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CITY ATTORNEY

REPORT NO. R 1 5 - 0 3 1 8
DEC 1 4 2015

REPORT RE:

**DISCONTINUING THE ISSUANCE OF BUSINESS TAX REGISTRATION
CERTIFICATES TO MEDICAL MARIJUANA DISPENSARIES NOT IN COMPLIANCE
WITH PROPOSITION D AND RELATED ACTIONS**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 14-0366-S2

Honorable Members:

Pursuant to your request, the Office of the City Attorney (City Attorney) and the Office of Finance (Finance) present this joint report responding to the City Council's actions taken on October 28, 2015, relating to medical marijuana dispensaries (MMDs) not in compliance with Proposition D.

Discontinuance of MMD BTRCs

The City Attorney has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality, which would amend Subsection (b) of Section 21.50 of Article 1, Chapter II of the Los Angeles Municipal Code (LAMC) to: (1) limit taxation of medical marijuana collectives to those that attest to compliance with Proposition D; (2) prohibit the issuance of new business tax registration certificates (BTRCs) for MMDs; and (3) add Subsection (g) to Section 21.50 to require MMDs to attest to compliance with Proposition D when submitting their

annual renewals. The draft ordinance provides that any person who makes a false statement or representation in the affidavit would be guilty of a misdemeanor.

Pursuant to Council Rule 38, a copy of this draft ordinance amendment was provided to Finance. Finance concurs with the draft amendment and recommends City Council approval. In anticipation of this proposed amendment, Finance has initiated necessary operational modifications to the various BTRC application and registration processes to effectuate Council's instruction and to support this legislative action. It should be noted that Finance's on-line E-registration and E-filing services will require programming changes, with assistance from ITA, to eliminate the ability for a MMD to apply for a BTRC or to file an annual business tax renewal via the Internet. Furthermore, operational changes are underway to alter the BTRC registration process and business tax renewal process at Finance's Public Counter locations, mail-in units and via the Department's Call Center.

We also have enclosed a sample affidavit to be attested to under penalty of law and remitted by each MMD claiming compliance with Proposition D with its annual renewal pursuant to the proposed draft ordinance. Per the draft ordinance, the final form of the affidavit would be subject to the Director of Finance's approval. The affidavit would be subject to public disclosure and may be released to law enforcement upon request.

Modification of BTRC

Finance has worked with the City Attorney to initiate the revision of current language on the face of the BTRC to more explicitly clarify that the issuance of a BTRC to a MMD does not indicate compliance with Proposition D, nor does it indicate permission by the City to operate a MMD business. In addition, Finance is in the process of altering the MMD BTRC to implement a distinct color scheme which will enable those viewing a displayed MMD BTRC to readily identify that the BTRC was issued to a MMD solely for tax compliance purposes.

Automatic Reporting Process

Effective October 1, 2015, Finance implemented a monthly reporting process which includes the reporting to the City Attorney, the Los Angeles Police Department, and the Building and Safety Department of all MMDs which have been issued a BTRC. This same data is also available on the City's Open Data website.

Displaying an Expired BTRC or a BTRC of a Different Classification

Further pursuant to your request, the enclosed draft ordinance would add a new Subsection (h) to Section 21.50 to make posting an expired or otherwise invalid BTRC a misdemeanor and similarly to prohibit any MMD from displaying a BTRC of a different

classification, such as retail sales, for medical marijuana business activity. Pursuant to Council Rule 38, a copy of this draft ordinance was provided to the Los Angeles Police Department with a request that it provide any comments to the City Council or its Committees when this matter is considered.

Summary of State Medical Marijuana Legislation

Recently enacted State legislation, the Medical Marijuana Regulation and Safety Act (Act), creates a State regulatory and licensing system for commercial cannabis activities. State regulations will be comprehensive, and address matters to include health and safety, testing, security and worker protections. The Act requires that, once State regulations have been implemented, all commercial cultivation, manufacture, dispensing, distribution, testing and transportation of marijuana be licensed by the state and authorized by the local jurisdiction where the activity is to take place: "Upon the date of implementation of regulations by the licensing authority, no person shall engage in commercial cannabis activity without possessing both a state license and a local permit, license, or other authorization." Bus. & Prof. Code §19320(a). Engaging in commercial cannabis activities without a State license will be subject to both civil and criminal penalties. The Department of Consumer Affairs estimates that it will begin issuing State licenses in January 2018. The Act provides that deliveries of medical marijuana can only be made by a dispensary and in cities and counties that do not "explicitly prohibit" such deliveries by local ordinance. Additionally, cities that do not have an ordinance regulating or prohibiting marijuana cultivation by March 1, 2016, will lose the authority to regulate or ban cultivation within their city limits. In such jurisdictions, the State will become the sole licensing authority for cultivation.

The Act expressly preserves local regulatory authority and provides for continued enforcement of Proposition D by the City of Los Angeles: "Issuance of a state license or a determination of compliance with local law by the licensing authority shall in no way limit the ability of the City of Los Angeles to prosecute any person or entity for a violation of, or otherwise enforce, Proposition D...or the city's zoning laws. Nor may issuance of a license or determination of compliance with local law by the licensing authority be deemed to establish, or be relied upon, in determining satisfaction with the immunity requirements of Proposition D or local zoning law, in court or in any other context or forum." Bus. & Prof. Code §19321(d).

Because Proposition D, as currently written, does not provide for the issuance of permits or other authorization by the City of Los Angeles, medical marijuana businesses in the City will not be able to obtain a State license and, therefore, will not be able to comply with the Act. As such, when the State begins issuing licenses (projected to be January 2018), MMDs in the City will not be authorized under State law unless the Act is amended or the City establishes a permit or other authorization process.

The Act does not disturb local authority to levy fees and taxes. In fact, it expressly provides that "local jurisdictions retain the power to assess fees and taxes, as applicable, on facilities that are licensed pursuant to this chapter and the business activities of those licensees." Bus. & Prof. Code §19320(d). Therefore, the City's ability to tax medical marijuana businesses will remain intact, although the Council may be faced with the choice of whether to tax MMDs that are unlawful under State law. Again, whether any MMD could lawfully operate under the State law will depend on the City's establishment of a permit or comparable process for MMDs or an amendment to the Act.

If you have any questions regarding these matters, please contact Assistant City Attorney Beverly Cook at (213) 978-7760 or Ed Cabrera, Assistant Director of Finance at (213) 978-1516. They or other members of the City Attorney's Office and the Office of Finance will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By 

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By 
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DM/EC/PJ:pj
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