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Carolina Peters <carolina.peters@lacity.org>

Fwd: Public Comment on Cannabis Location Ordinance

1 message

John White <john.white@lacity.org> Wed, Dec 6, 2017 at 3:46 PM
To: Carolina Peters <carolina.peters@lacity.org>

Please print attach the email below to CF 14-0366-s5 as a communication from the public

---------- Forwarded message ----------
From: **Cindy Cleghorn** <cindycleghorn@gmail.com>
Date: Wed, Dec 6, 2017 at 8:24 AM
Subject: Public Comment on Cannabis Location Ordinance
To: John.White@lacity.org, CityHall@empowerla.org

December 5, 2017

Dear Honorable City Councilmembers:

I am a business and property owner in Tujunga. In Council District 7.
I'm seeing an interest for properties in my area from people wanting to get into the cannabis business. Following are my comments and questions regarding the commercial cannabis location restriction ordinance.

At present there appear to be 7 shops in Sunland-Tujunga. Only two are listed on the map presented by City Planning as of 12/5/17. There may be others above the 7 shops operating behind closed to the public operations. There's been an effort to open them here in recent months. One just opened over the weekend in a spot where it had been open silently, changing names over and over. New Signage over the weekend and now Signage changed again last night. Another a few weeks ago replaced a VAPE shop. I'm wondering if anyone else is seeing these openings ? **Is there a map that overlays all the different cannabis uses / operations so the intensity of the uses can be seen in an area?** The City has the list of various maps but is there a map that shows all together?

As to tracking uses. Tuesday was my annual visit from the L.A. County Tax Collector where they stop by to verify you're still there and the value of your Personal Property Tax -- this is tax on the equipment inside your place of business in case no one is familiar. Is this the data the City will use to verify the uses ? How will they know what business is next door to the location when the City doesn't have a way to keep track? Some have multiple businesses operating from the same address / location. Some are cultivating in C2 zoned properties. Example: a tow truck driver will use a non-related business as the tow truck business address (likely to receive mail) but displays it on the side of the tow truck. (The tow truck business at that address happens to be illegal in the Specific Plan area but who's checking?) **So, you may not know what sensitive use type business is going on in a location. (Or what use is going on at all.) I realize my example is not a sensitive use but it was to make a point as to Use and Occupancy and**

being able to track it in the City of Los Angeles. Los Angeles does not know today what uses are taking place in the Zoning. The City knows what the common Zoning allows and perhaps the last recorded use but no mechanism for up to date Use and Occupancy with current Certificates of Occupancy in place. The City needs to overhaul its Use and Occupancy / Certificates of Occupancy. The BTRC is not the mechanism.

How will the registration of the locations be handled? When I heard Cat Packer speak she emphasized that the location had to be registered with the State first and then explained the State requirements, which are significant. Now I hear you cannot get registered with the State until you have a location in the City. So this tells me that a location will open without State approval on the onset. This is **same ol' same ol'** where one department will be pointing fingers at the other (this is what happens between LADBS and City Planning now). Months will drag out while the community suffers and the immediate neighbors suffer from non-compliance. LADBS and LAPD won't be able to carry through enforcement because the operation will have "filed" so all hands are off or that its up to LADBS or LAPD or ? In the meantime, the operation will operate. **Is there a time limit for full registration / compliance ?** What will full compliance look like ? Are there example locations in full compliance today ?

What about Community Benefits ? Is there anything proposed by the City at the community level ? What improvements to Oregon and Washington have communities seen? Or Colorado ? Our area lacks infrastructure, directional signage, community centers for retail restaurants and shops where the community gathers, store and street lighting, awnings, pocket parks, curbs and gutters for safe pedestrian access. Curious if there's any conversation going about what defines community benefits yet ? Will these benefits be only directed by the City Councilperson or will there be staff to oversee a community, local oversight that is not dragged out in bureaucracy or political favors and the benefits realized? **Neighborhood Councils should take a lead role in the direction of Community benefits so they are neighborhood driven.**

What about the Commercial and Specific Plans areas ? Example Target Area 3, Major Activity Area 3, that is close to a park and elementary school. **700 ft. isn't enough distance. Please increase to 850 ft.**

The Specific Plan calls out that the businesses need to be open It is to bring vibrancy to the area. We already suffer from properties that sit abandoned. Surrounding businesses suffer from lack of or unable to enforce LADBS violations for broken windows and signage that still exist years later. We have sites with old signage up on a property sitting closed off to the public 16 years later on Foothill and Commerce Avenue. **The system is broken.**

What about the parking? **A safe parking spot at least.** The locations in Sunland and Tujunga directly on Foothill Boulevard have no available space because their location is squeezed in with an auto use or in a space that has **absolutely no parking except on the street, which is full.** Signage is extreme or non-existent. We have bicycle lanes, 18 wheeler parking between the bicycle lanes and the curb, curves (Foothill Bl. is not straight throughout the 4-1/2 mile corridor), speeding drivers, pedestrians, illegal U-turns. We have approved left turn signals not installed because there are no funds to install them. This new use brings people who need a

parking space to manipulate getting in and out, walking in that is ADA compatible and getting back in their car without getting hurt. **The locations don't have the parking spaces.**

Businesses will also not be aware of all this. Businesses are too busy running their businesses and there are no mechanisms to educate them or the surrounding uses.

Thank you for the opportunity to submit these comments.

--Cindy Cleghorn
818-429-6699
10034 Commerce Avenue
Tujunga, CA 91042

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John A. White
Legislative Assistant
Information, Technology, and General Services Committee
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December 6, 2017

Sent via Electronic Mail to
Los Angeles City Council
c/o City Clerk John White
john.white@lacity.org

Re: Comments to Proposed Cannabis Requirements
Council File No. 14-0366-S4

Dear Members of the City Council:

Chernis Law Group P.C ("CLG") is a Santa Monica-based law firm that represents collectives, dispensaries, delivery services, cultivators, manufacturers, landlords, patients, and other cannabis-related clients, and has been doing so since 2009. We are very familiar with the City's history with regard to cannabis regulations and litigation. We urge the adoption of common-sense regulations that serve the health and safety interests of consumers and neighbors, while not imposing needless costs and other burdens on businesses, or unrealistic startup costs and barriers to new market entrants, including those social equity applicants contemplated by the City's ordinance. CLG also encourages the passage of regulations that are clear and that minimize uncertainty, so that we can better aid our clients in being fully complaint.

While CLG appreciates the efforts of the members of the Los Angeles City Council, Department of Cannabis Regulation, Planning Commission, and City staff in creating the proposed regulations for commercial cannabis activity, we believe the regulations, in a number of ways, are flawed, unfair, unduly restrictive, and impractical, and to that end, respectfully submit the following comments for your consideration:

1. **The City Should Reject Undue Concentration Findings for Non-Retail**

The current draft of the proposed regulations includes the concept "Undue Concentration," meaning a higher concentration of businesses within any one Community Plan Area based on population, which once met subjects applicants to a "public convenience" or "necessity" process ("PCN").

The Undue Concentration and PCN process is an eleventh-hour addition to this proposed ordinance that raises a number of concerns for applicants, which have become even more serious as a result of recent recommendations and proposed changes. For example, while thresholds in the initial proposal were at least easy to ascertain, the newly-proposed thresholds for triggering PCN review use a convoluted methodology that will invite chaos for applicants and the DCR. The City Council should simply reject the Undue Concentration provision for non-retail as it is

rooted in unsubstantiated fears that continue to reflect a "Reefer Madness" view of the cannabis industry. In its current form, it will contribute towards operators opting to act outside the regulated industry because it perpetuates the status quo and imposes unreasonable obstacles to new market entrants.

a. Undue Concentration Has No Basis in Measure M

Measure M contains no reference to "undue concentration," "caps," or requiring a PCN process for applicants. In fact, it was Measure N that contained such limitations on numbers of businesses in the City—a measure that was rejected by 65% of voters in lieu of Measure M. Rather than repeat the past failure of capping businesses under Prop D, the City should eliminate these "soft caps" for non-retail businesses. It will merely create obstacles to new business entrants, including social equity applicants, and perpetuate the unfair business advantage enjoyed by existing retailers. Natural market forces, availability of real estate, and sensitive use restrictions will serve as sufficient buffers against undue concentration of retail. Many of us have been fighting for years to create a more balanced and competitive commercial cannabis marketplace in the City of Los Angles, which offers business and employment opportunities to more members of the Los Angeles community; a PCN process, especially tied to such low threshold numbers, will only serve to stymie those goals and perpetuate the status quo of Prop D, and "black market" forces. If the goal is to reduce crime and unregulated activity, unnecessary barriers to entry will have the opposite result.

b. Application of Undue Concentration to Non-Retail is Contrary to the City's General Plan and Zoning

Non-retail cannabis businesses should be located in areas of the City predominantly comprised of manufacturing zones, specifically created for industrial uses. In developing the General Plan, certain parts of Los Angeles were zoned manufacturing areas, in part, to separate industrial businesses from residential population centers. As a result, most parts of the City are comprised of either more manufacturing or residential and commercial areas. This is reflected in Community Plan Areas, some of which have fewer residential zones and others of which have fewer manufacturing zones dedicated to industrial uses.

The problem of basing the threshold of Undue Concentration on population is that areas with more manufacturing zones (and likely less residential zones and population) have the lowest threshold for non-retail businesses. Meanwhile, areas with more residential zones and population have a higher threshold for non-retail businesses. Presumably, the City and its citizens would prefer more separation between residential areas and non-retail cannabis businesses. But the proposed framework will achieve the exact opposite by allowing more non-retail cannabis businesses in the areas with more residential zones and a higher population.

c. The Calculus Proposed in Item 1 Recommendation (f) Is Unnecessarily Complex and Drastically Reduces the Allowable Canopy

Item 1 Recommendation (f) proposes to limit cultivation to a "ratio of 1 square feet [*sic*] of cultivated area for every 350 square feet of land zoned M1, M2, M3, MR1, and MR2 with a maximum aggregate of 100,000 square feet of cultivated area and a maximum aggregate number of 15 licenses at a ratio of 1 license for every 2,500 square feet of allowable cultivated area for Cultivation." This formula is not only difficult to comprehend and use to calculate for each Community Plan Area, but will reduce allowable canopy in the City by more than 2.1 million square feet, resulting in less than half of what was proposed under the previous draft ordinance.

d. A PCN Process Does Not Exist for Any Other Non-Retail Business

The DCR referenced the PCN process that applies to restaurants, bars, and liquor stores to describe the process that will be required of cannabis business license applicants. The Council should note that the PCN process has a basis in only *retail* sale or onsite consumption of alcohol. Yet it is being proposed for all segments of the cannabis industry. Breweries, distilleries, and alcohol distributors are not subject to PCN findings applied to alcohol unless the business will conduct sales to the consumer. In treating cannabis cultivators, manufacturers, and wholesalers differently, the City continues to ostracize the cannabis industry and consider it as something other than legitimate—contradicting the very purpose of enacting a comprehensive licensing and regulatory system.

2. Additional Sensitive Uses Should be Rejected

Item 3 Recommendation (d) proposes to add day care centers to the list of sensitive uses subject to a now 700-feet buffer. We appreciate the City reducing the buffer from 800 to 700 feet. But presumably, the City was aware of the State's requirement under Business and Professions Code section 26054(b), which was enacted in June 2017, yet did not include this sensitive use until now. Additionally, Council has already added as a sensitive use, "Permanent Supportive Housing," which is not readily identifiable on public maps. Neither of these sensitive uses were included in the Planning Department original buffer maps.

Relying on those maps, putative applicants have been securing property in anticipation of the City's proposed regulations, and the City is yet again moving the goal posts at the eleventh hour. While this is not material for the favored EMMD priority applicants, or for applicants who have not yet secured real estate, it is significant for existing businesses who are prospective applicants that will now be unfairly treated. If the City is going to change the sensitive use buffers at the last minute like this, at the very least it can offer a carve out of protection for applicants who can demonstrate either purchasing or leasing property before the recent change, in reliance on the earlier drafts.

a. The Statutory Definition of Day Care Center is Ambiguous

"Day care center" is ambiguously defined, making it difficult to ascertain when seeking to identify whether a property is near one of these sensitive uses, and each are overbroad. This would cause unnecessary confusion for applicants and City Staff, thereby complicating identification of these sensitive uses and opening the door for legal challenges against the City.

For example, the statutory definition of "[d]ay care center" is "any ***child day care facility*** other than a family day care home, and includes infant centers, preschools, extended day care facilities, and ***schoolage child care centers***."[1] While "child care centers" are licensed by the California Department of Social Services (CDSS) and appear on a publicly available list,[2] the definition of a "[d]ay care center" is potentially broader, and the defining statute does not expressly require a license or registration to qualify as a day care center.

Closer review of the exemplar types of day care centers offers no clarification or narrowing of the definition. For example, a "[c]hild day care facility" is a facility "that provides ***nonmedical care*** to children under 18 years of age in need of ***personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual*** on less than a 24-hour basis."[3] Similarly, "[s]choolage child care center" means "a ***day care center*** or part of a day care center that provides ***nonmedical care*** and ***supervision, personal services, or assistance essential for sustaining the activities of daily living or for the protection of schoolage children or nonminor students***, or both, in a group setting for less than 24 hours per day.[4] Both definitions are potentially broader that facilities licensed by the CDSS and neither expressly requires such a license or certification. The latter definition even includes *nonminor* students, further complicating identification of qualifying facilities.

Moreover, the respective statutory definitions of day care center and child day care facility ostensibly contradict each other. A "[c]hild day care facility" includes "***day care centers***, employer-sponsored child care centers, and ***family day care homes***."[5] However, the very definition of day care center expressly *excludes* family day care homes.[6] As a result, it is unclear whether family day care homes would qualify as a sensitive use under MAUCRSA.

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1 Health & Saf. Code § 1596.76 (emphasis added).
2 The complete list of licensed child care centers is available on the CDSS website at: https://secure.dss.ca.gov/CareFacilitySearch/DownloadData
3 Health & Saf. Code § 1596.750 (emphasis added).
4 Health & Saf. Code § 1596.7915 (emphasis added).
5 Health & Saf. Code § 1596.750 (emphasis added).
6 See Health & Saf. Code § 1596.76 ("Day care center" means any child day care facility ***other than a family day care home***, and includes infant centers, preschools, extended day care facilities, and schoolage child care centers.") (emphasis added).

3. Unfair Preference for EMMDs

The current draft ordinance and its recommendations unfairly favor Prop D, Pre-ICO dispensaries ("EMMDs"), more closely resembling Measure N, which was rejected by 65% of voters in the City of Los Angeles. The proposed ordinance will unfairly benefit EMMDs by providing priority licensing not only for retail but also for non-retail activities on existing premises through Section 104.07(a) (e.g., adding delivery, manufacturing, distribution, or a combination thereof) as part of the priority licensing process and now also add non-retail activity to another location under Section 104.08(a). There is no logic to allowing EMMDs priority for non-retail licenses. This will shutter or push to the illegal market existing non-retail operators in the City, rather than encourage them to become part of the legal market, and make it more difficult and expensive for new businesses to obtain licenses.

a. EMMDs Not Subject to Undue Concentration Findings

EMMDs are not subject to Undue Concentration findings and the PCN process. Yet, it appears that EMMD licenses and canopy size will count toward the overall threshold for each Community Plan Area. As a result, numerous Community Plan Areas will begin social equity and general applicant licensing with retail, microbusinesses, and potentially cultivation license thresholds already met, forcing new applicants to overcome yet another barrier to opening a business, despite no such requirement in place for EMMDs. It is patently unfair to exempt EMMDs from the PCN process if their very existence triggers an Undue Concentration and the PCN process for other applicants. At the very least, the licenses obtained by EMMDs should not count toward the Undue Concentration and PCN process.

b. EMMDs Will Be Allowed to Expand Operations and Locations

The proposed Section 104.07 allows EMMD applicants to apply on a priority basis for a microbusiness license (which may include three of four activities) or a combination of a retail license and cultivation, manufacturing, or distribution. This proposed section allows EMMDs to expand into other licensed activity, which will be counted towards the threshold of Undue Concentration of licenses in the City, yet not require EMMDs to go through the PCN process. There is no logic to giving EMMDs priority for licensure beyond retail since Prop D gave such operators special treatment for retail operations, and perhaps some limited cultivation, at most.

Moreover, with respect to the cultivation protections afforded to EMMDs, they are incredibly liberal. While it is understandable that EMMDs that invested significant resources towards cultivation projects in compliance with Prop D should be protected, the proposed ordinance goes too far in providing EMMDS carte blanche to create new cultivation projects and still reap the benefits of protections ostensibly afforded by Prop D, to the detriment of social equity and new applicants. Item 1 Recommendation (p) proposes to "limit[] on-site cultivation at the Business Premises not to exceed the size of the EMMDs' existing square footage of the ~~onsite cultivation~~ building space as of March 7, 2017, as documented by dated photographs, building lease, or

comparable evidence." (Original text stricken with proposed modification underlined). A plain reading of this change allows an EMMD to expand its cultivation canopy to whatever size building it occupied on March 7, 2017, regardless of its canopy size at that time, or whether it even had an area devoted to cultivation at the time. This potential canopy would count towards the Undue Concentration threshold, increasing the likelihood that Social Equity Applicants and general applicants will all be subject to the PCN process by the time they are able to apply.

Finally, another way the proposed ordinance unfairly favors the EMMDs is with respect to the priority registration for non-retail operators. Previously, a pre-condition to qualifying for this protection was that the applicant had to certify that it "is not engaged in Retailer Commercial Cannabis Activity in the City. But now, Item 1 recommendation (q) proposes to change this so that the applicant need merely certify that it is not engaged in retail activity "at the Business Premises." (Original text stricken with proposed modification underlined). This section was originally created to create a pathway for non-retail businesses to continue operation and receive limited immunity. But now, it is clear this section will allow EMMDs, expressly excluded from this provision in the prior draft ordinance, to apply with priority for additional licenses for, distribution, and manufacturing licenses in addition to the retail license attached to the EMMD. This is an unnecessary advantage and windfall to EMMD businesses already receiving priority retail licensing.

4. The Social Equity Program in its Current Form Is Not Viable

As a proponent of the Social Equity Program, we are disappointed to see that it will likely run afoul of the emergency regulations recently issued by the Bureau of Cannabis Control. Namely, with the removal of the percentage contributions that would qualify businesses for Tier III (previously Tier IV), the sole pathway will be to provide "capital, leased space, business, licensing, and compliance assistance" to Tier I and II applicants. However, under California Code of Regulations section 5028, a licensee is prohibited from subletting "any portion of the premises." Thus, providing leased space within a licensed premises is not permitted. And providing a separate facility is not feasible, as the cost of buying or leasing two separate properties in Los Angeles is beyond what any small business could reasonably afford. Consequently, non-retail priority applicants will be either: a) large, capital-backed businesses or b) well-financed Prop D dispensaries that are now allowed to apply for non-retail. This will stifle small businesses.

Respectfully Submitted,

Michael S. Chernis

Connect Create Collaborate

Carolina Peters <carolina.peters@lacity.org>

Fwd: Letter from GLACA

1 message

John White <john.white@lacity.org> Wed, Dec 6, 2017 at 11:25 AM
To: Carolina Peters <carolina.peters@lacity.org>

please attach the accompanying letter to CF 14-0366-s5

---------- Forwarded message ----------
From: **Andrew Westall** <andrew.westall@lacity.org>
Date: Wed, Dec 6, 2017 at 9:46 AM
Subject: Fwd: Letter from GLACA
To: John White <john.white@lacity.org>

---------- Forwarded message ----------
From: **Aaron Lachant** <alachant@nelsonhardiman.com>
Date: Wed, Dec 6, 2017 at 9:20 AM
Subject: Letter from GLACA
To: "Andrew.westall@lacity.org" <Andrew.westall@lacity.org>, "danielmichaelsosa@gmail.com" <danielmichaelsosa@gmail.com>

Hi Andrew:

Please see attached letter from GLACA regarding the city's latest proposals. If there are any questions, please contact me.

Aaron

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LOS ANGELES CITY COUNCIL PRESIDENT
HERB WESSON
LOS ANGELES CITY COUNCILMEMBER, DISTRICT 10

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