



October 10, 2017

Council President Herb Wesson
Los Angeles City Council
200 N. Spring Street Room 430
Los Angeles, CA 90012

Re: Revised Proposed Requirements for Commercial Cannabis Activity in the City of Los Angeles; Council File 14-0366-S5 (6/8/17)

On September 22, 2017, the City of Los Angeles (the “City”) released a revised draft of the “Proposed Requirements for Commercial Cannabis Activity in the City of Los Angeles” (hereinafter, “Proposed Requirements.”). While the revised Proposed Requirements are not drafted in the form of an ordinance, they serve as an outline of the City’s policy goals. The revised Proposed Requirements should be modified, as described below, when the City drafts its Commercial Cannabis Activity Ordinance (hereinafter, “Ordinance” or “Cannabis Ordinance”).

I. Definitions

We believe that the following terms should be added to the definition section of the Proposed Requirements. These terms are used throughout the document and should be defined to avoid confusion.

“**Applicant**” means the individual, partnership, joint venture, association, corporation, limited liability company, or any other business entity, group or combination acting as a unit applying for a City license pursuant to this division.

“**Owner**” shall mean:

- (1) A person with an aggregate ownership interest of 20 percent or more in the business entity applying for a license or a licensee, unless the interest is solely a security, lien, or encumbrance;
- (2) The chief executive officer of a nonprofit;
- (3) A member of the board of directors of a nonprofit.

Additionally, the definition of the Business Tax Registration Certificate should be amended to specifically reference a BTRC for taxation as a commercial cannabis business.

“**BTRC**” means a Business Tax Registration Certificate issued by the City of Los Angeles Office of Finance for taxation as a commercial cannabis business.

II. Commercial Cannabis Application Processing

1. General

The Proposed Requirements set forth a basis for denial of applications. One such basis is a denial of a license, permit, or other authorization to engage in Commercial Cannabis Activity by a state or another local licensing authority. Although we understand that the City has an interest in protecting its residents from irresponsible operators, denials in other jurisdiction can also be due to license caps, zoning issues, unforeseen construction issues, and various other circumstances that are outside of the applicant’s control. In view of the foregoing, the language in Paragraph 4(a)(ii) on Page 5 and in paragraph 6(b)(ii) on Page 6 should be revised as follows (recommended changes italicized):

“or the applicant has been denied a license, permit, or other authorization to engage in Commercial Cannabis Activity by a state or local licensing authority *because the applicant, owner, licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, except that if the Department determines that the applicant, owner, or licensee is otherwise suitable to be issued a license, and granting the license would not compromise public safety.*

2. Prop M Priority Processing

a. Substantial Compliance

Pursuant to the Proposed Requirements, Exiting Medical Marijuana Dispensaries (“EMMD”) that received a BTRC after 2014 and are operating in compliance with the limited immunity and tax provisions of Proposition D are eligible for priority processing. The Department is tasked with determining eligibility for Priority M Processing. In doing so, the Department may consider mitigating circumstances for an EMMD’s inability to comply with Proposition D. Since the Department will be considering mitigating circumstances, the Proposed Requirements should specify that Proposition M eligibility will be based on substantial compliance with the limited immunity provisions of Proposition D. The passage of Measure M gave the City the power to amend Proposition D and create a comprehensive regulatory framework that is not plagued by

the arbitrary and capricious limited immunity system. The language should be revised as follows (recommended changes italicized):

An EMMD that received a BTRC after 2014 that is operating in *substantial* compliance with the limited immunity and tax provisions of Proposition D, may continue to operate within the City at the one location identified in its original or amended BTRC at the time of the beginning of the application processing window until such time that the EMMD applies for and receives a final response to its application for a License for Commercial Cannabis Activity being conducted at that location. No changes shall be made to the BTRC once application processing begins. The Department shall give priority in processing applications of EMMDs that can demonstrate to the Department that the EMMD has operated in *substantial* compliance with the provisions of the limited immunity and tax provisions of Proposition D. *The Department shall consider* any mitigating circumstances due to gaps in operations, location change, or involuntary closure, tax payments, etc., which must be described in detail for the Department to consider eligibility. *Changes in organizational structure from non-profit to for-profit are allowable.* A maximum of three Licenses per BTRC will be allowed (One Type 10 (retailer), One Type 10 (retailer with delivery) AND one Type 2A OR Type 3A (on-site cultivation if applicable)).”

b. Cultivation and Distribution Licenses

Applicants under Prop M Priority Processing, including those with onsite cultivation, will currently only be allowed to apply for Retailer Commercial Cannabis Activity. This is extremely problematic as the applicant needs a Cultivation Commercial Cannabis Activity license from the City in order to obtain a State of California Cultivation license. Without a local Cultivation Commercial Cannabis Activity license the applicant will not be eligible for a State license and will not be able to lawfully place its products into the stream of commerce. A license for Cultivation Commercial Cannabis Activity is further necessary to ensure that the on-site cultivation facility is subject to and complies with the City’s Cultivation Commercial Cannabis Activity Requirements in addition to the Retailer Cannabis Activity Requirements.

Equally important is an EMMD’s ability to obtain a Distribution Commercial Cannabis Activity license so that: (1) an EMMD can comply with the State imposed requirement that the excise tax and cultivation tax be collected by a distributor; and (2) an EMMD can lawfully transport its products from the premises for testing, manufacturing, and retail sale. Without a distribution license, an EMMD cannot remove its products from the premises in compliance with the impending City and State regulations or comply with the California Department of Tax and Fee Administration (“CDTFA”) tax obligations.

c. Canopy Size Restriction

Pursuant to the Proposed Requirements canopy size of on-site cultivation may not exceed the

size of EMMD's existing canopy or square footage of building space as documented by a lease or Certificate of Occupancy prior to January 1, 2017. This language directly contradicts Measure M, that expressly states that an "EMMD may continue to operate within the City *at the one location identified in its original or amended business tax registration certificate* until such time that the EMMD applies for and receives a final response to its application for a City permit or license *for commercial cannabis activity being conducted at that location.*"

Measure M does not distinguish between EMMDs with or without onsite cultivation and contains no restrictions on relocation, expansion of business premises, or expansion of canopy size. The Proposed Requirements must follow the voter's intent expressed in Measure M and allow the EMMDs to continue operating at the one location identified in its original or amended BTRC *at the time of submission of a cannabis license application* until such time that the EMMD applies for and receives a final response to its application for a license for all activity being conducted at that location.

d. Grandfathering of On-site Cultivation

The original draft of the Proposed Requirements for Commercial Cannabis in the City of Los Angeles dated June 8, 2017 required EMMD's to end onsite cultivation by December 31, 2024 if its premises are within a land use designation that does not allow for Indoor Cultivation Commercial Cannabis Activity. The Proposed Requirements accelerated the date to end onsite cultivation in non-conforming zones to December 31, 2020. This drastic reduction in time is detrimental to EMMDs currently engaged in onsite cultivation as they will be unable to amortize the buildout costs and the upcoming application, professional, inspection, and operating fees and costs that will result from the dual City and State licensing processes.

A number of EMMDs relied on the Proposition D zoning requirements, which did not prohibit cultivation in commercial zones, in selecting their premises and either purchasing the building or entering into a long-term lease. The City's drastic reduction in time for onsite cultivation in non-conforming zones will: (1) financially cripple a number of EMMDs who will be unable to amortize their investment and (2) interfere with existing leases and expose EMMDs to liability in the event of early termination of their leases.

3. **Social Equity**

The City should issue provisional licenses to all applicants who meet social equity criteria adopted by the City Council after the hearing on same, and prioritize review of these applications.

4. **Non-Retail Cannabis Activity**

The Revised Proposed Requirements have eliminated the non-retail registry from the prior draft, which potentially would have allowed non-retailers (cultivators and manufacturers) to register with the City and continue operating while their applications for City and State licensure could be completed. We urge adoption of a mechanism that would allow existing manufacturers, cultivators, distributors, labs and

delivery operations, who can meet certain criteria that objectively demonstrates a strong track record and compliance with the City’s Social Equity program, to continue operating during the application period.

III. License Types

a. Restriction on Retail Licenses

The Proposed Requirements restrict the number of Retailer Commercial Cannabis Activity licenses to 3 licenses per owner. The State does not contain any restrictions on ownership of retail licenses. Given that the majority of the City’s regulations are aligned with the State, the City should mirror the State’s lack of restrictions on retail ownership. The State already has restrictions to protect against unfair business practices, monopolies, and the over concentration of licenses in geographical areas. Business and Professions Code section 26051(a) applies the Cartwright Act, Unfair Practices Act, and Unfair Competition Law; section 26051(b) prohibits monopolization; and 26051(c) provides discretionary denial of State license if ratio of retail businesses in census tract or division exceeds that of county and section.

Additionally, because the term “Owner” is not defined, and it is not clear whether the City intends to impose a limit of three retail licenses per applicant or upon every member or shareholder of an applicant-entity. Should the City retain its license cap, it should restrict only the number of licenses per applicant-entity. This will alleviate the City’s concern of a single business entity monopolizing the market, but at the same time, allow individuals to freely invest in businesses.

IV. Commercial Cannabis Activity Application Requirements

a. Financial Information

The City’s application requires a great deal of personal financial information about the applicant, whether it is a business entity or an individual. It is imperative that this information remain confidential. Accordingly, the following sentence should be added to Paragraph 10 on page 14 of the Proposed Requirements:

“All financial information will be redacted unless otherwise required by law.”

b. Pre-Inspection

The Proposed Requirements mandate that new applicants submit to a pre-inspection of the premises prior to the issuance of a provisional license. The Proposed Requirements further state that “an applicant shall upgrade all applicable electrical and water systems to Building and Fire Code standards *prior to further application processing*” (emphasis added). This language is vague and ambiguous and may unnecessarily delay the issuance of a provisional license that would allow an applicant to move to the next step of the application processing. Electrical and water system upgrades should be conditions for the issuance of a permanent license. Thus, the last two sentences of Paragraph 14 on page 15 of the Proposed Requirements should be amended as follows:

“An applicant shall satisfy all requirements of a pre-inspection prior to further application processing. An applicant shall upgrade all applicable electrical and water systems to Building and Fire Code standards *prior to the issuance of a permanent License.*”

c. Notice to Neighborhood Council

The Proposed Requirements require the applicants to provide proof that the local Neighborhood Council “has been provided the initial application deemed complete and considered discussing the pending application at a duly-noticed and agenzized public meeting of the Board of the Neighborhood Council.” An applicant has no control over a Neighborhood Council’s agenda or decision to discuss the pending application at a public meeting. Neighborhood Councils will, however, have the opportunity to comment and review applications as a part of the normal public hearing and appeals process.

For these reasons, we request that the following language be stricken from the Revised Requirements:

~~Applicants will provide proof that the local Neighborhood Council in which the Business is proposed has been provided the initial application deemed complete and considered discussing the pending application at a duly noticed and agenzized public meeting of the Board of the Neighborhood Council, with notice to the public and applicant.~~

d. Retraction of Liquor Licenses

The Proposed Requirements require an applicant to attest that no owner is a licensed retailer of alcoholic beverages or tobacco products. This is unduly restrictive and would force existing shareholders or members of business entities to choose between investing in a cannabis business and keeping their other businesses, whether it may be a restaurant with a liquor license or a gas station that sells tobacco products.

The State does not restrict ownership in a liquor license or the sale of tobacco products so long as the licensee does not sell alcoholic beverages or tobacco products on the licensed premises. The City should align with the State rules and revise Paragraph 30 on page 16 as follows:

“The applicant shall attest that it shall not sell alcoholic beverages or tobacco products on the licensed premises.”

- e. The City Must Require Applicants To Comply With State And Local Labor Standards While Avoiding Federal Preemption And Providing Opportunity For Remediation.

To avoid federal field preemption, the City can only require compliance with state or local labor laws. In at least two provisions, the City requires applicants to comply with “any law involving wages or labor laws,” which should be changed to “*any state or local law involving wages or labor laws.*”

The first of these provisions, found in the Automatic Rejection of Application section, bans employers from engaging in commercial cannabis activity for five years. This provision should also be changed to allow for operators to become eligible to reapply sooner than five years if they are able to provide an attestation from a bona-fide labor organization which indicates that conditions have improved.

Current Language:

Any owner, business entity, or individual convicted for violating any law involving wages or labor laws will be banned from Commercial Cannabis Activity within the City of Los Angeles for a period of 5 years from the date of conviction

Proposed Language:

Any owner, business entity, or individual convicted for violating any *local or state law* involving wages or labor laws will be banned from Commercial Cannabis Activity within the City of Los Angeles for a period of 5 years from the date of conviction. *An owner, business entity, or individual convicted for violating any local or state law involving wages or labor laws may only reapply to the City before five years by providing an attestation from a bona-fide labor organization which indicates that the conditions resulting in the violation have improved.*

The second of these provisions is found in the Enforcement section, and should be changed to avoid preemption.

Current Language:

“Serious”. Violations which preclude or significantly interfere with enforcement, or those which cause significant false, misleading or deceptive business practices, potential for significant level of public or environmental harm, intentional or knowing sale of cannabis products to a person

under the age of 21 (unless a medical cannabis patient), intentional or knowing sale of medical cannabis to a person who is not a medical cannabis patient; packaging or labeling any cannabis product in a manner that violates the requirements of the State of California or Department, advertising or marketing cannabis products that violates the requirements of the State of California or Department, issued violations of any law involving wages or labor as a violation of the California Labor Code or Los Angeles Municipal Code, or for any violation which is a repeat of a Moderate violation that occurred within a two-year period and which resulted in an administrative civil penalty.

Proposed Language:

“Serious”. Violations which preclude or significantly interfere with enforcement, or those which cause significant false, misleading or deceptive business practices, potential for significant level of public or environmental harm, intentional or knowing sale of cannabis products to a person under the age of 21 (unless a medical cannabis patient), intentional or knowing sale of medical cannabis to a person who is not a medical cannabis patient; packaging or labeling any cannabis product in a manner that violates the requirements of the State of California or Department, advertising or marketing cannabis products that violates the requirements of the State of California or Department, issued violations of any *local or state law* involving wages or labor as a violation of the California Labor Code or Los Angeles Municipal Code, or for any violation which is a repeat of a Moderate violation that occurred within a two-year period and which resulted in an administrative civil penalty.

f. Proper Notice Should Be Given To Organizations Or Individuals Who Request To Be Put On The Interested Party Notification List

The Revised Requirements do not provide a mechanism for organizations or individuals to request to be put on the list of interested parties receiving notice on a given application.

Current Language:

“Proper Notice” means providing notice to the applicant, occupants and property owners who reside or own property within 500 feet of the proposed Commercial Cannabis Activity, the local Neighborhood Council, and Council office.

Proposed Language:

“Proper Notice” means providing notice to the applicant, occupants and property owners who reside or own property within 500 feet of the proposed Commercial Cannabis Activity, the local Neighborhood Council, Council office, *and to any organization or individual that requests to be put on the City’s interested party notification list.*

V. **Labor Peace Agreements For Employers Should Be Triggered By A Staffing Plan Or Hiring Of More Than 10 Employees Regardless Of Full-Time Or Part-Time Status**

The City incorrectly limits labor peace agreements to employers with more than 10 full-time equivalents (FTEs). The State attaches labor peace agreements to employers regardless of the number of hours worked by those employees, the number of employees is the determinative factor. A FTE standard would be an administrative hassle to assess. The criteria must be the number of employees. Moreover, the City's labor peace requirement should be triggered not only when the Employer employs more than ten, but also when an applicant's staffing plan shows more than 10 employees. This will ensure that the City is reviewing compliance with this requirement as part of the application process when applicants may yet to be in operation. In aforementioned instance, a labor peace agreement should be submitted within 15 days of a qualifying staffing plan.

Regarding proof of a labor peace agreement, an applicant should be required to provide an attestation from a person authorized to contract on behalf of a bona-fide of labor organization that one has been executed. The City should look to the labor organization to verify this standard. The Revised Requirements ask for an attestation only from the *commercial cannabis employer*.

As mentioned in our previous comments, labor peace agreements are private agreements between an employer and a bona-fide labor organization. Efficient and good faith negotiations would be best served by the confidentiality of the final labor peace agreement.

Current Language:

For an applicant with 10 or more full-time equivalent employees, the applicant shall attest that the applicant has entered into a labor peace agreement. Such agreement shall ensure full access for labor representatives to the premises during regular business hours as allowed by the State of California.

Proposed Language:

(a) For an applicant *whose staffing plan or organizational chart shows with 10 or more full-time equivalent* employees, the applicant shall *provide an attestation from a person authorized to contract on behalf of a bona-fide labor organization, which indicates that a labor peace agreement has been executed.* ~~attest that the applicant has entered into a labor peace agreement.~~ Such agreement shall ensure full access for labor representatives to the premises during regular business hours as allowed by the State of California.

(b) *If the City reviews an application with a staffing plan showing ten or more employees and the applicant has not complied with requirements of subsection (a), then the City shall require compliance within 15 days.*

VI. Anti-Retaliation Provisions Will Foster Safer Communities And Workplaces

Communities are best protected when cannabis industry employees are free to report noncompliance and safety issues in their workplace. The Ordinance must include anti-retaliation provisions to safeguard whistleblowers against adverse action. Currently, the Revised Requirements do not contain protections against retaliation for whistleblowers.

Proposed Language:

It shall be unlawful for an Employer or any other party to discriminate in any manner or take adverse action against any Employee in retaliation for exercising rights protected under this article. Rights protected under this article include, but are not limited to: the right to file a complaint or inform any person about any party's alleged noncompliance with this article; and the right to inform any person of his or her potential rights under this article, state or city labor standards, and to assist him or her in asserting such rights. Protections of this article shall apply to any Employee who mistakenly, but in good faith, alleges noncompliance with this article, or any other state or city labor standard. Taking adverse action against an Employee within 90 days of the Employee's exercise of rights protected under this article shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.¹

VII. Cancellations

The City requires a business that closes the premises for a period exceeding 30 consecutive calendar days surrender the license to the Department. This language is too vague and fails to account for closures due to relocation, remodeling, inspection, suspension of operations due to violations and other unforeseeable circumstances that may result in temporary closure in excess of 30 days. To account for these circumstances, Paragraph 1 on page 42 should be changed as follows:

“Every Business that surrenders, abandons, or quits the premises as identified in the License, or that closes the premises for a period exceeding 30 consecutive calendar days, shall, within 30 calendar days after closing, surrendering, quitting, or abandoning the premises, surrender the Licenses to the Department. This section shall not apply to a temporary closure of premises including without limitation for the purposes of construction, remodeling, or as a result of enforcement proceedings by the Department. Exceptions may be made to those Businesses who close due to involuntary relocation or if closure results from circumstances beyond the Businesses’ control and as long as the Business resumes operations within a reasonable amount of time. The Department may seize the Licenses of a Business who fails to comply with the surrender provisions and may proceed to revoke the Licenses.”

¹ This proposed language is substantially similar to the language found in Section 188.04 of Article 8 of the Los Angeles Municipal Code, titled “Los Angeles Office of Wages Standards Ordinance”

VIII. Conclusion

We respectfully request that the City consider our comments and recommended changes to the Proposed Requirements and thank the City for its continued efforts to implement a regulatory framework for Commercial Cannabis Activity.

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