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COUNTY OF LOS ANGELES DEPARTMENT OF CONSUMER AND BUSINESS AFFAIRS

Members of the Board

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Mark Ridley-Thomas
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"To Enrich Lives Through Effective and Caring Service"

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To: Supervisor Sheila Kuehl, Chair
Supervisor Hilda L. Solis
Supervisor Mark Ridley-Thomas
Supervisor Janice Hahn
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From: Joseph M. Nicchitta
Interim Director of Consumer and Business Affairs

REPORT AND ANALYSIS ON OPTIONS TO IMPLEMENT A POLICY FRAMEWORK FOR REGULATING COMMERCIAL MEDICAL AND ADULT-USE CANNABIS IN UNINCORPORATED AREAS (ITEM NOS. 3 AND 9, AGENDA OF FEBRUARY 7, 2017, and ITEM NO. 2, AGENDA OF NOVEMBER 7, 2017)

On February 7, 2017, your Board directed the Chief Executive Office (CEO) and its Office of Cannabis Management (OCM)¹ to coordinate with multiple other departments to prepare regulations to allow and license medical and adult-use cannabis businesses in unincorporated areas, including cultivation, distribution, testing, manufacturing, and retail.

Pursuant to your Board's directives on February 7, 2017, the OCM conducted extensive outreach to solicit feedback on stakeholder desires and concerns for commercial cannabis regulation. Outreach efforts included the convening of the Los Angeles County Advisory Working Group on Cannabis Regulation (Advisory Working Group), which consisted of 17 representative stakeholders such as drug policy experts, university professors, public health professionals, local elected officials, and community members; approximately 60 presentations to community groups, town councils, and County commissions; and 20 public workshops (listening sessions) throughout the County to solicit feedback from community members. The OCM published reports documenting its outreach efforts in October 2017. The reports are available online at <http://cannabis.lacounty.gov/documents-and-reports>.

On November 7, 2017, your Board directed the CEO to work with County Counsel and the Department of Public Health and its Center for Health Equity to develop a health equity model for commercial cannabis permitting, including a discretionary hearing process for

¹ As of May 2018, the OCM reports to the Interim Director of the Department of Consumer and Business Affairs.

cannabis retailers and phased-in permitting, among other things.

Currently, commercial cannabis activities are prohibited in unincorporated areas. This report outlines three options your Board can take with respect to commercial cannabis in unincorporated areas:

1. Allow and regulate all types of medical and adult-use commercial cannabis activity in unincorporated areas. This report outlines the components of a policy framework that would establish rules and regulations for permitting and regulating commercial cannabis activities. This framework is responsive to your Board's directives and incorporates input received by OCM during public outreach and stakeholder engagement.
2. Allow and regulate commercial cannabis but limit the types of businesses that can locate in unincorporated areas (e.g., allow commercial medical cannabis activities only, and limit business types to retail only).
3. Keep the prohibition on commercial cannabis in unincorporated areas in place.

The following documents are attached to this report:

- **Attachment I: Analysis of Policy Framework Components.** Attachment I contains a detailed analysis of each of the components of the policy framework described below. For your Board's convenience, this report describes each component in summary form.
- **Attachment II: Advisory Working Group Recommendations.** The OCM convened the Advisory Working Group, a group of experts and stakeholders, in June 2017 to provide advisory direction on cannabis regulations in unincorporated areas. The Advisory Working Group's 64 consensus-based recommendations are provided in Attachment II.
- **Attachment III: Maps.** Attachment III contains maps showing where cannabis businesses would be allowed to locate if the Board adopts this policy framework. These maps are available online at <http://planning.lacounty.gov/cannabis/maps>.
- **Attachment IV: Report on Cannabis Tax Consideration.** In November 2016, the OCM provided your Board with a report on potential cannabis tax revenues should the County adopt a local gross receipts tax on commercial cannabis activities. The tax revenue analysis has been revised and updated to reflect current laws, tax rates adopted by voters in Los Angeles County cities, and the number and types of cannabis businesses that would be permitted pursuant to the policy framework presented in Option 1, below.

OPTION 1: ALLOW AND REGULATE ALL TYPES OF MEDICAL AND ADULT-USE COMMERCIAL CANNABIS ACTIVITIES

Regulatory Framework

Should your Board decide to allow and regulate all types of medical and adult-use commercial cannabis activities, your Board may put into place a regulatory structure that promotes health equity, ensures the health and safety of consumers and people living and working nearby, prevents cannabis businesses from causing blight or becoming nuisances in their communities, takes residents' concerns into account, and does not promote commercial cannabis activities at the expense of other considerations.

The regulatory framework below consists of eight components which implement your Board's directives in February and November 2017, and reflect the recommendations provided by the Advisory Working Group, input received from the public, and close consultation with affected County departments, including but not limited to CEO, County Counsel, the District Attorney, the Sheriff, the Treasurer and Tax Collector, and the Departments of Agricultural Commissioner/Weights and Measures, Fire, Public Health, Public Works, and Regional Planning.

The eight components include:

- **Framework Component No. 1:** Establish a new cannabis commission to conduct public hearings on cannabis business applications, advise the Board of Supervisors on the effectiveness of cannabis regulations in unincorporated areas, and recommend cannabis-related policy or ordinance changes to the Board of Supervisors; and include the Treasurer and Tax Collector, the County Agricultural Commissioner, the Fire Chief, the Health Officer, the Director of the Center for Health Equity, and the Director of Regional Planning, or their designees, as advisory, non-voting members of the cannabis commission;
- **Framework Component No. 2:** Complete a health impact assessment on the health equity impacts of permitting cannabis businesses in unincorporated areas; identify data points and establish a system to monitor community health information as cannabis permitting is implemented, using the health impact assessment as the baseline for relevant health-related conditions and outcomes in unincorporated areas; and report in writing to the Board upon completion of the health impact assessment with recommendations to incorporate health equity into cannabis regulations, and create a grant program to serve high-needs areas identified by the health impact assessment, as directed by your Board on November 7, 2017;
- **Framework Component No. 3:** Prepare ordinance amendments to create permits to allow cannabis stores, delivery services, indoor cultivation, manufacturing, distribution, and testing laboratories in unincorporated areas; outdoor cultivation will remain prohibited;

- **Framework Component No. 4:** Prepare ordinance amendments to limit the availability of cannabis permits in the first two years to 25 cannabis store permits, with no more than five store permits per supervisorial district and no more than two cannabis store permits in any one unincorporated community, 25 cannabis delivery permits, with no more than five delivery permits per supervisorial district, 10 cultivation permits, 10 manufacturing permits, 10 distribution permits, and 10 testing laboratory permits;
- **Framework Component No. 5:** Prepare an ordinance amending Title 22 of the County Code (Zoning Code) to allow cannabis stores, delivery, and testing laboratories in heavy commercial and manufacturing zones, and allow all other commercial cannabis businesses in manufacturing zones only; and require cannabis stores to be located not less than 1,000 feet from schools (K-12), 600 feet from day cares (including preschools), public parks, public libraries, licensed drug and alcohol treatment centers, and other cannabis stores, and 300 feet from off-site alcohol sales, such as liquor stores; and requires all other commercial cannabis businesses to be located not less than 1,000 feet from schools (K-12) and 600 feet from day cares (including preschools), public parks, and public libraries;
- **Framework Component No. 6:** Convene a culturally competent public workshop to solicit stakeholder feedback about who should qualify for benefits under a program to reduce barriers to entry to cannabis industry ownership and employment for those living in communities disproportionately impacted by the “war on drugs,” and what types of benefits should be offered under such a program, and report back in writing to your Board with recommendations for the program;
- **Framework Component No. 7:** Prepare necessary ordinances to create a 15-member, Board-appointed cannabis advisory review panel, which will be advisory to the Board and the cannabis commission, and will periodically issue public reports evaluating the effectiveness of the County’s cannabis equity initiatives, the impacts of cannabis legalization on health equity and County neighborhoods, and equity in the civil and criminal enforcement of cannabis laws; and
- **Framework Component No. 8:** Prepare an ordinance amending Title 7 of the County Code (Business Licenses) to license and regulate, from a business license perspective, commercial medical and adult-use cannabis businesses.

A detailed analysis of each framework component is included in Attachment I. Should your Board decide to adopt the regulatory framework described above, it is estimated that drafting appropriate ordinances and creating the necessary County infrastructure to implement regulations could be accomplished in approximately 180 days.

Ensuring Equity

A primary goal of the regulatory framework described above is to ensure that cannabis regulations do not result in disproportionate impacts in any one community, or contribute to a decline in health outcomes. However, the diverse geography and demographics across Supervisorial Districts and unincorporated communities can make it difficult to achieve equity through traditional tools like zoning and buffering alone. For example, some unincorporated communities have more industrial zoning or contain major commercial corridors, which tend to attract uses that are more likely to affect health and social outcomes in a negative way, such as liquor stores and polluting industries. As mandatory buffer distances from schools and other common uses increase, available zoning tends to concentrate in already-impacted industrial and industrial-adjacent neighborhoods, or in areas like the Antelope Valley where properties tend to be larger and spread apart.

For this reason, the regulatory framework described above includes the preparation of a health impact assessment by the Department of Public Health, in collaboration with OCM (Framework Component No. 2). A health impact assessment is a systematic process for assessing the potential impacts of pending policy, program or project decisions outside of the traditional health sector on the health of populations and the distribution of those effects within populations. Health impact assessments inform decision-makers by providing recommendations on ways to augment the potential health benefits and/or mitigate the potential harms of proposed programs, projects or policies using a broad conception of health that includes both health outcomes (e.g., diseases, disabilities, conditions) and the social determinants of health (e.g., housing, income, social connections).

Among other things, the health impact assessment for cannabis regulation would offer multipronged recommendations for incorporating equity considerations into the County's cannabis policies in unincorporated areas, and can guide the decisions of a cannabis commission on a particular cannabis business application. Recommendations could include, for example, limiting the availability of cannabis stores in some communities, or implementing creative zoning solutions to address potentially disparate outcomes, which could result in changes to the zoning rules outlined above (Framework Component No. 5).

The Department of Public Health has already commenced preparation of the health impact assessment, and it is expected that the health impact assessment will yield action-items and recommendations by late 2018. Should your Board decide to allow and regulate commercial cannabis businesses in unincorporated areas, the health impact assessment's recommendations could be implemented as part of the ordinances prepared to implement the regulatory framework. Ongoing monitoring of development patterns will also be necessary, and adjustments proposed to the regulatory system, to ensure equity on an ongoing basis.

Taxing Commercial Cannabis

State law authorizes counties to “impose a tax on the privilege of cultivating, manufacturing, producing, processing, preparing, storing, providing, donating, selling, or distributing cannabis or cannabis products” by licensed commercial cannabis businesses. (Revenue and Taxation Code section 34021.5(a)(1)). The tax can be imposed countywide or in the unincorporated areas only, and can be a general tax, which must be approved by more than 50 percent of voters, or a special tax, which must be approved by more than two-thirds of voters. General tax revenues can be used for any governmental purpose. Special tax revenues must be used for the purposes specified in the ordinance approved by the voters.

During its stakeholder engagement efforts, the OCM received consistent feedback that commercial cannabis activities should be taxed locally and revenue used for specific purposes. Should your Board decide to implement the regulatory framework described in this report, your Board may also direct County Counsel, in collaboration with the CEO and OCM, to prepare a ballot measure and ordinance that implements the recommended commercial cannabis tax rates identified in the OCM's cannabis tax revenue report (Attachment IV), which could result in revenues of approximately \$18.3 million in year one of permitting, increasing to \$33.9 million after five years. A detailed analysis of the tax projections is contained in Attachments I and IV.

The OCM also received stakeholder recommendations and community feedback about how the County should spend cannabis tax revenue. In connection with any ballot measure and ordinance for a general or special tax, your Board can direct the OCM to consult with CEO, the Department of Public Health and other appropriate County departments, to provide your Board with recommendations for a spending plan for cannabis tax revenues that is informed by stakeholder recommendations and community feedback received by the OCM, and takes into account projected revenues, which could vary substantially depending on the level of regulated commercial cannabis activity your Board may decide to approve.

The next opportunity to place a measure on the ballot is November 2018, and the last day your Board may act to place a ballot measure on the ballot for November 2018 is August 10, 2018.

Budget and Fiscal Impact

The CEO would need to work with all affected departments to determine the budget impacts of the cannabis regulatory framework and report back in writing to your Board on such impacts, including but not limited to new staff, software and/or systems needs, and other necessary resources. However, your Board has already provided funding and resources to most affected departments in response to changing cannabis laws at the State level and, in consultation with the CEO, the OCM has preliminarily concluded that most departments would not need additional resources to implement the above regulatory framework, with the following exceptions:

- If your Board decides to allow and regulate commercial cannabis in unincorporated areas, the Department of Consumer and Business Affairs may require additional positions and resources, such as case management software, to build out a cannabis management unit to staff the cannabis commission, review applications, and enforce the cannabis regulatory framework; and
- The Treasurer and Tax Collector may need to upgrade case processing and tracking software. Acquisition and implementation costs are estimated at \$250,000 to \$300,000. Ongoing maintenance and service costs are expected to be cost recovered through licensing fees.

If your Board decides to allow and regulate commercial cannabis, the CEO will work with all affected departments to provide your Board with detailed budgetary impacts in the Supplemental phase of the Fiscal Year 2018-19 Budget in September 2018.

In addition, implementation of the cannabis regulatory framework and voter approval of the excise (gross receipts) tax rates identified in Attachment IV is expected to generate approximately \$18.3 million in 2019, increasing to \$33.9 million by 2023.

The County is expected to incur additional costs associated with cannabis legalization generally. These costs include increased health care costs to treat acute cannabis intoxication and cannabis dependency; costs to fund cannabis prevention, intervention, and treatment programs; and costs to enforce laws against driving under the influence of cannabis. Long-term costs are unknown, and could increase should the County decide to allow cannabis retail in unincorporated areas.

OPTION 2: ALLOW AND REGULATE A LIMITED NUMBER AND TYPE OF COMMERCIAL CANNABIS BUSINESSES IN UNINCORPORATED AREAS

Your Board may also decide to allow and regulate commercial cannabis but limit the types of businesses that can locate in unincorporated areas.

For example, during community engagement efforts, many residents asked the County to ensure sufficient access to cannabis to treat medical conditions. Access to medical cannabis can be achieved through a combination of cannabis stores and delivery services. Your Board could decide to allow medical cannabis activities but prohibit adult-use cannabis activities.

Another example of a more limited approach to regulating commercial cannabis includes licensing only some types of commercial cannabis activity. For example, allowing some form of cannabis retail could help the County reduce the profitability of the unlicensed stores that currently exist throughout the County by providing consumers a legal option to buy cannabis. Your Board can decide to permit cannabis delivery but preclude stores, or allow stores and delivery but preclude other types of non-retail cannabis activity.

The regulatory framework could be applied to both adult-use and medical commercial cannabis activities, or to only medical commercial cannabis activities. A more limited approach to regulating commercial cannabis would impact the cannabis tax revenues analyzed in the report included as Attachment IV.

OPTION 3: PROHIBIT COMMERCIAL CANNABIS ACTIVITY

Your Board can decide to keep the prohibition on commercial cannabis in unincorporated areas in place. The existing prohibition on commercial cannabis is codified in Title 22 of the County Code (Zoning Code). No further action by your Board is necessary to maintain this prohibition.

Prohibiting commercial cannabis would limit or eliminate potential tax revenues. Under State law, prohibiting commercial cannabis cultivation or sale would disqualify the County from receiving grants disbursed from the California Cannabis Tax Fund to local government programs addressing public health and safety associated with implementation of the Adult Use of Marijuana Act.

UNLICENSED CANNABIS BUSINESS ELIMINATION

In March 2016, your Board established the Medical Marijuana Dispensary Enforcement Team ("MMDET"), comprised of County Counsel, the District Attorney, the Department of Regional Planning, and the Sheriff, to combat illegal cannabis stores in unincorporated areas. The MMDET has been enforcing the County's ban against all unlawful dispensaries and other related cannabis businesses and activities. All reports of illegal cannabis stores are logged for follow-up. The Sheriff conducts investigations and serves warrants at suspected cannabis stores. County Counsel and the District Attorney work with property owners to evict illegal stores and, if such efforts are unsuccessful, file civil lawsuits to close the businesses. The process is time-consuming and resource-intensive but, in most cases, results in closure of the illegal store subject to investigation. However, preventing new unlicensed cannabis stores from opening continues to be a challenge.

The MMDET has previously reported on the challenges of making headway against illegal cannabis stores. On April 17, 2017, the MMDET submitted to your Board a report on Enforcement Strategies for Closure of Unlawful Medical Marijuana Dispensaries. The report estimated that approximately 75 illegal cannabis stores were operating in unincorporated areas. On November 7, 2017, County Counsel provided your Board with a verbal report indicating that 29 stores had been closed since the April 2017 report, but that 31 new stores had opened. This phenomenon has been described as "whack-a-mole," because new cannabis businesses quickly take the place of cannabis businesses that shut down.

Based on these enforcement realities, a more comprehensive approach is needed to eliminate unlicensed commercial cannabis activity. The OCM has been working closely with County Counsel, the District Attorney, the Sheriff, the Treasurer and Tax Collector, and the Directors of Public Health and Regional Planning to prepare an unlicensed

cannabis business elimination plan. The draft plan includes four strategies:

- **Strategy 1: Public Education and Outreach:** Engage in proactive outreach to educate key constituencies on how to determine whether a cannabis business is licensed, why it is important to support only licensed businesses, and how to report unlicensed cannabis businesses. This strategy includes:
 - Establishing a universal emblem placard identifying permitted cannabis stores, promoting awareness of the universal emblem as a way for consumers to distinguish between licensed and unlicensed cannabis retail stores, and educating consumers on the potential harms of purchasing cannabis from an unlicensed store. OCM has contracted a with a communications firm to develop the emblem and an associated education campaign to drive consumers away from unlicensed businesses.
 - Exploring the feasibility of posting warning signage at or near unlicensed cannabis stores to alert consumers that the business is not licensed. Such warning signage has been used by officials in the City of Compton.
 - Conducting outreach to employees of cannabis businesses to inform them of the potential risks of working for an unlicensed cannabis business, in collaboration with County departments and other local partners. The OCM and the Department of Consumer and Business Affairs have collaborated with the City of Los Angeles to educate the media about risks to employees working at illegal cannabis stores.
 - Conducting outreach to commercial and industrial property owners, chambers of commerce, and real estate industry associations to raise awareness of the potential legal and financial risks of leasing space to an unlicensed cannabis business. The OCM is compiling contact information for relevant groups for a targeted outreach campaign.
 - Conducting multilingual, culturally competent outreach to community groups to educate residents on how they can report unlicensed cannabis businesses in their neighborhoods. The OCM and MMDet members routinely present at community groups and provide this information. Members of the public can report illegal cannabis stores in unincorporated areas via phone (213-974-6453 or 211) or email (ZoningEnforcement@planning.lacounty.gov or cannabis@lacounty.gov).
 - Exploring the feasibility of adding a function to “The Works” smartphone application to facilitate the reporting of unlicensed cannabis businesses.²

² “The Works” is a smartphone application that provides a one-stop solution for County residents to report and track service requests, such as for graffiti removal, illegal dumping, unpermitted construction, and pothole repairs.

- **Strategy 2: Enhanced Direct Enforcement:** Enhance the effectiveness of direct enforcement against unlicensed businesses by strengthening existing tools and developing new tactics designed to dis-incentivize operating an unlicensed cannabis business. This strategy includes:
 - Exploring the feasibility of establishing a procedure to disconnect utility service at unlicensed cannabis businesses, particularly those with unsafe wiring or other life safety hazards, and those that are engaged in utility theft.
 - Exploring the feasibility of establishing an administrative process to allow physical locking and sealing of premises housing unlicensed cannabis businesses that would not be eligible for licensing, pursuant to Los Angeles County Code (County Code) section 7.04.380.A.
 - Amending the County Code to increase civil penalties per day for unlicensed cannabis businesses, pursuant to Business and Professions Code section 26038.
 - Exploring the feasibility of creating a multi-department inspection and enforcement team specifically for cannabis businesses, similar to the Nuisance Abatement Team.³
 - Developing criteria to prioritize new and existing enforcement cases based on the severity and urgency of the complaint.
- **Strategy 3: Legislative Advocacy:** Advocate for legislation that helps to deter the operation of unlicensed cannabis businesses and facilitates efforts to close such businesses. This strategy includes:
 - Advocating for the State to adopt and strictly enforce regulations or laws prohibiting advertising of unlicensed cannabis businesses, including on online platforms.
 - Exploring the feasibility of establishing a dedicated court department or judge to expedite processing of civil cases against unlicensed cannabis businesses.
 - Advocating for State funding and other resources to support enforcement against unlicensed cannabis businesses and consumer education efforts.

³ The Nuisance Abatement Team (NAT) program is comprised of a number of County departments, including Public Works, Regional Planning, Public Health, Sheriff, District Attorney, Fire, and Animal Care and Control. The NAT teams identify egregious code violations, cite properties where these violations have occurred, take steps to abate violations, and monitor for repeat violations. The NAT team coordinates joint inspections and investigates nuisance conditions at residential, commercial, and industrial properties.

- **Strategy 4: Strategic Partnerships:** Develop mutually beneficial partnerships between County departments and other agencies involved in cannabis regulation, including protocols to support close collaboration and an open exchange of information with trusted partners. This strategy includes:
 - Establishing a unified database of enforcement cases against unlicensed cannabis businesses in the County's unincorporated areas, to provide County departments with on-demand access to the most current information for any given case or location, and to facilitate reporting on summary-level statistics and geographic trends.
 - Exploring the feasibility of establishing a cross-referral protocol with state agencies involved in cannabis regulation and enforcement, to ensure that the relevant state agencies are automatically notified when the County initiates a new enforcement case, and vice versa.
 - Establishing a forum for cannabis regulators from the County, State, and other local jurisdictions to discuss enforcement strategies, emerging trends, identified needs, and other information on a regular basis. The OCM and MMDet members have met with State enforcement officials to discuss collaborative enforcement efforts, and the OCM is planning a convening of local city regulators to discuss enforcement, among other things.

The OCM will continue to develop the unlicensed business elimination plan and expects to provide your Board with a copy of the completed draft plan in 90 days.

Should you have any questions concerning this matter, please contact me at (213) 974-9750 or jnicchitta@dcba.lacounty.gov, or Julia Orozco at (213) 974-1151 or jorozco@ceo.lacounty.gov.

JMN:JO:DSK

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Attachments

c: Executive Office, Board of Supervisors
Chief Executive Office
County Counsel
Assessor
District Attorney
Sheriff
Agricultural Commissioner/Weights and Measures
Alternate Public Defender
Consumer and Business Affairs
Fire

Human Resources
Public Defender
Public Health
Public Works
Regional Planning
Sherriff Civilian Oversight Commission
Treasurer and Tax Collector

DRAFT