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May 25, 2021

The Honorable City Council
City of Los Angeles
City Hall, Room 395
Los Angeles, California 90012

Attention: Planning and Land Use Committee

Dear Honorable Members:

PROPOSED ORDINANCE AMENDMENTS TO SECTIONS 104.00, 104.01, 104.03, 104.05, 104.06, 104.06.1, 104.07, 104.13, 104.14, 104.19 AND 104.20 OF THE LOS ANGELES MUNICIPAL CODE

SUMMARY

This report proposes amendments to Sections 104.00, 104.01, 104.03, 104.05, 104.06, 104.06.1, 104.07, 104.13, 104.14, 104.19 and 104.20 of Article 4, Chapter X of the Los Angeles Municipal Code (LAMC or Cannabis Procedures Ordinance). As a continuation to the amendments adopted in June 2020, the Department of Cannabis Regulation (DCR) seeks to further streamline and clarify commercial cannabis licensing procedures and create a more equitable process by allowing greater access to licenses for Social Equity Applicants. The proposed amendments also revise the public convenience or necessity (PCN) process to require a land use review of PCN requests prior to Council consideration. In addition, the Department recommends amendments to strengthen and clarify the code sections related to compliance, enforcement, administrative violations and penalties, and appeal procedures. Lastly, several amendments proposed herein correct typographical errors which are non-substantive in nature. All proposed amendments are provided in a redlined ordinance in Attachment A.

BACKGROUND

After the passage of the California Adult Use of Marijuana Act (AUMA or Proposition 64) in November of 2016 and the passage of the City of Los Angeles Cannabis Enforcement Taxation and Regulation Act (CETRA or Measure M) in March of 2017, the Los Angeles City Council adopted procedures for the administration of the City's commercial cannabis Licensing and Social Equity Program in LAMC Section 104.

Since the beginning of the City's commercial cannabis licensing program in 2018, DCR has made significant progress towards the goals of the program. However, certain amendments are necessary to create a more responsible and equitable Licensing and Social Equity Program. The Department of Cannabis Regulation seeks to improve the administration of the City's commercial cannabis Licensing

and Social Equity Program through the following proposed amendments to the Cannabis Procedures Ordinance.

DISCUSSION OF AMENDMENTS

LAMC Section 104.00

DCR recommends amendments to conform the language concerning the promulgation of Rules and Regulations with the language existing in Section 104.16.

LAMC Section 104.01

DCR proposes to revise Section 104.01(a)(10) to change the term “Cultivation Canopy” to “Cultivation Area” to provide consistency with the other existing language in the ordinance.

DCR also proposes an amendment to Section 104.01(a)(48) to the definition of “Undue Concentration” to eliminate the limitation on the total number of cultivation licenses that may be issued within the City. When the Cannabis Procedures Ordinance was adopted in 2017, it limited cultivation area to “*a ratio of 1 square foot of cultivated area for every 350 square feet of land zoned M1, M2, M3, MR1, and MR2 with a maximum aggregate of 100,000 square feet of cultivated area and a maximum aggregate number of 15 Licenses at a ratio of one License for every 2,500 square feet of allowable cultivated area for Cultivation (Types 1A, 1C, 2A, 3A, and 5A).*” Most Community Plan Areas (CPAs) reached their limit because Existing Medical Marijuana Dispensaries (EMMDs) and their suppliers under LAMC Sections 104.07 (Phase 1) and 104.08 (Phase 2), respectively, were subsequently exempted from findings of Undue Concentration. As of today, 20 of the 35 Community Plan Areas have reached Undue Concentration, with some containing over 450% of their capacity, such as the Southeast Los Angeles Community Plan. Removing cultivation from the definition of “Undue Concentration” would allow these businesses to relocate to other Community Plan Areas, which may balance the existence of cultivation activity across the City.

In place of the existing limitation on cultivation licenses by “allowable cultivated area,” DCR proposes a new limitation to benefit Social Equity Applicants in Section 104.06. Specifically, DCR proposes an amendment to limit the issuance of cultivation licenses to only Social Equity Applicants until January 1, 2025. Such an amendment would promote the goals of the Social Equity Program by affording these applicants the opportunity to be among the first-to-market, reduce barriers to entry, and expand opportunities for the viability of Social Equity Applicants. It would also further the Social Equity Program’s objectives by promoting equitable ownership and employment opportunities in the cannabis industry, decreasing disparities in life outcomes for marginalized communities and addressing disproportionate impacts of cannabis prohibition in adversely impacted and lower income communities. These proposals would also align restrictions on cultivation licenses with the similar existing restrictions on retail and delivery licenses -- also until January 1, 2025 -- while simultaneously eliminating the existing artificial cap on cultivation licenses.

Other sections of the ordinance impacted by the elimination of “Undue Concentration” as it relates to cultivation licenses are the relocation modification process in Section 104.03 and the limitation in Section 104.06 restricting cultivation licenses to only Social Equity Applicants until January 1, 2025.

LAMC Section 104.03

DCR recommends revisions to Section 104.03(a) to reduce redundancy between the City and State's licensing processes concerning LiveScan requirements. Section 104.03(a)(1), however, retains LiveScan background review for licensure eligibility as an option, if and when DCR gains access to LiveScan data.

DCR recommends amending Subdivision 104.03(a)(1)(viii) to add the existence of a civil judgment concerning illegal cannabis activity as a reason for disqualifying Primary Personnel from applying for or holding a License for a period of five years from the judgment. Similarly, Subsection 104.03(a)(3)(vi) is added to include the padlocking of a site for illegal cannabis activity as a reason for disqualification of a proposed Business Premises location for a period of five years. These two amendments would facilitate a unified City-wide approach to cannabis enforcement and ensure that applicants and landlords are held responsible for prior non-compliance.

DCR recommends restructuring the public convenience or necessity (PCN) process in Section 104.03(a)(4) to allow DCR to review a proposed Business Premises' compliance with land use requirements prior to the initiation of the PCN process before the City Council. This adjustment will promote efficiency by ensuring that City Council considers only the proposed Business Premises locations that are compliant with the zoning and land use restrictions of Los Angeles Municipal Code (LAMC) 105.00 *et seq.*

DCR recommends amending Section 104.03(e) to provide clarity regarding modification processes, especially concerning relocation, and the applicability of certain modification fees for existing and future modification requests. For example, Section 104.03(e)(1) establishes a process by which a Temporary Approval may be transitioned to a new location through a request to cancel the Temporary Approval at an Applicant's prior location. DCR also recommends language that makes clear that an Applicant shall not conduct commercial cannabis activity at a new Business Premises location until Temporary Approval is issued at that location. This will promote public safety by ensuring only DCR-inspected locations can conduct commercial cannabis activity and that Applicants are not conducting Commercial Cannabis Activity under one Temporary Approval at multiple locations or in excess of their license.

In addition, DCR proposes adding a new Subsection 104.03(e)(1)(iv) to allow Phase 3 Retail Round 1 (P3RR1) Applicants deemed eligible for further processing under Section 104.06.1(b) the ability to request a one-time Business Premises relocation without paying the Business Premises Relocation Fee if the request is made prior to December 31, 2021. These applicants paid an initial application fee of \$8,059 in or around September 2019. This fee was eliminated in July 2020 when City Council adopted the existing fee structure contained in Section 104.19 in favor of a lower initial fee. DCR anticipates that a number of P3RR1 Applicants may need to relocate due to the amount of time that has elapsed since applications were submitted in September 2019. The proposed one-time exemption from the Business Premises Relocation Fee would assist P3RR1 Applicants, who are all Social Equity Applicants, by removing financial barriers to relocation without significantly impacting DCR's cost recovery.

DCR recommends amending Section 104.03(e)(4) to expand the limitation for physical modification of Business Premises from 20 percent to 50 percent of the existing floor area before the addition, or 2,500 square feet, whichever is less. The existing language of Section 104.03(e)(4) permits an expansion of no more than 500 square feet. The proposed increase to a maximum of 2,500 square feet will provide flexibility to Applicants who otherwise may need to relocate to a new Business Premises. Any requested expansion would undergo the same land use verification and compliance assessment under LAMC 105 *et seq.* as a relocation request or new application.

DCR recommends the addition of a new Subsection 104.03(h) to clarify that DCR may abandon an Application or modification request if an Applicant fails to timely pay fees or provide requested information or documents within the time specified by DCR. Although similar language concerning abandonment exists already in several sections, this amendment would facilitate timely progression through the licensing process by providing clarity to applicants that such procedures apply in all circumstances.

Other revisions to this section are non-substantive in nature. For example, DCR recommends changing the term “amendment” to “modification” to provide consistency throughout the ordinance and to align terminology with DCR’s forms and bulletins.

LAMC Section 104.05

DCR recommends a typographical correction of the heading in Section 104.05(c)(4) to conform the language of the heading to the language of section therein.

LAMC Section 104.06

DCR recommends amending Section 104.06(b) and (c) to limit the issuance of cultivation licenses to only verified social Equity Applications until January 1, 2025. DCR is responsible for administering the City’s commercial cannabis Licensing and Social Equity Program. The Social Equity Program is aimed at promoting equitable ownership and employment opportunities in the cannabis industry and is intended to decrease disparities in life outcomes for marginalized communities. As explained above with reference to the changes to Section 104.01, the proposed amendment to limit the issuance of cultivation licenses to Social Equity Applicants until January 1, 2025 is consistent with the Social Equity Program’s purpose because it will provide first-to-market opportunities for Social Equity Applicants and promote the viability of Social Equity Applicant businesses. It is also consistent with the existing provisions concerning retail and delivery licenses, which are also limited to Social Equity Applicants until January 1, 2025.

Currently, DCR has issued a total of 291 cultivation licenses. Although the application requirements of Section 104.08 (Phase 2) were intended to encourage participation by Social Equity Applicants, only 48 cultivation licenses -- or 16.5% of the existing cultivation market -- have been issued to businesses owned by a Tier 1 or Tier 2 Social Equity Applicant. Due to priority processing afforded to EMMDs and Phase 2 Tier 3 applicants, neither of which are Social Equity Applicants, nearly 250 cultivation licenses have been issued to Applicants who do not meet the Social Equity Program verification requirements concerning low income, a cannabis arrest or conviction, or residency. An amendment to limit the issuance of cultivation licenses to only Social Equity Applicants until 2025, while simultaneously lifting the cultivation cap, will facilitate increased participation from Social Equity Applicants and bolster the aims of the Program by providing more opportunities for Social Equity Applicants in a market ripe for expansion.

DCR also recommends amending Section 104.06(d) to streamline the issuance of Temporary Approval by creating a standalone process that does not involve other City agencies or the State licensing agencies. At this time, DCR estimates that most Applicants will require 6-12 months to receive Temporary Approval. This proposal will eliminate possible delays caused by other State, County or City agency processes that are outside the control of DCR and allow Applicants to progress through DCR’s Temporary Approval process simultaneously while they seek approval of architectural, mechanical and structural plans and other clearances from other government agencies. This amendment also clarifies that the issuance of a Temporary Approval does not waive any permit, inspection or other requirement required by another City, County or State agency, and allows DCR to suspend Temporary Approval without a hearing if: (1) any agency informs DCR that use of or conduct at the Business Premises poses an imminent threat to life or public safety; (2) if the business is conducting commercial cannabis activity without a State license; or (3) if the business is conducting commercial cannabis activity without all necessary permits, inspections or similar clearances to operate from another City, State or other public agency. This promotes public safety by ensuring that businesses have all required permits and/or licenses from State, City and County prior to conducting Commercial Cannabis Activity, even if DCR has already issued Temporary Approval. It also allows DCR to reinstate Temporary Approval if the Applicant provides evidence of the relevant State license(s), permits, inspections or similar clearances, or if such a showing is made during an

administrative hearing. These proposed amendments create a streamlined and autonomous Temporary Approval process that provides increased efficiency for Applicants, while balancing the City's interest in ensuring compliance with other State and City laws and protecting public safety.

Similarly, DCR recommends amendments to Section 104.06(d)(1) to add the ability for DCR to issue a Notice of Violation when a business with Temporary Approval fails to take corrective action required by another State or City agency. This amendment may promote compliance with City and State law and protect public safety by providing an additional enforcement mechanism if an Applicant fails to take action required to correct deficiencies under the Fire or Building Codes, among others. DCR also recommends adding Subsections 104.06(d)(3) and 104.06(d)(2) to specify that DCR may issue Notices of Violation in the event Temporary Approval was procured by fraud, misrepresentation, deceit, or material misstatement of fact in the application for licensure, which will promote honesty and transparency in the licensing process.

Lastly, DCR recommends adding Subdivision 104.06(e)(3) to adopt the City's existing appeal process contained in LAMC Section 197.01 *et seq.* for appeals under the California Environmental Quality Act (CEQA).

LAMC Section 104.06.01

DCR recommends that Section 104.06.1 is amended to allow non-substantive and typographical corrections throughout this Section. DCR also proposes amendments to Sections 104.06(c) and (d) to incorporate technical changes for the future application lottery and PCN processes, respectively. For example, the amendments would clarify the language concerning the number of licenses available for the lottery, as well as the process by, and time in which, Applicants selected in the lottery may identify a compliant property.

LAMC Section 104.07

DCR recommends amending Section 104.07 (h) to provide an extension of three years to December 31, 2025 for Existing Medical Marijuana Dispensaries (EMMDs) to find new business locations compliant with the requirements contained in LAMC 105 *et seq.* The existing ordinance allows for a limited period to December 31, 2022 so EMMDs may continue operations in their existing locations if compliant with Proposition D, notwithstanding Proposition D's repeal. A further extension of this period to 2025 is necessary given the challenges created by the COVID-19 pandemic and the current length of time required to process a relocation request. EMMDs represent the vast majority of the licensed retail market in the City; an extension will ensure that consumers continue to have access to safe and tested cannabis products for the foreseeable future.

LAMC Section 104.13

DCR recommends adding Section 104.13(b)(4) to allow DCR to reinstate a Licensee's authorization to conduct Commercial Cannabis Activity after suspension if the Licensee completes any corrective action(s) to remedy the violation. This amendment will provide consistency with other proposed amendments, such as those proposed in Section 104.06(d)(1) concerning the suspension of Temporary Approval in specified circumstances.

LAMC Section 104.14

DCR recommends that a new Subdivision 104.14(a)(5) be added to allow an Applicant to request an administrative appeal hearing after DCR suspends a license due to imminent threats to life safety, the failure to obtain or maintain a State license for ongoing Commercial Cannabis Activity, or the failure to obtain all necessary permits, inspections, or similar clearances to operate from another City, State or other public agency. The addition of an administrative appeal in these situations will provide due process to Applicants and allow a hearing officer to take appropriate action, such as reinstating or revoking the license, after a hearing. In addition, Section 104.14(b) clarifies the administrative appeal

hearing process, including when administrative remedies have been exhausted and when an Applicant must cease commercial cannabis activity, if applicable, following an appeal. These amendments will provide transparency and clarify existing vague language. Finally, DCR's proposed amendments to Section 104.14 streamline the administrative appeal process by removing an appeal to the Cannabis Regulation Commission following an administrative hearing officer decision. This will avoid duplicative administrative appeals and reduce the burden on Applicants to exhaust administrative remedies.

LAMC Section 104.19

DCR recommended a typographical correction in Section 104.19(d) to correct the term "Printed" to "Posted" as it relates to the notice requirement fee.

LAMC Section 104.20

DCR proposes amendments to Section 104.20 to correct typographical errors and make non-substantive revisions to clarify and or correct this Section's intent. Additionally, DCR recommends amendments to Section 104.20(a)(2) to clarify Equity Share requirements in the event of the Social Equity Applicant's death or incapacity by moving existing language to a section concerning successors and surviving spouses.

RECOMMENDATION

That the City Council, subject to approval by the Mayor:

1. Approve the amendments to Article 4, Chapter X of the Los Angeles Municipal Code proposed herein and in the attached redlined ordinance (Attachment A);
2. Request the Office of the City Attorney to prepare and present an ordinance to amend Article 4, Chapter X of the Los Angeles Municipal Code in accordance with the proposed amendments; and
3. Include an urgency clause in the ordinance transmitted for City Council consideration.

The above recommendations seek to improve the administration of the City's commercial cannabis licensing and Social Equity Program. Your time and consideration of this proposal is greatly appreciated. If you have any questions or concerns, please contact Rocky Wiles at (213) 978-0738.

Sincerely,



CAT PACKER
Executive Director

CP:RW

Attachment A: Redlined Ordinance

- c: William Chun, Deputy Mayor of Economic Development
Ron L. Frierson, Director of Economic Policy
Richard H. Llewellyn, Jr., City Administrative Officer
Sharon Tso, Chief Legislative Analyst
Taylor Wagniere, Deputy City Attorney - Cannabis Law Division