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February 2, 2018

Santa Barbara County
105 East Anapamu Street
Santa Barbara, CA 93101

Honorable Chair Williams and Supervisors,

Re: Agenda Item #3 Cannabis Land Use Ordinance

We write on behalf of our clients to comment on the Santa Barbara County Cannabis Land Use Ordinance. Specifically, we wanted to address how – and why - State law provides your Board with full authority and discretion to determine the permissible distance between cannabis businesses and schools, day care centers, or youth centers located within the County.

Our office served as counsel to the campaign that proposed Proposition 64, the statewide initiative measure approved by voters in November 2016 which enacted a new state system to control, regulate, and tax adult-use cannabis businesses in California. In that capacity, I was one of the lead drafters of the initiative and am very familiar with both its language and intent. I also consulted on the drafting of Senate Bill 94, also known as the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), which largely conformed the State's old medical marijuana regulatory structure, enacted in the Medical Cannabis Regulation and Safety Act (MCRSA) with the regulatory framework for adult-use cannabis enacted by Proposition 64.

MCRSA

Prior to the voters' adoption of Proposition 64, the Legislature enacted MCRSA to regulate medical cannabis businesses in California. In MCRSA, the minimum distance requirement was only intended to apply to cannabis retail outlets. Health and Safety Code section 11362.768 required certain types of medical marijuana operations to maintain a 600-foot minimum setback from schools. However, the setback requirement only applied to medical marijuana cultivation operations that, as part of their operations, maintain a storefront or mobile retail outlet.

Health and Safety Code section 11362.768 subdivision (b) provides that "*No medical marijuana cooperative, collective, dispensary, operator, establishment or provider who possesses, cultivates or distributes medical marijuana pursuant to this article shall be located within a 600-foot radius of a school.*"

Health and Safety Code section 11362.768 subdivision (e) qualifies the minimum setback requirement: "*This section shall apply only to a medical marijuana cooperative, collective, dispensary, operator, establishment or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that*"

provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a local business license.”

Proposition 64

One of the new laws enacted by Proposition 64 is Business and Professions Code section 26054, which as originally enacted, imposed certain limitations on the siting of adult-use cannabis businesses. Subdivision (b) of section 26054 provides that a licensed cannabis business

“shall not be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued, unless a licensing authority or a local jurisdiction specifies a different radius. The distance specified in this section shall be measured in the same manner as provided in subdivision (c) of Section 11362.768 of the Health and Safety Code unless otherwise specified by law.”

The proponents of Proposition 64 added the underlined language in section 26054 in response to comments received during the 30-day “public review process” following initial submission of the initiative to the Attorney General for title and summary.¹ Specifically, public officials in some local jurisdictions submitted comments stating that a mandatory, “one-size fits all,” 600-foot minimum radius from schools, day care centers, and youth centers would make it very difficult – if not impossible – for cannabis businesses to obtain permits in some cities, and was inconsistent with the idea of preserving local control over the siting of cannabis businesses. Proponents addressed this concern by allowing a “local jurisdiction” to specify “a different radius.”

Under the amended language, the 600-foot radius in subdivision (b) of section 26054 is intended to operate as a default radius. Local governments may deviate from the default radius and establish a “different” radius, whether it be smaller or larger than 600 feet, to address local concerns. Had the proponents intended the 600-foot radius to operate as a mandatory minimum radius, the language in subdivision (b) of section 26054 would have allowed local governments to only specify a “larger” or “greater” radius, not simply a “different” radius. The choice to use the phrase “different radius” in subdivision (b) was intentional to ensure that local governments have the power to make decisions regarding the location of licensed cannabis businesses that are appropriate to local conditions.

Moreover, by providing that the default manner of measuring the distance between cannabis businesses and certain sensitive receptors in the Health and Safety Code may be changed as “specified in law,” Proposition 64 provided additional flexibility to local governments in making determinations of where to site cannabis businesses. Indeed, the proponents made their intent to

¹ The Elections Code prescribes a 30-day “public review process” following receipt of a proposed statewide initiative measure by the Attorney General and before preparation of the circulating title and summary. (Elec. Code, § 9002.) During the public review process, the text of the proposed initiative measure is posted on the Attorney General’s website and members of the public are permitted to submit comments for consideration by the initiative’s proponents. (*Ibid.*) Proponents of the initiative may submit “amendments” to the initiative that are “reasonably germane to the theme, purpose, or subject of the initiative measure as originally proposed.” (*Id.* at (b).)

preserve the full range of local control in this regard clear through the enactment of subdivision (a) of Business and Professions Code section 26200, which states that the Business and Professions Code provisions enacted by Proposition 64 shall not be interpreted “to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate [licensed commercial cannabis businesses] including, but not limited to, local zoning and land use requirements . . .”

MAUCRSA

As noted above, after the adoption of Proposition 64, the Legislature enacted MAUCRSA to create a single, unitary regulatory structure for both medical and adult-use cannabis businesses. In other words, MAUCRSA supplants most of the old statutes governing medical cannabis businesses. Under MAUCRSA, both medical cannabis and adult-use cannabis businesses are licensed and regulated under the statutes contained in Division 10 of the Business and Professions Code.

MAUCRSA reenacted Business and Professions Code section 26054 subdivision (b) without change. Under that statute, no licensee under Division 10 of the Business and Professions Code – i.e., both medical and adult-use – can be located within 600 feet of certain locations “unless a licensing authority or a local jurisdiction specifies a different radius.” MAUCRSA thus preserved the flexibility of local governments with respect to siting of adult-use cannabis businesses and extended that flexibility to medical cannabis businesses as well. In so doing, the Legislature recognized that, consistent with the intent of Proposition 64, a one-size-fits-all minimum distance requirement of 600 feet is not appropriate for every locality, nor is it necessarily appropriate for each license type.

Using this flexibility in Business and Professions Code section 26054 subdivision (b), an increasing number of local jurisdictions are adopting different setback standards for different license types. For example, the City of Santa Rosa requires an *increased* setback for retail, and *no* setback for the rest of the supply chain: cultivation, manufacturing, distribution and testing labs. The City determined that since retail is the only commercial cannabis activity that is open to the public, it is the only activity that warrants a setback from sensitive receptors.

Culver City is another example of a locality that has only required setbacks for retail cannabis businesses, of 600 feet from sensitive receptors. All other types of businesses have no distance requirements.

MAUCRSA is clear that local governments have the authority and discretion to adopt a setback standard that works best for your jurisdiction. This may include specification of a different radius for different commercial activities (license types), or a different measurement of minimum distance requirement.

Thank you for considering this letter as you embark on the process of establishing local rules for operation of cannabis businesses in Santa Barbara County. I hope you find the information

useful, and I would be pleased to address any other questions or concerns you may have about the laws enacted by Proposition 64.

Very truly yours,

A handwritten signature in black ink, appearing to read "Richard C. Miadich". The signature is written in a cursive style with a large initial "R" and "M".

Richard C. Miadich