COUNCILMEMBER CHRIS CATE
CITY OF SAN DIEGO
SIXTH DISTRICT

MEMORANDUM

DATE: **August 24, 2017**

TO: **Honorable Mayor Kevin L. Faulconer**
Jeff Murphy, Director, Planning Department

FROM: **Councilmember Chris Cate, Chair, Public Safety and Livable Neighborhoods Committee**

SUBJECT: **Non-Retail Marijuana Business Public Safety Regulation Proposals**

On September 11, 2017, the City Council is currently scheduled to consider regulations on non-retail marijuana businesses, including cultivation, manufacturing, distribution, and testing. As Chair of the Public Safety and Livable Neighborhoods Committee, my top priority during these deliberations is to ensure that marijuana related businesses are well regulated in order to guarantee that they are operating safely and in a manner that promotes public safety.

While Proposition 64 sets many base-line public safety-related regulations and the State Legislature continues its process to establish additional regulations, it's crucial that the City of San Diego makes clear what it expects from businesses when they apply for a Conditional Use Permit to operate within our jurisdiction. As such, this memo outlines a list of my proposals regarding public safety related regulations on non-retail marijuana businesses that all applicants must comply with in order to be eligible to obtain and retain a Conditional Use Permit (CUP) from the City of San Diego. Many of these proposals are currently established or being considered in other cities in California and other states that allow non-retail marijuana businesses.

In addition, as Chair of the Public Safety and Livable Neighborhoods Committee, I intend to present proposals in early 2018 before the Committee to improve regulations regarding retail marijuana outlets, including regulations relating to marijuana advertisements in the City of San Diego.

Summary:

The following proposed public safety related regulations are structured into multiple categories. The first set of proposed regulations would apply to all non-retail marijuana businesses, including cultivation, manufacturing, distribution, and testing. Proposed businesses and applicants would need to comply with these regulations in order to qualify for a Conditional Use Permit from the City of San Diego and must continue to be in compliance in order to maintain their CUP. They are aimed at promoting safe business operations and public safety within all San Diego neighborhoods where these businesses are permitted to be located. Attached to this memo are all of my proposed regulations outlined in greater detail. Some of the highlights of my proposals include:

- Applicants must submit a community outreach plan that outlines how they will positively contribute to and serve the community in which they are located;
- Applicants must submit detailed written documents to the City regarding how they plan to comply with certain State laws and regulations;
- Security requirements relating to surveillance cameras, commercial grade locks, security plans, visitor logs, access control to limited access areas, exterior lighting, and no exterior signage of any kind;
- A designated Neighborhood Liaison available 24/7 to triage and address any legitimate issues and complaints within 24 hours;
- Mandatory reporting to the Police Department when significant inventory discrepancies are detected within 24 hours and when a business or any of its owners are convicted of felony charges relating to marijuana operations within 48 hours.

In addition to the requirements above, applicants and businesses must also comply with the following public safety related regulations that are specific to the particular type of non-retail operation for which they wish to obtain a Conditional use Permit. These type-specific requirements are aimed at ensuring the safe cultivation, manufacturing, distribution, and testing of marijuana and reducing the impact of such businesses to the surrounding neighborhoods. These proposals include:

<u>Cultivation:</u>

- All marijuana cultivation must take place indoors or outdoors that is within an entirely secured, enclosed, and locked structure;
- An applicant must provide a proposed Indoor Cultivation Plan as required by the State of California including how the applicant intends to meet all the operational requirements;
- The City of San Diego would require early implementation of all provisions in Chapter 38 of the State Building Standards Code for Plant Processing and Extraction Facilities effective immediately upon issuance of a CUP and a State license to operate. Chapter 38 was recently approved by the State's Building Standard Commission on August 14, 2017 but it will not officially take effect statewide until July 1, 2018. Requiring early implantation will ensure all marijuana businesses operating in the City are adhering to the most up-to-date safety regulations from the State of California governing marijuana plant processing and extraction.

Manufacturing:

- Provide a proposed Manufacture Plan as required by the State of California, which must include how the applicant intends to meet all the operational requirements as described;
- Provide a detailed description of the manufacturing activity to be conducted on the premises;
- Create and implement written procedures regarding a fire safety and prevention plan, disease control, cleanliness, contamination prevention, sanitary operations, quality control, the quality of raw materials and ingredients, manufacturing operations, master manufacturing protocol, hazard analysis, standard operating procedures, and inventory control plan;
- Early implementation of Chapter 38 of the State's Building Standards Code for Plant Processing and Extraction Facilities just like for cultivation businesses;
- Prohibiting the use of alkanes, such as butane or propane, or other flammable room-temperature gas or vapor, in non-volatile manufacturing processes and other manufacturing regulations as set forth of the State of California.

Testing and Distribution:

- Provide a proposed Testing Plan or Distribution Plan as required by the State of California, including how the applicant intends to meet all the operational requirements;
- Submit security plans to prevent theft and loss of products;
- Submit and establish plans relating to testing process and procedures that comply with State of California regulations.

Councilmember Cate's Non-Retail Marijuana Business Public Safety Regulation Proposals

All Non-Retail Marijuana Business

- No signage of any kind on the exterior portion of the property or any signage that is visible from the public right-of-way.
- An applicant must provide proof it has the legal right to occupy and use the proposed location for marijuana related operations. If the applicant is not the property owner, the applicant must provide a document from the property owner that states that the applicant has the right to occupy the property and may use the property for non-retail marijuana business operations.
- An applicant must submit an outreach plan to contact and engage residents and businesses in the local neighborhoods where the proposed non-retail marijuana business is located.
- An applicant must submit a detailed description of any plan to create positive impact in the neighborhood where the proposed premises is located, which may include participation in community and volunteer service. Applicants are encouraged to present experience in this regard.
- An applicant must complete a detailed diagram of the proposed premises. The diagram must be to scale. A business cannot change, alter, or modify in a manner that materially or substantially alters the premises or the use of the premises from the diagram originally filed with the application without the prior written approval of the City.
- Upon the State of California's development of an application process for state licensing, an applicant must provide adequate documentation demonstrating it has applied for a state license for non-retail marijuana business within 30 days of submitting a City of San Diego application.
- An applicant must submit a complete list of individual owners of the business and individuals with a non-controlling interest. Owners may not have been convicted of a felony involving the sale, trafficking, or distribution of a controlled substance (including cannabis and prescription pharmaceuticals) within the past 5 years.
- An applicant must submit a staffing plan and an organizational chart outlining the position and responsibilities of each employee, as well as the reporting structure for each employee.
- All employees of a business must display a laminated identification badge issued by the business. The badge must have, at a minimum, the employee's full name, and a color photograph of the employee showing the full front of the employee's face.
- A business must ensure that any person on the premises, except for employees, contractors of a business, and authorized individuals, are escorted at all times by the owner or at least one employee of the Business when in the limited-access areas of the premises.
- A business must maintain a log of individuals, other than employees, who enter limited-access areas of the premises. This log must include at least the full name of the visitor, badge number issued, time of arrival, time of departure, purpose of the visit, and the visitor's valid contact information. Visitor logs must be kept and maintained for three years and must be available to the City and the San Diego Police Department upon request.
- An applicant must submit a security plan for review and approval by the City. At a minimum, the security plan must include: a description of the applicant's video

surveillance system, including camera placement and practices for the maintenance of video surveillance equipment; how the applicant will ensure that all access points to the premises will be secured, including the use of security personnel; and a description of the applicant's security alarm system.

- At a minimum, the Business premises must have a digital video surveillance system in accordance with their submitted security plan with a minimum camera resolution of 1280 × 1024 pixels. The surveillance system and cameras must be capable of being accessed through the internet. All areas recorded by the video surveillance system must at all times have adequate lighting to allow the surveillance cameras to effectively record images. Cameras must be immobile and in a permanent location. Cameras must be placed in a location that allows the camera to clearly record activity occurring within 20 feet of all points of entry and exit on the premises, and allow for the clear identification of any person and activities in all areas required to be filmed. Areas that must be recorded on the video surveillance system include, but are not limited to, the following: areas where cannabis goods are weighed, packed, stored, quarantined, loaded and unloaded for transportation, prepared, or moved within the premises; areas where cannabis is destroyed; limited access areas; security rooms; areas storing a surveillance-system storage device with at least one camera recording the access points to the secured surveillance recording area; and entrances and exits to the premises, which must be recorded from both indoor and outdoor vantage points. Cameras must record continuously 24 hours a day. The physical surveillance equipment and surveillance recordings must be stored and secured in a manner that prevents tampering or theft. Surveillance recordings must be kept for a minimum of 30 days and must be made available to City Departments and San Diego Police Department upon request.
- All exterior portions of the premises must be adequately illuminated to facilitate the ability to identify individuals by sight and security camera footage.
- A business must hire armed security personnel and use commercial-grade, nonresidential door locks on all doors.
- A business must maintain an alarm system. A business must make available to the City or the San Diego Police Department all information related to the alarm system, monitoring, and alarm activity. A business must apply for, and maintain in good standing, a Police Alarm Permit issued by the City of San Diego.
- Loitering is prohibited on or around the premises or the area under control of a business. "No Loitering" signs must be posted in and outside of the business.
- No special event permits shall be granted for the premises and the immediately surrounding outdoor areas on the property. No parties or cannabis-related activities may occur outside of the enclosed premises.
- Applicant must provide a dedicated telephone number and email address as the official Neighborhood Liaison contact information for each business. Responses to legitimate complaints and/or grievances must be made within 24 hours.
- A business must be properly ventilated and the exhaust air filtered to neutralize the odor from cannabis so that the odor cannot be detected by a person with a normal sense of smell at the exterior of the business. No operable windows or exhaust vents can be located on the building that abuts a residential use or zone. Exhaust vents on rooftops must direct exhaust away from residential uses or zones.

- Employees and representatives of the City requesting admission to a business for the purpose of determining compliance must be given unrestricted access during regular business hours.
- A business must notify the City in writing, within 48 hours, of any felony conviction against the business or any owners of the business relating to marijuana operations.
- A business must notify the City and the Police Department of any theft or loss of cannabis and any significant inventory discrepancies within 24 hours of detection.
- A business must provide a detailed description of how the applicant will meet the State of California's track-and-trace, inventory, returns, destruction of products, waste management, environmental sustainability, records retention, and operational requirements.
- No retail sales of alcohol or marijuana may be made by the business on the premises.

Cultivation

- All marijuana cultivation must take place indoors or outdoors that is within an entirely secured, enclosed, and locked structure (like previously adopted personal marijuana cultivation regulations).
- An applicant must provide a proposed Indoor Cultivation Plan as required by the State of California including how the applicant intends to meet all the operational requirements.
- An applicant must follow and comply with State of California Building Standards Code Chapter 38 for Plant Processing and Extraction Facilities immediately upon issuance of a CUP and a state license to operate. This chapter was approved by the California Building Standards Commission but won't be in effect statewide until July 1, 2018. The City of San Diego would require adherence to Chapter 38 of the State Building Standards Code effective immediately and require sign-off by the Fire Marshal. This requirement in our City Municipal Code should sunset on July 1, 2018 when Chapter 38 goes into effect statewide to avoid preemption.
- An applicant must provide all water source information as required by the State of California.
- An applicant must provide all power source information as required by the State of California, including but not limited to, lighting, heating, cooling, and ventilation.
- An applicant must provide evidence that the San Diego Fire Department has been notified of the proposed premises for marijuana cultivation business purposes.

Manufacturing

- All applicants must provide a proposed Manufacture Plan as required by the State of California, which must include how the applicant intends to meet all the operational requirements as described.
- An applicant must provide evidence that the San Diego Fire Department has been notified of the proposed premises for marijuana manufacturing and extraction purposes.
- An applicant must provide a detailed description of the manufacturing activity to be conducted on the premises including, but not be limited to: the type of activity conducted (extraction, infusion, packaging, labeling) including a description of extraction and infusion methods; and the types of products that will be manufactured, packaged, or labeled. Certain methods and procedures may be kept confidential upon request.

- A business must create and implement written procedures regarding a fire safety and prevention plan, disease control, cleanliness, contamination prevention, sanitary operations, quality control, the quality of raw materials and ingredients, manufacturing operations, master manufacturing protocol, hazard analysis, standard operating procedures, and inventory control plan. These procedures must be submitted to the City and the San Diego Fire-Rescue Department and must be reviewed and approved by the Fire Marshal.
- An applicant must follow and comply with State of California Building Standards Code Chapter 38 for Plant Processing and Extraction Facilities immediately upon issuance of a CUP and a state license to operate. This chapter was approved by the California Building Standards Commission but won't be in effect statewide until July 1, 2018. The City of San Diego would require adherence to Chapter 38 of the State Building Standards Code effective immediately and require sign-off by the Fire Marshal. This requirement in our City Municipal Code should sunset on July 1, 2018 when Chapter 38 goes into effect Statewide to avoid preemption.
- An applicant must attest that the business will not manufacture, prepare, package, or label any non-cannabis products on the premises.
- Non-volatile and volatile cannabis extraction can only be conducted using the methods in accordance with all requirements and procedures of the State of California. No alkanes, such as butane or propane, or other flammable room-temperature gas or vapor, may be used in non-volatile manufacturing process. All extraction facilities shall require certification from the County agency with jurisdiction over the chemicals and hazardous materials to be used on the premises.

Testing

- An applicant must provide a proposed Testing Plan as required by the State of California, including how the applicant intends to meet all the operational requirements.
- A Business must develop and implement sampling plans, procedures, and protocols that meet the requirements of the State of California for obtaining samples of cannabis goods.
- A Business must develop, implement, and maintain written standard operating procedures and scientifically valid testing methodologies as required by the State of California.
- A Business must store cannabis secured with a commercial-grade lock in a room or cabinet capable of preventing diversion, theft, and loss. Secured areas must be locked at all times except when managing or retrieving a secured item or items.
- Laboratory employees must meet the experience, education, and training requirements specified and required by the State of California. A Business must verify and maintain documentation of qualifications of its employees.

Distribution

- An applicant must provide a proposed Distributor Plan as required by the State of California, which must include how the applicant intends to meet all the operational requirements.