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July 27, 2018

Lori Ajax, Chief
Bureau of Cannabis Control
P.O. Box 419106
Rancho Cordova, CA 95741
Submitted via Email: bcc.comments@dca.ca.gov

RE: Bureau of Cannabis Control Proposed Regulations – July 2018

Dear Chief Ajax,

The League of California Cities[®] appreciates the opportunity to comment on the proposed regulations released in July 2018 that seek to formally adopt the emergency regulations implemented in December 2017.

We have carefully reviewed the packet of over 130 pages of regulations and concur that many of the provisions represent helpful clarifying changes that further the implementation of the law. However, we strongly object to two proposed changes that we view are in fundamental conflict with both the language and intent of Proposition 64 and will undermine a city's ability to effectively regulate cannabis at the local level:

- Section 5416(d), would drastically preempt local control and regulatory authority by authorizing cannabis delivery anywhere in the state regardless of conflicting local regulations or bans, and
- Sections 5001(c) (11) and 5002(c) (28) would undermine the ability of local agencies to ensure community standards are met by reducing from 60 to 10 days the period to verify if a licensee has obtained necessary local approvals.

In furtherance of our mission to preserve local authority, the League has outlined our serious concerns with these proposed regulations. A detailed explanation of our reasoning on each of our issues are as follows:

§5416(d). Removal of Limitations on Cannabis Deliveries:

Section 5416(d) is extremely troubling. This section subverts the intent of the voters who approved Proposition 64 by removing local governments' ability to prohibit cannabis deliveries within its jurisdiction.

Proposition 64's purpose and intent provisions expressly recognize the value of local control in regulating commercial cannabis activity. In brief, it provides that "[i]t is the intent of the People in enacting this Act to ... [a]llow local governments to ban nonmedical marijuana businesses ..."¹ Thus, under existing law — as articulated in Proposition 64 and, now, MAUCRSA—local governments can adopt and enforce local ordinances to ban or regulate *all* commercial cannabis activity, including deliveries, within their borders. Section 5416(d), as proposed, fundamentally alters this pillar of Proposition 64 by implying that cannabis deliveries are allowed in violation of local ordinances.

Further, an influx of unapproved local cannabis deliveries will decrease transparency of cannabis operations and increase public safety obligations and costs for local law enforcement agencies.

¹ (Initiative Measure (Prop. 64), §3(d), approved Nov. 8, 2016, eff. Nov. 9, 2016)

That section 5416(d) contradicts existing law is illustrated further by the failure of Sen. Ricardo Lara's SB 1302, which would have similarly preempted a local government from adopting or enforcing an ordinance that would ban cannabis deliveries within its jurisdiction. Not only did SB 1302 fail to attain the required two-thirds vote required by Proposition 64 for the enactment of amendments, it failed to pass out of its house of origin.

Because section 5416(d) goes beyond the statutory provisions of Proposition 64² and MAUCRSA, adoption of 5416(d) would exceed the Bureau of Cannabis Control's (BCC) regulatory authority. California Business and Professions Code section 26013 limits the regulatory authority of the BCC to enacting rules and regulations that are "consistent with the purposes and intent of [Proposition 64]." By allowing deliveries in every jurisdiction in California, the BCC is fundamentally changing Proposition 64, not simply clarifying existing law. For these reasons, section 5416(d) should be removed from the regulations.

§5001(c) (11). Unrealistic Timelines for Adequate Local Government Review

Both sections 5001(c) (11) and 5002(c) (28) create a 10-day "shot clock" for cities to respond to the BCC's inquiry of the validity of a license before that license is otherwise deemed valid. This 10 day "shot clock" does not afford cities sufficient time to review license applications and respond to the BCC. This rushed timeline would favor those who may intend to skirt local requirements rather than comply with them, and undermine a fundamental pillar of Proposition 64 that ensures local jurisdictions can regulate cannabis in their communities.

Under Business and Professions Code Section 26055(g)(2)(D), if an applicant fails to provide evidence of local compliance, cities have **60 days** to provide notification of compliance or noncompliance with local

² Below is a list of the numerous ways the proponents of Proposition 64, the ballot analysis of Proposition 64 written by the State Legislative Analyst, and existing law that explicitly grants local regulatory authority for cannabis and cannabis businesses, including deliveries, that these regulations will subvert:

- "For example, cities and counties could require nonmedical marijuana businesses to obtain local license and restrict where they could be located. Cities and counties could also completely ban marijuana-related businesses. However, they could not ban the transportation of marijuana through their jurisdictions." (Ballot Pamp., General Elec. (November 8, 2016) analysis of Prop. 64 by the Legislative Analyst, p. 93.)
- "64 preserves local control." (Ballot Pamp., General Elec. (November 8, 2016) rebuttal to Argument against Prop. 64, p. 99.)
- §2(E). "The Adult Use of Marijuana Act sets up a comprehensive system governing marijuana businesses at the state level and safeguards local control, allowing local governments to regulate marijuana-related activities, to subject marijuana businesses to zoning and permitting requirements, and ban marijuana businesses..." (Ballot Pamp., General Elec. (November 8, 2016) proposed text of Prop. 64, p. 179.)
- §3(d). "Allow local governments to ban nonmedical marijuana businesses as set forth in this act." (Ballot Pamp., General Elec. (November 8, 2016) proposed text of Prop. 64, p. 179.)
- Cal Bus & Prof Code §26001(k) "'Commercial marijuana activity' includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery or sale of marijuana and marijuana products as provided in this division."
- Cal Bus & Prof Code §26055(d) "Licensing authorities shall not approve an application for a state license under this division if approval of the state license will violate the provisions of any local ordinance or regulation adopted in accordance with Section 26200."
- Cal Bus & Prof Code §26090(e) "A local jurisdiction shall not prevent delivery of marijuana or marijuana products on public roads by a licensee acting in compliance with this division and local law as adopted under Section 26200."
- Cal Bus & Prof Code §26200(a)(1) "This division shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand

ordinances or regulations before a license application is deemed in compliance. With limited resources and the difficulty detecting fraud, it is unreasonable to think that cities will be able to properly verify licenses within 10 days. Such a change could allow applicants to send multiple purported local licenses to the BCC, knowing that a city may not have the time and resources to check each license's validity before the 10-day verification period ends. If upholding public safety and public health is "the #1 priority of the regulators that determine who qualifies for a marijuana business license,"³ then these regulations must be changed. It is also notable that the BCC faces no such similar restriction on the timeline for their own reviews of applications to perform appropriate due diligence; why then impose such a different standard for local government?

Ensuring that a local jurisdiction has approved either a temporary or annual license is key to promoting public safety⁴ and should not be reduced to an over-the-counter approval process. For these reasons, these proposed regulations must be amended from a 10-day to a 60-day period in both sections 5001(c)(11) and 5002(c)(28), in order to both reflect current law and ensure cities an appropriate amount of time to verify whether local licenses are indeed valid.

Additional Comments:

The League believes the two proposed regulations commented upon above go beyond the BCC's regulatory authority and instead create a new cannabis policy outside of the legislative process. California's voters were assured that "64 preserves local control"⁵ and these regulations chip away at the very foundation of local control by allowing cannabis deliveries to every jurisdiction in California.

For these reasons, we respectfully oppose these regulations until such time as they are amended to address the concerns listed above. We look forward to continued opportunities to comment on specific regulatory proposals. If you have any questions, please feel free to contact me at (916) 658-8252.

Sincerely,



Charles W.R. Harvey
Legislative Representative

³ (Ballot Pamp., General Elec. (November 8, 2016) rebuttal to Argument against Prop. 64, p. 99.)

⁴ Below is a list of several ways the proponents and intent language of Proposition 64 and existing law explicitly outline the need for local licensing approval provisions to ensure public safety:

- "64 makes the protection of public health and safety the #1 priority of the regulators that determine who qualifies for a marijuana business license."
(Ballot Pamp., General Elec. (November 8, 2016) rebuttal to Argument against Prop. 64, p. 99.)
- §3(c). "Allow local governments to enforce state laws and regulations for nonmedical marijuana businesses and enact additional local requirements for nonmedical marijuana businesses, but not require that they do so for a nonmedical marijuana business to be issued a state license and be legal under state law."
(Ballot Pamp., General Elec. (November 8, 2016) proposed text of Prop. 64, p. 179.)
- Cal Bus & Prof Code §26055(d) "Licensing authorities shall not approve an application for a state license under this division if approval of the state license will violate the provisions of any local ordinance or regulation adopted in accordance with Section 26200."

⁵ (Ballot Pamp., General Elec. (November 8, 2016) rebuttal to Argument against Prop. 64, p. 99.)