AmericansFor SafeAccess
Advancing Legal Medical Marijuana Therapeutics and Research

13-1300-S5

FAX

DATE: January 22, 2013 TO: COMPANY City Clerk

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FROM Don Duncan FAX NUMBER 213-978-1040

A letter to City Council President Herb Wesson follows this page. Please include this document in the Council File Management System as part of the record for CFM 13-1300-S5.

Thank you,

Don Duncan

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AmericansFor SafeAccess
Advancing Legal Medical Marijuana Therapeutics and Research

January 22, 2013

Herb J. Wesson, Jr.
200 North Spring Street, Room 430
Los Angeles, CA 90012

RE: Proposed medical cannabis initiative (13-1300-S5)

Dear Council Member Wesson,

On January 16, 2013, the City Council approved a motion instructing the City Attorney to write a voter initiative regulating medical cannabis patients' cooperatives and collectives in the city and increasing the tax on those organizations. I anticipate the time for reviewing the proposed initiative and suggesting improvements before the deadline for placing it on the ballot will be limited, so I am writing with some comments in advance. It is my hope that you and your colleagues will consider these suggestions and include them in the language approved for the ballot in May.

Include Severability

The motion approved on January 16 asks the City Attorney to create an initiative that is "substantially similar" to the Limited Immunity Ordinance (08-0923 and 11-1737) approved by the City Planning Commission on November 29, 2012. That draft ordinance does not include the ordinary severability clause commonly found in legislation. Instead, Section 45.19.6.7 says that "If any provision or clause of Section 45.19.6.3 of this Article is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall invalidate every other provision, clause and application of Section 45.19.6.3 of this Article, and to this end the provisions and clauses of Section 45.19.6.3 of this Article are declared to be inseverable." This provision, or one like it, should not be included in the voter initiative approved by the City Council for the ballot.

I understand the desire to include a disincentive for additional litigation, but the lack of a severability clause is a poison pill. No one can prevent a determined party from filing a lawsuit or predict the outcome of future lawsuits. This all-or-nothing approach is fundamentally unfair and may sabotage the proposed voter initiative. It would be better for City Council Members to include an ordinary severability clause and let the usual checks and balances in our system of government work as intended. Doing so will give all of the stakeholders confidence that the initiative will survive a legal challenge and continue to protect safe access for legal patients and neighborhoods. This may be crucial in building a broad base of support behind the measure.

Allow for Amendments

The legal and political situation surrounding medical cannabis in California is evolving quickly. Last week, the California Supreme Court denied requests from Los Angeles District Attorney's Office, the Los Angeles City Attorney, and others to de-publish or review the decision in *People v. Jackson*. The *Jackson* decision affirms that storefront cooperatives and collectives are legal under state law. The Supreme Court's decision to let the *Jackson* decision stand may foreshadow a more far-reaching decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center*, which concerns the authority of local government to ban patients' associations. Oral arguments in the *Riverside* case are

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scheduled for February 5, 2013. These cases and others could dramatically alter the legal landscape around medical cannabis.

The state legislature may also act to clarify and regulate medical cannabis cultivation and provision this year. Board of Equalization Chairman Jerome Horton has proposed legislation that would tax and permit medical cannabis cultivation, transportation, and provision statewide. I anticipate other legislation regarding medical cannabis will be introduced in the legislature before the deadline for new bills at the end of February. If adopted, these bills could impact the implementation of a ballot measure approved by voters in Los Angeles. It would be prudent to make the City Council's proposed voter initiative amendable to the extent allowed by law.

Other Coalition Input

Americans for Safe Access (ASA) is working in coalition with the Greater Los Angeles Collective Alliance and the United Food and Commercial Workers Union Local 770 (UFCW) to protect safe access for legal patients and neighborhoods. In a letter dated January 11, 2013, UFCW Local 770 President Ricardo F. Icaza made additional suggestions for improvements to the Limited Immunity Ordinance. In anticipation that the proposed voter initiative will be based substantially on that draft ordinance, ASA strongly supports the recommendations in Mr. Icaza's letter. A copy of the letter from Mr. Icaza is attached for your reference.

Research conducted by ASA and our experience with medical cannabis since 1996 show us that sensible regulations preserve local access to legal medical cannabis, while reducing crime and complaints around patients' cooperatives and collectives. Patients and the community at large deserve the proven benefits of regulation. The most likely chance for succeeding in adopting regulations at the ballot box comes from building a broad consensus for support among all of the stakeholders. Making the provisions of the city's proposed initiative severable and amendable, and incorporating the other suggests from our coalition allies, increases the likelihood that we can reach that consensus and finally adopt a workable ordinance in Los Angeles.

Thank you for your leadership on this issue. I look forward to working with you and your colleagues to finally finish this compassionate work.

Sincerely,

Don Duncan
California Director

Enc. Letter from UFCW Local 770 President Ricardo F. Icaza

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UFCW LOCAL 770

UNITED FOOD AND COMMERCIAL WORKERS UNION · www.ufcw770.org

Ricardo F. Icaza, President John M. Grant, Secretary-Treasurer

January 11, 2013

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Herb J. Wesson, Jr.
200 N. Spring Street, Room 430
Los Angeles, CA 90012

Dear Councilman Wesson:

We write to you with respect to the important and timely issue of safe and accountable access to medical marijuana. The ordinance drafted in response to the Koretz – Zine motion on medical marijuana has been reviewed by the Planning Commission, and has been waived out of PLUM. It is now ready to be similarly waived out of the Public Safety Committee, or for an expeditious review by the Public Safety Committee in the next week, and then immediately forwarded to Council for a vote. We ask that you ensure this matter be properly scheduled and heard by Council during the week of January 23, 2013. We are of the view that if the City adopts the proposed ordinance with a few necessary amendments addressed herein, there will be no reason for the voters to adopt either of the initiatives currently heading to Council and the ballot.

We believe the general framework of the Proposed Ordinance, as set out by the Planning Commission, is consistent with the language and intent of the motion of Councilmembers Koretz and Zine. That said, a number of the provisions in practice, both individually and collectively, work contrary to the concept of allowing the pre-ICO collectives to remain in operation and provide safe access to medical marijuana.

Attached are the provisions that need to be modified to achieve the underlying purposes of the Ordinance. We request that you support bringing this matter to a vote before Council with these Amendments.

Thank you for your kind consideration.

Sincerely,

UFCW LOCAL 770

Ricardo F. Icaza, President

Attachments

cc: Los Angeles City Council
Office of Los Angeles City Attorney

1. "D. Every medical marijuana business is prohibited that ceased or ceases operation in the City at the location set forth in its original or any amended business tax registration or tax exemption certificate issued by the City, as evidenced by a self-report to the City of closure, report of the Los Angeles Police Department or other law enforcement agency of closure in response to a law enforcement action, written settlement agreement, or court order.

This provision, which we understand was intended to prevent medical marijuana businesses that go out of business from reviving, may capture many more and possibly all medical marijuana businesses. The City Attorney directed all medical marijuana businesses to close last summer after the passage of Ordinance 182190 (which was repealed by City Council on October 9, 2012 after a Certification of Sufficiency of a referenda petition). Further, since no Ordinance is effect in Los Angeles, the US Attorney has instructed certain dispensaries to close, regardless of compliance with the tenets of this Ordinance. Under one possible interpretation of this provision, a medical marijuana business that followed that directive would now be ineligible to operate under the limited immunity provisions. Similarly, others have closed by request of law enforcement, but then allowed to reopen. We have been informed that these scenarios would constitute ceasing operation. We therefore propose that the language be modified to say ceased operation for 120 days or more.

Proposed Substitute Language:

"D. Every medical marijuana business is prohibited that ceased or ceases operation in the City for 120 days or more at the location set forth in its original or any amended business tax registration or tax exemption certificate issued by the City, as evidenced by a self-report to the City of cessation of operation, report of the Los Angeles Police Department or other law enforcement agency of cessation of operation in response to a law enforcement action, written settlement agreement, or court order."

2. "F. Every medical marijuana business is prohibited that has an unpaid tax obligation to the City that: (i) was or is referred by the City to its collection unit or to an outside collection entity; and (ii) is not paid in full, including any assessed fines, penalties, interest or other costs prior to the commencement of the following tax year. The payment of amounts due pursuant to a collection referral shall not revive a medical marijuana business that ceased or ceases operations."

This provision does not state the date that the unpaid tax obligation is deemed a factor that would deny limited immunity. Any provision on tax compliance should be prospective with a date certain to give the medical marijuana business the opportunity to pay its taxes and provide a bright line for the City on compliance.

We suggest the phrase "commencing in 2014" be inserted after the words "following tax year." Moreover, we understand issues regarding taxation of medical marijuana are currently in the Courts and yet this section is tied to the limited non-severability

provision, 45.19.6.7. We suggest this provision be omitted from 45.19.6.7 so as not to jeopardize this newly crafted ordinance.

Proposed Substitute Language:

"F. Every medical marijuana business is prohibited that has an unpaid tax obligation to the City that: (i) was or is referred by the City to its collection unit or to an outside collection entity; and (ii) is not paid in full, including any assessed fines, penalties, interest or other costs prior to the commencement of the following tax year commencing in 2014. The payment of amounts due pursuant to a collection referral shall not revive a medical marijuana business that ceased or ceases operations."

SEC. 45.19.6.7. LIMITED SEVERABILITY.

If any provision or clause of Section 45.19.6.3 of this Article, with the exception of 45.19.6.7 F is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall invalidate every other provision, clause and application of Section 45.19.6.3 of this Article, and to this end the provisions and clauses of Section 45.19.6.3 of this Article are declared to be inseverable.

3. "L. Every medical marijuana business is prohibited that provides ingress or egress to its premises on any side of the location that abuts, is across a street, alley or walk from, or has a common corner with a residential use of land or any land zoned residential, except that an exit door required by this Code may be maintained for emergency egress only and must be locked from the exterior at all times."

We are informed that this language was crafted to avoid circumstances where residential property abuts a medical marijuana business, so as to avoid children living next door to a medical marijuana business. The language, however, states that a medical marijuana business cannot be across the street from a residential use of land or land zoned residential. Therefore, even if the street is a major avenue, such as Olympic Boulevard, the prohibition would apply. Further, it is unclear what "across the street" means. Does it mean directly across the street or on the same block? We believe the language is too vague and too broad to address the concern and that the word "Street" should be omitted. We are also concerned that extending the prohibition to property zoned residential as opposed to residential use, is too broad and difficult to enforce. The language should be limited to property that is in residential use. Further, there is not an opportunity to come into compliance with this section. Language similar to that set forth in Section O, should be added to allow the medical marijuana businesses who qualify based on A, B and C to come into compliance.

Proposed Substitute Language:

"L. Every medical marijuana business is prohibited that provides ingress or egress to its premises on any side of the location that abuts, is across an alley or walk

from, or has a common corner with a residential use of land except that an exit door required by this Code may be maintained for emergency egress only and must be locked from the exterior at all times. The provisions of this section shall not apply to a medical marijuana business that is otherwise entitled to assert limited immunity provided by this Article if it moves within ninety (90) days after the effective date of this Article to a location that does not violate this provision."

4. "M. Every medical marijuana business is prohibited whose managers, volunteers, and employees do not successfully pass an annual LAPD LiveScan background check by January 31 of each year. A failed LAPD LiveScan is any LiveScan that includes any felony conviction within the past ten years and/or current parole or probation for the sale or distribution of a controlled substance."

This language is vague. While it requires managers, volunteers, and employees to obtain LiveScan, there is nothing that requires the information to be disclosed to the medical marijuana business. Therefore, individuals could get the results and not inform the medical marijuana business, and yet the Business could lose its immunity. Further, there are no confidentiality protections that limit the disclosure of the LiveScan results to only felony conviction within the past ten years and/or current parole or probation for the sale or distribution of a controlled substance and to certain individuals. Such protections must be included for this provision to serve its purpose.

Proposed Substitute Language:

"M. Every medical marijuana business is prohibited whose managers, volunteers, and employees who are on site more than five (5) hours per week who do not successfully pass an annual LAPD LiveScan background check by January 31 of each year commencing ninety (90) days after the effective date of this ordinance. A failed LAPD LiveScan is any LiveScan that includes any felony conviction within the past ten years and/or current parole or probation for the sale or distribution of a controlled substance. The LAPD will maintain these files and give notice to the medical marijuana business of any individual who did not pass the test within ten (10) days of the administration of the test.

5. "O. Every medical marijuana business is prohibited that is located within a 1,000-foot radius of a school, public park, public library, religious institution, child care facility, youth center, alcoholism or drug abuse recovery or treatment facility, or other medical marijuana business. The distance specified in this paragraph shall be the horizontal distance measured in a straight line from the property line of the school, public
park, public library, religious institution, licensed child care facility, youth center, substance abuse rehabilitation center, or other medical marijuana business, to the closest property line of the lot on which the medical marijuana business is located without regard to intervening structures. In the event that two or more medical marijuana businesses are located within a 1,000-foot radius of one another, only the earliest medical marijuana business to both obtain a City business tax registration or tax

exemption certificate for the location and to post a notice of that certificate at the location may assert the limited immunity provided by this Article. The posted notice shall be clearly legible and visible from the exterior at street level, and shall remain posted for a minimum of thirty (30) days. The distance requirements set forth in this subsection shall not apply to: (i) those licensed health care and other facilities identified in California Health and Safety Code Section 11362.7(d)(1); (ii) a medical marijuana business that is otherwise entitled to assert the limited immunity provided by this Article if it moves within ninety (90) days after the effective date of this Article to a location that does not violate the distance requirements; and (iii) a medical marijuana business that violates the distance requirements because a sensitive use locates within the 1,000-foot radius of the medical marijuana business after the date on which the City issued a City business tax registration or tax exemption certificate to the medical marijuana business for its location."

The State of California requires a 600-foot distance from a medical marijuana business to a school. This version extends that to 1,000 feet, not only for schools but all sensitive uses. It also creates a 1,000-foot distance requirement between medical marijuana businesses. We are concerned that this limitation is overbroad and will not allow the medical marijuana businesses anticipated to remain in business via the limited immunity provisions to do so. This will limit safe and secure access to medical marijuana. Indeed, in the 2010 City Planning Report for Ordinance 181069, Planning looked at 137 Pre-ICO dispensaries operating as of 2009 and determined that only 39 would be permitted to stay in their current locations under the 1,000-foot buffer. Since this Ordinance already is limiting the number of medical marijuana businesses to remain in business, this additional limitation may foreclose the future of certain Businesses. We believe the 600-foot distance from all sensitive uses and other medical marijuana businesses and 1,000-foot distance from schools will achieve the policy purposes. Further, we do not find any definition of religious institution in the Planning Code, such that there would be a clear line as to where the medical marijuana businesses can locate.

Proposed Substitute Language:

SEC. 45.19.6.1. DEFINITIONS.

Add:

"Religious Institution means a building with a Certificate of Occupancy from LADBS as a religious institution."

5. "O. Every medical marijuana business is prohibited that is located within a 1,000-foot radius of a school, and 600 – foot radius of a public park, public library, religious institution, child care facility, youth center, alcoholism or drug abuse recovery or treatment facility, or other medical marijuana business. The distance specified in this paragraph shall be the horizontal distance measured in a straight line from the property line of the school, public park, public library, religious institution, licensed child care facility, youth center, substance abuse rehabilitation center, or other medical marijuana

business, to the closest property line of the lot on which the medical marijuana business is located without regard to intervening structures. In the event that two or more medical marijuana businesses are located within a 600-foot radius of one another, only the earliest medical marijuana business to both obtain a City business tax registration or tax exemption certificate for the location and to post a notice of that certificate at the location may assert the limited immunity provided by this Article. The posted notice shall be clearly legible and visible from the exterior at street level, and shall remain posted for a minimum of thirty (30) days. The distance requirements set forth in this subsection shall not apply to: (i) those licensed health care and other facilities identified in California Health and Safety Code Section 11362.7(d)(1); (ii) a medical marijuana business that is otherwise entitled to assert the limited immunity provided by this Article if it moves within ninety (90) days after the effective date of this Article to a location that does not violate the distance requirements; and (iii) a medical marijuana business that violates the distance requirements because a sensitive use locates within the 600-foot radius of the medical marijuana business after the date on which the City issued a City business tax registration or tax exemption certificate to the medical marijuana business for its location."