

## Communication from Public

**Name:**

**Date Submitted:** 10/28/2022 12:12 PM

**Council File No:** 21-1083-S1

**Comments for Public Posting:** Please see attached letter submitted on behalf of the Los Angeles County Bar Association.



**LOS ANGELES COUNTY BAR ASSOCIATION**

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October 28, 2022

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

**Re: Council File: 21-1083 - Public Comment - DCR Report to Planning  
and Land Use Committee dated October 13, 2022**

To Whom It May Concern:

We write on behalf of the Los Angeles County Bar Association (“LACBA”) Cannabis Section concerning the Department of Cannabis Regulations (“DCR”) recommended amendments to Article 4, Chapter X of the Los Angeles Municipal Code (“LAMC”).

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 28 sections, committees, networking events, live and on-demand CLE programs, and pro bono opportunities, as well as public service and informational resources.

LACBA formed its Cannabis Section in 2019, which is one of the newest among LACBA’s many sections. LACBA formed its Cannabis Section out of an interest among its members and the foresight of its leadership. 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.

The attorney members of LACBA’s Cannabis Section represent clients throughout the State of California in all aspects of the cannabis industry, including retailers, cultivators, manufacturers, distributors, investment funds, landlords, brands, 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 various local municipalities throughout the State.

On behalf of LACBA's Cannabis Section, we wish to express our appreciation to DCR for its continued efforts to refine, streamline and strengthen the existing regulatory framework for the City's cannabis industry.

Our attorney members have reviewed the DCR Report to the Planning and Land Use Committee dated October 13, 2022 (the "Report"). While we are generally supportive of the proposals, we have concerns that some of the proposed changes require further clarification.

#### *Amendments to Further Support the Social Equity Program*

##### **Aggregation of Social Equity Interests**

Comment: DCR has proposed creating a new definition for "Indirect Owner" for the purpose of capturing individuals who only have an ownership interest in an Applicant or Licensee by virtue of ownership of another entity that has at least a 20% aggregate ownership stake or equity interest in an Owner of the Applicant or Licensee. We are generally supportive of new definitions that would streamline compliance with Social Equity Program requirements. Clarification would be appreciated, however, regarding whether "Owners" and "Indirect Owners" will be subject to the same requirements set forth in the LAMC in all respects.

##### **Entity Substitutions**

Comment: DCR has recommended the addition of language concerning the entity substitution process to LAMC Section 104.03(e) and clarification that a License can be transferred from one entity to a new entity. We support this recommendation as it will simplify the license transfer process and provide clear guidance to licensees. We suggest that DCR's proposed changes to LAMC Section 104.03(e) clarify that a licensee can transfer its Temporary Approval or a License to another entity.

##### **Successor in Interest as Natural Person**

Comment: DCR has recommended amending LAMC 104.20(a)(2)(ii)(4) to require SEIAs to identify a successor-in-interest who is a natural person(s). We suggest expanding the pool of eligible successors-in-interest to trusts benefiting otherwise qualifying successors in interest, or an entity owned by otherwise qualifying successors-in-interest. These changes would allow SEIAs to access commonplace estate planning tools without undermining the policy rationale for the original rule.

##### **Clarification of the Abandonment Process**

###### Comment:

DCR has proposed amending the Code to add provisions that establish that an application which is not associated with an active, compliant Business Premises address may be subject to abandonment. In crafting such rules, we suggest that the rules are drafted to account for reasonable cessations in business operations.

DCR has proposed amending the Code to prevent the removal or replacement of any Owner until a License is issued. Such a rule would be unduly restrictive and burdensome for Applicants, and is unnecessary under the current rules. There are many valid reasons why an Applicant would need to amend its Ownership disclosures—including, without limitation, to report a new direct or indirect investor. LAMC 104.03(k)(2)(ii)(A) already provides a useful mechanism to allot DCR additional processing time where an Applicant files a modification request before the Temporary Approval is issued. Accordingly, the proposed change would likely cause confusion amongst Applicants on whether such modification is allowable while the DCR processes an Application. We do not recommend adopting this proposed change and instead support the modification requests as allowed by LAMC 104.03(k)(2)(ii)(A).

DCR has proposed requiring Applicants to pass an Initial Inspection within six months of the date their Application is deemed filed, or the Temporary Approval record may be deemed abandoned. This requirement would impose an unreasonable timeline on applicants who are trying to navigate the LADBS process and obtain required building permits prior to commencing construction and a certificate of occupancy prior to commencing operations. Indeed, an unduly restrictive timeline would encourage applicants to circumvent the city's permitting process in fear of having their applications abandoned after investing substantial time and money into the licensing process and the business premises. If DCR believes that a time limit to obtain an initial inspection is necessary, DCR should allow applicants at least one (1) year to schedule an inspection. This is consistent with DCR's other deadlines for re-filing abandoned applications and using *scheduling* of an inspection as a trigger instead of passing the initial inspection eliminates the risk of an application being deemed abandoned due to minor deficiencies that can be cured after an initial inspection. Additionally, DCR needs to clarify when an Application is deemed filed as there are several stages in the initial application process.

### **Relocations for Licensees and/or Applicants**

*Comment:* DCR has proposed rules to facilitate Business Premises relocation at the request of Applicants and Licensees. In particular, DCR proposes to allow licensees to relocate to a different Community Plan Area (CPA) beginning on January 1, 2025 as long as that CPA has not reached Undue Concentration. While we support this proposed change, we are concerned that it will not be a viable solution for cultivation licensees as it is our understanding that every CPA has already reached Undue Concentration for cultivation.

### **Licensee Relocation after Temporary Approval**

*Comment:* DCR has proposed implementing a rule that a relocating Applicant or Licensee must, in practice, wind down operations of its original Business Premises within 180 days of the date that the proposed relocated Business Premises location is deemed eligible for further processing. Assuming the DCR was referring to the date that Pre-Application Review is complete, the proposed policy would create unnecessary confusion since the rules already provide that an Applicant has one (1) year following the date of completed Pre-Application Review to submit a Temporary Approval Application or annual License Application, or the Pre-Application Review record will be deemed abandoned. Furthermore, LAMC Section 104.03(e)(1)(v) already provides it that the "old" and "new" application cannot operate simultaneously and that the Applicant must request cancellation of its Temporary Approval or License at the "old" business premises location before Temporary Approval or License at the "new" business premises location may be issued.

### **Deletion of or Changes to Certain Definitions (Undue Concentration)**

**Comment:** In the Report, DCR has provided that “Persons not subject to a finding of Undue Concentration should be limited to: (1) an EMMD; (2) an Applicant eligible for processing under Section 104.08; (3) a SEIAs previously selected through an Application lottery pursuant to Section 104.06.1(c)(5) and deemed eligible for further processing pursuant to Section 104.03(a); and, (4) a refiled Application pursuant to Section 104.03(i) and 104.03(j).” We are supportive of the DCR’s efforts to implement its Undue Concentration rules in such a way that minimizes sunk costs for operators, but we request clarification as to how DCR would implement the proposed policy. Would DCR continue to include the persons named above in the overall tabulation of Applications, Temporary Approvals, and Licenses counted toward the Undue Concentration thresholds for a particular Community Plan Area? How will the DCR sort through incoming applications to determine the order of receipt? Are there any instances where a certain type of relocation Application is afforded a higher processing priority? Would a PCN application fall to the end of the “line” of applications in the queue? Last, while we recognize the substantial administrative and logistical challenges involved in carrying out local cannabis rules and regulations, we note that ***these rules only will be effective if prospective Applicants and current operators have access to reliable, near-real-time information regarding the number of accepted applications in any given Community Plan Area.*** DCR can accomplish this by ensuring that the already existing DCR Undue Concentration map is regularly updated. We expect Applicants will be interested in an actively maintained wait list for each Community Plan Area as many applications are not processed to completion.

### **Sunset Date for the Issuance of Temporary Approval**

#### **Comment:**

DCR has proposed establishing a sunset date in LAMC Section 104.06(d) for the City’s Temporary Approval process to coincide with the end of the State’s provisional licensing process. DCR also recommended setting the final date for DCR to accept new Temporary Approval applications from general Applicants and Social Equity Applicants the latter of December 31, 2022 or six months after the date the State stops accepting provisional license applications from each Applicant group. As DCR noted in its report, under State regulations, the last day for the DCC to accept provisional license applications for most general applicants passed on March 31, 2022; the equivalent deadline for Social Equity Applicants will elapse on March 31, 2023. Rather than overcomplicate what is already a dense battery of state-level deadlines and requirements, DCR should align its deadlines with those set by the state.

Furthermore, DCR should establish a process for transferring existing Temporary Approvals after the sunset date for the City’s Temporary Approval process in the event an existing licensee needs to relocate. DCR’s process should coincide with the state’s process of allowing a provisional licensee to move locations after the date provisional licenses can no longer be issued.

DCR also recommended setting corresponding expiration dates for the final date that Temporary Approvals may be renewed based on the State’s deadline. Consistent with our comments above, we also suggest that any new local rules hew as closely as possible to the state-level deadlines. In this instance, it seems clear that no Temporary Approval can remain in effect where the underlying DCC-issued license

has expired, so it does not seem helpful for the DCR to create a local mechanism for non-renewal so long as the state-level license is still active.

**Authorize Certain Applicants to Participate in the Annual Renewal Process**

Comment: DCR has proposed amending the term “local authorization” to “Local Compliance Underway,” and continuing to require LAMC section 104.08 records to renew their “Local Compliance Underway” status annually until such time a License is issued and the Licensee has the option to renew their License. Status of “local authorization” allowed non-retail Phase 2 applicants to commence operations upon obtaining a State license. Status of Local Compliance Underway does not allow an applicant to commence operations and was established to allow applicants to concurrently apply for a provisional State license while undergoing the local licensing process. An applicant who has not commenced operations should not be required to pay an annual renewal fee for status of Local Compliance Underway.

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Thank you for the opportunity to comment, and please do not hesitate to reach out to LACBA with any questions or concerns.

Sincerely,



Elizabeth Barket Kremser, LACBA Cannabis Section, Policy Subcommittee

Yelena Katchko, LACBA Cannabis Section, Policy Subcommittee

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