposed to be removed. Where will this land use occur and what would be the impact associated with the likely alternatives for medical marijuana cooperatives and collectives if they are now forced to operate from residences (or other non-store front locations)? Without CEQA being applied to this proposed ordinance these reasonably foreseeable implications are yet not understood and until they can be measured and analyzed no action on this matter should be taken.

CEQA § 21003.1 Environmental Effects of Projects; Comments from Public and Public Agencies to Lead Agencies; Availability of Information

"§ 21003.1. Environmental Effects of Projects; Comments from Public and Public Agencies to Lead Agencies; Availability of Information" reads as follows:

"§ 21003.1. Environmental Effects of Projects; Comments from Public and Public Agencies to Lead Agencies; Availability of Information"

"The Legislature further finds and declares it is the policy of the state that:"

"(a) Comments from the public and public agencies on the environmental effects of a project shall be made to lead agencies as soon as possible in the review of environmental documents, including, but not limited to, draft environmental impact reports and negative declarations, in order to allow the lead agencies to identify, at the earliest possible time in the environmental review process, potential significant effects of a project, alternatives, and mitigation measures which would substantially reduce the effects."

"(b) Information relevant to the significant effects of a project, alternatives, and mitigation measures which substantially reduce the effects shall be made available as soon as possible by lead agencies, other public agencies, and interested persons and organizations."

"(c) Nothing in subdivisions (a) or (b) reduces or otherwise limits public review or comment periods currently prescribed either by statute or in guidelines prepared and adopted pursuant to Section 21083 for environmental documents, including, but not limited to, draft environmental impact reports and negative declarations."

By the City's determination that the proposed ordinance to ban medical marijuana businesses is "exempt" from CEQA while knowing and admitting that the activity associated with the medical marijuana business (i.e. the collective cultivation of medical marijuana) will continue in some capacity is not a reasonable position with respect to the clear intentions of CEQA's purpose as stipulated above.

CEQA § 21005 Information Disclosure Provisions; Noncompliance; Presumption; Findings

"§ 21005. Information Disclosure Provisions; Noncompliance; Presumption; Findings" reads as follows:

"§ 21005. Information Disclosure Provisions; Noncompliance; Presumption; Findings"

"(a) The Legislature finds and declares that it is the policy of the state that noncompliance with the information disclosure provisions of this division which precludes relevant information from being presented to the public agency, or noncompliance with substantive requirements of this division, may constitute a prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome would have resulted if the public agency had complied with those provisions."

"(b) It is the intent of the Legislature that, in undertaking judicial review pursuant to Sections 21168 and 21168.5, courts shall continue to follow the established principle that there is no presumption that error is prejudicial."

"(c) It is further the intent of the Legislature that any court, which finds, or, in the process of reviewing a previous court finding, finds, that a public agency has taken an action without compliance with this division, shall specifically address each of the alleged grounds for noncompliance."

The point of including the above is again to stress the importance of thoroughly vetting all the potential impacts that may be associated with the entirety of a "project". In this case we are informed in the City's proposed "exemption narrative" that since the use will be banned there will be no impacts. At the same

time the proposed ordinance also stipulates that most of the activities associated with the subject use will be allowed to continue (i.e. "preserved") under State law. It is this secondary element of the proposal that is ignored and therefore we are left with an incomplete picture of what will/may result from the adoption of this ban.

If the activities associated with this land use, which we know will be permitted to continue pursuant to State law and by this proposed ordinance, is no longer permitted in a storefront environment, where will it be conducted and what will those impacts be? Without conducting a thorough analysis of the "Project" we are unable to understand all the potentially significant impacts that may result from this proposal. This is not consistent with the above statute that requires the disclosure of all relevant information before a decision on the matter is rendered.

Rebuttal Comments on the City's Document entitled: California Environmental Quality Act (CEQA) Narrative: ENV 2012-1273-CE

The following narrative presents both general and specific rebuttals/comments that in total will serve to refute the City's determination that the project, a proposed ordinance that will serve to ban "medical marijuana businesses" throughout the City, is "exempt" from CEQA. In making the determination that the "Project" is "categorically exempt" from CEQA the City has produced a document entitled "California Environmental Quality Act (CEQA) Narrative: ENV 2012-1273-CE". The format of this section of this correspondence will first present the most salient components of said document "ENV 2012-1273-CE", and following each will present some alternative considerations that should result in the City's reconsideration of taking further action on this project without proper environmental analysis.

"ENV 2012-1273-CE": "Project Description"

The initial section of the CEQA narrative document as well as the proposed "Notice of Exemption" includes a project description that is arbitrary, misleading, and significantly vague. The following are the actual project descriptions lifted from both the CEQA narrative document and the proposed "Notice of Exemption" respectively, to describe the project that is the subject of this correspondence.

> **"I. PROJECT DESCRIPTION (CEQA NARRATIVE)**
>
> "An ordinance (Appendix A) repealing and replacing Article 5.1 of Chapter IV of the Los Angeles Municipal Code in response to recent appellate court decisions concerning regulation of medical marijuana."

> **"DESCRIPTION OF NATURE, PURPOSE, AND BENEFICIARIES OF PROJECT: (Proposed Notice of Exemption)**
>
> "An ordinance repealing and replacing Article 5.1 of Chapter IV of the Los Angeles Municipal Code in response to recent appellate court decisions concerning regulation of medical marijuana."

My general opinion as a professional planner with nearly 20 years of experience working in the public sector for jurisdictions across the State, is that a "Project Description" when published should provide some general and basic information about the subject proposal and not disguise or mislead in any way as to the nature of the project and should clearly, in layman's terms, describe the project. Neither is the case with the project description presented at the outset of the CEQA Narrative document and nowhere

within the proposed "Notice of Exemption" is there any description that informs the public of the true intentions of this project and the proposed ordinance is to actually ban "medical marijuana businesses" outright while at the same time recognizing the activities associated with the subject land use will be allowed to continue, albeit in a new and different manner (e.g. only in "dwelling units" and requiring on-site cultivation within the City of Los Angeles) In the CEQA Narrative document it is not until the reader reaches the last paragraph of section "**II. Project History**" is it clear what the proposed ordinance will actually do.

"ENV 2012-1273-CE": "Project History"

Within the "Project History" section of the CEQA Narrative document the City presents an alleged history of the City's efforts to date to develop "...a comprehensive regulatory framework to balance the unregulated proliferation of medical marijuana businesses, access by seriously ill patients to medical marijuana consistent with State law as codified in the Compassionate Use Act (CUA) and Medical Marijuana Program Act (MMPA), and public safety."

It is important to recognize that the City, in this opening sentence, establishes two important facts:

1. That the subject land use has proliferated across the City and needs to be balanced and regulated; and
2. That any regulations must be consistent with State law and specifically the Compassionate Use Act (CUA) and the Medical Marijuana Program Act (MMPA).

Following the above the City further describes the various court cases and the litigation that has occurred since the adoption of the City's various ordinances to regulate medical marijuana and presents that as the justification to propose the ordinance that will serve to "ban medical marijuana businesses". The City then outlines the exceptions to the definition of "medical marijuana businesses" outlined in the proposed ordinance, notably the exclusion of "any dwelling unit where a maximum of three of fewer qualified persons process or associate to collectively or cooperatively cultivate marijuana on-site."At the conclusion of this section the document reads as follows:

> "The proposed ordinance thereby preserves the limited State law medical marijuana criminal immunities, and does not prohibit seriously ill patients and their primary caregivers from processing and collectively and cooperatively cultivating medical marijuana consistent with State law."

The tantamount question that goes unanswered as well as not even considered or analyzed is the impact created by the creation of small "micro-collectives" located in dwelling units throughout the City (with on-site cultivation) now that storefront medical marijuana collectives are going to be banned As a result of the City's determination to find that this project is "exempt" from CEQA there is no discussion, analysis, alternatives, mitigation investigated and we are left to speculate. A decision on a project should not be made when the direct impacts associated with the project are not quantified and determined to be either significant or otherwise.

An obvious and logical impact as a result of this project would be the creation of small "micro-collectives" located in dwelling units within residential neighborhoods. To not address these potentially significant impacts that are likely to occur as a result of this proposed ban is not consistent with basic CEQA provisions that will be cited specifically later in this correspondence.

"ENV 2012-1273-CE": "Existing Environment"

The essential elements of this section of the City's CEQA Narrative appear to attempt to establish that there are no legally established medical marijuana businesses in the City, due to the fact that the City hasn't processed/implemented their own ordinance which does permit this land use under certain circumstances. It is also made clear in this section that there are some significant number of these businesses currently in existence that are pre-registered with the City and awaiting implementation of the City's processes to regulate the use.

For the City to take from this section that because they themselves have not implemented their own regulations to mean there are no existing "projects/conditions" that establish the baseline for potential impacts for purposes of CEQA is not reasonable or accurate.

One additional statement that the City makes needs to also be highlighted here as well. The first sentence of the final paragraph of this section reads as follows:

> "It has been, and remains, infeasible for the City to undertake to verify that each of the dispensaries on the TUO and Certificate Lists actual physically exist."

Again as a former 20 year public sector planner working in planning departments at jurisdictions across the State, I find this statement to be alarming and in contradiction to my own experiences. A simple physical inspection of each property based on whatever certified list the City has would quickly determine the locations and baselines for CEQA purposes as to the quantifiable number of businesses that would be required to close as a result of the proposed ordinance and therefore provide some indication of the scope of potential impacts that may now occur in other locations as a result.

"ENV 2012-1273-CE": "Environmental Review Under CEQA"/Section 15060(c)(2)

In this section of the CEQA Narrative document the City staff cites Section 15060(c)(2) of the "State CEQA Guidelines" in support of their position that CEQA would not apply to the proposed ordinance. Specifically they cite Section 15060(c)(2) which reads as follows:

> "Section 15060(c)(2) Once an application is deemed complete, a lead agency must first determine whether an activity is subject to CEQA before conducting an initial study, An activity is not subject to CEQA if:"
>
> "..."
>
> "(2) The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment..."
>
> "..."

In support of their finding that Section 15060(c)(2) applies they cite a number of court rulings and rely upon their determination that none of the existing medical marijuana businesses are operating in conformance with the Zoning Code and therefore for purposes of CEQA the existing facilities are purposely excluded from the "environmental baseline". They further stipulate that "because the existing baseline of conditions is that existing medical marijuana businesses are operating in violation of the Zoning Code and the proposed ordinance would specifically make medical marijuana businesses a disallowed activity, the proposed ordinance would have no direct or reasonably foreseeable indirect physical change or impact upon the environment."

Rebuttal Comments on the Application of Section 150602(c)(2)

There are two (2) significant flaws in the City's reasoning outlined above. To state that the existing medical marijuana businesses are operating illegally because they don't meet the requirements of the current ordinance regulating this land use is not correct in that it is my understanding that the reason no current medical marijuana businesses have been issued permits to operate in the City under the MMO and TUO is because the City has chosen not to implement the applicable local law. . In addition, the City has in fact recognized in this same document, that the land use associated with the collective cultivation of medical marijuana will continue, albeit in a new and different manner, (i.e. in dwelling units with onsite cultivation). Again, the City has failed to analyze and mitigate the direct and reasonably foreseeable indirect impacts that will certainly result from the closing of all existing "medical marijuana businesses" and the creation of new "micro-collectives" dispersed throughout the City, including those in single family residential neighborhoods, where most "dwelling units" exist

"ENV 2012-1273-CE": "Environmental Review Under CEQA"/Categorical Exemptions

The City goes onto to cite four (4) specific sections of the Article 19. Categorical Exemptions from the State's CEQA Guidelines. These same sections are also identified in the proposed Notice of Exemption and include the following:

1. **Section 15301. Existing Facilities:** "...the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination."
2. **Section 15305. Minor Alterations In Land Use Limitations:** "...minor alterations in land use limitations in areas with an average slope of less than 20% which do not result in any changes in land use or density, including but not limited to:
    a. Minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel;
    b. Issuance of minor encroachment permits;
    c. Reversion to acreage in accordance with the Subdivision Map Act."
3. **Section 15308. Actions By Regulatory Agencies For Protection Of The Environment:** "...actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption."
4. **Section 15321. Enforcement Actions BY Regulatory Agencies:** "...
    a. Actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered or adopted by the regulatory agency. Such actions include, but are not limited to, the following:
        i. The direct referral of a violation of lease, permit, license, certificate, or entitlement for use or of a general rule, standard, or objective to the Attorney General, District Attorney, or City Attorney as appropriate, for judicial enforcement;
        ii. The adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective.

b. Law enforcement activities by peace officers acting under any law that provides a criminal sanction;
c. Construction activities undertaken by the public agency taking the enforcement or revocation action are not included in this exemption."

The following sections present a brief summary of the City's arguments in support of each of the Categorical Exemptions cited above. Following each of the City's arguments is my opinion (rebuttal comments) on their arguments/findings concerning the applicability and use of the cited Categorical Exemptions.

"ENV 2012-1273-CE": Section 15301. Existing Facilities

The City supports the citing of this section by claiming that the proposed ordinance would only impact existing medical marijuana businesses. They further claim that as a result of the proposed ban on medical marijuana businesses those uses would cease to exist and only those uses permitted by the applicable zoning ordinance would then move into the vacated locations. Typically the City would be correct in this application as most potential land uses impacts associated with uses that are permitted by right are exempt not only by this type of Categorical Exemptions but also as a Statutory Exemption.

Rebuttal Comments on the Application of Section 15301

The significant flaw in the City's proposal to cite this Class of Categorical Exemption is that it does not accurately represent the totality of the reasonably foreseeable impacts that may occur as a result of this project. If the proposed ordinance serves to ban the medical marijuana "store front/business" but at the same time acknowledges the activities associated with this previous use will still be permitted to occur pursuant to State Law (albeit in a new way - primarily in dwelling units with onsite cultivation composed of three or fewer persons) what will be the impacts? It is this component that makes Section 15301 inapplicable. The activities associated with this land use will now occur almost exclusively in residential environments and to characterize the activities associated with this land use as a "minor alteration of public private structures... involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination" when applied to a single family residential environment would be grossly inaccurate and not a reasonable application of this categorical exemption. The potential impacts associated with the "how and where" that will remain even after the proposed ban must be answered in terms of CEQA before the proposed ordinance that will create these potentially significant impacts to existing residential environments must be answered.

"ENV 2012-1273-CE": Section 15305. Minor Alterations In Land Use Limitations

The City supports the application of this section by stating "the proposed ordinance will prohibit an activity that is not enumerated in the Zoning Code." They further stipulate that the proposed ordinance will not result in any changes in land use because the ultimate result is that the same uses that are allowed prior to the adoption of the proposed ordinance would still be permitted after the ordinance is adopted. They conclude their argument for the application of this class of exemption by stating the following.

> "...The ultimate result is that the exact same enumerated uses that are allowed prior to the adoption of the proposed ordinance would be permitted after the adoption of the proposed ordinance. Therefore, the baseline of existing conditions will have a net result of being the same after the proposed ordinance is adopted."

Rebuttal Comments on the Application of Section 15305

"Section 15305. Minor Alterations In Land Use Limitations" prescribes specific project types to characterize the scenarios under which this class of project should be cited. The following are the types of projects cited in the state guidelines that qualify for this category of exemption:

a. Minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel;
b. Issuance of minor encroachment permits;
c. Reversion to acreage in accordance with the Subdivision Map Act."

The "Project" in this case, a proposed ordinance that will ban a land use type from its current locations but at the same time recognize that the land use activities associated with the subject land use (which includes cultivation of marijuana) can continue albeit in a new and different form, is nothing remotely similar to this category of project types. This section specifically excludes those projects which would result in any changes in land use, which is exactly what this proposed ordinance will do. This categorical exemption is in no way appropriate or applicable to a project that will affect land use in the obvious way this project does and should not be cited in support of the City's determination that this project is exempt from CEQA.

"ENV 2012-1273-CE": Section 15308. Actions By Regulatory Agencies For Protection Of The Environment

The City presents a number of claims that this action will serve to "protect the environment" and therefore is qualified to cite this class of categorical exemption. The following is a brief summary of the City's narrative/justifications for citing this section:

- "It enhances the environment by prohibiting rather than authorizing medical marijuana businesses as required by the ruling in *Pack*....The *Pack* court ruled that cities may enact prohibitions that restrict and limit medical marijuana businesses but may not enact affirmative regulations that permit or authorize such businesses. The proposed ordinance is in conformity with public necessity and protection of the environment where the regulatory process involves procedures for protection of the environment in that it maintains conformity with the *Pack* rulings.";
- "It protects the environment by banning an activity that is associated with criminal activity....By banning medical marijuana businesses, the proposed ordinance maintains the health and safety of the environment which therefore protects the environment";

- "...The proposed ordinance promotes protection of the environment because it prevents the continuing drain of litigation and police services; and"
- "It assures the maintenance and protection of the environment by not changing access to and cultivation for personal use of medical marijuana by qualified patients, persons with an identification card, or primary caregivers, consistent with State law. Under the proposed ordinance, qualified patients, persons with an identification card, or primary care givers will continue to have access to medical marijuana consistent with State law as codified in the CUA and MMPA...."

Rebuttal Comments on the Application of Section 15308

There are three (3) significant comments on the City's arguments above that clearly remove the application of this category of exemptions to this project.

1. The City clearly claims that this land use (the cultivation of medical marijuana) and the activities associated with it has the potential for associated criminal activities;
2. The City also claims that this project will prevent the continuing drain of litigation and police services; and
3. They again acknowledge that the land use activities associated with this land use will continue via State law.

For all the reasons above this project is not exempt from CEQA pursuant to this class of projects. If the City alleges that the land use at issue has some potentially significant impacts (e.g. alleged criminal activities) and the use will now be required to take place in dwelling units (with onsite cultivation), the City is obligated to investigate the reasonably foreseeable impacts that result from the proposed ordinance as it now impacts this land use (cultivation of medical marijuana) by banning"storefront medical marijuana businesses". Again we are left to speculate on how the relocation of the activities associated with this land use (cultivation of medical marijuana) will impact the City without conducting a thorough analysis, via CEQA, of the foreseen land use impacts as the City cites above.

"ENV 2012-1273-CE": Section 15321. Enforcement Actions BY Regulatory Agencies

The City supports the application of this categorical exemption with the following remarks:

> "The proposed ordinance would be the adoption of an order enforcing a law, general rule, standard and objective administered and/or adopted by the City because it confirms and restores the rule of law, expressed by the City's Zoning Code and the *Pack* court...Further, the proposed ordinance exempts from the definition of medical marijuana business, locations and vehicles used in strict conformity with State law...."

The question that the City does not answer is simply this, what are the impacts that could result from the proposed ordinance that serves to allow the activities associated with medical marijuana collectives, cooperatives in terms of future locations and vehicles used provided for in the proposed ordinance and in strict conformity with State law. Clearly there will be impacts associated with this land use going forward, as the City itself has asserted, and if this proposed ordinance permits these activities (albeit in a new and different manner) they are obligated to address these potential impacts via CEQA. The class of projects that is cited by the City here is simply a misapplication of this category as it was intended. The intention for citing that a project falls within this class of projects is to allow the jurisdiction some relief from CEQA when dealing with matters concerning singular projects that are noncompliant with their conditions of approval or other permit requirements.

"ENV 2012-1273-CE": "Exceptions To The Use Of Categorical Exemptions"

In this section of the CEQA Narrative document the City's planning staff presents their arguments in support of their finding that "Section 15300.2 Exceptions" does not apply and therefore the project is exempt from CEQA. The following is a brief summary of each of their arguments followed by my rebuttal comments:

> "A. Cumulative Impact. The exception applies when, although a particular project may not have a significant impact, the impact of successive projects, of the same type, in the same place, over time is significant."

The City argues that the above "exception" is not applicable because, "There are no successive projects of the same type planned for the City of Los Angeles." They also stipulate that any impact from the proposed ordinance is negligible or close to *de minimis*, so that any incremental effect would not be cumulatively considerable. They further state that any existing medical marijuana business is not an authorized land use and therefore the proposed ordinance does not result in additional uses after its adoption.

Rebuttal Comments on Applicability of Section 15300.2(a) Cumulative Impact Exception

Although I agree in principle with the City's conclusion that this exception section/category is not necessarily applicable, I do not agree with the remarks the City staff makes in there characterization of the project, that is the subject of this matter. Specifically, they claim the impact from the proposed ordinance is "negligible or close to *de minimis*". They fail again to recognize and address that this ordinance also recognizes that this land use and all the potentially significant issues that come with it will in fact be permitted under this proposed ordinance albeit in a new and different manner at potentially thousands of locations throughout the City.

"ENV 2012-1273-CE": "Exceptions To The Use Of Categorical Exemptions" Significant Effect Due to Unusual Circumstances

The following is the specific language of Section 15300.2 (b) :

> "This exception applies when, although the project may otherwise be exempt, there is a reasonable possibility that the project will have a significant effect due to unusual circumstances. Examples include projects which may affect scenic or historical resources."

The City staff supports that this exception is not applicable based upon the following:

> "There is no reasonable possibility that the proposed ordinance will have a significant effect due to unusual circumstances. As demonstrated above, there is nothing about any impacts associated with the proposed ordinance that differ from general circumstances of the exemptions listed. There is no unusual concentration of existing medical marijuana businesses; they occur throughout the City. Therefore, the prohibition of such activity will not cause an impact due to unusual circumstances when an entire city is impacted en masse by this proposed ordinance. "
>
> "Additionally... any impact from the proposed ordinance is less than significant."
>
> "Finally, the proposed ordinance will not have a significant effect on medical marijuana businesses that cease to operate as qualified patients, persons with an identification card, and primary caregivers will continue to access medical marijuana at locations

throughout the City consistent with the CUA and MMPA. Qualified persons, within limited restrictions relating to large-scale growing operations, can also continue to cultivate medical marijuana for their personal use consistent with the CUP and MMPA."

Rebuttal Comments on Applicability of Section 15300.2(b) Significant Effect Due to Unusual Circumstances

It appears that the City's justification for not citing this clearly applicable "exception", is simply based on the following statement, "...any impact from the proposed ordinance is less than significant." Without question, there is ample evidence throughout this correspondence that substantiates the conclusion that there will be reasonably foreseeable direct and indirect impacts resulting from this project but regardless of the strong evidence presented herein there is certainly extremely "unusual circumstances" surrounding this project that clearly apply. The City's arguments that this exception does not apply is simply wrong. The alleged fact that there is not a concentration of existing medical marijuana businesses is irrelevant. The fact that the City believes there are no impacts associated with this project is irrelevant to this exception because of the extremely unusual circumstances surrounding this land use. The fact that the project will ban medical marijuana businesses (as currently defined) and at the same time allow the continued activities associated with this land use to continue albeit in a new and different form (i.e. dwelling units with onsite cultivation) under the provisions of State law is extremely unusual and therefore demands that this exception be cited and the CEQA process applied.

"ENV 2012-1273-CE": "Exceptions To The Use Of Categorical Exemptions" Scenic Highway

I concur with the City's conclusion that this "exception" is not applicable, but again I do not agree with some of their characterizations in support of their finding with respect to this category of "exception".

Rebuttal Comments on Applicability of Section 15300.2(c) Scenic Highway

Specifically the City's following remark, "...The proposed ordinance merely affects operation within existing structures that are already built out...." is not an accurate representation of all the activities associated with this land use that will be permitted to continue albeit in a new and different manner pursuant to both the proposed ordinance and State law. This characterization completely ignores the "cultivation" activities which will continue as a result of this project, in dwelling units with required onsite cultivation, pursuant to the proposed ordinance and these activities could result in significant impacts to some locations yet undetermined and not analyzed. Again, the activities that will continue as a result of this proposed ordinance related to "cultivation" need to be analyzed.

"ENV 2012-1273-CE": "Exceptions To The Use Of Categorical Exemptions" Hazardous Waste Site

The City's conclusion that this "exception" is not applicable is not entirely unsubstantiated but again I do not agree with some of their characterizations in support of their finding with respect to this category of "exception".

Rebuttal Comments on Applicability of Section 15300.2(c) Hazardous Waste Site

Specifically the City's following remark, "...The proposed ordinance merely affects operation within existing structures that are already built out...." is not an accurate representation of all the activities associated with this land use that will be permitted to continue albeit in a new and different form pursuant to both the proposed ordinance and State law. This characterization completely ignores the "cultivation" activities which will continue as a result of this project, in dwelling units throughout the City, pursuant to the proposed ordinance and these activities could result in significant impacts to some

locations yet undetermined and not analyzed. Cultivation of marijuana plants could involve significant amounts of hazardous waste and this potential impact needs to be analyzed.

"ENV 2012-1273-CE": "Exceptions To The Use Of Categorical Exemptions" Historical Resources

The City's conclusion that this "exception" is not applicable is not entirely unsubstantiated but again I do not agree with some of their characterizations in support of their finding with respect to this category of "exception".

Rebuttal Comments on Applicability of Section 15300.2(c) Historical Resources

Again the City's remark, "...The proposed ordinance merely affects operation within existing structures that are already built out...." is not an accurate representation of all the activities associated with this land use that will be permitted to continue albeit in a new and different manner pursuant to both the proposed ordinance and State law. As a consequence of not conducting a thorough analysis pursuant to CEQA it is not known if future locations where the activities associated with this land use will still be allowed would impact historical resources. Since we do not know where these future facilities will be located, we don't know how historical resources may be impacted. If the City were to conduct the proper CEQA analysis any potential impacts to historical resources that may occur as a result of this proposed ordinance could be thoughtfully identified and mitigated. Without the benefit of the appropriate analysis offered by CEQA we again are left to speculate.

"ENV 2012-1273-CE": "Additional Factual Support"

The remainder of the CEQA Narrative document prepared by the City presents a very unusual /atypical analysis that they claim further supports their conclusions that the project is exempt from the provisions of CEQA. They essentially conduct a modified or "faux" "Initial Study" for the project as if the project was not exempt. They provide various arbitrary arguments for each of the standard component parts to the State's "Initial Study Checklist" but the explanations are again very limited and don't truly evaluate the project in terms of each of the component sections of a "real" "Initial Study". They present little or no analysis of the entirety of the proposal and specifically ignore the elements of the proposed ordinance that prescribe that many of the activities associated with medical marijuana collectives, cooperatives, and the cultivation and dispensing of marijuana will still occur as a result of this ordinance but make no real effort to quantify the impacts of these activities and as a result do not identify potential mitigation or alternatives that would be required for projects going forward.

A formal "Initial Study Checklist" provides a very detailed list of questions associated with each of the component parts of the checklist that provoke a thorough vetting of the potential impacts. The City's "pseudo/faux" "Initial Study" simply doesn't provide the depth or identify any alternatives to this "Project" or any mitigation that may be necessary that is typical when conscientious analysis consistent with the professional planning community is applied. Rather than presenting a comprehensive response to each of the marginal/incomplete arguments provided by the City it is safe to say they should endeavor to actually conduct the analysis this project requires for all the reasons stipulated within this correspondence.

Another reason to require that the City actually conduct an "Initial Study" and apply CEQA to this project is to provide all with the opportunity to comment on the document and the analysis presented which will further ensure that the most complete analysis is conducted. The application of CEQA will ultimately serve to better inform the decision makers and the public to ensure that all the potential impacts

associated with this proposed ordinance are considered in the debate and decision making process that will occur on this matter in the near future.

Please carefully consider the recommendations prescribed herein as they are consistent with how CEQA is intended and required to be applied on projects that will result in reasonably foreseeable direct and indirect impacts and that carry with them such "unusual circumstances" as does this project. The City has supported their determination that this project is exempt from CEQA by only focusing on the proposed ban of this land use. The fact is the proposed ordinance will also allow many of the activities associated with this land use to also continue albeit in a new and different form (and with new restrictions such an mandated onsite cultivation) and it is this element that the City must also consider in much greater detail and the application of CEQA to the entirety of this "Project" will provide us with the complete picture of potential impacts and in turn possible alternatives and mitigation as required.

Sincerely,

s/Sean Scully
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