Seattle City Attorney
Peter S. Holmes

December 3, 2013

Rules Coordinator
Washington State Liquor Control Board
P.O. Box 43080
Olympia, WA 98504-3080

Dear Rules Coordinator:

Initiative 502 prohibits the Liquor Control Board from issuing licenses for marijuana-related "premises within one thousand feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older." RCW 69.50.331(8) (I-502, Section 6). In September, the Board proposed a rule measuring this 1,000 foot distance using a "common path of travel" method ("along the most direct route over or across established public walks, streets, or other public passageway between the proposed building/business locations to the perimeter of the grounds of the entities listed") rather than measuring the distance "as the crow flies." Shortly after announcing this proposed language, however, the Board revised this proposal and proposed returning to the "as the crow flies" measurement. We understand that the Board proposed this latest change as a result of guidance from the U.S. Department of Justice regarding its interpretation of the federal Drug Free Schools and Communities Act (21 U.S.C. § 860).

Seattle supports the "common path of travel" measurement for two reasons. First, it reflects that I-502 and the Drug Free Schools Act are concerned with limiting access to marijuana by minors, and "common path of travel" most accurately measures how minors might attempt to access I-502 licensed facilities. Second, in a densely populated city like Seattle, "as the crow flies" measurements severely constrain the locations available for licensed dispensers. We, too, want to keep licensed dispensers away from schools, playgrounds, and other locations identified in I-502, but this must be balanced with the equally important goal of supplanting the current illicit marijuana market with a sufficient number of I-502 stores.

To address these issues, we propose the following: Measure the distance from schools and playgrounds "as the crow flies," and measure the distance from the

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remaining locations identified in I-502—recreation centers, child care centers, public parks (other than playgrounds), public transit centers, libraries, and all-ages game arcades—by "common path of travel." These latter locations are *not* covered by the Drug Free Schools Act's 1,000' restriction. Applying the "as the crow flies" rule to I-502's more expansive list of facilities with 1,000' restrictions, the Board would consequently exclude more territory for potential I-502 sites than would the Drug Free Schools Act alone.

We understand that the Board was motivated by pressure from the U.S. Attorney's Office. However, it is unrealistic for federal officials to simultaneously insist on strict control of marijuana while effectively limiting the number of legal facilities intended to displace illegal operations. We are confident that Deputy Attorney General James Cole's August 29, 2013, memorandum was not intended to set up our state's fledgling marijuana supply system for failure. Indeed, that same memorandum effectively mandates that the Board revise its prior projections and plan for a much more rapid shift from illicit marijuana to licensed product purchases.

Seattle's City Council has already embraced such expedited transition by enacting zoning rules that will require a state license for any production facility with more than 45 plants—thus precluding a strained legal construction allowing medical marijuana produced in large-scale "collective gardens" within City limits. Since Seattle already has more than 200 known medical marijuana access points, far more than the presently-allotted 21 stores will be necessary to handle the redirected demand. We urge you to award at least 50 such retail licenses initially in Seattle, and reassess the adequacy of retail supplies within the first 12 months of operation.

Finally, we urge you to give licensing preference to *existing* medical marijuana facilities that otherwise comply with—or demonstrate the ability to come into compliance with—I-502 requirements, including application of the 1000' rule as described above. We believe that these final rulemaking adjustments, made during the current application period, will give Washington the best chance of successfully launching a fully regulated marijuana supply system that displaces illegal enterprises.

Thank you for your consideration.

Very truly yours,

Peter S. Holmes
Seattle City Attorney

cc: Mayor Michael McGinn
Sally Clark, President, Seattle City Council