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THE LAW OFFICES OF  
**AMATUZZI & VILLMER**

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April 16, 2013

**RECEIVED**

**APR 18 2013**

**ATTN: Commissioner William M. Rubenstein**  
Department of Consumer Protection  
Room 103  
State Office Building  
165 Capitol Avenue  
Hartford, Connecticut 06106

DEPT OF CONSUMER PROTECTION  
OFFICE OF THE COMMISSIONER

Re: Written Comment Regarding Proposed Regulation  
Concerning Palliative Use of Marijuana

Dear Commissioner Rubenstein:

Please accept this packet of information as a comment in response to the Proposed Regulation Concerning Palliative Use of Marijuana. Our firm assists individuals and businesses with dispensary and production facility application preparation and regulatory compliance. Considering our vested interest in the success of House Bill 5389, our firm wishes to raise one important issue that the Department of Consumer Protection (“DCP”) should consider: local zoning regulations and their effect upon medicinal marijuana sales and cultivation. In short, our firm believes that the current proposed regulations do not adequately address the preemption of local Connecticut municipality zoning ordinances—ordinances that will surely be passed with the primary goal of banning the sale and distribution of medicinal marijuana.

As the DCP knows, numerous states throughout the U.S. have adopted laws allowing for the distribution and cultivation of medicinal marijuana. The purpose of these laws—including Connecticut’s law—is to provide patients in need with the medication they require. Throughout the country, various local municipalities have attempted to thwart state legislatures’ medicinal marijuana legislation by passing restrictive zoning ordinances. These zoning ordinances typically ban the cultivation and sale of medicinal marijuana outright. Without addressing the issue of local zoning in its proposed regulations, the DCP risks a tangled web of restrictive local zoning ordinances and resulting litigation throughout the State of Connecticut.

A brief review of various local zoning ordinances throughout the U.S. demonstrates that failure to address this issue in the DCP’s proposed regulations will likely result in numerous

local municipalities throughout Connecticut effectively banning the sale and production of medicinal marijuana—an action that frustrates the purpose of House Bill 5389. One may simply look to the State of Washington for examples of such municipality bans:

- Edmonds, Washington: Ordinance No. 3833 placed a moratorium on the establishment of medicinal marijuana dispensaries and production facilities for local zoning purposes;
- Kent, Washington: Ordinance No. 4036 stated that medical marijuana production facilities are not permitted within any zoning district throughout the city;
- SeaTac, Washington: Ordinance Nos. 12-1011 and 11-1015 placed a moratorium on the establishment of medicinal marijuana dispensaries and production facilities for local zoning purposes;
- Woodland, Washington: Ordinance No. 1245 enacted a moratorium prohibiting the licensing, establishment, maintenance, or continuation of any medicinal marijuana production facilities, the production facilities were designated as prohibited uses for local zoning purposes, and the city determined that no business licenses were to be issued to any person for production of medicinal marijuana;
- Tukwila, Washington: Ordinance No. 2379 placed a moratorium on the establishment of medicinal marijuana dispensaries and production facilities for local zoning purposes;
- Edgewood, Washington: Ordinance No. 13-0357 dictated that no business license would be issued for local businesses that violate federal law;
- Yakima, Washington: Ordinance No. 2012-03 stated that no land use zone in the city would allow for any use that is illegal under federal law.

The above examples are only from Washington State—numerous other municipalities throughout the country have passed similar ordinances that frustrate their respective state medicinal marijuana laws. These local ordinances have spawned legal action resulting in various judicial rulings and attorney general opinions.

One such recent judicial ruling is that of a Washtenaw County Circuit Court judge in the state of Michigan. The judge was asked to decide whether Michigan state law trumped conflicting Washtenaw County law. After the passage of Michigan’s medicinal marijuana legislation, Washtenaw County passed a zoning regulation that restricted the growing of medicinal marijuana within various zones. In reviewing the County’s regulation in light of Michigan’s conflicting law, the judge stated in his ruling, “[t]here are no provisions in [Michigan’s medicinal marijuana legislation] that prohibit municipalities from adopting zoning ordinances regulating where medical marijuana caregivers can grow and dispense marijuana for other patients.” This judge upheld the County zoning ordinance despite its conflict with Michigan state law.

Another such decision, this time issued by the Massachusetts Attorney General, struck down a local ordinance banning the sale of marijuana within all local zoning districts. The Attorney General found that a Wakefield Fall zoning ordinance that prohibited the sale of marijuana for zoning purposes “frustrate[s] the purpose of [Massachusetts’ medicinal marijuana legislation]” and that the state’s medicinal marijuana law’s “legislative purpose could not be served if a municipality could prohibit treatment centers within its borders, for if one municipality could do so, presumably all could do so.”

These two specific (2) examples, along with the numerous Washington municipality restrictive ordinances listed above, demonstrate the legal morass the DCP will surely encounter without addressing the issue of preemption and zoning in its regulations.

As a part of its proposed regulations, the DCP should include language that unequivocally prevents local Connecticut municipalities from enacting ordinances that frustrate the purpose of House Bill 5389. Currently, House Bill 5389 does not address local zoning issues, and the proposed regulations only state that dispensary and production facility applications must include “[d]ocuments sufficient to establish that the applicant is authorized to conduct business in Connecticut and that state and local building, fire and zoning requirements and local ordinances will be met.” The current language contained within the proposed regulations does not adequately address the municipality zoning issues that are sure to arise in the future. By addressing this issue within the regulations that the DCP ultimately adopts, the DCP will avert future legal gridlock that frustrates the purpose of House Bill 5389.

If the DCP has any further questions about this issue, do not hesitate to contact Matt Villmer, our attorney specializing in dispensary and production facility application preparation and regulatory compliance.

Sincerely,



Matt Villmer  
For the Firm

Enclosures: Ten (10) copies of this statement for  
Department of Consumer Protection consideration