



To: City Council Members & Staff

From: UFCW Local 770, United Cannabis Business Association, Los Angeles Cannabis Task Force

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

Date: August 14, 2017

On June 8, 2017, the City of Los Angeles released its “Proposed Requirements for Commercial Cannabis Activity in the City of Los Angeles” (hereinafter, “Proposed Requirements.”) While the Proposed Requirements are not drafted in the form of an ordinance, they serve as an outline of the City’s policy goals. The Proposed Requirements should be modified, as described below, when the City drafts its Commercial Cannabis Activity Ordinance (hereinafter, “Ordinance” or “Cannabis Ordinance”).

**I. The City should develop a licensing framework that is consistent with state law and Proposition M.**

The City proposes to maintain the ban on commercial cannabis activities, and so the Proposed Requirements are drafted to conform to the concept of “limited immunity.” The undersigned organizations incorporate by reference, our emails and comment letters of July 13, 2017 submitted to Planning Case File CPC-2017-2260-CA, which extensively detail the legal and equitable flaws in a limited immunity approach.

As previously stated, Proposition M (or “Prop M”) explicitly authorized only a “licensing” structure.<sup>1</sup> Indeed, the word “license” is used throughout the text of Prop M, and its accompanying staff report.<sup>2</sup> The Proposed Requirements should be reconfigured to reflect the will of the voters and the certificate of compliance model can be easily transitioned to a licensing framework.<sup>3</sup> A licensing structure will help the

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<sup>1</sup> “License” shall consist of (i) a state license issued under Division 10 of the California Business and Professions Code, Chapter 3.5 of Division 8 of the California Business and Professions Code, or such other applicable cannabis related provisions under state law, and (ii) any such other applicable City authorization, permit, or license (not including a business tax registration certificate which shall not be construed as a permit in any way).

<sup>2</sup> Report re: ballot resolutions regarding a proposed ordinance to submit to the voters related to the enforcement, taxation and regulation of cannabis related activity in the City of Los Angeles, and Ordinance calling an election for the ballot measure on March 7, 2017. Report No. R16-0347, November 04, 2016.

<sup>3</sup> However, Section 22.1141 of Los Angeles City Council Ordinance No. 185025, establishing the City of Los Angeles Cannabis Commission (hereinafter, “Commission”), will need to be amended to authorize the Commission to issue “licenses” instead of “Certificates of Compliance.” The Commission Ordinance should also be amended to authorize the Commission to determine each Commercial Cannabis Business’s compliance with the zoning standards of the LAMC so that the hearing process will be efficient and streamlined.

City to implement the regulatory scheme through a process that is symbiotic to that of the State, and is necessary in order to professionalize the industry.

The City has correctly modeled its application requirements after that of the State. As discussed below, the City will want to craft additional application requirements that are unique to the needs of Los Angeles, however, using the State's requirements as a base model will provide much needed clarity to the process for applicants. Similarly, the Ordinance should provide clarity as to the types of licenses that will be issued by the City, and should contain a licensing structure modeled after the State. All license types issued by the City should bear the same nomenclature used by the State, including Type P (packaging) and Type N (edibles) should those license types be included in the Department of Public Health's reissued regulations.<sup>4</sup>

The City should allow retail, small to medium sized indoor cultivation operations, microbusinesses, indoor nurseries, distribution, small outdoor and small to medium mixed-light cultivation, testing, and manufacturing. The City should also follow state law with regards to authorizing licensees to hold multiple licenses except for testing licensees pursuant to Business and Professions Code Section 26053. 1.

The licensing process must also recognize and give priority to businesses eligible under a Social Equity Program, to be created by the City, as a necessary component of the licensing of this industry. The licensing process should also incorporate a commitment by all employers to a hiring and retention program that meets social equity as well as responsible labor standards for this new burgeoning workforce.

## **II. The Application Process**

### **A. The City's proposed application requirements correctly mirror those of the State.**

The City correctly uses the State's application requirements as the base of its own. The regulations should defer to operative State law requirements which are evolving, and have evolved with the passage of SB 94, so that changes at the State law level do not create confusion during the City's application process. That said, the City should enhance these requirements by including application standards that are unique to Los Angeles's commercial cannabis program. For example, once the City develops a plan for its Social Equity Program, the application should include, at a minimum, a social equity applicant's plan for compliance with the program, a pledge by all employers to utilize social equity hiring and responsible labor standards. The application process must also have clear standards for commercial cannabis businesses who have been in compliance with Prop D to identify themselves for priority processing purposes.

### **B. Proof of a state license should not be required as a prerequisite to apply.**

The requirement that an applicant provide proof of a state license at the application stage does not take into consideration that the State has proposed issuance of temporary licenses and an optional dual process, so that the City and State can begin processing applications at the same time. And, in any case, it is

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<sup>4</sup> Small business owners and cannabis workers should be able to find licensing requirements and other regulations within the Cannabis Ordinance rather than a land use ordinance.

typically the case that an Applicant will not have a State license until after obtaining a local license, so this requirement is out of step with SB 94

**C. Proof of Compliance with Prop D should be included in the application.**

As mentioned, applicants claiming eligibility for Prop M Priority Processing should be required to provide proof of compliance with Prop D by submission of a 2016 or 2017 Business Tax Registration Certificate (BTRC), and an attestation as to substantial compliance with the limited immunity and tax provisions of Prop D.

**D. The City should require a community benefits attestation.**

The Proposed Requirements rightly propose to impose a community benefits requirement on applicants which we anticipate will be consistent with the social equity standards to be set by the City. The City has yet to develop the full nature of the community benefits it will require. The Proposed Requirements reference local hire and employment of transitional workers as two possibilities. As part of the Social Equity Program, a Community Based Organization (“CBO”) must be identified to recruit, train, certify and refer such worker to the Industry.

Applicants should be required to attest to the community benefits provided by its commercial cannabis business, such as, utilizing local and transitional workers. To that end, the City should also ask for a plan to be submitted by the Licensee of how it will achieve these goals. Moreover, should the City offer incubator services or other training, applicants should have to pledge to utilize those services as a part of the application.

**E. Applicants should comply with local, state and federal labor laws.**

The application process should also screen for an applicant’s history of complying with local, state, and federal labor laws, and employer payroll obligations, by taking into consideration final adverse judgement obtained against the applicant with regards to its duties as an employer by the City, State or federal government.

The application process should be used to assess what plan the applicant has put in place in order to ensure compliance with local, state and federal labor laws. Moreover, applications of those who are operating in knowing violation of the City’s Minimum Wage Ordinance and Labor Standards should be automatically denied.

**F. Labor peace agreements are private agreements.**

The City correctly recognizes that a labor peace commitment should be required of all employers and proof of a labor peace agreement should be required of all who either employ 10 or more or represent in their staffing plan that they intend to hire 10 or more employees. Regarding proof of a labor peace agreement, an applicant should only 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. 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.

**G. The application requirements should be modified to include other minor changes.**

The City should ensure that all applications are submitted under penalty of perjury, and that each application clearly states that misrepresentations can result in a denial or revocation.

There are other specific application materials mandated by the Proposed Requirements that should be modified. For example, the surety bond requirement should be liberalized to allow applicants to also show proof of escrow accounts or insurance policies in the amount or \$5,000.

**H. The City should grant immunity from criminal prosecution to qualified applicants and should not share information gathered.**

The City should create a process for granting immunity from prosecution to qualified applicants who meet a certain baseline threshold such as having control of the premises and a properly zoned location. Moreover, the City should create a mechanism to ensure that information received and collected during the application process will not be shared with federal authorities. This will incentivize the sharing of information, and encourage all applicants to enter the regulated market. The City may still use all information gathered to weigh its decision-making process during the administrative review or hearing processes.

**I. Priority Processing**

Proposition M's ballot language states, in pertinent part, "Shall an ordinance providing for enforcement, taxation and regulation of cannabis and/ or cannabis products by... giving priority in the processing of applications to existing medical marijuana dispensaries operating in compliance with current City law... be adopted?" Proposition M Section 45.19.7.2 (C) further specifically requires that the City's designated licensing agency give priority in processing application of Existing Medical Marijuana Dispensaries that are operating in compliance with the limited immunity and tax provisions of Proposition D. In conformance with this concept and the explicit language in Proposition M, the City correctly proposed a Prop M Priority Processing schedule.

Applicants who qualify as an Existing Medical Marijuana Dispensary (dispensary and/or dispensary with onsite cultivation) that either received a 2016 or 2017 BTRC and that are operating in substantial compliance with the limited immunity and tax provisions of Proposition D should be immediately granted a provisional license by the City for the commercial cannabis activity being conducted at the location identified in its original or amended BTRC at the beginning of the application processing window so that it may continue to operate in the City at said location until such time that the Department or Commission issues a license or Notice of Determination through the full vetting process, or until such time that a state license is denied. **Importantly, there should not be any retroactive restrictions on expansion of business premises as this would go against the voter intent in Prop M that did not place any restrictions on relocation of EMMDs.** The review and granting of provisional license to EMMDs must be done by January 1, 2018 and in the first wave of licenses to be reviewed by the City This will allow EMMDs to apply for a temporary State license once the State starts accepting applications.

**The City should issue provisional licenses to all applicants who meet social equity criteria, and prioritize review of these applications.**

The City should issue provisional license to all social equity applicants who meet the City eligibility criteria. Any City Equity applicants should have minimum 50% ownership interest, solely or cumulatively with other social equity applicants, in any commercial operation in addition to city eligibility criteria. Again, under this model, the City would still undergo review for provisional licensees, under a framework in which all social equity applicants are able to operate immediately. The review and granting of provisional license to social equity applicants must be done by January 1, 2018 and in the first wave of licenses to be reviewed by the City.

Additionally, the City should create a pathway for the issuance of provisional licenses to applicants who are engaged in non-dispensary commercial cannabis activity, such as cultivation, manufacturing, testing, distribution, and delivery, (i) that comply with the City's cannabis zoning requirements, and (ii) that will sign an affidavit stating that they will operate in compliance with the City's operating requirements, including without limitation applicable building codes.

To be clear, under this model, the City would still undergo review of all provisional licensees, under a framework in which existing medical marijuana businesses are able to continue to operate immediately.

A provisional license is only meant to be a stop gap until the City completes its review of all provisional licensees. After the City issues provisional licenses, the City will then move on to conduct full license review, wherein the City will give priority in processing to Prop M priority applicants and Social Equity applicants. If the City determines that a provisional licensee materially misrepresented its qualifications in order to receive a provisional license, then the City may automatically deny the commercial cannabis license. Applicants should have the right to appeal.

The City should accept applications for all others applicants but not process them until licenses are granted to the Prop M priority applicants, the social equity applicants, and the non-dispensary commercial cannabis activity applicants who meet threshold applicant criteria. The City can then go back and fully review those applications after fully processing the priority applicants.

The Social Equity Program should provide social equity applicants additional annual periods during which to apply so that they may be given priority in processing, as many will be entering the market once the Social Equity Program is up and running.

The Ordinance should include a provision that details a clear timeline for processing, which includes a mandate that processing should begin as soon as possible, but no later than November 1, 2017. All applicants who apply for licenses by January 1, 2018, who meet the eligibility criteria discussed above, should be granted provisional licenses in the order of the priority processing.

#### **J. The City must provide resources and support to social equity applicants.**

The Social Equity Program can thrive only if the City provides adequate resources, training, and support. The City has an obligation to educate residents about the social equity program via external messaging. Diverse communities need to know why there is a need for licensing and regulation. This will help eliminate the number of illegal operators and promote minorities obtaining legitimate businesses in the cannabis space. The City should focus on creating a meaningful economic development campaign geared towards empowering social equity applicants. Social equity applicants who meet the City eligibility criteria should only be required to provide a signed Letter of Intent for the lease or purchase of real property for the purposes of application and approval for a provisional license so long as the State authorizes. The City should also waive or discount permit application fees and other city fees associated with the application for social equity applicants.

##### **i. Social Equity Business & Workforce Development**

The City should designate a set criteria on which to evaluate social equity applicants. To do so, it should examine the criteria utilized by other cities, including but not limited to the City of Oakland. The undersigned will submit a detailed proposal at the time that the social equity ordinance is considered by Council.

Social equity applicant (including 2016 BTRC) licenses should be in the first round of provisional licenses. They should be in first round of processing of licenses together with the Measure M Priority applicants. Additional windows of time (perhaps every 6 months) should be created to move Social Equity License applicants to the front of the line in batches of a reasonable number. Mechanisms will be put in place to ensure social equity applicants will have access to provisional and long term licenses.

Licensing opportunities will only be successful with strong outreach programs to serve the needs of a diverse and changing community. It is imperative to engage in inclusive outreach practices and reach out to the underserved. Education cannot be ignored. Social equity applicants not only need assistance with

the application itself, but with business practices and protocols. Business literacy can be accomplished through funding for business seminars and coaching. Moreover, applicants can work with CBO partners with measures to aid in capital acquisition and mitigate land use limitations/skyrocketing commercial rents.

A City-sponsored incubator pilot program should include educational seminars, individualizing coaching for business owners; a physical location for the cooperative creation of cannabis manufacturing, cultivation and other businesses; as well as facilitating pooling of resources/capital acquisition for business development. The program should also facilitate the introduction of applicants to potential equity partners through a vetting process that aligns business interests, experience levels and investment needs.

The City should enforce and make licensing contingent upon the worker protection and safety provisions in Los Angeles, including those described in the proposed cannabis regulations.

Through a central non-profit organization and interlinked partners, the City should develop a social equity workforce development program that recruits and guarantees cannabis job placement for transitional workers. This partner organization, in partnership with the Community College District, will also create a cannabis worker certification and apprenticeship program, as well as link workers to wraparound services such as expungement and legal aid.

#### **ii. Social Equity & Preventing Harm**

Through the new cannabis tax revenue, the City should create a Community Outreach Roadmap that provides a strategic focus on community outreach goals, strategies and suggested protocols. One of the suggested programs is a Neighborhood Health Fund that offers small grants to programs that (1) improve resident life outcomes and (2) address the roots of prevention and healthy communities in Tier 1 and 2 zones. These include youth engagement and health services.

CBO outreach partners should also host youth-focused dialogue groups on cannabis access and on the history of the War on Drugs, and create a youth cannabis safety & rights curriculum. The City should sponsor legal clinics with community partners for LiveScan and expungement.

The City's Cannabis Commission should create a policing task force to which business owners, residents and employees can bring concerns and formal complaints regarding illegal police enforcement actions. Commitment by law enforcement is crucial. Affected communities must feel that they area not being targeted due to their geographic location.

The City should also ensure decriminalization for 18-21 year olds through a court diversion program that focuses on education and community service but avoids any criminal charges and impoverishing fees.

#### **iii. Social Equity Programs Funding**

The City should set aside a percentage of municipal tax revenue and/or fines/fees from cannabis business for the Social Equity Program. The City can also create an initial capital pool through a capital drive targeting the members of all major cannabis business coalitions and enterprise organizations and/or a leveraging existing state/city funding streams (such as Prop 64 funds), re-appropriating LAPD seizures, or utilizing a (bank) credit union for city cannabis businesses.

## **K. Hearings & Appeals**

### **i. The notice requirements should mirror those principles already woven through the City Code, and provide full transparency to the public.**

The City has included a robust notice requirement in its Proposed Requirements, which correctly requires public notice for an application, initial public hearing, and/or appeals. The type of notice that must be given at each stage should be clearly delineated in the ordinance. Generally, the notice requirements should be consistent with other City noticing principles, but should also allow for email notice to be given when possible. As with most of the City's notice provisions, the applicant should be required to provide public notice at application and before a public hearing. An applicant should not be required to give public notice of a Department or Commission denial, which is currently included in the Proposed Requirements.

Moreover, instead of singling out various groups to receive notice, the City should follow the notice procedures generally found in the LAMC, which typically includes notice to nearby addresses and to any resident or community group that requests to be included as an "interested party."

The more transparency that exists on the front end, the better the needs of the community will be served. To that end, the City should prepare a user friendly, map-based website that provides access to any public information collected during the application process.

### **ii. The public hearing process should be clearly outlined in the Ordinance, and modeled after public hearing principles found throughout the City Code.**

The Proposed Requirements make significant progress towards an efficient public hearing process. That said, the City should streamline the public hearing process by giving the Department the ability to approve license types with less impact on communities, such as, Type 1A, Type 2A, Type 3A, Type 4, Type 11. In order to provide transparency with regards to license types with more community impact, the Commission should retain initial approval rights over Type 1B, Type 2B, Type 3B, Type 5A, Type 6, Type 7, Type 8, new and non-Prop M priority Type 10, Type 12.

The City should eliminate the public hearing process for applicants eligible for priority processing under Prop M, who have been operating in substantial compliance with the limited immunity and tax provisions of Prop D. These applicants should be approved by the Commission without public hearing, but still be subject to appeal. If after the issuance of a license, the City or State cites a Prop D dispensary for a violation of law, a public hearing will be triggered at renewal.

Moreover, the Proposed Requirements lacked several common provisions governing public hearings such as the findings necessary for approval or denial, a standard of review, and timelines for scheduling hearings and issuing notices of determination.

### **iii. The appeals process should be clearly outlined in the Ordinance, and modeled after existing appellate standards in the City Code.**

As proposed by the City, the Commission should act as the final appellate body for the actions originating in the Department, and the City Council should act as the final appellate body for the actions originating in the Commission. Again, the Proposed Requirements lack a standard of review, the findings necessary to affirm or reverse a lower body decision, standing to appeal, timeline to appeal, and the timelines associated with scheduling hearings and issuing decisions.

Only a party with standing should be able to appeal a decision of the Commission or the Department. A party has standing when it has commented at the initial public review of the application. Moreover, only

the applicant or its representatives should have standing to appeal a denial of the Commission or the Department.

**L. Consistent with Proposition M, the City should allocate tax revenue toward enforcement of the Cannabis Ordinance.**

Proposition M authorized the City to impose a business tax of \$100 for every \$1,000 of gross receipts for the sale of commercial cannabis. Yet, the Proposed Requirements are silent as to the allocation of this revenue. Taxation is necessary in order to provide Angelenos with a well-regulated cannabis industry. To realize that goal, the Ordinance must allocate funds to the Department so that it may use the legal tools available to safeguard communities, children, workers, and the industry from bad actors.

The City's taxing authority also creates an opportunity for it to provide meaningful support and resources to the social equity program.

**M. The City should create a youth education program.**

The City Council should create a subcommittee to coordinate and oversee targeted outreach programs which provide education on cannabis use, abuse, and prevention for the City's underage youth. The subcommittee will collaborate with various community groups, law enforcement, and health care providers to create a limited curriculum which addresses the potential for addiction and abuse of cannabis among minors and school aged children, particularly in the context of wrongful diversion of cannabis from the adult use and recreational market. The subcommittee will collaborate with law enforcement, schools, community groups, and local health organizations to provide various forums to educate teens regarding abstinence from cannabis, harm reduction, addiction risks and treatment in underage populations across the City. The goal of the subcommittee's programs will be to reduce cannabis use among minors, and ensure that safe and compliant cannabis based businesses' products do not become wrongfully diverted into youth markets after the point of sale to adults. The sub-committee's forums will be grounded in science-based information provided in non-judgmental and non-punitive settings, such as after school programs, youth leadership groups, and other safe channels between youth and youth educators. Related programs shall include anonymous tip hotlines to report known sales to minors, workshops for parents to develop smart and well thought out ways to discuss cannabis use, prevention, abuse, and treatment, and advertising and social media campaigns aimed to ensure decreased use of cannabis among minors and underage children. To that end, the subcommittee's efforts could provide exemplary content and frameworks for other municipalities across the country that encounter similar issues upon the inception of adult use and recreational cannabis laws.

**N. Issues related to the cannabis industry employees**

**i. A worker retention policy must be implemented to ensure a stable, well-trained workforce.**

The City of Los Angeles has long been a leader in worker retention policy. With regards to the cannabis industry, the community's interest is best served by a stable, well-trained workforce, which can be achieved through the City's continued leadership on the issue. The cannabis industry is volatile, historically prone to turn-over, and with increased profits on the horizon: increasingly vulnerable to the lure of corporate acquisition.

**ii. 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.



**iii. Grounds for disciplinary action should include knowing violations of state or local labor laws.**

The Proposed Requirements includes a list of offenses for which commercial cannabis businesses may be subject to disciplinary action, but this list omits knowing violations of state or local labor laws. This oversight leaves cannabis workers vulnerable, and incentivizes subpar working conditions, the impacts of which will spill over into communities. To that end, the Ordinance must ensure like other City licenses that commercial cannabis licenses can be denied or revoked if the applicant has been found to have willfully violated any law involving wages or labor as a violation of the California Labor Code or the Los Angeles Minimum Wage Ordinance, Los Angeles Municipal Code, Article 7, of Chapter XVIII or the Los Angeles Municipal Code, Article 8 of Chapter XVIII.

**iv. On-call employees & GPS requirements**

The Proposed Requirements mandate that each applicant provide the name of a community liaison who remains on-call for 24 hours. There are complex wage and hour laws associated with on-call employees, and the rate of pay for those employees are dictated, more or less, by the amount of control that the employer seeks to have over those employees during on-call time. For that reason, the City should cross reference this requirement with a proviso directing that all such community liaison positions be compensated for on-call time in a manner consistent with state and federal law.

Additionally, the Proposed Requirements mirror state language requiring all delivery and transport employees to use vehicles tracked with a GPS device. Employers should be required to notify employees when and how their movements are being tracked.

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In closing, as the City takes on the monumental task of regulating a new industry which has significant economic opportunities for the City, as well as social challenges, the City must have a clear licensing process, and tools in place to ensure compliance, and one that dovetails with State law. The City must continue to be engaged as issues will arise as both State law and City law will be in their infancy and will need on going modifications to reflect a new reality. In drafting this Ordinance, the City must draw on its own municipal code standards and expertise, must include all of the provisions authorized by Proposition M, and defer to and incorporate State law whenever possible. A final ordinance that provides clear cross-references to State and local laws will allow for our local small business owners and cannabis workers to bring a well-regulated cannabis industry into Los Angeles and allow the City and State to work together to reap the benefits of this industry while keeping concerns in check.

**For more information, please contact:**

Yelena Katchko  
Katchko, Vitiello & Karikomi, PC  
Counsel to UCBA  
[ykatchko@kvklawyers.com](mailto:ykatchko@kvklawyers.com)  
(310) 943-9587

Ariel Clark  
Clark Neubert LLP  
Counsel to LATCF  
[adc@clarkneubert.com](mailto:adc@clarkneubert.com)  
(877) 257-2442

Margo Feinberg  
Schwartz, Steinsapir, Dohrmann  
& Sommers  
Counsel to UFCW Local 770  
[margo@ssdslaw.com](mailto:margo@ssdslaw.com)  
(323) 655-4700