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CITY ATTORNEY

REPORT NO. R 1 6 - 0 3 3 0

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REPORT RE:

DRAFT ORDINANCE AND BALLOT RESOLUTIONS PURSUANT TO CHARTER SECTION 453 REGARDING ACTION BY COUNCIL ON A CERTIFIED INITIATIVE PETITION REGARDING CANNABIS ACTIVITY PERMITS AND REGULATION

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

Honorable Members:

The City Clerk has presented to your Honorable Body a certified initiative petition in support of a proposed ordinance regarding cannabis activity permits and regulation. In connection with the City Clerk's transmittal, this Office has prepared and now transmits the enclosed draft ordinance, approved as to form and legality, and resolutions pursuant to Charter Section 453 regarding action by the City Council upon presentation of a certified initiative petition proposing an ordinance amending an existing ordinance previously adopted by a vote of the people.

Background

On September 19, 2016, a group of proponents submitted an initiative petition to the City Clerk containing voter signatures in support of a proposed ordinance that would establish a permitting program and regulations for cannabis activity in the City (the "Initiative").

On September 28, 2016, the City Clerk completed its preliminary review of the Initiative petition and accepted it for processing. The City Clerk thereafter examined the voter signatures contained on the petition using the random sampling method

authorized in the City Election Code and in accordance with Charter Section 451. The City Clerk has now completed that examination and has determined that the initiative petition contains a sufficient number of valid voter signatures to qualify for presentation to the City Council. On October 12, 2016, the City Clerk certified the petition as sufficient and presented the certified petition to the Council.

Summary of the Initiative

The ordinance proposed in the Initiative would amend certain sections of the Los Angeles Municipal Code and Administrative Code, including to:

- (1) Authorize the City, through a newly created Department of Medical Marijuana Regulation, to issue permits for commercial cannabis activity. The Initiative would replace Proposition D in its entirety and implement a permitting and regulatory system to be administered by a new City entity, the Department of Medical Marijuana Regulation. Permits would be issued for the following commercial cannabis activities: cultivation, dispensing, manufacturing, distribution and testing. Initially, permits would only be available for cultivation and dispensing, with the latter type of permit possibly encompassing manufacturing as well. Other than with respect to dispensing and on-site cultivation permits, discussed below, the Department shall determine the number of Commercial Cannabis Activity Permits to be issued for each other type of activity, with applications being made available on January 31, 2018. However, the Initiative provides that after the one year anniversary of the Initiative, the City Council may expand or limit the number of such permits.
- (2) Give priority to existing Medical Marijuana Businesses in substantial compliance with Proposition D and maintain 135 dispensaries unless that number is increased by the City Council. The permitting program established by the Initiative would give priority to existing Medical Marijuana Businesses which are in compliance with certain of Proposition D's limited immunity requirements. Only this group of businesses, referred to as "Pre-ICO Medical Cannabis Dispensaries," would be allowed to apply for a Collective Cannabis Activity Permit for dispensing and/or on-site cultivation during the initial stage of the permitting program. If less than 135 dispensaries qualify for such permits, then beginning January 31, 2018, the Department shall allow non-"Pre-ICO" dispensaries to apply in order to maintain 135 dispensaries in the City. No more than 135 dispensary permits may be issued unless the City Council amends the ordinance established by the Initiative to allow for additional locations.
- (3) Allow permitted commercial cannabis activity in specified non-residential zones. The Initiative would make dispensing, cultivation, manufacturing and distribution covered by Commercial Cannabis Activity Permits allowed uses in certain non-residential zones specified for each type of permit and prohibit these activities in all other zones. However, cultivation and dispensing conducted by "Pre-ICO" dispensaries pursuant to Collective Cannabis Activity Permits at locations where these activities

“have been conducted continuously since prior to the Effective date” of the Initiative would be “grandfathered in” as legal non-conforming uses in otherwise prohibited zones. Testing would be allowed in specified non-residential zones and prohibited in all others.

(4) Provide operational standards, including minimum distance requirements. The Initiative imposes operational requirements on permitted locations, including hours of operation (between 10:00 a.m. and 10:00 p.m.), prohibitions on unaccompanied minors and the use of alcohol or marijuana on site, security requirements, and allowing City employees access to ensure legal compliance. All permittees must maintain a minimum 1000-foot distance from schools and dispensing permittees must maintain a 600-foot distance from sensitive uses, including public parks, religious institutions, licensed child care facilities, substance abuse rehabilitation centers, residential zones, and other permitted locations.

(5) Authorize fines and other penalties for non-permitted activity but limit enforcement options for violations by permit holders. Under the Initiative, those who engage in commercial cannabis activity without a City permit would be subject to misdemeanor prosecution, nuisance abatement procedures, and fines of \$10,000 per day. A violation of the ordinance by a permit holder would result in a “correction letter” from the City Attorney, unless more than one violation occurred in any two-year period, in which case punishment as an infraction (for the second violation), permit suspension (for the third violation), and possible misdemeanor prosecution, nuisance abatement and/or permit revocation may result (for the fourth violation).

(6) Allow permittees to operate as adult use marijuana businesses and impose a new business tax for such sales if Proposition 64 passes. If the Adult Use of Marijuana Act (Proposition 64) passes in November, the Initiative would allow those Medical Marijuana Businesses which have already been issued City permits to engage in commercial medical cannabis activity to also operate under those permits as adult use commercial cannabis businesses, upon the date the State of California makes adult use licensing available.

The Initiative also provides that, should Proposition 64 pass, a business tax of \$80 per each \$1,000 of gross receipts would apply to non-medical sales not otherwise specifically taxed under Chapter II of the LAMC. The \$60 tax rate for sales of medical cannabis would be retained.

(7) Allow amendments that are consistent with and further the purposes of the Initiative. The Initiative authorizes the City Council to amend the Initiative’s implementing ordinance, provided such amendments are “consistent with and further the purposes and intent of this Act and the permit process provided for herein.”

Council Options

The Charter provides that Council may submit the Initiative to the voters at the City's upcoming Primary Nominating Election on March 7, 2017, or at a special election held before that date. While the Charter also generally allows the City Council to adopt an initiative directly, that option is not available here. The ordinance proposed in the Initiative would amend an existing ordinance adopted by a vote of the people. In May 2013, the voters of Los Angeles adopted Proposition D, an ordinance regulating and taxing medical marijuana businesses in the City. The ordinance proposed in this Initiative would replace Proposition D with a new permitting and regulation program for medical cannabis activity in the City. Charter Section 453 provides that when presented with a certified initiative petition proposing an ordinance that would amend an existing ordinance previously adopted by a vote of the people, the City Council must act within 20 days to submit the proposed ordinance to the voters at either a special election or the next regular City or State election held more than 110 days after the date of Council's action. (Charter § 453.)

The ordinance proposed in this Initiative also would impose a new business tax of \$80 per each \$1,000 of gross receipts from adult use marijuana sales if state law changes to allow non-medical adult use of marijuana. The State Constitution requires that any new or increased tax must be submitted to the voters for their approval or disapproval. (Cal. Const., Art. XIII C § 2(b).)

The City Clerk certified this initiative petition as sufficient and presented it to Council on October 12, 2016. The deadline for Council to act on the petition is November 1, 2016. The City's Primary Nominating Election on March 7, 2017, will occur more than 110 days after the last day for Council to act on the petition. Accordingly, pursuant to Charter Section 453 and State Constitution, the ordinance proposed in this initiative petition must be submitted to the voters at the City's Primary Nominating Election to be held on March 7, 2017.

We have enclosed the election ordinance and ballot resolutions to place the measure on the ballot on March 7, 2017. The election ordinance and resolutions include a ballot title for the measure, which must be 175 words or less. (See City Election Code § 603.)

If you have any questions regarding this matter, please contact Deputy City Attorney Heather Aubry at (213) 978-8393 or Deputy City Attorney Harit Trivedi at (213) 978-7100. They or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By 

DAVID MICHAELSON
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DM:HA:pj
Transmittals