



Councilmember Nick Pacheco (Ret.)

VIA EMAIL ONLY: MIKE.FEUR@LACITY.ORG

Friday, November 17, 2017

Honorable Mike Feuer
City Attorney
1300 I Street, Suite 125
Los Angeles, CA 90012

RE: Legal Sufficiency of Proposed Cannabis Zoning Ordinance and Other Cannabis Department Matters Including Social Equity Program

Dear Honorable City Attorney Feuer,

I apologize for the last minute communication. I am concerned that the Proposed Zoning Ordinance for the cannabis industry is legally deficient. This concerns me because I don't want an injunction issued in January of 2018 that shuts down the industry. Such a shutdown will obviously be horrendous for the Social Equity program. With this in mind, here are my concerns:

Insufficient Findings to Support the Proposed Zoning Ordinance

As you know, findings provide the analytical route traveled by government from the raw evidence to the action taken. In revealing this route citizens can have intelligent discussions with their government representatives since it is these findings that bridge the analytical gap between the raw evidence utilized by the government and its ultimate decision on how to form law or regulations.

In an effort to explain why the City was not going to allow both cultivation and retail in commercial zones after 2020, ***I was unable to locate any findings.*** The Planning Department's report dated September 14, 2017 which is the basis for the proposed zoning ordinance regulating the cannabis industry lacks any meaningful findings in Appendix C, which is identified by the department as FINDINGS.

Q: will this apparent deficiency in the "FINDINGS" provide a legal basis for someone to enjoin the entire industry from moving forward due to a regulatory scheme that was not properly established?

Q: is it legally permissible for there to be a change from the status quo of allowing non-volatile manufacturing, cultivation, and retail in the same location without findings?

Q: does the City expose itself to legal liability since it allowed the jewelry district to use toxic chemicals in the manufacturing of its products in the same building it was being sold in a retail store?

618 ½ NORTH CUMMINGS STREET, LOS ANGELES, CA 90033

Such an injunction would be crippling to the Social Equity Program, which already has to wait behind the pre-existing PreICO/Prop. D.

Pocket/Community Parks Kill Opportunities for Disenfranchised

Parks are considered sensitive sites because of the proclivity that unsupervised children will roam from these open spaces and be exposed to cannabis retail facilities. Pocket/Community Parks, such as the Ross Valencia Community Park, are sometimes located on major commercial corridors and including them in the definition of parks would disproportionately eliminate store fronts in the poor neighborhoods, such as Boyle Heights.

I don't have to tell you about the lack of open space on the east side compared to other parts of the city due to discrimination in the past. As an appeasement to my community of Boyle Heights as their Councilmember I would convert any unused lots in the community into pocket parks or community parks to provide some green space for the residents.

Q: how can these “parks” be legally included in the proposed ordinance as sensitive sites when the raw evidence of unsupervised children being at risk does not apply for them?

It would be an insult to the community if these are not excluded from the sensitive sites category since their sole existence is from an effort to offset an unjust situation of open space. The Social Equity Program will suffer if store fronts are eliminated merely because they are on the same block as a community/pocket park.

Illegal Delegation of Responsibility by the City Council

Under the proposed ordinance an applicant for a license must show that their application has been provided to their Neighborhood Council and that it was reviewed in a public hearing properly agendized by the Neighborhood Council: there is no time limit.

Q: without a time limit and no existing legal recourse if a Neighborhood Council President for personal reasons did not like an applicant, could they legally chose to never agendize the matter since there does not exist a time limit on this review by the Neighborhood Council?

I want to be clear that I am not opposing the Neighborhood Council review of the application so that it can make a recommendation to the Cannabis Department, I just think there should be a set time limit to exercise this right, otherwise, it could be abused in the future.

Social Equity Licensee Priority

The Social Equity Program is focused on including the disenfranchised but the City currently has not provided any assistance in giving these applicants a chance at success. All new business have an initial period that is extremely difficult and that is why most of them close down within two years.

Q: would any of these efforts be legally permissible for social equity licensees?

- a) **Required Use of Social Equity Licensee Holders:** can the City mandate that any NON Social Equity licensee MUST use the services provided by any existing Social Equity licensee, for example, can the city mandate that the retail licensees MUST utilize any Social Equity Testing, Distribution or Delivery licensee?
- b) **Tax Abatement Similar to LA Live:** can the City legally abate the payment of local taxes by the Social Equity Licensees for the initial 10 years of their existence to increase the possibility of success?
- c) **Boilerplate Plans:** the regulations require many plans; can the City provide boilerplate security plans, fire plan, staffing plans and/or local hiring plans that can be modified to fit each unique situation and be acceptable by the department to reduce the initial cost of an application?

Census Data Inadequate for Latino Community Population Count

As you know, the Census historically has been an undercount of Latino communities because it does not capture the undocumented.

Q: is it legally permissible to use alternative accepted methods for population counts, like those used by researchers, instead of the census data since this will impact the number of licenses available in Latino communities?

Once again, I apologize for the last minute communication but if you knew the short periods of time we are given to review the proposed regulations you'd understand how difficult it's been to provide meaningful input.

I have included Appendix C: Findings from the Planning Department's September 14, 2017 report for your convenience.

Thank you in advance for your time and consideration of this matter.

Sincerely,

Nick Pacheco

Appendix C: Findings

General Plan/Charter Findings

1. In accordance with **City Charter Section 556**, the proposed ordinance (Appendix A) is in substantial conformance with the purposes, intent, and provisions of the General Plan. The draft ordinance furthers the following goals and objectives of the General Plan:

Framework Element:

Goal 7B. A City with land appropriately and sufficiently designated to sustain a robust commercial and industrial base.

Objective 7.2. Establish a balance of land uses that provides for commercial and industrial development which meets the needs of local residents, sustains economic growth, and assures maximum feasible environmental quality.

The draft ordinance helps to create a City with land appropriately and sufficiently designated to sustain a robust commercial and industrial base by balancing the proliferation of commercial cannabis activity, public safety, and access to cannabis and cannabis-derived products. It advances these policies by identifying certain agricultural, commercial and industrial zones as eligible locations for the sale, cultivation, manufacturing, distribution and testing of cannabis and cannabis-derived products, and by requiring businesses engaging in on-site sales of cannabis to maintain an additional distance from specified categories of sensitive sites, as well as from other businesses engaging in on-site sales of cannabis.

The draft ordinance helps to establish a balance of land uses that provides for commercial and industrial development which meets the needs of local residents, sustains economic growth, and ensures maximum feasible environmental quality, for the same reasons previously stated, by balancing the proliferation of commercial cannabis activity, public safety, and access to cannabis and cannabis-derived products.

Goal 7D. A City able to attract and maintain new land uses and businesses.

The draft ordinance helps to create a City able to attract and maintain new land uses and businesses by balancing the proliferation of commercial cannabis activity, public safety, and access to cannabis and cannabis-derived products. It advances this policy by identifying certain agricultural, commercial and industrial zones as eligible locations for the sale, cultivation, manufacturing, distribution and testing of cannabis and cannabis-derived products, and by requiring businesses engaging in on-site sales of cannabis to maintain an additional distance from specified categories of sensitive sites, as well as from other businesses engaging in on-site sales of cannabis.

Housing Element:

Objective 2.1. Promote safety and health within neighborhoods.

Policy 2.1.1. Establish development standards and policing practices that reduce the likelihood of crime.

Policy 2.1.2. Establish development standards and other measures that promote and implement positive health outcomes.

The draft ordinance helps to reduce the likelihood of crime and promote positive health outcomes by controlling the proliferation of commercial cannabis activity and restricting the location, in particular, of retail-type cannabis businesses, which have been associated with criminal activity, nuisance behavior, and negative secondary effects. The draft ordinance contains location restrictions that limit the sale, cultivation, manufacturing, distribution and testing of cannabis and cannabis-derived products to certain agricultural, commercial and industrial zones and require businesses engaging in on-site sales of cannabis to maintain an additional distance from specified categories of sensitive sites, as well as from other businesses engaging in on-site sales of cannabis.

These restrictions will help to reduce the likelihood of crime and associated negative secondary impacts on neighborhoods by discouraging over-concentration of cannabis retail businesses with on-site sales in the same neighborhood, so that no single area becomes a destination for cannabis retail and the anticipated instances of crime and nuisance behavior remain isolated from one another.

Despite legal prohibitions against the behavior, some public consumption of cannabis is inevitable near sites with on-site cannabis retail sales. By increasing the distance between on-site cannabis retail sales and between on-site cannabis retail sales and sensitive sites – particularly parks, libraries, and schools where minors are likely to congregate – these location restrictions will help to reduce exposure to health risks such as secondhand smoke, and will help to reduce minors' exposure to cannabis and cannabis-derived products.

2. In accordance with **City Charter Section 558(b)(2)**, the adoption of the proposed ordinance will be in conformity with public necessity, convenience, general welfare and good zoning practice.

Conformity with Public Necessity: The proposed ordinance is in conformity with public necessity because it: a) identifies appropriate zones for the sale, cultivation, manufacturing, distribution and testing of cannabis and cannabis-derived products in the City; and b) requires businesses engaging in on-site sales of cannabis to maintain an additional distance from specified categories of sensitive sites, as well as from other businesses engaging in on-site sales of cannabis; c) provides needed regulation to an emerging industry with the potential to generate jobs and revenue in the City; d) balances concerns regarding public safety with access to cannabis and cannabis-derived products.

In addition, the proposed ordinance is in conformity with public necessity because it responds to the passage by voters, in the election of March 7, 2017, of Proposition M, which requires the City Council to repeal the City's existing regulations concerning

medical cannabis dispensaries and states the City's intent to adopt a comprehensive regulatory process and structure for all medical and nonmedical commercial cannabis activity; and as part of that process and structure, it is in the interest of the public safety and welfare to regulate the location and distance requirements of cannabis-related businesses to ensure compatibility with surrounding neighborhoods and protect sensitive sites from negative impacts.

Furthermore, the proposed ordinance is in conformity with public necessity because it responds to recent State legislation – including the 2015 Medical Cannabis Regulation and Safety Act, and the 2016 Adult Use of Marijuana Act (Proposition 64) – that present challenges to license and regulate both medical and nonmedical cannabis and ensure that commercial cannabis activity is compatible with surrounding neighborhoods and that sensitive sites are protected from negative impacts.

Conformity with Public Convenience: The proposed ordinance is in conformity with public convenience for the same reasons as stated above, because it: a) identifies appropriate zones for the sale, cultivation, manufacturing, distribution and testing of cannabis and cannabis-derived products in the City; and b) requires businesses engaging in on-site sales of cannabis to maintain an additional distance from specified categories of sensitive sites, as well as from other businesses engaging in on-site sales of cannabis; c) provides needed regulation to an emerging industry with the potential to generate jobs and revenue in the City; d) balances concerns regarding public safety with access to cannabis and cannabis-derived products.

Conformity with General Welfare: The proposed ordinance is in conformity with general welfare for the same reasons as stated above, because it: a) identifies appropriate zones for the sale, cultivation, manufacturing, distribution and testing of cannabis and cannabis-derived products in the City; and b) requires businesses engaging in on-site sales of cannabis to maintain an additional distance from specified categories of sensitive sites, as well as from other businesses engaging in on-site sales of cannabis; c) provides needed regulation to an emerging industry with the potential to generate jobs and revenue in the City; d) balances concerns regarding public safety with access to cannabis and cannabis-derived products.

Conformity with Good Zoning Practice: The proposed ordinance is in conformity with good zoning practice by: a) identifying appropriate zones for the sale, cultivation, manufacturing, distribution and testing of cannabis and cannabis-derived products in the City; b) separating incompatible land uses and preserving the character of neighborhoods by requiring businesses engaging in on-site sales of cannabis to maintain an additional distance from specified categories of sensitive sites, as well as from other businesses engaging in on-site sales of cannabis.

CEQA Findings

The Department of City Planning determined that the proposed ordinance (Appendix A) would not have a significant impact on the environment. Negative Declaration ENV-2017-

2261-ND (Appendix D) was prepared to assess any potential impacts on the physical environment.

On the basis of the whole of the record before the lead agency, including any comments received, the lead agency finds that there is no substantial evidence that the proposed ordinance (Appendix A) could have a negative effect on the environment. The attached Negative Declaration was published in the Los Angeles Times on Thursday, August 31, 2016, and reflects the lead agency's independent judgment and analysis. The records upon which this decision is based are located at the Code Studies Division of the Department of City Planning in City Hall Room 701, 200 North Spring Street.

Furthermore, based on the whole of the administrative record, the lead agency finds that the project is exempt from CEQA pursuant to California Business and Professions Code Section 26055(h) on the basis that the project will adopt ordinances, rules and/or regulations, that will require discretionary review under CEQA to approve licenses to engage in commercial cannabis activity in the City of Los Angeles (ENV-2017-3361-SE).