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CITY ATTORNEY

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REPORT RE:

ENFORCEMENT OF CITY'S CANNABIS ORDINANCE

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

Council File No. 18-1800-S2

Honorable Members:

As requested by the City Council, this letter reports on the progress the Office of the City Attorney has made in enforcing the City's cannabis law since the dramatic change in the legal landscape at the beginning of the year and to discuss our enforcement efforts going forward.

STATUS OF ENFORCEMENT EFFORTS

As background, the Criminal Branch of the City Attorney's Office, working in partnership with the Los Angeles Police Department (LAPD), has filed 141 criminal cases against 617 defendants associated with 118 unlawful commercial cannabis activity locations between May, 2018 (when enforcement of the City's new cannabis ordinance began in earnest) and November 5, 2018. Of the 617 defendants, 203 are property owners, 93 are business and business owners, and 292 are employees (who may or may not have another financial affiliation with the business), volunteers and security guards, with the remainder following into other categories. To date, we have been able to confirm that 60 of these locations have closed following the investigation and/or the filing of the criminal case.

This follows the successful enforcement of Proposition D, pursuant to which we were able to accomplish the closure of over 900 illegal medical marijuana businesses. The City Attorney's Office is committed to continuing this aggressive approach to unlawful commercial cannabis activity given the significant public safety and consumer protection measures that are only safeguarded by a commercial cannabis activity having the required licensing, including important oversight by the City's Department of Cannabis Regulation (DCR).

ONGOING ENFORCEMENT EFFORTS

Members of the City Council have expressed a concern regarding the filing of criminal charges against employees of commercial cannabis activities and have asked for an ordinance amendment which would allow for such individuals to be cited under the Administrative Citation Enforcement (ACE) program. We support the principle of not criminally enforcing against individuals who are only employees of a business, with no other financial affiliation. Demonstrably, our filing considerations include the nature and extent of an employee's affiliation with an unlawful business as well as other factors when determining whether to offer diversion, whether to file charges and if so, what charges, as well as in formulating plea offers and sentencing recommendations. However, we feel strongly that the determination of the extent of an employee's involvement in an unlawful cannabis business is critical in determining whether he or she should be issued an ACE citation or alternately face criminal penalties.

We have and will continue to review all possible options to develop the most effective enforcement strategy and believe it is appropriate to consider an integrated, multi-faceted approach. Our enforcement goals, by which to define "effectiveness," are the closures of unlawful cannabis businesses as expeditiously as possible as well as generating results which will dissuade individuals who profit most from unlawful activity (such as property owners and business owners and operators) from re-offending while deterring others from engaging in unlawful activity.

We anticipate a significant amount of enforcement will continue by way of criminal prosecution. The ordinance enacted by City Council at the end of last year makes it a misdemeanor to engage in unlicensed commercial cannabis activity. Under the new regulatory scheme, the establishment that a business is unlicensed and is engaging in a commercial cannabis activity should be sufficient to establish a violation (in contrast to Proposition D's more complex immunity-based structure). This allows for a relatively straightforward investigation by LAPD when referring cases to our office for criminal prosecution. As demonstrated by our results to date, criminal prosecutions can be effective in closing unlicensed businesses and also can result in a misdemeanor conviction and a five-year prohibition on seeking a City cannabis license for the offender and terms and conditions of probation precluding the individual from owning, operating, participating in, using land as, leasing, renting, or otherwise allowing an unlicensed commercial cannabis business for the probationary period.

The Honorable City Council
City of Los Angeles
Page 3

Under the new ordinance, an unlicensed commercial cannabis business may be deemed a nuisance, allowing for our office to file a civil nuisance abatement action which if successful could result in closure of the business, injunctive relief which could preclude or limit the offender from engaging in cannabis activity for some period of time, and, by the ordinance, penalties up to \$20,000 per day. This option can be effective in meeting the goal of closing the unlawful businesses, especially if we are able to convince a court to issue interim injunctive relief constituting an expedited closure order. It is important to note that the penalties set forth in the ordinance are the maximum a court may order (not required to order), at the conclusion of a lengthy civil litigation process and collection often is difficult or impossible. Moreover, civil enforcement is always more resource intensive for both our office and LAPD. Our office will file some initial civil actions against property owners and business owners and operators to evaluate the effectiveness and viability of this approach under the new ordinance. We will consider the continued filings of civil enforcement actions as the factors of each case dictate.

We look forward to a continued partnership with the Mayor, City Council, LAPD, and DCR in successfully enforcing the City's cannabis laws.

Sincerely,

MICHAEL N. FEUER, City Attorney

By


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Chief of Staff

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