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RE: Proposed Ordinance CB15-0109

Dear Denver City Council:

As an attorney representing marijuana consumers, medical marijuana patients and caregivers, and businesses, I am writing to address some of my concerns regarding CB15-0109, a bill which would limit the total number of marijuana plants on any zone lot in the city to thirty-six (36) plants, except in a "licensed marijuana cultivation facility", as defined in the Ordinance.

This bill will be under final review on Monday March 23, 2015. However, because we fear the confusion and collateral damages that would occur should it be enacted, we ask you to please postpone your final vote until such a time that this bill may be rewritten, amended, and ask that you request a public hearing to allow the public the opportunity to comment. Concerns regarding CB15-0109 re many, including:

1. **The proposed ordinance deprives Denver citizens the right to cultivate marijuana as explicitly authorized under the Colorado Constitution, and will likely INCREASE the number of unlicensed and unsafe grows.**

The proposed ordinance seeks to limit cultivation to 36 plants on "any zone lot". The likely effect of such a broad prohibition would be caregivers and those growing for personal use to only have the option to cultivate in their home. Homes are not equipped to handle even the smallest of grows, and many Denver departments have voiced safety concerns about home growing. The ordinance leaves little alternative for a patient or adult consumer, and thus will likely INCREASE the number of cultivations throughout the city, taking them out of commercial areas, and bringing them back to residential areas. I cannot understand why the city would want to push marijuana growing back into homes and apartments.

The Colorado Constitution directly contemplates how recreational marijuana shall be cultivated, and may be a good guidepost for a reasoned accommodation. Adults twenty-one years of age or older may grow no more than six marijuana plants, "provided that the growing takes place in an enclosed, locked space, is not conducted openly or publicly and is not made available for sale", Colorado Constitution Article XVIII, Section 16, subsection 3(b). Instead of a blanket and broad prohibition, which will undoubtedly lead to unsafe conditions within communities, might I suggest the City reasonably limit the size of marijuana cultivations (either by plant count or square footage) and require that each person (caregiver or adult for personal use) should grow in

an "enclosed, locked space". "Enclosed and locked space" could be defined, and the city could require each non-residential "enclosed and locked space" to be permitted and inspected. [1]

2. **It is unclear <u>how or against whom</u> Denver law enforcement would enforce this proposed ordinance.**

The proposed ordinance is unclear how or against whom a violation of the plant limitation will be enforced, the grower or the landowner, or both? It also uses language about a person *"allowing"* **to cultivate or possess** more than 36 plants on "any zone lot". How would someone know they are "allowing" such activities to occur? Though there is confusing and meaningless language about "exceptions" (which in no way clarifies what is meant to be excepted), it is unclear whether Denver citizens, who are in compliance with the City's zoning code maximum plant count of 12 per residence, are in violation of this proposed ordinance because they all live in the same zone lot. <u>The law must be clear so that there is notice and uniformity in its application</u>. Combine the vague and confusing language of the ordinance with the overly broad definition of a "marijuana plant" and we undoubtedly have an ordinance that could be found void for its vagueness.

3. **The definition of "Marijuana Plant" is overly broad and re-prohibits possession of marijuana and bans industrial hemp production in Denver.**

The definition of "Marijuana Plant" contained in the ordinance is overly broad and as a result, CB 15-0109 essentially re-prohibits conduct the Constitution explicitly allows, including the possession of marijuana. Under the proposed ordinance, "Marijuana Plant" is defined as: "all parts of the plant of the genus cannabis, alive or dead", including stems, flowers, seeds, etc. The proposed ordinance not only limits the number of marijuana plants to the plants being cultivated, but would include *possession* of marijuana plants, (i.e seeds, leaves, flowers) stating "it shall be unlawful for any person…to *possess* or cultivate more than thirty-six (36) marijuana plants on *any* zone lot in the city" (*emphasis added*). It even goes a step further, making it a crime to "*allow*... to be possessed" more than 36 plants on any zone lot. This is also vague, overly broad, and undoubtedly re-criminalizes conduct the Colorado Constitution explicitly allows.

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[1] Furthermore, the non-licensed cultivation of medical marijuana is also contemplated by the Colorado Code of Regulations which states that "[a] primary care-giver shall not join together with another primary care-giver for the purpose of growing marijuana. Any marijuana grows by a care-giver shall be physically separate from grows by other primary care-givers and licensed growers or medical marijuana centers, and a primary care-giver shall not grow marijuana for another primary care-giver. If two or more care-givers reside in the same household and each grows marijuana for their registered patients, the marijuana grows must be maintained in such a way that the plants and/or ounces grown and or maintained by each primary care-giver are separately identified from any other primary caregivers plants and/or ounces." 5 CCR 1006-2, Regulation 9(H).

Notably, industrial hemp would also fall under the definition of "marijuana plant" under this ordinance, which means Denver will have, in effect, prohibited the cultivation of industrial hemp within its borders.

4. **Ironically, the language of the Ordinance makes possession of marijuana and clones by Licensed Recreational or Medical Marijuana stores "illegal" too.**

"Marijuana Cultivation facility" is defined only as a licensed Optional Premises Cultivation or a licensed Recreational Cultivation facility, as defined under the Colorado Medical and Retail Marijuana Codes. Because the Ordinance states: "it shall be unlawful for any person, alone or in concert with other persons, to possess or cultivate" (or allow to be possessed or cultivated)….. "more than 36 marijuana plants on any zone lot in the City, **except in a licensed marijuana cultivation facility**" (defined only as an OPC or RMCF), does this mean it is thus "unlawful" for a licensed medical or recreational marijuana store to sell a clone? And because "marijuana plant" is so broadly defined to include the seeds or the dead "leaves, stalks, or flowers" does this mean a licensed marijuana store cannot possess such either? While that may seem impractical or perhaps not what was intended, it is unfortunately how this poorly drafted ordinance reads.

5. **The proposed ordinance is a pretext for harassment of otherwise law-abiding citizens by law enforcement and City departments.**

Because one cannot reasonably fathom when they may have "allowed" someone to possess more than what the Ordinance allows, all Denver citizens are undoubtedly at risk from unreasonable searches and seizures of property, and unwarranted invasions of privacy by law enforcement and other City agencies.

6. **Lastly, the ordinance seeks to revoke, without notice or due process, the permits and property rights of compliant caregivers, landlords, and responsible adult consumers. Remember, many property owners have already been permitted and inspected.**

Sadly, the purpose of this proposed ordinance is to address the health and public safety concerns of these operations and to ensure that these operations comply with "city building, electrical, fire, and environmental safety regulations", but it does nothing of the sort. It is simply an overbroad ordinance, which seeks to re-criminalize activities that the voters of Denver and the Colorado Constitution sought to allow.

Limiting the number of plants that may be grown on "any zone lot" does not address issues of safety or diversion. These issues may still exist even in smaller grow operations. Should the City seek to decrease the number of city building, electrical, fire and environmental safety violations, then the City should enact legislation that focuses on these particular issues rather than imposing a blanket prohibition.

Creating a safe and healthy environment in which caregivers may grow marijuana for their patients is a valid concern and one that should be addressed. However, CB 15-0109 is the wrong way to go about it. I urge the City Council to postpone the final reading of CB 15-0109 and ask that the City Council at least allow for public comment.

Sincerely,

Rachel K. Gillette, Attorney