NELSON HARDIMAN

July 18, 2017

VIA E-MAIL TRANSMISSION

Andrew Westall, Assistant Chief Deputy
Office of Los Angeles City Council President
Herb J. Wesson, Jr.
1819 S. Western Avenue
Los Angeles, CA 90006

Re: Revisions to Proposed Cannabis Ordinance

Dear Mr. Westall:

This law firm represents the Greater Los Angeles Collective Alliance ("GLACA"). We are writing to provide you with feedback on the proposed ordinance to succeed Proposition D. In particular, we are identifying five major issues of concern: (1) Non-Retail Registry; (2) Proposition D compliance; (3) Discretionary Hearings; (4) Youth Centers; and (5) Change of Ownership. Below is a summary of the provision, an explanation of GLACA's concern, and a proposed solution.

As a preliminary matter, GLACA shares concerns that other organizations have raised about the Certificates of Compliance. Rather than repeat arguments already raised at length, GLACA will focus on other issues in this letter. Although GLACA notes that Measure M calls specifically for licenses and permits for existing operators to be issued on a priority basis. Anything short of a permit or license would be outside the voter mandate in Measure M.

1. Non-Retail Registry

The City's proposal calls for a Non-Retail Registry. (p.12.) Only cultivators and manufacturers in existence before January 1, 2016 qualify. Proposition D-compliant operators are not eligible for the registry. Proposition D operators may apply for off-site cultivation and manufacturing as members of the general public.

The City should permit Proposition D complaint operators to apply for the registry. The current proposal rewards those who violated municipal law. Proposition D prohibits cultivation and manufacturing facilities from existing outside a Proposition D compliant location. (LAMC § 45.19.6 *et seq.*) The City's proposal unfairly rewards those who have operated in violation of the law for the last 18 months. There is no rationale for favoring those who have flouted municipal

law over those who have a history of compliance. Further, existing operators have invested in off-site locations in anticipation of participating in lawful permitting. These buildings are sitting empty and operators would like to use them as quickly as they can be licensed.

Thus, the City should permit Proposition D complaint operators to participate in the Non-Retail Registry

2. Proposition D Compliance

The proposed ordinance provides existing medical marijuana businesses in substantial compliance with Proposition D can apply for existing medical marijuana certificates of compliance. One section notes the business must be in compliance **with all limited immunity requirements**. See Proposed LAMC § 45.19.8.3.A.1. As you know, Proposition D is a limited immunity defense to be raised in a criminal prosecution. Some of the elements (for example utility bills dating back to 2007 to prove continuous operations) require the subpoena power of the court in order to obtain the records from Los Angeles Department of Water and Power. I have frequently encountered the situation where the account holder in 2007 is no longer affiliated with the business and the current operators cannot access the old utility bills due to privacy laws. A workable solution would be to qualify those entities that registered under Interim Control Ordinance No. 179027 and received a 2016 or 2017 business tax registration certificate. Further, once an applicant submits an application, all enforcement efforts must cease until a determination is made.

3. Discretionary Hearings

Under the proposed ordinance, dispensaries must undergo a discretionary hearing for obtaining a Certificate of Compliance. (pp. 7-9.) Existing law provides a medical marijuana business may locate in any non-residential zone. The location must, however, comply with sensitive use and site requirements. See Los Angeles Municipal Code Section 45.19.6.3, subsections (L) and (O). The right to occupy a particular location is a ministerial matter, not discretionary. The change of existing policy from ministerial review to discretionary threatens current operators. For example, many businesses have selected sites without regard for a public meeting. An adverse ruling in a public hearing threatens millions of dollars in already made investment. It is not equitable to subject these businesses to a discretionary review after substantial investments into the property. The city should change the proposal to require a discretionary hearing on all new applicants or if a licensee changes locations.

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4. Youth Center

The City needs to affirmatively opt out of the 'youth center' sensitive use. State law provides that a state license cannot issue if a youth center is within 600 feet of the applicant. Business and Professions Code Section 26054(b). State law does not exempt youth center locations established after the marijuana business was established at a location. Rather, it disqualifies all applicants located within 600 feet without regard for which business was there first.

The majority of medical marijuana businesses established locations in 2013 and earlier. Since then, one or more 'youth centers' have located within 600 feet of the marijuana business. Under Proposition D, limited immunity is not affected if a youth center locates within 600 feet of the marijuana business, even though Proposition D prohibits marijuana businesses from locating within 600 feet of a youth center. The rule of 'first in time' controls. However, unless the City opts out of Section 26054(b), state law would disqualify an applicant if, at the time of licensing, a youth center is located within 600 feet.

In order to avoid this absurd and unjust outcome, the City needs to affirmatively opt out of Business and Professions Code Section 26054(b). Section 26054(b) allows municipalities to opt out of the youth center requirement and set their own. The city should opt out in order to facilitate licensing for existing operators who may be impacted by youth centers that have been established nearby.

5. Change of Ownership

The City's proposal provides that businesses are not transferrable once a Certificate of Compliance is issued, including a Provisional Certificate of Compliance. A change to the business organizational structure or ownership requires a new application, the initial application fees, and approval of the new application by the Commission, Department, or City Council. The City should treat a change of ownership as a ministerial duty and not require a new application, application fee, and approval. Specifically, the business should notify the City of a change of ownership or business structure once the change is approved by the State. Circumstances may occur in which a change of ownership is involuntary; for example, death of owner. It would be onerous to require a new application simply because an owner dies.

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We appreciate your anticipated consideration of the matters raised in this letter. We look forward to seeing the City's revisions as soon as they are released.

Very truly yours,

NELSON HARDIMAN, LLP

By: Aaron Lachant