



MEMORANDUM

DATE: October 23, 2013

TO: Chair Kasner and Members of the East Bellevue Community Council

FROM: Catherine A. Drews, Legal Planner, 425-452-6134

SUBJECT: Public hearing on Ordinance No. 6133 1-B, Implementing a City-Wide Emergency Interim Zoning Ordinance Regulating Recreational Marijuana Producers, Processors, and Retailers.

INTRODUCTION

On November 5, the East Bellevue Community Council (EBCC) will hold a public hearing to consider the interim zoning ordinance (Ordinance No. 6133 1-B) regulating recreational marijuana producers, processors, and retail uses. The interim zoning ordinance limits location of recreational marijuana uses and prohibits the uses in residential land use districts. The interim official ordinance is limited to periods of up to six months, but may be renewed for additional six-month periods provided that Council holds a public hearing within 60-days of each subsequent extension.

The Washington State Liquor Control Board (LCB) has allocated four retail marijuana licenses for Bellevue. Unlike the retail sale of marijuana, its production and processing are not dealt with on an allocation basis. The City Council adopted Ordinance No. 6133 on October 21, 2013. A copy of Ordinance No. 6133 1-B is included as Attachment 1 to this memorandum. The ordinance is not effective within the EBCC area until the EBCC votes to approve the ordinance or the EBCC fails to disapprove the ordinance within 60 days following its enactment by the City Council. LUC 20.35.450.A.

The LCB adopted rules regulating recreational marijuana on October 16.¹ Under its rules, the LCB will begin accepting applications for licenses for recreational marijuana producers, processors, and retailers on November 18. Based on this schedule, there is insufficient time for the City to pursue enactment of permanent zoning regulations using the process generally employed under the Land Use Code (LUC) of delegating consideration of proposed zoning to the Planning Commission for a public hearing and subsequent recommendation to Council. The Growth Management Act (GMA) allows cities to adopt emergency interim zoning ordinances to address such situations. Consequently, to ensure the City has considered locating these uses before the November 18 license deadline, an emergency interim zoning ordinance as allowed under the GMA is necessary. As required under the GMA, the City Council will hold a public hearing in early December.

¹ Chapter 314-55 Washington Administrative Code (2013),

DISCUSSION

During the July 15 City Council meeting, the Council directed staff to develop recommendations for an interim zoning regulation implementing land use regulations for recreational marijuana producers, processors, and retailers for Council's consideration in early September. In response to the LCB's announcement that it would file revised rules in early September,² Council consideration of staff recommendations was rescheduled for October 7.

On October 7, 2013, staff presented recommendations to the Council regarding appropriate land use districts to site recreational marijuana producers, processors, and retailers. Council directed staff to proceed conservatively with the emergency ordinance with the goal of avoiding the creation of nonconforming uses that could be contrary to Planning Commission recommendations on permanent regulations for recreational marijuana uses. Council discussion and feedback provided during the October 7 Study Session prompted staff to develop performance requirements beyond those provided in the LCB's proposed rules. The performance standards are intended to protect neighborhoods and adjoining uses from the impacts of recreational marijuana production, processing and retail outlets, during the interim period when the emergency ordinance is in effect. Of great concern to Council is the odor associated with marijuana and its impact on adjoining properties.

Land Use Districts for Recreational Marijuana Uses

The following limitations apply to all recreational marijuana uses:

1. A marijuana producer, retailer, or processor, shall not be located within 1,000 feet of the following uses or any use included in Chapter 314-55 WAC now or as hereafter amended:
 - a. Elementary or secondary school;
 - b. Playgrounds;
 - c. Recreation center or facility;
 - d. Child care centers;
 - e. Public parks;
 - f. Public transit centers;
 - g. Libraries;
 - h. Any game arcade or
 - i. Any medical cannabis collective garden.
2. No marijuana producer, processor, or retailer shall be allowed in single family and multi-family land use districts (R-1 – R-30).
3. No marijuana retailer is allowed as a subordinate or accessory use in any land use district.

² The Washington State Liquor Control Board filed revised rules on September 4, 2013 (Supplemental CR 102). http://www.liq.wa.gov/publications/Marijuana/SEPA/SEPA_Checklist_Addendum.pdf

4. Marijuana shall be grown in a structure. Outdoor cultivation is prohibited.

Ordinance No. 6133 B-1 limits recreational marijuana uses to the following land use districts, and requires such uses to comply with all applicable provisions for the underlying land use district:

Retail outlets may only be located in following land use districts:

1. General Commercial (GC);
2. Community Business (CB);
3. Factoria Land Use District 1 (F1);
4. Downtown Office District (DNTN O-1);
5. Downtown Office District (DNTN O-2)
6. Downtown Mixed Use District (DNTN-MU);
7. Downtown Old Bellevue Business District (DNTN-OB);
8. Downtown Office and Limited Business District (DNTN-OLB)
9. Bel-Red Office Residential and Nodes (BR-OR/OR1/OR2)
10. Bel-Red Residential Commercial and Nodes (BR-RC-1, RC-2, RC-3);
11. Bel-Red General Commercial (BR-GC);
12. Bel-Red Commercial Residential (BR-CR);
13. Bel-Red Office Residential Transition (BR-ORT).

Marijuana producers and processors may be located only in the Light Industrial district.

Other Provisions

The interim zoning ordinance also contains the following provisions in response to Council's feedback:

- Prohibits retail outlets in residential and Neighborhood Business (NB) land use districts to ameliorate potential impacts on residential uses and avoid the establishment of uses that could conflict with recommendations from the Planning Commission further limiting zoning under permanent regulations.
- Consistent with the requirements for collective gardens, useable cannabis and cash must be stored in a locked container when the business is closed.
- Requires ventilation so that odors from marijuana plants and products cannot be smelled on adjoining properties.
- Prohibits growing marijuana outdoors.
- Requires producers and processors to provide for a secure and screened loading dock when transferring marijuana and marijuana-related products for shipment or delivery. The objective is to provide visual separation and address odor issues.
- Includes a 1,000 foot separation requirement from medical cannabis collective gardens.

- Requires retail licensees to comply with the LCB signage rules and undergo City design review where required. Marijuana producers and processors are required to comply with the City's sign code.

Federal Response to State Regulation of Marijuana

On August 29, 2013, the United States Department of Justice, Office of the Attorney General, ("DOJ") released updated guidance regarding marijuana enforcement. According to DOJ, the guidance was updated in response to state ballot initiatives, such as I-502, legalizing the possession of small amounts of marijuana and regulating the production, processing, and sale of marijuana. The guidance reiterates that DOJ is committed to using its limited investigative and prosecutorial resources to address the most significant threats to public safety related to marijuana crimes in "the most effective, consistent, and rational way." The guidance directs federal prosecutors to review potential marijuana-related charges on a case-by-case basis and weigh all information and evidence, including whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A primary question in all cases is if the conduct at issue implicates one or more of the eight stated federal enforcement priorities set forth in the guidance. The DOJ appears to not differentiate application of the guidance between medical cannabis and recreational marijuana. A copy of the DOJ's August 29 guidance is included with this memorandum as Attachment B.

Next Steps:

Council will hold a public hearing on the interim zoning control in early December. At the public hearing, staff will present proposed planning principles for Council consideration as Council directed on October 7. The Council-approved planning principles will guide the Planning Commission and staff in developing permanent recreational marijuana regulations.

ACTION REQUESTED OF THE EAST BELLEVUE COMMUNITY COUNCIL

Following review of Ordinance No. 6133, vote to approve the ordinance so it will become effective within the jurisdiction of the EBCC. Staff will be present at the November 5, 2013 hearing to answer any questions you may have.

Please contact me at 425-452-6134 or at cdrews@bellevuewa.gov if you have any questions before the November 5, 2013 meeting.

Attachment A: Ordinance No. 6133 B-1
Attachment B: Memorandum for all United States Attorneys, from James M. Cole, Deputy Attorney General, Subject: Guidance Regarding Marijuana Enforcement, August 29, 2013.

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6133 B-1

AN ORDINANCE of the City of Bellevue, Washington, adopting interim official zoning controls regarding recreational marijuana producers, processors and retailers for a period of six months, to be in effect while the City drafts, considers, holds hearings and adopts permanent zoning regulations, to be effective immediately upon adoption, scheduling a hearing on the maintenance of the interim zoning ordinance and declaring an emergency.

WHEREAS, Washington votes approved Initiative 502 (I-502) on November 6, 2012. In relevant part, I-502 legalized the possession of small amounts of marijuana and marijuana-related products for persons age 21 and older, and directed the Washington State Liquor Control Board (LCB) to develop and implement rules to regulate and tax recreational marijuana producers, processors, and retailers by December 31, 2013; and

WHEREAS, the LCB re-filed its proposed rules regulating recreational marijuana uses on September 4, 2013, and accepted the proposed rules on October 16; and

WHEREAS, the LCB rules become effective on November 16, 2013, and the LCB will begin accepting license applications for recreational marijuana beginning November 18, 2013. Applicants will be required to identify a business location with their application submittals; and

WHEREAS, the LCB allocated four recreational marijuana retail licenses for the City of Bellevue, and there are no limits on the number of recreational marijuana producer and processor licenses to be issued; and

WHEREAS, the City of Bellevue Land Use Code (LUC) prohibits all recreational marijuana producers, processors, and retailers as uses in the City of Bellevue;

WHEREAS, the City Council deems it to be in the public interest to establish interim regulations advising the public where recreational marijuana producers, processors, and retail uses may be located in the City of Bellevue before the application deadline established by the LCB for state licensing for such uses; and

WHEREAS, the establishment or licensing of recreational marijuana uses may allow new uses that are incompatible with nearby existing land uses and lead to erosion of community character and harmony; and

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WHEREAS, marijuana is still classified as a schedule I controlled substance under federal law and crimes related to marijuana remain subject to prosecution under federal law; and

WHEREAS, On August 29, 2013, the United States Department of Justice, Office of the Attorney General, ("DOJ") released updated guidance regarding marijuana enforcement. The guidance reiterates that DOJ is committed to using its limited investigative and prosecutorial resources to address the most significant threats to public safety related to marijuana crimes in "the most effective, consistent, and rational way." The guidance directs federal prosecutors to review potential marijuana-related charges on a case-by-case basis and weigh all information and evidence, including whether the operation is demonstrably in compliance with a strong and effective state regulatory system and if the conduct at issue implicates one or more of the eight stated federal enforcement priorities. The DOJ appears to not differentiate application of the guidance between medical cannabis and recreational marijuana; and

WHEREAS, pursuant to RCW 36.70A.390 a public hearing must be held within 60 days of the passage of this ordinance; and

WHEREAS, establishment of interim regulations of six months in duration for establishment of recreational marijuana producers, processors, and retailers will prevent substantial change until the land areas and the text of development standards applicable to recreational marijuana uses is reviewed, and any needed revisions are made to city codes; and

WHEREAS, the potential adverse impacts upon the public safety, welfare, and peace, as outlined herein, justify the declaration of an emergency; now therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES
ORDAIN AS FOLLOWS:

Section 1. Interim Regulation Adopted. Recreational marijuana producers, processors, and retailers shall comply with the following provisions:

- A. Definitions. For the purposes of this interim regulation only, the definitions provided below and the definitions codified at WAC 314-55-010, now provided or as hereafter amended, shall apply to the provisions of this ordinance.
1. "Director" means the Director of the City of Bellevue's Development Services Department or his designee.
 2. "Marijuana" or "marihuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of

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the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

3. "Marijuana processor" means a person licensed by the state liquor control board to process marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sell useable marijuana and marijuana-infused products at wholesale to marijuana retailers.
4. "Marijuana producer" means a person licensed by the state liquor control board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.
5. "Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products do not include useable marijuana.
6. "Marijuana retailer" means a person licensed by the state liquor control board to sell useable marijuana and marijuana-infused products in a retail outlet.
7. "Retail outlet" means a location licensed by the state liquor control board for the retail sale of useable marijuana and marijuana-infused products.
8. "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include marijuana-infused products.

B. Chapter 314-55 WAC, now or as hereafter amended, shall apply in addition to the provisions of this ordinance.

C. Limitations on Uses. The following limitations shall apply to all marijuana producers, processors, and retailers, unless stated otherwise:

1. A marijuana producer, retailer, or processor, shall not be located within 1,000 feet of the following uses or any use included in Chapter 314-55 WAC now or as hereafter amended:
 - a. Elementary or secondary school;
 - b. Playgrounds;
 - c. Recreation center or facility;
 - d. Child care centers;
 - e. Public parks;
 - f. Public transit centers;

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- g. Libraries;
 - h. Any game arcade or
 - i. Any medical cannabis collective garden.
2. No marijuana producer, processor, or retailer shall be allowed in single family and multi-family land use districts (R-1 – R-30).
 3. No marijuana retailer is allowed as a subordinate or accessory use in any land use district.
 4. Marijuana shall be grown in a structure. Outdoor cultivation is prohibited.
- D. Marijuana Retail Outlets. For the purposes of this interim ordinance, marijuana retail outlets are considered within the land use classification of "Miscellaneous Retail Trade," and shall comply with all corresponding notes in the use charts for the underlying land use district where the retail outlet is located. Retail outlets shall also comply with the applicable requirements of Chapter 20.25 LUC, Special and Overlay Districts. Marijuana odor shall be contained within the retail outlet so that odor from the marijuana cannot be detected by a person with a normal sense of smell from any abutting use or property. If marijuana odor can be smelled from any abutting use or property, the marijuana retailer shall be required to implement measures, including but not limited to, the installation of the ventilation equipment necessary to contain the odor. Retail outlets may only be located in following land use districts:
1. General Commercial (GC);
 2. Community Business (CB);
 3. Factoria Land Use District 1 (F1);
 4. Downtown Office District (DNTN O-1);
 5. Downtown Office District (DNTN O-2)
 6. Downtown Mixed Use District (DNTN-MU);
 7. Downtown Old Bellevue Business District (DNTN-OB);
 8. Downtown Office and Limited Business District (DNTN-OLB)
 9. Bel-Red Office Residential and Nodes (BR-OR/OR1/OR2)
 10. Bel-Red Residential Commercial and Nodes (BR-RC-1, RC-2, RC-3);
 11. Bel-Red General Commercial (BR-GC);
 12. Bel-Red Commercial Residential (BR-CR);
 13. Bel-Red Office Residential Transition (BR-ORT).
- E. Signage for Marijuana Retail Outlets. Retail outlets shall comply with WAC 314-55-155(1), now or as hereafter amended. Additionally, signage for retail outlets must undergo design review in those land use districts requiring such review in City of Bellevue Sign Code, Chapter 22B BCC.
- F. Marijuana Producers and Processors. For the purposes of this interim ordinance, marijuana producers are considered within the land use

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classification "Agricultural Production of Food and Fiber Crops," and marijuana processors are considered within the land use classification "Agricultural production." Marijuana processors and producers shall comply with all corresponding notes in the use charts for the Light Industrial land use district. Marijuana producers and processors shall also comply with the applicable requirements of Chapter 20.25 LUC, Special and Overlay Districts. Marijuana production and processing facilities are allowed only in the Light Industrial land use district and shall comply with the following provisions:

1. Marijuana production and processing facilities shall be ventilated so that the odor from the marijuana cannot be detected by a person with a normal sense of smell from any adjoining use or property;
 2. Signage for marijuana producers and processors shall comply with the City of Bellevue Sign Code, Chapter 22B of the Bellevue City Code.
 3. A screened and secured loading dock, approved by the director shall be required. The objective of this requirement is to provide a secure, visual screen from the public right of way and adjoining properties, and prevent the escape of orders when delivering or transferring marijuana, useable marijuana, and marijuana-infused products.
- G. Security. In addition to the security requirements in Chapter 315-55 WAC, during non-business hours, all recreational marijuana producers, processors, and retailers shall store all useable marijuana, marijuana-infused product, and cash in a safe or in a substantially constructed and locked cabinet. The safe or cabinet shall be incorporated into the building structure or securely attached thereto. For useable marijuana products that must be kept refrigerated or frozen, these products may be stored in a locked refrigerator or freezer container in a manner approved by the Director, provided the container is affixed to the building structure.

Section 3. Duration and Scope of Interim Regulations. The interim regulations imposed by this ordinance shall become effective on the date herein, and shall continue in effect for an initial period of sixty (60) days, unless repealed, extended, or modified by the City Council after subsequent public hearings and the entry of additional findings of fact pursuant to RCW 35A.63.220.

Section 4. Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council shall hold a public hearing on this ordinance within sixty (60) days of its adoption, or no later than December 20, 2013, so as to hear and consider public comment and testimony regarding this ordinance. Following such hearing, the City Council may adopt additional findings of fact, and may extend the interim regulations for a period of up to six (6) months. If a period of more than six months is required to complete consideration of any changes to city codes, the Council may adopt additional extensions after any required public hearing, pursuant to RCW 35A.63.220 and RCW 36.70A.390.

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Section 5. Permanent Regulations. The City Council hereby directs the staff to develop for its review and adoption permanent regulations to adopt the interim regulations adopted herein, and to transmit this ordinance to the Washington State Department of Commerce as required by law.

Section 6. Severability. Should any provision of this ordinance or its application to any person or circumstance be held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances shall not be affected.

Section 7. Public Emergency. The City Council hereby finds and declares that a public emergency exists and that this ordinance is a public emergency ordinance necessary for the protection of the public health and safety and should, therefore, take effect upon adoption. The facts upon which this public emergency is based include all recitals set out in this ordinance as well as those facts contained in the legislative record.

Section 8. Effective Date. In accordance with RCW 35A.13.190, this ordinance, as a public emergency ordinance, shall take effect and be in force immediately upon adoption by a majority plus one of the City Council.

Passed by the City Council this 21st day of October, 2013 and signed in authentication of its passage this 21st day of October, 2013.

(SEAL)



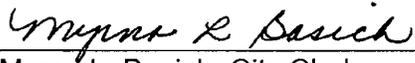
Conrad Lee, Mayor

Approved as to form: ..



Lori M. Riordan, City Attorney

Attest:



Myrna L. Basich, City Clerk

Published October 24, 2013,



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole 
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.¹

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

¹ These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.

must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman
Acting Assistant Attorney General, Criminal Division

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