

Communication from Public

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Council File No: 21-1083

Comments for Public Posting: Please see the attached letter from the Los Angeles County Bar Association's Cannabis Section regarding this motion.



LOS ANGELES COUNTY BAR ASSOCIATION

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February 10, 2022

The Honorable City Council
City of Los Angeles
City Hall, Room 395
Los Angeles, California

**Re: Public Comments on Harris-Dawson – Price – de Leon – Ridley
Thomas – Raman Motion: [Council File No. 21-1083](#)**

Dear Honorable Councilmembers of the City of Los Angeles:

We write on behalf of the Los Angeles County Bar Association (LACBA) Cannabis Section in connection with the January 18, 2022 amendment to the Harris-Dawson-Price-De Leon-Ridley Thomas- Raman Motion (CF 21-1083) originally adopted on September 29, 2021 and subsequently re-introduced on January 18, 2022 relative to the implementation of cannabis licensing changes to increase speed and equity in the process (the “Motion”). The LACBA Cannabis Section supports and appreciates the City’s efforts to address these important concerns; but also wish to raise certain recommendations we have in the hopes of further assisting the council’s efforts with this Motion.

LACBA was founded in 1878 and is one of the largest voluntary metropolitan bar associations in the country, with more than 20,000 members. LACBA serves attorneys, judges, and other legal professionals through 27 sections, committees, networking events, live and on-demand CLE programs, and pro bono opportunities, as well as public service and informational resources.

LACBA’s Cannabis Section provides top-tier continuing legal education concerning the legal cannabis industry and its many complex issues, including: state and local regulatory compliance, corporate and tax structuring, banking, real estate, labor and employment, intellectual property, insurance, litigation, distribution, marketing, and ethics. The Cannabis Section serves as a source of expertise for other attorneys, government bodies, and the news media on issues regarding cannabis laws, regulations and developments, and serves as a forum for the consideration of public policies dealing with or regarding cannabis generally. Together with the City Attorney’s office, LACBA also launched Los Angeles’s first ever cannabis pro bono services program; which has already successfully assisted many applicants.

Within the City and throughout the State, the attorney members of the LACBA Cannabis Section represent clients in all aspects of the cannabis industry, including retailers, cultivators, processors, distributors, investment funds, and suppliers of ancillary products and services. Our clients seek legal solutions to the full range of rulemaking, regulatory, transactional, legislative, and litigation challenges they confront, and our members seek to provide clear advice about the varying contours and conflicts within the law that must be navigated and respected. Many of our members have also assisted with creating policy and ordinances in other California cities regarding the drafting and implementation of licensing ordinances and assisted other jurisdictions to assist with avoiding licensing delays and the unintended impact on city staff and the industry such delays cause.

As noted, we applaud the City Council's and the Los Angeles Department of Cannabis Regulation's ("DCR") efforts to ensure that the City's licensing program has the necessary guidance and resources to promptly and equitably process cannabis license applications within the City. We often see our clients – especially those located within the City – frustrated by long processing delays and an inability to commence operations in a reasonably timely fashion. We are hopeful that the Motion, if adopted, will assuage much of those concerns. As such, while we are in support of the Motion and the majority of the DCR recommendations contained in DCR's report dated January 27, 2022 (collectively, the "DCR Recommendations"), there are a few areas of concern that we would like to highlight and recommend alternatives for the City Council to consider. These recommendations are based upon our collective decades of experience representing cannabis businesses operating or seeking to operate in the City and State. These recommendations are as follows:

1. Adopt the DCR Recommendation to Delete LAMC 104.03(a)(2)(ii).

We support the DCR Recommendation to amend LAMC 104.03(a)(2) to remove existing language that prohibits an entity incorporated outside of the United States from having an ownership interest in a licensed entity. This language was expressly excluded from the approved DCR recommendations at the Planning and Land Use Management Committee (the "Committee") hearing and the Committee instructed DCR to prepare a report on the issue of foreign ownership.

LAMC 104.03(a)(2)(iii) focuses on where an entity incorporates, not the country of origin of the investors in said entity. Nothing in the existing regulations prevents a non-public foreign company or a foreign investor from incorporating in the U.S. and owning a license in the City. As written, this language only prohibits publicly traded companies from holding an ownership interest in a licensed entity as these are the only entities that cannot incorporate in the U.S. due to federal law. Instead of prohibiting foreign ownership, this restriction prohibits ownership by U.S. companies that have to go public outside of the U.S. because cannabis is still illegal under federal law. Keeping this language will serve no purpose other than to limit opportunities for U.S. companies and licensees who may want to work with publicly traded companies.

It is also important to note that because LAMC 104.03(a)(2)(iii) was not adopted until July 10, 2020 (i.e., long after DCR accepted applications for Phase 1, Phase 2 and Phase 3 Round 1), the failure to delete this language will impact multiple pre-existing licensees that are already operating in the City, paying millions of dollars in taxes, and employing hundreds

of City residents. If this DCR Recommendation is not adopted, we are concerned that there will be unintended consequences of the likelihood of increased lawsuits against the City based upon claims such as impermissible taking/eminent domain, violation of due process, and estoppel, amongst other concerns.

Based on the foregoing, we respectfully request that City Council adopt the DCR Recommendation to delete LAMC 104.03(a)(2)(ii).

2. Amend the Proposed Language of LAMC 104.20(c)(1)(iv).

While we are in support of the DCR Recommendation to add mechanisms such as annual "Equity Reports" for ensuring compliance with LAMC 104.20, we propose that Tier 3 Social Equity Applicants that are paying a "property support" fee pursuant to LAMC 104.20(c)(3)(i)(5), as opposed to incubating or otherwise assisting businesses and applicants in the Social Equity Program, be expressly exempt from the requirements under the newly proposed equity report pursuant to LAMC 104.20(c)(1)(iv).

3. Supermajority Voting Concerns in Social Equity Businesses

We have noted that DCR's proposed language for LAMC 104.20(c)(1)(iv) is inconsistent with the Motion and the current language of LAMC 104.20. Specifically, the DCR Recommendations propose that a new subdivision (vi) be added to LAMC 104.20(c)(1) to read as follows:

"(vi)...As part of the Equity Report, all Owners and Management Companies, if applicable, must execute an affidavit under penalty of perjury confirming compliance with all requirements set forth in Section 104.20, ***including those prohibiting supermajority voting requirements***, and acknowledging all requirements to disclose agreements about the management, control or direction of the entity, profits, and/or loans."

(Bold and italics added.)

The LACBA Policy Committee deeply appreciates the policy concerns of protecting social equity participants' "Equity Share" as that term is defined by LAMC 104.20(a)(2)(ii); particularly the goal to protect against predatory practices of creating contractual restrictions that would act to dilute or devalue such Equity Share. However, a blanket prohibition on supermajority voting rights is not the solution. There are many major decisions that a business faces (such as dissolution of the company, addition of new owners, sale of business, etc.) that all owners should have a say in deciding. Such rights can also be a crucial option for incentivizing outside investment – if outside investors are not allowed any voting control, the simple reality is that few sophisticated investors will be interested in participating in a business where their vote would not carry weight. That impact on outside investors could hinder or defeat the whole purpose of the social equity program: creating business opportunities for its qualified participants. A proper supermajority provision that protects and permits the SEP Applicant to exercise its Equity Share means that supermajority decisions cannot be made without the inclusion of the SEP Applicant's vote (for example: if supermajority is 65%, then without the SEP Applicant's 51% or 33 1/3% vote, such decision will likely fail). When used properly, a supermajority voting clause is not a predatory and often

vital company governance procedure. Entities should be allowed to privately determine what is appropriate voting standards on such issues provided actual pro rata ownership is the basis for such voting.

A blanket prohibition of supermajority provisions would create such unintended consequences. We are further concerned that the DCR does not have the resources or the legal ability to determine and adjudicate what exactly would be a predatory supermajority provision and a motion dedicated to increasing application processing times should not include a provision that will have the opposite effect of delaying application review and processing times. Further study and insight into this situation—including whether the City and/or DCR have the legal ability as government actors to place such restrictions on private contracts—should be conducted, and this Motion, which focuses on processing times and equity plan requirements, is not the forum for such discussion. Moving forward with this recommendation at this time could potentially expose the City and DCR to legal liability arising from such determinations. While it is an admirable goal to protect against agreements that use voting provisions under the guise of the word “supermajority” to dilute or diminish an SEP Applicant’s vote, we do not believe the DCR’s suggested response is the solution. Further discussion on this important issue should be held and a more nuanced approach to protecting against predatory voting practices should be considered.

Finally, LAMC 104.20 does not currently prohibit supermajority voting requirements. Additionally, neither the Motion nor the DCR Recommendations propose any changes to LAMC 104.20 which would otherwise prohibit supermajority voting requirements. Accordingly, to ensure consistency and avoid confusion and allow for further discussion and investigation into a more tailored solution, any ordinance language which may be construed, by implication or otherwise, to suggest that LAMC 104.20 prohibits supermajority voting requirements should be stricken.

4. Amend LAMC 104.03(e)(4) to Ensure Consistency With the Motion With Respect to Business Premises Expansion.

LAMC 104.03(e)(4)(i) currently limits expansion of a business premises to 50% of its existing footprint or 2,500 square feet, whichever is less. The Motion directed that LAMC 104.03(e) be amended to allow for any modifications or expansions of a business premises so long as the applicant has obtained State approval for such modification or expansion. However, the DCR Recommendations do not contain any proposed ordinance amendments to reflect any such changes to LAMC 104.03(e)(4). In order to ensure consistency with and effectuate the intent of the Motion, LAMC 104.03(e)(4) should be amended as directed by the Motion.

5. Amend LAMC 104.03(e) to Allow Applicants to Modify Contact Information Without the Need for DCR Approval or Modification Fees.

Currently, the DCR requires applicants to pay a \$542 modification fee and undergo the lengthy modification process in order to add, remove or modify basic contact information. This applies whenever an applicant seeks to update contact information for its business, its Neighborhood Liaison or its authorized person(s) of contact, such as its legal counsel. As a result, DCR will not speak to an applicant’s attorney unless and until (i) a modification request has been submitted, (ii) timely payment of the \$542 modification fee

has been reported by Office of Finance, and (iii) the modification request has been approved by DCR in accordance with LAMC 104.03(e). Due to this overly burdensome process, attorneys are often forced to wait over 4-6 weeks before being able to speak to DCR on behalf of their client.

We are unaware of any other regulatory agency or department within the State that requires a business to pay a fee in order to authorize that agency or department to speak with a business's legal counsel. It is already financially difficult enough for applicants to hire and pay attorneys. Requiring applicants – especially Social Equity applicants – to pay an additional \$542 fee to have their interests represented by legal counsel serves no purpose other than to hinder or delay an attorney's ability to communicate with the DCR and effectively advocate on behalf of his or her client. The DCR has suggested having attorneys submit applications through the attorney's Accela account, as opposed to the applicant's Accela account, to ensure automatic listing of a contact, but this does not resolve the issue for existing applications or any situations where an applicant later hires new counsel to assist it.

For the above reasons, we recommend that LAMC 104.03(e) be amended to include the following language:

“For purposes of this section, an Applicant or Licensee seeking to add, supplement or otherwise amend names and/or contact information for related contacts in connection with an Application or License shall not be considered a modification which would require either DCR's prior written approval under this Section 104.03(e) or require payment of a modification fee pursuant to Section 104.19. As used herein, the term “related contacts” shall not include Owners or Primary Personnel.”

6. Instruct the DCR to Develop a Professional Service Provider Communications System.

Similar to the point above, in most instances the DCR will not speak with an applicant's counsel and also is reluctant to discuss regulatory interpretations; including providing feedback regarding implementation and definitions or various regulations. Attorneys are tasked with guiding their clients' businesses and advising them how to smoothly navigate the application process and remain in compliance with City regulations. We propose the ordinance include a directive for the DCR to set up a professional service provider hotline and potentially an email account with 48-hour response times from the DCR to permit attorneys to speak directly with licensing staff while still allowing DCR staff to consider the issues and questions posed to permit attorneys to speak directly with licensing staff. This will help ensure that attorneys can receive real-time guidance on regulatory compliance issues which will help them guide applicants to properly submit information and thus decrease the DCR staff's workload and review time while also creating an avenue for professional and dispassionate resolution of application issues.

We thank the City Council for its consideration of these recommendations and look forward to the passing of the Motion as amended with the clarifications and additions referenced above.

Sincerely, 

Michelle Mabugat, LACBA Cannabis Section Policy Subcommittee Member
Bryan Bergman, LACBA Cannabis Section Policy Subcommittee Member
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Joshua Mandell, LACBA Cannabis Section, Chair

cc: Honorable Nury Martinez, City Council President
Honorable Marqueece Harris-Dawson, Chair, Planning and Land Use Committee
Honorable Paul Krekorian, Chair, Budget and Finance Committee
Honorable Kevin De León, Chair, Immigrant Affairs, Civil Rights and Equity Committee
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