MEJIA, JESSICA

Subject: FW: Medical Marijuana Study Session Letter
Attachments: Letter to Council 3_9_15.docx

From: Harold Weitzberg [mailto:hweitzberg@cs.com]
Sent: Monday, March 09, 2015 7:19 PM
To: GREEN, BRENDA
Subject: Medical Marijuana Study Session Letter

Dear Brenda,

Attached is a letter from my wife Joyce that we would like included in the documents for the Study Session for Tuesday March 10 on the Medical Marijuana Ordinance.

Please have it included in the distributed materials.

Thank you.

Sincerely,

Harold Weitzberg
714 313 7334

3/9/15

TO: Costa Mesa City Council

FROM: Joyce Weitzberg

RE: Medical Marijuana Ordinance Draft and Study Session on 3/10/15

Dear Costa Mesa City Council,

I have reviewed the Draft ordinance and although there are some improvements there are a number of issues that are detrimental to the successful administration of Safe Access as prescribed by State Regulations.

Many of the provisions you are writing would be somewhat reasonable if creating an ordinance for recreational marijuana use, but we are still talking about Medicinal Marijuana, You do not appear to be recognizing the needs of those who need and want safe access for medicine for their conditions.

A. Locations - By limiting dispensaries to industrial areas only, you put an undue burden on disabled individuals who do not have their own transportation. In addition, in the evening, they will be entering areas with limited lighting and population which creates safety issues.

B. Records - The clause on records is still a HIPPA Violation. Access to patients' records should only be available with a subpoena.

C. Security - You are creating a conflicting situation by keeping the exterior door locked and also prohibiting loitering. Under your proposal patients will be waiting outside a dispensary until they are let in. The alternative solution is one that is prevalent already. Individuals come into an interior waiting area. The dispensary area is separated from the waiting area with a locked door. When it is the patient's turn to enter, they are then allowed in via a buzzer system to the interior room.

In this way you are maintaining a safe environment and you do not have individuals standing in front of buildings awaiting access.

D. Special Tax -

a. The 15% special tax on Medical Marijuana is an undue financial burden. With a Sales tax of 8.25% and credit card fees of 2.5% to 3.5%, the total tax and fees is at least 26%. If this was recreational marijuana and you were considering a "sin tax" like cigarettes and liquor or a community service tax like gasoline, it would be one thing. But, for now, this is medicine. The special tax should be limited to 5%.

b. The $10 a square foot fee for cultivation is counterproductive. If you want to have dispensaries providing quality, pure, verified product to their clients, you should be encouraging them to grow it themselves locally, not forcing them to grow outside the city. This fee can increase the overhead of a typical cultivation area by thousands of dollars a month. It will force

individuals to look for less expensive sources of medicine supply. This amount will also be passed along to the patient will have to bear an additional unfair burden.

E. Deliveries - The information you are requiring for delivery needs to be controlled under HIPPA guidelines.

F. Quality Control - Your language about "disclosing specified compounds as designated by the city CEO...." does not make sense. Medical Marijuana is made up of different levels of THC, CBD, and Terpenes. Depending on how it is treated through growth, there may be evidence of or a lack of pesticides, fertilizers and other chemicals. The language should simply state the THC and CBD levels and that it has been tested by a lab, and that there are no pesticides, solvents and mold in the product.

The sections of the proposed ordinance should be revised to mitigate these concerns.

I am available to consult at length with any Council Members, City Staff, Attorneys or Safety Personnel on the efficacy and benefits of Medical Marijuana and how I feel it should be made available.

Sincerely,

Joyce Weitzberg

RN (Retired)

MEJIA, JESSICA

Subject: FW: Memo from Jim Fitzpatrick
Attachments: CM MMJ Ordinance Feedback.doc

From: FRANCIS, RICK
Sent: Monday, March 09, 2015 3:38 PM
To: CITY COUNCIL; garymonahan@att.net
Cc: Christopher F. Neumeyer; LETOURNEAU, TAMARA; HATCH, THOMAS; DUARTE, TOM; GREEN, BRENDA
Subject: Memo from Jim Fitzpatrick

Dear members of the City Council:

We received the attached memo from Jim Fitzpatrick today. Chris Neumeyer and I met with Jim and Matt Harrison from the Prometheus Institute on Friday to discuss the MMJ draft ordinance. The Prometheus Institute is apparently involved with the legislative effort to draft a statewide ballot initiative for recreational marijuana use in California in November 2016.

Thanks,

Rick Francis
Assistant Chief Executive Officer
City of Costa Mesa
(714) 754-5688 | (714) 754-5330 (fax)
rick.francis@costamesaca.gov

Issues presented with Costa Mesa's proposed ordinance, XX-XX (Foley)

We have reviewed the proposed local ordinance for the regulation of medical marijuana in Costa Mesa.

Overall, we find the initiative to be poorly suited for the purposes intended by its drafters. Whether from a legal, economic, or public policy perspective, the initiative faces an infinitesimal probability of achieving its stated goals. From hastily drafted provisions likely to achieve counterproductive ends, to burdensome rules inhibiting the very implementation of the rules themselves, the myriad flaws contained in the ordinance will be enumerated in this memo herein.

As an initial matter, it is important for policymakers to recognize that the majority of medical marijuana distribution business activity remains wholly unlicensed at any level of government. Until November 2016, where an expected statewide initiative will license, regulate and preempt much of the current provisions, cities regulate against a backdrop of primarily gray-market operations. In order for cities to most effectively control industry operations, it is essential that the regulatory structure reflect the realities of the current marketplace and legal regime.

1. Vague, overbroad and ambiguous definitions plague the ordinance from the outset

The definitional infrastructure of the ordinance is exceptionally vague, overbroad and ambiguous. Section 9-493(v) defines a "member" broadly as a "qualified patient, person with identification card, or primary caregiver of a patient." As such, each dispensary would have over 1 million "members" as an initial matter. And since section 9-503(c) requires dispensaries to cultivate, dispense, store and transport medical marijuana "only...in aggregate amounts tied to its members' needs," the plain terms of the ordinance would seem to mandate a massive distribution apparatus covering vast swaths of Costa Mesa acreage, sufficient to supply the whole state of California. Of course, such a result is neither what the authors intended, nor would it be possible under the manifold restrictions mandated by law. Even without this strained interpretation, however, the residual harms and risks posed by this rickety legal infrastructure will be further delineated below.

The proposed definition for a medical marijuana cultivation business in 9-493(t) - namely, a "location where cultivation occurs" - is patently overbroad, and would encompass even a single patients' home growing of a single plant for exclusively personal use, and not for sale or distribution. Such a result is clearly contrary to the express intent to define the activity as a medical marijuana "business", and is further inconsistent with the intent of the California voters in approving the Compassionate Use Act. Additionally, like the definition of "member", this flaw will cause additional conflicts and problems upon implementation, as further highlighted herein.

2. A poorly-drafted delivery ban will cause severe supply shortages and adverse public policy effects

Section 9-503(x)(v) of the ordinance explicitly bans the delivery of medical marijuana for two years from the date of enactment. From a general public policy perspective, this restriction is unduly burdensome and counterproductive, since delivery services actually are the most effective demonstrated method to enable patients' medical marijuana access while simultaneously reducing deleterious secondary effects in local communities. Delivery services

avoid the major nuisance issues common to retail outlets, and also enable existing retail operations to more effectively manage customer flow. As such, the city's proposed ban is just another example of a misguided effort which will only serve to frustrate the city's putative goals.

Unfortunately, the resulting harms of this provision run far deeper, however. Under the ordinance's fuzzy definitional structure mentioned above, it is likely that the delivery ban would extend on its face to ALL acquisition and transfer of medical marijuana, even that strictly necessary for basic business operations by licensees. This is because the provision expressly prohibits any delivery (defined as "the act of taking something to a person or place") "from the medical marijuana business to a member located outside of [the business'] location." Since a business is broadly defined as "any location where cultivation occurs" (as mentioned above), and all marijuana supply must come from members under section 9-503(p), *any* act of a dispensary to acquire any supply whatsoever *inevitably* results in a "delivery" from and to a member "outside its business location", by definition. In other words, it is literally impossible for any business to comply with the ordinance without violating the express terms of the delivery ban. Sadly, however, this instance of sloppy drafting and hasty overregulation is just just one of many examples saturating this proposed ordinance.

3. **Proximity restrictions extend far beyond any justifiable or rational purpose, further inhibiting effective implementation**

Section 9-505(d) prevents all medical marijuana businesses from being located within 1,000 feet of another medical marijuana business, or 500 feet from a school, library or youth center. While clearly intended to combat the secondary effects of retail outlets, these restrictions apply equally to all medical marijuana businesses, regardless of whether they are actually open to the general public. Purely industrial operations, such as cultivation centers and delivery/distribution centers not open to the public, would clearly not present the same risk to public welfare or safety, nor do the same public policy justifications support such restrictive provisions. Not only does this overreach inhibit the opportunity available for prospective applicants, it also restricts the revenue the city is capable of raising under the ordinance.

4. **Proposed restraints on private contracts are unnecessary and potentially unconstitutional**

Section 9-497 mandates that all "on-going and continuing obligations required pursuant to any provision" be expressly "approved as to form" by city attorney. Though "obligations" is not defined in the ordinance, the obvious and common usage of such term refers to business contracts, and such contracts relating to the ordinance would cover the panoply of operations of lawful business. The myriad private agreements to which businesses are parties may not be simply subject to prior restraint at the open discretion of the City of Costa Mesa. Among other violations, this provision on its terms may be an unconstitutional restraint on contract formation or other fundamental constitutional rights.

5. **Procedural provisions fail to stipulate sufficient measures to ensure applicants' adequate compliance**

The ordinance also fails to stipulate sufficient measures to ensure the quality and legitimacy of dispensary applicants. Santa Ana, after authorizing the licensing of medical marijuana dispensaries in a recent election, became flooded with applications of questionable legitimacy, receiving well over 400 applications for only 22 available properties. Without a robust or effective statutory method of verification for each proposed business entity in its own

ordinance, it was impossible for city officials to determine the compliance ability of each applicant prior to the lottery selection. The lack of enforceable standards resulted in overwhelming volume, and considerable litigious activity which further slows and inhibits policy implementation.

It is important that Costa Mesa learn from this cautionary tale. In order to prevent this undesirable outcome, it is essential that the city require additional methods of compliance verification, such as, at a minimum, amending 9-596(e) by adding at the end, "including a copy of the lease or other instrument by which the applicant's presence and activities are authorized."

6. Open-ended rulemaking authority poses further dangerous uncertainties

Compounding the problems mentioned above, the ordinance also authorizes additional rulemaking without sufficient legal guidance or support. Section 9-503(l)(v) authorizes the city CEO to establish additional "minimum requirements as deemed necessary", including specified compounds to be required on medical marijuana labels pursuant to section 9-503(k). Without any applicable experience, expertise or legal guidance for the proper enforcement of these rules, this provision creates yet another potential hazard and obstacle for effective implementation.

7. Disproportionate tax rate could foreclose all effective implementation or revenue production

The proposed 15% tax in section 9-513(a) establishes a rate which well exceeds those imposed by other cities elsewhere in California, and even rivals the excise tax rates charged by some states, such as Colorado. As such, even if the tax is passed by the voters, the inevitable economic result will be diversion, seepage, and aggressive avoidance of tax obligations. More than likely, dispensaries will continue to locate elsewhere, and operate by other means. However, it is also likely that the tax will simply be rejected by the voters outright at the polls, leaving the city no financial ability to implement the ordinance, let alone pursue the specified goals of 9-513(d). Therefore, economic and political reality both strongly caution against the city's proposal.

8. Excessive and unfair occupancy restrictions will create a public nuisance and counteract stated goals

Section 9-503(iv) requires that "all entrances into the building housing a medical marijuana business shall be locked from the exterior at all times with entry controlled by employees," while 9-503(j) bans the usage of any "seating area, tables, couches or chairs for gathering". The bizarre result of these two combined provisions is to force massive queues of patients outside the dispensary, spilling into the parking lots and other adjacent public areas around the premises.

These provisions are obviously unnecessary, arbitrary and capricious for several reasons. First, small waiting areas are common to both typical medical offices as well as medical marijuana dispensaries. Such rooms are commonly recognized as necessary to facilitate the initial scheduling, identification process prior to entry into secondary areas within the medical premises. There is no analogous medical business which forces its patients to queue outside, in public, in violation of numerous privacy norms and regulations.

Second, the City's admittedly compelling interest in preventing "lounge"-type premises does not require the heavy-handed ban present in this draft ordinance. Waiting rooms are not lounges, and should not be treated as such in a properly drafted ordinance.

Third, and most importantly, requiring prospective medical patients to queue outside will result in a far more deleterious public safety impacts than necessary. Because medical marijuana businesses are cash only, requiring prospective patients to queue outside will constitute a massive target for criminal activity as well as a dangerous risk for the patients seeking medical relief. Moreover, basic privacy principles also dictate that requiring patients to wait outside a designated dispensary building for a potentially significant amount of time is unreasonably burdensome.

Thus, at a minimum, we recommend the city amend (iv) to read, "...all entrances to the building housing a medical marijuana business shall be locked from the exterior whenever the medical marijuana business is not in operation.", and amend (j) to add at the end, "except as reasonably necessary for a waiting room utilized for the management of queuing patients during the process of verification, identification, or other reasonable efforts to ensure secure and compliant entry to the dispensary premises."

9. Conclusion and recommendations

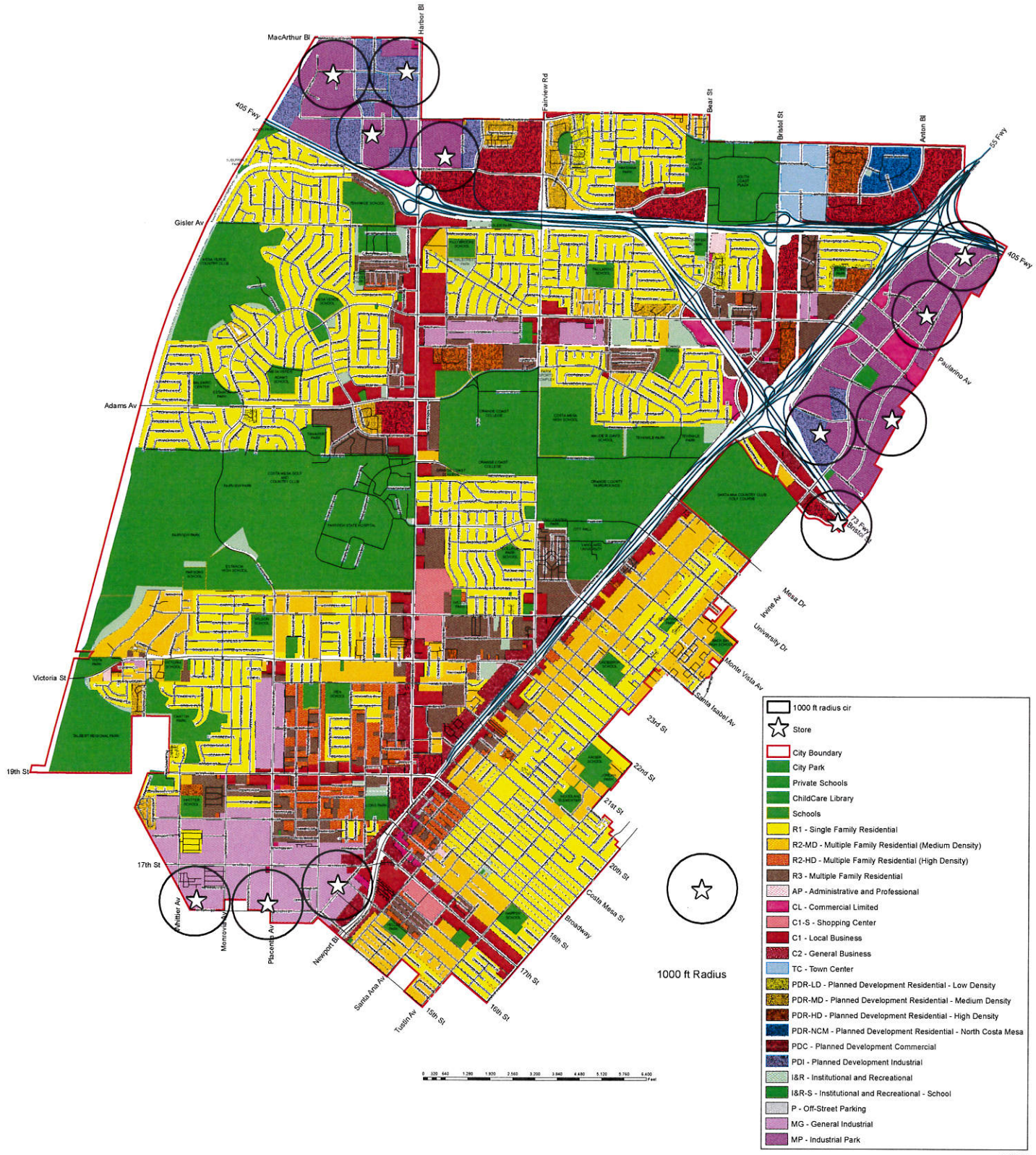
Despite the considerable flaws of the opposing initiatives drafted by local dispensary owners and advocates, it is difficult to say that the city's proposed alternative would be superior in any meaningful way. Its myriad legal, economic and policy flaws make it unlikely to achieve any appreciable benefit intended by the city or its voters.

If the city truly desires to make a serious effort at licensing, regulating and taxing medical marijuana, it is essential that they take an informed, justified and reasoned approach based on the legal, economic and policy realities facing the issue.

Costa Mesa

Map # 1 (Rev. 3/10/15)
Schools parks library and child care 1000 ft
R1 R2 R3 1000 ft
Commercial / industrial / manufacturing zones only

Total:12



Costa Mesa

Map # 2 (Rev. 3/10/15)
Schools parks library and child care 1000 ft
R1 R2 R3 1000 ft
Industrial / manufacturing zones only

Total:12