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October 25, 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 Revised Proposed Regulations – October 2018

Dear Chief Ajax,

The League of California Cities[®] continues to strongly oppose these proposed regulations, even in their modified form, as they fail to address any of our previous concerns and in fact make some provisions worse.

As stated in our original letter (see ATTACHMENT B), there are 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 deliveries anywhere in the state regardless of conflicting local regulations or bans, and removes local governments ability to reasonably regulate deliveries;
- Section 5002(c) (28) would undermine the ability of local agencies to ensure community standards are met by establishing a 10-day period to verify if a licensee has obtained necessary local approvals.

We maintain the position that the proposed regulations both as originally offered and as modified, go far beyond the Bureau of Cannabis Control's scope and regulatory authority. Relatedly, the revisions made to the July 2018 proposed regulations are far beyond technical and clarifying, and thereby should have triggered another 45-day comment period. In fact, by allowing only 15 days to digest these significant changes, the BCC is limiting the opportunity for the public to provide necessary and robust feedback.

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

Under the original version of these regulations, section 5416(d) subverted the intent of the voters who approved Proposition 64 by removing local governments' ability to prohibit cannabis deliveries within their jurisdictions. Section 5416(d) was amended to add the following underlined language, "A delivery employee may deliver to any jurisdiction within the State of California provided that such delivery is conducted in compliance with all delivery provisions of this division." With this additional language, this section has managed to go from bad to worse.

As modified, this section not only strips local governments of the ability to prohibit cannabis deliveries but also disallows local governments from *regulating* deliveries in any manner that exceeds the provisions of these regulations.

California’s voters were assured that “Proposition 64 preserves local control.”¹ By removing local governments’ ability to regulate cannabis deliveries, this provision undermines the very foundation of local control and imposes a ‘one size fits all’ form of cannabis regulation.

It is noteworthy that Section 26090 of the Business and Professions Code (B&P Code) explicitly requires licensees to “[act] in compliance with...local law as adopted under Section 26200.” The cited statute specifically and repeatedly confirms local authority to regulate – or prohibit – any cannabis sales and other commercial cannabis activities conducted within the local jurisdiction, with no exclusion for sales of delivered cannabis conducted by retailers licensed in other jurisdictions.

Indeed, multiple subdivisions of Section 26200 emphasize that local governments retain regulatory authority over any cannabis business “operat[ing]” in their jurisdictions. B&P Code Section 26200 expressly cautions against any attempt to interpret the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to “supersede or limit ... enforcement of ... local ordinances.” It also concludes, “[t]his division, or any regulations promulgated thereunder, shall not be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution.”² The cross-reference to this provision in Section 26090 unambiguously dispels any suggestion that delivery transactions are somehow excluded from this expansive local control.

A more direct statement that neither MAUCRSA nor the Bureau of Cannabis Control (BCC) can preempt a local government’s ability to regulate cannabis business transactions occurring within its jurisdiction is difficult to envision.

In enacting Proposition 64, California voters made clear that local control is valuable to them– as much for delivery sales as for brick-and-mortar establishments.³ The extensive role and protections for local governments were not included in MAUCRSA by accident, but rather reflect the recognition that local governments are best positioned to determine whether, when, and how commercial cannabis activities should be introduced into their communities. Local flexibility allows local governments to develop regulatory regimes at the right time, and with the right components, to meet the unique needs of their residents. The assurance of local control promotes community trust and acceptance of legal cannabis businesses, and was instrumental in the passage of both Proposition 64 and the MCRSA before it.

¹ Business & Professions Code 26200(a)(1)(a) – 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 smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction.

² The express reference to California Constitution, article XI, section 7 in Business and Professions Code section 26200 is significant, since that provision incorporates a formidable presumption against preemption of local business regulations. (See, e.g., *California Veterinary Medical Assn. v. City of West Hollywood* (2007) 152 Cal.App.4th 536, 548-549 [declining to defer to Department of Consumer Affairs opinion that ordinance was preempted]; *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149; *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 742-743; *Garcia v. Four Points Sheraton LAX* (2010) 188 Cal.App.4th 364, 373.) Even without the express local control protections in Sections 26200 and 26090, the Bureau would have a substantial burden to convince the public, the legal community, and the courts that MAUCRSA can reasonably be interpreted to preempt local authority over cannabis sales under any circumstances. With those protections, that position is wholly unsustainable.

³ It is sometimes suggested that cannabis deliveries are akin to an individual customer purchasing cannabis at a storefront and then returning with it to their own home – and should be equally free from regulation. However, this is a false comparison. Sales of cannabis are unequivocally *commercial* activities, with all of the risks and benefits that entails, regardless of whether they are conducted at a storefront or in the customer’s home. The state and local governments regulate business activities for good reasons, and many of those reasons are just as pressing when the activity occurs between a delivery employee and a customer in the customer’s living room.

§5002(c) (28). Unrealistic Timelines for Adequate Local Government Review:

The initially proposed regulations included two sections-- §5001(c)(11) and §5002(c)(28)—that created a 10-day “shot clock” for cities to respond to the BCC’s inquiry of the validity of a local license before that license is otherwise deemed valid. While the modified proposed regulations deleted all references to temporary licenses, including section 5001(c)(11), they retained section 5002(c)(28), relative to the issuance of annual licenses.

As stated in our original letter, 10 calendar days does not afford cities sufficient time to review annual license applications and respond to the BCC. Under this scenario, a city could receive a local license inquiry upon the close of business on a Friday, leaving the city only one workweek to investigate, review and respond to the BCC. Such a rushed timeline would favor those who intend to circumvent local requirements, rather than comply with them, undermining a fundamental pillar of Proposition 64.

Ensuring that a local jurisdiction has approved a temporary, provisional,⁴ or annual license is key to promoting public safety⁵ and should not be reduced to an over-the-counter approval process. As such, we maintain the position that the finalized regulations should be amended from a 10-day to a 60-day period in section 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 has expressed repeated concerns over the aforementioned sections. With respect to the proposed regulation on statewide delivery of cannabis, § 5416(d), we believe such provisions go well beyond the BCC’s regulatory authority and instead create a new cannabis policy outside of the legislative process. In addition to our previous letter, we reiterated our position through oral testimony at all three public hearings facilitated by the BCC during the month of August 2018. It should be noted that our stated positions were not made in a vacuum.

In fact, to date, at least 96 California cities have voiced written opposition to the aforementioned provisions (see ATTACHMENT A). While there are many cities that simply have no desire to have commercial cannabis in their communities, a number of cities are merely taking a cautious approach during these early days of cannabis legalization, opting to wait until state regulations are finalized and the industry is better settled before permitting commercial cannabis activities. This represents conscientious and sensible public policy in many communities, and should not be greeted with reactionary regulatory proposals. While there may be some frustration at the pace of transition and deployment of the legal cannabis industry, we are still very early in that process – less than two years after the passage of Proposition 64. MAUCRSA did not – and could not – promise immediate, overnight access to legal

⁴ Senate Bill 1459 (Canella, 2018) establishes a provisional cannabis license that may be issued at the sole discretion of a state licensing authority, until January 1, 2020.

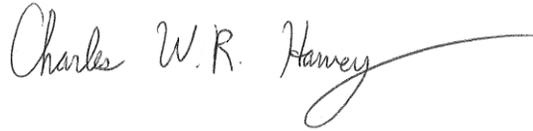
⁵ Below is a list of several ways the proponents and intent language of Proposition 64 and existing law explicitly outline the need for local licensing approval provisions to ensure public safety:

- “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.”

commercial cannabis everywhere in the state, and the BCC must remain cognizant and respectful of MAUCRSA's more deliberate intent and approach.

For the foregoing reasons, we respectfully oppose these regulations until such time as they are revised or removed to address the concerns listed above. If you have any questions, please feel free to contact me at (916) 658-8252.

Sincerely,

A handwritten signature in black ink that reads "Charles W.R. Harvey". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Charles W.R. Harvey
Legislative Representative



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List of cities OPPOSED to BCC Proposed Regulations (as of 8/30/18):

- Alhambra
- Arcadia
- Bishop
- Camarillo
- Carlsbad
- Chino
- Concord
- Corning
- Covina
- Culver City
- Dublin
- El Cajon
- El Centro
- Escalon
- Escondido
- Fairfax
- Farmersville
- Fillmore
- Fountain Valley
- Fremont
- Goleta
- Indian Wells
- Indio
- Jackson
- La Canada Flintridge
- La Mirada
- La Quinta
- Lakewood
- Lincoln
- Lindsay
- Lodi
- Loma Linda
- Los Alamitos
- Lynwood
- Manhattan Beach
- Manteca
- Marysville
- Modesto
- Monterey
- Moorpark
- Moreno Valley
- Newark
- Newman
- Palmdale
- Paradise
- Petaluma
- Placerville
- Port Hueneme
- Poway
- Rancho Cucamonga
- Rancho Palos Verdes
- Rancho Santa Margarita
- Riverbank
- Roseville
- San Dimas
- San Luis Obispo
- San Pablo
- Santa Barbara
- Santa Clarita
- Simi Valley
- Temecula
- Thousand Oaks
- Tiburon
- Truckee
- Tulare
- Tulelake
- Ventura
- Wasco
- Waterford
- Yorba Linda
- Yreka
- Yuba City
- Blythe
- Carpinteria
- Dana Point
- Elk Grove
- Fairfield
- Grass Valley
- Gustine
- Hughson
- La Habra Heights
- Laguna Niguel
- Portola
- Redondo Beach
- Riverside
- Rolling Hills
- San Jose
- Stockton
- Torrance
- Upland
- Pinole
- Beverly Hills
- Claremont
- Irwindale
- Mendota
- Yucaipa



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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 ..."⁶ 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.

⁶ (Initiative Measure (Prop. 64), §3(d), approved Nov. 8, 2016, eff. Nov. 9, 2016)

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.

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 64⁷ 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,

⁷ 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

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 ordinances or regulations before a license application is deemed in compliance. With limited resources and the difficulty of 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,”⁸ 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 safety⁹ 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”¹⁰ and these regulations chip away at the very foundation of local control by allowing cannabis deliveries to every jurisdiction in California.

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

⁹ 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.”
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- 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.”

¹⁰ (Ballot Pamp., General Elec. (November 8, 2016) rebuttal to Argument against Prop. 64, p. 99.)

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,

A handwritten signature in cursive script that reads "Charles W.R. Harvey". The signature is written in black ink and features a long, sweeping horizontal line that extends to the right, ending in a small loop.

Charles W.R. Harvey
Legislative Representative